

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

Civil Action

No: **3 - 97 CV 2162 - P**

v.

MID-AMERICA DAIRYMEN, INC.
SOUTHERN FOODS GROUP LP
and MILK PRODUCTS, LLC,

Filed:

Defendants

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named and alleges as follows:

1. The United States brings this antitrust case to prevent the proposed acquisition by Mid-America Dairymen, Inc. ("Mid-America") of the voting stock of Borden/Meadow Gold Dairies Holdings, Inc. ("Borden/Meadow Gold"). Mid-America, through its affiliate Southern Foods Group LP ("Southern Foods"), and Borden/Meadow Gold compete head-to-head in the supply of fluid milk for school lunch and breakfast programs throughout Eastern Texas and Louisiana. The transaction will create a school milk monopoly in many areas of Eastern Texas and Louisiana and will

reduce the number of competitors to two or three in many more. As a result, many school districts are likely to pay higher prices for milk.

2. Mid-America is the largest dairy cooperative in the United States, with some 18,000 producer members in 30 states. In addition, Mid-America owns numerous dairy manufacturing and processing plants throughout the country, including a significant number of plants that process fluid milk. In particular, Mid-America owns 50 percent of Southern Foods. Southern Foods engages in extensive dairy processing operations in Texas and Louisiana. Borden/Meadow Gold operates a significant number of competing dairy plants in these two states.

3. In Eastern Texas -- an area from Fort Worth east to the Louisiana border and north from Fort Worth to the Oklahoma border to just south of San Antonio and Houston -- Southern Foods operates five fluid milk plants, and Borden/Meadow Gold operates three. In many of the major metropolitan areas of Eastern Texas, such as Dallas/Fort Worth, Waco, and San Antonio, Southern Foods plants and Borden/Meadow Gold plants are usually the only bidders for school milk contracts and the transaction will thus create a monopoly.

4. In Louisiana, Southern Foods and Borden Meadow/Gold each operate three plants. In the areas around New Orleans and

Baton Rouge, the number of competitors for school milk will be reduced to two. In other areas of Louisiana, the transaction will create a monopoly.

5. Mid-America has proposed to remedy the anticompetitive effects of the proposed transaction by selling the Borden/Meadow Gold assets located in Texas, Louisiana, and New Mexico to a newly-formed firm, Milk Products LLC, for \$65 million. Mid-America proposes, however, to finance most of the purchase price with a loan of \$40 million to Milk Products. The loan would leave Mid-America with the ability to influence the operations of Milk Products. Therefore, the proposed remedy will not adequately replace the independent competition that Borden/Meadow Gold currently provides in Eastern Texas and Louisiana.

JURISDICTION AND VENUE

6. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

7. Mid-America, itself and through Southern Foods, sells raw milk, fluid milk and other dairy products in interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

8. Mid-America, Southern Foods and Borden/Meadow Gold transact business in this district. Venue is proper in this district under 15 U.S. C. § 1391 (c).

THE DEFENDANTS

9. Mid-America is a corporation organized and existing under the laws of the state of Kansas with headquarters in Springfield, Missouri. The company had over \$4 billion in revenues in 1996. Its ownership interests in 36 fluid milk plants span 19 states, with operations from California to New Jersey.

10. Southern Foods is a limited partnership organized under the laws of Delaware, with headquarters in Dallas, Texas. Mid-America owns 50 percent of Southern Foods directly and through its 50 percent ownership of Southern Foods' general partner, SFG Management LLC, a Delaware limited liability company. Mid-America also holds \$85 million of non-voting preferred equity in the partnership. Mid-America's affiliate, Mid-Am Capital LLC, holds an additional \$20 million in unsecured subordinated debt in the partnership. In 1996, Southern Foods' dairy plants in Texas and Louisiana had sales in excess of \$550 million. Southern Foods sells fluid milk and other dairy products in Texas and Louisiana under various brand names, including Oak Farms, Golden

Royal, Midwest Farms, Sunnydell, Texas Bluebonnet, Schepps, Dairyland, Goodday, Brown's Velvet, Medallion, Foremost, Barbe, and Guth.

