United States v. United Shoe

U.S. District Court for the District of Massachusetts
110 F. Supp. 295
February 18. 1953

UNITED STATES v. UNITED SHOE MACHINERY CORP. Civ. A. 7198.

District Judge Charles Edward WYZANSKI Jr.:

I.

Introduction.

December 15, 1947 the Government filed a complaint against United Shoe Machinery Corporation under˜ the Sherman Act˜ in order to restrain alleged violations of Secs. 1 and 2 of that Act˜.

Stripped to its essentials, the 52 page complaint charged, first, that since 1912 United had been 'monopolizing interstate trade and commerce in the shoe machinery industry of the United States' (Par. 27 (a)).˜ The second principal charge laid by the complaint was that United had been (a) 'monopolizing the distribution in interstate commerce of numerous * * * shoe factory supplies' and (b) 'attempting to monopolize the distribution in interstate commerce of * * * other such supplies' (Par. 27(e)). Third, the complaint alleged United was 'attempting to monopolize and monopolizing the manufacture and distribution in interstate commerce of tanning machinery used in the manufacture of shoe leather' (Par. 27(f)).

In support of this three-pronged attack, directed to shoe machinery, shoe factory supplies, and tanning machinery, the Government set forth detailed allegations with respect to acquisitions, leases, patents, and a host of other aspects of United's business. The part of this opinion containing findings of fact sets forth, in the same order as does the complaint, the Government's allegations concerning, and this Court's finding upon, each of these aspects.

After stating its charges, the Government prayed for an adjudication of United's violations of both Sec. 1 and Sec. 2 of the Sherman Act; an injunction against future violations; a cancelation of United's shoe machinery leases; a requirement that United offer for sale all machine types 'manufactured and commercialized by it and be enjoined from leasing shoe machinery except upon terms * * * approved by the Court'; a requirement that, on such terms as the court may deem appropriate, United make available to all applicants all patents and inventions relating

to shoe machinery; an injunction against United manufacturing or distributing shoe factory supplies, and a divestiture of United's ownership of virtually all branches and subsidiaries concerned with shoe factory supplies or tanning machinery.

Defendant answered seasonably, denying all the significant allegations~.

A trial of prodigious length followed. The court attempted to shorten the hearings by requiring defendant in advance of trial to submit to the Government's exhaustive requests for discovery, by requiring the Government at the opening of its case to file a brief correlating all its proposed evidence, by encouraging the use of sampling devices, and by insisting that the Government should, in formal answers, indicate in each branch of the case on what evidence it principally relied. Nonetheless, the hearing took 121 days and covered 14,194 pages of transcript and included the offer of 5512 exhibits totalling 26,474 pages (in addition to approximately 150,000 pages of [company reports] and over 6,000 soft copies of patents) and 47 depositions covering 2122 pages. At the close of the evidence the Court asked for briefs, and requested findings of fact and conclusions of law. The Government offered briefs totalling 653 pages, and requests totalling 667 pages. United submitted briefs totalling 1240 pages, and requests totalling 499 pages.

In an anti-trust case a trial court's task is to reduce, as far as fairness permits, a complex record to its essentials, so that the parties, the Supreme Court, other courts, the bar, and the general public may understand the decree, and may recognize the premises on which that judgment rests. It is not the Court's duty to make a precise finding on every detail of four decades of an industry. It is not its duty to approach the issues as an historian, an archaeologist (See A. N. Hand, Trial Efficiency pp 31, 32, Business Practices Under Federal Anti-trust Laws, 1951 Symposium, N.Y. State Bar Assoc.), an economist, or even a master appointed to settle every factual dispute. A trial judge who undertakes such tasks will unnecessarily sacrifice the rights of litigants in other cases clamoring for attention. Moreover, he will encourage just that type of extravagant presentation which has come to plague the field of anti-trust law. Hence this opinion is to be construed as denying on the ground of immateriality every request not granted.~

II.

(The ordinary reader can skip the whole of Part II, since its gist is summarized at the start of Part III. The role of Part II is primarily to dispose of 1166 printed pages of Requests for Findings.)

{The remainder of Part II omitted.}

III.

Opinion on Alleged Violations.

As an introduction to the discussion of law, the following half dozen pages draw upon the previous eighty-five pages of findings of fact for a summary statement of the structure of the shoe machinery market, and United's power and, to some extent, its performance within that market.

