

AntitrustConnect Blog

Housekeeping Continues at the Antitrust Division as Government Seeks Termination of Dozens More ‘Legacy’ Judgments

Jeffrey May (Wolters Kluwer) · Friday, May 31st, 2019

In April 2018, the Department of Justice [announced](#) an initiative to terminate “legacy” antitrust judgments—those lacking an express termination date. These types of judgments date from the early days of the Sherman Act until the late 1970s, when the Antitrust Division adopted the general practice of including sunset provisions that automatically terminate judgments, usually 10 years from entry.

The first group of judgments targeted for termination were announced in July 2018. The Antitrust Division [moved](#) for termination of 19 judgments in the federal district court in Washington, D.C. Among those was a 91-year-old consent decree, prohibiting a defunct trade association and its members from conspiring to restrain trade in amusement tickets. Others involved decades-old cases against other trade associations and against individual companies that were no longer in business, such as Pan Am, or companies that have rebranded, such as Standard Register Company. Later, the government [moved](#) for termination of judgments in the federal district court for the Eastern District of Virginia. The termination motions were ultimately granted.

The Antitrust Division has continued its housekeeping efforts and recently moved for termination of dozens of additional legacy judgments. During the month of May 2019, the filed motions for termination of judgments in federal district courts in Georgia, Louisiana, and Massachusetts. There has been no public opposition to termination.

In a May 16 [filing](#), the Justice Department sought termination of three antitrust orders entered in the federal district court in Georgia between 1974 and 1979. According to the government, the judgments in the three price fixing and customer allocation cases were outdated and prohibit acts already prohibited by law.

Separately, the government is [seeking](#) to end 13 decades-old antitrust orders in cases between 47 and 126 years old from a federal district court in Louisiana. The 13 judgments at issue in the motion to terminate include: an 1893 case enjoined unions from striking; three cases from 1940 and one from 1970 involved bid rigging; a number of cases involved price fixing from the 1950s; two 1970 cases enjoined companies from tying their grain elevators to specific stevedoring services (involving Archer-Daniels-Midland Co. and Bunge Corp.); a 1971 judgment required a charter vessel firm to divest at least eight supply and utility boats; and a

1972 judgment enjoined a company and four individuals from entering certain agreements designed to limit customers' options for obtaining oil, gas, and mineral work vessels.

The government has also moved to terminate 24 antitrust orders entered in federal district court in Massachusetts. The Justice Department cites several reasons for the motion, including that the terms of the judgments have been fulfilled, defendants likely no longer exist, they prohibit acts already prohibited by law, or they concern expired patents. According to the government, the judgments should therefore be terminated, as they no longer serve to protect competition. One of the defendants is The Gillette Company, which was bound by a 1975 final judgment.

The age of the judgments (entered from 43 to 77 years ago) alone would create a presumption that they should be terminated, according to the government [filing](#). However, the judgments also are unnecessary, in that the terms of the judgments have been fulfilled, most defendants likely no longer exist, they prohibit acts already prohibited by law, or they concern expired patents. The Justice Department submitted a summary of reasons for termination for each case. In four cases (relating to fuel oil, footwear, retail-outlet gasoline, and electric shavers), the terms of the judgment have been satisfied, mainly by divestitures that occurred years ago. In six cases (all more than 60 years old), the defendants have likely gone out of existence. In 15 cases, the judgments prohibit acts already prohibited by law, including price fixing, market allocation, group boycotts, and bid-rigging. One judgment (more than 68 years old) concerns outdated patents, which have expired.

The termination motions are expected to continue. When Makan Delrahim, Assistant Attorney General in charge of the Antitrust Division, announced the initiative last year, he noted that there were "nearly 1300 'legacy' judgments remain on the books of the Antitrust Division, and nearly all of them likely remain open on the dockets of courts around the country."

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