

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 DAIRYMEN, INC.)
)
 Defendant.)

Civ. No. 7634-A

10/20/78

SUPPLEMENTAL FINAL JUDGMENT

Plaintiff, the United States of America, having filed its complaint herein on March 29, 1973, and the Court after a full trial and consideration of the evidence and briefs, and findings of fact and conclusions of law submitted by the parties, and the Court having filed its Findings of Fact and Conclusions of Law, Memorandum Opinion and Judgment, on April 5, 1978, and having heard the parties with respect to the issue of relief, it is hereby further

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter hereof and of the parties hereto.

II.

As used in this Final Judgment

(A) "Class I premium" is the price D.I. charges for Class I (fluid) milk sales regulated by a Federal marketing order over and above the minimum price for such Class I milk sales under the marketing order.

(B) "Competitor of defendant" means a person selling or offering to sell milk or other dairy products, including, but not limited to, an individual producer, a group of producers, a cooperative or a proprietary firm;

(C) "Federal milk marketing 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;

(D) "Gross Market Value" is calculated for the milk of any member producer whose milk is qualified by any Federal milk marketing order as the minimum price under the marketing order that must be paid to that producer (or to his cooperative) by a handler regulated under a milk marketing order on that milk, plus a pro rata share of premium revenues collected by D.I. in that marketing order. The pro rata share of premium revenues collected by D.I. shall be determined by dividing the total revenue collected by D.I. from handlers regulated by that marketing order over and above the minimum prices the handlers were required to pay D.I. on the milk according to the marketing order by the total cwt. of milk of D.I. member producers pooled in that marketing order, and multiplying the result by the cwt. of milk produced by that member producer.

(E) "Member" means a producer who has a membership and marketing agreement with defendant and whose milk production is marketed by defendant;

(F) "Milk" means raw Grade A milk [produced by cows];

(G) "Net premium reblend price" for any group of producers pooled on a Federal milk marketing order is the average amount of money that DI pays to that group of member producers per cwt., above the minimum producer price per cwt. applicable on sales of producer milk in that marketing order;

(H) "Person" means any corporation, partnership, association, individual, cooperative, or other business or legal entity;

(I) "Producer" means any person engaged in the production of milk.

(J) "Reblending" means the distribution of the proceeds received from the sale of members' milk among the members of the cooperative.

(K) "Southeast federal orders" means all federal milk marketing orders located in whole or in part in the States of Virginia, Georgia, Alabama, North Carolina, South Carolina, Mississippi, Louisiana, Tennessee, and Kentucky.

III.

The provisions of this Final Judgment shall apply to Dairymen, Inc., its officers, directors, agents and employees, to its subsidiaries, successors and assigns and to their respective officers, directors, agents and employees, and to all persons in active concert or participation with any of them who receive actual notice of the Final Judgment by personal service or otherwise.

IV.

Defendant is hereby enjoined and restrained from:

(A) Qualifying milk for participation in any federal milk marketing order pools with the effect of suppressing the uniform price paid to producers participating in any federal milk marketing order pool in order to force, coerce or induce such producers who are not members of defendant to join defendant or to cease selling milk in competition with defendant;

(B) Entering into or enforcing any contract, agreement or transaction with another cooperative or association of producers to qualify milk for participation in any federal milk marketing order pool with the effect of suppressing the uniform price paid to producers participating in any federal milk marketing order pool in order to force, coerce or induce such producers who are not members of defendant to join defendant or such other cooperative or association or to cease selling milk in competition with defendant or such other cooperative or association;

(C) Paying to, granting to, or reblending to any member producer whose milk is regulated by any Southeast Federal milk marketing order, anything of value in excess of the gross market value of that producer's milk;

(D) Charging a Class I premium per hundredweight on milk sold to any handler regulated by any Southeast Federal milk marketing order, that is less than the net premium reblend price that D.I. pays to the member producers whose milk was delivered to that handler; provided that nothing in paragraph IV shall prevent the defendant from (1) providing legitimate insurance or disaster payments for lost production or lost sales of milk when such lost sales or production by virtue of the loss is not qualified on any federal or state milk marketing order and such protections are offered to all producer members of defendant in similar situations; or (2) paying specific producers a fair market value for goods or services other than grade A milk rendered to the defendant and which were purchased by defendant for legitimate uses;

(E) Nothing contained in paragraphs C and D of this Section IV shall prevent defendant from lowering Class I premiums or increasing net premium reblends in instances where defendants can demonstrate that such changes in pricing are necessary to meet competition, provided that in instances where defendant meets the Class I premiums of a competitor it does not exceed the highest net premium reblend paid by a competitor in that federal order and provided that in instances where defendant

meets the net premium reblend of a competitor
it does not decrease the Class I premiums
below the lowest Class I premium charged by
a competitor in that federal order.

(F) Making any threats, inducements or other
statements to nonmember producers, member producers
or milk processors which state or are meant to imply
that defendant is considering an action or will take
an action which would, if taken, violate one or more
of the provisions IV(A) through IV(D) above.

V.

(A) Defendant is enjoined and restrained from
adopting, adhering to, enforcing, or claiming any rights
under any by-law, rule or regulation which is contrary
to or inconsistent with any of the provisions of this
Final Judgment.

(B) Defendant is ordered to file with plaintiff
annually for a period of ten (10) years, on or before
June 30, a report setting forth the steps taken by its
board of directors to advise its officers, directors,
employees, members and all appropriate committees of
its and their obligations under this Final Judgment.

VI.

(A) Defendant is ordered to mail or otherwise
furnish within ninety (90) days after the entry of this
Final Judgment a copy thereof to each of its members and
employees, and to any organization for which defendant
acts as marketing agent, and within one hundred fifty

(150) days from the aforesaid date of entry to file with the Clerk of this Court an affidavit setting forth the fact and manner of compliance with Paragraph VI.

(B) Defendant is further ordered and directed to publish, in a publication circulated to all its members, a copy of this Final Judgment once each year for four (4) years on or about the anniversary date of entry of this Final Judgment, and to furnish a copy of this Final Judgment to any person upon request.

VII.

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

(1) Access, during the regular business hours of 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 the Defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of the Defendant, and without restraint

or interference from it, to interview any officers or employees of Defendant, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, the Defendant shall submit such reports in writing, under oath if so requested, with respect to any matters contained in this Final Judgment as may from time to time be requested in writing by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

(C) No information obtained by the means provided in this Part VII shall be divulged by a 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.

(D) If at any time information or documents are furnished by Defendant to Plaintiff, and Defendant represents and identifies in writing that the material in any such information or documents is of a type described in 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 Defendant prior to divulging such material in any legal proceeding (other

than a Grand Jury proceeding) to which the Defendant is not a party.

VIII.

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 and directions as may be necessary or appropriate for the construction of 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.

Charles M. Allen
UNITED STATES DISTRICT JUDGE

Louisville, Kentucky

Dated: