

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

UNITED WISCONSIN GRAIN, PRODUCERS LLC, et al.,)	
)	
Plaintiffs,)	
v.)	Case No. 20-CV-2314
)	
ARCHER DANIELS MIDLAND COMPANY,)	
)	
Defendant.)	

ORDER

Plaintiffs United Wisconsin Grain Producers LLC, Didion Ethanol, LLC, Ace Ethanol, LLC, Fox River Valley Ethanol, LLC, Badger State Ethanol, LLC, and PLCP, LLLP, filed a Complaint (#1) against Defendant Archer Daniels Midland Company (“ADM”), alleging that ADM violated Section 2 of the Sherman Antitrust Act. See 15 U.S.C. § 2. Plaintiffs also raised a number of claims arising under the laws of Illinois, Wisconsin, and Iowa. ADM filed a Motion to Dismiss (#12), which this court granted (#32) on September 28, 2021.

On October 19, 2021, Plaintiffs filed an Amended Complaint (#36). Presently before the court is ADM’s Motion to Dismiss (#42) the Amended Complaint for failure to state a claim, filed on December 9, 2021. Plaintiffs filed a Response (#45) on January 20, 2021; ADM filed a Reply (#49) that was docketed on June 2, 2022; and Plaintiffs filed a Sur-Reply (#52) that was docketed on June 28, 2022. For the reasons set forth below,

ADM's Motion to Dismiss (#42) is granted with respect to Counts I through IV of the Amended Complaint. The court relinquishes jurisdiction over, and thus dismisses without prejudice, Counts V through VII of the Amended Complaint.

BACKGROUND

The following background facts are taken from the allegations in Plaintiffs' Amended Complaint. For purposes of ruling on the Motion to Dismiss, the court assumes to be true all well-pled factual allegations in the Complaint and any inferences that can reasonably be drawn therefrom. See *Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 966 (7th Cir. 2016).

The Amended Complaint

At the outset, the court notes that, with important exceptions discussed below, the allegations contained within the Amended Complaint – and the claims derived therefrom – are largely identical to those in the original Complaint. Thus, the court's detailed description of the original Complaint, set forth in its prior order of dismissal, remains relevant.

Plaintiffs allege in their Amended Complaint that ADM engaged in monopolization (Count I) and attempted monopolization (Count II) in violation of Section 2 of the Sherman Antitrust Act. See 15 U.S.C. § 2. Plaintiffs bring similar claims (Counts III and IV) under parallel provisions of the Illinois Antitrust Act. See 740 Ill. Comp. Stat. 10/3(3). Finally, Plaintiffs allege violations of the Illinois Consumer Fraud and Deceptive Practices Act (815 Ill. Comp. Stat. 505/1 et seq.) (Count V) and tortious interference with contract under Iowa (Count VI) and Wisconsin (Count VII) law. A

claim of violation of the Wisconsin Deceptive Trade Practices Act (Wis. Stat. § 100.18) was previously dismissed by this court and has not been reraised in the Amended Complaint.

Plaintiffs allege that ADM engaged in unlawful conduct intended to depress the price of ethanol. Specifically, Plaintiffs' allegations relate to ADM's conduct in the ethanol terminal in Argo, Illinois ("Argo Terminal"). Trading for ethanol at the Argo Terminal during the half-hour "Market-on-Close" ("MOC") period each trading day determines the Chicago Benchmark Price created by S&P Global Platts. The Chicago Benchmark Price, in turn, sets the value of Chicago Ethanol Derivatives traded on the Chicago Mercantile Exchange. Trades at the Argo Terminal are also used by the Oil Price Information Service ("OPIS") in its reports of daily Chicago OPIS Prices. Plaintiffs sell ethanol primarily pursuant to Producer Sales Contracts that specify prices in a formula based on the Chicago Benchmark Price, Chicago Ethanol Derivatives Prices, or Chicago OPIS Prices – all of which are determined to some extent by sales prices at the Argo Terminal during the MOC window.

Beginning on November 17, 2017, until an unknown date in at least mid-2019, ADM became a prolific seller during the Argo Terminal's MOC window, "flooding" Argo with ethanol that it intentionally sold at uneconomically low prices. ADM's conduct included uneconomically buying and shipping ethanol to Argo when the prices at the Argo Terminal were already lower than those at other terminals; selling ethanol at the Argo Terminal for less than ADM's variable cost to produce or obtain the ethanol; selling during the MOC window even when ADM did not have enough physical

ethanol to deliver to satisfy the sales contracts; and aggressively reducing its prices during the MOC window to capture 90 to 100 percent of sales in that period. The Amended Complaint further alleges that ADM controlled seventy percent of the overall Argo Terminal Market.

Plaintiffs allege that ADM funded its operation through outsized short positions in ethanol. A short position is a trading position where a derivative investment earns money for a trader if the price of the underlying commodity decreases. By reducing prices at the Argo Terminal during the MOC window, thereby decreasing the Chicago Ethanol Derivative Prices, ADM created substantial gains on its short positions in Chicago Ethanol Derivatives, sufficient to compensate ADM for its sales losses incurred at Argo, with profit to spare. Plaintiffs incurred losses when they sold ethanol pursuant to Producer Sales Contracts in which prices were based on a formula incorporating the depressed MOC window ethanol prices from the Argo Terminal.

Plaintiffs also provide numerous allegations regarding ethanol and the United States ethanol market generally. The total ethanol production capacity in the U.S. is nearly 16.3 billion gallons. ADM produces approximately 10% of the ethanol in the U.S. Of the 200 ethanol plants in the U.S., 176 are located in the Midwest, and “[s]hipping ethanol out of the Midwest for sale in other regions is therefore a routine part of the ethanol production business.” There are more than 1,200 ethanol terminals in the country, with the Argo Terminal being one of the largest.

Prior Order of Dismissal

In its first Motion to Dismiss, ADM argued, inter alia, that the original Complaint was insufficient because Plaintiffs had failed to allege that ADM's conduct had caused competing ethanol producers to leave the market.

This court observed in its Order that because the alleged antitrust injury was based upon *low* prices, Plaintiff was required to allege that ADM engaged in predatory pricing, and that one element of a predatory pricing scheme is the actual or imminent exit from the market by producers who can no longer make a profit.

The court, quoting *R.J. Reynolds Tobacco Co. v. Cigarettes Cheaper!*, 462 F.3d 690, 696 (7th Cir. 2006), found that Plaintiffs had failed to make the required allegations, observing that "the Complaint still does not plausibly allege that Plaintiffs have 'been knocked out of the market or [are] in imminent danger of leaving,' or that other ADM competitors 'tried and failed to enter the marketplace' or already 'exit[ed] the market.' The court concluded that Plaintiffs' failure to make "concrete allegations of producers driven from the market due to ADM's scheme" rendered them unable to properly allege an antitrust injury, and was therefore fatal to their antitrust claims.

While that finding was sufficient to dismiss Plaintiffs' antitrust claims, the court went on to address the other grounds on which ADM claimed the original Complaint was insufficient.

As relevant to the instant Order, ADM asserted in its first Motion to Dismiss that Plaintiffs had failed to sufficiently allege that ADM had monopoly power, or that there existed a dangerous probability of ADM achieving such power, in a legally viable

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