

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Northland Milk & Ice Cream Company, et al., U.S. District Court, D. Minnesota, 1955 Trade Cases ¶68,091, (Jun. 23, 1955)

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United States v. Northland Milk & Ice Cream Company, et al.

1955 Trade Cases ¶68,091. U.S. District Court, D. Minnesota, Fourth Division. Civil Action No. 4361. Dated June 23, 1955. Case No. 1147 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Milk Distributors and Trade Association.—Milk distributors and a trade association were prohibited by a consent decree from entering into any combination to fix or determine prices or other terms of sale, or to induce or coerce any store or distributor not to sell milk or cream at any price set by such store or distributor. They were ordered to eliminate from their contracts all references to the prices at which vendors buy or sell milk or cream; to refrain from distributing any resale price lists to any store containing suggested Out-of-store prices to be charged by any store; to refrain from compelling or requesting any store not to advertise its out-of-store price; and to refrain from suggesting to any store the price such store should charge.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Customers.—Milk distributors and a trade association were prohibited by a consent decree from entering, into any combination to allocate or divide customers for the purchase or sale of milk or cream.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Exclusion from Trade.—Milk distributors and a trade association were ordered by a consent decree to eliminate from their contracts all provisions, with the exception of the requirement of union membership, which restrict or curtail any person from becoming a vendor of milk or cream.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Membership.—Milk distributors and certain of their officials were prohibited by a consent decree from organizing or becoming a member of any trade; association knowing that the purpose or activities of such association are contrary to any of the provisions of the decree.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined— Interlocking Directorates.—Individual milk distributors and certain officials of other milk distributors were prohibited by a consent decree from holding any office in, or acting as a director of, more than one distributor. After complying with another provision of the decree (providing for the disposal of stock), the defendants were prohibited from holding any office in, or acting as a director of, any distributor while owning or controlling any capital stock in any other distributor. The decree further provided that any defendant may hold office in, or act as a director of, two distributors having the relation of parent and subsidiary.

Combinations and Conspiracies—Monopolies—Consent Decree—Specific Relief—Disposal of Stock —Acquisitions of Assets or Stock Enjoined.—Milk distributors and certain individual defendants were each ordered by a consent decree to dispose of any stock owned by such defendant in more than one distributor. They were each enjoined from acquiring any stock in, or assets of, any other milk distributor or more than one distributor, except after showing that the effect of such acquisition may not be substantially to lessen competition or to tend to create a monopoly. Certain defendants were ordered to eliminate from a certain: option agreement an option to purchase an undivided one-half interest in the business of a specified dairy company, One defendant was permitted to retain her status as creditor for certain beneficiaries under a loan agreement.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provision;—Milk Marketing Orders.—A consent decree entered against milk distributors provided that nothing contained in a provision of the decree shall be construed as forbidding the distributors from complying with, the provisions of milk marketing orders issued by the Production and Marketing Administration of the United States Department of Agriculture or any similar governmental agency, whether state or federal.

Department of Justice Enforcement and Procedure—Consent Decrees—Contingent Provision.—A consent decree entered against milk distributors provided that the refusal of any distributor to sell milk or cream to vendors in accordance with the requirements of a provision of an agreement between milk dealers and a labor union shall not be deemed a violation of the decree in the interval between the date of the entry of the decree and (1) the termination or expiration of the agreement or (2) the entry of a final decree against the defendant union, whichever period shall be the shorter; The consent decree further provided that nothing in the decree shall require any distributor to take any action with respect to another provision of the above agreement in the interval of time specified above.

Department of Justice Enforcement and Procedure—Consent Decrees—Scope of Decree—Admissibility of Evidence in Future Action.—In an action in which a consent decree was entered against all of the defendants except one, the decree provided that in any future proceeding wherein the Government is a party, the entry of the decree is not intended to operate as a “cut-off date” for the purpose of determining the admissibility of evidence.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; William Kilgore, Jr.; Charles F. B. McAleer; Earl A. Jinkinson, Special Assistant to the Attorney General; and James E. Mann Trial Attorney.

