

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 COUNTRY LAKE FOODS, INC.;)
 SUPERIOR-DAIRY FRESH MILK CO.;)
 PENNY C. VAN BEEK, individually)
 and as co-personal representative)
 of the Estate of Philip E.)
 Peteler, Deceased; FIRST BANK)
 NATIONAL ASSOCIATION, co-personal)
 representative of the Estate of)
 Philip E. Peteler, Deceased;)
 GEORGENE H. PETELER;)
 LYNN RUDERSDORF; THOMAS D.)
 CAMPBELL, SR. and DIANE CAMPBELL,)
)
 Defendants.)

Civil Action No.

3-90-CIV-101
Judge Renner
Filed: 2/22/90

VERIFIED COMPLAINT

The United States of America, plaintiff, by its attorneys, 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 herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

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

2. Country Lake Foods, Inc. is found and does business in the District of Minnesota. Venue in this District is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

3. Superior-Dairy Fresh Milk Co. is found and does business in the District of Minnesota. Venue in this District is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

4. The remaining defendants reside or are found in the District of Minnesota. Venue in this District is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(b).

II

DEFINITIONS

5. "Raw milk" means the raw milk of cows used for processing into fluid milk.

6. "Fluid milk" means pasteurized milk sold by milk processors for human consumption in liquid form.

7. "Milk processor" means a person or firm that pasteurizes raw milk and packages fluid milk.

8. "Minneapolis-St. Paul MSA" means the Metropolitan Statistical Area as defined by the U.S. Department of Commerce, Bureau of Census, which includes the Minnesota counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, and Wright, and the Wisconsin county of St. Croix.

9. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration 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 thirty, thirty, twenty and twenty percent, the HHI is 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

III

THE DEFENDANTS

10. Country Lake Foods, Inc. ("Country Lake") is made a defendant. Country Lake is a corporation organized and existing under the laws of the State of Delaware, with its principal offices in St. Paul, Minnesota. Seventy percent of the common stock of Country Lake is owned by Land O'Lakes, Inc., a Minnesota dairy cooperative. The remaining 30 percent of Country Lake's common stock is publicly traded. Country Lake is a milk processor with three divisions operating five fluid milk plants in North Dakota, South Dakota and Minnesota. Country Lake's Norris Division operates a plant in Woodbury, Minnesota, located within the Minneapolis-St. Paul MSA. Country Lake's sales of fluid milk in 1989 in the Minneapolis-

St. Paul MSA were approximately \$29.3 million, and its market share of approximately 18.2 percent of total fluid milk sales in the MSA makes it one of the two largest milk processors in the Minneapolis-St. Paul MSA. Country Lake is engaged in interstate commerce and in activities substantially affecting interstate commerce.

11. Superior-Dairy Fresh Milk Co. ("Superior") is made a defendant. Superior is a corporation organized and existing under the laws of the State of Minnesota, with its principal offices in Minneapolis. Superior is a milk processor with one plant which is located in Minneapolis. Superior's sales of fluid milk in 1989 in the Minneapolis-St. Paul MSA were approximately \$28.6 million, and its market share of approximately 17.8 percent of total fluid milk sales in the MSA makes it one of the three largest milk processors in the Minneapolis-St. Paul MSA. Superior is engaged in interstate commerce and in activities substantially affecting interstate commerce.

12. First Bank National Association ("First Bank") is made a defendant in its capacity as co-representative of the Estate of Philip E. Peteler. First Bank is a corporation organized and existing under the laws of the State of Minnesota, with its principal offices in Minneapolis, Minnesota. The Estate of Philip E. Peteler is a shareholder of Superior, with ownership of approximately 48 percent of Superior's capital stock.

13. Penny C. Van Beek is made a defendant individually and in her capacity as co-representative of the Estate of Philip E. Peteler. She resides or is found in the District of Minnesota. She is a shareholder of Superior, with ownership of approximately nine percent of Superior's capital stock, and is a co-representative of the Estate of Philip E. Peteler, a shareholder of Superior as described in paragraph 12.

14. Georgene H. Peteler is made a defendant. She resides or is found in the District of Minnesota. She is a shareholder of Superior, with ownership of approximately 31 percent of Superior's capital stock.

15. Lynn Rudersdorf is made a defendant. She resides or is found in the District of Minnesota. She is a shareholder of Superior, with ownership of approximately nine percent of Superior's capital stock.

16. Thomas D. Campbell and Diane Campbell are made defendants. They reside or are found in the District of Minnesota. They are shareholders of Superior, together having ownership of approximately two percent of Superior's capital stock.

IV

TRADE AND COMMERCE

17. Fluid milk is produced by milk processors which purchase their raw milk requirements from dairy farmers and agricultural cooperative associations. Some processors produce a full line of packaged fluid milk products, including

homogenized whole milk, two-percent milk, one-percent milk, skim milk, sweet acidopholis milk, chocolate whole and skim milk, buttermilk, and half-and-half in gallons, half-gallons, quarts, pints and half-pints. Other processors produce a more limited line of fluid milk products and container sizes.

18. The sale of raw milk is regulated by the United States Department of Agriculture under Federal Milk Marketing Orders covering most areas of raw milk production in the United States. The sale of raw milk produced in most of Minnesota (excluding four southwestern counties but including the entire Minneapolis-St. Paul MSA), and parts of Wisconsin, North Dakota, South Dakota, and Iowa is regulated under Federal Order No. 68 of the Upper Midwest Marketing Area, 7 C.F.R. § 1068.2 (1989). Among other things, Federal Order No. 68 establishes minimum prices for the sale of milk produced in the Upper Midwest Marketing Area. Country Lake purchases raw milk for processing at its Norris Division plant from sources which are regulated under Federal Order No. 68 of the Upper Midwest Marketing Area. Superior also purchases its raw milk from a source regulated under Federal Order No. 68. The minimum raw milk price established for the Upper Midwest Marketing Area is the lowest USDA minimum price in the United States.

19. Grocery and other food stores are the principal purchasers of fluid milk. Other significant purchasers of fluid milk are schools and other institutional customers.

20. Fluid milk is a product that has special nutritional characteristics and is without practical substitutes. There is no reasonable substitute to which a significant number of customers would turn in response to a small but significant and nontransitory increase in the price of fluid milk. All forms of fluid milk are produced from raw milk by the use of the same specific machines and processes, including receiving, pasteurizing, homogenizing, cooling, filling and packaging equipment.

21. Most milk processors located outside the Minneapolis-St. Paul MSA would be unlikely to ship substantial volumes of fluid milk into the Minneapolis-St. Paul MSA in response to a small but significant and nontransitory increase in the price of fluid milk in the MSA because of, among other reasons, the higher cost of raw milk outside the Federal Order No. 68 area, the costs of transportation, and the difficulty of establishing and maintaining customer relationships.

22. The sale of fluid milk constitutes a line of commerce and a relevant product market, and the Minneapolis-St. Paul MSA is a section of the country and a relevant geographic market in which fluid milk is sold, within the meaning of Section 7 of the Clayton Act.

23. At present, Country Lake and Superior are the second and third largest milk processors, respectively, in the Minneapolis-St. Paul MSA. If Country Lake were allowed to acquire the stock of Superior, Country Lake's share of the

market would increase to approximately 36 percent, and the top two firms would control approximately 72.4 percent of total sales.

24. At present, the HHI for the sale of fluid milk in the Minneapolis-St. Paul MSA is 2185. The proposed acquisition would increase the HHI by 648 to 2833. A market with a post-acquisition HHI of 1000 is moderately concentrated, and a market with a post-acquisition HHI of 1800 is highly concentrated.

25. Entry into the fluid milk market in the Minneapolis-St. Paul MSA by a new milk processor in response to a small but significant and nontransitory increase in the price of fluid milk would be difficult and time consuming because of, among other things, the cost and time required to construct a new plant and the difficulty of establishing and maintaining customer relationships.

26. Milk processors located in Minnesota ship and sell substantial quantities of fluid milk across state lines to locations outside Minnesota. The processing and sale of fluid milk is within the flow of and substantially affects interstate commerce.

V

VIOLATION ALLEGED

27. Under the terms of a purchase and sale agreement dated November 15, 1989 between Country Lake and Superior's shareholders, Country Lake proposes to acquire 100 percent of the capital stock of Superior for the purchase price of \$12,067,749. A condition to the closing of the transaction is

the execution of three non-competition agreements by three employees of Superior for which the employees will be paid a total of \$3.6 million. The transaction is planned to be consummated on or after February 24, 1990.

28. The effects of the proposed acquisition of the stock of Superior by Country Lake may be substantially to lessen competition in the sale of fluid milk in the Minneapolis-St. Paul MSA in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) actual and potential competition between Country Lake and Superior in the sale of fluid milk in the Minneapolis-St. Paul MSA will be eliminated; and
- (b) competition generally in the sale of fluid milk in the Minneapolis-St. Paul MSA may be substantially lessened.

VI

PRAYER

WHEREFORE, plaintiff prays:

1. That pending a final adjudication of the merits of this Complaint, a temporary restraining order and a preliminary injunction be issued against the defendants preventing and restraining each of them, and all persons acting on their behalf, from taking any action, either directly or indirectly, in furtherance of the acquisition of the stock or assets of Superior by Country Lake;

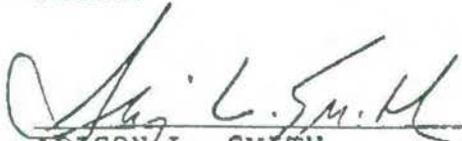
2. That the proposed acquisition of the stock of Superior by Country Lake be adjudged to be a violation of Section 7 of the Clayton Act;

3. 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 Superior and Country Lake;

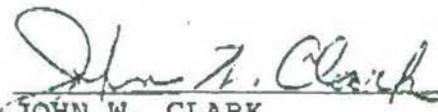
4. That the plaintiff have such other and further relief as the Court may deem just and proper; and

5. That plaintiff recover the costs of this action.

Dated:


ALISON L. SMITH
Acting Assistant Attorney General


JUDY WHALLEY


JOHN W. CLARK


JOHN A. WEEDON (0002839--OH)
Attorneys for the United States


EDMUND ROUND (0009843--OH)

PAUL L. BINDER (0002819--OH)
SHENTELL L. AUFFART (18756--NE)
ANNE P. DEMAURO (1409--SD)

Attorneys, Antitrust Division
U.S. Department of Justice
995 Celebrezze Federal Building
Cleveland, Ohio 44199
Telephone: 216-522-2657

United States Attorney
District of Minnesota

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

COUNTRY LAKE FOODS, INC., et al.,

Defendants.

Civil Action No.

3-90-CIV-101

Judge Renner

VERIFICATION OF COMPLAINT

I, Edmund Round, declare:

1. I am an attorney with the Antitrust Division of the United States Department of Justice.

2. The foregoing Verified Complaint for and on behalf of the United States of America was duly prepared under the direction of the Attorney General of the United States. The facts stated therein have been assembled by authorized employees and counsel for the United States. The allegations therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the above is true and correct.

Dated:

EDMUND ROUND

