

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Yellow Freight System, Inc., U.S. District Court, W.D. Missouri, 1973-1 Trade Cases ¶74,338, (Mar. 6, 1973)

[Click to open document in a browser](#)

United States v. Yellow Freight System, Inc.

1973-1 Trade Cases ¶74,338. U.S. District Court, W.D. Missouri, Western Division. Civil Action No. 20632-2. Entered March 6, 1973. Case No. 2282, Antitrust Division, Department of Justice.

Sherman Act

Reciprocity—Truck Line—Subsequent Challenge of Interline or Pooling Arrangements—Consent Decree.

—An anti-reciprocity consent decree prohibited a truck line from engaging in specified reciprocity activities and require it to adopt policies and inform personnel accordingly. Additionally, the decree provided that it did not bar the government from challenging or attacking as illegal by or in any other proceeding or by separate action against or involving the defendant or any other firm or carrier the trade relations or reciprocity aspects or effects of interline or pooling arrangements between carriers or of arrangements between carriers establishing through routes and joint rates or to preclude the defendant from asserting any defense or objection legally available to it in any investigation, proceeding or action referred to by such reservation.

Reciprocity—“Customers” and “Suppliers”—Consent Decree.—An anti-reciprocity decree defined “supplier” to include, among others, actual and potential suppliers, banks, and suppliers of suppliers. “Customers” was defined to include, among others, banks and customers of customers.

For plaintiff: Bert C. Hum, Kansas City, Mo. and Irene A. Bowman, Dept. of Justice, Washington, D. C.

For defendant: Swanson, Midgley, Eager, Gangwere & Thurlo, Kansas City, Mo.

Final Judgment

COLLINSON, D. J.: Plaintiff, United States of America, having filed its Complaint herein on October 26, 1972 and plaintiff and defendant, 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 this Final Judgment constituting evidence or admission by any party with respect to any such issue of fact or law herein;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states claims upon which relief may be granted against the defendant under Sections 1 and 2 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]

For purposes of this Final Judgment:

- (A) “Person” means any individual, corporation, partnership, association, firm or other business or legal entity;
- (B) The term “defendant” shall mean Yellow Freight System, Inc., and include any or all of its subsidiaries and any company which it or any of its subsidiaries controls or has the power to control;

(C) "Purchasing decision" shall include any decision, at any stage in the purchasing process, as to the selection of suppliers, the allocation of purchases among suppliers, the placing of any firm on a bidder's list, the designation of any firm as a qualified bidder, the selection of a winning bidder, or the continuance, discontinuance, increase or decrease of purchases from any supplier;

(D) "Supplier" shall include both actual and potential suppliers of any goods, commodities or services; bidders; lessors as well as sellers; contractors including prime contractors, subcontractors and material suppliers; in-plant cafeteria and vending operator; banks; insurance companies; and transportation companies. The term shall also include suppliers of suppliers;

(E) "Customer" shall include both actual and potential customers for any goods, commodities or services; lessees as well as purchasers; contractors including prime contractors, subcontractors and material suppliers; in-plant cafeteria and vending operators; banks; insurance companies; and transportation companies. The term shall also include customers of customers;

(F) The terms "purchase" and "sale" shall include both actual and potential purchases or sales, increases in purchases or sales and potential increases in purchases or sales. The terms "purchase" and "sale" shall also include the purchase or sale of transportation service. The terms "purchase" and "sale" cover both products and services and any combination thereof, including construction and engineering service, and any transfer of any property interest including but not limited to leaseholds, bank deposits, and arrangements for in plant feeding or vending service;

(G) "Trade Relations" shall mean any policy, program or activity which involves either the use of any firm's purchases to aid, influence, or promote any firm's sales to suppliers or the consideration of sales to particular suppliers as a factor in purchasing decisions.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant and its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. This Final Judgment shall not apply to any acts or transactions outside the United States which do not substantially affect the interstate or foreign commerce of the United States.

IV

[*Reciprocity Activities*]

Defendant is hereby enjoined and restrained from:

(A) Practicing or engaging in trade relations;

(B) Purchasing or selling products, goods or services on the condition or understanding that purchases by the defendant from any supplier will be based upon, conditioned upon or related to defendant's sales to any suppliers;

(C) Communicating to any person:

(1) that defendant will consider sales to any customer or supplier as a factor in any purchasing decision;

(2) that any supplier or customer should consider defendant's purchases from it as a factor in any purchasing decision;

(3) that the defendant unilaterally made a decision to purchase from such person even though the offer of a competing supplier was of equal or greater value with respect to price, quality, and service.

