

8. *Atlanta, Georgia*

The evidence offered in Atlanta by counsel supporting the complaint involved three competitor witnesses, one representing an Atlanta company, another representing a company in the nearby Marietta area, and the third representing a company in Columbus, which is in the extreme western portion of the state. Two other witnesses, one representing French Ice Cream Company of Atlanta and another representing Happy Valley Farms of Rossville were excused at the request of counsel supporting the complaint. No dealer witnesses were called. Since the Atlanta-Marietta area appears to be an entirely separate market area from Columbus, involving substantially different groups of competitors, the two areas are considered separately below.

a. *Atlanta-Marietta Area*

The only respondents doing business in the Atlanta area are National and Foremost. Swift & Company is another so-called national company which operates in the area. The local companies include Irvindale Farms Dairy, Georgia Milk Producers Association, Atlanta Dairies, Greenwood Dairy, George Moore, French Ice Cream Company, Modern Ice Cream Company, and Druggists' Cooperative. The only Atlanta witness to testify was an official of Irvindale, a representative of French Ice Cream Company having been excused.

The evidence with respect to Irvindale indicates that the company has made very significant progress since it entered the ice cream business in 1947. Prior to that year the company had been solely in the milk business in Atlanta and entered the ice cream end of the dairy business in order to have an outlet for its surplus milk. Its principal operation is still in milk. Starting with no ice cream gallonage in 1947, it managed to reach a gallonage of slightly more than 100,000 by 1953, and in the last full year prior to the Atlanta hearing in January 1956, it had achieved a gallonage well in excess of 250,000. The Irvindale witness indicated that the company had all the ice cream business it could handle with its present facilities, and was in the process of building a new plant with a capacity of one million gallons.

Irvindale is well represented in the large grocery chains in Atlanta. It is the main supplier for the Big Apple Supermarket chain which has 30 stores in the Atlanta area. At one time the chain was served by respondent Foremost, but Irvindale was able to acquire the bulk of the business. Some of the stores are split with Foremost and some with the local competitor, Greenwood Dairy. Irvindale also serves

most of the 20 Kroger stores in Atlanta, although it splits some with respondent National and a few with respondent Foremost. It also serves 10 of the 40 stores of the Colonial Stores chain, and at the time of the hearing was "working" on getting into the other stores of the chain.

Irvindale supplies cabinets to most of its customers. Those who own their cabinets receive a 10-cent a gallon discount. Since it supplies 300 cabinets to approximately 225 customers, it is apparent that some of the larger accounts have more than one cabinet. There is, however, a trend among the chain stores to install their own cabinet equipment in order to receive the benefit of the customary discount paid to dealers who own their own equipment. This has been true of some of the more recently opened stores of the Big Apple and Kroger chains. The Irvindale witness indicated that he would prefer not to have to supply cabinets because of the expense involved, and that he would prefer to give the dealer a lower price in lieu thereof. However, this would not result in any significant benefit to the consumer since, as the witness conceded, the dealer would have to figure the cost of the cabinet in computing his retail price. Irvindale has its own service department and has a regular preventive maintenance program. The witness agreed that the ownership and maintenance of cabinets by the manufacturer helps him to preserve his product better. The Irvindale representative also made some reference to the fact that customers placed other frozen foods in the ice cream cabinets and indicated that it was a constant battle to keep customers from doing this. However, he conceded that he knew of no competitors who supplied cabinets specifically for this purpose.

The only testimony by the Irvindale witness regarding any specific competitive difficulty with any competitor related to the company's alleged inability to acquire a restaurant account because of the amount of equipment which respondent National had supplied. However, the witness conceded that he had no knowledge as to what equipment National had furnished the account other than the hearsay information which he had received from the owner. No finding can be made as to why Irvindale was unable to acquire this account, based on the hearsay, conclusory testimony of the witness.

While the Irvindale witness claimed that his company lost about ten accounts a year, he did not assign any reason for this and conceded that the company gained more accounts than it lost. Such losses appear to be part of the normal turnover experienced by all ice cream companies. The company, which employs three full-time salesmen, is steadily expanding its sales, both in the acquisition of new accounts and

in sales through existing accounts. The Irvindale witness attributed the latter increase, at least in part, to the use of open-top display cabinets.

