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Hearing Clerk
Department of Agriculture
Agricultural Marketing Service
Room 1083, South Building
Washington, D.C. 20250

Ref. Exceptions to Tentative Marketing Agreement [Docket No. AO-361-A35; DA-01-03]

This tentative decision is flawed, contradictory of it's self and a miscarriage of justice and the declared intent of the Agricultural Agreement Act.

The "Act", specifically under 7USC, 608e "Terms Common to All Orders", (A) Prohibits unfair trade practices in the handling thereof." It is also stated at 7 USC 608c(16)(A)(I), When the Secretary finds that the orders do not effect the declared policy of the Act, the orders must be terminated.

Keeping this in mind we will examine this decision and the basis of the hearing it self. It has long been held that the purpose of the Class I differential is to "attract milk for fluid use". Then, manufacturing plants and the cooperatives shipping to them decided they were entitled to a share of the Class I differential. Thus, the market wide pool. This whole hearing process is all about who can take the most from the fluid handlers through the pool.

The writer states on page 6, Paragraph 3, "The witness also expressed the opinion that in markets with 20 percent of less milk used for fluid purposes, the notion of assuring an adequate supply of milk for fluid use becomes of questionable importance".

Disorderly Marketing.

Why is disorderly marketing occurring? Because the producer settlement fund does not pay moneys to producers as does the California producer settlement fund, rather it pays moneys to plants who compete for producer milk in a

competitive environment. Thus we have not only an abomination of the purpose of the Class I differential, but artificially high Class I differentials are fought over by manufacturers which includes manufacturing plants owned and controlled by Farmer co-operatives. This is one example where this decision is untruthful in it's comparison of Order 30 pool to the California operation.

This very hearing is proof of the disorderly marketing promulgated by the Administration with the use of Federal Orders. The order regulation is being manipulated so as to obtain competitive advantage by plants drawing money from the pool. To gain competitive advantage are unfair trade practices and prohibited by the AMAA.

AMAA Objectives.

We must analyze the historic portrayal of the milk marketing program eluded to on page 9. The objectives of the AMAA are not achieved under the Federal Order Program and according to the testimony of Dr. Shelden Kimmel, economist for the Department of Justice, @ Docket No. AO-14-A68A et Al:. DA-0901, "the Federal Order system has done nothing to bolster the dairy industry in the last 60 years. In his studies he concludes that in fact, the per capita consumption of fluid milk under Federal Milk Marking orders has declined mostly due to the higher price charged for fluid milk under the Orders". The classified pricing system, which establishes a higher price for milk for fluid use (with the Class I differential) is to ensure an adequate supply of fresh milk for fluid use. This is to say that fluid handlers have to pay a higher price in order to attract milk to the fluid market. If handlers up bid the price paid to producers, that is good for the producer. If producers are willing to sell their milk for less, this only means the price established by the controlled artificial price, is too high and such activity should indicate that this is true.

Monopolies.

As to stabilizing markets, and eliminating cut throat price competition, what you are talking about is price fixing and monopoly pricing. This is supposed to be illegal. Competition in a free market is supposed to be the principle that protects the consuming public. The pricing of products to consumers at the wholesale and retail level is still competitive though it is the underlying control of classified pricing by the Department in a monopolistic nature at the producer level, which is against the principle of free competition.

Marketwide pooling.

Marketwide pooling does not provide equity between producers and processors, but rather provides to manufacturing plants a license for unfair trade

practices to be used to gain competitive advantages. This is accomplished two different ways.

- According to the testimony of Wisconsin Sec. Of Agriculture, Jim Harsdorf that one handler would charge another handler for being pooled under an order so as to obtain money out of the pool, he considered to be a normal business practice. In this case, the qualifying handler is extracting money out of the system which gains him an unfair competitive advantage. Another name for this is "extortion".
- 2. The second method is to negotiate a price to purchase milk from a supply plant at below the open market cost of the milk. In Order 30 marketing area, Producer premiums are prevalent ranging from \$1.00 to \$1.60 per Cwt. of milk. A supply plant is required to pay the market blend price plus the premiums to compete for that supply of milk. If the supply plant sells milk to a fluid processor and charges him the Class I price plus \$0.10 for example, and a small competing fluid handler is buying milk directly from producers have to pay the competitive premiums of \$1.50 or more.

The larger fluid handler then purchases milk at a saving of \$1.40 per cwt. The reason this can be done is that the larger fluid processor, with larger purchases can qualify much higher volumes of milk which are used for manufacturing purposes. This is seen in the testimony of Jim Hahn of Land O Lakes co-op where he testifies that he sells milk to Deans at below cost. Deans uses there buying power to buy milk at below market competitive prices giving themselves a competitive advantage over the smaller handler.

Both of these examples are only possible because of the artificially high Class I prices which are above parity which is prohibited by the AMAA, coupled with the market-wide pool. This only helps in providing the further development of monopolies.

Admission of the plan to <u>eliminate the purpose of the Class I differential</u> is seen on page 9, 3rd paragraph it is stated; "The Federal Order program purposefully moved away from individual handler pooling—a pooling method not uncommon when many milk marketing orders represented much smaller and much more local milk marketing areas. Through marketwide pooling, the equalization of prices paid to dairy farmers did have implications that affected the competitive relationship between processors along with uniform prices received by dairy farmers. Under individual handler pooling, the use-values of milk by a handler are averaged, or blended, and distributed **separately** to only those producers who had supplied the handler. This is the way it is supposed to work...

