

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY**

**UNITED STATES OF AMERICA,**

*Plaintiff,*

vs.

**SUIZA FOODS CORPORATION,**

**d/b/a Louis Trauth Dairy,  
Land O' Sun Dairy, and  
Flav-O-Rich Dairy, and**

**BROUGHTON FOODS COMPANY,**

**d/b/a Southern Belle Dairy**

*Defendants.*

Civil Action No.

**MEMORANDUM OF UNITED STATES IN SUPPORT OF ITS  
MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiff, the United States, filed this action pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18, to block the proposed acquisition of Broughton Foods Company ("Broughton") by Suiza Foods Corporation ("Suiza"). Section 7 provides, in relevant part, that:

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock . . . of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

15 U.S.C. §18.

Pursuant to section 15 of the Clayton Act, 15 U.S.C. § 25, in proceedings brought by the United States to prevent the Act's violation, "the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises." The United States has moved this Court for entry of a Temporary Restraining Order to preserve the status quo until such time as the Court can address the United States' Motion for Preliminary Injunction. The defendants do not oppose this Motion. See Letter from Paul T. Denis, Counsel for Suiza, and Thomas J. Murray, Counsel for Broughton, to James K. Foster, Jr., March 17, 1999 (appended hereto as Attachment A). The parties are currently negotiating a schedule to propose to the Court for presentation of the United States' Motion for Preliminary Injunction in this matter.

Unless restrained by the Court, the defendants would be free to consummate their transaction as early as March 20, 1999, under the terms of the timing agreement defendants entered into with the United States preventing them from consummating the transaction before then. If defendants were to proceed with the proposed acquisition before a hearing on the merits could be held, the public interest in vigorous competition in the production and sale of milk to schools in Kentucky could be irreparably harmed. Plaintiff would have no adequate remedy at law and this Court's ability to fashion effective relief would be significantly impaired if the proposed acquisition proceeds but is found later to be unlawful. E.g., Christian Schmidt Brewing Co. v. G. Heileman Brewing Co., 600 F. Supp.

1326, 1332 (E.D. Mich.), aff'd, 753 F.2d 1354 (6<sup>th</sup> Cir. 1985) (“If injunctive relief is not awarded and the merger is subsequently found to be unlawful, it would be extremely difficult, if at all possible, to remedy effectively the unlawful merger.”) Granting the requested temporary restraining order would serve the public interest. Accordingly, the United States requests that this Court issue a temporary restraining order to enjoin Suiza and Broughton from consummating their proposed acquisition, and thus preserve the status quo pending the Court’s consideration of the United States’ requests for injunctive relief.

Dated: March 18, 1999

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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## **ATTACHMENT A**

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing, together with a copy of any Order or Judgment the United States proposes in connection therewith, has been served by telecopier and by mail to:

Suiza Foods Corporation  
c/o Paul T. Denis, Esq.  
Myles R. Hansen, Esq.  
ARNOLD & PORTER  
555 Twelfth Street, N.W.  
Washington, D.C. 20004

Broughton Foods Company  
c/o Thomas J. Murray, Esq.  
Daniel J. Konrad, Esq.  
HUDDLESTON, BOLEN, BEATTY, PORTER & COPEN  
611 Third Avenue  
Suite 4000  
Huntington, WV 25722

On this the 18 day of March, 1999.

\_\_\_\_\_/s/\_\_\_\_\_  
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