

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Borden Company, et al., U.S. District Court, N.D. Illinois, 1952-1953 Trade Cases ¶67,441, (Feb. 19, 1953)

[Click to open document in a browser](#)

United States v. The Borden Company, et al.

1952-1953 Trade Cases ¶67,441. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 51 C 947. Dated February 19, 1953. Case No. 1090 in the Antitrust Division of the Department of Justice.

Robinson-Patman Price Discrimination Act and Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Price Discrimination—Meeting Competition —Dairies.—Dairies are enjoined by a consent decree from selling or offering to sell milk of like grade or quality to a wholesale customer, other than a non-profit institution, at prices which discriminate against other customers of the seller or on such terms or conditions as involve lump sum cash payments, interest free loans, store equipment (or non-compensated use thereof), gratuities or other similar inducements, or discriminatory rebates, discounts, or advertising service charges. The decree further provides that, upon proof being made, at a hearing on a complaint by the Government under this provision that a defendant has sold or offered to sell milk at price terms or conditions, as aforesaid, the burden of rebutting the prima facie case thus made shall be upon the defendant so charged; provided, however, that nothing shall prevent such defendant from rebutting the prima facie case by showing that such prices, terms or conditions were made lawfully and in good faith in order to meet equally low prices, terms or conditions offered or given by a competitor, or that the price differentials offered or given made only due allowance for differences in the cost of sale or delivery resulting from differing methods or quantities in which the milk was sold or delivered to such customer.

Consent Decrees—Practices Enjoined—Allocation of Markets-Collusive Bidding.—Dairies are enjoined by a consent decree from entering into any agreement with any other distributor or vendor for the purpose of (1) allocating or dividing customers or markets, (2) adopting rules governing the solicitation of wholesale customers or public institutions by contact men or solicitors, and (3) refusing to submit a bid or making a bid higher than, or identical with, the bid of any other person, or to submit collusively a bid. The decree further provides that nothing contained in the provision shall prevent a defendant from contracting with a vendor to service a particular route, provided that the right of such vendor to sell upon other routes is not restricted.

Consent Decrees—Practices Enjoined—Price Fixing and Related Practices.—Dairies are enjoined by a consent decree from entering into any agreement which has the purpose of fixing or maintaining prices, price lists, differentials, or discounts; from inducing or requesting any labor union to coerce or prevent any wholesale customer from selling milk except at prices established or determined by any person other than said wholesale customer; from compelling or requesting any wholesale customer not to advertise prices for the sale of milk; and from printing or distributing any resale price list containing out-of-store prices to the public, provided that lawful newspaper advertising shall not be prohibited.

Consent Decrees—Practices Enjoined—Selling and Exclusive-Dealing Practices.—Dairies are prohibited by a consent decree from entering into or continuing or claiming any rights for the sale of milk under any contract, the consideration for which was or is a gift, payment or loan of any property of value; from selling milk on the basis that the purchaser shall not purchase or deal in milk obtained from any other source, except in contracts the duration of which does not exceed one year; from refusing to sell milk to any person on the grounds that such person has purchased or is purchasing milk from any other source; from ordering its solicitors not to solicit the milk business of any person because such person is or has been purchasing milk from another source; and from communicating to any other distributor or vendor other than a vendor selling milk purchased from such distributor the name of any person to whom such defendant is or has been selling milk.

Consent Decrees—Specific Relief—Bids, Records, Certified Lists.—Dairies are ordered by a consent decree (1) to submit, as part of any bid for the sale of milk to any public institution, an affidavit certifying that such bid has been compiled and is submitted without discussion or collusion, (2) to keep and maintain, for a period

of three years, a copy of each bid submitted by it to a public institution, (3) to keep and maintain route books, for a period of three years, showing the prices at which milk is sold to each wholesale customer, (4) to keep and maintain, for a period of three years, every permanent record and every record of solicitation of wholesale customers kept in the ordinary course of business, and (5) to file with the Attorney General a duly certified list showing each and every loan by such defendant to its store, restaurant or hotel customers outstanding and unpaid, and each and every transaction of purchase or loan of fixtures, equipment, merchandise, facilities or other property of value entered into with others by a store, restaurant or hotel customer of such defendant where such purchase or loan is outstanding and unpaid and in respect of which such defendant is an accommodation endorser or guarantor.

