

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

ASSOCIATED MILK PRODUCERS, INC.,
Defendant.

CIVIL ACTION NO. SA 72 CA 49

Filed: 2/1/72

Equitable Relief Sought

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above named defendant and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the above named defendant under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act (15 U.S.C. § 4), in order to prevent and restrain continued violations by the defendant, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The defendant transacts business and is found within the Western District of Texas, San Antonio Division.

II

THE DEFENDANT

3. Associated Milk Producers, Inc. (hereinafter "AMPI") is an agricultural cooperative marketing association, as defined in 7 U.S.C. § 291, incorporated and existing under the laws of the State of Kansas with its principal office and place of business at San Antonio, Texas. AMPI has a membership of more than 40,000 milk producers located in the following states, among others: Wisconsin, Minnesota, South Dakota, Iowa, Nebraska, Illinois, Indiana, Missouri, Kansas, Tennessee, Arkansas, Oklahoma, New Mexico and Texas. AMPI also owns and controls numerous large volume plants that process and distribute fluid milk and milk products. AMPI was formed in the latter part of 1969 as a combination of and the successor in interest to some 36 or more cooperatives, including Milk Producers, Inc. and Pure Milk Association. Any reference to defendant AMPI, unless the context requires otherwise, is also a reference to previously existing corporations and entities that have been merged or consolidated into AMPI.

III

CO-CONSPIRATORS

4. Various corporations and individuals not made defendants herein, including but not limited to milk haulers and processors, have participated in the violations alleged and have performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

5. As used herein:

- (a) "Milk" means the raw milk of cows prior to pasteurization;
- (b) "Fluid milk" means pasteurized milk sold for human consumption in fluid form;
- (c) "Milk products" mean products manufactured from milk such as butter, ice cream, cheese and powdered milk;
- (d) "Processor" means a person, partnership or corporation engaged in the business of purchasing milk and processing, bottling and/or packaging fluid milk and milk products;
- (e) "Producer" means any person engaged in the production of milk approved for consumption as Grade A milk by any duly constituted state or municipal health authority;
- (f) "Cooperative" means any marketing association of producers meeting the requirements of 7 U.S.C. § 291;
- (g) "Plant" means the land, buildings, facilities and equipment constituting a single operating unit or establishment in which milk is processed; ar
- (h) "Federal milk marketing order" means an order and applicable rules of practice and procedure relating thereto, establishing minimum prices which processors within a defined market area are required to pay producers, and adopted

pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. § 601, et seq.).

V

TRADE AND COMMERCE

6. Producers may join together in cooperatives to collectively market and process their milk, and may make necessary contracts and agreements to effect such purposes. Producers in at least 14 midwestern states have joined together to market their milk through AMPI. Although milk is usually transported to nearby plants, it can be transported very long distances. In marketing milk AMPI treats the entire area in which it has members as one market, and has on many occasions sold milk to plants located far from where such milk was produced. AMPI accounts for a substantial majority of the milk marketed throughout AMPI's entire marketing area; AMPI controls over 90 percent of the milk market in many local markets, as defined by federal milk marketing orders, and 100 percent of the milk marketed in some such local markets.

7. Under the Agricultural Marketing Agreement Act, 7 U.S.C. § 601, et seq. ("the Act"), the Secretary of the United States Department of Agriculture is granted inter alia the power to issue federal milk marketing orders. The purpose of such orders is to provide for orderly marketing conditions such as will establish parity prices for farmers, protect the interest of the consumer, establish and maintain quality of products and establish and maintain an orderly flow of supply. These statutory objectives are sought to be achieved by a

complex economic regulatory scheme which, among other things, sets minimum prices that all processors must pay farmers for prescribed classifications of various milk products meeting specified quality standards. An order becomes effective if producers who produce at least two-thirds of the volume of milk produced for the market favor the order. Cooperatives are permitted to vote for their members. There are presently in effect more than 60 different federal milk marketing orders, each applicable to a different geographical area. While most major metropolitan areas in the United States are covered by federal milk marketing orders, there are many milk producing areas that are not federally regulated.

