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and the other relationships between the parties, considered in the light of the statutory provision and the legislative intent. (cf *Wirtz* v. *Wornom's Pharmacy* (E.D. Va.), 18 WH Cases 289, 365; 57 Labor Cases 32,006, 32,030.)

**§ 779.219 Unified operation may be achieved without common control or common ownership.**

The performance of related activities through ''unified operation'' to serve a common business purpose may be achieved without common control and without common ownership. In particular cases ownership or control of the related activities may be factors to be considered, along with all facts and circumstances, in determining whether the activities are performed through ''unified operation.'' It is clear from the definition that if the described activities are performed through unified operation they will be part of the enterprise whether they are performed by one company or by more than one corporate or other organizational unit. The term ''unified operation'' has reference particularly to enterprises composed of a number of separate companies as is clear in the quotation from the Senate Report in § 779.215. Where the related activities are performed by a single company, or under other single ownership, they will ordinarily be performed through ''common control,'' and the question of whether they are also performed through unified operation will not need to be decided. (*Wirtz* v. *Barnes Grocer Co.*, 398 F. 2d 718 (C.A. 8).)

**§ 779.220 Unified operation may exist as to separately owned or controlled activities which are related.**

Whether there is unified operation of related activities will thus be of concern primarily in those cases where the related activities are separately owned or controlled but where, through arrangement, agreement or otherwise, they are so performed as to constitute a unified business system organized for a common business purpose. For example, a group of separately incorporated, separately owned companies, may agree to conduct their activities in such manner as to be for all intents and purposes a single business system except for the fact that the ownership and control of the individual segments of the business are retained, in part or in whole, by the individual companies comprising the unified business system. The various units may operate under a single trade name; construct their establishment to appear identical; use identical equipment; sell generally the same goods or provide the same type of services, and, in some cases, at uniform standardized prices; and in other respects appear to the persons utilizing their services or purchasing their goods as being the same business. They also may arrange for group purchasing and warehousing; for advertising as a single business; and for standardization of their records, as well as their credit, employment, and other business policies and practices. In such circumstances the activities may well be performed through ''unified operation'' sufficient to consider all of the related activities performed by the group of units as constituting one enterprise, despite the separate ownership of the various segments and despite the fact that the individual units or segments may retain control as to some or all of their own activities. That this is in accord with the congressional intent is plain, since where the Congress intended that such arrangements shall not bring a group of certain individual retail or service establishments into a single enterprise, provision to accomplish such exception was specifically included. (See § 779.226, discussing the proviso in section 3(r) with respect to certain franchise and other specified arrangements entered into between independently owned retail or service establishments and other businesses.)

**§ 779.221 "Common control" defined.**

Under the definition the ''enterprise'' includes all related activities performed through ''common control'' for a common business purpose. The word ''control'' may be defined as the act of fact of controlling; power or authority to control; directing or restraining domination. ''Control'' thus includes the power or authority to control. In relation to the performance of the described activities, the ''control,'' referred to in the definition in section

3(r) includes the power to direct, restrict, regulate, govern, or administer the performance of the activities. ''Common'' control includes the sharing of control and it is not limited to sole control or complete control by one person or corporation. ''Common'' control therefore exists where the performance of the described activities are controlled by one person or by a number of persons, corporations, or other organizational units acting together. This is clearly supported by the definition which specifically includes in the ''enterprise'' all such activities whether performed by ''one or more corporate or other organizational units.'' The meaning of ''common control'' is discussed comprehensively in part 776 of this chapter.

### § 779.222 Ownership as factor.

As pointed out in § 779.215 ''unified operation'' and ''common control'' do not refer to the ownership of the described activities but only to their performance. It is clear, however, that ownership may be an important factor in determining whether the activities are performed through ''unified operation or common control.'' Thus common control may exist where there is common ownership. Where the right to control, one of the prerogatives of ownership, exists, there may be sufficient ''control'' to meet the requirements of the statute. Ownership, or sufficient ownership to exercise control, will be regarded as sufficient to meet the requirement of ''common control.'' Where there is such ownership, it is immaterial that some segments of the related activities may operate on a semi-autonomous basis, superficially free of actual control, so long as the power to exercise control exists through such ownership. (See *Wirtz* v. *Barnes Grocer Co.*, 398 F. 2d 718 (C.A. 8).) For example, a parent corporation may operate a chain of retail or service establishments which, for business reasons, may be divided into several geographic units. These units may have certain autonomy as to purchasing, marketing, labor relations, and other matters. They may be separately incorporated, and each unit may maintain its own records, including records of its profits or losses. All the units together, in such a case, will constitute a single enterprise with the parent corporation. They would constitute a single business organization under the ''common control'' of the parent corporation so long as they are related activities performed for a common business purpose. The common ownership in such cases provides the power to exercise the ''control'' referred to in the definition. It is clear from the Act and the legislative history that the Congress did not intend that such a chain organization should escape the effects of the law with respect to any segment of its business merely by separately incorporating or otherwise dividing the related activities performed for a common business purpose.

### § 779.223 Control where ownership vested in individual or single organization.

Ownership, sufficient to exercise ''control,'' of course, exists where total ownership is vested in a single person, family unit, partnership, corporation, or other single business organization. Ownership sufficient to exercise ''control'' exist also where there is more than 50 percent ownership of voting stock. (See *West* v. *Wal-Mart*, 264 F. Supp. 168 (W.D. Ark.).) But ''control'' may exist with much more limited ownership, and, in certain cases exists in the absence of any ownership. The mere ownership of stock in a corporation does not by itself establish the existence of the ''control'' referred to in the definition. The question whether the ownership in a particular case includes the right to exercise the requisite ''control'' will necessarily depend upon all the facts in the light of the statutory provisions.

### § 779.224 Common control in other cases.

(a) As stated in § 779.215 ''common control'' may exist with or without ownership. The actual control of the performance of the related activities is sufficient to establish the ''control'' referred to in the definition. In some cases an owner may actually relinquish his control to another, or by agreement or other arrangement, he may so restrict his right to exercise control as to abandon the control or to share the