

APPENDIX A

FINAL JUDGMENTS

(Ordered by Case Listing in the Case Caption)

UNITED STATES v.
A M I, INCORPORATED

Civil Action No. 3238

Year Judgment Entered: 1957

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. A M I Incorporated., U.S. District Court, W.D. Michigan, 1957 Trade Cases ¶68,758, (Jun. 28, 1957)

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United States v. A M I Incorporated.

1957 Trade Cases ¶68,758. U.S. District Court, W.D. Michigan, Southern Division. Civil Action No. 3238. Filed June 28, 1957. Case No. 1350 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets—Refusal To Deal—Coin Operated Phonographs.—A manufacturer-distributor of coin operated phonographs was prohibited by a consent decree from (1) limiting or restricting the persons to whom or the territory within which any distributor or operator may sell such phonographs, (2) requiring any distributor to advise it of the name or address of any purchaser of phonographs or the serial number of such phonograph, or (3) limiting or restricting the right of any purchaser from any distributor to resell such phonographs after they have been paid for in full. Also, the manufacturer-distributor was prohibited from refusing to enter into or canceling any contract with a distributor because of such distributor's refusal to do any of the above acts and from maintaining any index or record of the names or addresses of any purchasers from distributors of such phonographs or the serial numbers of such phonographs.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Obtaining Names of Purchasers—Right To Select Customers.—A consent decree did not prohibit a manufacturer-distributor of coin operated phonographs from requiring any distributor to advise it of the name or address of any purchaser of such phonographs from the distributor or the serial number of such phonographs where such name, address, and serial number are necessary (1) to fill an order for repair parts, for service, or for possible attendance at service schools, or (2) to resolve a complaint of inquiry involving loss or the fulfillment or breach of a conditional sales agreement or other credit or collateral agreement. The decree also provided that the manufacturer-distributor could exercise its right to select its distributors and customers and to designate geographical areas in which distributors shall be primarily responsible for promoting the sale of its coin operated phonographs.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Notice of Judgment.—A manufacturer-distributor of coin operated phonographs was required by a consent decree to serve upon each of its distributors a conformed copy of the decree.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; Wendell A. Miles, United States Attorney, Western District of Michigan; and W. D. Kilgore, Jr., Earl A. Jinkinson, Harold E. Baily, and James E. Mann, Attorneys, Department of Justice.

For the defendant: Thomas L. Marshall of Bell, Boyd, Marshall & Lloyd, Chicago, Ill.; and Marshall M. Uhl of Uhl, Bryant, Slawson & Wheeler, Grand Rapids, Mich.

Final Judgment

S. WALLACE KENT, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 28, 1957, the defendant having filed its answer denying the substantive allegations thereof, and the United States of America and the defendant, AMI Incorporated, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party signatory hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties signatory hereto, It is hereby ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The complaint states claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce from unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, firm, corporation, or any other legal entity;
- (B) "Distributor" shall mean any person engaged in the purchase from defendant, for resale, of coin-operated phonographs manufactured by it;
- (C) "Operator" shall mean any person who owns coin-operated phonographs and leases said machines to location owners;
- (D) "Location owner" shall mean any person owning or operating a restaurant, tavern or other place of business in the Continental United States where coin-operated phonographs are placed for use by the public;
- (E) "Coin-operated phonographs" shall mean new and used coin-operated phonographs manufactured originally by defendant.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment shall apply to defendant and to its successors, assigns, officers, directors, servants, employees and agents, and to any corporation subsidiaries of defendant, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

This Final Judgment is not to be construed as relating to commerce outside the United States.

IV

[*Practices Enjoined*]

Defendant is enjoined and restrained from directly or indirectly:

- (A) (1) Limiting or restricting, the persons to whom or the territory within which any distributor or operator may sell coin-operated phonographs;
- (2) Requiring any distributor to advise defendant of the name or address of any purchaser from such distributor of any coin-operated phonographs or the serial number or numbers of such phonographs, except where such name, address and serial number or numbers are necessary to fill an order for repair or maintenance parts, or for service, or for possible attendance at service schools, for maintenance or replacement of parts or components, or to resolve a complaint or inquiry involving loss or theft or the fulfillment or breach of a conditional sales agreement or other credit or collateral agreement;
- (3) Limiting or restricting the right of any purchaser from any distributor of coin-operated phonographs to resell such phonograph or phonographs after they have been paid for in full.

