

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

U.S. DISTRICT COURT
EASTERN DISTRICT-WI
FILED

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JON W. SANFILIPPO
CLERK

UNITED STATES OF AMERICA,

STATE OF WISCONSIN,

STATE OF ILLINOIS,

and

STATE OF MICHIGAN

Plaintiffs,

v.

DEAN FOODS COMPANY

Defendant.

10-C-0059

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the States of Wisconsin, Illinois, and Michigan, by and through their respective Attorneys General ("Plaintiff States"), bring this civil action for equitable relief against Defendant Dean Foods Company ("Dean") for violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The United States and the Plaintiff States allege as follows:

I. INTRODUCTION

1. This lawsuit challenges Dean's acquisition of the Consumer Products Division of Foremost Farms USA, consummated April 1, 2009 (the "Acquisition"). Foremost Farms USA ("Foremost") is a dairy cooperative owned by approximately 2,300 dairy farms located in seven

states, including Wisconsin. Through the Acquisition, Dean acquired two dairy processing plants owned by Foremost, located in Waukesha and DePere, Wisconsin. Dean's acquisition of these plants violates Section 7 of the Clayton Act because "the effect of such acquisition may be substantially to lessen competition." 15 U.S.C. § 18.

2. The Acquisition adversely affects two types of markets. The first are the markets for the sale of school milk to individual school districts located throughout the State of Wisconsin and the Upper Peninsula of Michigan (the "UP"). The second is the market for the sale of fluid milk to purchasers located in Wisconsin, the UP, and northeastern Illinois.¹

3. The Acquisition eliminates one of Dean's most aggressive competitors—a competitor that engaged in pricing that Dean considered "dangerous" and "irrational." In recent years, Dean and Foremost have been the first and fourth largest sellers of school milk and fluid milk in Wisconsin, the UP, and northeastern Illinois. With the Acquisition, Dean will account for more than 57 percent of fluid milk sales in the region. In the most recent school year, Dean and the two plants it acquired sold more than 50 percent of the school milk purchased in Wisconsin and the UP.

4. Numerous school districts have benefitted from vigorous competition between Dean and Foremost. Dean and Foremost have frequently been the two lowest bidders for school milk contracts at numerous school districts in Wisconsin and the UP and, in some school districts, have been the only two bidders for those contracts.

¹ "Northeastern Illinois" is defined as the following counties in the State of Illinois: Cook County, DeKalb County, DuPage County, Grundy County, Kane County, Kendall County, Lake County, McHenry County, and Will County.

5. Grocery stores, convenience stores, and other purchasers have also benefitted from vigorous competition between Dean and Foremost for fluid milk contracts. Dean and Foremost have been the only two bidders for some contracts and two of only three bidders for other contracts. The aggressive competition between them has lowered purchasers' costs. For example, in 2006, a retailer with hundreds of stores in northeastern Illinois held an auction for its fluid milk business in which the competition between Dean and Foremost saved the retailer approximately \$1.5 million.

6. The Acquisition's elimination of head-to-head competition between Dean and Foremost will hurt school milk and fluid milk purchasers. The loss of this head-to-head competition leads directly to what are referred to as anticompetitive "unilateral effects."

7. In the fluid milk market, the Acquisition is also likely to produce coordination among the remaining competitors. This coordination gives rise to what are referred to as anticompetitive "coordinated effects." The fluid milk business in this region is already conducive to coordination among competitors. Notably, when deciding whether and how much to bid for an account, Dean and other dairy processors often consider the reactions of their competitors. Eliminating Foremost, which Dean describes as an "irrational" pricing competitor, will leave only a few remaining competitors, whose competitive decision-making Dean has described as "more predictable" and "rational." Consequently, the Acquisition will make coordination easier and more durable.

8. As further described below, the Acquisition is likely to substantially lessen competition in the school milk and fluid milk markets at issue here in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Entry is unlikely to restore competition in a timely or sufficient manner. To

date, Dean has not integrated Foremost's plants into its operations in light of the pendency of the United States' investigation. The United States and Plaintiff States ask this Court to declare this Acquisition unlawful and require Dean to divest the acquired assets to restore competition in the markets at issue.

