

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,
Plaintiff,

v.

UNITED TOTE, INC.,
Defendant.

Civil No. CA-90-130

Filed: 3/14/90

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by defendant, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. United Tote Inc., maintains offices, transacts business and is found within the District of Delaware.

3. Venue is proper in the District of Delaware under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

II. DEFINITIONS

4. "HHI" means the Herfindahl-Hirshman Index, a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2,600$). The HHI takes into account the relative size and distribution of firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

III. DEFENDANT

5. United Tote, Inc. ("United Tote") is made a defendant herein. United Tote is a corporation organized and existing under the laws of the State of Delaware and maintains its principal executive offices in Shepherd, Montana. United Tote is engaged in interstate commerce and in activities substantially affecting interstate commerce.

IV. TRADE AND COMMERCE

6. A totalisator system is the data processing system used to support parimutuel wagering operations at horse racing tracks, dog racing tracks and jai alai frontons ("tracks"). A "cash/sell" totalisator system allows patrons to place all types of bets and to cash winning tickets at the same window. It consists of a central computer that receives information from and transmits information to wagering terminals, calculates odds and payout amounts, verifies winning tickets, distributes information to display systems, and generates management information reports; terminals that print and issue tickets to bettors and read information printed on tickets being cashed in by winning bettors; peripheral and display equipment; and proprietary software that controls the operation of the system. Except for some very small tracks, which use older-generation "sell only" totalisator systems, all economically viable tracks in the United States use cash/sell totalisator systems.

7. A totalisator system is essential to the operation of a parimutuel wagering facility. No other product can practically substitute for a totalisator system.

8. Prior to December 11, 1989, only three firms designed, manufactured and marketed cash/sell totalisator systems and services in the United States. These firms were United Tote; Autotote Systems, Inc. ("Autotote"); and American Totalisator Company, Inc. ("AmTote"). Each of these firms typically

contracted with its customers to install, operate, maintain, and repair a totalisator system at the customer's facility during a specified racing season. Each of these firms typically received as compensation for the provision of the totalisator system and the services described above a specified percentage of the amount of money wagered at the customer's facility. Each of these firms provided, or offered to provide, totalisator systems and services throughout the United States.

9. The manufacture and provision of cash/sell totalisator systems and services constitutes a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

10. The United States as a whole is a section of the country and a relevant geographic market for the manufacture and provision of cash/sell totalisator systems and services, within the meaning of Section 7 of the Clayton Act.

11. Prior to December 11, 1989, of total annual revenue from the manufacture and provision of cash/sell totalisator systems and services in the United States, United Tote earned approximately 16%, Autotote earned approximately 33%, and AmTote earned approximately 51%. The HHI in this market was approximately 3956.

12. On December 11, 1989, United Tote acquired all of the outstanding shares of Autotote.

13. As a result of the acquisition described in paragraph 12, above, supply options for totalisator system customers were reduced from three to two and the totalisator industry became significantly more concentrated; the HHI in the market for the manufacture and provision of totalisator systems and services in the United States increased by approximately 1046, to 5002.

14. Successful entry into the manufacture and provision of cash/sell totalisator systems in the United States is difficult and time-consuming. Designing and developing a cash/sell totalisator system is time-consuming and difficult due to the complexity of the software controlling the payout calculations and the very high processing speed required of both the terminals and the central processor. In addition, because of the critical function a totalisator performs, it must be extremely reliable. Tracks are unwilling to contract with a totalisator company unless they are fully satisfied that the company's totalisators are completely reliable and that the company can and will keep the system running at all times. As a consequence, tracks are unwilling to use a totalisator that has not already been used successfully at a track with comparable wagering volume. Thus, even a company that provided totalisator systems and services in other countries would find it difficult and time-consuming to enter the United States market for cash/sell totalisator systems.

V. VIOLATION ALLEGED

15. On December 11, 1989, United Tote acquired all of the outstanding shares of Autotote. The effect of the acquisition may be substantially to lessen competition in the market for the provision of totalisator systems and services in the United States in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual and potential competition between United Tote and Autotote in the market for the provision of totalisator systems and services in the United States will be eliminated; and

(b) Competition generally in the market for the provision of totalisator systems and services in the United States may be substantially lessened.

PRAYER

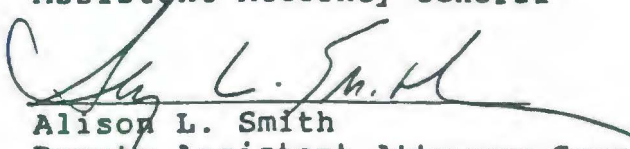
WHEREFORE, plaintiff prays:


1. That United Tote's acquisition of Autotote be adjudged to be in violation of Section 7 of the Clayton Act.
2. That a temporary restraining order and a preliminary injunction be issued requiring United Tote to hold United Tote and Autotote separate.
3. That United Tote be ordered to divest Autotote.
4. That the United States have such other and further relief as the Court may deem just and proper.

5. That the United States recover the costs of this action.

Dated:


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