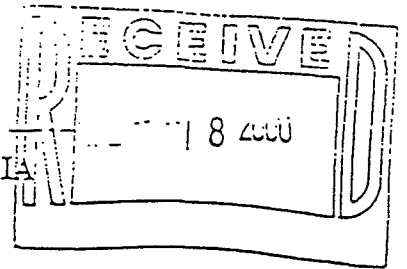


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA



UNITED STATES OF AMERICA

Plaintiff,

vs.

DAIRY FARMERS OF AMERICA,
et al.,

Defendants.

FILED NOV 03 2000

Civil Action No. 00-1663

Entered: November 3, 2000

FINAL JUDGMENT

WHEREAS Plaintiff, the United States of America (hereinafter "United States"), having filed its Complaint on March 31, 2000, this Court having issued a temporary restraining order on the same date, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendant Societe de Diffusion Internationale Agro-Alimentaire, while not agreeing that it does business in the United States generally, has agreed to be bound by the provisions of this Final Judgment;

AND WHEREAS, Defendants SODIAAL North America Corporation and Dairy Farmers of America, Inc. have agreed to be bound by the provisions of this Final Judgment;

NOW, THEREFORE, before the taking of any testimony, and without trial or final

ENTERED: 11-3-00

CLERK OF COURT

adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Butter LLC" means the limited liability company formed pursuant to Section IV of this Final Judgment and includes each of its successors, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, and employees, and each and any successor to its interest in the *Keller's*, *Hotel Bar*, or *Breakstone's* brands.

B. "Dairy Farmers of America, Inc." or "DFA," means Defendant Dairy Farmers of America, Inc., a Kansas corporation with its headquarters in Kansas City, Missouri, and includes each of its successors, divisions, parents, subsidiaries, and majority-owned affiliates, and each other person, directly or indirectly, majority-owned by it, including, but not limited to, Mid-Am Capital LLC and Butter LLC, and each majority-owned partnership or joint venture to which any of them is a party, and all

of their directors, officers, managers, agents and employees.

C. "DFA butter assets" means (a) assets currently employed by DFA to produce and process butter at DFA's Winnsboro, Texas facility and (b) DFA's interest in the *Breakstone's* brand (the transfer of which is subject to the consent of Kraft Foods, Inc.), which shall include, but not be limited to, all customer lists, inventory, contracts, and promotional materials.

D. "Federation" means:

- (1) An agency in common, federation, pooling arrangement, merger or other combination or collaboration, including, but not limited to, any agreement on price or output, involving DFA's and/or Land O'Lakes' Branded Butter operations; or
- (2) An agreement, directly or indirectly, between DFA and Land O' Lakes with regard to the price, quantity, sale or supply of cream, milk, or butter to Butter LLC pursuant to which DFA, Land O'Lakes, or both would charge Butter LLC more for cream, milk or butter than either one or both charge other customers. However, nothing in this paragraph shall prohibit price differentials that are reasonably based on differences in purchase volume, freight or shipping costs, federal regulation or product quality.

E. "Land O' Lakes" means Land O' Lakes, Inc., each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents and

employees.

- F. "Societe de Diffusion Internationale Agro-Alimentaire" means Defendant Societe de Diffusion Internationale Agro-Alimentaire, each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents, and employees.
- G. "SODIAAL North America Corporation" means Defendant SODIAAL North America Corporation and includes each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents and employees.
- H. "SODIAAL North America Corporation butter assets" means the real property, equipment, vehicles, inventories, accounts receivables, information and records, intellectual property, and other assets used to produce, process or market butter including, but not limited to, the *Keller's* and *Hotel Bar* brands, and which assets are to be acquired by DFA pursuant to the Transaction, defined in Paragraph II.I., herein.
- I. "Transaction" means the proposed acquisition of certain assets of SODIAAL North America Corporation by DFA, described in the December 15, 1999, letter agreement between DFA and Societe De Diffusion Internationale Agro-Alimentaire, and includes all related agreements among Defendants.
- J. "Agricultural Cooperative" means an entity eligible for classification as an

"agricultural cooperative" under the terms of the Capper-Volstead Act, 7 U.S.C. § 291, as "[p]ersons engaged in the production of agricultural products such as farmers, planters, ranchmen, dairymen, nut or fruit growers," acting individually or "together in associations, corporate or otherwise," as such terms are used in the Capper-Volstead Act.

