UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA, Plaintiff, v. MAINE CO-OPERATIVE SARDINE COMPANY, ET AL., Defendants.	Case No. 2:27-cv-00905-JDL

UNITED STATES OF AMERICA, Plaintiff, v. MAINE FOOD COUNCIL, INC., ET AL., Defendants.	Case No. 2:41-cv-00100

MOTION TO TERMINATE LEGACY ANTITRUST JUDGMENTS WITH INCORPORATED MEMORANDUM OF LAW

The United States moves to terminate the judgments in each of the two above-captioned antitrust cases pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The Court entered these judgments in cases brought by the United States in 1927 and 1941, respectively; thus, one judgment is seventy-seven years old and the other is ninety-one years old. After examining each judgment—and after soliciting public comments on each proposed termination—the United States has concluded that termination of these judgments is appropriate. As explained below, because of their age and changed circumstances since their entry, these decades-old judgments no longer serve to protect competition, the purpose for which they were sought and obtained. Moreover, termination will permit the Court to clear its docket, the Department to clear its

records, and businesses to clear their books, allowing each to utilize its resources more effectively. Accordingly, the United States requests that these judgments be terminated.

I. BACKGROUND

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States frequently sought entry of antitrust judgments whose terms never expired.[1] Such perpetual judgments were standard practice until 1979, when the Antitrust Division of the United States Department of Justice ("Antitrust Division") adopted the practice of including a term limit of ten years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, however, remain in effect indefinitely unless a court terminates them. Although a defendant may move a court to terminate a perpetual judgment, few defendants have done so. There are many possible reasons for this, including that defendants may not have been willing to bear the costs and time resources to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or organizational defendants may have gone out of business. As a result, hundreds of these legacy judgments remain open on the dockets of courts around the country. Originally intended to protect the loss of competition arising from violations of the antitrust laws, nearly all of these judgments likely are no longer necessary to protect competition.

The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment Termination Initiative encompasses review of all of its outstanding perpetual antitrust judgments. The Antitrust

[1] The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1-7, and the Clayton Act, 15 U.S.C. §§ 12-27. The judgments the United States seeks to terminate with the accompanying motion concern violations of the Sherman Act.

Division has described the initiative in a statement published in the Federal Register.[2] In addition, the Antitrust Division has established a website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.[3] The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division examined each judgment covered by this motion to ensure that it is suitable for termination. The Antitrust Division also gave the public notice of—and the opportunity to comment on—its intention to seek termination of these judgments.

In brief, the process by which the United States has identified judgments it believes should be terminated is as follows:[4]

- The Antitrust Division reviewed its perpetual judgments entered by this Court to identify those that no longer serve to protect competition such that termination would be appropriate.

- When the Antitrust Division identified a judgment it believed suitable for termination, it posted the name of the case and a link to the judgment on its public Judgment Termination Initiative website, https://www.justice.gov/atr/JudgmentTermination.

- The public had the opportunity to submit comments regarding each proposed termination to the Antitrust Division within thirty days of the date the case name and judgment link was posted to the public website.

- Having received no comments regarding the above-captioned judgments, the United States now moves this Court to terminate them.

The remainder of this memorandum is organized as follows: Section II describes the Court's jurisdiction to terminate the judgments in the above-captioned cases; Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten

[2] Department of Justice's Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461.

[3] https://www.justice.gov/atr/JudgmentTermination.

