

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
United States Department of Justice
Antitrust Division
450 Fifth Street NW, Suite 4100
Washington, DC 20530,

Plaintiff,

v.

B.S.A. S.A.,
33 Avenue du Maine
Paris, France 75015,

LAG HOLDING, INC.,
2376 South Park Avenue
Buffalo, NY 14220,

and

THE KRAFT HEINZ COMPANY,
One PPG Plaza
Pittsburgh, PA 15222,

Defendants.

Civil Action No.:

COMPLAINT

The United States of America brings this civil antitrust action to enjoin B.S.A. S.A. and its subsidiary, LAG Holding, Inc. (together “Lactalis”), from acquiring the natural cheese business of The Kraft Heinz Company (“Kraft Heinz”) in the United States. This combination would bring together the two largest suppliers of feta cheese in the United States and the two largest suppliers of ricotta cheese in the metropolitan and surrounding area of New York, New York, and in four metropolitan and surrounding areas in Florida. As a result, the proposed

combination of Lactalis and Kraft Heinz would likely lead to higher prices, lower quality, and reduced choice for retail consumers of these cheeses, at a time when many Americans are struggling to meet rising food prices. The transaction should be enjoined to prevent American consumers from suffering these likely anticompetitive harms. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Grocery and supermarket purchases account for a significant portion of the household budget for American families, and Americans' food bills are rising. According to the USDA's Economic Research Service, grocery prices have increased in 2021, and are expected to further increase in 2022, putting more pressure on American consumers who are struggling to make ends meet. Competition plays an important role in keeping down the prices for grocery items, such as cheese, that Americans purchase and use every day.

2. B.S.A. S.A. is one of the world's largest dairy companies, manufacturing and selling cheese in the United States through its subsidiaries, LAG Holding, Inc. and Lactalis American Group, Inc. In the United States, Lactalis sells natural cheeses primarily under the Galbani and Président brand names. Kraft Heinz is one of the largest food products and beverage companies in the world. Kraft Heinz is also the largest supplier of natural cheeses to grocery stores and other retail outlets in the United States, selling natural cheeses primarily under the Kraft, Cracker Barrel, Athenos, and Polly-O brand names.

3. On September 15, 2020, B.S.A. S.A. agreed to pay approximately \$3.2 billion to acquire Kraft Heinz's (1) natural cheese business in the United States, which includes feta, ricotta, and many other types of cheeses, but excludes processed cheese and cream cheese, (2)

grated cheese business in Canada, and (3) entire cheese business outside North America (the “proposed transaction”).

4. The proposed transaction would combine the two largest suppliers of feta cheese sold to retailers in the United States, and the two largest suppliers of ricotta cheese sold to retailers in five metropolitan and surrounding areas located in New York and Florida. If allowed to proceed, the merged firm’s brands would control approximately 65% of all retail feta sales (brands and private label) nationwide, with its next closest branded competitor controlling approximately 6% of retail feta sales. For ricotta, the merged firm’s brands would control approximately 70% of all retail sales (brands and private label) in the metropolitan and surrounding area of New York, New York, with its next closest branded competitor controlling approximately 7% of retail ricotta sales in that market. And in each of the four metropolitan and surrounding areas in Florida identified below, the merged firm’s brands would control over 65% of all retail ricotta sales (brands and private label), with its next closest branded competitor in each of the markets controlling no more than 2% of retail ricotta sales.

5. Defendants are particularly close competitors for the sale of feta (through Lactalis’s Président brand and Kraft Heinz’s Athenos brand) and ricotta (through Lactalis’s Galbani brand and Kraft Heinz’s Polly-O brand) to retailers. These strong brands allow Lactalis and Kraft Heinz to compete aggressively with each other in the sale of feta and ricotta cheese in the relevant markets, which has resulted in lower prices and innovative products, such as Lactalis’s double cream ricotta cheese and Kraft Heinz’s flip top container for Athenos crumbled feta cheese, that benefit consumers.

6. The proposed transaction would eliminate this competition, likely leading to higher prices, reduced innovation, and fewer choices for these products for retailers in the

relevant markets. For these reasons, the proposed transaction is likely to substantially lessen competition in the sale of feta and ricotta cheeses in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Court should, therefore, enjoin the proposed transaction.

II. JURISDICTION AND VENUE

7. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

8. Defendants sell cheeses, including feta and ricotta, in the flow of interstate commerce, and their sale of these products substantially affects interstate commerce, including in this judicial district. This Court therefore has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Defendants have each consented to personal jurisdiction and venue in this judicial district for purposes of this action. Venue is therefore proper in this district under 28 U.S.C. §§ 1391(b) and (c).

III. THE DEFENDANTS

10. B.S.A. S.A. is a French company operating under the name Lactalis Group. B.S.A. S.A. is a corporation organized and existing under the laws of France, with its headquarters in Laval, France. It is one of the largest dairy companies in the world.

11. LAG Holding, Inc. is a subsidiary of B.S.A. S.A. It is a Delaware corporation with its headquarters in Buffalo, New York. LAG Holding, Inc. and its subsidiary, Lactalis

American Group, Inc., generated natural cheese sales of approximately \$429 million at retail outlets in the United States in 2020.

12. Kraft Heinz is a Delaware corporation co-headquartered in Pittsburgh, Pennsylvania, and Chicago, Illinois. Kraft Heinz is one of the largest food products and beverage companies in the world. Retail sales of its natural cheeses in the United States amounted to over \$2.2 billion in 2020.

IV. RELEVANT MARKETS

13. A typical starting point for merger analysis is defining a relevant market, which has both a product and a geographic dimension. Courts define relevant markets to help determine the areas of competition most likely to be affected by a merger. As described below, both feta cheese sold to retailers across the United States and ricotta cheese sold to retailers in the metropolitan and surrounding area of New York, New York (the “New York Metro Market”) and in four metropolitan and surrounding areas in Florida—Miami/Ft. Lauderdale, Tampa/St. Petersburg, Orlando, and Jacksonville (collectively, the “Florida Metro Markets”)—are relevant markets.

A. Relevant Product Markets

14. Cheeses are sold to retailers as branded cheeses or private label cheeses. A branded cheese bears a brand name controlled by the cheese supplier (*e.g.*, Kraft Heinz’s Athenos and Polly-O brands and Lactalis’s Président and Galbani brands). A branded cheese is usually carried by multiple retailers. A private label cheese is usually sold under a name owned by the retailer (*e.g.*, Wal-Mart’s Great Value private label), and is typically offered only in that retailer’s stores.

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