

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. International Telephone and Telegraph Corp. (ITT Canteen Corp.), U.S. District Court, N.D. Illinois, 1971 Trade Cases ¶73,667, (Sept. 24, 1971)

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United States v. International Telephone and Telegraph Corp. (ITT Canteen Corp.).

1971 Trade Cases ¶73,667. U.S. District Court, N.D. Illinois. Civil Action No. 69-C-924. Entered September 24, 1971. Case No. 2047, Antitrust Division, Department of Justice.

Clayton Act

Acquisition—Diversified Industrial Corporation and Food Service Firm—Divestiture —Consent Decree.—

A diversified industrial corporation was required by a consent decree to divest itself within two years of all interest, direct and indirect in a food service firm. The divestiture must not be made as a part of any divestiture of a fire insurer, a rental car firm, a residential construction firm or the fire protection division of an automatic sprinkler manufacturer, or to any person acquiring the corporation's interest in the stock or assets of these companies, except upon consent of the government or, failing such consent, upon approval of the court. If the divestiture is not made within two years, the corporation must place in the control of a trustee, upon application by the government, all of the corporation's then undivested interest in the food service firm, vesting in the trustee full authority to manage and to dispose of such interest, subject to court supervision.

Acquisition—Diversified Industrial Corporation and Food Service Firm—Reciprocal Practices—Interstate and Foreign Commerce—Consent Decree.—

A diversified industrial corporation and food service firm was barred by an antimerger consent decree from engaging in various reciprocal practices in the interstate or foreign commerce of the United States for a period of ten years. For example, the firms must not (1) purchase products, goods or services from any actual or potential supplier on the condition that he purchase from them; (2) sell products, goods or services to any actual or potential customer on the condition that he purchase from them; (3) compare or exchange statistical data with any actual or potential supplier or contractor to ascertain or facilitate reciprocal dealing; and (4) issue, to personnel having purchasing responsibilities or responsibilities for awarding contracts, lists which identify customers and the magnitude of their purchases, companies and the dollar volume of contracts they have been awarded, or specify or recommend that purchases be made from any such customer or that contracts be awarded to such companies.

Acquisition—Diversified Industrial Corporation and Food Service Firm—Reciprocal Practices—Consent Decree—Unaffected Activities—Government Compilations.—Nothing contained in the antireciprocity portions of an antimerger consent decree prohibited a diversified industrial corporation and a food service firm from complying with any requirement or request of a state or federal agency concerning the preparation, maintenance, or distribution of any compilation or list.

For plaintiff: William J. Bauer, U. S. Atty., Roy L. Ferre, Peter H. Goldberg, John W. Poole, Jr., and John E. Sarbaugh, Dept. of Justice, Chicago, Ill., Richard W. McLaren, Ass't. Atty. Gen., Washington, D. C.

For defendant: Thomas F. Gardner, Jeffrey J. Kennedy, Hammond E. Chaffetz, William R. Jentes, and John H. Morrison, of Kirkland, Ellis, Hodson, Chaffetz & Masters, Chicago, Ill., David P. List and Robert E. Mason, of Leibman, Williams, Bennett, Baird & Minow, Chicago, Ill., and Edward T. Tait, of Whitlock, Markey and Tait, Washington, D. C.

Final Judgment

AUSTIN, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 28, 1969, and the defendant having filed its answer thereto, and the Court having on July 9, 1971, entered its judgment dismissing plaintiff's complaint on the ground that the plaintiff had failed to establish any violation of law, and the Court thereafter, on the joint motion of both parties, having vacated said judgment, and plaintiff and defendant, by their attorneys, having consented to the entry of this Final Judgment;

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Now, therefore, without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. § 18), commonly known as the Clayton Act, as amended.

II.

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;
- (B) "Subsidiary" shall mean a company which a person controls or has power to control, or in which fifty percent (50%) or more of the voting securities is owned or controlled by that person, directly or indirectly;
- (C) "ITT" shall mean defendant International Telephone and Telegraph Corporation and any of its subsidiaries;
- (D) "Canteen" shall mean ITT Canteen Corporation and any of its subsidiaries.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to defendant shall apply also to each of its subsidiaries, successors, and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a party hereto who acquires any securities or assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of defendant except as provided in Section IX of this Final Judgment.