- K. "Branded Butter" means butter, as currently defined by the Food and Drug Administration at 7 C.F.R. § 58.305(a), sold in a retail grocery channel under a brand owned or licensed by the butter manufacturer.
- L. "Majority-owned" means either (a) holding more than 50 percent of the voting interests in a corporation, partnership, or limited liability company, or (b) having the right to designate more than 50 percent of the board of directors or similar body.
- M. "Competitively Sensitive Information" means information that is not public and could be used by a competitor or supplier to make production, pricing, or marketing decisions including, but not limited to, information relating to costs, capacity, distribution, marketing, supply, market territories, customer relationships, the terms of dealing with any particular customer (including the identity of individual customers and the quantity sold to any particular customer), and current and future prices, including discounts, slotting allowances, bids, or price lists. "Competitively Sensitive Information" does not include information that must be disclosed to implement a supply arrangement in the ordinary course of business.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to:

- (1) Defendant Dairy Farmers of America, Inc., as defined above, so long as DFA or Butter LLC (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the *Keller's* or *Hotel Bar* brands;
- (2) Defendants Societe de Diffusion Internationale Agro-Alimentaire and SODIAAL North America Corporation, as defined above, so long as either of them (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the *Keller's* or *Hotel Bar* brands;
- (3) Butter LLC, as defined above, so long as DFA or Butter LLC (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the *Keller's* or *Hotel Bar* brands;
- (4) Any person under Paragraph III.B. of this Final Judgment; and
- (5) all other persons in active concert or participation with anyone named in Paragraphs III.A.(1), III.A.(2), III.A.(3), or III.A.(4) above, who receive actual notice of this Final Judgment by personal service or otherwise.

B. DFA and/or Butter LLC shall require as a condition of the sale or other disposition

of either the *Keller's* or *Hotel Bar* brands (or both) to an Agricultural Cooperative or to an entity in which DFA has a non-majority ownership interest that such person or persons agree to be bound by the provisions of this Final Judgment. However, except as provided in Paragraph III.A.(2) or III.A.(5) above, this Final Judgment shall not apply to transferees of either the *Keller's* or *Hotel Bar* brands (or both) who are neither an Agricultural Cooperative nor an entity in which DFA has an ownership interest.

IV. FORMATION OF LIMITED LIABILITY COMPANY AND CONTRIBUTION OF ASSETS

- A. Within 30 days after the consummation of the Transaction, DFA shall cause to be formed "Butter LLC," a limited liability company to be partially owned by persons other than DFA which will cause Butter LLC to be ineligible for classification as an Agricultural Cooperative. Butter LLC shall, within 15 days of its formation, stipulate in writing to be bound by this Final Judgment and subject to the jurisdiction of this Court and shall serve a copy of its stipulation on Plaintiff and file that stipulation with the Court within those 15 days.
- B. Within 30 days after the consummation of the Transaction, DFA and/or Societe de Diffusion Internationale Agro-Alimentaire shall contribute to Butter LLC (a) the DFA butter assets including, subject to the consent of Kraft Foods, Inc., DFA's interest in the *Breakstone's* brand; and (b) the SODIAAL North America Corporation butter assets. Prior to that contribution, DFA shall take no steps to

reduce, eliminate, or otherwise divest those assets.

- C. Without prior written approval of Plaintiff, Butter LLC shall not sell, transfer, divest, license, or in any way grant, direct or indirect, control over the pricing, production, sales, promotion, or marketing of any or all of *Keller's*, *Hotel Bar*, or *Breakstone's* brands to Land O'Lakes.
- D. Without prior written approval of Plaintiff, Butter LLC shall not obtain, receive, or in any way acquire, direct or indirect, control over the pricing, production, sales, promotion, or marketing of any or all Branded Butter from Land O' Lakes.
- E. Without 30 days prior notice to Plaintiff, Butter LLC shall not sell, transfer, or divest either the *Keller's* or *Hotel Bar* brands, or both, to any entity in which DFA has an ownership interest. This Final Judgment shall apply to any such entity pursuant to Paragraph III.B.
- F. Without 30 days prior notice to Plaintiff, Butter LLC shall not sell, transfer, or divest either the *Keller's* or *Hotel Bar* brands, or both, to any entity in which neither DFA nor Land O' Lakes has an ownership interest. Notice provided under this Paragraph shall include the production to the Plaintiff of copies of any and all supply contracts then existing or contemplated between Butter LLC and the transferee.

