

**UNITED STATES DISTRICT COURT
FOR 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.

No. 20 C 2658

Judge Feinerman

JOINT STATUS REPORT

The parties submit this joint status report in response to the Court's June 5, 2020, Minute Order (Docket No. 21) relating to when the United States will file a motion for entry of the proposed Final Judgment.

I. INTRODUCTION AND BACKGROUND

On May 1, 2020, the United States, the Commonwealth of Massachusetts, and the State of Wisconsin (collectively, "Plaintiffs") filed a Complaint (Docket No. 1) alleging that Dairy Farmers of America's ("DFA") acquisition of Dean Food Company's ("Dean") fluid milk processing plants would further consolidate the highly concentrated fluid milk markets in (1) northeastern Illinois and Wisconsin and (2) New England. If allowed to proceed, the Complaint

further alleges, the likely result of Defendants' transaction would be to substantially lessen competition for the processing and sale of fluid milk in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time that Plaintiffs filed the Complaint, Plaintiffs also filed an Asset Preservation and Hold Separate Stipulation and Order (Docket No. 4-1) and a proposed Final Judgment (Docket No. 4-2), which are designed to remedy the anticompetitive effects identified in the Complaint. Defendants consented to entry of the proposed Final Judgment without trial or adjudication of any issue of fact or law and without the Final Judgment constituting any evidence against or admission by a party regarding any issue of fact or law.

The proposed Final Judgment requires the divestiture of three dairy processing plants and related assets identified in the proposed Final Judgment. The Court appointed Jerry Sturgill as Divestiture Trustee on July 24, 2020 (Docket No. 37). Since his appointment, Mr. Sturgill has been marketing the Divestiture Assets.

II. THE PARTIES HAVE MET THE APPA'S NOTICE REQUIREMENTS

Entry of the proposed Final Judgment is subject to the requirements of the Antitrust Penalties and Procedure Act, 15 U.S.C. § 16(b)–(h) (the "APPA"), which governs the settlement of antitrust claims by the United States. The APPA, also known as the Tunney Act, requires that the United States publish the proposed Final Judgment and a Competitive Impact Statement to facilitate public comment.

The United States filed the Competitive Impact Statement with this Court on May 26, 2020 (Docket No. 16). The United States then published notice of the proposed Final Judgment in the *Federal Register* on June 2, 2020, to inform members of the public of a 60-day comment period during which they may submit comments about the proposed Final Judgment to the

United States Department of Justice, Antitrust Division. *See* 15 U.S.C. § 16(b)–(c); 85 Fed. Reg. 33,712 (June 2, 2020). Similarly, the United States facilitated the publication of newspaper notices informing members of the public of the proposed Final Judgment in the *Washington Post*, *Chicago Tribune*, and *Boston Globe* on June 1–4 and June 8–10, 2020.

DFA and Dean have also completed their obligations, submitting their Section 16(g) reports to the Court on August 4, 2020 (Docket No. 38). After the United States responds to public comments, certifies its compliance with the Tunney Act, and moves to enter the proposed Final Judgment, the Court can enter the proposed Final Judgment without a hearing. *See United States v. U.S. Airways*, 38 F. Supp. 3d 69, 76 (D.D.C. 2014) (“A court can make its public interest determination based on the competitive impact statement and response to public comments alone.”) (citing *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000)).

III. THE APPA COMMENT PERIOD HAS CONCLUDED

The period for the public to submit comments ended on August 10, 2020. After a reasonable period of time has passed to ensure receipt of any comments sent by mail to the Antitrust Division’s published address, the United States will complete its review of any public comments it receives.

IV. THE UNITED STATES IS CURRENTLY REVIEWING COMMENT(S)

To date, the United States has received one comment. The United States will consider all comments it receives, including any that may have been sent by the deadline for comments, but have not yet arrived at the offices of the Antitrust Division, and will publish all comments it receives as well as the responses of the United States, in the *Federal Register*, or alternatively, upon leave of the Court, on the U.S. Department of Justice, Antitrust Division’s website.

V. THE UNITED STATES IS LIKELY TO MAKE A MOTION IN SEPTEMBER RELATING TO THE PROPOSED FINAL JUDGMENT

As the period for the public to submit comments has only just closed, it is still uncertain exactly how many comments the United States will receive and what the comments will say. Subject to the comments that it receives, the United States expects that it will move this Court to enter the proposed Final Judgment by the end of September 2020. If the United States determines that it will not be able to file such a motion by the end of September, it will notify the Court and advise as to a new projected date for filing.

Dated: August 11, 2020

Respectfully submitted,

/s/ Karl D. Knutsen

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CERTIFICATE OF SERVICE

I, Karl D. Knutsen, hereby certify that on August 11, 2020, I caused a copy of the foregoing Joint Status Report to be served on Defendants by mailing the document electronically to their duly authorized legal representatives as follows:

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