With marketwide pooling, a handler regulated by an order with high Class I use was no longer able to exercise control over producers through the higher blend prices they where able to pay to producers who were, for example, more favorably located to the plant. Similarly, handlers with lower Class I use, unable to pay as large a blend price, found that marketwide pooling greatly improved their position in competing for a supply of milk. Prices paid by handlers were equalized across the entire market where handlers competed with each other for fluid sales and producers received a more uniform price for their milk."

This philosophy and use of the order system contradicts all the principals of justice in free enterprise system and is unfair and unjust. First of all, it has long been held that the purpose of the higher price for Class I use milk, is to attract milk for fluid use. If in fact a handler has a lower percentage use of milk in Class I or fluid sales, this means that he is also into milk manufacturing at lower price use. The provision of a higher price to attract milk can not be intended to be used to attract milk for manufacturing uses. This is contrary to the purpose of the price being higher for fluid use so as to attract milk for that use. If in fact the handler with the lower use value because of lower fluid sales, this then means that he has enough milk to satisfy his fluid needs. A handler can never exercise control over a producer as indicated in the quote unless the handler is a cooperative of which the producer is a member. What this does is to disallow the fluid handler to attract milk for fluid use and puts the control of purchasing milk from producers in the hands of manufacturing supply plants. While pool supply plants are required to ship 10% of their receipts of milk to a fluid plant in order to qualify for pool, the order does not regulate the price value beyond the minimum values according to use.

Here we should preface the next remarks stating that the manufacturing use values are established from the manufactured product value at market wholesale prices and reducing that price by a make allowance covering the cost of manufacture, marketing and return on investment. There are no such considerations in the establishment of the values of Class I fluid use. This is unfair and unequal treatment under the law.

To continue, a manufacturing supply plant can set their own prices in the sale of milk to fluid plants. This can be the market blend price, the Class I price plus handling charges which can range from 10 cents to \$2.00. The small fluid plant who can qualify only a limited amount of milk for pool because a smaller fluid use is usually charged a much higher price. With the manufacturing plants controlling the price to fluid handlers and the producers, the only choice the fluid handler has is to buy milk direct ship from producers and pay additional premiums in order to attract the milk. This puts the fluid handler at a competitive disadvantage when competing with the larger fluid plant competition.

To the extent that a producer is attracted to a higher price for milk is the way that the competitive market is supposed to work. To the extent that a handler is able to attract closer-in milk supplies is also the way that it is supposed to work for this is much more efficient. In the present order, pooling standards are designed to eliminate the need to ship milk to a fluid handler just for qualifying purposes.

To the extent that there is to great a disparity between milk values for milk used for fluid use and that used for manufacturing purposes is only evidence that the Class I differentials are artificial and too high (above parity levels), especially with the expert economist Dr. Robert Cropp's testimony that the cost to produce milk for Grade "A" versus that used for manufacturing purposed is only 5 to 7 cents per cwt. of milk.

Competitive advantage.

This is just more evidence that the orders have been used as a tool to force the Class I market to subsidize the cost of milk used by manufacturers and give manufacturers a competitive advantage. Testimony at page 15, paragraph 3, eludes to 33% of the milk in the markets which was de-pooled during times when manufacturing prices were higher than Class I and manufacturers de-pooled in order to avoid having to pay into the pool.

The decision at page 19, par. 4 states, "Pooling of "distant" milk from the Upper Midwest order is neither new nor without precedent. The record testimony and evidence shows milk pooled on Order 30 from nearly all corners of the country". Later, "The Upper Midwest order also provides a significant degree of pooling flexibility in the form of provisions allowing system and unit pooling. These provisions promote the orderly marketing of milk by minimizing the inefficient movement of milk for the sole purpose of meeting pooling standards". This is not true because the administration is not promoting the orderly marketing of milk but rather the orderly taking of Class I money out of the pool.

The simple fact that when a higher price is set on milk for bottled use means that that price is intended to be used to attract milk to fluid use needs.

Unfair trade practices.

Not addressed in this decision is the testimony of LOL witness and the Wisconsin Secretary of Agriculture where it was acknowledged that extortion kickbacks are paid to Class I plants from manufacturers so as to have Class I sales and qualify to receive money from the producer settlement fund. This is only further evidence of the abuse and unfair trade practices existing under the market wide pool of the Order 30.

At page 21 it is stated, "Milk prices are an outcome of supply and demand conditions for milk. Prices tend to increase during tighter supplies and fall when milk is plentiful relative to demand". This is true as it is the free market which exists in the market and which is misconstrued by artificial Class I pricing.

Under General Findings and Findings and Determinations at (b) and (2) respectively, it is stated that "parity prices of milk are not reasonable in view of the price of feeds etc." and there was no evidence in the record to draw such a finding or conclusion. This finding is invalid and untrue. The supply demand market is what controls the level of prices and the industry knows that if the dairy farmer can not make a living producing milk, he will not produce it. The industry it's self adjust the level of milk pricing and it is not controlled by the orders. If there is any control, it is as stated above.

Conclusion.

The disorderly marketing and unfair trade practices existing under Order 30 calls for termination of the Orders.

Respectfully submitted,

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