



Department of Justice

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JUSTICE DEPARTMENT FILES ANTITRUST LAWSUIT AGAINST DEAN FOODS COMPANY

Lawsuit Seeks to Restore Lost Competition in Sale of Milk to School Districts and Retailers in Illinois, Michigan and Wisconsin

WASHINGTON — The Department of Justice filed a civil antitrust lawsuit today against Dean Foods Company challenging its April 2009 acquisition of Foremost Farms USA's Consumer Products Division. The department said that the merger eliminates substantial competition between the two companies in the sale of milk to schools, grocery stores, convenience stores and other retailers in Illinois, Michigan and Wisconsin.

The Department of Justice's Antitrust Division, along with state attorneys general from Illinois, Michigan and Wisconsin, filed a lawsuit today in U.S. District Court in Milwaukee, seeking to require Dean Foods to sell the dairy processing plants it acquired from Foremost Farms.

Dairy processors, such as Dean Foods and Foremost Farms, purchase raw milk from dairy farms and agricultural cooperatives to pasteurize and package the milk. The processors then distribute and sell the milk to school districts, supermarkets, grocery stores and other commercial customers.

"The purpose of the department's lawsuit is to restore competition so that schools, grocery stores and other retailers in Illinois, Michigan and Wisconsin, will pay lower prices for their milk," said Christine Varney, Assistant Attorney General in charge of the Department of Justice's Antitrust Division.

The department's lawsuit not only seeks to undo the 2009 deal but also requires Dean Foods to notify the department at least 30 days prior to any future acquisition involving a milk processing operation.

Dean Foods' acquisition of Foremost Farms' two dairy processing plants in De Pere and Waukesha, Wis., eliminated an aggressive competitor against Dean Foods, the department said. Dean Foods and Foremost Farms were the first and fourth largest milk processors in northeastern Illinois, the Upper Peninsula of Michigan (the UP) and Wisconsin, respectively. Dean Foods now has approximately 57 percent of the market for processed milk in northeastern Illinois, the UP and Wisconsin.

The department's complaint alleges that the transaction reduced competition substantially in the sale of milk to school districts in the UP and Wisconsin. Dean Foods and Foremost Farms were the two best-situated processors from which to purchase milk for numerous school districts in the UP and Wisconsin. After Dean Foods' acquisition of Foremost Farms' Consumer Products Division, these districts have been left with a monopoly provider. There are also a substantial number of school districts in the region for which Dean Foods and Foremost Farms were two of only three recent or likely future bidders. These school districts have been left with only two choices after the acquisition.

The department also alleges that the acquisition reduced competition substantially in the sale of milk to supermarkets, grocery stores, and other commercial customers throughout northeastern Illinois, the UP and Wisconsin. Dean Foods' acquisition deprived these retailers of the benefits of substantial head-to-head competition between Dean Foods and Foremost Farms. Further, the department said that with Foremost Farms eliminated as a competitor, it would be easier for Dean Foods to coordinate with the remaining milk processors, whose competitive decision-making Dean Foods has described as "more predictable" and "rational."

The April 2009 transaction between Dean Foods and Foremost Farms was not required to be reported under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which requires companies to notify and provide information to the department and the Federal Trade Commission before consummating certain acquisitions. The purchase price of the transaction was less than the minimum reporting threshold.

Dean Foods is a Delaware corporation with its principal place of business in Dallas. It is one of the largest food and beverage producers in the United States, with revenues of \$11.82 billion in 2008. Dean Foods' Dairy Group is the country's largest processor and distributor of milk and other dairy products.

Foremost Farms is a Wisconsin member-owned business association headquartered in Baraboo, Wis., the members of which are dairy farmers. In 2008, its Consumer Products Division had net sales of \$233.7 million. Prior to Dean Foods' acquisition of its Consumer Products Division, Foremost Farms processed its members' raw milk at its plants in DePere and Waukesha, Wis., as well as at other facilities.

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