The evidence as a whole fails to indicate anything but a bright future for Irvindale in the Atlanta area. Its own confidence in its future appears to be amply demonstrated by its recent construction of a plant which will enable it to increase its present production fourfold. The company has been able to acquire not only the Big Apple chain from respondent Foremost, but also one of the largest department stores in Atlanta. It has also succeeded in acquiring a 32,000 gallon account from respondent National. There is no reason to believe that the company will be unable to hold its own in Atlanta. There is no evidence in the record to indicate that the position of other local competitors in the Atlanta area is any less favorable than Irvindale's. It appears that at least one, George Moore, is a substantial factor in the market, having a greater number of delivery trucks and presumably a larger gallonage than Irvindale. Atlanta Dairies is an even more recent entrant into the market than Irvindale, having entered business in 1952.

In the Marietta area, which is approximately 25 miles from Atlanta, the position of local companies appears to be no less favorable than in Atlanta. In addition to Economy Ice Cream Company, a representative of which testified at the hearing in Atlanta, the other local competitors include Cobb Cooperative, which entered the market around 1950, and Aristocrat. There is also Drug Mutual which sells to many of the drug stores in the area. In addition, Irvindale of Atlanta competes in the Marietta market. The respondents doing business in the area are Foremost and National, and to a small degree, Borden. Swift & Company is also active in the area.

Economy Ice Cream Company, the only Marietta company represented at the hearings, has had a rapid rise in the market. Until World War II it sold almost exclusively through its own retail stores. Thereafter it disposed of most of these stores and began to sell at wholesale to non-affiliated retail accounts. At the time of the hearing the company had approximately 95 accounts, which was the largest number it had ever had since entering the wholesale business. The year 1955 represented one of the company's best years. While the company had lost a few accounts during the year, it was "not enough to amount to anything" and was "more than offset" by accounts which it had gained.

The witness identified only three accounts as having been lost to the respondents since it had entered the wholesale business. Two

were lost to Foremost, allegedly because the latter had supplied a cabinet for frozen food in addition to one for ice cream. There is no evidence outside of the witness' hearsay testimony as to what Foremost furnished the accounts in question. The witness also cited an account allegedly lost to respondent National because of a neon sign, but conceded that he had not yet seen the sign up, and there is no evidence in the record to support his hearsay testimony.

The only other complaint of the witness was with respect to his company's inability to get into the big supermarkets, which he claimed were being served by the "big dairies", viz., National, Foremost and Swift. His only explanation for not being able to get into these markets was that they "want the ice cream too cheap". There was nothing to indicate that these supermarket accounts (not specifically identified in the record) received their ice cream at other than National's and Foremost's published prices or that any price arrangement made with them was conditioned on their purchasing their exclusive requirements from these respondents.

The evidence as a whole indicates that Economy is making reasonably good progress in the Marietta market, considering its size and the recency of its entry into the wholesale ice cream business. There is a complete lack of reliable evidence that the engagement by any of the respondents in any of the complaint practices has been responsible for any significant competitive difficulties by Economy, let alone has resulted in injury to competition in the Marietta market.

b. Columbus Area

The evidence of competitive conditions in the Columbus area is barren of any suggestion of injury to competition by any of the respondents, for any reason. The respondents doing business in the area include National, Foremost and Borden. Swift & Company also operates in the area. The local companies include Kinnett Dairies, Columbus Ice Cream Company and Wells Dairy Cooperative. Velda (Plantation Food) of Florida also sells in the territory. With the exception of Foremost and Kinnett, all of these companies have entered the market since World War II. There are more companies operating in the area than there have ever been and there is no evidence of any business casualties in the area.

