

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE PACKAGED ICE ANTITRUST :
LITIGATION :

THIS DOCUMENT RELATES TO: :
ALL ACTIONS :

Case No. 08-MD-01952

U.S. District Judge Paul D. Borman

**ORDER ACCEPTING SUBMISSIONS OF
SOUTHERN DISTRICT OF OHIO TRANSCRIPT EXCERPTS
OF FEBRUARY 11 AND MARCH 2, 2010 FROM
PARALLEL CRIMINAL PROCEEDINGS**

Defendant Reddy Ice Holdings, Inc. and Reddy Ice Corporation (collectively the “Reddy Defendants”), filed a Motion on March 2, 2010 for leave to Submit Transcript Excerpts Containing February 11, 2010 Statements by a U.S. Department of Justice Attorney Regarding the Scope of the Alleged Packaged Ice Conspiracy, in Support of Reddy Defendants’ F.R.Civ.P.12(b)(6) Motion to Dismiss. These statements were made in a parallel criminal proceeding before U.S. District Judge Herman Weber, in the Southern District of Ohio.

On March 15, 2010, Indirect Purchaser Plaintiffs filed a response in opposition, which also included as exhibits, transcript excerpts from those parallel criminal proceedings, dated February 11, 2010 and March 2, 2010. On March 16, 2010, Direct Purchaser Plaintiffs filed a response in opposition. On March 19, 2010, the Reddy Defendants filed a Reply in support of its Motion.

The Court will accept the submissions from both the Reddy Defendants and the Indirect Purchasers. The submissions are proper given that both the Direct and the Indirect Purchaser Complaints in the instant case refer to a Department of Justice nationwide investigation. Since the Plaintiffs have opened the door to that issue, the offered federal court transcripts, quoting from the lead Justice Department attorney in that investigation on this issue is relevant to provide this Court with appropriate information. Plaintiffs have injected the criminal investigation in their pleadings. Indeed, it would mislead the Court to exclude this information from its consideration.

At the same time, as cited in the Indirect Purchaser Plaintiffs Response, this Court is aware that the Second Circuit has held that “[e]ven if we could consider this evidence on a motion to dismiss . . . no case . . . support[s] the proposition that a civil antitrust complaint must be dismissed because an investigation undertaken by the Department of Justice (DOJ) found no evidence of conspiracy.” *Starr v. Sony BMG Music Entertainment*, 592 F.3d 314, 325 (2nd Cir. 2010). It would have been appropriate if counsel for the Indirect Plaintiffs had also quoted the next sentence in *Starr*:

Second, this argument neglects the fact that the complaint alleges that the Department of Justice has, since 2003, launched two new investigations into whether defendants engaged in collusion and price fixing and whether defendants misled the Department about the formation and operation of MusicNet and pressplay.

Id. In the instant case, the Department of Justice criminal investigation has not closed.

Accordingly, the Court accepts the Reddy Defendants' and Indirect Purchasers' submissions of Southern District of Ohio's transcript portions in the parallel criminal proceedings.

SO ORDERED.

S/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: March 26, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on March 26, 2010.

S/Denise Goodine
Case Manager