

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SANDEE’S CATERING,)	
)	
<i>Plaintiff,</i>)	
)	No. 20 C 2295
v.)	
)	Judge Virginia M. Kendall
AGRI STATS, INC. et al.,)	
)	
<i>Defendants.</i>)	
)	
)	

MEMORANDUM OPINION AND ORDER

This is an antitrust case brought by an indirect purchaser of turkey products against several turkey wholesalers and a company that produces statistical reports about the agricultural industry.¹ The Complaint alleges that Defendants conspired, in violation of Section 1 of the Sherman Act, to exchange competitively sensitive information and that this exchange caused Plaintiff to pay more for turkey than it would have under normal market conditions. Plaintiff has also brought state law antitrust claims, state consumer protection claims, and claims for unjust enrichment. Defendants² now move to dismiss the Complaint for failure to state a claim. For the reasons set forth below, the Joint Motion [Dkt. 34] is denied as to the federal antitrust claims, the dismissal of the state antitrust claims is granted as to Utah only, the dismissal of the state consumer protection claims is granted as to Arkansas only,³ and all unjust enrichment claims are dismissed. Defendant Kraft has filed a separate Motion to Dismiss [Dkt. 36], which is granted for the reasons discussed below.

¹ This case is related to *Olean Wholesale Grocery Cooperative, Inc., et al. v. Agri Stats, Inc., et al.*, 19-cv-08318 (“*Olean*”) a case brought by direct purchaser plaintiffs which focuses on the same set of facts alleged here.

² All defendants except Kraft have joined the Joint Motion to Dismiss [Dkt. 34]. The Court refers to this motion as “Defendants’ Motion to Dismiss” or “Joint Defendants Motion to Dismiss” throughout.

³ Plaintiff has voluntarily withdrawn its Missouri and Rhode Island consumer protection claims and the Court dismisses those accordingly.

BACKGROUND

On a motion to dismiss under Rule 12(b)(6), the Court accepts the Complaint's well-pleaded factual allegations and draws all reasonable inferences in the non-moving party's favor, but not its legal conclusions. *See Smoke Shop, LLC v. United States*, 761 F.3d 779, 785 (7th Cir. 2014). The facts below come from Plaintiff's Complaint (Dkt. 1) and the Court accepts them as true for purposes of reviewing this Motion. *See Vinson v. Vermillion Cty., Ill.*, 776 F.3d 924, 925 (7th Cir. 2015).

Plaintiff Sandee's Catering brings this action on behalf of itself individually and on behalf of a plaintiff class comprising all commercial and institutional indirect purchasers of turkey that purchased turkey other than directly from a defendant or co-conspirator in the United States beginning at least as early as January 1, 2010 through January 1, 2017 (the Class Period). (Dkt. 1 ¶ 66). Plaintiff Sandee's Catering is a bakery and deli located in Jamestown, New York. (*Id.* ¶ 34). During the Class Period, Plaintiff purchased turkey in New York, indirectly from Defendants. (*Id.*). The turkey purchased by Plaintiff was impacted by the conduct of one or more of the Defendants, constituting an alleged antitrust violation, and plaintiff suffered monetary loss as a result of the antitrust violations alleged herein. (*Id.*). The turkey integrator defendants are the leading suppliers of turkey in an industry with approximately \$5 billion in annual commerce.⁴ (*Id.* ¶ 1). Defendant Agri Stats is a company that provides secretive information exchange services to companies in a variety of agricultural sectors, including pork, chicken, and turkey. (*Id.* ¶ 2). The turkey integrator defendants each entered into an agreement from at least 2010 to January 1, 2017,

⁴The Defendants include Butterball LLC (Butterball); Cargill Inc. and Cargill Meat Solutions Corporation, (together and separately, Cargill); Cooper Farms, Inc. (Cooper Farms); Farbest Foods, Inc., (Farbest); Foster Farms LLC and Foster Poultry Farms (together and separately, Foster Farms); Hormel Foods Corporation and Hormel Foods LLC (together and separately, Hormel); House of Raeford Farms, Inc., (House of Raeford); Kraft Heinz Foods Company and Kraft Foods Group Brands LLC (together and separately, Kraft Foods), Perdue Farms, Inc. and Perdue Foods LLC (together and separately, Perdue); Tyson Foods, Inc., The Hillshire Brands Company, Tyson Fresh Meats, Inc. and Tyson Prepared Foods, Inc. (together and separately, Tyson).

to exchange sensitive information through Agri Stats regarding their production and sales of turkey. (*Id.* ¶ 3). Turkey is the relevant product market and the geographic market is the continental United States. (*Id.* ¶ 4). Defendants and co-conspirators collectively controlled approximately 80 percent of the overall market share for turkeys during the Class Period. (*Id.* ¶ 6). Each one of the defendants and co-conspirators entered into an agreement to exchange information through Agri Stats, as shown in a 2010 excerpt from an Agri Stats presentation. (*Id.* ¶ 8).