There are 18 major processes for the manufacturing of shoes by machine. Some machine types are used only in one process, but others are used in several; and the relationship of machine types to one another may be competitive or sequential. The approximately 1460 shoe manufacturers themselves are highly competitive in many respects, including their choice of processes and other technological aspects of production. Their total demand for machine services, apart from those rendered by dry thread sewing machines in the upper-fitting room, constitutes an identifiable market which is a 'part of the trade or commerce among the several States'. Sec. 2 of the Sherman Act.

United, the largest source of supply, is a corporation lineally descended from a combination of constituent companies, adjudged lawful by the Supreme Court of the United States in 1918. *United States v. United Shoe Machinery Co. of N.J.*, 247 U.S. 32. It now has assets rising slightly over 100 million dollars and employment rolls around 6,000. In recent years it has earned before federal taxes 9 to 13.5 million dollars annually.

Supplying different aspects of that market are at least 10 other American manufacturers and some foreign manufacturers, whose products are admitted to the United States free of tariff duty. Almost all the operations performed in the 18 processes can be carried out without the use of any of United's machines, and (at least in foreign areas, where patents are no obstacle,) a complete shoe factory can be efficiently organized without a United machine.

Nonetheless, United at the present time is supplying over 75%, and probably 85%, of the current demand in the American shoe machinery market, as heretofore defined. This is somewhat less than the share it was supplying in 1915. In the meantime, one important competitor, Compo Shoe Machinery Corporation, became the American innovator of the

cement process of manufacture. In the sub-market Compo roughly equals United.

Machine types in all processes vary greatly in character. The more complex ones are the important revenue producers in the industry. They must be designed with great engineering skill, require large investments of time and money, and demand a knowledge of the art of shoemaking. Otherwise they cannot meet extraordinary elements of variability resulting from the variety of manufacturing processes and sub-processes, the preliminary preparatory stages of manufacture, the lasts, the sizes, the leather, and other aspects of the shoe-making business.

Once designed, a shoe machine can be copied, as German competitors have shown. But the copying is not easy, and an American machine manufacturer unfamiliar with the art of shoemaking would not ordinarily enter the field even if United gave him technical assistance, at least, unless he were assured that he would be encouraged to continue making similar machines for a long time.

United is the only machinery enterprise that produces a long line of machine types, and covers every major process. It is the only concern that has a research laboratory covering all aspects of the needs of shoe manufacturing; though Compo has a laboratory concentrating on the needs of those in the cement process.~ Through its own research, United has developed inventions many of which are now patented. Roughly 95% of its 3915 patents are attributable to the ideas of its own employees.

Although at the turn of the century, United's patents covered the fundamentals of shoe machinery manufacture, those fundamental patents have expired. Current patents cover for the most part only minor developments, so that it is possible to 'invent around' them, to use the words of United's chief competitor. However, the aggregation of patents does to some extent block potential competition. It furnishes a trading advantage. It leads inventors to offer their ideas to United, on the general principle that new complicated machines embody numerous patents. And it serves as a hedge or insurance for United against unforeseen competitive developments.

In the last decade and a half, United has not acquired any significant patents, inventions, machines, or businesses from any outside source, and has rejected many offers made to it. Before then, while it acquired no going businesses, in a period of two decades it spent roughly $ 3,500,000 to purchase inventions and machines. Most of these were from moribund companies, though this was not true of the acquisitions underlying the

significant Littleway process and the less significant heel seat fitting machines and patents, each of which was from an active enterprise and might have served as a nucleus of important, though, at least initially, not extensive competition.

In supplying its complicated machines to shoe manufacturers, United, like its more important American competitors, has followed the practice of never selling, but only leasing. Leasing has been traditional in the shoe machinery field since the Civil War. So far as this record indicates, there is virtually no expressed dissatisfaction from consumers respecting that system; and Compo, United's principal competitor, endorses and uses it. Under the system, entry into shoe manufacture has been easy. The rates charged for all customers have been uniform. The machines supplied have performed excellently. United has, without separate charge, promptly and efficiently supplied repair service and many kinds of other service useful to shoe manufacturers. These services have been particularly important, because in the shoe manufacturing industry a whole line of production can be adversely affected, and valuable time lost, if some of the important machines go out of function, and because machine breakdowns have serious labor and consumer repercussions. The cost to the average shoe manufacturer of its machines and services supplied to him has been less than 2% of the wholesale price of his shoes.

However, United's leases, in the context of the present shoe machinery market, have created barriers to the entry by competitors into the shoe machinery field.