[4] The process is identical to that followed by the United States when it recently and successfully moved the District Court for the District of Columbia to terminate nineteen legacy antitrust judgments. See Order Granting Mot. to Terminate Legacy Antitrust Js., United States v. Am. Amusement Ticket Mfrs. Ass'n, et al., et al., Case No. 1:18-mc-00091-BAH (D.D.C. Aug. 15, 2018); Order Granting Mot. to Terminate Legacy Antitrust Js., United States v. The Noland Company, Inc., et al., Case No 2:18-mc-00033-HCM-LRL (E.D. Va. Nov. 21, 2018).

years old presumptively should be terminated, as well as describing the additional reasons that the United States believes each of the judgments should be terminated; and Section IV concludes. A copy of each final judgment that the United States seeks to terminate is attached as an exhibit to the Amlin Declaration.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. Each judgment, a true and correct copy of which is attached as Exhibit 1 and 2 to the Amlin Declaration, provides that the Court retains jurisdiction. The Federal Rules of Civil Procedure grant the Court authority to terminate each judgment. Rule 60(b)(5) and (b)(6) provides that, "[o]n motion and just terms, the court may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5)-(6); *see also Giroux v. Fed. Nat'l Mortg. Ass'n*, 810 F.3d 103, 108 (1st Cir. 2016) ("Rule 60(b)(6) is a catch-all provision that authorizes the district court to grant relief from judgment for any other reason that justifies relief"); *Consumer Advisory Bd. v. Harvey*, 697 F. Supp. 2d 131, 135 (D. Me. 2010) (noting that Rule 60(b)(5) authorizes a court to provide relief from a decree if "applying it prospectively is no longer equitable" in circumstances in which there are significant changes in factual conditions) (citing Fed. R. Civ. P. 60(b)(6); *Agostini v. Felton*, 521 U.S. 203, 215 (1997)) (internal quotation marks omitted).

Given its jurisdiction and its authority, the Court may terminate each judgment for any reason that justifies relief, including that the judgments no longer serve their original purpose of protecting competition.[5] Termination of these judgments is warranted.

[5] In light of the circumstances surrounding the judgments for which it seeks termination, the United States does not believe it is necessary for the Court to make an extensive inquiry into the facts of each judgment to terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). These judgments would have terminated long ago if the Antitrust Division had the foresight to limit them to ten years in duration as under its policy adopted in 1979.

III. ARGUMENT

In the *Maine Co-operative Sardine* matter (No. 2:27-cv-00905-JDL), eighteen sardine packing companies, the co-operative those companies formed, and numerous individual defendants engaged in a price-fixing and attempted monopolization conspiracy relating to the market for "standards" sardines. The Court's 1927 judgment in this matter ordered the dissolution of the co-operative, and prohibited each of the defendants from engaging in any similar unlawful conduct relating to the production, sale, or shipment of sardines. *See* Amlin Declaration, Ex. 1.

In the *Maine Food Council* matter (No. 2:41-cv-00100), a trade association of wholesale and retail grocers, five member firms, and fifteen individuals conspired to fix wholesale and retail market prices for grocery products shipped in interstate commerce in Maine. The Court's 1941 judgment ordered the dissolution of the trade association and prohibited each of the defendants from combining and conspiring to fix the price of grocery products, as well as from engaging in other conduct such as issuing price lists or disseminating information regarding price policies and proposed prices. *See* Amlin Declaration, Ex. 2.

It is appropriate to terminate the perpetual judgments in each of these cases because they no longer continue to serve their original purpose of protecting competition. The United States believes that the judgments presumptively should be terminated because their age alone suggests they no longer protect competition. Other reasons, however, also weigh in favor of terminating the judgments, including that most defendants likely no longer exist and the terms of the judgments merely prohibit acts the antitrust laws already prohibit. Under such circumstances,

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Moreover, the passage of decades and changed circumstance since their entry, as described in this memorandum, means that it is likely that the judgments no longer serve their original purpose of protecting competition.

the Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

A. The Judgments Presumptively Should Be Terminated Because of Their Age

Permanent antitrust injunctions rarely serve to protect competition. The experience of the United States in enforcing the antitrust laws has shown that markets almost always evolve over time in response to competitive and technological changes. These changes may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. The development of new products that compete with existing products, for example, may render a market more competitive than it was at the time of entry of the judgment or may even eliminate a market altogether, making the judgment irrelevant. In some circumstances, a judgment may be an impediment to the kind of adaptation to change that is the hallmark of competition, undermining the purposes of the antitrust laws. These considerations, among others, led the Antitrust Division in 1979 to establish its policy of generally including in each judgment a term automatically terminating the judgment after no more than ten years.[6]

The judgments in the above-captioned matters—each of which are many decades old—presumptively should be terminated for the reasons that led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years.[7] There are no affirmative reasons for the judgments to remain in effect; indeed, there are additional reasons for terminating them.