II. JURISDICTION & VENUE

9. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. §§ 4 and 25. The Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26. Plaintiff State of Wisconsin brings this action under its authority in Wis. Stat. § 165.065.

10. Dean and the assets it obtained through the Acquisition produce dairy products for sale in interstate commerce. Accordingly, Dean and the Acquisition assets are engaged in activities affecting interstate commerce under Section 7 of the Clayton Act. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

11. Dean is present in the State of Wisconsin, and it transacts substantial business and commerce in the State. Accordingly, Dean is subject to personal jurisdiction. Venue is also proper in this District pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b)(1), (b)(2) & (c). The acquired dairy processing plant in Waukesha is located within the territory of the Milwaukee Division of this Court.

III. BACKGROUND

A. The Milk Business in Wisconsin, the UP, and Northeastern Illinois

12. Dairy processors purchase raw milk from dairy farms and agricultural cooperatives, pasteurize and package the milk, and distribute and sell the processed product. Fluid milk is raw milk that has been processed for human consumption. It does not include extended shelf life milk, ultra high temperature milk or aseptic milk, which are produced by different processes, generally cost significantly more than fluid milk, and have numerous significant physical differences that, compared with fluid milk, affect shelf stability and taste.

1. Fluid Milk

13. Dairy processors supply fluid milk directly to retailers, distributors, broad-line food service companies, and institutions such as hospitals and nursing homes. The vast majority of fluid milk is sold directly by processors to retailers. The balance of sales is made to distributors, food service companies, and institutions. Distributors and food service companies resell the milk that they purchase from processors to small retailers, restaurants, and institutions. Retailers in Wisconsin, the UP, and northeastern Illinois do not resell fluid milk to other retailers or institutions in any substantial quantity. Retail demand for fluid milk is based directly on consumer demand.

14. Milk processors charge different prices to different purchasers for the same product based on a variety of factors, including the number of competitive alternatives available to the purchaser. Large retailers typically request bids from milk processors. Distributors, institutions, and small retailers generally purchase their milk from price lists that dairy processors issue. However, these customers sometimes obtain rebates, discounts, or other forms of price relief, so

that two customers covered by the same price list may pay different prices. Bid prices are based on the processor's product, transportation, and service costs, the processor's capacity utilization, and the number and strength of processors likely to offer competing bids, among other factors.

15. Distance between processors and purchasers is an important consideration in fluid milk pricing because fluid milk has a limited shelf life and is costly to transport. These costs result in most customers purchasing fluid milk from nearby processing plants. For example, more than 90 percent of the milk sold to customers in Wisconsin and the UP traveled less than 150 miles from the plant in which it was processed.

2. School Milk

16. School milk is fluid milk packaged and distributed for sale to school districts, typically in half-pint containers. Dean, Foremost, and other school milk suppliers often use distributors to supply and service school districts. Dairy processors generally use one distributor per service area. While school milk contracts occasionally include other products, school milk accounts for the vast majority of the dollar value of these contracts.

17. School milk delivery is not just a matter of dropping product off at the curb. Different school districts specify their individualized service requirements in contracts with processors. For example, some school districts require multiple deliveries per week because they have limited refrigerated storage space; some require guaranteed emergency deliveries. Most school districts require the capability to deliver to all of the schools in the district. Many require early morning or other specific delivery times to avoid conflicts with the arrival of schoolchildren and buses. Other services can include milk reordering, cooler supply, cooler restocking, cooler

cleaning and maintenance, carton rotation, retrieval of spoiled and damaged product, and automatic allotment of credit for retrieved product.

18. The number of processors from which a school district can successfully solicit competitive bids is often very small. Given the limited volume of milk delivered to each school, the extensive and highly individualized service requirements, and the seasonal nature of school milk demand, among other considerations, it is almost always uneconomic for a dairy processor to supply a new contract unless the processor already has significant fluid milk distribution in or near the school district's area. Dairy processors that do not already distribute fluid milk locally can rarely bid competitively. This is particularly relevant in sparsely populated areas such as northern Wisconsin and the UP.

