

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Cleaning Contractors, Inc. and Kinney Service Corporation., U.S. District Court, S.D. New York, 1966 Trade Cases ¶71,814, (Jul. 25, 1966)

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United States v. National Cleaning Contractors, Inc. and Kinney Service Corporation.

1966 Trade Cases ¶71,814. U.S. District Court, S.D. New York. No. 66 Civ. 885 Entered July 25, 1966. Case No. 1892 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisition of Competitors—Divestiture—Portion of Business After Merger—Consent Judgment.—

Two general cleaning and maintenance companies were required, after their merger, to divest themselves of Metropolitan New York Area business having an annual gross volume of at least \$7.8 million to a purchaser in a position to operate as a viable general cleaning and maintenance contractor, independent of the companies. In the event of the re-acquisition of the business by enforcement of any form of security, divestiture of the business regained would be required.

Acquisition of Competitors—Injunctive Relief—Future Acquisitions—Consent Judgment.—Two general cleaning and maintenance companies were prohibited, after their merger, from acquiring any stock or assets in any general cleaning and maintenance contractor in the Metropolitan New York Area, for a period of five years, except that assets could be acquired from such a contractor in the ordinary course of business. For an additional five-year period, acquisitions had to be submitted to the government for approval, with the right to a court determination in the event the government disapproved.

For the plaintiff: Donald F. Turner, Assistant Attorney General, Antitrust Division; Gordon B. Spivack, William D. Kilgore, Jr., John D. Swartz, Ralph T. Giordano, and Joan Sidor, Attorneys, Department of Justice.

For the defendants: Kugel, Berkeley & Gottesman by Coleman E. Herman, for National Cleaning Contractors, Inc.; Paul, Weiss, Rifkind, Wharton & Garrison by J. H. Rifkind for Kinney Service Corporation.

Final Judgment

CANNELLA, District Judge: Plaintiff having filed its complaint herein on March 28, 1966, and defendants having appeared, and plaintiff and defendants, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without admission by and party in respect of any such issue,

Now, Therefore, before any testimony has been taken, and upon the consent of all the parties, it is hereby Ordered, Adjudged and Decreed:

I

[*Clayton Act*]

This Court has jurisdiction of the subject matter of this action and of all the parties. The complaint states a claim upon which relief may be granted against defendants, and each of them, under Section 7 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "National" means defendant National Cleaning Contractors, Inc., a New York corporation;

- (B) "Kinney" means defendant Kinney Service Corporation, a New York corporation;
- (C) "Defendants" means National, Kinney and the entity resulting from the merger of National and Kinney;
- (D) "Metropolitan New York Area" means New York City and the immediately adjoining areas of Westchester and Nassau Counties in the State of New York, and Northern New Jersey;
- (E) "General cleaning and maintenance" means general cleaning, floor waxing and polishing, carpet shampooing, window washing, Venetian blind cleaning and repairing, furniture cleaning, polishing and refinishing, elevator operating, porter work, wall washing, lighting maintenance, metal cleaning, washroom disinfecting, snow removal, and lawn and garden maintenance.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries and affiliated companies, and to its successors, officers, directors, employees, agents, and all persons in active concert or participation with such defendant, who shall have received actual notice of this Final Judgment by personal service or otherwise. Without limiting the generality of the foregoing, the provisions of this Final Judgment shall apply to Kinney National Service, Inc., the entity which, it is contemplated, will result from the merger of National and Kinney. The person or entity which acquires the general cleaning and maintenance business pursuant to paragraph IV of this Final Judgment shall not be deemed a successor of the defendants for the purposes of this Final Judgment.

IV

[*Divestiture*]

Following the merger of Kinney and National and within ten (10) months of the date of entry of this Final Judgment, defendants shall sell, transfer, assign or otherwise divest themselves of general cleaning and maintenance business in the Metropolitan New York Area having an annualized gross volume of at least \$7,800,000 to a purchaser which is or shall be in a position to operate as a viable general cleaning and maintenance contractor, independent of the defendants.

Defendants shall make a full disclosure to the plaintiff of the facts with respect to such proposed divestiture. If the plaintiff shall not object to the proposed divestiture within thirty (30) days after plaintiff's receipt of the proposed contract of divestiture, such divestiture shall be deemed not to be a violation of this Final Judgment. If the plaintiff should object to the proposed divestiture, the defendants may apply to this Court for permission to make such divestiture, which may be granted upon a showing by the defendants to the satisfaction of this Court that such divestiture complies with the principles set forth in the first sentence of paragraph IV of this Final Judgment and shall not have the effect of substantially lessening competition or tending to create a monopoly.

V

[*Future Acquisitions*]

Following the merger of Kinney and National and for a period of five (5) years from the date of this Final Judgment, defendants are enjoined and restrained from acquiring, directly or indirectly, any stock, assets or other financial interest in any general cleaning and maintenance contractor in the Metropolitan New York Area except that assets may be acquired from a general cleaning and maintenance contractor in such area in the ordinary course of business. For an additional period of five (5) years, defendants are so enjoined and restrained, provided, however, that if, at any time during such additional period of five (5) years, defendants wish to make any acquisition that would otherwise be prohibited in such additional period, such defendants may submit a full disclosure of the facts with respect to such proposed acquisition and the reason therefor to the plaintiff for consideration. If the plaintiff shall not object to the proposed acquisition within thirty (30) days, such acquisition shall be deemed not to be a violation of this Final Judgment. If the plaintiff should object, defendants

may apply to this Court for permission to make such acquisition, which may be granted upon a showing by defendants to the satisfaction of this Court that such acquisition does not violate [Section 7 of the Clayton Act](#).

VI

[*Re-acquisition*]

Nothing herein contained shall be deemed to prohibit defendants from retaining, accepting and enforcing a bona fide lien, pledge or other form of security for the purpose of securing to defendants repayment of loans, guaranties of loans, or letters or lines of credit, made to or on behalf of the purchaser, or for the purpose of securing to defendants full payment of the price at which said business is disposed of or sold; and provided further that if, after divestiture pursuant to Paragraph IV, defendants, by enforcement or settlement of a bona fide lien, pledge, or other form of security, regain ownership or control of any of the business disposed of, defendants shall, subject to the provisions of this Final Judgment, dispose of any such business thus regained within twelve (12) months from the time of re-acquisition.

VII

[*Inspection and Compliance*]

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

(A) Access, during the office hours of said defendants, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendants regarding the subject matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said defendants and without restraint or interference from them, to interview officers or employees of the said defendants regarding such matters. Such officers or employees may have counsel present, who may be the counsel for the said defendants.

No information obtained by the means provided for in this Paragraph 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 a legal proceeding to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to the 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, and for the enforcement of compliance therewith and the punishment of violations thereof.