

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARYLAND AND VIRGINIA MILK
PRODUCERS ASSOCIATION, INC.,

Defendant.

Civil Action No. 4482-56

11-22-60

1961

FINAL JUDGMENT

Plaintiff, United States of America, having filed its amended complaint on February 7, 1957, and this Court having entered a Final Judgment on January 22, 1959, with respect to plaintiff's causes of action stated in paragraphs 24 to 29 of such amended complaint, and the plaintiff and defendant having severally consented to the entry of this Final Judgment with respect to the charges of violations of Section 2 of the Sherman Act contained in paragraphs 21, 22 and 23 of the said amended complaint, and without any admission by plaintiff or defendant with respect to any issue therein,

NOW, THEREFORE, upon said consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of paragraphs 21, 22 and 23 of the amended complaint and of the parties hereto pursuant to Section 4 of the Act of Congress of July 2, 1890 entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and paragraphs 21, 22 and 23 of the amended complaint state claims upon which relief may be granted.

II

As used in this Final Judgment:

- (A) "Milk" means the raw milk of cows prior to pasteurization;
- (B) "Fluid milk" means pasteurized milk as sold by dealers for consumption in fluid form;
- (C) "Dealer" means any person engaged in the business of purchasing milk and processing, bottling and distributing it in the form of fluid milk;
- (D) "Washington metropolitan area" means the area comprising Montgomery and Prince Georges Counties, Maryland, the District of Columbia, Arlington and Fairfax Counties and the cities of Alexandria and Falls Church, Virginia;
- (E) "Person" means any individual, partnership, corporation, association, firm or other legal entity;
- (F) "Pro rata classification" means the apportionment for classified pricing purposes of all milk received by a dealer in a calendar month in which the dealer has received and routinely commingled milk supplied by both the defendant and another person or persons so that milk supplied by defendant is considered to have been used during such month in each classification in which the dealer may have used milk in the same ratio as the dealer's receipts of milk from defendant bore to the dealer's receipts from all sources;
- (G) "Calendar month" means one calendar month's time or such other length of time as may be customarily utilized as an accounting or billing period.

III

The provisions of this Final Judgment applicable to the defendant, shall apply also to its officers, directors, employees and agents, and to all other persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

The defendant is enjoined and restrained from:

(A) Coercing or attempting to coerce any person to purchase all or any part of his requirements of milk from defendant or to refrain from purchasing milk from any other producer or supplier not a member of defendant;

(B) Interfering or attempting to interfere with the sources of supply of milk or fluid milk of any person engaged or seeking to engage in the sale or distribution of milk or fluid milk in the Washington metropolitan area; provided, however, that nothing in this subsection shall be construed to prohibit defendant from using fair and reasonable means to obtain suppliers of milk, members or customers;

(C) Coercing or attempting to coerce any producer or supplier of milk to refrain from selling or offering to sell milk in the Washington metropolitan area, or from selling or offering to sell milk to any dealer selling or proposing to sell fluid milk in said area;

(D) Coercing or attempting to coerce any dealer to refrain from selling or offering to sell fluid milk in the Washington metropolitan area;

(E) Boycotting or threatening to boycott any person in order to induce or compel any person to purchase milk from defendant or to induce or compel any person to refrain from purchasing milk from any other producer or supplier not a member of defendant;

(F) Entering into or carrying out any agreement with any other supplier of milk to fix prices or allocate territories or customers; provided, however, that nothing in this subsection shall be construed to prohibit defendant from exercising any right or privilege created by the Clayton Act or the Capper-Volstead Act and not inconsistent with any other subsection of this Final Judgment;

(G) Engaging or employing any person to present as his own or as any person's other than defendant's, the views of defendant concerning the enactment, amendment, repeal or rescision of any legislation or regulation affecting defendant, or from remunerating any person who, without disclosing either that he is presenting the views of defendant or that he is being remunerated by defendant, makes representations to a legislative or regulatory body or who, at the express or implied direction or request of defendant, makes representations to any organization or association without making either such disclosure;

(H) Fixing or attempting to fix the price at which any dealer sells or offers to sell fluid milk;

(I) Discriminating in the application of any sales policy between or among its regular dealer-customers who are located in the Washington metropolitan area or who are in competition with one another in any area;