19. Individual school districts solicit bids for school milk, although groups of school districts will occasionally solicit bids collectively. However, even school districts involved in collective solicitations typically award their contracts separately. Consequently, dairy processors tailor their bids to each school district or school district group that solicits collectively. Bid prices are based on the processor's product, transportation, and service costs, the processor's capacity utilization, and the number and competitiveness of processors likely to offer competing bids, among other factors.

B. The Acquisition

20. Dean is one of the largest food and beverage producers in this country, with revenues of \$12.5 billion in 2008. Dean's Dairy Group is the country's largest processor and distributor of milk and other dairy products. Dean is a corporation organized under Delaware state law, with its principal place of business in Dallas, Texas.

21. The Acquisition is the latest in a series of acquisitions by Dean of smaller dairy processors across the United States. Since 1996, Dean has made more than 100 acquisitions, which have added to Dean's market share and increased its size substantially.

22. Foremost is a dairy cooperative headquartered in Baraboo, Wisconsin, and formed under Wisconsin state law. Like other agricultural cooperatives, Foremost is a member-owned business association. Foremost is governed by a 21-member Board of dairy farmers. Prior to the Acquisition, Foremost processed its members' raw milk at its DePere and Waukesha plants, as well as at other facilities. The DePere and Waukesha plants were owned and operated by Foremost's Consumer Products Division. On or about April 1, 2009, Dean bought substantially all of the Consumer Products Division's assets for \$35 million. The Acquisition was not required to be reported beforehand to federal antitrust authorities under the federal antitrust notification statute.

C. Dean's Rationale for the Acquisition

23. While Dean's fortunes have been rising, the same has not been true for Foremost. In 2006 and 2007, Foremost lost some fluid milk customers that preferred a processor with a broader geographic reach. Consequently, Foremost's Waukesha and DePere plants were operating at less than two-thirds of their fluid milk capacity, giving Foremost the most excess capacity in Wisconsin, the UP, and northeastern Illinois.

24. Excess capacity creates an incentive to bid more aggressively for fluid and school milk contracts. Because of its substantial excess capacity, Foremost was pricing aggressively to secure new business. Unlike Foremost, Dean did not have substantial excess capacity and so did not have the same economic incentives as Foremost. As a result of Foremost's aggressive

pricing, Dean faced the choice of losing business or cutting its margins. Neither approach was attractive to Dean.

25. The problem that Foremost posed was not unique. Dean saw competitors such as Foremost and other local competitors with excess capacity as posing a serious problem for Dean's profitability. Dean's Chief Executive Officer, Gregg Engles, articulated the competitive issue facing Dean in a September 2008 speech to Dean's top executives:

"Every one of you has an irrational local competitor story. . . . Why do we have irrational local competitors? Because we have too much capacity in this industry. . . . these guys are losing share, . . . they have less volume in their plants, . . . so they default to the same game that gets played in industries that have little volume growth and too much capacity everywhere around the world. People play for share, and in this category, you play for share with price."

26. Dean's own internal documents confirm that Dean viewed Foremost as one of those "irrational" local competitors because of Foremost's excess capacity, among other reasons. In 2008, as part of an effort to develop a strategic growth plan for its fluid milk business, Dean's corporate headquarters asked the group vice presidents in each region to prioritize their key competitive issues. The Vice President for the North Central region (which includes Wisconsin) identified his key concern as "Midwest excess capacity lies with cooperatives with staying power." Cooperatives, such as Foremost, were competitive threats because their "earnings expectations [are] lower than Deans," because the "co-op goal is to move Member milk," and because "their plants are under utilized."

27. The problem this created for Dean was obvious. Competition with these cooperatives was predicted to "lower margins and condition clients [to] the benefits of shopping their business." Along with one other cooperative in the region, Foremost was identified as a

particularly “dangerous” competitor because “they need to add volume to maintain their lo[w] cost strategy.” In other words, according to Dean, Foremost was more willing to accept lower prices for processed fluid and school milk than Dean found acceptable.

28. In 2007, the general manager at Dean’s Verifine plant in Sheboygan, Wisconsin, reported to his boss that he was “seeing alot [sic] of off the wall pricing coming from [Foremost]” and that he was “worried about them coming at us again at [WalMart] not to mention the rest of the market.” In 2009, after receiving reports of very low Foremost prices in several grocery and convenience stores in the UP, the general manager of Dean’s Marquette, Michigan, plant complained to his boss that “[t]his is the most aggressive pricing the UP has seen since probably the 60’s. Our volume is off roughly 15 percent as the effects of this onslaught really kick in . . . I know you’re with me on this, so how can we cease / desist and regain some sanity?”