IV.

[*Divestiture—Terms and Conditions*]

(A) ITT is ordered and directed to divest, within two (2) years from the date of entry of this Final Judgment, all of its interest, direct and indirect, in Canteen.

(B) The divestiture of Canteen directed in subsection (A) hereof shall not be made as a part of any divestiture of Hartford Fire Insurance Company, ITT Avis, Inc., ITT Levitt and Sons, Incorporated, or the Fire Protection Division of Grinnell Corporation or to any person acquiring ITT's interest in the stock or assets of Hartford Fire Insurance Company, ITT Avis, Inc., ITT Levitt and Sons, Incorporated, or the Fire Protection' Division of Grinnell Corporation, except upon the consent of the plaintiff or, failing such consent, upon approval of this Court. This prohibition shall not, however, prevent joint, simultaneous, or successive public offerings of the separate stocks of any of said corporations, or the distribution of said separate stocks as dividends or in exchange offers to shareholders.

(C) Subject to the limitations set forth in this Section IV, the divestiture directed above may be carried out by any method; provided, however, that if ITT receives in connection with any such divestiture any securities from a person to whom divestiture is made, such securities (other than securities issued by ITT) (1) shall not be voted, if of a voting class, and (2) shall be disposed of no later than two hundred twenty (220) days after receiving such securities, unless plaintiff consents to a longer period, and provided further that if the divestiture is carried out by

way of disposition of assets, such divestiture shall be made in the form of a going and viable business, capable of engaging in substantially the same operations as those previously conducted by such business.

(D) The complete details of any contemplated plan of divestiture intended to implement the provisions of subsection (A) of this Section IV (including identification of any person, or persons, or class of persons to whom the divested property is to be transferred and all outstanding contracts involving the properties to be divested to which ITT or any of its remaining subsidiaries is a party and not to be fully executed within two (2) years from the date of submission), shall be submitted to the plaintiff by ITT. Following the receipt of any such plan, plaintiff shall have thirty (30) days in which to object thereto by written notice to ITT. If plaintiff does not so object to the proposed plan, the plan may be consummated, but if objection is so made, the proposed divestiture shall not be consummated until ITT obtains judicial approval of the plan or until the plaintiff withdraws its objection; provided, however, (1) that in the case of a plan which provides for a pro rata distribution to security holders of ITT, or an exchange with security holders of ITT or any of its subsidiaries, or a public offering not involving a prior understanding or commitment to sell a portion of the securities to any predetermined purchaser (other than an underwriter or selling dealer for the purpose of resale to the general public), prior approval of the plaintiff need not be obtained and the plan may be consummated upon the termination of the thirty (30) day period, so long as the plan prohibits any person known by ITT to own or control beneficially more than one per cent (1%) of the voting securities (including securities convertible into voting securities) of ITT from receiving any of the equity interest being divested until he has disposed of his voting securities (including securities convertible into voting securities) of ITT in excess of one per cent (1%) thereof, and (2) that in the case of a plan as to which the plaintiff objects, the time period set forth in subsection (A) of this Section IV within which divestiture must be accomplished shall, unless the Court orders otherwise upon application of the plaintiff, be tolled during the pendency of any proceeding under this Final Judgment relating to the approval of a proposed plan of divestiture.

(E) If the divestiture requirement of subsection (A) of this Section IV has not been met within two (2) years from the date of entry of this Final Judgment, ITT shall place in the control of a trustee, promptly after his appointment by this Court, upon application of the plaintiff, at the cost and expense of ITT, all of ITT's then un divested interest in Canteen, vesting in the trustee full authority to manage and to dispose of such interest subject to Court supervision after hearing the parties hereto on any issue presented.

(F) Until the divestiture required by this Final Judgment is accomplished ITT shall take no action which knowingly impairs the viability of Canteen or ITT's ability to accomplish such divestiture, and, specifically, shall not cause or permit any of the following, except upon consent of the plaintiff:

(1) The payment of any dividends by Canteen except out of current earnings, but this restriction shall not prohibit the payment of dividends which are not in excess of the per share rate of the last dividend declaration prior to August 1, 1971;

(2) Any disposition of any of the assets of Canteen, other than transactions in the ordinary course of business and except as otherwise permitted by the provisions of this Final Judgment;

(3) The encumbrance of any of the assets of Canteen to secure the indebtedness of ITT or of any other subsidiary of ITT.