(J) Preventing or attempting to prevent any carrier of milk other than defendant from transporting to the Washington metropolitan area milk of producers or suppliers not members of defendant; provided, however, that nothing in this subsection shall be construed to require defendant to permit milk of its members to be carried (i) in the same vehicle with milk of producers or suppliers not members of defendant if the effect is to cause the milk of defendant's members to lose its character as inspected milk under the laws of any of the several states or the District of Columbia, or (ii) in the same tank or compartment with milk of producers or suppliers not members of defendant;

(K) Retaliating or threatening to retaliate against any dealer because such dealer is attempting to obtain or has succeeded in obtaining business of defendant or any dealer-customer of defendant; provided, however, that nothing in this subsection shall be construed to prohibit defendant from using fair and reasonable means to retain, obtain or re-obtain business;

(L) Attempting to obtain from the books and records of any dealer-customer any information not reasonably necessary to verify the total

quantity of milk received by the dealer-customer and the utilization thereof;

(M) Classifying milk (for purposes of calculating payments due defendant for milk received by a dealer for fluid utilization in the Washington metropolitan area in a calendar month in which the dealer has received and commingled milk supplied both by defendant and by another person or persons) in a manner which results in a larger proportion of the milk supplied by such other person or persons being consigned to a lower value utilization category than the percentage that the milk delivered by such other person or persons is to the total quantity of milk received and so commingled by the dealer in such calendar month; provided, however, that nothing in this subsection shall apply when defendant makes spot sales of milk to other than its regular customers.

V

For a period of ten (10) years from the date of entry of this Final Judgment, defendant is enjoined and restrained from:

(A) Entering into or carrying out any agreement with any purchaser of milk in the Washington metropolitan area whereby such purchaser is required to purchase its entire requirements of milk from defendant;

(B) Charging different prices for the same fluid utilization for milk sold to a dealer for resale within any part of the Washington metropolitan area from those charged at the same time for milk sold to a dealer for resale elsewhere within the Washington metropolitan area, unless such different prices are required by any federal or state regulation or order; provided, however, that nothing in this subsection shall be construed to prohibit the defendant from charging a lower price in good faith to meet the lower price of any competitor or in any situation where competitive bidding is invited by a public agency or institution. In the event milk is being offered by defendant to dealers for Class I use at a price below defendant's then highest price for

Class I utilization, the volume of milk to be sold to any dealer at such lower price may be made proportionate to the percentage that the dealer's purchases of milk from defendant for use in all Class I utilizations bears to the dealer's total purchases for all Class I utilizations during the calendar month in which such lower price milk is delivered;

(C) Conditioning or attempting to condition the sale of milk to any purchaser on his refraining from purchasing milk from any producer or supplier not a member of defendant;

(D) Adopting or using any sales plan or policy with respect to the sale of milk in the Washington metropolitan area by which the price per hundredweight or other unit of measurement or the terms of sale are related to, established by, or contingent upon the proportion of a dealer's purchases from defendant to the dealer's total requirements, or which includes the assignment or use of purchase quotas, minimum purchase requirements or the like; provided, however, that nothing in this subsection shall be construed to prohibit defendant from use of pro-rata classification whenever milk is sold to a dealer on a classification-utilization pricing basis or from requiring purchasers to receive upon each delivery a reasonable minimum quantity of milk;

Provided, however, that at the end of five (5) years from the date of entry of this Final Judgment, defendant may move for modification or termination of any of the subsections of this Section V, which may be granted upon a showing by defendant to the satisfaction of this Court that the pertinent subsection or subsections sought to be modified or terminated have worked or will work an undue hardship upon defendant.

VI

For a period of five (5) years from the date of entry of this Final Judgment, defendant is enjoined and restrained from:

(A) Refusing, except for good cause (which shall include reasonable terms and conditions), to sell available milk to any dealer for fluid utilization within the Washington metropolitan area. Milk shall be deemed available if it is available at the time specified for delivery unless delivery would interfere with defendant's normal operations or pre-existing contractual obligations;

(B) Offering to make or making any loan to any dealer in the Washington metropolitan area; provided, however, that nothing in this subsection shall be construed to prohibit defendant from granting reasonable extensions of credit in the ordinary course of business.

VII

Within one (1) year from the date of entry of this Final Judgment, defendant shall dispose of all assets of Richfield Dairy Corporation and Simpson Bros., Inc., trading as Wakefield Model Farms Dairy, tangible and intangible, acquired by defendant on or about December 6, 1957, pursuant to a contract for the purchase of the capital stock of the said corporations, and replacements therefor. The divestiture herein ordered shall be in good faith and shall require the prior approval of this Court on notice to counsel for the plaintiff. Within sixty (60) days from the date of entry of this Final Judgment defendant shall report to the Court, with a copy served on plaintiff, its efforts to carry into effect the divestiture herein ordered. Further reports shall be made to this Court and the plaintiff every ninety (90) days thereafter and on such other dates as this Court may order. Pending divestiture, defendant shall administer the said assets and replacements therefor in good faith with a view to preserving them in as good condition as possible, ordinary wear and tear excepted.

