



## **Justice Department files antitrust lawsuit against Dean Foods**

**By Sara Wyant**

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Washington, Jan. 22 – UPDATED – Citing concerns over the lack of competition, the U.S. Department of Justice (DOJ) filed a civil antitrust lawsuit Friday against Dean Foods Company, challenging its April 2009 acquisition of Foremost Farms USA’s Consumer Products Division and seeking to undo the deal. Dean Foods immediately announced that it was contesting the DOJ complaint. The company maintains that its acquisition of the DePere and Waukesha, WI fluid milk processing plants from Foremost is fully compliant with antitrust laws and has announced that it will defend itself vigorously against the complaint.

“The purpose of the department’s lawsuit is to restore competition so that schools, grocery stores and other retailers in Illinois, Michigan and Wisconsin, will pay lower prices for their milk,” said Christine Varney, Assistant Attorney General in charge of the Department of Justice’s Antitrust Division.

The Antitrust Division, along with state attorneys general from Illinois, Michigan and Wisconsin, filed the lawsuit in the U.S. District Court in Milwaukee, seeking to require Dean Foods to sell the dairy processing plants it acquired from Foremost Farms and asks that Dean Foods notify the department at least 30 days prior to any future acquisition involving a milk processing operation.

Dean Foods’ acquisition of Foremost Farms’ two dairy processing plants in De Pere and Waukesha, Wis., eliminated an aggressive competitor against Dean Foods, according to a statement issued by the DOJ. Dean Foods and Foremost Farms were the first and fourth largest milk processors in northeastern Illinois, the Upper Peninsula of Michigan (the UP) and Wisconsin, respectively. Dean Foods now has approximately 57 percent of the market for processed milk in northeastern Illinois, the UP and Wisconsin.

The department’s complaint alleges that the transaction reduced competition substantially in the sale of milk to school districts in the UP and Wisconsin. Dean Foods and Foremost Farms were the two best-situated processors from which to purchase milk for numerous school districts in the UP and Wisconsin. After Dean Foods’ acquisition of Foremost Farms’ Consumer Products Division, these districts have been left with a monopoly provider. There are also a substantial number of school districts in the region for which

Dean Foods and Foremost Farms were two of only three recent or likely future bidders. These school districts have been left with only two choices after the acquisition, according to DOJ.

The department also alleges that “the acquisition reduced competition substantially in the sale of milk to supermarkets, grocery stores, and other commercial customers throughout northeastern Illinois, the UP and Wisconsin. Dean Foods’ acquisition deprived these retailers of the benefits of substantial head-to-head competition between Dean Foods and Foremost Farms.” With Foremost Farms eliminated as a competitor, the DOJ also said it would be easier for Dean Foods to coordinate with the remaining milk processors, whose competitive decision-making Dean Foods has described as “more predictable” and “rational.”

The April 2009 transaction between Dean Foods and Foremost Farms was not required to be reported under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which requires companies to notify and provide information to the department and the Federal Trade Commission before consummating certain acquisitions. The purchase price of the transaction was less than the minimum reporting threshold.

Dallas-based Dean Foods was not immediately available for comment. (We will update this story as soon as they send their response.) However, Peter Carstensen, a professor of law at the University of Wisconsin-Madison and an expert in anti-trust law was overjoyed with the news.

“Hooray, hooray!” exclaimed Carstensen, when informed by Agri-Pulse of DOJ’s lawsuit. “That’s very good news...especially for Wisconsin dairy farmers. It really is moving forward.”

But Carstensen, who flagged the Dean Foods-Foremost Farms transaction to federal antitrust regulators, said he’s not fully satisfied. “I would like to have seen the Justice Department take a broader view of what Dean what was doing in trying to get control of the milk processing business.

“Dean has enough milk processing facilities. It should not be allowed to buy up and often close down competing facilities because that just forecloses access to the fluid milk market,” he said.

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