

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Food Lion, LLC, and Maryland and
Virginia Milk Producers Cooperative
Association, Inc.,

Plaintiffs,

Case No. 1:20-cv-442

v.

Dairy Farmers of America, Inc.,

Defendant.

COMPLAINT

This action arises out of Defendant Dairy Farmers of America, Inc.’s (“DFA”) longstanding effort to seize control of the milk supply chain. Indeed, for the past two decades, DFA has rapidly consolidated and dominated the market for the supply of raw milk not by competing on the merits, but through unlawful conduct and anti-competitive agreements through which it has gained near-complete control over the purchasing of key nationwide milk processors. This anti-competitive campaign has allowed DFA to transform itself from a modest regional dairy cooperative into the Standard Oil of the modern dairy industry.

DFA accomplished this transformation through a mutually advantageous partnership with Dean Foods Company (“Dean”), formerly the nation’s largest processor of raw milk. Their partnership was forged through a corrupt bargain entered into at the

time of a prior merger between Dean and another dairy processing giant, in order to avoid U.S. Department of Justice (“DOJ”) scrutiny through subterfuge and deception. The illicit side agreement allowed DFA to secure full-supply rights for its higher-priced raw milk to the newly merged Dean processing plants through a twenty-year exclusive-dealing arrangement, in exchange for an agreement not to compete with Dean at the processing level.

Together, these two dairy conglomerates have suppressed competition, raised market concentration, and bolstered each other’s market power ever since, to the detriment of independent dairy farmers at one end of the milk supply chain and customers at the other. Their efforts were mutually reinforcing: the more dominant DFA became in producing and supplying raw milk, the more control DFA and Dean could exercise in contracts for processing milk, the more dominant DFA became in producing and supplying raw milk, and so on, simultaneously eliminating competition in both the milk production and milk processing markets in which each dominated. As a result, both entities were subject to an avalanche of lawsuits targeting their anti-competitive practices, resulting in a series of settlements totaling hundreds of millions of dollars. Nonetheless, DFA’s conduct persisted, and even grew worse, as its grip on the market strengthened.

This anti-competitive cycle of harm was set to slow or end in the near future, or so the dairy industry thought. On or about April 2021, the twenty-year exclusive raw milk supply agreement between DFA and Dean that was a key part of the original corrupt bargain—structured as a series of one-year evergreen provisions to avoid a prior DOJ

consent decree against DFA’s predecessor—was scheduled to end on its terms. If that happened, DFA’s competitors would finally be able to compete with DFA on the merits to supply raw milk to Dean processing plants across the country.

In November 2019, however, Dean announced that it would be filing for Chapter 11 bankruptcy, thus accelerating the time when DFA’s iron-fisted grasp over Dean plants would be released. DFA could not let that happen. Instead, to avoid the prospect of competition and protect its market power, DFA engineered a “solution” to permanently solidify and complete its control over Dean’s purchasing decisions by strategically maneuvering to buy forty-four Dean processing plants out of the bankruptcy estate (the “Asset Sale”) at an opportune time. On May 1, 2020, DFA and Dean closed on the Asset Sale, transforming DFA overnight into both the largest milk producer **and** the largest milk processor in the United States.

DFA’s ownership of the majority of the legacy Dean milk processing plants represents the *coup de grâce* for competition in the relevant fluid milk markets. With capability to wield market power at two levels of the supply chain, DFA now has both the ability and the incentive to wipe out any remaining pockets of competition. This, in turn, will lead inevitably to a durable DFA monopoly over the dairy supply chain, the death of the independent, family-owned dairy farm, and higher prices for consumers who depend on milk for their daily sustenance, especially during the current pandemic. Indeed, as it flexes its newfound muscles as an aspiring monopolist, the fully integrated DFA will compel cooperatives and independent dairy farmers to either join DFA or cease to exist;

create an even more difficult environment for new entrants to compete for the supply of raw milk; and in turn further entrench DFA’s control over (and ability to manipulate) both the raw and processed milk supply chains. This harm will be particularly acute in the areas surrounding milk processing plants in North and South Carolina, where plaintiff Maryland and Virginia Milk Producers Cooperative Association, Inc. (“MDVA”) is DFA’s only significant remaining competitor for the supply of raw milk and plaintiff Food Lion, LLC (“Food Lion”) is one of the largest retailers selling milk to consumers.

The Asset Sale marks the culmination of DFA’s longstanding, anti-competitive campaign to dominate the fluid milk markets and positions DFA to monopolize the dairy supply chain going forward. Accordingly, to address DFA’s past misconduct and prevent irreversible harm to competition, Food Lion and MDVA bring this action under Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2. While Food Lion and MDVA believe that the Asset Sale will substantially lessen competition across the country, this action is narrowly focused on the area in which dairy farmers supply raw milk to, and customers purchase processed milk from, milk processing plants located in North and South Carolina. Plaintiffs request that the Court grant a preliminary injunction that preserve the status quo, protect the relevant assets, and ensure the viability of a divestiture remedy until the conclusion of this matter. Plaintiffs further seek permanent injunctive relief requiring DFA to divest at least one of the legacy Dean facilities in the Carolinas to a viable, qualified, and independent purchaser unaffiliated with DFA, as is necessary to promote competition in the milk supply chain

going forward. Without such remedies, competition in the raw and processed milk markets in the region will be lost forever.

THE PARTIES

1. Plaintiff Food Lion is a North Carolina limited liability company headquartered in Salisbury, North Carolina. It operates more than 1,000 supermarkets, either directly or through affiliates, in ten states, including approximately 600 supermarkets in North and South Carolina and dozens more that purchase fluid milk from milk processing facilities in the Carolinas. Food Lion purchases processed fluid milk in interstate commerce and is one of the largest retail purchasers of processed fluid milk from processing facilities in North and South Carolina.

2. Plaintiff MDVA is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Reston, Virginia. MDVA is a dairy cooperative with approximately 950 member farms in eleven states throughout the Mid-Atlantic and Southeast. MDVA also owns two fluid milk processing facilities outside of the Carolinas and two plants that produce bulk dairy ingredients for food manufacturers.

3. Defendant DFA is a dairy cooperative organized and existing under the laws of the State of Kansas, with its principal place of business in Kansas City, Missouri. DFA is the largest dairy cooperative in the United States, representing over 14,000 dairy producers in forty-eight states and recognizing \$13.6 billion in revenue in 2018. In the wake of the Asset Sale, DFA is also the nation's largest processor and direct-to-store

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