VIII

For a period of five (5) years from the date of divestiture ordered by this Final Judgment and the Final Judgment entered on January 22, 1959,

defendant is enjoined and restrained from engaging in any phase of distribution or sale of fluid milk within the Washington metropolitan area; provided, however, that nothing in this section shall apply to the distribution or sale of fluid milk to installations maintained by the Armed Services of the United States.

IX

(A) Defendant is enjoined and restrained from acquiring, directly or indirectly, any shares of stock or any assets of, or any interest in, Richfield Dairy Corporation and Simpson Bros., Inc., trading as Wakefield Model Farms Dairy, or Embassy Dairy, Inc., after divestiture as ordered by this Final Judgment and the Final Judgment entered on January 22, 1959. In the event that after divestiture the above-described stock or assets shall be offered for sale at a forced sale or a liquidation proceeding, defendant may acquire such stock or assets if necessary to protect its position as a general creditor; provided, however, that defendant shall again divest itself of such assets thus regained within one year from the date of such acquisition subject to the same terms and conditions under which they were required to be divested under the aforesaid Final Judgments.

(B) Subject to subsection (A) above, defendant is enjoined and restrained, for a period of five (5) years from the date of entry of this Final Judgment, and except upon notice to plaintiff and approval by this Court, from acquiring directly or indirectly any shares of stock of any corporation or any assets of, or any interest in, the business of any person engaged in the Washington metropolitan area in the sale of milk for resale as fluid milk or in the sale of fluid milk. In the event plaintiff shall object to any such proposed acquisition, the Court may grant permission to make such acquisition upon a showing to the satisfaction of this Court that the acquisition

will not substantially lessen competition or tend to create a monopoly in the sale or distribution of milk for resale as fluid milk in the Washington metropolitan area or in the sale and distribution of fluid milk in the Washington metropolitan area.

X

For a period of five (5) years from the date of entry of this Final Judgment, defendant shall promptly give written notice of each establishment of or change in the price of milk for any fluid utilization in the Washington metropolitan area to each dealer who has purchased milk for fluid utilization therein from defendant at any time in the preceding twelve-month period.

XI

(A) Defendant is enjoined and restrained, for a period of five (5) years from the date of entry of this Final Judgment, from entering into or renewing any agreement for the marketing of milk of any person for a term of more than one year unless any such agreement shall on its face be terminable by such person on the annual anniversary thereof by written notice delivered not less than thirty (30) days prior to such date. Each agreement for the marketing of milk now in effect between defendant and any person shall be terminable by such person on the annual anniversary thereof by written notice delivered not less than thirty (30) days prior to such date.

(B) From the date of entry of this Final Judgment until one hundred and twenty (120) days after the disposition by defendant of the assets of Embassy Dairy, Inc., or until April 1, 1961, whichever shall occur later, the membership contract of each producer of milk who supplied milk to Embassy Dairy, Inc., in May 1954, and who is a member of defendant shall be terminable at the option of such producer at any time upon thirty (30) days written notice to defendant.

Defendant shall give written notice of this provision of this Final Judgment to each such producer within ten (10) days from the entry of this Final Judgment.

XII

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers, directors, employees or members of defendant, who may have counsel present, regarding any such matters.

No information obtained by the means permitted in this Section XII 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 plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII

Jurisdiction is retained for the purpose of enabling either of the parties 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 or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: November 22, 1960
Washington, D. C.

/s/ Alexander Holtzoff
United States District Judge

We hereby consent to the making and entry of the foregoing
Final Judgment:

FOR THE PLAINTIFF:

/s/ Robert A. Bicks
Robert A. Bicks
Assistant Attorney General

/s/ Joseph J. Saunders
Joseph J. Saunders

/s/ W. D. Kilgore, Jr.
W. D. Kilgore, Jr.

/s/ Paul A. Owens
Paul A. Owens
Attorneys, Department of Justice

FOR THE DEFENDANT:

/s/ William J. Hughes, Jr.
William J. Hughes, Jr.

/s/ Herbert A. Bergson
Herbert A. Bergson

/s/ Herbert Borkland
Herbert Borkland