


Marketing Information for Minnesota Dairy Farmers


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The Minnesota Dairy Unfair Trade Practices Act

Minnesota is one of 13 states with regulations prohibiting milk distributors and retailers from selling dairy products at prices below cost. The Minnesota Dairy Unfair Trade Practices Act, which became law in 1957, regulates not only sales below cost, but forbids certain practices. The act has its supporters and opponents.

NEED FOR THE ACT

The Minnesota Dairy Unfair Trade Practices Act regulates competitive practices of dairy distributors, processors, and manufacturers. Several conditions in the fluid milk industry of the 1950's led to its passage. The industry was rapidly switching from home delivery to selling through stores. The glass bottle was being replaced by the paperboard milk container which increased the volume of milk that could be trucked while eliminating the need for handling returnable containers. These reasons and other technological changes, tremendously increased the size of the sales territories and fluid processing plants. Many small plants were forced out of business, finding it increasingly difficult to compete with larger plants.

Intense competition to develop sales outlets and expand volume took several forms. Retail price wars were common. A half gallon of milk, then selling for about 30 cents, would drop to 20 cents during the price wars. Many other methods were used to obtain and hold retail accounts. These included gifts to retailers, extended credit terms, free use of coolers and freezers—sometimes for refrigerated and frozen foods, not just dairy products—and advertising allowances—sometimes for the entire line of retail products.

Dairy farmers were concerned that these practices would lead to lower farm prices for milk. Processors believed these practices were forced on them by other firms and would ruin their business. Government control was sought and obtained in the resulting 1957 Minnesota Dairy Unfair Trade Practices Act. The stated objective of the act is to prevent unfair methods of competition in the state's dairy industry and assure orderly marketing. It is applied to selected milk products: all fluid milk items, all fluid cream, ice cream, dips, cottage cheese, and yogurt. The Dairy Practices Division was established in the Minnesota Department of Agriculture to administer the act. The act, together with the administrative rules issued under it, regulated several types of trade practices:

1. It prohibited gifts from processors to retailers.
2. It prohibited overextension of credit. Retailers must pay for dairy products by the 15th of the following month.
3. It insisted that signs and advertising materials supplied by wholesalers or processors to retailers be used for dairy products only.

4. It insisted that credit to a customer account for spoiled or returned merchandise be a bonafide transaction.
5. It permitted only volume and prompt payment discounts; otherwise, the same prices must be charged to all customers unless such pricing is necessary to meet competition.
6. It prevented coupling sales of the selected dairy products with below-cost prices for other dairy or other products.
7. It required wholesalers to report all prices and price changes for selected dairy products to the Dairy Practices Division.
8. It insisted wholesalers and processors of dairy products could only provide retailers with equipment used exclusively for the selected dairy product.
9. It authorized the Commissioner of Agriculture to seek injunctions and sue for damages for violations.

The original act has been amended several times. In 1961 an amendment made sales below cost illegal, provided for subpoena power for investigation, and authorized the Commissioner to issue cease and desist orders.

In 1966 an amendment prohibited receiving benefits from prohibited practices and permitted parties injured by prohibited practices to sue for three times the actual damages.

In 1971 an amendment eliminated the Commissioner's power to sue for damages and injunctive relief. This now prevents the Dairy Practices Division from obtaining quick relief for any practice that is deemed illegal. It must go through more lengthy procedures.

In 1975, the price filing section of the act was eliminated.

ENFORCEMENT PROCEDURE

The Dairy Practices Division (DPD) of the State Department of Agriculture, as mentioned, administers the act. Investigation and action can be initiated by the Division; however, about 90 to 95 percent of all investigations result from complaints by firms in the industry.

An investigation involves several steps. First, the DPD checks out the alleged facts and the possibility of a violation. Second, the DPD determines if evidence of injury to competition resulted from the alleged violation. If both conditions exist, the alleged violator is asked to agree to terminate action and perhaps to pay a penalty without additional action. If agreement is not reached, the case is argued before a hearing officer at the Office of Hearing Examiners for the State of Minnesota. Legal counsel for both the DPD and the defendant are present. If the hearing officer decides in favor of the DPD, the Commissioner of Agriculture can then impose a penalty and issue a cease and desist order.



Of all the DPD actions where there were confirmed violations, about half are settled by a mandatory penalty. To date, these have ranged from \$50 to \$8,500. Most cases involving overextension of credit are settled by cease and desist agreements. For the last few years, 250-300 investigations have been initiated each year. Less than 100 of these go beyond the investigative stage.

The DPD currently has nine staff positions and one attorney on retainer. The annual budget has run from \$220,000 to \$288,000.

Fees from processors of fluid milk and ice cream support the program. The charge is 1 cent per hundredweight of milk and cream used by fluid milk processors and 5½ mills per gallon for all ice cream sold. This applies only to products sold in Minnesota.