V. INJUNCTIVE PROVISIONS

- A. DFA and Butter LLC are hereby enjoined, individually and/or collectively, from entering into a Federation with Land O'Lakes, provided, however that, except as set forth in Paragraphs IV.C. and IV.D., nothing contained herein shall prohibit either

DFA or Butter LLC from entering into a supply arrangement with Land O' Lakes whereby one party processes and packages (but does not market, promote, sell, or distribute) Branded Butter on the other's behalf.

- B. DFA and Butter LLC are further enjoined, individually and/or collectively, from disclosing to Land O'Lakes, directly or indirectly, any Competitively Sensitive Information regarding Branded Butter.

VI. COMPLIANCE PROGRAM

DFA and Butter LLC shall maintain a judgment compliance program that shall include:

- A. Distributing, within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all directors, officers and Branded Butter sales and marketing personnel;
- B. Distributing, in a timely manner, a copy of this Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph VI.A;
- C. Distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment and Competitive Impact Statement to Land O' Lakes;
- D. Briefing, annually, in writing or orally, those persons designated in Paragraphs VI.A. and VI.B. on the meaning and requirements of this Final Judgment and the antitrust laws, including penalties for violation thereof;
- E. Obtaining from those persons designated in Paragraphs VI.A. and VI.B. annual written certifications that they (1) have read, understand, and agree to abide by this

Final Judgment, (2) understand that their noncompliance with this Final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported violations, if any, of this Final Judgment of which they are aware to counsel for the respective Defendant; and

- F. Designating a specific individual for each company who shall be responsible for maintaining for inspection by Plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding this Final Judgment have been received.

VII. CERTIFICATION AND NOTIFICATION

- A. Within 75 days after entry of this Final Judgment, DFA and Butter LLC each shall certify to Plaintiff that it has made the distribution of the Final Judgment and Competitive Impact Statement as required by Paragraph VI.A.
- B. For each year after the entry of this Final Judgment, on or before its anniversary date, DFA and Butter LLC each shall certify to Plaintiff its compliance with any provisions of Sections IV, V, and VI then applicable to it; and
- C. Butter LLC shall notify the Plaintiff at least 30 days prior to, as applicable, any proposed (1) dissolution, (2) sale or assignment of claims or assets resulting in a successor person, or (3) change in company structure that may affect compliance with this Final Judgment.
- D. All certifications, notices and communications required to be made to Plaintiff pursuant to this Final Judgment shall be in writing and shall be deemed to be

delivered when (1) hand delivered; or (2) when deposited in the United States mail, postage prepaid, registered or certified U.S. mail, return receipt requested, and addressed, in each such case, to the address set forth in this Paragraph, or the address as changed pursuant to the requirements of this Paragraph.

United States Department of Justice - Antitrust Division
Director of Operations and Merger Enforcement
601 D Street, N.W.
Room 10103
Washington, D.C. 20530

With a copy to:

United States Department of Justice - Antitrust Division
Chief, Litigation II Section
1401 H Street, N.W.
Washington, D.C. 20530

Plaintiff may change the address for notices to be sent to it by written notice delivered to the Defendants by one of the methods described above in this Paragraph.

VIII. COMPLIANCE INSPECTION

- A. For the purposes of determining or securing compliance with this Final Judgment, or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the

Antitrust Division, and on reasonable notice to any Defendant or Butter LLC, be permitted:

- (1) access during office hours to inspect and copy, or at Plaintiff's option, demand Defendants or Butter LLC to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants or Butter LLC, who may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) subject to the reasonable convenience of Defendants or Butter LLC and without restraint or interference from them to interview, either informally or on the record, directors, officers, employees, and agents of Defendants or Butter LLC; who may have their individual counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, Defendants and Butter LLC shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or

as otherwise required by law..

- D. If at the time information or documents are furnished by Defendants or Butter LLC to the United States, Defendants or Butter LLC represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants or Butter LLC mark each pertinent page of such material, "Subject to claim of protection under Rule 26 (c)(7) of the Federal Rules of Civil Procedure," then the United States shall give Defendants or Butter LLC ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

IX. RETENTION OF JURISDICTION

This Court retains jurisdiction for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. TERMINATION OF FINAL JUDGMENT

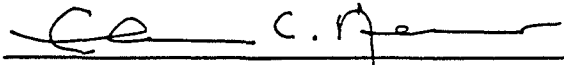
This Final Judgment will continue in force until terminated pursuant to an order of this Court.

XI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated: 11-1-00

Court approval subject to procedures of
Antitrust Procedures and Penalties Act, 15
U.S.C. § 16.


United States District Judge