

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

BEATRICE FOODS CO.; FEDERATED)
DAIRY FARMS, INC.; and HI-LAND)
DAIRYMAN'S ASSOCIATION,)

Defendants.)

Civil No. NC-38-69

Entered: April 7, 1972 as to
Count III. Beatrice Foods
dismissed as to Counts I and II.
Damages assessed.

PARTIAL FINAL JUDGMENT AGAINST DEFENDANT,
BEATRICE FOODS CO.

Plaintiff United States of America, having filed its complaint herein on June 26, 1969, and the consenting Defendant, Beatrice Foods Co., having appeared by its attorneys and having filed its answer to such complaint denying the substantive allegations thereof; and plaintiff and consenting Defendant, by their respective attorneys, having consented to the making and entry of this Partial Final Judgment pursuant to stipulation entered into on February 22, 1972 without trial or adjudication of or finding on any issue of fact or law herein, and no testimony having been taken herein and without this Partial Final Judgment constituting any evidence against or admission by any party to said stipulation with respect to any such issue and upon 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 consenting Defendant. The complaint herein having presented more than one claim for relief and dismissal being sought as to Counts I and II as to the consenting Defendant, the Court having considered all facts and circumstances in this case hereby determines that there is no just reason for delay and directs entry of this Partial Final Judgment as to the claim made in Count III.

The complaint herein in Count III states a claim upon which relief may be granted against said consenting Defendant under Section 1 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 (15 U.S.C. §1).

II

As used in this Partial Final Judgment:

(a) "Consenting Defendant" means the defendant Beatrice Foods Co.;

(b) "Raw milk" means unprocessed cows' milk sold or delivered by producers to distributors for processing into dairy products;

(c) "Dairy products" means the end products which have been processed from raw milk and, in addition, means related products which are not processed from raw milk but which are usually marketed by distributors, consisting of pasteurized and homogenized milk; two-percent milk; skim milk; buttermilk; whipping and table cream; half and half; sour cream; yogurt; cottage cheese; chocolate and

flavored milk; orange and other fruit drinks; ice cream and ice milk; sherbet; water ices; mellorinetype products; popsicles and similar frozen novelties.

(d) "Distributor" means any corporation, cooperative, partnership, firm or individual which either processes raw milk into dairy products or purchases dairy products from processors, and which sells and distributes dairy products to, among others, wholesale customers including grocery stores and retail customers including home delivery purchasers and purchasers at milk depots;

(e) "Wholesale prices" means those list prices, discounts and other terms and conditions of sale at which dairy products are to be sold by distributors to grocery stores and other retail outlets;

(f) "Retail prices" means those list prices, discounts and other terms and conditions of sale at which dairy products are to be sold to home delivery customers and other consumers.

III

The provisions of this Partial Final Judgment shall apply throughout the United States to the consenting Defendant, its subsidiaries, successors and assigns and to their respective officers, directors, agents and employees,

and shall also apply to all persons in active concert or participation with any of them who receive actual notice of this Partial Final Judgment by personal service or otherwise, but shall not apply to activities between consenting Defendant and its officers, directors, agents and employees, nor to activities between consenting Defendant and subsidiary companies or affiliated companies of which 50% or more is owned by the consenting Defendant or which is in fact controlled by the consenting Defendant.

IV

The consenting Defendant is enjoined and restrained from directly or indirectly in any manner entering into, adhering to, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan or program with any other distributor:

(a) to fix, raise, maintain or stabilize wholesale prices for the sale of dairy products;

(b) to fix, raise, maintain or stabilize retail prices for the sale of dairy products;

(c) to submit collusive or rigged bids on dairy products to the United States of America or any instrumentality or agency thereof, to any State government or any instrumentality or agency thereof, or to any other customer;

(d) to allocate, rotate or divide sales territories or dairy product business among distributors.

V

The consenting Defendant is enjoined and restrained from:

(a) communicating with any other distributor concerning prices and terms or conditions of sale for dairy products bid or to be bid to any third person prior to the bid opening of any such bid, or, in the absence of a bid opening, prior to the release by such third person of such information to the public;

(b) communicating to or exchanging with any other distributor selling any dairy product any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any dairy product is to be, or has been, sold to any third person prior to the communication of such information to the public or customers generally.

Nothing in this Paragraph V shall be construed to enjoin or restrain consenting Defendant from communicating with any other distributor concerning prices, terms or conditions of sale of bona fide sales of dairy products between consenting Defendant and such other distributor; provided, however, that any such transactions shall be subject to the prohibitions of Section IV(a), (b), (c), and (d) above.

VI

The consenting Defendant is ordered and directed for a period of five (5) years from the date of the entry of this Partial Final Judgment, to attach to each bid submitted by it to any federal, state or local governmental authority, agency or instrumentality thereof, including but not limited to public school districts, for the sale of dairy products, a written certification by each officer or employee of consenting Defendant who participates

in whole or in part in determining the prices for the bid involved, which certification shall be in a form acceptable to plaintiff.

VII

The consenting Defendant is ordered and directed for a period of ten (10) years commencing with the date on which this Partial Final Judgment is entered, to:

(A) Serve within one hundred twenty (120) days after the entry of this Partial Final Judgment a conformed copy of this Partial Final Judgment upon each of its respective officers, directors, managing agents and employees (excluding wholesale and retail truck drivers) who have any responsibility for establishing wholesale prices, retail prices or bids for the sale of dairy products by consenting Defendant;

(B) Serve forthwith upon each successor officer, director, managing agent and employee (excluding wholesale and retail truck drivers) who shall have any responsibility for establishing wholesale prices, retail prices or bids for the sale of dairy products by consenting Defendant a conformed copy of this Partial Final Judgment;

(C) Advise and inform each such officer, director, managing agent and employee upon whom the Partial Final Judgment has been served as described in subparagraphs (A) and (B) above, that violation by him of the terms of this Partial Final Judgment could result in a conviction for contempt of court and could subject him to imprisonment and/or a fine.

(D) File with the San Francisco Office of the Antitrust Division at the end of each of consenting Defendant's

fiscal years a report setting forth the steps which it has taken during the prior year to advise the consenting Defendant's appropriate officers, directors, managing agents and employees of its and their obligations under this Partial Final Judgment. Said report shall also include a list showing the name, title and address of each officer, director, managing agent and employee upon whom the Partial Final Judgment has been served, as described in subparagraphs (A) and (B) above, together with the date on which service was made.

VIII

(A) For the purpose of determining or securing compliance with this Partial Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the consenting Defendant made to its principal office, be permitted:

(a) access, during the office hours of said consenting Defendant, and in the presence of counsel if said Defendant chooses, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said consenting Defendant relating to any of the matters contained in this Partial Final Judgment; and

(b) subject to the reasonable convenience of said consenting Defendant and without restraint or

interference from it, to interview the officers and employees of said consenting Defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal offices, the consenting Defendant shall submit such written reports with respect to any of the matters contained in this Partial Final Judgment as from time to time may be requested for the enforcement of this Partial Final Judgment.

(C) No information obtained by the means provided in this Section VIII 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 to which the United States is a party for the purpose of securing compliance with this Partial Final Judgment, or as otherwise required by law.

IX

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

DATED this 7th day of April, 1972.

BY THE COURT:

/s/ A. SHERMAN CHRISTENSEN

A. Sherman Christensen
UNITED STATES DISTRICT JUDGE