

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
Department of Justice)	
Antitrust Division)	
325 7 th Street, N.W.,)	
Washington, D.C. 20530,)	
)	
<i>Plaintiff,</i>)	CIVIL CASE NO.: 1:02CV01768
)	JUDGE: John D. Bates
<i>v.</i>)	DECK TYPE: Antitrust
)	DATE STAMP: 09/06/2002
ARCHER-DANIELS-MIDLAND)	
COMPANY)	
P.O. Box 1470)	
Decatur, IL 62525, and)	
)	
MINNESOTA CORN PROCESSORS, LLC)	
901 North Highway 59)	
Marshall, MN 56258)	
)	
<i>Defendants.</i>)	
)	

COMPLAINT

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

1. On July 11, 2002, Archer-Daniels-Midland Company (“ADM”) and Minnesota Corn Processors, LLC (“MCP”) entered into an agreement under which ADM would acquire all of the assets of MCP. The United States seeks to enjoin this transaction because it would significantly increase ADM's share of the highly concentrated markets for corn syrup and high fructose corn

syrup (“HFCS”) in the United States and Canada, substantially lessening competition in those markets. Corn syrup and HFCS are manufactured from corn by wet mill processing and used as sweeteners in the preparation of a wide variety of food products and soft drinks. Americans consume over \$2.5 billion in corn syrup and HFCS each year.

2. ADM and MCP are two of the largest corn wet millers in the United States, competing to manufacture and sell corn syrup and HFCS to many of the same purchasers throughout the United States and Canada. Through its acquisition of MCP, ADM will eliminate this competition and increase concentration in the already highly concentrated corn syrup and HFCS markets, making anticompetitive coordination among the few remaining corn wet millers in these markets more likely.

3. If ADM acquires MCP, the prices of corn syrup and HFCS are likely to increase and the quantities of these products sold is likely to decrease. As a result, consumers of products containing corn syrup and HFCS will be harmed. The proposed acquisition therefore violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I.

JURISDICTION AND VENUE

4. This Complaint is filed and this action is instituted under Section 15 of the Clayton Act, 15 U.S.C. § 25, in order to prevent and restrain the violation by the defendants, ADM and MCP, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

5. Defendants are engaged in interstate commerce and activities substantially affecting interstate commerce. The court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

6. Defendants transact business and are found within the District of Columbia. Venue is

proper in this district under 15 U.S.C. § 22 and 28 U.S.C. § 1391 (b) and (c).

II.

THE DEFENDANTS

7. ADM is a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Decatur, Illinois. ADM is engaged in the processing and sale of agricultural products, including corn syrup and HFCS, which it produces at three domestic plants in Cedar Rapids, Iowa, Clinton, Iowa, and Decatur, Illinois. Its net sales in 2001 were approximately \$20 billion. ADM sales of corn wet milled products in the United States in 2001 exceeded \$1 billion, approximately half of which were sales of corn syrup and HFCS.

8. MCP is a limited liability company organized and existing under the laws of the state of Colorado with its principal offices in Marshall, Minnesota. It is an agricultural processing and marketing business that operates corn wet milling facilities in Marshall, Minnesota and Columbus, Nebraska. MCP's net sales in 2001 were approximately \$620 million. MCP's sales of corn wet milled products in the United States in 2001 totaled approximately \$402 million, approximately half of which were sales of corn syrup and HFCS.

III.

TRADE AND COMMERCE

A. Relevant Product Market

9. Corn syrup and HFCS are manufactured by wet mill processing of corn. In the wet milling process, corn kernels are first soaked in water, then ground and separated from other components of the kernel, producing a starch slurry. Corn wet millers then add enzymes and/or acid that convert the starch slurry to sugars, producing various distinct corn sweeteners such as corn syrup and HFCS.

10. Corn syrup is used as a sweetener in the preparation of food products, including confectionary, bakery, and dairy products, salad dressings, condiments, jams and jellies, lunch meats, canned foods and vegetables.

11. There are two grades of HFCS, HFCS 42 and HFCS 55, with the numbers referring to the percentage of fructose in the product. HFCS 42 is used as a sweetener in jams, jellies, baked goods, canned goods, dairy products and some beverages. HFCS 55 is used mainly to sweeten soft drinks.

12. Corn syrup, HFCS 42 and HFCS 55 are each distinct products without practical substitutes, differing from all other sweeteners and each other in their physical characteristics, means of production, uses and pricing.

13. Corn syrup, HFCS 42 and HFCS 55 are functionally interchangeable with sugar in many applications, but are much less expensive and therefore are the sweeteners of choice for many uses. Very few purchasers of corn syrup, HFCS 42, and HFCS 55 would switch to other sweeteners in response to a small but significant increase in price.

14. The manufacture and sale of corn syrup, HFCS 42 and HFCS 55 each constitutes a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market

15. All or almost all corn syrup, HFCS 42 and HFCS 55 sold to customers in the United States is produced by corn wet millers in the United States or in Canada. Very few U.S. purchasers of corn syrup, HFCS 42 and HFCS 55 would turn to producers outside the United States or Canada in response to a small but significant price increase .

16. The United States and Canada is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Market Concentration

17. ADM competes against only four other firms in the manufacture and sale of corn syrup, HFCS 42 and HFCS 55 in the United States or Canada.

18. MCP sells these products through an exclusive sales joint venture that it formed in December 2000 with another corn wet miller, Corn Products International, Inc. (“CPI”). The joint venture is known as CornProductsMCP Sweeteners LLC (“CPMCP”). Under the joint venture, MCP and CPI are prohibited from selling or distributing corn syrup and HFCS in the United States and Canada except through CPMCP.

19. The markets in the United States and Canada for corn syrup, HFCS 42 and HFCS 55 are highly concentrated. In these markets, ADM accounts for about 10% of all corn syrup manufacturing capacity, 33% of all HFCS 42 manufacturing capacity, and 25% of all HFCS 55 manufacturing capacity. MCP, in its joint venture with CPI, accounts for more than 20% of all corn syrup manufacturing capacity, more than 15% of all HFCS 42 manufacturing capacity, and more than 15% of all HFCS 55 manufacturing capacity.

20. The markets in the United States and Canada for corn syrup, HFCS 42 and HFCS 55 will become substantially more concentrated if ADM acquires MCP and succeeds to MCP's position in its joint venture with CPI. The number of independent competitors will be reduced from five to four. Using a measure of market concentration called the Herfindahl-Hirschman Index (“HHI”) (defined and explained in Appendix A), the proposed transaction will increase the HHI in corn syrup by more than 400 points to a post acquisition level of over 3000. The post

acquisition HHIs for HFCS 42 and HFCS 55 would exceed 3500 and 3000, with increases in the HHIs of more than 1000 and 850 points, respectively, resulting from this transaction.

D. Anticompetitive Effects

21. ADM's acquisition of MCP likely will lessen competition substantially in the manufacture and sale of corn syrup, HFCS 42 and HFCS 55 throughout the United States and Canada by making anticompetitive coordination among the few remaining corn wet millers more likely. Anticompetitive coordination will increase prices for these products above competitive levels and reduce production of these products below competitive levels.

22. New entry is not likely to thwart these anticompetitive effects. Successful entry into the manufacture and sale of corn syrup, HFCS 42 and HFCS 55 is difficult, time consuming, and costly. Construction of an efficient corn wet milling facility likely would take more than two years from the time of site selection to production of commercial quantities of corn wet milled products.

IV.

VIOLATION ALLEGED

23. The effect of ADM's proposed acquisition of MCP will be to substantially lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

24. Unless restrained, the transaction likely will have the following effects, among others:

- a. actual competition between ADM and MCP will be eliminated;
- b. competition generally in the manufacture and sale of corn syrup, HFCS 42 and

HFCS 55 will be substantially lessened;

- c. prices for corn syrup, HFCS 42 and HFCS 55 will increase; and
- d. the amount of corn syrup, HFCS 42, and HFCS 55 produced will decrease.

25. Unless restrained, the proposed acquisition of MCP by ADM will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

V.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

1. That the proposed acquisition by ADM of MCP be adjudged to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;
2. That ADM and MCP be permanently enjoined from and restrained from carrying out the Agreement dated July 11, 2002, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of ADM and MCP;
3. That plaintiff be awarded its costs of this action; and

4. That plaintiff have such other relief as the Court may deem just and proper.

Dated this 6th day of September, 2002.

"/s/"

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Assistant Attorney General

"/s/"

R. HEWITT PATE
Deputy Assistant Attorney General

"/s/"

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APPENDIX A DEFINITION OF “HHI”

The term “HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. 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 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.