Kinnett Dairies was the only company from the area to be represented at the Atlanta hearing. The company is a substantial factor in the Columbus market, operating 12 to 15 delivery routes and having 1,200 to 1,500 accounts, with an annual gallonage of 600,000 to 700,000. The company's volume has been on the increase since the war and

it is now enjoying its maximum volume, except for a period during the war when it was servicing the military installations at Fort Benning, which the witness volunteered would not be an appropriate basis of comparison.

The only respondent to which the Kinnett representative made any reference as having been responsible for the loss of any specific account was respondent Borden, to which his company had allegedly lost a drug store, after declining to make the account a loan because it still owed his company several hundred dollars. The Kinnett witness conceded that he had no knowledge as to whether Borden had ever made the account a loan. Despite this loss, whatever may have been the reason, Kinnett serves a majority of the drug stores in Columbus. It also serves most of the grocery chains, including A & P, Colonial Stores and Kroger's. The witness indicated that his company had lost some of its chain drug store and variety-store accounts to respondents Foremost, Borden and National when the national headquarters of these stores began to enter into contracts for the purchase of ice cream on a national basis, rather than through the local managers. However, there is no evidence that the loss of these accounts was connected in any way with the complaint practices. Despite such losses the witness stated, in answer to the question of counsel supporting the complaint as to whether he was "holding his own" in the market, that: "I think I am doing better than holding my own." He indicated that while the company lost some accounts it had gained more than it had lost.

Aside from the single instance of an alleged loan by Borden, the only other complaint practice referred to by the witness was the furnishing of signs. He indicated that his company supplied his customers with signs, including some containing a privilege panel for the dealer's name, and that the company regarded it as an advantage to place signs with their name in a "strategically good spot". Kinnett has never lost or been unable to acquire an account because of the furnishing of a sign by any competitor. The witness also made oblique reference to the practice of supplying frozen food cabinets. He made no claim that his competitors supplied cabinets for this purpose, and commented that he would not be surprised to find his customers putting frozen food into his company's ice cream cabinets, despite the company policy of discouraging such practice.

Although Kinnett allegedly sells on the basis of "one-price policy", the company has been more than holding its own due to its aggressive selling program, and considers itself "the leaders in the field". The witness indicated that he felt that he could "hold my own with the

big boys". The only way in which he felt that he was at a disadvantage was when a contract was made by officials of a national retail chain on a national or regional level, rather than through local management. However, as above indicated, there is no evidence that the loss of some chain drug or variety store accounts has been connected with any of the complaint practices. In any event, any such losses have had no significant effect on the fortunes of Kinnett which has enjoyed a steady growth in sales since the war, and is now at its peacetime peak.

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The evidence fails to disclose any injury to competition in either the Atlanta-Marietta market or the Columbus market or in any other area of the state. The evidence also fails to disclose any significant improvement in the competitive position of any of the respondents operating in the Georgia market. Respondent National's share of state production has increased modestly from 7.0 per cent in 1947 to 11 per cent in 1955. Respondent Borden, which did not enter the state until 1950 when it acquired two existing companies, has enjoyed a modest increase from 10.3 per cent in 1950 to 15.8 per cent in 1955. Comparable data for Foremost respondent does not appear in the record.

9. Jacksonville, Florida

The respondents operating in the Jacksonville market are Foremost, Borden and National (Southern Dairies). Foremost and National manufacture their product in Jacksonville and Borden has a distributing branch there. The ice cream sold in the area by these companies is manufactured entirely in the State of Florida. There are two local Jacksonville companies, J. R. Berrier Ice Cream Company and Dinsmore Dairy. In addition Velda, which operates throughout the State of Florida and in parts of Georgia, also sells in the Jacksonville market. Counsel supporting the complaint called as witnesses representatives of the two local Jacksonville companies. No dealer witnesses testified. However, counsel supporting the complaint was permitted to read into the record, by agreement of counsel, a list of accounts which had received loans (secured by chattel mortgage) or had been sold equipment on a conditional sales basis by respondents Foremost, Borden or National, as recorded in the Recorder of Deeds' office.⁸⁷

⁸⁷ The treasurer of Foremost, who approves all loans in the area, was produced as a witness but counsel supporting the complaint declined to examine him.