[6] U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), https://www.justice.gov/atr/division-manual.

[7] *See id.* ("Perpetual final judgments, whether litigated judgments or consent decrees, were the norm from the early days of the Sherman Act until 1979, when the Division announced that future settlements would have 'Sunset' provisions that would automatically terminate a decree on a date certain, usually after a period of 10 years. The 1979 change in policy was based on a judgment that perpetual decrees were not in the public interest.").

B. The Judgments Should Be Terminated Because They Are Unnecessary

In addition to age, other reasons weigh heavily in favor of termination of each judgment. These reasons include: (1) most defendants likely no longer exist, and (2) the judgments largely prohibits acts the antitrust laws already prohibit. Each of these reasons suggests the judgments no longer serve to protect competition. In this section, we describe these additional reasons.

1. Most Defendants Likely No Longer Exist

The Antitrust Division believes that most of the defendants in the two cases at issue likely no longer exist. In the *Maine Co-operative Sardine* matter, the cooperative itself was dissolved in 1928. Further, the United States believes that each of the defendant companies which formed the collective have ceased to exist; moreover, given that the judgment was entered more than ninety years ago, it is a near certainty that all of the individual defendants are deceased. *See* Amlin Declaration, ¶9. Similarly, in the *Maine Food Council* matter, the Food Council itself has dissolved; in addition, given that the judgment was entered more than seventy-five years ago, it is likely that all individual defendants are deceased. *See* Amlin Declaration, ¶10. To the extent that defendants no longer exist, the related judgments serve no purpose, which is a reason to terminate them.

2. Terms of Judgment Prohibit Acts Already Prohibited by Law

The Antitrust Division has determined that the core provisions of the judgments merely prohibit acts that are illegal under the antitrust laws. As noted previously, each of the two judgments primarily prohibits the defendants from engaging in practices relating to price fixing. These terms amount to little more than an admonition that defendants shall not violate the law. *Cf.* 15 U.S.C. § 1. Absent such terms, defendants who engage in the type of behavior prohibited by these judgments still face the possibility of imprisonment, significant criminal fines, and

treble damages in private follow-on litigation, thereby making such violations of the antitrust laws unlikely to occur. *Cf.* 15 U.S.C. §§ 1, 15. Given that the judgments include terms that do little to deter anticompetitive acts, they serve no purpose and there is reason to terminate them.

C. There Has Been No Public Opposition to Termination

The United States has provided adequate notice to the public regarding its intent to seek termination of the judgments. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments, and noting that it would begin its efforts by proposing to terminate judgments entered by the federal district courts in Washington, D.C., and Alexandria, Virginia.[8] *See* Amlin Declaration, ¶5. On June 1, 2018, the Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its intent to move to terminate the judgments.[9] *See* Amlin Declaration, ¶7c. The notice identified each case, linked to the judgment, and invited public comment. The Division received no comments concerning these judgments. *See* Amlin Declaration, ¶8.

IV. CONCLUSION

For the foregoing reasons, the United States believes termination of the judgments in each of the above-captioned cases is appropriate, and respectfully requests that the Court enter an order terminating them.

[8] Press Release, Department of Justice, Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments, (April 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

[9] https://www.justice.gov/atr/JudgmentTermination, link titled "View Judgments Proposed for Termination in Maine, District of."

Respectfully submitted,

Dated: May 16, 2019

/s/

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