11. Milk Products LLC is a limited liability company organized under the laws of Delaware. It will operate the Borden/Meadow Gold assets located in Texas, Louisiana and New Mexico.

TRADE AND COMMERCE

A. The Relevant Market

12. Dairy processors purchase raw milk requirements from dairy farmers and agricultural cooperative associations such as Mid-America and produce fluid milk in a variety of forms. Some processors produce a full line of packaged fluid milk products, including whole, low-fat, skim and flavored milk, which are packaged in gallons, half gallons, quarts, pints and half pints. Other processors package a limited line of container sizes, most typically gallons and half gallons.

13. In addition to grocery and other food stores, schools, hospitals and other institutional customers are the major purchasers of fluid milk. Almost all of the milk purchased by schools is in half pint containers, a size not purchased in significant quantities by most other customers.

14. Federal regulations require that schools participating

in the National School Lunch program and the School Breakfast program offer a half pint of fluid milk with each meal. Fluid milk is a product with special nutritional characteristics and is without practical substitutes. There is no reasonable substitute to which a significant number of schools could turn in response to a small but significant and non-transitory increase in the price of fluid milk.

15. School districts in Eastern Texas and Louisiana purchase milk through contracts that generally are let annually. The contracts require the delivery of milk in half pint containers to each school in the district and often require delivery five days per week. Sometimes the contracts require that deliveries be made during particular hours of the day.

16. The winning bidder of a school contract must have a distribution system capable of meeting the needs of the schools. Because most school contracts involve frequent deliveries to numerous schools, and school deliveries are made only when school is in session, winning bidders generally deliver to schools using route trucks that also serve other customers in the area.

17. Firms that bid on school contracts generally include only those that, at the time they bid on the contract, have an established route truck distribution system in or near the district to be served under the contract. Except for the largest

school districts, the volume purchased under a school milk contract is not usually sufficient to justify the cost of establishing a distribution route in an area remote from a firm's other customers. A small but significant and non-transitory price increase to a school district would not cause firms that do not currently serve the immediate area to bid on a contract to serve the district.

18. The production, sale and distribution of fluid milk to schools in Eastern Texas and Louisiana constitutes a line of commerce and a section of the country, and is a relevant market for antitrust purposes.

B. Competition and Entry

19. Southern Foods and Borden/Meadow Gold have established route distribution systems suitable for serving school districts throughout Eastern Texas and Louisiana. Each firm is a bidder or potential bidder in more than 600 public school districts in Eastern Texas and more than 50 school districts in Louisiana. In many of these districts, there are no other bidders or potential bidders with existing route distribution systems suitable for providing milk to schools.

20. The sale and delivery of fluid milk to schools is a business highly susceptible to tacit or overt collusion among competing firms. Numerous dairy firms have been convicted of

collusion in school milk bids in a number of criminal antitrust cases brought in the last two decades. Such collusion typically involves the allocation of school contracts among competitors and, where it has occurred, has persisted for many years.

21. Collusive behavior in this industry is unlikely to attract new entry. In school milk markets, collusion often has been maintained for many years without being dissipated by new entry. The Department of Justice has uncovered numerous longstanding criminal antitrust conspiracies that have survived for years without attracting new entry.

22. The elimination of one of a small number of significant competitors and the resulting increase in concentration, such as would occur as a result of the proposed transactions, significantly increases the likelihood of collusion in school milk markets.

MID-AMERICA'S PROPOSED REMEDY

23. In an effort to remedy the anticompetitive consequences of the purchase by Mid-America of the Borden/Meadow Gold assets in Texas and Louisiana, Mid-America proposes to sell the assets located there and in New Mexico to Milk Products for \$65 million. Mid-America further proposes to finance most of the purchase price by extending to Milk Products a loan of \$40 million. The size and terms of the loan would leave Mid-America with the

ability to affect the competitive behavior of Milk Products. Because of its significant financial interests in both firms, Mid-America would have both the incentive and the ability to inhibit vigorous competition between Southern Foods and Milk Products.