29. As part of Dean’s 2008 Strategic Growth Plan, Dean proposed future acquisitions, which included problematic local processors. Ed Fugger, Dean’s acquisitions chief, highlighted that fragmentation “[d]rives margin compression,” and that a significant part of the fluid milk market “remains highly fragmented.” In handwritten notes he wrote in preparation for his speech to Dean’s senior management, and later, Dean’s Board of Directors, Fugger wrote that the “benefit of acquisition in these m[ar]k[e]ts is *margin expansion*” (emphasis added). In other words, by eliminating this fragmentation Dean could increase its profits.

30. The Strategic Growth Plan included “Potential Acquisition Targets” for each of Dean’s regions. The targets for the North Central Region included Foremost, which Dean had identified as one of two “irrational competitors” that are “significantly short on volume.”

31. Dean eliminated the competitive threat posed by Foremost by acquiring its two milk processing plants. Any efficiencies Dean may realize from acquiring the two plants are not likely to reverse the anticompetitive impact of eliminating a competitor responsible for the “most aggressive pricing” Dean had seen in 40 years. There was an alternative to this outcome. At the time Foremost accepted Dean’s offer to acquire these plants, another potential buyer was pursuing Foremost’s plants.

IV. THE COMPETITIVE HARM IN SCHOOL MILK MARKETS

A. School Milk is a Relevant Market

32. School milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. School districts have no reasonable product alternatives to school milk.

33. The United States Department of Agriculture sponsors several programs to reimburse schools for meals served to students from lower-income families. To qualify, schools must offer milk to every student, regardless of family income. Schools will not substitute other products for school milk even at substantially higher milk prices because they would lose their federal meal reimbursement.

B. The Relevant Geographic Markets

34. Each school district in Wisconsin and the UP constitutes a relevant geographic market or section of the country within the meaning of Section 7 of the Clayton Act. As alleged in paragraph 19, individual school districts solicit school milk contract bids from processors. In response, processors engage in “price discrimination,” *i.e.*, charging different prices to different customers. Processors develop individualized bids based on both cost and non-cost factors (*see e.g.*, paragraph 14). School districts are unlikely to engage in arbitrage, *i.e.*, reselling among

customers, to offset the processors' ability to engage in price discrimination among school districts. Therefore, a hypothetical monopolist supplying school milk to any particular district would impose (at least) a small but significant non-transitory price increase (*e.g.*, five percent).

C. The Acquisition Will Result in Anticompetitive Unilateral Effects

35. School districts in Wisconsin and the UP have only a few choices for school milk suppliers. There are numerous school districts, particularly in northeastern Wisconsin and the western UP, for which the Acquisition merged the two processors that were best situated to serve the district. In many cases, the Acquisition created a "merger to monopoly," leaving Dean as the only likely bidder. These school districts include those where Dean and Foremost were the only two dairy processors to bid in recent years. The elimination of head-to-head competition between Dean and Foremost will likely substantially lessen competition in these school milk markets and enable Dean to raise prices and/or reduce services.

36. In addition, in a separate set of school districts, either Dean or Foremost was the only bidder and the other processor was the next-lowest-cost supplier because of factors such as distance from the processing plant or the presence of an established distribution network. It is likely that prices will rise and/or services will be reduced in these school milk markets, regardless of whether both Dean and Foremost submitted formal bids before the Acquisition. There is also a substantial number of school districts in Wisconsin and the UP for which Dean and Foremost were two of only three recent or likely future bidders. For these school districts, the Acquisition represents a "merger to duopoly."

37. In addition, Foremost was an especially aggressive bidder. This forced its rivals to keep their bid prices as low as possible or risk losing substantial amounts of school milk business.

V. THE COMPETITIVE HARM IN THE FLUID MILK MARKET

A. Fluid Milk is a Relevant Product Market

38. Fluid milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. Fluid milk is a product with special nutritional characteristics and has no practical substitutes.