(B) Entering into, adhering to or enforcing any contract, agreement, or understanding with any distributor, directly or indirectly:

(1) Limiting or restricting the persons to whom or the territory within which any distributor or operator may sell a coin-operated phonograph or phonographs;

(2) Limiting or restricting the right of any purchaser from any distributor of coin-operated phonographs to resell such phonograph or phonographs after they have been paid for in full.

(C) Refusing to enter into or cancelling any contract with a distributor for the distribution of coin-operated phonographs because of such distributor's refusal to do any of the following acts:

(1) Limit or restrict, directly or indirectly, the persons to whom, or the territory within which he sells coin-operated phonographs;

(2) Advise defendant of the name or address of any purchaser from such distributor of any coin-operated phonographs or the serial number or numbers of such phonographs, except where such name, address and serial number or numbers are necessary to fill an order for repair or maintenance parts, or for service or for possible attendance at service schools, for maintenance or replacement of parts or components, or to resolve a complaint or inquiry involving loss or theft, or the fulfillment or breach of a conditional sales agreement or other credit or collateral agreement held by the defendant.

(3) Limit or restrict, directly or indirectly, the right of any purchaser of coin-operated phonographs to resell such phonographs after the defendant shall have been paid in full therefor.

(D) (1) Maintaining any index, catalog or record of the names or addresses of any purchasers from distributors of coin-operated phonographs or the serial numbers of such phonographs; provided, however, that any distributor may advise defendant and defendant may keep a record of the names or addresses of any such purchasers of such phonographs and the serial numbers thereof in connection with an order for repair or maintenance parts, or for service or for possible attendance at service schools, or for advertising, or in connection with a complaint or inquiry involving loss or theft or fulfillment or breach of a conditional sales agreement or other credit or collateral agreement involving such phonographs ; and provided further that defendant shall not be required to discontinue obtaining post cards upon forms prescribed from any owner of its coin-operated phonographs as a means of determining the time at which its warranty begins to operate and identification of its then warranty promisee, but these exceptions and provisions shall not be used directly or indirectly to accomplish, or to attempt to accomplish, action or results enjoined by any provision of this decree.

(2) Using any file or record of defendant for any purpose contrary to any of the provisions of this Final Judgment.

(E) Subject to the above subsections of this Section IV, defendant may exercise its right from time to time to choose and select its distributors and customers, and to designate geographical areas in which such distributors shall respectively be primarily responsible for promoting the sale and distribution of coin-operated phonographs manufactured by defendant.

V

[Notice of Judgment]

Defendant is directed, within sixty (60) days after the entry of this Final Judgment, to serve by mail upon each of its distributors a conformed copy thereof.

VI

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during regular office hours, to those parts of the books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant which relate to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview its officers or employees, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

[*Effective Date*]

This Final Judgment shall become effective ninety (90) days after entry herein.

UNITED STATES v.
AMERICAN BAKERIES CO., *et al.*

Civil Action No. 5787

Year Judgment Entered: 1969

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Bakeries Co., et al., U.S. District Court, W.D. Michigan, 1969 Trade Cases ¶72,908, (Jul. 31, 1969)

[Click to open document in a browser](#)

United States v. American Bakeries Co., et al.

1969 Trade Cases ¶72,908. U.S. District Court, W.D. Michigan, Southern Division. Civil Action No. 5787. Entered July 31, 1969. Case No. 1980 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Baked Goods—Consent Decree.—Four bakers were prohibited by a consent decree from fixing prices, submitting rigged bids, allocating bids, communicating price information, and from joining any trade association whose practices are inconsistent with the prohibitions of the decree. For a period of five years a certificate of non-collusion would have to accompany all bids. Independent review and determination of price lists for the state of Michigan were required.

Consent Judgments—Government's Election of Court for Contempt Proceedings— Limitation on Further Proceedings.—A consent decree provided that if the government should institute contempt proceedings against defendants with respect to a set of facts that it believes constitutes a violation of the terms of the decree, then the government will elect the court in which to institute the action and, upon such election, will not institute another contempt action based upon substantially the same set of facts in any other court.

For the plaintiff: Baddia J. Rashid, Director of Operations, Antitrust Div., Dept. of Justice, Harry N. Burgess, John E. Sarbaugh, Robert J. Ludwig, and William F. Costigan, Attys., Dept. of Justice.