First, the complex of obligations and rights accruing under United's leasing system in operation deter a shoe manufacturer from disposing of a United machine and acquiring a competitor's machine. He is deterred more than if he owned that same United machine, or if he held it on a short lease carrying simple rental provisions and a reasonable charge for cancelation before the end of the term. The lessee is now held closely to United by the combined effect of the 10 year term, the requirement that if he has work available he must use the machine to full capacity, and by the return charge which can in practice, through the right of deduction fund, be reduced to insignificance if he keeps this and other United machines to the end of the periods for which he leased them.

Second, when a lessee desires to replace a United machine, United gives him more favorable terms if the replacement is by another United machine than if it is by a competitive machine.

Third, United's practice of offering to repair, without separate charges, its leased machines, has had the effect that there are no independent service organizations to repair complicated machines. In turn, this has had the effect that the manufacturer of a complicated machine must either offer repair service with his machine, or must face the obstacle of marketing his machine to customers who know that repair service will be difficult to provide.

Through its success with its principal and more complicated machines, United has been able to market more successfully its other machines, whether offered only for sale, or on optional sale or lease terms. In ascending order of importance, the reasons for United's success with these simpler types are these. These other, usually more simple, machines are technologically related to the complex leased machines to which they are auxiliary or preparatory. Having business relations with, and a host of contracts with, shoe factories, United seems to many of them the most efficient, normal, and above all, convenient supplier. Finally, United has promoted the sale of these simple machine types by the sort of price discrimination between machine types, about to be stated.

Although maintaining the same nominal terms for each customer, United has followed, as between machine types, a discriminatory pricing policy. Clear examples of this policy are furnished by the nine selected instances reviewed in detail in the findings. Other examples of this policy can be found in the wide, and relatively permanent, variations in the rates of return United secures upon its long line of machine types. United's own internal documents reveal that these sharp and relatively durable differentials are traceable, at least in large part, to United's policy of fixing a higher rate of return where competition is of minor significance, and a lower rate of return where competition is of major significance. Defendant has not borne the burden of showing that these variations in rates of return were motivated by, or correspond with, variations in the strength of the patent protection applicable to different machine types. Hence there is on this record no room for the argument that defendant's discriminatory pricing policy is entirely traceable to, and justified by, the patent laws of the United States.

On the foregoing facts, the issue of law is whether defendant in its shoe machinery business has violated that provision of Sec. 2 of the Sherman Act, addressed to 'every person who shall monopolize, or attempt to monopolize * * * any part of the trade or commerce among the several States'.

The historical development of that statutory section can be speedily recapitulated.

When they proposed the legislation, Senators Hoar and Edmunds thought it did little more than bring national authority to bear upon restraints of trade known to the common law, and it could not apply to one 'who merely by superior skill and intelligence * * * got the whole business because nobody could do as well'. (21 Cong.Rec. 3146-3152). They did not discuss the intermediate case where the causes of an enterprise's success were neither common law restraints of trade, nor the skill with which the business was conducted, but rather some practice which without being predatory, abusive, or coercive was in economic effect exclusionary.

{After discussing some other cases, the court came to} the landmark opinion of Judge Learned Hand in *United States v. Aluminum Co. of America*, 2 Cir., 148 F.2d 416. In *Aluminum* Judge Hand, perhaps because he was cabined by the findings of the District Court, did not rest his judgment on the corporation's coercive or immoral practices. Instead, adopting an economic approach, he defined the appropriate market, found that Alcoa supplied 90% of it, determined that this control constituted a monopoly, and ruled that since Alcoa established this monopoly by its voluntary actions, such as building new plants, though, it was assumed, not by moral derelictions, it had 'monopolized' in violation of Sec. 2.~ At the same time, he emphasized that an enterprise had 'monopolized' if, regardless of its intent, it had achieved a monopoly by manoeuvres which, though 'honestly industrial', were not economically inevitable, but were rather the result of the firm's free choice of business policies.

The justification for this interpretation of the law Judge Hand found in the purposes of the Sherman Act, which he stated in language often quoted, 148 F.2d at 427. He referred to the economic purpose in these words:

> 'Many people believe that possession of unchallenged economic power deadens initiative, discourages thrift and depresses energy; that immunity from competition is a narcotic, and rivalry is a stimulant, to industrial progress; that the spur of constant stress is necessary to counteract an inevitable disposition to let well enough alone.'

And he referred to the social purpose in this passage:

> 'It is possible, because of its indirect social or moral effect, to prefer a system of small producers, each dependent for his success upon his own skill and character, to one in which the great mass of those engaged must accept the direction of a few.'

