

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Texas Citrus and Vegetable Growers and Shippers., U.S. District Court, S.D. Texas, 1980-81 Trade Cases ¶63,588, (Sept. 11, 1980)

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United States v. Texas Citrus and Vegetable Growers and Shippers.

1980-81 Trade Cases ¶63,588. U.S. District Court, S.D. Texas, Brownsville Division, Civil No. B-77-41, Entered September 11, 1980.

(Competitive impact statement and other matters filed with settlement: 45 *Federal Register* 43904). Case No. 2567, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Transportation Rates: Shippers' Trade Association: Consent Decree.— Agreeing to fix the rates paid or offered to motor carriers that transport fresh produce by truck, discussing or distributing any rate schedule for motor carrier transportation or influencing shippers to use any particular transportation rate was barred by a consent decree agreed to by a shipper association.

For plaintiff: Sanford M. Litvack, Asst. Atty. Gen., Joseph H. Widmar, Charles R. McConachie, and Alan A. Pason, Attys., Antitrust Div., Dept. of Justice, Dallas, Tex. **For defendant:** James C. Abbott, McAllen, Tex. (Ewers, Toothaker, Ewers, Abbott, Talbot, Hamilton & Jarvis, of counsel).

Final Judgment

DEANDA, D. J.: Plaintiff, United States of America, having filed its Complaint herein on February 18, 1977, and plaintiff and defendant, by their respective attorneys, having each consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any finding by the Court that defendant has violated any antitrust law of the United States, and without this Final Judgment constituting evidence or admission by plaintiff or defendant, or either of them, in 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 consent of the parties as aforesaid, it is hereby

Ordered, Adjudged, and Decreed as follows:

I

[*Jurisdiction*]

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

II

[*Definitions*]

As used in this Final Judgment:

(A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity.

(B) "Fresh produce" includes, but is not necessarily limited to beets, cabbage, cantaloupes, carrots, cauliflower, cucumbers, eggplant, grapefruit, green onions, honeydew melons, lettuce, onions, oranges, peppers, squash, and tomatoes.

- (C) "Defendant" shall mean Texas Citrus and Vegetable Growers and Shippers (TCVGS).
- (D) "Member" shall mean any person who was or is listed as such by defendant.
- (E) "Motor carrier" shall mean any person engaging in the transportation of fresh produce by motor vehicle for compensation.

III

[*Applicability*]

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

IV

[*Rate Fixing*]

Defendant whether acting unilaterally, or in concert, agreement or understanding with any other person is enjoined and restrained from directly or indirectly:

- (A) Entering into, adhering to, maintaining, or furthering any contract, agreement, understanding, plan, or program to fix, determine, maintain, or stabilize rates paid, or offered to be paid, to motor carriers.
- (B) Discussing, adopting, publishing, distributing or recommending any printed list or other schedule of rates paid, or offered to be paid, to motor carriers.
- (C) Advocating, suggesting, urging, inducing, coercing, or compelling any member or any person to adopt, use, or adhere to any uniform or specific rate paid, or offered to be paid to motor carriers.

Provided, however, that nothing in this Final Judgment shall prohibit defendant from seeking the enactment, issuance, repeal, amendment or interpretation of any federal or state law or regulation applicable to the transportation of fresh produce.

V

[*Notice*]

Defendant is ordered and directed to:

- (A) Provide, by mail or otherwise, within sixty (60) days after the date of entry of this Final Judgment a copy of this Final Judgment to each of its officers and members and to each person who was an officer or member at any time from January 1, 1973 to the date of entry of this Final Judgment;
- (B) Provide, by mail or otherwise, a copy of this Final Judgment to each person who becomes a member of defendant within 5 years after the date of the entry of this Final Judgment; and
- (C) Provide, by mail or otherwise, within sixty (60) days from the date of entry of this Final Judgment, written notices in the form attached hereto as Appendix "A" [not reproduced.--CCH] to its members, in sufficient quantities, with instructions that such members redistribute these notices to motor carriers with whom such members do business.

VI

[*Compliance*]

Defendant is ordered and directed to file with this Court, and with plaintiff herein, within ninety (90) days after date of entry of this Final Judgment, an affidavit setting forth the fact and manner of its compliance with Sections V(A) and (C).

VII

[*Inspections*]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

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

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII 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 the time information or documents are furnished by a defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and 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 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which defendant is not a party.

VIII

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling either 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 of any of the provisions herein, and for the enforcement of compliance therewith and punishment of any violation of any of the provisions contained herein.

IX

[*Public Interest*]

The entry of this Final Judgment is in the public interest.