For the defendants: William I. Goldberg, for American Bakeries Co.; John H. Shafer, for Continental Baking Co.; Gordan Wheeler, for Rainbo Bread Co. of Saginaw; Niel A. Weathers, for Ward Foods, Inc.

Final Judgment

Fox, D. J.: Plaintiff, United States of America, having filed its Complaint herein on December 11, 1967, and defendants American Bakeries Company; Continental Baking Company; Rainbo Bread Company of Saginaw; and Ward Foods, Inc., by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, without admission by any party in respect to any such issue, and without this Final Judgment constituting evidence with respect to any such issue;

Now Therefore, before the taking of any testimony and upon said consent of the parties hereto the Court hereby determines that the proceeding herein is terminated as to the aforesaid consenting defendants and directs entry of Final Judgment as to all of plaintiff's claims herein against said consenting defendants and as to said consenting defendants, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and the parties consenting hereto. The Complaint states claims against the defendants upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[Definitions]

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As used in this Final Judgment:

- (A) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity.
- (B) "Bakery product" means any type of bread or bread type buns or rolls.

III

[Applicability]

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to activities between a defendant, its officers, directors, agents or employees and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact controlled by the defendant or such defendant's parent or subsidiary companies.

IV

[Prices and Information]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

- (A) Fix, determine, maintain or stabilize prices, discounts or other terms or conditions for the sale of any bakery product to any third person;
- (B) Submit collusive or rigged bids or quotations or to allocate any such bids or quotations for the sale of any bakery product;
- (C) Communicate to or exchange with any other person selling any bakery product any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally (except in the course of negotiating for, entering into, maintaining, or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV(A) and (B) above).

V

[Communication—Trade Groups]

Each defendant is enjoined and restrained, directly or indirectly:

- (A) For a period of ten (10) years from communicating to any other person selling any bakery product, any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be sold by the defendant, or such other person to any third person, prior to the communication of such information to the public or trade generally;
- (B) Subparagraph (A) hereof shall not apply to the communication of such information in the course of negotiating for, entering into, maintaining or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV above;
- (C) Joining, participating in, or belonging to any trade association, organization, or other group with knowledge that any of the activities thereof are inconsistent with any term of this Final Judgment.

VI

[Bid Affidavits]

Each defendant is ordered and directed:

(A) For a period of five (5) years from and after the date of entry of this Final Judgment to furnish simultaneously with each bid or quotation required to be sealed which is submitted by it for the sale of any bakery product in the State of Michigan, a certification, in substantially the form set forth in the Appendix hereto, by an official of such defendant knowledgeable about and having authority to determine the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling any bakery product. Provided, however, that such certification would not be violated solely because the defendant has negotiated for, entered into, maintained, or carried out bona fide purchase or sale transactions with any other person, with respect to said bid or quotation, whereby the defendant would purchase bakery products from or supply bakery products to such person or whereby the defendant would submit a joint bid or quotation with such other person.

(B) Within thirty (30) days after the date of entry of this Final Judgment, independently and individually, to review and determine its prices, discounts, terms and conditions for the sale of each bakery product in the State of Michigan based upon lawful considerations, unless such review and determination shall have been made voluntarily within six (6) months prior to the entry of this Final Judgment; and within forty-five (45) days after the date of entry of this Final Judgment, to file with this Court and serve upon the plaintiff an Affidavit as to the fact and manner of compliance with this Section VI(B) including a statement setting forth the method used to review and determine such prices, discounts, terms and conditions for sale of each such bakery product.

(C) Within ninety (90) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its officers and directors and to each of its plant managers, and to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with this Section (C).

VII

[*Fair Trading*]

Nothing in this Final Judgment shall be deemed to prohibit the lawful exercise by any defendant of such legal rights, if any, which a defendant may have under the Miller-Tydings Act, 50 Stat. 693 (1937), and the McGuire Act, 66 Stat. 632 (1952).

VIII

[*Contempt Proceedings*]

If the plaintiff should institute contempt proceedings against defendants American Bakeries Company; Continental Baking Company, Rainbo Bread Company of Saginaw, or Ward Foods, Inc., with respect to a set of facts which it believes to constitute a violation of the terms of both this Final Judgment and a Final Judgment of any other court, then the plaintiff shall elect the court in which it shall institute such contempt action and, upon such election, shall not institute another contempt action based upon substantially the same set of facts in any other court.