Both the technique and the language of Judge Hand were expressly approved in *American Tobacco Co. v United States*, 1946, 328 U.S. 781. Comparable principles were applied in *United States v. Griffith*, 1948, 334 U.S. 100; *Schine Chain Theatres, Inc. v. United States*, 1948, 334 U.S. 110~.

{In various other cases, the court noted the following:} {I}t is delusive to treat opinions written by different judges at different times as pieces of a jig-saw puzzle which can be, by effort, fitted correctly into a single pattern.~

{The court then turned to applying the law on monopolization:}

The facts show that (1) defendant has, and exercises, such overwhelming strength in the shoe machinery market that it controls that market, (2) this strength excludes some potential, and limits some actual, competition, and (3) this strength is not attributable solely to defendant's ability, economies of scale, research, natural advantages, and adaptation to inevitable economic laws.

In estimating defendant's strength, this Court gives some weight to the 75 plus percentage of the shoe machinery market which United serves. But the Court considers other factors as well. In the relatively static shoe machinery market where there are no sudden changes in the style of machines or in the volume of demand, United has a network of long-term, complicated leases with over 90% of the shoe factories. These leases assure closer and more frequent contacts between United and its customers than would exist if United were a seller and its customers were buyers. Beyond this general quality, these leases are so drawn and so applied as to strengthen United's power to exclude competitors. Moreover, United offers a long line of machine types, while no competitor offers more than a short line. Since in some parts of its line United faces no important competition, United has the power to discriminate, by wide differentials and over long periods of time, in the rate of return it procures from different machine types. Furthermore, being by far the largest company in the field, with by far the largest resources in dollars, in patents, in facilities, and in knowledge, United has a marked capacity to attract offers of inventions, inventors' services, and shoe machinery businesses. And,

finally, there is no substantial substitute competition form a vigorous secondhand market in shoe machinery.

To combat United's market control, a competitor must be prepared with knowledge of shoemaking, engineering skill, capacity to invent around patents, and financial resources sufficient to bear the expense of long developmental and experimental processes. The competitor must be prepared for consumers' resistance founded on their long-term, satisfactory relations with United, and on the cost to them of surrendering United's leases. Also, the competitor must be prepared to give, or point to the source of, repair and other services, and to the source of supplies for machine parts, expendable parts, and the like. Indeed, perhaps a competitor who aims at any large scale success must also be prepared to lease his machines. These considerations would all affect potential competition, and have not been without their effect on actual competition.

Not only does the evidence show United has control of the market, but also the evidence does not show that the control is due entirely to excusable causes. The three principal sources of United's power have been the original constitution of the company, the superiority of United's products and services, and the leasing system. The first two of these are plainly beyond reproach.~ But United's control does not rest solely on its original constitution, its ability, its research, or its economies of scale. There are other barriers to competition, and these barriers were erected by United's own business policies. Much of United's market power is traceable to the magnetic ties inherent in its system of leasing, and not selling, its more important machines. The lease-only system of distributing complicated machines has many 'partnership' aspects, and it has exclusionary features such as the 10-year term, the full capacity clause, the return charges, and the failure to segregate service charges from machine charges. Moreover, the leasing system has aided United in maintaining a pricing system which discriminates between machine types.

In addition to the foregoing three principal sources of United's power, brief reference may be made to the fact that United has been somewhat aided in retaining control of the shoe machinery industry by its purchases in the secondhand market, by its acquisitions of patents, and to a lesser extent, by its activities in selling to shoe factories supplies which United and others manufacture.

In one sense, the leasing system and the miscellaneous activities just referred to (except United's purchases in the secondhand market) were natural and normal, for they were, in Judge Hand's words, 'honestly

industrial'. 148 F.2d at 431. They are the sort of activities which would be engaged in by other honorable firms. And, to a large extent, the leasing practices conform to long-standing traditions in the shoe machinery business. Yet, they are not practices which can be properly described as the inevitable consequences of ability, natural forces, or law. They represent something more than the use of accessible resources, the process of invention and innovation, and the employment of those techniques of employment, financing, production, and distribution, which a competitive society must foster. They are contracts, arrangements, and policies which, instead of encouraging competition based on pure merit, further the dominance of a particular firm. In this sense, they are unnatural barriers; they unnecessarily exclude actual and potential competition; they restrict a free market.~

The violation with which United is now charged depends not on moral considerations, but on solely economic considerations. United is denied the right to exercise effective control of the market by business policies that are not the inevitable consequences of its capacities or its natural advantages. That those policies are not immoral is irrelevant.

