

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Borden, Inc., Coleman Dairy, Inc., and Dean Foods Products Co., Inc., U.S. District Court, E.D. Arkansas, 1980-1 Trade Cases ¶63,091, (Oct. 25, 1979)

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United States v. Borden, Inc., Coleman Dairy, Inc., and Dean Foods Products Co., Inc.

1980-1 Trade Cases ¶63,091. U.S. District Court, E.D. Arkansas, Western Division, Civil No. LR-C-77-108, Entered October 25, 1979, (Competitive impact statement and other matters filed with settlement: 44 *Federal Register* 43536).

Case No. 2580, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Dairy Products: Consent Decree.— Three dairy companies were prohibited by a consent decree from fixing prices, rigging bids, or exchanging price information with regard to the sale of dairy products in the State of Arkansas. An annual compliance audit for five years was required.

Final Judgment

EISELE, D. J.: Plaintiff, United States of America, having filed its Complaint herein on April 22, 1977, and plaintiff and defendants, by their respective attorneys, having each consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by plaintiff or defendants, or any of them, in respect to any such issue;

Now, Therefore, before any testimony has been taken herein and without trial or adjudication of any issues of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

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 Section One of the Sherman Act, 15 U. S. C. §1.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Person" shall mean any individual, corporation, partnership, firm, association, or other business or legal entity.

(B) "Dairy products" means fluid pasteurized and homogenized milk, two percent milk, skim milk, chocolate milk, buttermilk, whipping and table cream, half and half, sour cream, yogurt, cottage cheese, ice cream and ice milk, and butter; and in addition means related products which are not processed from raw milk but which are regularly marketed by dairies such as margarine, non-dairy creamers, orange and other fruit drinks, sherbert, popsicles, and other frozen novelties.

(C) "Dairy" means any person which produces dairy products or which sells and distributes dairy products to customers such as grocery stores, restaurants, hotels, schools, hospitals, military installations or other government agencies.

(D) "Defendant" means defendants Coleman Dairy, Inc.; Dean Foods Products Company, Inc.; and Borden, Inc.

III

[Applicability]

The provisions of this Final Judgment are applicable to Coleman Dairy, Inc.; Dean Foods Products Company, Inc.; and Borden, Inc., when acting through the Dairy & Services Division of Borden, Inc.; and to any successor entity thereto and to the parents, subsidiaries, successors and assigns, directors, officers, agents and employees of each such defendant and to all 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

[Prices; Bids; Exchanges]

Each defendant is enjoined and restrained from directly or indirectly:

- (A) Entering into, maintaining or furthering any contract, agreement, understanding, combination or conspiracy to raise, fix, stabilize or maintain the prices of dairy products produced or marketed in the State of Arkansas; and,
- (B) Entering into, maintaining or furthering any contract, agreement, understanding, combination or conspiracy to submit collusive or rigged bids, or collusive or rigged price quotations to any purchaser of dairy products in the State of Arkansas.

V

[Exchange of Information]

Each defendant is enjoined and restrained from communicating to or exchanging with any other dairy any actual or proposed prices, price lists, price changes, or other terms or conditions of sale at or upon which any dairy product is to be or has been sold in the State of Arkansas. *Provided*, however, that a defendant may (a) communicate such information with a person acting as a distributor of the defendant's dairy products pursuant to a bona fide distributorship agreement; and, (b) solely in connection with a proposed or actual bona fide sales transaction, quote to any person a price and other applicable terms and conditions of sale for a specific dairy product.

VI

[Notice]

Each Defendant is ordered and directed to:

- (A) Furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof of its officers and directors, and to each of its employees and agents who have any responsibility for the pricing or sale of dairy products in the State of Arkansas.
- (B) Furnish a copy of this Final Judgment to each successor to those officers, directors, employees, or agents described in Paragraph (A) of this Section, within thirty (30) days after such successor is employed by or becomes associated with such defendant.
- (C) File with this Court and with plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Paragraph (A) of this Section; and
- (D) Obtain, from each officer, director, employee and agent served with a copy of this Final Judgment pursuant to Paragraph (A) of this Section, and from each successor to each such officer, director, employee and agent served with a copy of this Final Judgment pursuant to Paragraph (B) of this Section, a written statement evidencing such person's receipt of a copy of this Final Judgment, and to retain such statements in its files.

VII

[*Compliance*]

(A) Once each year, for a period of five (5) years, each defendant shall conduct an audit of its operations to determine compliance with the provisions of this Final Judgment. The scope of the audit shall include all dairy plants and sales offices which are involved in the production or marketing of dairy products in the State of Arkansas. The auditors must be given complete cooperation by all personnel of defendants and shall be given access to all books and records of the defendants.

(B) A detailed description by each defendant as to how the audit will be conducted is to be submitted to the Court and to the plaintiff for approval prior to the initial audit.

(C) As soon as practicable after the anniversary date of this Final Judgment, a report of the findings of the audit shall be filed with the Court, the plaintiff, and submitted to responsible officers of defendants.

VIII

[*Inspections*]

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 of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant 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, who may have counsel present, 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 or such defendants, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents 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 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. 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.

IX

[*Retention of Jurisdiction*]

Jurisdiction is retained 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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the provisions herein, and for the enforcement or compliance therewith and punishment of any violation of any of the provisions contained herein.

X

[*Public Interest*]

The entry of this Final Judgment is in the public interest.