IX

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to a defendant, made through its principal office;

(A) Duly authorized representative of the Department of Justice shall be permitted:

(1) Access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any of the subject matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview officers, directors, employees or agents of the defendant, who may have counsel present, regarding any such matters; and

(B) Defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

X

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer or seller of bakery products and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any such person other than the recipient of such bid and will not be communicated to any such person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath, and is made subject to the provisions of 18 U. S. C, 1001 relating to the making of false statements.

UNITED STATES v.
AMERICAN BAKERIES CO., *et al.*

Civil Action No. 5787

Year Judgment Entered: 1969
(Adding Additional Defendants)

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Bakeries Co., et al., U.S. District Court, W.D. Michigan, 1969 Trade Cases ¶72,827, (Jul. 31, 1969)

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United States v. American Bakeries Co., et al.

1969 Trade Cases ¶72,827. U.S. District Court, W.D. Michigan, Southern Division. Civil Action No. 5787. Entered July 31, 1969. Case No. 1980 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Baked Goods—Consent Decree.—Nine bakeries were prohibited by a consent decree from fixing prices, submitting rigged bids, allocating bids, communicating price information, and from joining any trade association whose practices are inconsistent with the prohibitions of the decree. For a period of five years an affidavit of non-collusion would have to accompany all bids. Independent price review and determination for products sold in Michigan was required.

For the plaintiff: Robert A. Hammond, Deputy Asst. Atty. Gen., Baddia J. Rashid, Harry N. Burgess, John E. Sarbaugh, William F. Costigan, and Robert J. Ludwig, Attys., Dept. of Justice.

For the defendants: Luyendyk, Hainer & Karr, by John D. B. Luyendyk, Grand Rapids, Mich., for Grocers Baking Co.; Hillman, Baxter & Hammond, by Douglas W. Hillman, Grand Rapids, Mich., for Silvercup Bakers, Inc.; Varnum, Riddering, Wierengo & Christenson, by Peter Armstrong, Grand Rapids, Mich., for Roskam Baking Co.; Dickinson, Wright, McKean & Cudlip, by John A. Krsul, Jr., Detroit, Mich., for Michigan Bakeries, Inc.; Honigman, Miller, Schwartz & Cohn, by Maurice S. Binkow, Detroit, Mich., for Koeplinger's Bakery, Inc.; Paulson, Bennett, Palmer & Lewis, by R. A. Palmer, Kalamazoo, Mich., for Dutch Treat Bakers, Inc.; Glassen, Parr, Rhead & McLean, by Lloyd D. Parr, Lansing, Mich., for Gase Baking Co. and Schafer Bakeries, Inc.; and Edward L. Cobb, Jackson, Mich., for Way Baking Co.

Final Judgment

Fox, D. J.: Plaintiff, United States of America, having filed its Complaint herein on December 11, 1967, and defendants Dutch Treat Bakers, Inc.; Gase Baking Company; Grocers Baking Company; Koeplinger's Bakery, Inc.; Michigan Bakeries, Inc.; Roskam Baking Company; Schafer Bakeries, Inc.; Silvercup Bakers, Inc.; and Way Baking Company, by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, without admission by any party in respect to any such issue, and without this Final Judgment constituting evidence with respect to any such issue;

Now, Therefore, before the taking of any testimony and upon said consent of the parties hereto the Court hereby determines that the proceeding herein is terminated as to the aforesaid consenting defendants and directs entry of Final Judgment as to all of plaintiff's claims herein against said consenting defendants and as to said consenting defendants, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and the parties consenting hereto. The Complaint states claims against the defendants upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity.
- (B) "Bakery product" means any type of bread or bread type buns or rolls.

III

[Applicability]

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to activities between a defendant, its officers, directors, agents or employees and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact controlled by the defendant or such defendant's parent or subsidiary companies, or which are affiliated with defendant through common ownership or control.

IV

[Price Fixing]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

- (A) Fix, determine, maintain or stabilize prices, discounts or other terms or conditions for the sale of any bakery product to any third person;
- (B) Submit collusive or rigged bids or quotations or to allocate any such bids or quotations for the sale of any bakery product;
- (C) Communicate to or exchange with any other person selling any bakery product any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally (except in the course of negotiating for, entering into, maintaining, or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV(A) and (B) above).