V.

[*Common Officers or Directors*]

Simultaneously with the consummation of the divestiture of Canteen pursuant to Section IV of this Final Judgment ITT shall take such steps as may be necessary to remove from the position as director or officer of Canteen any person holding any position with ITT, unless plaintiff otherwise consents.

VI.

[*Reciprocity*]

ITT and Canteen (individually and collectively referred to in Sections VI, VII, VIII and X of this Final Judgment as defendants) are enjoined and restrained, for a period of ten (10) years from the entry of this Final Judgment in connection with any purchases or sales in the interstate or foreign commerce of the United States, from:

(A) Purchasing, or entering into or adhering to any contract, agreement or understanding to purchase, products, goods or services on the condition or understanding that purchases by defendants or either of them from any actual or potential supplier will be based on or conditioned upon, in whole or in part, such actual or potential supplier's purchases from such defendants;

(B) Selling, or entering into or adhering to any contract, agreement or understanding to sell, products, goods or services to any actual or potential customer on the condition or understanding that purchases of products, goods or services by defendants or either of them from such customer will be based on or conditioned upon, in whole or in part, such actual or potential customer's purchases from such defendants;

(C) Communicating to either defendant's actual or potential suppliers or contractors that:

(1) In purchasing products, goods or services, such defendant will give preference to any supplier or contractor based on or conditioned upon, in whole or in part, the fact, volume or dollar amount of such supplier's or contractor's purchases from such defendant;

(2) In compiling bidder lists or in awarding contracts for projects involving capital expenditures by either defendant, preference will be given to any supplier or contractor based on or conditioned upon, in whole or in part, the fact, volume or dollar amount of such contractor's or supplier's purchases from either defendant;

(3) Either defendant is entitled to receive contracts or orders for products, goods or services from any supplier or contractor based on or conditioned upon, in whole or in part, either defendant's purchases from such supplier or contractor, or based on or conditioned upon, in whole or in part, any contract award made by either defendant to any such supplier or contractor;

(D) Comparing or exchanging statistical data with any actual or potential supplier or contractor to ascertain, develop, facilitate or further any relationship between purchases by either defendant from such supplier or contractor and sales by either defendant to such supplier or contractor;

(E) Engaging in the practice of discussing with any actual or potential supplier or contractor the relationship between purchases or contract awards by either defendant involving such supplier or contractor, and sales by either defendant to such supplier or contractor;

(F) Preparing or maintaining lists or statistical compilations which compare the volume of, or dollar amount of, purchases by either defendant from suppliers or contractors, or the fact of or dollar value of contracts awarded by either defendant to such contractors, with purchases by such suppliers from either defendant or contracts awarded to either defendant by such contractors;

(G) Issuing, to personnel having responsibilities for purchasing or responsibilities for awarding contracts, lists which identify customers and the magnitude of their purchases from either defendant or which identify companies and the dollar value of contracts such companies have awarded to either defendant or which specify or recommend that purchases be made from any such customers or that contracts be awarded to such companies;

(H) Referring compilations of bids received for contracts for projects involving capital expenditures by either defendant to any department or unit of either defendant having sales responsibilities for decision or recommendation by such department or unit as to the identity of the firm or firms to which contracts for such projects should be awarded;

(I) Agreeing with or suggesting to particular suppliers or contractors that such suppliers or contractors purchase from certain customers of one or both of the defendants in order to reciprocate for purchases made by either defendant from such suppliers or contractors;

(J) Agreeing with or suggesting to particular suppliers or contractors that such suppliers or contractors will attempt to persuade other companies to buy from one or both of the defendants in order to reciprocate for purchases made by either defendant from such suppliers or contractors.

VII.

