

UNITED STATES vs. MARKET TRUCKMEN'S ASSO-
CIATION OF NEW YORK, ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 30-626.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

MARKET TRUCKMEN'S ASSOCIATION OF NEW YORK; THE
FRUIT AND PRODUCE TRADE ASSOCIATION OF NEW YORK;
FRANK A. BARACLOUGH, INC.; BURT BARNES, INC.;
BERK TRUCKING CORP.; COHEN & HAAS TRUCKING
CORP.; SAM COHEN TRUCKING Co., INC.; COSTA TRUCK-
ING Co., INC.; D. & J. TRUCKING CORP.; DE VITA BROS.
INC.; ELL-BERN TRUCKING CORP.; ESSENFELD BROS.,
INC.; F. & L. TRUCKING CORPORATION; FERRO TRUCK-
ING, INC.; HYGRADE TRUCKING CORP.; WILLIAM KIER-
NAN TRUCKING Co., INC.; JAMES C. PEOPLES, INC.;
PRODUCE DELIVERY Co., INC.; RABIN & SHOOPS, INC.;
ROTHMAN & MILLER, INC.; S. & G. TRUCKMEN CORP.;
SCHRULA TRUCKING Co., INC.; GEO. S. STAMBERGER,
INC.; J. TURINO, INC.; GEORGE ALLISON & Co.; AMERI-
CAN FRUIT GROWERS, INC.; CARBONE BROS. & Co., INC.;
ROBT. T. COCHRAN & Co., INC.; GARGIULO & AMENDOLA,
INC.; C. W. HAVENER & Co., INC.; HELLER BROS. Co.,
INC.; FRANK JILL, INC.; KORNBLUM & Co., INC.; M. G.

R. Co., Inc.; MANNIELLO BROS. & MAYRSOHN, INC.; P. MARTORI'S SONS, INC.; SAMUEL ROSENBLUM, INC.; SENTER BROS., INC.; HOWARD SMITH & Co., INC.; F. H. VAHLSING, INC.; A. J. WEINSTEIN & Co., INC.; YECKES-EICHENBAUM, INC.; ANGELO COSTA; WILLIAM A. COSTA; GEORGE COSTA; CHARLES LAUB; ANTHONY LEVANTINO; JOSEPH LEVANTINO; STEPHEN LEVANTINO; CARMINA MANZA; ANTONIO J. ROSS; DAVID TEITELBAUM; LOUIS SYKEN; PETER W. GIBBONS; CLYDE C. HESS; WILLIS R. HESS; MICHAEL KODISH; LOUIS ZWICK; SAMUEL S. LEEF; SAM N. SCHNIEBOLK; NATHAN BRANDT; GRACE E. MCCLEES; PETER J. MCCLEES; PAUL MOSES; IRVING J. OKUN; FREDERICK OPOLINSKY; DAVID OPOLINSKY; JOHN W. PFEIFFER; EDWARD PFEIFFER; IKE TABACK; MORRIS POST; BENJAMIN TABACK; IRVING SILKOWITZ; EDO J. SCHWITERS; GEORGE A. SCHWITERS; WILLIAM SHAPIRO; JOHN TASSINI; and MAX SALISCH,

DEFENDANTS.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 19, 1945; the defendants having severally appeared and filed their answers to such complaint, denying the substantive allegations thereof; and each of the parties herein, by their respective attorneys, having consented to the entry of this final judgment herein;

Now, THEREFORE, without taking any testimony or evidence or making any findings of fact, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

The Court has jurisdiction of the subject matter hereof and all the parties hereto, and the complaint states a cause of action against the defendants and each of them 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," as amended, commonly known as the Sherman Act, (15 U.S.C. 1, 2, et seq.).

II

A. As used in this final judgment "receiver" means a person to whom fruits or vegetables are forwarded as consignee for initial sale or resale in the New York Market Area, whether such consignee is a commission merchant, agent of a grower or shipper, or a grower or shipper engaged in such business on his own account.

B. As used in this final judgment "services" means operations other than carting performed in connection with the handling, sale or transportation of fruits and vegetables, including, but not limited to, policing, assumption of risk of loss from theft, sorting and loading.