39. Consumer demand for fluid milk is relatively inelastic, *i.e.*, fluid milk consumption does not decrease significantly in response to a price increase. Demand by retailers, distributors, and other purchasers of fluid milk is also inelastic because it is based on consumer demand. As a result, a hypothetical monopolist over fluid milk would profitably impose at least a small but significant and non-transitory price increase (*e.g.*, five percent).

B. The Relevant Geographic Market

40. Fluid milk processors are able to charge different prices to buyers in different areas, *i.e.*, they can price discriminate. In the presence of price discrimination, relevant geographic markets may be defined by reference to the location of buyers. In particular, a relevant geographic market for fluid milk refers to a region within which purchasers can be targeted for a price increase. A portion of the fluid milk supplied to the relevant geographic market comes from plants located outside of Wisconsin, the UP, and northeastern Illinois.

41. Wisconsin, the UP, and northeastern Illinois constitute a relevant geographic market and section of the country under Section 7 of the Clayton Act. As discussed in paragraph 15, most customers purchase fluid milk from suppliers with processing plants located near them because of the costs associated with transportation and shelf life. Prior to the Acquisition, Foremost sold

virtually all of its fluid milk to purchasers located in the relevant geographic market. Dean competed to supply fluid milk to purchasers throughout this same area.

C. Market Concentration

42. The Acquisition will result in a substantial increase in the concentration of processors that compete to supply fluid milk to purchasers located in the relevant geographic market. Some of these processors are located outside of Wisconsin, the UP, and northeastern Illinois. Prior to the Acquisition, Dean had the largest share of sales to purchasers within the relevant geographic market. Dean accounted for 44.6 percent of fluid milk sales; Foremost accounted for another 12.6 percent. As a result of the Acquisition, Dean now has more than 57 percent of all fluid milk sales in the relevant geographic market. There are only two other competitors with more than five percent of fluid milk sales in the relevant geographic market, Kemps LLC (a subsidiary of Hood LLC) (“Kemps”) and Prairie Farms Dairy, Inc., which have 17 and 15 percent, respectively. Moreover, Dean’s post-Acquisition shares are even higher in certain areas within the relevant geographic market: over 85 percent in the UP and over 60 percent in Green Bay, Wisconsin, and in northeastern Illinois (including Chicago).

43. As articulated in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index (“HHI”) is a measure of market concentration.² The Acquisition increases the HHI by 1,127 points to 3,830, indicating a

² See U.S. DEP’T OF JUSTICE, HORIZONTAL MERGER GUIDELINES § 1.51 (1997), available at http://www.justice.gov/atr/public/guidelines/horiz_book/hmg1.html. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of

substantial increase in concentration. The change in the HHI is even more pronounced in certain areas within the relevant geographic area. For example, in the UP, the HHI increased by 2,814 points to 7,510, and in Green Bay, the HHI increased by 1,728 to 4,777.

D. The Acquisition Will Result in Competitive Harm

44. The Acquisition will likely substantially lessen competition among fluid milk producers in the relevant geographic market, resulting in higher fluid milk prices to purchasers than would exist in the absence of the Acquisition. The Acquisition will eliminate head-to-head competition that has benefitted and would otherwise continue to benefit purchasers and final consumers. The Acquisition will also result in easier and more durable coordinated interaction among Dean and its few remaining competitors.

1. The Anticompetitive Effects from the Loss of Head-to-Head Competition

45. Dean and Foremost often competed head-to-head to win fluid milk contracts because they were the nearest fluid milk processors to many of the purchasers in the relevant geographic market. As discussed in paragraph 15, proximity to the purchaser is an important factor in a processor's competitiveness. Prior to the Acquisition, Foremost competed with Dean throughout the relevant geographic market. The head-to-head competition between Dean and Foremost was most pronounced and pervasive in the UP and northeast and southeast Wisconsin, where the Dean and Foremost plants were the two closest plants to many fluid milk purchasers.

46. As discussed in paragraph 23, Foremost had substantial excess capacity, and as a result, was pricing aggressively to secure new business. The presence of Foremost as an aggressive pricing competitor to Dean and a constraining force on Dean's pricing is reflected in the internal

firms in the market decreases and as the disparity in size between those firms increases.