8. Federal milk marketing orders establish market-wide producers' pools, as authorized by 7 U.S.C. § 608c (5)(B). Under this regulatory scheme, administered by a Federal Milk Market Administrator (an agent of the Secretary of Agriculture), processors make payment or account for their purchases of milk to the Administrator, according to the end use of the milk they have purchased. Federal milk marketing orders establish a Class I price for milk used as fluid milk and a lower Class II price for milk manufactured into milk products in each marketing area. Each month the total volume of milk in each of the two categories used by processors in a market is multiplied by the appropriate coefficient price. These two dollar figures are totalled and then divided by the total volume of milk. The resultant "uniform price" for the month represents the average value of all milk sold in the market area. The Administrator pays the "blend price", which is the uniform price after the addition and subtraction of certain functional differentials, to each milk producer or association of producers

for sales in that market, or verifies that such price has been paid. Thus, except to the extent that the functional adjustments differ, each milk producer or the cooperative of which he is a member receives the same price per unit of milk sold regardless of the actual end use of its milk; the producer or his cooperative selling to a processor for Class I use receives no more than a producer selling to a processor for Class II manufacturing use. The cost of milk to each processor, however, is based on actual utilization. A processor who, for example, has 100 percent Class I utilization will pay or account to the Administrator at the Class I price for all its milk even though only the blend price is paid to the producers of its milk or the producers' cooperatives.

9. A cooperative collects the money all of its members are entitled to under federal milk marketing orders, and can determine how such money shall be allocated among its members. AMPI also collects a premium above the federal order price from most processors to whom it sells milk. AMPI has established a "base-excess" plan as a basis for payments to its members in certain parts of its marketing area. Under this plan, each member is assigned a specified number of pounds as base, and all milk produced over that amount is excess or surplus milk. AMPI pays its members approximately twice as much for base milk as for surplus milk. To obtain enough base to make milk producing profitable, many members of AMPI must buy another member's base, or produce excess for a period of years. In either case a substantial investment is required of AMPI members for them to operate profitably. Under the membership obligations of AMPI such investment is forfeited if a member sells milk in competition with AMPI for a period of five years after he terminates his membership in AMPI.

10. Federal milk marketing orders differ as to what milk is considered to be part of the milk used in a given market area. However, the provisions of some marketing orders permit cooperatives to report Class II milk as having been used in a given market area when, in fact, it has not been. This practice is called "loading the pool". The effect of loading the pool may be to drive the uniform and blend prices significantly downward. Members of AMPI may be insulated from such economic loss by receiving payments from AMPI out of funds collected in other market areas.

11. Milk must be transported from dairy farms where it is produced to plants. Most individual producers do not produce sufficient quantities of milk to make it economically feasible for them to transport their milk themselves. In many areas independent milk haulers traditionally perform this service. Such haulers must transport the milk of enough producers to provide them with a minimum volume of milk for a profitable business.

12. AMPI is engaged in interstate commerce, and there is a continuous flow of milk in interstate commerce. During the period covered by this complaint, AMPI has sold and shipped substantial quantities of milk in states other than the states in which it was produced. AMPI also owns a number of plants in many states at which it processes milk and from which it sells and ships fluid milk and milk products across state lines.

VI

VIOLATIONS ALLEGED

13. Beginning in or about 1967, the exact date being unknown to the plaintiff, and continuing up to and including the date of the filing of this complaint, defendant and the co-conspirators have engaged in a combination and conspiracy

to unreasonably restrain and monopolize the above described interstate trade and commerce in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §§ 1 and 2), commonly known as the Sherman Act.

14. Beginning in or about 1967, the exact date being unknown to the plaintiff, and continuing up to and including the date of the filing of this complaint, defendant has attempted to monopolize the above described interstate trade and commerce in violation of Section 2 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 2), commonly known as the Sherman Act.

15. In furtherance of the aforesaid combinations and conspiracies, and pursuant to the aforesaid attempt to monopolize, the defendant and co-conspirators have done the following things, among others:

- (a) Depressed the price competing producers of AMPI could receive for their milk under the applicable federal milk marketing order in various geographic areas, by loading the pool, while insulating AMPI members from economic loss;
- (b) Agreed that processors who purchase milk from AMPI will not purchase milk from competitors of AMPI, or will pay a substantially higher price for their milk than their competitors who do not deal with AMPI's competitors;

- (c) Agreed that some processors would not sell or deliver milk acquired from AMPI to other processors except as directed by AMPI;
- (d) Agreed that haulers who haul milk produced by members of AMPI will not haul milk produced by competitors of AMPI;
- (e) Acquired the business and assets of processors who processed milk produced by competitors of AMPI and terminated said processing;
- (f) Acquired the business and assets of haulers who transported milk produced by competitors of AMPI and terminated said transporting; and
- (g) Compelled producer-members of AMPI to sign membership agreements which unreasonably restrained the right of said members to withdraw from AMPI and market milk in competition with AMPI.