Consent Decrees—Applicability of Provisions—Area. — A consent decree entered against dairies provides that the provisions of the decree shall apply only to those activities of the defendants in three specified counties in one state and in one specified county in another state.

For the plaintiff: Edward P. Hodges, Acting Assistant Attorney General; Edwin H. Pewett, Trial Attorney; Victor H. Kramer, Special Assistant to the Attorney General; and W. D. Kilgore, Jr., Ralph M. McCareins, and Charles F. B. McAleer, Attorneys for the United States.

For the defendants: Herman A. Fischer for American Processing and Sales Co.; Isidore Fried for Capitol Dairy Co.; Thomas B. Gilmore for Hunding Dairy Co. and Western United Dairy Co.; and Charles W. Schaub for Meadowmoor Dairies, Inc.

Final Judgment

[*Consent to Entry of Judgment*]

CAMPBELL, District Judge [*in full text*]: Plaintiff, United States of America, having filed its complaint herein on June 18, 1951, and the defendants, American Processing and Sales Company, Capitol Dairy Company, Hunding Dairy Company, Meadowmoor Dairies, Inc., and Western United Dairy Co, (which defendants are hereinafter referred to collectively as the “consenting defendants”), and each of them, having appeared and filed their answers to said complaint denying the substantive allegations thereof; and the plaintiff and the consenting defendants, 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 of any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of the plaintiff and the consenting defendants,

It is hereby ordered, adjudged and decreed as follows:

I

[*Sherman and Clayton Act Causes of Action*]

This Court has jurisdiction of the subject matter hereof and of the plaintiff and consenting defendants. The complaint states a cause of action against the consenting 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 Acts and Monopolies,” commonly known as the Sherman Act, and under Section 2 (a) of the Act of Congress of October 15, 1914, entitled “An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes,” commonly known as the Clayton Act, and acts amendatory thereof and supplemental thereto.

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 inter-mixtures thereof;

(B) "Distributor" means any person engaged in the business of purchasing, pasteurizing, processing, bottling, and selling fluid milk;

(C) "Vendor" means any person engaged in the business of buying fluid milk from a distributor for resale to wholesale customers or others;

(D) "Wholesale customers" means vendors and those customers for fluid milk who buy from a distributor or from a vendor for resale purposes. It also includes hotels, restaurants and other eating places purchasing milk for resale to consumers;

(E) "Public institutions" means any federal, state, county or municipal institution;

(F) "Person" shall mean an individual, partnership, firm, association, corporation, cooperative or any other legal entity.

III

[*Applicability of Provisions*]

The provisions of this Judgment applicable to any consenting defendant shall apply to such defendant, its successors, subsidiaries, assigns, officers, directors, agents and employees, and to all other persons acting or claiming to act under, through or for such defendant. Such provisions shall apply only to those activities of such defendant, in the counties of Cook, DuPage and Lake in Illinois, and Lake County, Indiana.

IV

[*Prohibited Agreements and Practices*]

Each of the consenting defendants is enjoined and restrained from:

(A) Entering into, adhering to or maintaining any combination, conspiracy, contract, agreement, understanding plan or program, directly or indirectly, with any other distributor or vendor for the purpose or with the effect of:

(1) Allocating or dividing customers, territories or markets for the sale of fluid milk;

(2) Adopting, maintaining, enforcing or adhering to rules, instructions or practices governing the solicitation of wholesale customers or public institutions by contact men or solicitors;

(3) Refusing to submit a bid for the sale of fluid milk or making a bid therefor higher than, or identical with, the bid of any other person, or to submit collusively a bid therefor.

Nothing contained in this Section IV (A) shall prevent a consenting defendant from contracting with a vendor to service a particular route or territory, provided that the right of such vendor to sell in other territories or upon other routes is not directly or indirectly restricted thereby.

(B) Selling or offering to sell fluid milk of like grade or quality to a wholesale customer, other than a non-profit institution, at prices which discriminate against other customers of the seller or on such terms or conditions as involve lump sum cash payments, interest free loans, store equipment (or non-compensated use thereof), gratuities or other similar inducements, or discriminatory rebates, discounts or advertising service charges.

