

11/8/90

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
FLORISTS' TELEGRAPH DELIVERY
ASSOCIATION,
Defendant.

Case No. 15748 ✓ BB 12 82
(Filed June 1, 1956)
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA,
Plaintiff,
v.
FLORISTS' TRANSWORLD
DELIVERY ASSOCIATION,
Defendant.

Case No. 28784
(Filed August 1, 1966)
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

ORDER ACCEPTING MODIFIED FINAL JUDGMENT

On August 1, 1990, the parties herein, the United States of America (Government) and Florists' Transworld Delivery Association (FTD), filed a stipulation for the entry of an order that would terminate the final judgment in Case No. 66-28784, and modify the final judgment in Case No. 56-15748. The parties, in addition to filing the stipulation and proposed order, each filed a memorandum in support thereof.

On August 22, 1990, three amicus briefs were filed. The companies filing amicus briefs were Carik Services, Inc. (Carik), The Food Marketing Institute, Inc. (FMI), and American Floral Services, Inc. (AFS). A fourth company granted amicus status,

Baker, Inc., did not file an amicus brief.

The Carik, AFS and FMI amicus briefs opposed section X of the proposed modified final judgment. Section X provides as follows:

This Modified Final Judgment shall terminate by its own terms and without further action of this Court ten (10) years from the date of its entry and shall be of no further force or effect thereafter unless, prior to that time, plaintiff shall move that this date be extended. Upon a showing of good cause, the Court may extend the termination date.

Carik requests that this court leave the proposed modified final judgment in effect indefinitely. Carik is concerned that FTD may place "onerous conditions upon the contracts with its competitors concerning access to FTD's Mercury Network System." (Carik Brief at p.4). For this reason Carik argues that section X should be stricken from the proposed modified final judgment.

AFS opposes section X of the proposed modified final judgment and asserts that the public interest will best be served by its elimination, ". . . so as to make [the] decree subject to the usual rule that an injunctive decree is effective for an indefinite period of time but always subject to modification as a result of changed conditions . . .". (AFS Brief at p.5).

AFS also contends that the burden of demonstrating that the public interest does not require continuation of the modified final judgment, after ten years, should be borne by FTD. AFS requests that the proposed modified final judgment be entered in all respects, except for section X which should be eliminated.

FMI also opposes section X of the proposed modified final judgment. FMI argues that automatic termination of the modified

final judgment, in this action, is not appropriate because any presumption that the market will become more competitive is unfounded.

The government states that the ten year provision of the proposed modified final judgment conforms to current anti-trust division policy that consent decrees normally be limited to ten years. The government notes that it has reserved its option to move the court, prior to expiration, for the extension of the decree for good cause shown. The government also has the option of filing a new complaint after the termination period if the circumstances warrant. According to the government, these options adequately provide for the unexpected or adverse developments.

FTD argues that it has been subject to the jurisdiction of this court pursuant to the two anti-trust consent decrees since 1956 and 1969 respectively. The proposed final judgment would extend the jurisdiction for another ten years until the year 2000. FTD submits that there should come a time when the regulation of a civil defendant's conduct by the court is put to rest. FTD argues that the proposed modified final judgment is in the public interest and should be entered as stipulated to by the parties.

The court has reviewed the proposed modified final judgment, the parties' memorandum in support thereof, the amicus briefs and the parties' responses thereto. The court believes that the proposed modified final judgment, as stipulated to by the parties, is in the public interest and the court will not change or modify it in any manner. The court finds that section X of the proposed

final judgment adequately protects the public interest in that the government has reserved its option to move the court, prior to expiration, for the extension of the decree if good cause is shown. Furthermore, if circumstances warrant, the government may file a new complaint. The court finds that since these options adequately address any possible adverse developments, and are in keeping with the current U.S. Department of Justice policy that consent decrees be limited to ten years, the court adopts therefore the final judgment as proposed by the parties.

Additionally, the court adopts the government's position, as set forth in its memorandum in response to FMI's amicus brief. The court finds that FTD may establish a separate category of "affiliated" business members.

ACCORDINGLY, IT IS HEREBY ORDERED that the proposed modified final judgment, as stipulated to by the parties, is hereby adopted by the court, in its entirety, and entered on this date.

SO ORDERED.

Date: _____

11/3/90



PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE