

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 80-174
v.	)	Filed: July 16, 1980
	)	
AGRI-MARK, INC.,	)	Entered: April 1, 1981
AGWAY INC., and	)	
H.P. HOOD, INC.,	)	
	)	
Defendants.	)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on June 27, 1980, and the Plaintiff and the Defendants, by their respective attorneys, having consented to the entry of this Final Judgment, without trial or adjudication of, or finding on, any issue of fact or law herein, and without this Final Judgment constituting any evidence against or admission by any party with respect to any such issue:

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of, or finding on, any issue of fact or law herein, and upon the consent of the parties hereto, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states claims upon which relief may be granted against the Defendants under Sections Three and Seven of the Clayton Act, 15 U.S.C. §§ 14 and 18.

## II.

As used in this Final Judgment:

- A. "Agri-Mark" means the Defendant, Agri-Mark, Inc.;
- B. "Hood" means the Defendant, H.P. Hood, Inc.;
- C. "Agway" means the Defendant, Agway Inc.;
- D. "Hood independent" means any dairy farmer (producer) who at any time in February, 1980, was not a member of any bargaining or marketing cooperative of dairy farmers and whose milk was delivered to Hood at any time during February, 1980;
- E. "New England supply area" means Maine, Vermont, New Hampshire, Connecticut, Massachusetts, Rhode Island, and Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Montgomery, Orange, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Washington, Warren, Putnam, and Westchester Counties in New York;
- F. "Handler" means any dairy, milk manufacturing facility, or cooperative regulated by any Federal Order or State Order;
- G. "Dairy" means any person engaged in the business of processing and packaging fluid milk for human consumption in liquid form;
- H. "Milk manufacturing facility" means any plant which produces any product whose principal ingredient is milk;
- I. "Federal Order" means the regulations, rules of practice and procedures issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. § 601, et seq.), regulating the handling of milk;
- J. "State Order" means the regulations, rules of practice and procedures issued by any state or commonwealth regulatory body which regulates the handling of milk and sets minimum prices for raw milk pursuant to any state or commonwealth statute; and

K. "Person" means any corporation, partnership, association, individual, cooperative, or other business or legal entity.

### III.

The provisions of this Final Judgment are applicable to all Defendants herein and shall also apply to each of said Defendants' officers, directors, agents and employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

### IV.

Agri-Mark is hereby enjoined and restrained from:

A. Offering or charging any handler regulated by any Federal or State Order which also regulates any Hood plant different prices or offering or granting different terms or conditions of sale for raw milk than Agri-Mark charges, offers, or grants any Hood plant regulated by that Federal or State Order;

B. Charging Hood different prices for raw milk based upon the geographic areas in which or the customers to whom Hood sells processed milk products where the price differential applies to less than the entire Federal Order marketing area in which those geographic areas or customers are located.

### V.

Agri-Mark is enjoined from repaying any Agri-Mark member equity contribution or allocated retained earnings to any member who for any reason has ceased delivering raw milk to

Agri-Mark before Agri-Mark makes such repayments to all other persons who, at an earlier date, ceased delivering raw milk to Agri-Mark, provided that nothing herein shall prevent Agri-Mark from:

A. repaying at any time any member equity contribution or allocated retained earnings to the estate of any member who has died, or to any member who has been adjudged bankrupt;

B. repaying any member equity contribution or allocated retained earnings according to a time-schedule in effect and uniformly applied to all Agri-Mark members at the time such repayment is requested.

#### VI.

Hood is hereby enjoined and restrained from:

A. Entering into any supply agreement with Agri-Mark whose duration, if any and all options to renew are exercised, exceeds one year;

B. Hauling raw milk for Agri-Mark (other than for delivery to Hood itself);

C. Refusing to purchase raw milk from any Hood independent until March 1, 1981, subject to the following conditions:

1. if the Hood independent has signed a marketing agreement with Agri-Mark, and if such producer elects to terminate all agreements with Agri-Mark pursuant to Paragraph VII hereof, the producer must notify Hood of this within 20 days of receiving the notice required by Paragraph XI A hereof;

2. if the Hood independent has not joined Agri-Mark and is no longer shipping milk to Hood, the producer must:

(a) state in writing that such producer is legally free to ship milk to Hood and wishes to do so, and

(b) inform Hood of said producer's intention to deliver to Hood within 20 days of receiving the notice required by Paragraph XI A hereof;

Hood must be prepared to receive milk from producers meeting the requirements of Paragraph VI C 2 hereof within 10 days of Hood's receipt of the producer's notification of intention to deliver to Hood;

D. Refusing to purchase raw milk from any producer described in Paragraph VI C above on the same non-price terms and conditions, and with the same services provided by Hood in purchasing raw milk from Hood independents in February, 1980.