Upon proof being made, at any hearing on a complaint by the plaintiff under this Section IV (B) that a defendant has sold or offered to sell fluid milk at prices, terms or conditions, as aforesaid, the burden of rebutting the prima facie case thus made shall be upon the defendant so charged; Provided, however, that nothing herein contained shall prevent such defendant from rebutting the prima facie case thus made by showing that such prices, terms or conditions were made lawfully and in good faith in order to meet equally low prices, terms or conditions offered or given by a competitor, or that the price differentials offered or given made only due allowance for differences in the cost of sale or delivery resulting from differing methods or quantities in which the fluid milk was sold or delivered to such customer.

(C) Entering into, adhering to, continuing or claiming any rights for the sale of fluid milk under any contract agreement or understanding, the consideration for which was or is a gift, payment or loan of any property of value.

(D) Entering into any contract, agreement or understanding which has the purpose or effect of determining, fixing, maintaining, adhering to, or inducing the adherence to, prices, price lists, differentials, discounts or other terms or conditions of sale for fluid milk sold to third persons;

(E) Selling or offering to sell fluid milk on the basis, agreement or understanding that the purchaser thereof shall not purchase or deal in fluid milk obtained from any other source, except in contracts the duration of which does not exceed one year.

(F) Refusing, directly or indirectly, to sell fluid milk to any person on the grounds that such person has purchased or is purchasing fluid milk from any other source.

(G) Ordering, directing or instructing its solicitors or contact men not to solicit the fluid milk business of any person because such person is or has been purchasing fluid milk from another source.

(H) Communicating, directly or indirectly, to any other distributor or vendor other than a vendor selling fluid milk purchased from such distributor the name of any person to whom such defendant is or has been selling fluid milk.

(I) Inducing, attempting to induce, or requesting any labor union, through its officers, members or agents to coerce or prevent, or to attempt to coerce or to prevent any wholesale customer from selling fluid milk except at prices established or determined by any person other than said wholesale customer.

(J) Compelling, inducing or requesting any wholesale customer not to advertise prices for the sale of fluid milk.

(K) Printing, writing or distributing any resale price list containing suggested out-of-store prices to the public for fluid milk, provided that the provisions of this subsection (K) shall not prohibit lawful newspaper advertising.

V.

[Bids to Public Institutions—Requirements]

Each of the consenting defendants is hereby ordered and directed:

(A) To submit, as part of any bid for the sale of fluid milk to any public institution, an affidavit of the officer or agent of such defendant signing the bid, certifying that such bid has been compiled and is submitted without discussion, agreement, understanding or collusion on the part of the defendant submitting the same with any other distributor or vendor;

(B) To keep and maintain, in orderly classification, for a period of three (3) years after the date of submission, a copy of each bid for the sale of fluid milk submitted by it to a public institution, and a list of such bids showing the date on which, and the name of the public institution to which, the respective bids were submitted.

VI.

[Records To Be Maintained]

Each of the consenting defendants is ordered and directed to:

(A) Keep and maintain route books or other records, for a period of three (3) years after making the entries therein, showing the prices at which fluid milk is sold and delivered to each wholesale customer after the date of entry of this Final Judgment;

(B) Keep and maintain, for a period of three (3) years after the making thereof, every permanent record and every record of solicitation of wholesale customers kept in the ordinary course of business;

(C) Distribute to each of its officers, agents and employees, engaged in selling fluid milk to wholesale customers, a copy of this Final Judgment and to file with the Clerk of this Court and with the Attorney General of the United States within thirty (30) days after the date of entry of this Final Judgment an affidavit of an officer of said defendant to the effect that such distribution has been made.

(D) File with the Attorney General of the United States within thirty (30) days after the entry of this Final Judgment, to be used only for the purpose of securing compliance with this Final Judgment, a duly certified list showing each and every loan by such defendant to its store, restaurant or hotel customers then outstanding and unpaid, in whole or in part, of money, credit, fixtures, equipment, merchandise, facilities or other property of value, and each and every transaction of purchase or loan of fixtures, equipment, merchandise, facilities or other property of value, tangible or intangible, entered into with others by a store, restaurant or hotel customer of such defendant where such purchase or loan is still outstanding and unpaid, in whole or in part, and in respect of which such defendant is an accommodation endorser or guarantor.

VII.

[*Compliance*]

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 any consenting 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 of the matters contained in this Final Judgment, and

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

Upon request the defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary to the enforcement of this Final Judgment. No information obtained by the means permitted in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized 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.

VIII.

[*Jurisdiction Retained*]

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