V

[Price Information]

Each defendant is enjoined and restrained, directly or indirectly:

- (A) For a period of ten (10) years from communicating to any other person selling any bakery product, any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be sold by the defendant, or such other person to any third person, prior to the communication of such information to the public or trade generally;
- (B) Subparagraph (A) hereof shall not apply to the communication of such information in the course of negotiating for, entering into, maintaining or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV above;
- (C) From joining, participating in, or belonging to any trade association, organization, or other group with knowledge that any of the activities thereof are inconsistent with any term of this Final Judgment.

VI

[Bids]

Each defendant is ordered and directed:

(A) For a period of five (5) years from and after the date of entry of this Final Judgment to furnish simultaneously with each bid or quotation required to be sealed which is submitted by it for the sale of any bakery product in the State of Michigan, a certification, in substantially the form set forth in the Appendix hereto, by an official of such defendant knowledgeable about and having authority to determine the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling any bakery product. Provided, however, that such certification would not be violated solely because the defendant has negotiated for, entered into, maintained, or carried out bona fide purchase or sale transactions with any other person, with respect to said bid or quotation, whereby the defendant would purchase bakery products from or supply bakery products to such person or whereby the defendant would submit a joint bid or quotation with such other person.

(B) Within thirty (30) days after the date of entry of this Final Judgment, independently and individually, to review and determine its prices, discounts, terms and conditions for the sale of each bakery product in the State of Michigan based upon lawful considerations, unless such review and determination shall have been made voluntarily within six (6) months prior to the entry of this Final Judgment; and within forty-five (45) days after the date of entry of this Final Judgment, to file with this Court and serve upon the plaintiff an Affidavit as to the fact and manner of compliance with this Section VI(B) including a statement setting forth the method used to review and determine such prices, discounts, terms and conditions for sale of each such bakery product.

(C) Within ninety (90) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its officers and directors and to each of its plant managers, and to file with this Court and serve upon the plaintiff an affidavit as to *the* fact and manner *or* its compliance with this Section (C).

VII

[Fair Trade]

Nothing in this Final Judgment shall be deemed to prohibit the lawful exercise by any defendant of such legal rights, if any, which a defendant may have under the Miller-Tydings Act, 50 Stat. 693 (1937), and the McGuire Act, 66 Stat. 632 (1952).

VIII

[Compliance]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to a defendant, made through its principal office;

(A) Duly authorized representatives of the Department of Justice shall be permitted:

(1) Access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any of the subject matter contained in this Final Judgment;

(2) Subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview officers, directors, employees or agents of the defendant, who may have counsel present, regarding any such matters; and

(B) Defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No

information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of determining or securing compliance with *this* Final Judgment or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer or seller of bakery Products and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any such person other than the recipient of such bid and will not be communicated to any such person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath and is made subject to the provisions of 18 U. S. C, 1001 relating to the making of false statements.

UNITED STATES v.
EXPRESSWAYS INC., *et al.*

Civil Action No. M 75-41

Year Judgment Entered: 1979

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Expressways, Inc., Flanigan Brothers Storage Co., Nystrom's Moving and Storage, Inc., Vanways, Inc., and Dobson Cartage and Storage Co., U.S. District Court, W.D. Michigan, 1979-2 Trade Cases ¶62,914, (Jul. 13, 1979)

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United States v. Expressways, Inc., Flanigan Brothers Storage Co., Nystrom's Moving and Storage, Inc., Vanways, Inc., and Dobson Cartage and Storage Co.

1979-2 Trade Cases ¶62,914. U.S. District Court, W.D. Michigan, Northern Division, Civil No. M 75-41, Entered July 13, 1979, (Competitive impact statement and other matters filed with settlement: 44 *Federal Register* 21085).

Case No. 2454, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Bid Rigging: Allocation of Markets: Exchange of Information: Storage Business: Consent Decree.— Five Michigan storage companies were barred by a consent decree, for a period of five years, from fixing prices, rigging bids, allocating markets or exchanging information in connection with the contracting for non-temporary storage of household goods of military personnel. Provisions of the decree did not apply to transactions or communications between commonly controlled companies.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John A. Weedon, James S. Brady, U. S. Atty., David F. Hils, Dept. of Justice, Antitrust Div., Cleveland, Ohio. **For defendants:** Fred L. Woodworth, for Expressways, Inc. and Vanways, Inc.; J. Terry Moran, for Nystrom's Moving & Storage, Inc.; Marvin L. Heitman, for Flanigan Brothers Storage Co.; Jon G. March, for Dobson Cartage and Storage Co.