For the defendants: Raymond Scallen, Loring M. Staples, Armin M. Johnson, and Faegre & Benson for Northland Milk and Ice Cream Company, Ohleen Dairy Co., Minneapolis Milk Dealers Association, Edwin S. Elwell, Edwin S. Elwell, Jr., Margaret Cook, A. H. Heller, Jr., L. H. Heller, B. B. Nelson, B. B. Nelson, Jr., J. E. Hogander, Monne Roberts, Arop M. Berg, and A. R. Wolff, John D. Nelson for Clover Leaf Creamery Company, Raymond H. Nelson, Theodore L. Nelson, and Hjalmer Newline. David Shearer for Superior Dairies, Inc. R. H. Fryberger for Ewald Brothers Sanitary Dairy. Thomas O. Kachelmacher for Franklin: Co-Operative Creamery, Association. Henry E. Halladay for Norris Creameries, Inc. All of Minneapolis, Minn.

Final Judgment

DENNIS F. DONOVAN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on November 24, 1952, and the defendants having appeared and filed their several answers to said complaint denying the substantive allegations therein and any violation of law; and the plaintiff and said defendants, with the exception of the defendant Union, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect to any such issue; and the Court having considered the matter and being duly advised;

Now, therefore, without the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent, as aforesaid, of all the parties hereto, is hereby

Ordered, adjudged and decreed, as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a cause of action against the defendants under Sections 1 and 2 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.

II

[*Definitions*]

As used in this Final Judgment:

(A) “Person” shall mean an individual, partnership, firm, corporation, association, trustee, cooperative or any other legal entity;

- (B) "Association" shall mean defendant Minneapolis Milk Dealers Association, an unincorporated trade association with its principal office at St. Paul, Minnesota;
- (C) "Union" shall mean defendant Milk Drivers and Dairy Employees Union, Local No. 471, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L.;
- (D) "Distributor defendants" shall mean each and all of the defendants Northland Milk and Ice Cream Company; Norris Creameries, Incorporated; Ohleen Dairy Co.; Clover Leaf Creamery Company; Franklin Cooperative Creamery Association; Superior Dairies, Incorporated; Ewald Brothers Sanitary Dairy, a limited partnership under the laws of the State of Minnesota; Raymond G. Ewald and Dewey S. Ewald, general partners; and Arop M. Berg and A. R. Wolff, co-partners doing business as Purity Dairy Company;
- (E) "Distributor" shall mean any person engaged in the business of processing and bottling milk or cream and selling or distributing such milk or cream to consumers or other purchasers;
- (F) "Milk" shall mean cow's milk sold for Human consumption in fluid form as whole milk, or as milk drinks, such as chocolate milk, buttermilk and skimmed milk;
- (G) "Cream" shall mean fluid cream removed or separated from cow's milk and sold for human consumption in fluid form, as cream;
- (H) "Vendor" shall mean any person (other than a store, restaurant or hotel). engaged primarily in the business of purchasing milk or cream from a distributor and reselling such milk or cream to consumers' or other purchasers, including stores, restaurants and hotels;
- (I) "Minneapolis area" shall mean the territory lying within the corporate limits of the city of Minneapolis, Minnesota, and the adjacent suburbs named Columbia 'Heights, St. Louis Park, Morningside, Richfield, New Brighton, Edina and Robbinsdale, all in the State of Minnesota;
- (J) "Stores" shall mean grocery stores, whether chain or independently owned, delicatessens, so-called, milk stores which specialize in the sale of milk products, and like establishments which purchase milk or cream for resale to consumers for consumption off the premises.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to a defendant shall apply only to such defendant, its or his officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, a defendant and the respective officers, agents, servants, employees and attorneys thereof shall be deemed to be one person.

IV

[*Concerted Activities Prohibited*]

The distributor defendants and the defendant Association are jointly and severally enjoined and restrained from directly or indirectly entering into, adhering to maintaining or participating in any combination, conspiracy, contract, agreement, understanding, plan or program with any other person to:

- (A) Fix, establish or determine the price or other terms of sale for milk or cream sold to third persons;
- (B) Induce or coerce, or attempt to induce or coerce, any store, vendor or distributor not to sell milk or cream at any price set by said store, vendor or distributor;
- (C) Allocate or divide customers or sellers for the purchase or sale of milk or cream.