III

Defendant Market Truckmen's Association of New York, its officers and members, shall forthwith take such steps as shall be necessary to dissolve the association, terminate its activities and wind up its affairs, and shall within 60 days from the entry of this decree file with the Court a copy, certified by the secretary of the association, of a resolution duly enacted at a meeting of the association effecting its dissolution.

IV

All of the defendants and each of them and each of their respective successors, subsidiaries, officers, directors, partners, agents and employees, and each person acting or claiming to act under, through or for them, or any of them, are hereby enjoined and restrained from entering into, adhering to, participating in, maintaining, or furthering any agreement, undertaking, plan or program among themselves or with others to:

A. Fix, maintain, impose, enforce or publish prices, terms, or conditions to be quoted, charged or imposed by, to or upon any other person for carting fruits or vegetables or for performing services.

B. Establish, maintain, impose or publish any charge of any kind as consideration for, or as a condition

precedent to the admission of any vehicle into any market or place where fruits or vegetables are sold.

C. Establish, maintain, impose or publish any charge of any kind for transporting by vehicle fruits or vegetables sold by receivers from the place of such sale to vehicles owned or operated by or on behalf of the buyers of such fruits or vegetables.

D. Allocate or designate the vehicles in which any other person must take delivery of fruits and vegetables.

E. Prohibit, restrict, limit, or penalize in any way the taking of delivery of fruits or vegetables by any buyer in vehicles owned or operated by or on behalf of, or selected by such buyer.

F. Condition the sale or transfer of title to fruits or vegetables upon acceptance of delivery thereof in vehicles or in a manner selected or designated by the seller.

V

Each of the defendants and each of their respective successors, subsidiaries, officers, directors, partners, agents, and employees, and each person acting or claiming to act under, through, or for them, or any of them, is hereby enjoined and restrained from doing, attempting to do, soliciting or inducing others to do any of the following:

A. Imposing, collecting or publishing any charge of any kind as consideration for, or as a condition precedent to the admission of any vehicle into any market or place where fruits or vegetables are sold.

B. Prohibiting, restricting, or limiting in any way the right of any person to bring a vehicle or vehicles into any market or place where fruits and vegetables are sold.

C. Maintaining, contributing to, furthering or supporting, in any way, any association or organization of any kind which directly or indirectly does, contributes to the doing of, or furthers any of the things or acts enjoined and restrained in sub-divisions a through f of paragraph IV of this final judgment.

VI

Each of the defendants engaged in performing carting or service operations, and each of their respective successors, subsidiaries, officers, directors, partners, agents and employees, and each person acting or claiming to act under, through or for them, or any of them, is hereby enjoined and restrained from billing, charging or collecting payment from any person for carting or services not actually rendered to, for or on behalf of such person.

VII

The term or condition of sale that all sales are made subject to delivery in the sellers' trucks; all "O.C." and "Pierhead Delivery" charges for which no service is rendered; each and every contract between a receiver and a truckman giving the latter the exclusive right to truck fruits and vegetables sold by a receiver are hereby each set aside and cancelled.

Each and every charter provision, article of incorporation, by-law, rule or regulation of defendant Market Truckmen's Association of New York and of defendant The Fruit and Produce Trade Association of New York which directly or indirectly supports, furthers, or contributes to any of the things or acts enjoined and restrained in subsections a through f of paragraph IV of this final judgment are hereby set aside and cancelled.

Each of the defendants and each of their respective successors, subsidiaries, officers, directors, partners, agents and employees and each person acting or claiming to act, under, through, or for them or any of them are hereby enjoined and restrained from reviving any such or similar term or condition of sale, charge, contract, charter, provision, article of incorporation, by-law, rule, or regulation described in the first two sub-paragraphs of paragraph VII of this final judgment.

VIII

Nothing in this judgment shall be construed to restrict or prohibit in any way action taken by any defendant, its

successor, subsidiaries, officers, or employees in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as "Exhibit A")¹, or with any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any National War Agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto.

IX

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to any defendants be permitted, subject to any legally recognized privilege, (1) access, during the office hours of the defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any matter contained in this decree; (2) without restraint or interference from the defendants to interview officers or employees of the defendants, who may have counsel present, regarding such matters; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this decree in which the United States is a party or as otherwise required by law.

