United States of America
v.
U.S. Sugar, et al.

Opening Statement
I have confirmed that **we are matching Imperial’s quote**. He didn’t get a quote from Domino...as he says they are just always too high. They have not spoken with Cargill.
Competition Between United and Imperial Has Caused Lower Prices

From: Jeana Hines
Sent: Friday, September 07, 2018 1:09 PM
To: Heidi Hancock <HEIDI.HANCOCK@ldc.com>; SGL-Refined Trading <SGL-RefinedTrading@ldc.com>
Subject: RE: Costco Large gran Quote - NOT IN FORESIGHT

Costco feedback – any room to go down slightly? Competing with united cane.
Relevant Product Market

Refined Sugar in All Its Forms

Granulated

Powdered

Brown

Liquid
“The proper question to be asked in this case is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate.”

United Views Sugar Markets as Regional
Relevant Geographic Markets

Broader Market

Narrower Market

Based on PTX 452 at 20
American Crystal Sugar Co. v. Cuban-Am. Sugar Co.

**District Court:** a market for refined sugar sold in a broader ten-state region and a narrower 3-state region “correspond[ed] to the commercial realities of the sugar industry . . . because [of] the impact of freight rates on sugar prices.”

152 F. Supp. 387, 398 (S.D.N.Y. 1957), aff’d, 259 F.2d 524 (2d Cir. 1958)

**Second Circuit:** affirmed, noting that the merging parties were “better situated to supply this territory” where they had a “locational advantage” over refiners in other parts of the country.

259 F.2d 524, 529 (2nd Cir. 1958)
Transportation Costs Affect Competition

Patrick Henneberry

For GA, we have a locational advantage. Costs for LSR or Domino are probably about $3.50-$4 to either Chatt or Atlanta.... ATL is 185 miles, we are 220 and Chatt and Sanford FL both about 300 miles..... So ATL is probably about 50 cents per cwt cheaper truck frt and the other two locations are probably about $1-$1.2 more expensive. So all in FOB to Delivered costs in ATL are 3.75 + 2.65, = 6.40 our cost is 3.15, Chatt is about $4 + 4.15 = 8.15 and Sanford is probably 3.00+4.15 = 7.15. Even with at $2 fob price difference we would be able to command a premium of a Dollar for Sanford, $2 for Chatt and we would be even with Atlanta. With the NSM uncertainty do you think anyone will offer atlanta transfers?

We should be able to get $7 to $8 for GA location

Jeana Hines

we have always lost GA to United cane on the last 3 bis
Transportation Costs Affect Competition

Thank you for your feedback and discussion on our quote for 2020. I always like to lead with my best price taking into consideration the market and our competition.

We do have a significant freight disadvantage over one competitor in Savannah, GA which is why I went with a much lower FOB bulk basis number. Given your recent feedback, we have lowered our FOB bulk basis down to a $35/cwt. Included in the $35/cwt is the industry standard of $2/cwt liquid premium. Hence the true bulk basis is a $33/cwt, which given the current average NY 16 2020 strip at $26.26 it is the equivalent of a $4.24 EO. I hope you view this as a very competitive EO equivalent and most importantly a competitive delivered price to maintain the business at Jacksonville, FL.
“While there is no bright-line rule as to the minimum percentage that qualifies as undue, the Supreme Court has held that a post-merger market share of 30% triggered the presumption of anticompetitive effects.”
The [government] may establish a prima facie case by showing a high market concentration based on HHI numbers alone.” When it does so, “the District Court need[s] no further evidence to find that the [government] had established its prima facie case.”
Market Shares and HHI Concentration Analysis

Market Shares of Refined Sugar Producers by CWT
Calendar Year 2021

- 54% (Narrower Market)
- 46% (Broader Market)
- 34% (Narrower Market)
- 29% (Broader Market)

Pre and Post-Transaction HHI (2021)

- Pre: 2,265
- Post: 3,658
- Increase: 1,393
- HHI Over 2,500 Points: Met

- Pre: 2,024
- Post: 3,035
- Increase: 1,011
- HHI Increase +200 Points

Rothman Rpt., Table 3; Rothman Reply Rpt., Table 3, Fig. 4
Competition Between United and Imperial Poised to Intensify

Subject: SE Product Mix - Status and Next Steps

Attack the market like Chicago

Industrial - Similar to Chicago Strategy
- Focus sales on higher NSP line-items (50# FG and Liquid)

Needs
- Additional sales manager(s) focused on small and medium accounts (dependent on increased demand)
- Additional supply chain capacity and flexibility/swing capacity (50# FG, liquid, supersacks) (dependent on increased demand)
Coordinated effects refers to rivals “coordinat[ing] their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels” and is likely “where rivals are few.”