Dean documents discussed in paragraphs 25 to 29. The elimination of this head-to-head competition likely will produce higher prices and/or reduced services for many purchasers in the relevant geographic market. These effects will vary among purchasers because, as discussed previously, different purchasers have different competitive options. Thus, the prices paid and services received will continue to differ among purchasers after the Acquisition, but for many purchasers the prices they pay and/or the services they receive will be adversely affected by the Acquisition.

2. The Acquisition Will Facilitate Anticompetitive Coordination

47. By eliminating Foremost, a significant, disruptive, and aggressive competitor, the Acquisition also will likely substantially lessen competition among the remaining competitors selling fluid milk in the relevant geographic market by facilitating coordination among them. Dean and its few remaining competitors will be more likely to decline to bid aggressively for one another's established customers out of concern for retaliation, thereby allocating customers among one another based on a mutual recognition of what supplier serves what customers. This form of coordination is easier when there are fewer competitors and they can identify one another's customers. With the elimination of Foremost, purchasers in many areas of the relevant geographic market will have only two or three significant suppliers of fluid milk. For example, in Wisconsin, Dean and Kemps, its next-largest competitor, now account for more than 80 percent of sales.

48. Even before the Acquisition, Dean and other dairy processors besides Foremost were at times content not to attack one another's large accounts. In a recent bidding event, Dean refused to bid aggressively for a major supermarket chain that was Kemps's largest account, despite the

purchaser's complaint to Dean that Dean's bid was too high. A Dean executive testified that stealing the account from Kemps would have put a Kemps plant "out of business or to its knees" and that "we're not going to do that right now. You pick your fights." In contrast, Foremost was not content to pick its fights. When Foremost was bidding for the same large supermarket chain, it submitted a competitive bid, even though Foremost realized that the "cost" of winning that business could be high, due to the potential for retaliation. The general manager of Foremost's Morning Glory plant estimated that retaliation at five of his larger accounts could cost almost \$500,000 per year.

49. Whereas Foremost was routinely labeled as an "irrational" competitor by Dean executives, the Group Vice President for Dean's North Central region labeled two other processors "good competitors" in his 2008 strategic growth planning document. By "good competitor," Dean's Vice President admitted he meant that, unlike Foremost, these competitors were "more predictable" in terms of "where they're going to poke you in the eye and where they're not, whereas the other . . . fellows [are] poking all the time." With this Acquisition, only the so-called "good competitors" will remain.

50. In at least one instance, Dean successfully sent price signals to its competitors. In 2008, Dean announced an upcoming fuel surcharge price increase, and one of its competitors followed suit. In reporting this to his boss, the Group Vice President for the region in which this occurred wrote, "[our competitor] followed us this week with a similar increase. The strategy paid off." His boss then declared that it is a good practice "to signal your intentions early and often." The Vice President for the North Central region, which includes Wisconsin, then instructed his staff to "get out early for July and signal the marketplace."

51. By reducing the number of competitors serving the relevant geographic market and eliminating an aggressive competitor with large amounts of excess capacity, the Acquisition makes coordination easier and more durable.

VI. ENTRY IS UNLIKELY

52. Entry is unlikely to be sufficient or timely enough to offset the anticompetitive effects of the Acquisition. Firms currently serving the fluid milk and school milk markets in Wisconsin, the UP, and northeastern Illinois are unlikely to expand their service area or presence sufficiently to substantially mitigate the loss of Foremost's head-to-head competition with Dean in the fluid milk and school milk markets, or to disrupt coordinated interaction by Dean and its remaining competitors in the fluid milk market. Firms not currently serving these markets are unlikely to enter in the foreseeable future.

VII. VIOLATIONS ALLEGED

53. The United States and the Plaintiff States hereby incorporate the allegations of paragraphs 1 through 52 above.

A. Count 1

54. The Acquisition likely will substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in that:

- a. actual and potential competition between Foremost and Dean in the State of Wisconsin and the UP in the sale of school milk will be eliminated; and
- b. competition in the State of Wisconsin and the UP in the sale of school milk will be substantially lessened.

