

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Frozen Food Distributors Association of Greater New York; Global Frozen Foods, Inc.; Nassau Suffolk Frozen Food Co., Inc.; Reliable Food Distributors, Inc.; Snow-Kist Frozen Foods Corp.; Flagstaff Frozen Food Associates, Inc.; McRoberts Bros., Inc.; Leonard Rapoport; Morris Bahar; Michael Goldfarb; Jack Karger; and Walter Greenspan., U.S. District Court, S.D. New York, 1959 Trade Cases ¶69,364, (May 15, 1959)

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United States v. Frozen Food Distributors Association of Greater New York; Global Frozen Foods, Inc.; Nassau Suffolk Frozen Food Co., Inc.; Reliable Food Distributors, Inc.; Snow-Kist Frozen Foods Corp.; Flagstaff Frozen Food Associates, Inc.; McRoberts Bros., Inc.; Leonard Rapoport; Morris Bahar; Michael Goldfarb; Jack Karger; and Walter Greenspan.

1959 Trade Cases ¶69,364. U.S. District Court, S.D. New York. Civil Action No. 135-141. Dated May 15, 1959. Case No. 1404 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Price Fixing—Prices Fixed by Agreements Between Competitors—Coercion.—Distributors of frozen food specialties were prohibited by a consent decree from agreeing (1) to fix the prices at which such frozen food specialties are sold to third persons or (2) to coerce or persuade a distributor to increase, change, or maintain the price of such products. Also, the distributors were prohibited from suggesting prices to other distributors.

Combinations and Conspiracies—Consent Decree—Practices Prohibited—Boycotts—Refusal to Deal—Coercion.—Distributors of frozen food specialties were prohibited by a consent decree from agreeing (1) to boycott or refuse to deal with a packer, (2) to coerce or persuade a packer to boycott or otherwise refuse to deal with any distributor, or (3) to coerce or persuade a distributor to boycott or otherwise refuse to deal with any packer. The distributors were also enjoined from inducing or coercing other distributors to refuse to purchase from any packer or class of packers, and coercing or compelling any packer to refuse to sell to any other distributor. However, exclusive distribution contracts between packers and distributors were not prohibited.

Combinations and Conspiracies—Consent Decree—Trade Association Membership as Means of Trade Restraints.—Distributors of frozen food specialties were prohibited by a consent decree from knowingly becoming members of or participating in the activities of any trade association or other organization whose purposes or functions relate to the distribution or sale of frozen food specialties and are contrary to a section of the decree prohibiting certain agreements.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Dissolution of Trade Association.—Distributors of frozen food specialties were ordered by a consent decree to dissolve their association at the earliest possible date.

Department of Justice Enforcement and Procedure—Consent Decrees-Permissive Provisions—Fair Trade Laws.—A consent decree provided that nothing in the decree should prevent the defendants, distributors of frozen food specialties, from availing themselves of the benefits, if any, permitted under state laws, the Miller-Tydings Act, and the McGuire Act.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; W. D. Kilgore, Jr., Charles T. Whittinghill, Richard B. O'Donnell, John D. Swartz, William J. Elkins, Joseph T. Maioriello, Edward F. Corcoran, and Agnes T. Leen, Attorneys, Department of Justice.

For the defendants: Laporte & Meyers, by Ernest S. Meyers, for Frozen Food Distributors Assn. of Greater New York; Sidney R. Schwartzreich for Nassau Suffolk Frozen Food Co., Inc., and Morris Bahar; Jacob Rapoport for

Global Frozen Foods, Inc., and Leonard Rapoport; Charles N. Kors for McRoberts Bros., Inc.; Jaffe & Wachtell, by Herbert M. Wachtell, for Reliable Food Distributors, Inc.; Matthew H. Bradenburg for Snow-Kist Frozen Foods Corp., Michael Goldfarb, and Jack Karger; Benjamin Weiner for Walter Greenspan and Flagstaff Frozen Food Associates, Inc.