Provided, however, that nothing in this Section IV shall be construed as forbidding the distributor defendants from complying with the provisions of Milk Marketing Orders issued by the Production and Marketing

Administration of the United States Department of Agriculture or any similar governmental agency, whether state or federal.

V

[*Contracts*]

Each of the distributor defendants and the defendant Association are ordered and directed:

- (A) To eliminate from their contracts all “provisions, with the exception of the requirement of union membership, which restrict or curtail, directly or indirectly, any person from becoming a vendor, and said defendants are each enjoined and restrained from entering into any agreements or understandings having the effect of continuing or renewing any of the same or similar restrictions;
- (B) To eliminate from their contracts all references to the prices at which vendors buy or sell milk or cream in the Minneapolis area, and said defendants are each enjoined and restrained from entering into any agreements or understandings having the effect of continuing or renewing any of the same or similar restrictions;
- (C) To refrain from printing, writing or distributing any resale price lists to any store containing suggested or recommended out-of-store prices to be charged by any store for milk or cream sold in the Minneapolis area;
- (D) To refrain from compelling, inducing or requesting, individually or otherwise, any store not to advertise its out-of-store price for milk or cream;
- (E) To refrain from suggesting or recommending to any store the price such store should charge for milk or cream sold in the Minneapolis area.

VI

[*Trade Association Membership*]

Each of the defendants is jointly and severally enjoined and restrained from organizing or becoming a member of, or participating in any of the activities of, any trade association or similar organization knowing that the purpose or activities of said association or such organization are contrary to any of the provisions of this Final Judgment.

VII

[*Interlocking Directorates*]

Each of the individual defendants is enjoined and restrained from:

- (A) Holding any office in or acting as a director of, more than one distributor in the Minneapolis area;
- (B) After complying with Section VIII(A) hereof, holding any office in or acting as a director of any distributor in the Minneapolis area while owning or controlling any capital stock in any other distributor in such area.

Provided, however, that any of said individual defendants may hold office in or act as a director of two distributors having the relation of parent, and subsidiary, and that A. H. Heller, Jr., may continue as an officer and director of Minnesota Milk Company of St. Paul; Minnesota and defendant Northland Milk & Ice Cream Company,

VIII

[*Sale of Stock—Acquisitions*]

(A) The defendants Northland Milk & Ice Cream Company, Clover Leaf Creamery Company, Edwin S. Elwell, Edwin S. Elwell, Jr., A., H. Heller, Jr., L. H. Heller, B; B. Nelson, B. B. Nelson, Jr., Raymond H. Nelson, Theodore L. Nelson, J. E. Hogander, Monne Roberts and Hjalmer Newline are each ordered and directed within one year after the entry of this Final Judgment to dispose of any stock owned by such defendant, directly or indirectly, in more than one distributor in the Minneapolis area. Said stock shall be disposed of to persons other than

defendants named in this Section VIII or to persons not related by blood or marriage to or in any manner controlled by any such; defendant; provided, however, that defendant B. B. Nelson may sell his interest in Clover Leaf Creamery Company to defendants Raymond A. Nelson or Theodore L. Nelson, their wives or persons under their control. If at the end of one year from the date of the entry of this Final Judgment any defendant named in this Section has been unable, with due diligence, to comply with this order such defendant shall file with this Court a complete report stating the efforts which have been made to dispose of its or his stock holdings required to be divested. Such report should be filed on notice to the Attorney General, which notice shall include a copy of the report, and the Court shall thereupon grant such extension of time or enter such further orders as may be just in the premises;

(B) The defendants Northland Milk & Ice Cream Company and Clover Leaf Creamery Company are each enjoined and restrained from acquiring, directly or indirectly, any shares of stock in or assets of, or any other interest in, any other distributor in the Minneapolis area, except after showing to the satisfaction of this Court, upon reasonable notice to the Attorney General, that the effect of such acquisition may not be substantially to lessen competition or to tend to create a monopoly in the distribution or sale of milk or cream in the Minneapolis area;