X

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders and directions

as may be necessary or appropriate for the construction or carrying out of this decree, for the modification or termination of any of the provisions thereof; for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: New York, New York, April 19th, 1945.

Approved:

JOHN W. CLANCY
United States District Judge

EXHIBIT "A"

APRIL 29, 1941

JOHN LORD O'BRIAN, ESQUIRE,

*General Counsel, Office of Production Management,
Washington, D. C.*

DEAR JOHN: The marshaling of the nation's industrial assets for a maximum productive effort in the national defense will doubtless require the allocation of orders, the curtailment of some kinds of production so as to increase production in defense fields, and the establishment of priorities and price ceilings. Furthermore, many of these steps must necessarily affect the production of goods used to satisfy our normal needs, as well as the production of materials and implements used directly in our defense effort.

Some of these acts if accomplished by private contract or arrangement within an industry and carried on for private advantage would probably constitute violations of the anti-trust laws. On the other hand, it is obvious that in the present emergency acts performed by industry under the direction of public authority, and designed to promote public interest and not to achieve private ends, do not constitute violations of the antitrust laws. In these circumstances, the Department of Justice recognizes that business interests which are asked to comply with public plans for increasing production and preventing inflation are entitled to the cooperation of agencies of the Government in eliminating any uncertainties which may exist as to the application of the antitrust laws to their activities.

Accordingly, this Department has formulated a policy which it proposes to follow in its relations with the Office of Production Management and the Office of Price Administration and Civilian Supply and with all industries or contractors acting in compliance with the orders or request of either of these organizations. The important points of this policy are:

Meetings of the industry with the Office of Production Management and the Office of Price Administration and Civilian Supply or their representatives are not illegal. In-

dustrial committees may be formed at the request of the Office of Production Management or the Office of Price Administration and Civilian Supply, to work with representatives of such offices on problems involving defense. There will be nothing unlawful in the industry cooperating in the selection of its representatives or in selecting members for committees, or in the activities of such committees provided they are kept within the scope of this letter.

Questions as to whether there is need for such a committee, and if so, how it shall be chosen, and by whom constituted, shall be the sole responsibility of the Office of Production Management or the Office of Price Administration and Civilian Supply. This Department will not participate in these decisions beyond the suggestion now made that any such committee should be generally representative of the entire industry and satisfactory to the Office of Production Management or the Office of Price Administration and Civilian Supply.

Each industry committee shall confine itself to collecting and analyzing information and making recommendations to the Office of Production Management or the Office of Price Administration and Civilian Supply, and shall not undertake to determine policies for the industry, nor shall it attempt to compel or to coerce any one to comply with any request or order made by a public authority.

All requests for action on the part of any unit of an industry shall be made to such unit by the Office of Production Management or the Office of Price Administration and Civilian Supply and not by the industry committee. That is to say, the function of determining what steps should be taken in the public interest should in each case be exercised by the public authority which may seek the individual or collective advice of the industry. But the determination shall not be made by the industry itself or by its representatives.

Requests for action within a given field, such as the field of allocation of orders, shall be made only after the general character of the action has been cleared with the Department of Justice. If the general plan is approved, thereafter each request for specific action in carrying out such plan shall be

made in writing and shall be approved by the Office of the General Counsel of the Office of Production Management or the office of the General Counsel of the Office of Price Administration and Civilian Supply, but need not be submitted to the Department of Justice. In the case of any change in the personnel of such offices or if serious practical difficulties arise, this latter arrangement may be revoked upon notice from me.

Acts done in compliance with the specific requests made by the Office of Production Management or the Office of Price Administration and Civilian Supply and approved by their General Counsel in accordance with the procedure described in this letter will not be viewed by the Department of Justice as constituting a violation of the antitrust laws and no prosecutions will be instituted for acts performed in good faith and within the fair intendment of instructions given by the Office of Production Management or the Office of Price Administration and Civilian Supply pursuant to this procedure.

In the case of all plans or procedure, however, the Department reserves complete freedom to institute civil actions to enjoin the continuing of acts or practices found not to be in the public interest and persisted in after notice to desist.

With kind personal regards,

Sincerely,

(S) ROBERT H. JACKSON,

Attorney General.