

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAIRYMEN, INC.,

Defendant.

CIVIL ACTION NO. 7634-B

Filed: March 29, 1973

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 to obtain equitable relief 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 under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, and under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, to prevent and restrain the continuing violation by the defendant as hereinafter alleged of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and of Section 3 of the Clayton Act (15 U.S.C. § 14).

2. The defendant transacts business and is found within the Western District of Kentucky.

II. THE DEFENDANT

3. Dairymen, Inc., hereinafter referred to as DI, is made a defendant herein. It is a corporation organized and existing under the laws of the State of Kentucky and has its principal office in Louisville, Kentucky. It is an association of approximately 9,500 milk producers, organized in eleven divisions with members principally in Virginia, West Virginia, Indiana, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Louisiana, and Mississippi.

III. DEFINITIONS

4. As used herein:

(a) "Milk" means the raw milk of cows suitable for utilization as fluid milk;

(b) "Fluid milk" means pasteurized milk sold by processors for human consumption in fluid form;

(c) "Producer" means a person engaged in the production of milk;

(d) "Independent producer" means a producer not a member of DI;

(e) "Processor" means a person, partnership or corporation engaged in the business of purchasing milk and processing, bottling and/or packaging and selling fluid milk and milk products;

(f) "DI marketing area" means the geographical area comprising the territory in which DI members produce milk, i.e., substantially all of Kentucky, Tennessee, Georgia, and Mississippi, and portions of Indiana, Louisiana, Alabama, North Carolina, South Carolina, Virginia, and West Virginia.

IV. NATURE OF TRADE AND COMMERCE

5. Substantial quantities of milk are produced and marketed in the DI marketing area by DI and by independent producers who compete with it in the sale of milk to processors for fluid utilization. Milk is transported by haulers from producers to processors, who require a constant supply of milk in order to carry on their business. In the production; transportation and marketing of milk by producers, haulers, and processors in the DI marketing area there is a continuous and substantial flow of trade and commerce among the states. In 1970 about 11 billion pounds of milk were marketed in the DI marketing area.

6. Processors pay for their purchases of milk according to its end use. Under Federal milk marketing orders, effective in many areas of DI's marketing area, a market administrator sets a Class I price for milk used as fluid milk and a lower Class II price for milk utilized in manufacturing milk products. The blend price, which reflects total utilization in a market during the preceding month, is paid each month by processors to producers in the market. Producers who are members of an agricultural association are not paid directly by the processors but by the association, which collects from the processors. The amount paid to the association frequently includes a premium, which is added to the blend price. Market order regulations have allowed inclusion, for the purpose of computing the blend price, of milk produced outside the area, transported into it, and then diverted and processed outside the area. Importing Class II milk into a market reduces the blend price received by producers.

7. DI was formed in September 1968, as a consolidation of eight associations of milk producers, each of which now forms the nucleus of a DI division. It operates through eleven divisions. DI has also acquired and operates manufacturing and processing facilities. When it was formed membership consisted of more than 7,000 producers shipping close to three billion pounds of milk annually. Many producers are members of DI as a result of membership in predecessor producer associations. Other milk producer associations have joined DI since its formation and the membership has risen to more than 9,000 farmers. In its second fiscal year, ending August 31, 1970, DI members marketed 3.6 billion pounds of milk for a total value to members of approximately \$223 million. In the fiscal year ending August 31, 1971, DI members marketed more than 5.0 billion pounds of milk for a total value of more than \$351 million. A substantial quantity of this milk was sold and shipped to states other than the state in which it was produced.

8. In its marketing area DI is the dominant supplier; in some parts of its marketing area it controls more than 90% of the milk production. Most processors in this area, whose purchases of milk represent a substantial part of the market for milk producers, have no choice but to buy part of their requirements of milk from DI.

9. In 1968 and 1969 DI supplied milk to processors under oral agreements on a weekly basis. In or about December 1969, DI notified its customers that it intended to require processors who wished to buy milk from it to execute full supply contracts. These contracts were not executed at that time. In or about the summer of 1971 DI

again notified its customers that it intended to insist upon modified full supply contracts. It threatened to cut off the milk supplies of any processor who did not sign, and in fact did cut off the milk supplies of certain of these processors.

10. Milk must be transported from producers to the plants of processors. Most individual producers do not produce sufficient quantities of milk to make it economically feasible for them to transport their milk themselves and must rely on milk haulers to perform this service. Haulers having a substantial part of the milk hauling capacity in the DI marketing area have entered into contracts with DI for the transportation of the milk of DI members. These haulers have been instructed by DI not to transport the milk of independent producers.

V. OFFENSES CHARGED

11. Beginning at least as early as 1968, and continuing thereafter up to and including the date of the filing of this complaint, the defendant has entered into contracts, agreements, and understandings in unreasonable restraint of the above-described trade and commerce in milk in violation of Section 1 of the Sherman Act. The substantial terms of said contracts, agreements, and understandings are that milk haulers are required to haul milk only for defendant or for independent producers approved by defendant.

12. Beginning at least as early as 1968, and continuing thereafter up to and including the date of the filing of this complaint, the defendant has entered into contracts, agreements,

and understandings in unreasonable restraint of the above-described trade and commerce in milk in violation of Section 1 of the Sherman Act, and the effects of which may be substantially to lessen competition or tend to create a monopoly in said trade and commerce in violation of Section 3 of the Clayton Act. The substantial terms of said contracts, agreements, and understandings are that processors are required to purchase from defendant all or substantially all of their milk requirements.

