

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

UNITED STATES OF AMERICA,

COMMONWEALTH OF
MASSACHUSETTS,

and

STATE OF WISCONSIN,

Plaintiffs,

v.

DAIRY FARMERS OF AMERICA, INC.

and

DEAN FOODS COMPANY,

Defendants.

COMPLAINT

The United States of America, the Commonwealth of Massachusetts, and the State of Wisconsin (“Plaintiff States”), bring this civil antitrust action to prevent Dairy Farmers of America, Inc. (“DFA”) from acquiring certain fluid milk processing plants from Dean Foods Company (“Dean”).

I. Introduction

DFA’s acquisition of most of Dean’s fluid milk processing plants would further consolidate two highly concentrated fluid milk markets: (1) northeastern Illinois and Wisconsin and (2) New England. The acquisition would make DFA the largest player in each market, with nearly 70% market share in northeastern Illinois and Wisconsin and over 50% in New England.

DFA is the largest dairy cooperative in the United States, with nearly 14,000 farmer-members located in dozens of states. DFA also owns numerous fluid milk processing plants, including plants in Cedarburg, Wisconsin; New Britain, Connecticut; and Portland, Maine. Dean, the largest fluid milk processor in the nation, owns competing plants in Harvard, Illinois; De Pere, Wisconsin; and Franklin, Massachusetts.

DFA and Dean compete head-to-head to sell fluid milk to customers in the geographic areas served by these plants, including supermarkets, schools, convenience stores, and hospitals, among others. In these areas, DFA and Dean are two of only three significant competitive options for these customers. Competition between DFA and Dean has benefitted these customers by lowering fluid milk prices and improving service. The acquisition would eliminate competition between DFA and Dean in these geographic areas, threatening to increase prices for supermarkets, schools, and other fluid milk customers—price increases that would ultimately be passed on to millions of individual consumers.

For these reasons and those set forth below, DFA's proposed acquisition of assets from Dean threatens to lessen competition substantially in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. Background

A. Fluid Milk Processing

1. Approximately 10 million dairy cows produce over 200 billion pounds of raw milk in the United States each year. Dairy farmers sell the raw milk that their cows produce to processing plants that convert the raw milk into fluid milk, ice cream, cheese, and other dairy products. Fluid milk is raw milk that has been processed for human consumption. It is the ordinary fresh milk that can be found in supermarket and convenience store refrigerators.

2. Fluid milk processing plants purchase raw milk from dairy farmers, pasteurize and package the milk, and sell and distribute the processed product. Processors sell fluid milk to supermarkets, schools, convenience stores, hospitals, and others—sometimes through distributors and sometimes directly. The demand for fluid milk in the United States has declined, causing the closure of fluid milk processing plants around the country and, among other factors, leading to the pending bankruptcy of Dean and other fluid milk processors. Despite this reduction in demand, a significant group of consumers remains loyal to traditional fluid milk, and their demand for fluid milk continues to be largely unaffected by changes in price.

3. Fluid milk customers pay different prices based on a variety of factors, including the number of competitive alternatives available to the customer. Large customers and school districts typically request bids from fluid milk processors. The prices quoted by processors in these bids depend on the number and strength of competing processors, the processor's product, transportation and service costs, the processor's capacity utilization, and the ability of the processor to deliver directly to the customers' locations, among other factors. Distance between processors and purchasers also affects fluid milk pricing because fluid milk has a limited shelf life and is costly to transport. As a result, most customers purchase fluid milk from nearby processing plants.

B. The Defendants and the Merger

4. Dairy Farmers of America is the largest cooperative of dairy farmers in the country, with nearly 14,000 members. In 2018, DFA marketed 64.5 billion pounds of raw milk—approximately 30% of all raw milk produced in the United States. DFA had 2018 revenues of \$13.6 billion.

5. DFA is also vertically integrated through its ownership interests in milk processing plants. DFA owns a number of dairy processing plants around the country, including

eight fluid milk processing plants and a significant stake in a joint venture that owns twelve additional fluid milk plants. In the northeastern Illinois and Wisconsin area, DFA owns a fluid milk plant in Cedarburg, Wisconsin. In the New England area, DFA owns fluid milk plants in New Britain, Connecticut and Portland, Maine. These plants compete directly against certain processing plants that DFA proposes to acquire from Dean.

6. Dean Foods is the largest fluid milk processor in the country. It currently operates 57 fluid milk processing plants in 29 states. Dean's fluid milk processing network includes plants in the northeastern Illinois and Wisconsin area in Harvard, Illinois and De Pere, Wisconsin, and in the New England area in Franklin, Massachusetts. Dean had 2018 revenues of \$7.75 billion.

7. Dean filed for Chapter 11 bankruptcy protection on November 12, 2019. Simultaneous with the bankruptcy filing, Dean announced that it was in discussions to sell some or all of its fluid milk plants to DFA. Dean's financial position continued to worsen in the months after its bankruptcy filing and was exacerbated by the coronavirus pandemic, which caused demand for milk by schools and restaurants to plummet. The growing financial crisis caused the bankruptcy process to be accelerated in order to find buyers for Dean's assets before the company ran out of money to continue operating. By order of the bankruptcy court, Dean accepted bids for its assets and selected winning bidders on March 30, 2020. Dean selected DFA as the winning bidder for the majority of Dean's assets.

8. On April 6, 2020, DFA and Dean entered into an asset purchase agreement whereby DFA agreed to purchase 44 of Dean's 57 fluid milk plants, along with various other assets, for a total value of \$433 million. The purchase price consists of \$325 million in cash and \$108 million in forgiveness of debt owed by Dean to DFA.

III. Jurisdiction and Venue

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

10. The Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The Plaintiff States, by and through their respective Attorneys General, bring this action as *parens patriae* on behalf of and to protect the health and welfare of their citizens and the general economy of each of their states.

11. DFA and Dean process, market, sell, and distribute fluid milk in the flow of interstate commerce, and their sale of fluid milk substantially affects interstate commerce. 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.

12. DFA and Dean both transact business in this district, including by selling fluid milk to customers in this district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22 and under 28 U.S.C. § 1391(c).

IV. The Merger Would Substantially Lessen Competition in the Sale of Fluid Milk.

13. DFA's acquisition of Dean's plants in northeastern Illinois, Wisconsin, and New England is likely to lessen competition substantially for fluid milk customers. DFA and Dean are two of only three significant fluid milk processors that can serve customers in these areas. If the acquisition were permitted to proceed, DFA would control nearly 70% of the fluid milk market in northeastern Illinois and Wisconsin, and approximately 51% in New England. DFA and Dean compete head-to-head to supply fluid milk customers in these areas today, and those customers

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