EFFECTIVENESS OF THE ACT

The Dairy Unfair Trade Practices Act is constantly debated. Supporters argue that the program has substantial benefits. Opponents reply regulation is unnecessary. There is probably no economic or trade regulation program that benefits everyone. Some of the issues follow regarding effectiveness of the act.

Maintenance of a Large Number of Firms

Despite the act, the number of fluid milk processors in the state has declined. In 1957, there were 277 milk bottling plants (164 grade A and 113 other than grade A). On July 1, 1978, there were 35 fluid bottling plants (29 grade A and 6 other than grade A); This parallels the national trend. However, the number of plants did not dwindle because of a failure of the act. Rather, it occurred principally because of innovations and technical developments, mentioned earlier, that increased the plant size necessary to achieve lowest per unit costs. It is possible that more firms or competitors in the market might have dropped out without the act's regulation.

Permissible Trade Practices

Food retailers charge that the act prevents them from using merchandising techniques widely used for other food products for selected dairy products. These include "loss leader pricing," a technique that may reduce the price of the leader item well below its purchase price. The special attracts customers and generates sales of all products and more than covers all direct losses on the leader item. Loss leaders to generate sales are often used for other foods, and the retailers claim that these activities are generally applauded by farmers.

Yet, loss leader pricing is a merchandising technique generally most useful to large retail establishments. Small and limited-line retailers can't compete when large, multi-product retailers begin loss leader pricing. Similarly, a retail milk distributor may find it difficult or impossible to special a product because additional sales or profits on a few other products won't recover losses on the leader.

Relevance to Today's Dairy Industry

It has been charged that the Dairy Unfair Trade Practices Act is a product of the 1930's depression era and not relevant to today's dairy industry. Though enacted in the 1950's, the language copies that of the depression-generated laws designed to discourage vigorous price competition. The charge of being old or a product of the past could be made for many regulations. To determine relevance, ask whether the regulated practices are currently a problem and decide whether the regulation effectively controls these practices.

Duplication of Other Trade Laws and Regulations

Another common criticism of the act is that in Minnesota there is another general fair trade law, the Unfair Discrimination and Competition Act, which prohibits sales below cost and price discrimination for retailers and wholesalers. The

Attorney General's office administers this act. Unless firms can show that marketing and handling costs are less, this act requires wholesalers to price products at least 2 percent above invoice cost and retailers to price products at least 8 percent above invoice cost.

The Dairy Act prohibits a number of competitive practices that are permitted under the general Unfair Competition Act: rebates and discounts, free equipment, gifts to procure business, overextended credit to obtain or keep favored customers.

Another possible duplication is the federal milk marketing order. It is sometimes argued that the dairy act is not needed to protect producers from price cutting at retail or wholesale because the federal milk order sets minimum milk prices for dealers. Regardless of what happens at other points in the marketing channel, this assures that producers receive the minimum federal order prices. This is only partially true—there are a couple of exceptions. First, the federal order may seem more protective of the dairy farmer who sells milk to a private dairy because the dairy's losses cannot be passed back in lower prices for bulk milk. The protection is not quite so complete for producers selling milk to cooperatives that are also processors and distributors of the selected dairy products. Farmer cooperatives may choose to pay their producers less than the order price, subject, of course, to the pressures of competitors as well as their farmer-owners. Therefore, competitive practices that reduce returns to cooperatives may be passed on to producer members. Second, the actual producer prices in the federal order may and often do include an over-order premium—a payment in addition to the federal order minimum price. These premiums may be vulnerable when retail or wholesale price wars develop. Although the possibility exists, there is little evidence that these premiums depend on retail or wholesale competitive conditions. In fact, in Minnesota retail milk price cutting has occurred at the same time that producer cooperatives have announced new, higher premiums for milk sold to processors.

Impact on Prices and Margins

The impact of restrictions on sales below cost for dairy products on milk prices and margins is difficult to measure. A 1975 Penn State University study found that fluid milk marketing margins in markets with sales below cost regulations were not significantly different from the markets with no regulations (Bulletin 803, Penn State University, 1975).

Processors are assessed costs for administration of the program in Minnesota. Total costs are not only the fees charged against the processors, but costs of program compliance record-keeping as well as defending against investigations by the Dairy Practices Division. These added costs of marketing often mean somewhat higher retail prices and somewhat lower farm prices. The direct fees are relatively small, about 1/10 of a cent per gallon of fluid milk and ½ cent per gallon of ice cream.

SUMMARY

The Minnesota Dairy Unfair Trade Practices Act regulates several kinds of price and nonprice competition between sellers of fluid milk and other selected milk products in Minnesota. An important part of the regulation is aimed at sales below costs that are injurious to competition. It also limits and regulates the use of gifts, supplying of equipment, and extension of credit. Debate on the need for the program has continued since the passage of the act.

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