(D) Establishing or maintaining any trade relations office or position; and from assigning to, or permitting any employee to have any trade relations duties or activities;

- (E) Preparing or keeping statistical compilations for any supplier or any class or grouping of suppliers which compare or relate purchases from such suppliers with sales by defendant to such supplier or suppliers;
- (F) Giving or showing any report of defendant's purchases, or information extracted therefrom, to any sales personnel, providing sales personnel with information as to the dollar amount of purchases from any supplier, providing sales personnel with an identification of any of defendant's suppliers, or permitting sales personnel to have or to seek purchase information;
- (G) Giving or showing to any purchasing agent any customer list or sales report which identifies defendant's customers, providing purchasing personnel with information as to the dollar amount of defendant's sales to any customer, providing purchasing personnel with an identification of any of defendant's customers or permitting purchasing personnel to have or to seek sales information;
- (H) Holding any meeting for the purpose of discussing either purchases or sales at which both purchasing and sales personnel of the defendant and any representative of a customer or supplier are present, or using purchasing personnel to introduce suppliers to sales personnel, or using sales personnel to introduce customers to purchasing personnel;
- (I) Belonging to or permitting its officers or employees to belong to or participate in the activities of, or contribute anything of value to the Trade Relations Association, Inc., or to any association or group whose activity, program or objectives are to promote trade relations;
- (J) Programming any computer or data-processing equipment so as (1) to compare the defendant's sales to a firm with the defendant's purchases from such firm; or (2) to produce output or print-outs comparing such purchases and sales; and
- (K) Permitting, for two years from the date of the entry of this Final Judgment, any person who is or was a member of the Trade Relations Association, Inc., or of any association whose activity, program or objectives were to promote trade relations, or any person who served as "Director of Sales" (1) to solicit business from any firm which defendant had designated within one year prior to the date of entry of this Final Judgment as a "National Account" if such firm is a manufacturer of trucks, trailers, automotive components, tires and business forms or a petroleum refiner and (2) to be assigned to the position of "Director of Sales".

V

[Policy; Notice]

Defendant is ordered and directed to:

- (A) Disregard sales to any supplier as a factor in all purchasing decisions whatsoever;
- (B) Adopt, maintain and enforce a written corporate policy requiring that all officers and employees with purchasing responsibilities disregard sales to any supplier as a factor in all purchasing decisions whatsoever;
- (C) Take all necessary and appropriate actions to inform its present and future officers and its present and future employees having managerial, purchasing or sales responsibilities or responsibility for data processing, data collecting or analyzing purchase or sales information of the provisions and requirements of this Final Judgment, and to enforce compliance therewith; and defendant shall furnish within sixty (60) days of the entry hereof a copy of this Final Judgment to each officer and to each employee having managerial, purchasing or sales responsibilities, or responsibility for data processing, data collecting or analyzing purchases or sales information, together with a written notice, signed by its chief executive officer, in a form satisfactory to plaintiff, which notice shall promulgate the policy required by ¶ V(B) above; and thereafter defendant shall immediately furnish a copy of this Final Judgment and such notice to each person who becomes such an officer or employee at any time;
- (D) Furnish within sixty (60) days after entry thereof, a copy of this Final Judgment to each manufacturer of trucks, trailers, automotive components, tires or business forms and petroleum refiner from whom defendant purchased more than \$50,000 of products, goods or services during any of defendant's fiscal years 1969 through

1971, and to each customer designated by defendant a "National Account" in any of defendant's fiscal years 1969 through 1971, together with a written notice satisfactory to the plaintiff;

(E) File with this Court, and serve upon the plaintiff, within 75 days from the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with this Judgment; and

(F) File with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps which it has taken during the prior year to comply with this Final Judgment, to advise the defendant's officers, directors and employees of its and their obligations under this Final Judgment, and to enforce their compliance therewith.

VI

[Inspection and Compliance]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose; and subject to any legally recognized privilege;

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or 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 the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or under the control of defendant 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 officers or employees of defendant, who may have counsel present, regarding such matters;

(B) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided for in this Section VI 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 plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

[Inter-line and Pooling Arrangements]

Nothing in this Final Judgment shall be construed or interpreted to estop or prevent the plaintiff from investigating, challenging or attacking as illegal by or in any other proceeding or by separate action against or involving the defendant or any other firm or carrier the trade relations or reciprocity aspects or effects of interline or pooling arrangements between carriers or of arrangements between carriers establishing through routes and joint rates or to preclude the defendant from asserting any defense or objection legally available to defendant in any investigation, proceeding or action referred to by this Article VII.

VIII

[Jurisdiction Retained]

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, for the modification of any of the provisions contained herein, for the enforcement of compliance therewith, and the punishment of the violation of any of the provisions contained herein.

IX

[*Termination*]

This Final Judgment shall terminate and cease to be effective ten (10) years from the date of entry of this Final Judgment.