Final Judgment

[Consent Decree]

RICHARD H. LEVET, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein, on June 30, 1958; each of the defendants having appeared and filed their respective answers to such complaint, denying the substantive allegations thereof; and the parties hereto, 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 admission by any party hereto with respect to any such issue;

Now, Therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, and this Court being advised and having considered the matter, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants 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, partnership, corporation or other business or legal entity;
- (B) "New York Metropolitan area" means the Counties of New York, Kings, Queens, Bronx, Richmond, Nassau, Suffolk and Westchester in the State of New York and those counties within the State of New Jersey lying north of Mercer and Monmouth Counties;
- (C) "Frozen food specialties" means frozen foods that are prepared and precooked before freezing, such as pastry cakes, fish sticks, crab meat cakes, meat pies, fruit pies, egg rolls, blintzes, various complete dinners, pizzas and ravioli. "Frozen food specialties," as used herein, shall not include frozen vegetables, fruits or juices therefrom, or frozen raw meats, fish and poultry;
- (D) "Packers" means persons engaged in the business of producing frozen food specialties;
- (E) "Distributors" means persons who are engaged within the New York Metropolitan area in the business of purchasing frozen food specialties from packers for resale to retailers;
- (F) "Retailers" means persons within the New York Metropolitan area who purchase frozen food specialties from distributors for resale to consumers;
- (G) "Defendant association" means Frozen Food Distributors' Association of Greater New York;
- (H) "Distributor defendants" means all defendants except Frozen Food Distributors Association of Greater New York.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, agents, employees, servants, subsidiaries, successors and assigns and to all other persons in active concert or participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise; provided, however, that the provisions of this Final Judgment shall not apply to transactions between a defendant and a company which wholly owns such defendant or is wholly owned by such defendant, or between a defendant and any other company when both are wholly owned and operated by the same person or persons.

IV

[*Price Fixing—Boycotts—Refusal to Deal*]

The distributor defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program among themselves or with any association of distributors or any other person:

- (A) To fix, determine, maintain, establish or stabilize prices at which any frozen food specialties are sold to any third person;
- (B) To coerce or persuade a distributor to increase, change or maintain the price of any frozen food specialties;
- (C) To coerce or persuade a packer to boycott or otherwise refuse to deal with any distributor;
- (D) To coerce or persuade a distributor to boycott or otherwise refuse to deal with any packer;
- (E) To boycott or refuse to deal with a packer.

V

[*Coercion*]

Each of the distributor defendants is enjoined and restrained from:

- (A) Urging upon or suggesting to any other distributor the price or prices to be charged for any frozen food specialties by that other distributor;
- (B) Inducing, persuading or coercing, or attempting to induce, persuade or coerce, any other distributor to refuse to purchase, or threaten to refuse to purchase, any frozen food specialties from any packer or class of packers;
- (C) Coercing or compelling, or attempting to coerce or compel, any packer to refuse to sell, or threaten to refuse to sell, any frozen food specialties to any other distributor; provided, however, "that nothing in this provision shall be deemed to apply to an exclusive distribution contract between a packer and a distributor.

VI

The defendant association is ordered and directed to furnish to each of its members a copy of this Final Judgment and to file an affidavit with this Court and with plaintiff herein setting forth the fact of its compliance with this Section.

VII

[*Specific Relief—Dissolution*]

Defendants are ordered and directed:

- (A) To institute such action as may be necessary to dissolve the defendant association at the earliest possible date;
- (B) Upon the completion of such dissolution of the defendant association, to file an affidavit with this Court and with plaintiff herein setting forth the fact of compliance with this Section.

VIII

[*Trade Association Membership*]

Each distributor defendant is enjoined and restrained from knowingly becoming a member of, participating in the activities of or organizing, directly or indirectly, any trade association or other organization the purposes or functions of which relate to the distribution or sale of frozen food specialties and are contrary to any of the provisions of Section IV of this Final Judgment.

IX

[*Permissive Provision*]

Nothing contained in this Final Judgment shall prevent the defendants, from availing themselves of the benefits, if any, permitted and lawful under State Law, of the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, and of the Act of Congress of July 14, 1952, commonly known as the McGuire Act.

X

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives 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 (A) access, during the office hours of such defendant, to 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; (B) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview its officers and employees, who may have counsel present, regarding any such matters. Upon such request, such defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary to the enforcement of this Final Judgment. No information obtained by the means permitted 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 plaintiff, 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.

XI

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this 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 or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.