[*Anti-reciprocity Steps*]

Each defendant is ordered and directed to:

(A) Refrain from continuing or establishing any office or position the activities, programs or objectives of which are to promote trade relations involving reciprocal purchasing policies, arrangements, or practices in the interstate or foreign commerce of the United States;

(B) Withdraw from all personnel with sales responsibilities in the interstate or foreign commerce of the United States any lists or compilations which may be in existence described in subsections (F) and (H) of Section VI above, and withdraw from all personnel with purchasing or contracting responsibilities in the interstate or foreign commerce of the United States any lists or compilations which may be in existence described in subsections (F) and (G) of Section VI above;

(C) Refrain from being a member of and prohibit its officers and employees from belonging to, or participating in the activities of, or contributing anything of value to, any association whose activities, programs or objectives are in whole or in part to promote trade relations involving reciprocal purchasing policies, arrangements or practices in the interstate or foreign commerce of the United States;

(D) Issue within sixty (60) days to each of its officers and employees having sales, purchasing or contracting responsibilities in the interstate or foreign commerce of the United States a policy directive stating that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase products, goods or services from any actual or potential supplier on the condition or understanding that such purchases from such supplier or potential supplier will be based on or conditioned upon, in whole or in part, or influenced by, such supplier's purchases from either defendant;

(2) All officers and employees are prohibited from selling, or entering into any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that either defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon, in whole or in part, or influenced by either defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by either defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, on the condition or understanding that such solicitations or such awards by a defendant will be based on or conditioned upon, in whole or in part, or influenced by, such contractor's or supplier's purchases from either defendant or the dollar value of contracts awarded by such contractor or supplier to either defendant;

(4) Violation of the policy directive may subject any offending officer or employee to dismissal from his employment and to liability for violation of this Final Judgment;

(E) Furnish to each domestic supplier from which any ITT operating unit in the United States purchased Twenty Thousand Dollars (\$20,000) or more in products, goods or services during 1970, and to each domestic purchaser to which any ITT operating unit in the United States other than Hartford Fire Insurance Company sold Twenty Thousand Dollars (\$20,000) or more in products, goods or services during 1970, and to each purchaser of insurance whose account was handled during 1970 by Hartford's Special Accounts Insurance Department, a statement accurately and completely describing the provisions contained in Sections VI and VII of this Final Judgment, or a copy thereof, and advise each such supplier and customer, by written notice satisfactory to the Antitrust Division of the United States Department of Justice, that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase, products, goods or services from any actual or potential supplier on the condition or understanding that such purchases from such supplier or potential supplier will be based on or conditioned upon, in whole or in part, or influenced by, such supplier's purchases from either defendant;

(2) All officers and employees are prohibited from selling, or entering into any contract, agreement or understanding to sell, products, goods or services to any actual or potential customer on the condition or understanding that either defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditional upon, in whole or in part, or influenced by, either defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by either defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, upon the condition or understanding that such solicitations or such awards by either defendant will be based on or conditioned upon, in whole or in part, or influenced by, such contractor's or supplier's purchases from either defendant or the dollar value of contracts awarded by such contractor or supplier to either defendant.

VIII

[*Unaffected Activities*]

Nothing in Sections VI or VII of this Final Judgment shall prohibit either defendant:

(A) From entering into arrangements for the conversion of its products or goods into other forms thereof for its own use or resale or from converting products or goods for others;

(B) From contracting for construction work or for the manufacture or installation of equipment and facilities for its own use and not for resale on the condition that its products, goods or services are to be used in the performance of such contracts; or

(C) From complying with any requirement or request of a state or federal agency concerning the preparation, maintenance, or distribution of any compilation or list.

IX.

[*Jurisdiction Over Divested Firm*]

ITT is further ordered and directed, within sixty (60) days from the date of entry hereof, to cause Canteen to file with this Court its submission to the jurisdiction of the Court and its consent to be bound by the provisions of Sections VI, VII and X of this Final Judgment until the expiration of ten (10) years from the date of entry of this Final Judgment.

X.

[*Inspection & Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, each defendant shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to such defendant's principal office, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant, 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 such defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters.

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

(C) No information obtained by the means provided in this Section X of this Final Judgment 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 plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI.

[Jurisdiction Retained]

Jurisdiction is retained by this Court for the purpose of enabling any 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, modification, or termination of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XII.

[Effective Period]

This Final Judgment shall remain in full force and effect for ten (10) years, and no longer, from the date of entry hereof except as to any provision herein for which a shorter term is specified therein.