Final Judgment

Miles, D. J.: Plaintiff, United States of America, having filed its complaint herein on May 20, 1975, and plaintiff and defendants, by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states claims upon which relief may be granted against the defendants under [Section 1 of the Sherman Act](#), 15 U. S. C. §1.

II

[Definitions]

As used in this Final Judgment:

- (A) "Nontemp storage" means the non-temporary storage of household goods of military personnel;
- (B) "TMO" means the Transportation Management Office;
- (C) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity;

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(D) "Control" means at least a 50 percent direct or indirect ownership interest in the controlled person by the controlling person.

III

[Applicability]

The provisions of this Final Judgment are applicable to each defendant herein and shall apply also to each of such defendant's subsidiaries, successors, assigns, directors, officers, agents, servants and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[Damage Settlement]

Count Two of the plaintiff's complaint herein, pursuant to the settlement stipulation of all parties, has been finally disposed of under the Court's accompanying Consent Judgment dated [July 13, 1979; ¶62,915].

V

[Price Fixing; Bidding]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering, enforcing, or claiming any rights under any contract, agreement, arrangement understanding, plan, program, combination, or conspiracy with any other person, directly or indirectly to:

- (A) Fix, raise, stabilize or maintain the prices or other terms or conditions for nontemp storage;
- (B) Allocate or rotate customers, territories or markets for nontemp storage;
- (C) Submit noncompetitive, collusive, or rigged bids or quotations for nontemp storage;
- (D) Refrain from bidding for nontemp storage.

VI

[Price Information]

Each of the defendants is enjoined and restrained from communicating to or exchanging with any other person who furnishes nontemp storage any information concerning prices of nontemp storage.

VII

[Certification]

Each defendant shall accompany each of its bids for nontemp storage with a certified written statement, by one of its officers, that the bid was arrived at independently and was not the result of any agreement or understanding with any other person who furnishes nontemp storage.

VIII

[Controlled Companies]

This Final Judgment shall not apply to transactions, dealings, or communications solely between a defendant and a parent or subsidiary of, or corporation under common control with, such defendant, or solely between defendant Vanways, Inc. and Stevens Van Lines or its subsidiary, Stevens Forwarders, as long as control of these three companies remains in one or more of the following: Archie H. Stevens, Sr., and his sons, Archie H. Stevens, Jr., James Stevens, Morrison Stevens, and John Stevens.

IX

[Acquiring Parties]

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its nontemp storage business, or all, or substantially all, of the assets of its nontemp storage business serving K. I. Sawyer Air Force Base, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

X

[Compliance]

For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall file with this Court and with plaintiff, on the anniversary date of this Final Judgment, a sworn statement by a responsible officer, designated by that defendant to perform such duties, setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment. Said report shall be accompanied by copies of all written directives issued by said defendant during the prior year with respect to compliance with the terms of this Final Judgment.

Within sixty (60) days of the entry of this Final Judgment, each such defendant shall take affirmative steps (including, but not limited to, written directives setting forth corporate compliance policies, distribution of this Final Judgment, and meetings to review its terms and the obligations it imposes) to advise each of its officers, directors, agents, and employees engaged or involved in the nontemp storage business of the company's and their obligations under this Final Judgment and the antitrust laws, and of the criminal penalties for violation of the provisions of this Final Judgment and the antitrust laws.

XI

[Notice]

Each defendant is ordered and directed to:

- (A) furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to each of its officers and directors, and to each of its employees and agents who has responsibility for or authority over the establishment of prices or bids for nontemp storage;
- (B) furnish a copy of this Final Judgment to each successor to those officers, directors, employees or agents described in Paragraph (A) of this Section, within thirty (30) days after such successor is employed by or becomes associated with such defendant;
- (C) furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to the TMO of K. I. Sawyer Air Force Base;
- (D) file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Paragraphs (A) and (C) of this Section.

XII

[Inspection]

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners, or employees of such defendant, who may have counsel present, regarding any such matters.

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

XIII

[Retention of Jurisdiction]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV

[Public Interest]

Entry of this Final Judgment is in the public interest.