24. The proposed remedy is inadequate to replace the independent competition currently provided by Borden/Meadow Gold in Eastern Texas and Louisiana.

INTERSTATE COMMERCE

25. Southern Foods purchases a substantial amount of raw milk for its Texas and Louisiana processing plants from dairy farmers and cooperatives located outside these states. Southern Foods also purchases substantial amounts of packaging material, equipment, and other supplies from vendors in other states. Southern Foods sells significant amounts of fluid milk produced in its Texas plants in Oklahoma; and milk produced in its Shreveport, Louisiana plant is also sold in Texas and Arkansas. Milk produced at Southern Foods' Brown's Velvet plant in New Orleans is sold in Mississippi. Significant federal funds flow to school districts in Eastern Texas and Louisiana under the National School Lunch and School Breakfast Program in reimbursement for milk and other food items. The sale and

delivery of fluid milk to school districts in Eastern Texas and Louisiana is in the flow of and substantially affects interstate commerce.

VIOLATION ALLEGED

26. On May 22, 1997, Mid-America entered into an agreement under which Mid-America would acquire all of the stock of Borden/Meadow Gold Dairies Holdings, Inc. for a purchase price of \$435 million. On May 28, 1997, Mid-America agreed that a new limited liability company to be formed by Allen A. Meyer would purchase the Borden/Meadow Gold assets in Texas, Louisiana and New Mexico for \$65 million. Mid-America further agreed to cause its affiliate, Mid-Am Capital LLC, to lend the new company at least \$35 million to make the purchase.

27. The effect of the proposed transactions may be to substantially lessen competition in the production, sale and distribution of fluid milk to school districts in Eastern Texas and Louisiana in violation of Section 7 of the Clayton Act, in the following ways, among others:

a. actual and potential competition between Southern Foods and Borden/Meadow Gold in the production, sale and distribution of fluid milk to school districts in Eastern Texas and Louisiana will be eliminated;

b. competition generally in the production, sale and distribution of fluid milk to school districts in Eastern Texas and Louisiana may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

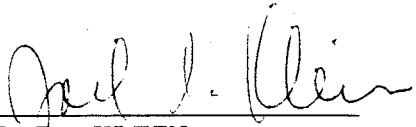
1. That the proposed acquisition by Mid-America of the stock of Borden/Meadow Gold Dairies Holdings, Inc. be adjudged to be in violation of Section 7 of the Clayton Act;

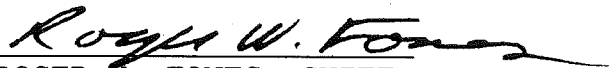
2. That the defendants and all persons acting on their behalf be permanently enjoined from carrying out any agreement, understanding, or plan, the effect of which would be to combine Mid-America and Borden/Meadow Gold Dairies Holdings, Inc. or to result in Milk Products' or Southern Foods' acquiring the Borden/Meadow Gold assets in Texas or Louisiana while Mid-America or Mid-Am Capital is a creditor of Milk Products LLC;


3. That the plaintiff have such other and further relief as the Court may deem just and proper; and

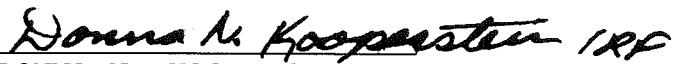
4. That plaintiff recover the costs of this action.

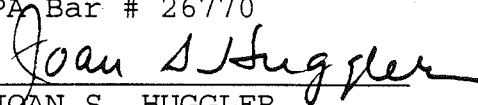
Respectfully submitted,


JOEL I. KLEIN
Assistant Attorney General

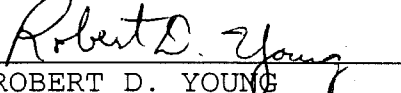

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Dated: September 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Complaint to be served on counsel for defendants in this matter in the manner set forth below:

By first class mail, postage prepaid:

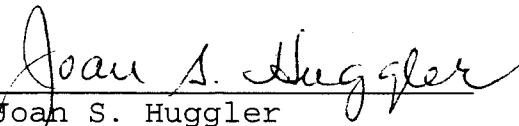
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Dated: September 3, 1997


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