(C) The defendants Edwin S. Elwell, Edwin S. Elwell, Jr., A. H. Heller, jr., L. H. Heller, B. B. Nelson, B. B. Nelson, Jr.; Raymond H. Nelson, Theodore L. Nelson, J. E. Hogander, Monne Roberts and Hjalmer Newline, are each enjoined and restrained from acquiring, directly or indirectly, any shares of stock in or assets of, or any other interest in, more than one distributor in the Minneapolis area, except after showing to the satisfaction of this Court, upon reasonable notice to the Attorney General, that the effect of such acquisition may not be substantially to lessen competition or to tend to create a monopoly in the distribution or sale of milk or cream in the Minneapolis area.

IX

[*Option to Purchase*]

The defendants A. R. Wolff, Arop M. Berg, and Margaret Cook are ordered and directed to eliminate from their option agreement, originally dated January 2, 1944 and extended at various times since said date, the defendant Margaret Cook's option to purchase an undivided one-half interest in the business of the Purity Dairy Company, and that the defendant Margaret Cook and each of the defendants named in this Section IX above are enjoined and restrained from claiming any rights under said option agreement and from entering into, directly or indirectly, any agreement having the same purpose or effect as the option agreement referred to above with the defendants A. R. Wolff and Arop M. Berg, either jointly or severally,

X

[*Creditor*]

The defendant Margaret Cook as agent or trustee for Ellen Jean Elwell, Leonard H. Heller, Jr., Mrs. Robert H. Harris, Bernard Nelson, Jr., Ebba Roberts and Florence Hogander, may retain her status as creditor for said beneficiaries under the loan agreement originally dated January 2, 1944 and extended at various times since that date between defendants A. R. Wolff, Arop M. Berg and Margaret Cook; or said beneficiaries may acquire the status of creditors under said loan agreement, as their interest may appear; provided that neither said Margaret Cook nor any of said beneficiaries may acquire any interest in defendant Purity Dairy Company other than as creditors provided further, however, that in the event defendant Purity shall be incorporated, the said beneficiaries other than Bernard Nelson, Jr., Ebba Roberts, and Florence Hogander may become stockholders in the company so formed and receive stock in exchange for their rights as creditors, providing their combined total holdings of common voting stock shall not exceed 33 1/3 per, cent of the outstanding voting stock of the company so formed.

XI

[*Notice of Judgment*]

The defendant Association is ordered and directed to furnish, to each of its present and future members a true copy of this Final Judgment and to obtain and keep on file receipts showing delivery of said copies.

XII

[*Contingent Provisions*]

(A) The refusal of any distributor to sell milk or cream to vendors, or so-called peddlers or independent milkmen, in accordance with the requirements of Section H of Article 5 of the *Articles of Agreement Between The Milk Dealers and The Milk Drivers, and Dairy Employees. Union Local 471*, dated May 1, 1955 shall not be deemed a violation of this Final Judgment in the interval between the date of entry hereof, and (1); the termination or expiration of such articles of agreement or (2) the entry of a Final Judgment against the defendant Union in this cause, whichever period shall, be the shorter;

(B) Nothing in this Final Judgment shall require any distributor to take any action with respect to Section L of Article 5 of the *Articles of Agreement Between The Milk Dealers and The Milk Drivers and Dairy Employees Union Local 471*, dated May 1, 1955 in the interval between the date of entry of this Final Judgment and (1) the termination or expiration of the aforesaid articles of agreement or (2) the entry of a Final Judgment against the defendant Union in this cause, whichever period shall be the shorter.

XIII

[*Inspection and Compliance*]

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 any defendant made to its principal office, be permitted:

(A) Access during the office hours of such defendant to 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

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

Upon such request defendant shall submit written reports to the Department of Justice with respect to any matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Section XIII of 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 Department of Justice except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIV

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time, upon proper notice, for such further orders or 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 thereof or for the purpose of enforcement of [or] compliance therewith and for the punishment of violations thereof.

XV

[*Future Proceedings—Evidence*]

It is agreed that in any future proceedings wherein the plaintiff is a party, the entry of this Final Judgment is not intended to operate as a "cut-off date" for the purpose of determining the admissibility of evidence.