**FTC v. H.J. Heinz Co.,**
246 F.3d 708, 715 (D.C. Cir. 2001)

**United States v. H&R Block, Inc.,**
833 F. Supp. 2d 36, 77-78 (D.D.C. 2011)

Finding support that “coordination would likely take the form of mutual recognition that neither firm has an interest” in driving prices lower.
I would love to get aggressive here but Rob S. does not want to lower the bar with marginal accounts (less than 100K) at this time. We would like to avoid sending a signal out to competitors that we are chasing business and lowering pricing off the standard $41.00 bulk basis.
November 16, 2020 - 10:35 AM
Curious what you’re hearing on domestic raw and refined pricing? sounds like united has pullback from spot market, is that right? Where would you put spot and forward beet prices?

November 16, 2020 - 11:13 AM
Curious what you’re hearing on domestic raw and refined pricing? I haven’t heard back from United yet. Did they pullback from spot market? Where would you put prices and cane coverage?
Simultaneous Conversation with Competitors

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November 16, 2020 - 12:04 PM
We remain at $36.50 and $38.50 but will probably go higher given our strong sold position.

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November 16, 2020 - 5:30 PM
Near-by values back up to $46.00 FOB all locations.
For calendar 2021:
- East/West - $42.00 fob
- Gulf - $39.50 fob
- Cane Coverage - 85 to 90%

PTX 397, PTX 049
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ASR saying prices keep climbing: $46 spot all locations, forward prices ranging from $39.50 Gulf to $42 East/ West coasts, cane refiners 85-90% booked for FY21.
Waiting to hear back from most contacts . . .
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**November 17, 2020 - 10:07 AM**
So strange, I can’t wrap my head around United’s approach. They came up very short on production, and market has firmed, but they’re still at $36.50 RRV and $38.50 Southeast?!?! But did they say they’ll probably be taking prices higher given strong sold position (you don’t say??)
Waiting to hear back from a number of contacts.
The routine exchange of “intimate information on prices” among competitors “facilitates collusion and therefore entitles [the government] to worry even more about large horizontal acquisitions in this industry.”

_Hosp. Corp. of Am. v. FTC_, 807 F.2d 1381, 1388-89 (7th Cir. 1986)
Distributors Are Subject to Market Power of Sugar Producers

- Chicago small and medium bag customers generate $2.78/cwt, higher NSP’s than large distributors.
- Strategy: Eliminate dependence on Batory Foods, Increase direct bag shipments to Customers, Increase prices to Chicago area distributors.

**Montgomery Post Audit**

*Increase Customer Revenue*

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<th>Year 3</th>
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<tr>
<td>Incremental Revenue ($ mm)</td>
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<td>1.65</td>
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</table>
Fed. Trade Comm’n v. Penn State Hershey Med. Ctr.,
838 F.3d 327, 348-49 (3d Cir. 2016)

- Penn State Hershey requires that efficiencies:
  - Offset anticompetitive concerns in the relevant market
  - Be merger specific, and not achievable by either company alone
  - Be verifiable, not speculative
  - Be shown in real terms
  - Not arise from anticompetitive reductions in output or service
- Defendants cannot meet this rigorous standard
USDA’s Role in Industry in No Way Lessens Importance of Competition . . . and that is Consistent with Case Law

**United States v. Philadelphia Nat’l Bank,**
374 U.S. 321, 371-72 (1963)

Section 7 requires “that the forces of competition be allowed to operate within the broad framework of governmental regulation of the industry.”

**Georgia v. Pennsylvania R.R. Co.,**
324 U.S. 439, 460-61 (1945)

Even in an industry where prices are directly regulated and restricted to a “zone of reasonableness,” anticompetitive conduct “within that zone” can “constitute violations of the anti-trust laws.”