UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE BORDEN COMPANY, Defendant.	)	CIVIL ACTION NO. 51 C 947

At Chicago, Illinois, in said Division and District on

FINAL JUDGMENT

PRELIMINARY STATEMENT

Plaintiff, United States of America, filed its complaint herein on June 18, 1951 and the defendant, The Borden Company, filed its answer on September 19, 1952. The complaint alleging violations of the Sherman Act and Section 2(a) of the Clayton Act was tried in 1953.

At the conclusion of the Government's case-in-chief, the Sherman Act allegations of the complaint were dismissed by the Court on the ground that the Government had failed to show violations of the Sherman Act. At the same time, the Court also dismissed the Clayton Act allegations holding that, although the Government had shown

prima facie evidence that Borden and Bowman had each discriminated in price among its purchasers, a decree entered by the Court in a private antitrust suit against The Borden Company, Bowman Dairy Company, and others afforded adequate relief and rendered injunctive relief in this suit unnecessary.

On Appeal, the Supreme Court affirmed the Sherman Act phase of the case, but reversed and remanded as to the Clayton Act phase on the sole ground that the existence of a private decree does not in itself deprive the Government of its right to a decree when the need for injunctive relief is shown.

After remand, on the motion of plaintiff on April 18, 1955, the Court reopened the record for the introduction of further evidence: (a) by plaintiff for the purpose of showing the existence of current Clayton Act violations as to prices charged store customers, restaurants, hotels, and other similar wholesale customers, and (b) by the defendant for asserting affirmative defenses. All of the evidence was taken in the form of stipulations embodied in pre-trial orders, and in the form of depositions of expert witnesses.

The District Court entered findings of fact and conclusions of law and held that, while the plaintiff had established a prima facie violation of Section 2(a) of the Clayton Act, the defendant had cost justified the discriminatory prices. On this basis, the Court dismissed the complaint. Plaintiff did not appeal with respect to

the prices charged restaurants, hotels, and other similar wholesale customers. A direct appeal with respect to prices charged store customers was taken from this Final Judgment and the Supreme Court rendered an opinion on June 25, 1962 reversing the District Court's dismissal by holding that the cost justification defense as presented to the Court did not adequately establish a reasonable and proper classification of store customers. The Supreme Court remanded the cause to this Court to determine the need for injunctive relief.

Upon remand this Court held a pre-trial conference where, after due consideration of the mandate of the Supreme Court, it was determined that except as reserved in Article VIII herein further proceedings are unnecessary and that there is a need for injunctive relief.

DECREE

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

ARTICLE I

This Court has jurisdiction of the subject matter hereof and of the party hereto. The complaint states a cause of action under Section 15 of the Act of Congress of October 15, 1914 entitled "An Act to supplement existing laws against unlawful restrictions and monopolies and for other purposes," commonly known as the Clayton Act.

ARTICLE II

Definitions

As used in this Final Judgment:

A. "Fluid milk" means cow's milk sold in fresh fluid form, whether as milk or as cream or intermixtures thereof.

B. "Chicago area" means the territory lying within the corporate limits of the cities of Chicago and Evanston, and the territory lying within the corporate limits of the villages of Wilmette, Kenilworth, Winnetka, Glencoe, and Oak Park, all in the State of Illinois.

C. "Store customer" means any person, firm, or corporation operating one or more grocery stores in the Chicago area which purchases fluid milk for resale purposes and not for consumption on the premises.

D. "Optional method of delivery" is one which by nature is not inherent in defendant's system of distribution of fluid milk, and which a store customer may (in order to obtain a lower price or a larger discount) elect to perform for himself instead of having it performed for him by defendant.

ARTICLE III

The defendant has prima facie discriminated in price in sales of fluid milk of like grade and quality in interstate trade and commerce between different store customers and the effect of such discrimination may have been and may continue to be to substantially lessen competition or tend to create a monopoly in the sale of fluid milk in the Chicago area.

ARTICLE IV

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

ARTICLE V

The defendant is enjoined and restrained from:

A. Selling or offering to sell fluid milk of like grade and quality and in comparable containers to competing store customers in the Chicago area at different prices unless:

(1) Such price differences make due allowance for cost savings resulting from differing methods of manufacture, sale, or delivery, or differing quantities purchased; or

(2) Made in good faith in order to meet equally low prices offered or given by a competitor.

B. Selling or offering to sell fluid milk of like grade and quality and in comparable containers to competing store customers in the Chicago area pursuant to discount or net price schedules based on classifications of store customers on any basis other than those arising from differing methods of manufacture, sale, or delivery or differing quantities purchased; provided that in the event any one or more methods of delivery are optional to the store customers in

any given volume class then all such store customers shall be given the opportunity, in writing, of exercising their choice of such methods of delivery.

ARTICLE VI

The defendant is ordered and directed to keep and maintain route books, price and discount schedules, or other records for a period of five years which will reflect the conditions and terms of purchase of fluid milk, the volume purchased, and the prices charged and discounts granted.

ARTICLE VII

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

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

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

No information obtained by the means permitted in this section VII shall be divulged by any representative of the Department 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.

ARTICLE VIII

Jurisdiction of this action is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court within a reasonable 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, or for the enforcement of compliance therewith and the punishment of violations thereof, and for the determination of proper costs, if any, in this cause.

ENTER:

4/24/63

s/ Campbell
Chief Judge, United States District Court