13. Beginning at least as early as 1968, and continuing thereafter up to and including the date of the filing of this complaint, the defendant has been engaged in an attempt to monopolize the above-described trade and commerce in milk in violation of Section 2 of the Sherman Act. The defendant has furthered and effectuated said attempt to monopolize by various means and methods including, among others:

- (a) Entering into contracts, agreements and understandings hereinbefore described in paragraphs 11 and 12 of this complaint, in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act;

- (b) Effecting agreements with other producers of milk that they will not furnish milk to processors who do not agree to take all or substantially all of their requirements of milk from defendant;

- (c) Preventing the delivery of milk by other producers to processors;

(d) Requiring or attempting to require processors to take their full requirements, or substantially their full requirements of milk from the defendant and penalizing processors failing or refusing to do so;

(e) Requiring processors to contract for a set quantity of milk for a twelve-month period and penalizing processors failing or refusing to do so;

(f) Manipulating the supply of milk by flooding the market in order to depress the price competing producers of defendant receive for their milk;

(g) Restricting independent milk haulers from transporting the milk of independent producers;

(h) Coercing and attempting to coerce producers to become and remain members under threat of loss of market; and

(i) Entering into membership agreements which unreasonably restrict the right of members to withdraw and market their milk in competition with defendant.

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

VI. EFFECTS

15. The aforesaid offenses have had, or will have, the following effects, among others:

(a) Processors who have signed supply contracts have been limited in their ability to choose between defendant and competing independent producers as sources of supply;

(b) Processors who have refused to sign the aforesaid contracts either have been refused their usual purchases of milk or have been threatened by DI with a refusal to supply their requirements;

(c) Independent producers have been and will be foreclosed from selling to processors whose purchases represent a substantial share of the market;

(d) Independent producers have been and may be compelled to join defendant because of a decreasing number of outlets for their milk or because of inability to have their milk transported to market;

(e) Members of defendant have been and may be prevented from withdrawing from membership and competing with defendant;

(f) The number of sources of supply to which processors may turn for their milk has been reduced and will be further reduced;

(g) Independent producers have been and may be foreclosed from dealing with milk haulers who sign exclusive agreements with defendant;

(h) Milk haulers have been and may be foreclosed from dealings with independent producers;

(i) Competition in the production and sale of milk in the DI marketing area has been and may be substantially lessened.

VII. PRAYER

Wherefore plaintiff prays:

1. That the Court adjudge and decree that the defendant has been engaged in an attempt to monopolize interstate trade and commerce in violation of Section 2 of the Sherman Act.

2. That the Court adjudge and decree that the defendant has entered into contracts, agreements, and understandings in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act and whose effect may be substantially to lessen competition or tend to create a monopoly in violation of Section 3 of the Clayton Act.

3. That the defendant, its officers, directors, agents, representatives, successors, assigns, and all persons acting or claiming to act on its behalf, be perpetually enjoined from:

(a) inducing, or attempting to induce any milk processor to enter into any agreement, contract or understanding for the sale of milk:

(1) which requires, as a condition of such sale, that any milk processor purchase all or substantially all of its milk supply requirements from the defendant, or

(2) which limits or attempts to limit, in any manner, the sources of supply of milk from which a milk processor may purchase, or

(3) which charges any milk processor a higher price for the purchase of milk if he does not purchase his complete milk supply from defendant, or if the processor purchases milk from any supplier not a member of defendant;

(b) refusing to sell, or threatening to refuse to sell, to any milk processor any quantity of milk on the grounds that the processor has not entered into any form of exclusive dealing arrangement with defendant;

(c) enforcing, or attempting to enforce any form of exclusive dealing arrangement with a milk processor; and

(d) giving preference, or continuing to give preference in the sale of milk to any milk processor who has previously entered into any form of exclusive dealing arrangement over any milk processor who has not entered into any such arrangement.

4. That the defendant, its officers, directors, agents, representatives, successors, assigns, and all persons acting or claiming to act on its behalf be perpetually enjoined from:

(a) inducing or attempting to induce any milk hauler to enter into any agreement, contract, or understanding for the transportation of milk:

(1) which requires as a condition of such agreement that any milk hauler transport milk only for the defendant;

(2) which conditions the milk hauler's right to transport the milk of independent producers on the obtaining of defendant's permission;

(3) which discriminates in any way between a milk hauler who does not agree to deal exclusively with defendant and a milk hauler who does;

(b) refusing to deal or threatening to refuse to deal with any milk hauler on the grounds that the milk hauler has not entered into any form of exclusive dealing arrangement with defendant;

(c) enforcing or attempting to enforce any form of exclusive dealing arrangement with a milk hauler;

(d) giving preference or continuing to give preference to any milk hauler who has previously entered into any form of exclusive dealing arrangement over any milk hauler who has not entered into any such arrangement; and

(e) purchasing or acquiring control of milk haulers who transport milk of independent producers for the purpose of eliminating such hauling.

5. That the defendant, its officers, directors, agents, representatives, successors, assigns, and all persons acting or claiming to act on its behalf be perpetually enjoined from:

(a) using threats or coercion to induce any producer to become or remain a member of defendant;

(b) coercing producers to enter into membership agreements which unreasonably restrain their right to withdraw and market their milk in competition with defendant; and

(c) importing milk into marketing areas for the purpose of eliminating the competition of independent producers.

6. That the defendant, its officers, directors, agents, representatives, successors, assigns, and all persons acting or claiming to act on its behalf be perpetually enjoined from engaging in or participating in practices, contracts, relationships, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving or renewing any of the aforesaid violations.

7. That the plaintiff have such other and further relief
as may be just and proper; and

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

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