Defendant seems to suggest that even if its control of the market is not attributable exclusively to its superior performance, its research, and its economies of scale, nonetheless, United's market control should not be held unlawful, because only through the existence of some monopoly power can the thin shoe machinery market support fundamental research of the first order, and achieve maximum economies of production and distribution.

To this defense the shortest answer is that the law does not allow an enterprise that maintains control of a market through practices not economically inevitable, to justify that control because of its supposed social advantage. Cf. *Fashion Originators' Guild of America v. Federal Trade Commission*, 312 U.S. 457, 668. It is for Congress, not for private interests, to determine whether a monopoly, not compelled by circumstances, is advantageous. And it is for Congress to decide on what conditions, and subject to what regulations, such a monopoly shall conduct its business.

Moreover, if the defense were available, United has not proved that monopoly is economically compelled by the thinness of the shoe machinery market. It has not shown that no company could undertake to develop, manufacture, and distribute certain types of machines, unless it alone met the total demand for those types of machines.

Nor has United affirmatively proved that it has achieved spectacular results at amazing rates of speed, nor has it proved that comparable research results and comparable economies of production, distribution and service could not be achieved as well by, say, three important shoe machinery firms, as by one. Compo with a much smaller organization indicates how much research can be done on a smaller scale. Yet since Compo is limited to the simpler cement process machines, too much reliance should not be placed on this comparison. Nonetheless, one point is worth recalling. Compo's inventors first found practical ways to introduce the cement process which United had considered and rejected. This experience illustrates the familiar truth that one of the dangers of extraordinary experience is that those who have it may fall into grooves created by their own expertness. They refuse to believe that hurdles which they have learned from experience are insurmountable, can in fact be overcome by fresh, independent minds.

So far, nothing in this opinion has been said of defendant's intent in regard to its power and practices in the shoe machinery market. This point can be readily disposed of by reference once more to *Aluminum*, 148 F.2d at 431-432. Defendant intended to engage in the leasing practices and pricing policies which maintained its market power. That is all the intent which the law requires when both the complaint and the judgment rest on a charge of 'monopolizing'~. Defendant having willed the means, has willed the end.

Next, come those issues relating to supplies, each of which is, for factual reasons stated in the findings, a separate market under Sec. 2 of the Sherman Act.

The most important fact with respect to United's manufacturing and distributive activities in these supply markets is that they are a consequence of United's power in the shoe machinery market and to some extent buttress that power.

In certain of those supply fields such as cutters and irons, nails and tacks, eyelets, and wire, United has control of the market as is shown by the fact that it is supplying much more than half the demand. This control comes principally from United's power over the shoe machinery market. And for that reason the exercise of dominant power in those supply fields is unlawful. An enterprise that by monopolizing one field, secures dominant market power in another field, has monopolized the second field, in violation of Sec. 2 of the Sherman Act.~

IV.

Opinion on Remedy.

Where a defendant has monopolized commerce in violation of Sec. 2, the principal objects of the decrees are to extirpate practices that have caused or may hereafter cause monopolization, and to restore workable competition in the market.~

The Government's proposal that the Court dissolve United into three separate manufacturing companies is unrealistic. United conducts all machine manufacture at one plant in Beverly, with one set of jigs and tools, one foundry, one laboratory for machinery problems, one managerial staff, and one labor force. It takes no Solomon to see that this organism cannot be cut into three equal and viable parts.

Nor can the division of United's business be fairly accomplished by dividing the manufacture of machinery into three broad categories, and then issuing an injunction restraining the Beverly plant from manufacturing two broad categories of machine types, and vesting in each of two new companies the right to manufacture one of those categories. Such an order would create for the new companies the most serious type of problems respecting the acquisition of physical equipment, the raising of new capital, the allotment of managerial and labor forces, and so forth. The prospect of creating three factories where one grew before has not been thought through by its proponents.~ On the whole, therefore, the suggested remedy of dissolution is rejected.

{The court went on to provide other remedies, including with regard to the treatment of leases and the divestiture of supplier subsidiaries.}

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NOTES ABOUT THE EDITING OF THIS CASE: *The superscript tilde (~) denotes an ellipsis. Citations matter was removed and/or shortened without notation. Footnotes were eliminated and some paragraphing was changed without notation. Italicization was done after as part of the editing and may not reflect the original text.*