

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA

vs.

WELLS DAIRY, INC.,

Defendant.

Criminal No: 97-133

Filed: [4/25/97]

Violation: 15 U.S.C. § 1

Judge: Magnuson

INFORMATION

The United States of America, acting through its attorneys, charges:

I.

DESCRIPTION OF THE OFFENSE

1. Wells Dairy, Inc. is hereby made a defendant on the charge stated below.
2. The defendant and others entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices, rigging bids, and allocating customers with respect to public school contracts for the sale of dairy products in the following counties in the states of Minnesota, South Dakota and Iowa, but not necessarily limited to those counties: Rock, Nobles and Jackson in Minnesota; Yankton, Bon Homme, Clay and Union in South Dakota; and Lyon, Sioux, O'Brien and Osceola in Iowa. The conspiracy began as early as about Spring

1986 and lasted to at least May 1992, the exact dates being unknown to the United States. The combination and conspiracy, engaged in by the defendant and its co-conspirators in unreasonable restraint of interstate trade and commerce, violated Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendant and its co-conspirators, the substantial terms of which were:

- (a) to allocate among the corporate co-conspirators contracts with certain public school districts for the supply of dairy products to those public school districts;
- (b) to refrain from submitting bids or to submit collusive, noncompetitive and rigged bids to certain public school districts for the supply of dairy products to those public school districts;
and
- (c) to have the designated corporate co-conspirators supply dairy products to certain public school districts at fixed and noncompetitive prices.

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) discussing among themselves the submission of upcoming bids to certain public school districts;

- (b) designating which corporate co-conspirator would be the low bidder for contracts to supply dairy products to certain public school districts;
- (c) refraining from bidding or submitting intentionally high, complementary bids for contracts to supply dairy products to certain public school districts;
- (d) having the designated corporate co-conspirators supply dairy products to certain public school districts and receive payment for supplying those products;
- (e) recruiting and attempting to recruit others to join the conspiracy; and
- (f) concealing and attempting to conceal the conspiracy.

II.

DEFENDANT AND CO-CONSPIRATORS

5. Defendant Wells Dairy, Inc. is a corporation organized and existing under the laws of the State of Iowa with its corporate headquarters in LeMars, Iowa. During the period covered by this Information, Wells Dairy, Inc. was engaged in the sale and distribution of dairy products throughout the United States, including in the states of Minnesota, South Dakota and Iowa.

6. Various corporations and individuals, not made defendants in this Information, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance of it.

7. Whenever in this Information reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

III.

TRADE AND COMMERCE

8. During the period covered by this Information, the United States of America subsidized the purchase of school meals in the states of Minnesota, South Dakota and Iowa for the purpose of helping provide nutrition to children. The subsidized meals included dairy products which are the subject of the conspiracy charged in this Information. Because of these subsidies, a continuous and uninterrupted flow of a substantial amount of federal funds crossed state lines into the states of Minnesota, Iowa and South Dakota.

9. The business activities of the defendant and co-conspirators that are the subject of this Information were within the flow of, and substantially affected, interstate trade and commerce.

IV.

JURISDICTION AND VENUE

10. The combination and conspiracy charged in this Information was carried out, in part, in the District of Minnesota, within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

Dated:

_____/s/_____
A. DOUGLAS MELAMED
Acting Assistant Attorney General
Antitrust Division

_____/s/_____
DAN W. GOLDFINE

_____/s/_____
GARY R. SPRATLING
Deputy Assistant Attorney General
Antitrust Division

_____/s/_____
MICHAEL G. PATEYUK

_____/s/_____
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