#### VII.

Agri-Mark is enjoined for 20 days from the date the Hood independents receive the notice required by Paragraph XI A hereof from refusing to allow any Hood independent to terminate all agreements between Agri-Mark and that producer if the producer gives written notice to Agri-Mark of the producer's desire to terminate such agreements, said notice to be effective if post-marked within the aforesaid 20 day period. All producers who terminate their agreements with Agri-Mark pursuant to this Paragraph VII shall receive, within 30 days of such termination, a full refund from Agri-Mark of all equity or membership contributions or payments said producers made to Agri-Mark.

#### VIII.

Agri-Mark is enjoined from entering into or enforcing agreements with anyone an effect of which is to discriminate, with respect to repayment of any amount of money borrowed from or through Agri-Mark, between (1) producers who have ceased the business of milking cows for reasons other than

death, disability, natural catastrophe, or retirement at age 65 or older, and (2) producers who have ceased marketing milk through Agri-Mark and subsequently marketed milk by some other means.

IX.

Hood and Agri-Mark are hereby enjoined and restrained from:

- A. Having any common Director;
- B. Having any common Officer or management;
- C. Discussing with each other prices or terms and conditions of sale of raw or processed milk, excluding discussions of prices, proposed prices, or terms and conditions of sale for sales between Agri-Mark and Hood.

X.

Each Defendant is hereby enjoined and restrained, for a period of five years from the entry of this Final Judgment, from purchasing, consolidating with, acquiring control of, or leasing any dairy or any milk manufacturing plant which produced any butter, milk powder, or cheddar cheese during the year prior to its acquisition, where such dairy or milk manufacturing plant is located in the New England supply area (except for renewal of an existing lease) without the prior written consent of the Department of Justice or the Court. At least forty-five (45) days in advance of the closing date of any transaction to purchase, consolidate with, acquire control of, or lease any such plant, the Defendant planning any such transaction shall supply Plaintiff with complete details concerning the terms and conditions of the proposed transaction. Within thirty (30) days after its receipt of the above information Plaintiff shall advise the appropriate Defendant of any objection it may have to the consummation of the proposed

transâction. If such an objection is made by Plaintiff, then the proposed transaction shall not be consummated unless approved by the Court on the basis of a showing by Defendant that the proposed transaction will not substantially lessen competition in any line of commerce, in any section of the country.

XI.

A. Agri-Mark and Hood shall provide written notice, in a form satisfactory to Plaintiff or to the Court, of the terms of Paragraphs VI C and VII hereof to each Hood independent prior to the 15th day after the date of entry of this Final Judgment ("the date of entry"). Agri-Mark and Hood shall provide such notice by registered mail, return receipt requested, and Agri-Mark and Hood shall maintain such return receipts for one year from the date of entry.

B. Within 30 days of the date of entry:

1. Agri-Mark shall send a copy of this Final Judgment to each of its members;

2. Agri-Mark, Hood, and Agway shall provide to each of their respective officers and directors a copy of this Final Judgment and a written explanation of the obligations imposed on each Defendant by this Final Judgment;

3. Agri-Mark and Hood shall provide to each employee with responsibility for Agri-Mark's sale of raw milk or Hood's procurement of raw milk a copy of this Final Judgment and a written explanation of the obligations imposed on each Defendant with respect to the procurement and sale of raw milk;

4. Each Defendant shall obtain from the persons described in Paragraphs XI B (2) and (3) a written acknowledgment of receipt of a copy of this Final Judgment and the above described written explanations and retain said acknowledgments in the Defendant's files.

C. Within 45 days of the date of entry each Defendant shall provide to the Plaintiff and file with the Court a detailed description of the means used to satisfy Paragraphs XI A and B hereof. Such description shall include copies of the written explanations required by Paragraphs XI B (2) and (3) and a summary of the actions taken in connection with the notices provided pursuant to Paragraph XI A and the responses thereto.

D. Agri-Mark is hereby ordered within 60 days of the date of entry to provide Plaintiff with copies of all documents used to effect compliance with Paragraphs V-IX hereof.

E. If at any time Agri-Mark suspends repayment of any member equity contribution or allocated retained earnings to producers who have ceased delivering raw milk to Agri-Mark, Agri-Mark is hereby ordered to provide Plaintiff with written notice of this suspension within 20 days of its effective date, such notice to include an explanation of the reasons for such suspension and the expected length of the suspension.

## XII.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any Defendant made to its principal office, be permitted:

1. Access during the office hours of such Defendant, who may have counsel present, to inspect

and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such Defendant relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview officers, employees, and agents of such Defendant regarding any such matters; the officer or employee interviewed and the Defendant each may have its own counsel present.

B. A Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by a Defendant to Plaintiff, such Defendant represents and identifies 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 said Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by Plaintiff to such Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that Defendant is not a party.

XIII.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

XIV.

This Final Judgment will expire on the twentieth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

XV.

Entry of this Final Judgment is in the public interest.

Dated: April 1, 1981

Albert W. Coffrin  
UNITED STATES DISTRICT JUDGE