

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL BROILER MARKETING ASSOCIATION,

Defendant.

Civil Action No. 18173

Filed: Apr. 16, 1973

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendant named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, in order to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 1 of that Act (15 U.S.C. §1).
2. The defendant transacts business and is found within the Northern District of Georgia, Atlanta Division.

II

THE DEFENDANT

3. National Broiler Marketing Association (hereinafter referred to as "NBMA"), is made the defendant herein. NBMA is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Jackson, Mississippi. It is an association whose members are

persons, firms or corporations engaged in the marketing of broilers.

III

CO-CONSPIRATORS

4. Various other persons, firms, organizations and corporations, not made defendants herein, have participated as co-conspirators and are parties with the defendant in the combination and conspiracy in violation of Section 1 of the Sherman Act, as hereinafter alleged. Such co-conspirators include, but are not limited to, members of defendant NBMA.

IV

TRADE AND COMMERCE

5. Broilers are chickens that have been grown for a period of 8-10 weeks and then slaughtered and processed for sale to customers such as supermarkets, hotels, restaurants and institutions. There are several different grades of broilers; grades less than Grade A are referred to in the industry as undergrades.

6. The production of broilers requires an investment in farm land, buildings and equipment. While historically the production of broilers was carried on by persons who had made this investment, in recent years a substantial part of the production of broilers has been carried on through the use of contract grower arrangements. These arrangements generally provide that the contract grower will raise the broilers from chickens supplied by a processor. While the processor at all times owns the broiler, the contract grower bears the substantial part of the risk of loss of the investment in the farm land, buildings and equipment needed to produce the broilers. Substantially all of the broilers

marketed by members of NBMA are produced for these members by contract growers under arrangements such as those described above.

7. The price of broilers can be increased by reducing the number of broilers available to be marketed. The normal method of reducing this number is by reducing the number of eggs that are set to be hatched.

8. During the period of time covered by this complaint, the members of NBMA have sold and shipped substantial quantities of broilers to customers located in states other than the state in which said broilers were raised and slaughtered, and in other countries. In 1971, sales of broilers by NBMA members amounted to more than \$600 million, or about 50 percent of total sales of broilers in the United States. The activities of NBMA and its members, as described herein, are within the flow of and have an effect upon interstate commerce.

V

VIOLATION ALLEGED

9. Beginning at least as early as 1970, the exact date being to the plaintiff unknown, and continuing up to and including the date of the filing of this complaint, the defendant and the co-conspirators have been engaged in a combination and conspiracy to fix, maintain and stabilize the price of broilers, in unreasonable restraint of the aforesaid interstate trade and commerce in broilers in violation of Section 1 of the Sherman Act. Such unlawful combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

10. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendant and the co-conspirators, the substantial terms of which have been and are:

(a) to exchange information about past, present, and future prices for broilers;

(b) to establish and disseminate a price for broilers;

(c) to sell broilers at or above that price;

(d) to report to NBMA surplus broilers that cannot be sold at that price;

(e) to sell undergrades at agreed on discounts from the Grade A price;

(f) to withhold broiler parts from the market in order to increase their price;

(g) to exchange information about past, present, and future production of broilers;

(h) to establish and disseminate broiler production guidelines;

(i) to reduce the number of broilers available for marketing in accordance with such guidelines; and

(j) to sell surplus broilers to customers in foreign countries.

11. For the purpose of effectuating the aforesaid combination and conspiracy the defendant and the co-conspirators have done those things which as hereinbefore alleged they combined and conspired to do.

VI

EFFECTS

12. The aforesaid combination and conspiracy has had the effect, among others, of raising, stabilizing and maintaining the prices of broilers at non-competitive levels.

VII

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant and the co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in broilers, as hereinabove alleged, in violation of Section 1 of the Sherman Act.

2. That the defendant and each of its officers, directors, agents, employees, and all persons acting under and through or for defendant be perpetually enjoined and restrained from:

(a) Continuing to carry out, directly or indirectly, the combination and conspiracy hereinbefore alleged, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program, or device having a similar purpose or effect;

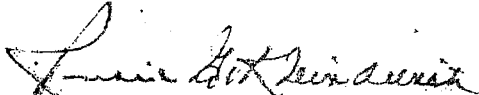
(b) Furnishing to, or requesting from, any processor of broilers, any information concerning prices, terms, or conditions for the sale of or production of broilers; and

(c) Entering into any agreements, arrangements, or understandings with any other persons to eliminate or suppress competition in the sale or production of broilers.

3. That defendant be ordered to make whatever changes are necessary in its organization and operation to insure compliance with the judgment of this Court.

4. That the plaintiff have such other, further,
and different relief as the Court may deem just and proper
in the premises.

5. That the plaintiff recover the costs of this suit.



RICHARD G. KLEINDIENST
Attorney General

ROBERT B. GREENBAUM



THOMAS E. KAUPER
Assistant Attorney General

AARON B. KAHN

Attorneys, Department of Justice



BADDIA J. RASHID



ROBERT B. HUMMEL

GERALD A. CONNELL

WILLIAM E. SWOPE

Attorneys, Department of Justice

United States Attorney