16. The violations alleged in this complaint are continuing and will continue unless the relief hereinafter prayed for is granted.

VII

EFFECTS

17. The violations alleged in this complaint have had the following effects, among others:

- (a) Competition among the defendant and other producers and cooperatives in the sale of milk has been restrained and eliminated;

2
2
2
8
2
2
2
2
2
2
0
2
2
2
1
2
2
2
2
2
2
2
3
2
2
2
4
2
2
2
5
2
2
2
6
2
2
2
7
7

- (b) Sale of milk in the AMPI marketing area has been monopolized;
- (c) Producers have been denied unrestricted access to milk haulers;
- (d) Producers have been denied the unrestricted opportunity to sell milk to processors;
- (e) Processors and haulers have been deprived of the benefit of free and open competition among producers; and.
- (f) Consumers and other purchasers have been deprived of the opportunity to buy fluid milk and milk products in an unrestricted market and at competitive prices.

PRAYER

WHEREFORE, the plaintiff prays:

1: That the Court adjudge and decree that the defendant AMPI has engaged in combinations and conspiracies to unreasonably restrain and monopolize, and has unlawfully attempted to monopolize, the aforesaid trade and commerce in violation of both Sections 1 and 2 of the Sherman Act.

2. That the defendant AMPI, its successors, assignees, transferees, officers, directors, members, agents and employees and all persons acting or claiming to act on behalf thereof be permanently enjoined and restrained from:

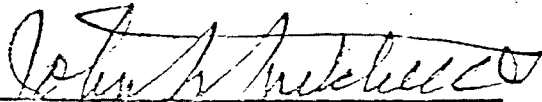
- (a) Directly or indirectly, continuing, maintaining or renewing the unlawful combinations, conspiracies and attempt to monopolize alleged in this complaint, or from engaging in any other

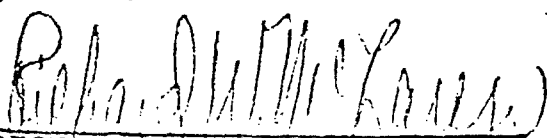
- combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program or device having a similar purpose or effect;
- (b) Refusing to employ independent milk haulers who transport or are potential transporters of milk for non-members of AMPI or using threats or coercion or persuasion to induce independent milk haulers to refuse to haul milk for non-members of AMPI;
 - (c) Purchasing or acquiring control of haulers who transport milk of non-members of AMPI for the purpose of eliminating such transporting;
 - (d) Refusing or threatening to refuse to sell milk to or purchase surplus milk from processors unless said processors agree to the condition, agreement or understanding that they will not purchase milk from AMPI's competitors;
 - (e) Agreeing with processors that they will not sell or deliver milk acquired from AMPI except as directed by AMPI;
 - (f) Discriminating or threatening to discriminate against processors who purchase milk produced by competitors of AMPI in any way, including but not limited to, charging said processors higher prices than AMPI charges competitors of said processors;

- (g) Purchasing, acquiring, owning or controlling plants which have bought milk produced by non-members of AMPI for the purpose of eliminating said plants as markets for said producers;
- (h) Using threats or coercion to induce producers to join AMPI;
- (i) Compelling producer-members of AMPI to sign membership agreements which unreasonably restrain the right of said members to withdraw from AMPI and market their milk in competition with AMPI; and
- (j) Loading the pool of marketing areas where AMPI has competition from independent producers or producer cooperatives.

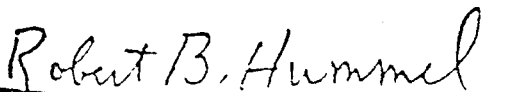
3. That the plaintiff shall have such other and further relief as the Court may deem just and proper.

4. That the plaintiff recover the costs of this suit.


JOHN N. MITCHELL
Attorney General


RICHARD W. McLAREN
Assistant Attorney General


BADDIA J. RASHID


ROBERT B. HUMMEL

JOHN E. SAREAUGH
Attorneys, Department of Justice

United States Attorney

REBECCA J. SCHNEIDERMAN

RONALD L. FUTTERMAN

JAMES J. KUBIK

Attorneys, Department of Justice

Room 2634 United States Courthouse
Chicago, Illinois 60604

312 - 353-7565

2
2
2
8

2
2
2
9

2
2
2
0

2
2
4
1

2
2
2
2

2
2
2
3

2
2
2
4

2
2
2
5

2
2
2
6

2
2
2
7

7