B. Count 2

55. The Acquisition likely will substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in that:

- a. actual and potential competition between Foremost and Dean in the State of Wisconsin, the UP, and northeastern Illinois in the sale of fluid milk will be eliminated; and
- b. competition in the State of Wisconsin, the UP, and northeastern Illinois in the sale of fluid milk will be substantially lessened.

VIII. RELIEF REQUESTED

56. The United States and the Plaintiff States request that this Honorable Court:

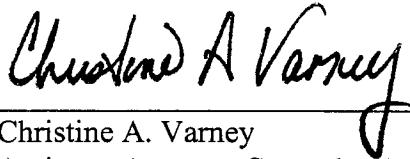
- a. adjudge and decree that the Acquisition violates Section 7 of the Clayton Act, 15 U.S.C. § 18;
- b. compel Dean to divest all of the assets and interests it acquired as part of the Acquisition;
- c. permanently enjoin Dean from further ownership and operation of the assets acquired as part of the Acquisition;
- d. compel Dean, including any of its subsidiaries, joint ventures, successors or assigns, and all persons acting on behalf of any of the foregoing, to provide the United States (and any Plaintiff State(s) if commerce in that state(s) is potentially affected) with notification at least 30 calendar days prior to any acquisition, in whole or in part, of any school milk or fluid milk processing operation, notwithstanding the consideration Dean intends to pay for such acquisition; and

- e. award to each plaintiff its costs for this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

Dated: January 22, 2010

Respectfully submitted,

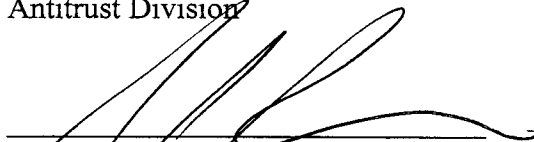
FOR PLAINTIFF UNITED STATES OF AMERICA



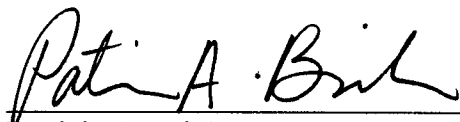
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Dated: January 21st, 2010

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read 'MR', is written over a horizontal line. The signature is stylized and cursive.

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Dated: January 22, 2010

Respectfully submitted,

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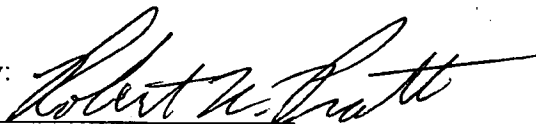
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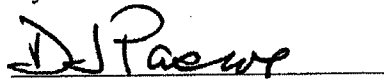
Dated: January 22 2010

Respectfully submitted,

FOR PLAINTIFF STATE OF MICHIGAN

MICHAEL A. COX
ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read "DJ Pascoe", written over a horizontal line.

DJ Pascoe
Assistant Attorney General
Corporate Oversight Division
Attorney for the State of Michigan
G. Mennen Williams Building, 6th Floor
525 W. Ottawa Street
Lansing, Michigan 48933
Telephone: (517) 373-1160

CIVIL COVER SHEET

10-C-0059

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

Place an X in the appropriate Box. Green Bay Division Milwaukee Division

I. (a) PLAINTIFFS
 United States of America, State of Wisconsin, State of Illinois, and State of Michigan

(b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Jon B. Jacobs, United States Department of Justice,
 450 5th St., Washington, DC 20530, (202) 514-5012

DEFENDANTS
 Dean Foods Company

Dallas (TX)

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
 Paul Denis of Dechert LLP (Washington, DC)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	TORTS - UNLAWFUL ACTS	TAX/GUPTIC	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input checked="" type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Other Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	LABOR	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 490 Cable/Sat. TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	HABEAS CORPUS:	<input type="checkbox"/> 720 Labor/Mgmt. Relations Act	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	IMMIGRATION	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 446 Amer. w/Disabilities - Other				<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability					<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 All Other Real Property					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Section 7 of the Clayton Act, 15 U.S.C. section 18

Brief description of cause:
 unlawful acquisition

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions) JUDGE _____ DOCKET NUMBER _____

DATE: 1-22-10

SIGNATURE OF ATTORNEY OF RECORD: Jon B. Jacobs

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____