The alleged information exchanged by Agri Stats is current and forward-looking, it is specific to the turkey producers, including information on profits, prices, costs and production levels, and none of the information was publicly available. (*Id.* ¶ 10). Industry participants relied on Agri Stats reports in their analysis of their business operations, as attested to by confidential witnesses. (*Id.* ¶¶ 12–15, 19). Agri Stats reports also contained detailed information on industry-wide supply levels; a job description of an Agri Stats employee stated that they analyzed Turkey “breeder flock and hatchery data” as well as Turkey “growout flocks.” (*Id.* ¶ 16–17). Stats reports are nominally anonymous, but defendant integrators were often able to deanonymize the reports to identify the data of specific companies based on their industry knowledge. (*Id.* ¶ 18). In addition to their participation in Agri Stats, defendant integrators had frequent opportunities to communicate, in conjunction with formal meetings of various trade associations, namely the National Turkey Federation (“NTF”) which held regular yearly meetings, including the NTF Annual Convention and the NTF Leadership conference, which were widely attended by the defendant integrators. (*Id.* ¶¶ 22, 123–26). Defendants also participated in the United States Poultry & Egg Export Council (USAPEEC) and the North American Meat Institute (NAMI), which provide further opportunities to collude. (*Id.* ¶¶ 127–29).

Throughout the conspiracy period, defendant integrators were able to exercise a high level of industry-wide restraint in keeping the growth of turkey supply in check. (*Id.* ¶ 20). This restraint caused turkey prices to rise, therein having the anticompetitive effect of allowing defendants to engage in collusion to restrain the supply of turkey by facilitating information exchange about supply levels throughout the industry. (*Id.*). The turkey market during the conspiracy period, production, measured through USDA data, remained artificially restrained even as demand, captured by higher per capita expenditures on turkey, rose significantly. (*Id.* ¶ 21). These observed price and output dynamics indicate that it was not falling demand that caused a decline in supply during the conspiracy period. (*Id.*).

The turkey market has all of the characteristics of a market where information exchange is likely to have anticompetitive effects: turkey is a fungible product, the market for turkey has price-based competition, the demand for turkey is relatively inelastic, and the turkey market features a trend towards price uniformity. (*Id.* ¶ 28, ¶¶ 98–106). The information exchange through Agri Stats had anticompetitive effects on the market. (*Id.* ¶ 31). Prior to the conspiracy, turkey prices closely tracked the underlying cost of feed, which is the primary input cost in the production of turkey. (*Id.*). Beginning in 2009 through 2010, prices of turkey spiked to an unprecedented level, showing the anticompetitive effects of Defendants' information exchange through Agri Stats. (*Id.* ¶¶ 31, 108–16). Prices of turkey quickly returned to match underlying feed costs after litigation was filed in late 2016 in the broiler industry that centered on the anticompetitive use of Agri Stats. (*Id.*).

There are high barriers to entry in the market for turkey for meat consumption. (*Id.* ¶ 92). A new entrant into the market would face costly and lengthy start-up costs, including multi-million dollar costs associated with research and development, equipment, energy, transportation,

distribution, infrastructure (aka “rolling stock”), skilled labor, experienced management, a skilled contract-farmer base in a specific geographic area, longstanding customer relationships, safety and quality assurance, and regulatory approvals relating to environmental, worker safety, and food safety issues. (*Id.*). The price of construction of a new integrated turkey processing complex is relatively high. (*Id.*). The turkey market also has high levels of vertical integration that constitute a barrier to entry. The NTF states that “turkey companies are vertically integrated, meaning they control or contract for all phases of production.” (*Id.* ¶ 95).

Plaintiffs bring their suit as a class action seeking equitable and injunctive relief. The class (“the Nationwide Class”) is defined as:

All commercial and institutional purchasers in the United States and its territories that purchased turkey, once or more, other than directly from Defendants, entities owned or controlled by Defendants, or other producers of turkey, from January 1, 2010 to January 1, 2017. Excluded from the Nationwide Class are the Court and its personnel, and any Defendants and their parent or subsidiary companies.

(*Id.* ¶ 130). Plaintiff also seeks damages pursuant to the common law of unjust enrichment and the state antitrust, unfair competition, and consumer protection laws of the states and territories listed below (the “Indirect Purchaser States”) on behalf of the following class (the “Damages Class”):

All commercial and institutional purchasers in the Indirect Purchaser States that purchased turkey, once or more, other than directly from Defendants, entities owned or controlled by Defendants, or other producers of turkey from January 1, 2010 to January 1, 2017. Excluded from the Damages Class are the Court and its personnel, and any Defendants and their parent or subsidiary companies.

(*Id.* ¶ 131). Common questions of law and fact exist as to all members of the Classes which predominate over individual issues and Plaintiff’s claims are typical of the class members. (*Id.* ¶¶ 135–36, 138). Plaintiff will fairly and adequately protect the interests of the Class. (*Id.* ¶ 137).

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