

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

UNITED STATES OF AMERICA,)	
STATE of WISCONSIN,)	
STATE of ILLINOIS, and)	
STATE of MICHIGAN,)	
<i>Plaintiffs,</i>)	Civil Action No. 2:10-cv-00059 (JPS)
v.)	
DEAN FOODS COMPANY,)	
<i>Defendant.</i>)	
)	

ANSWER OF DEFENDANT DEAN FOODS COMPANY

Pursuant to Fed. R. Civ. P. 8(b), Defendant Dean Foods Company (“Dean Foods”) answers Plaintiffs’ January 22, 2010, Complaint as follows:

RESPONSES TO PLAINTIFFS’ ALLEGATIONS

The initial, unnumbered paragraph of the Complaint contains no factual allegations to which a response is required.

1. Dean Foods denies that it acquired the Consumer Products Division of Foremost Farms USA, but admits that in a transaction consummated on April 1, 2009, subsidiaries of Dean Foods acquired assets from Foremost Farms USA, Cooperative, including milk processing plants located in Waukesha and De Pere, Wisconsin, that were formerly operated by Foremost Farms’ Consumer Products Division. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of Paragraph 1. Dean Foods admits the allegations

in sentence three of Paragraph 1. Sentence four of Paragraph 1 contains legal conclusions to which no response is required.

2. Dean Foods denies the allegations in Paragraph 2.

3. Dean Foods denies the allegations in sentence one of Paragraph 3. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 3.

4. Dean Foods admits that Dean Foods' subsidiaries, Foremost, other dairy processors, distributors, and food service companies have competed on occasion in the past to supply school milk to some school districts in Wisconsin and the Upper Peninsula of Michigan. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 4.

5. Dean Foods admits that Dean Foods' subsidiaries, Foremost, other dairy processors, distributors, and food service companies have competed on occasion in the past to supply fluid milk to some customers. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 5.

6. Dean Foods denies the allegations in Paragraph 6.

7. Dean Foods denies the allegations in Paragraph 7.

8. Dean Foods denies the allegations in the sentences one and two of Paragraph 8. Dean Foods admits that it has complied with a series of agreements with the Department of Justice that limit Dean Foods' ability to integrate the Waukesha and De Pere plants fully into its dairy processing network. Dean Foods admits that Plaintiffs

seek the relief stated in the sentence three of Paragraph 8, but denies that Plaintiffs are entitled to the relief they seek.

9. Dean Foods admits the allegations in Paragraph 9, except to the extent Paragraph 9 contains legal conclusions to which no response is required.

10. Dean Foods admits that its subsidiaries operate assets, including the milk processing plants acquired from Foremost Farms, that are used to produce dairy products, some of which are offered for sale in interstate commerce. Dean Foods admits that its subsidiaries are engaged in activities affecting interstate commerce. Dean Foods admits the remaining allegations in Paragraph 10, except to the extent they contain legal conclusions to which no response is required.

11. Dean Foods admits that its subsidiaries are present in the State of Wisconsin, and that its subsidiaries transact substantial business in the State. Dean Foods admits the remaining allegations in Paragraph 11, except to the extent Paragraph 11 contains legal conclusions to which no response is required.

12. Dean Foods admits that some dairy processors, including Dean Foods' subsidiaries, purchase raw milk from dairy farms and agricultural cooperatives, pasteurize and package the milk, and distribute and sell the processed product. Dean Foods denies the remaining allegations in Paragraph 12, several of which are vague, imprecise, and ambiguous.

13. Dean Foods admits that some dairy processors sell fluid milk directly to distributors, food service companies, retailers, and institutions. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in sentences two and three of Paragraph 13. Dean Foods admits that

distributors and food service companies resell milk they purchase from processors to retailers, restaurants, and institutions, but Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that such retailer customers are “small” and that there are not other customers to which distributors and food service companies resell milk. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 13, several of which are vague, imprecise, and ambiguous.

14. Dean Foods admits that its subsidiaries sometimes charge different prices to different purchasers based upon a variety of factors, including the level of service provided to the purchaser. Dean Foods admits that retailers, institutions, and distributors either request bids or receive price quotes or price lists. Dean Foods admits that some fluid milk customers obtain rebates, discounts, or other forms of price relief. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 14, several of which are vague, imprecise, and ambiguous.

15. Dean Foods admits that some packaged fluid milk has a limited shelf life, but denies the remaining allegations in sentence one of Paragraph 15. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 15, several of which are vague, imprecise, and ambiguous.

16. Dean Foods denies the allegations in sentence one of Paragraph 16. To the extent the allegations in sentence two of Paragraph 16 relate to Dean Foods’ subsidiaries, Dean Foods admits them. Dean Foods is without knowledge or information

sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 16, several of which are vague, imprecise, and ambiguous.

17. Dean Foods admits that different school milk customers sometimes request different types or levels of service. Dean Foods further admits that such service requirements may be specified in a school district's supply contract. Dean Foods further admits that services to school districts can include milk reordering, cooler supply, cooler restocking, cooler cleaning and maintenance, carton rotation, retrieval of spoiled and damaged product, and automatic allotment of credit for retrieved product. Dean Foods further admits that some school districts require multiple deliveries of school milk per week or delivery during specified time periods. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 17.

18. Dean Foods denies the allegations in Paragraph 18.

19. Dean Foods admits that individual school districts often solicit bids for school milk supply contracts. Dean Foods admits that its subsidiaries base bids for school milk supply contracts on a variety of factors. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 19.

20. Dean Foods admits that its enterprise-wide 2008 revenues totaled approximately \$12.5 billion. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in sentences one and two of Paragraph 20. Dean Foods admits the allegations in sentence three of Paragraph 20.

21. Dean Foods admits that since 1996 it has completed more than 100 acquisitions, including acquisitions of dairy processors, but notes that many of these acquisitions did not involve fluid milk processing plants. Dean Foods admits that its acquisitions have increased Dean Foods' revenues. Dean Foods denies the remaining allegations in Paragraph 21.

22. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in sentences one through three of Paragraph 22. Dean Foods denies that it acquired assets of Foremost Farms' Consumer Products Division, but admits that in a transaction consummated on April 1, 2009, subsidiaries of Dean Foods acquired assets from Foremost Farms USA, Cooperative, including milk processing plants located in Waukesha and De Pere, Wisconsin, that were formerly operated by Foremost Farms' Consumer Products Division. Dean Foods admits the remaining allegations in Paragraph 22.

23. Dean Foods admits that the Waukesha and De Pere milk processing plants were not successful under Foremost Farms' ownership. Dean Foods admits the allegations in sentence two of Paragraph 23. Dean Foods admits that the Waukesha and De Pere milk processing plants were operating at less than two-thirds capacity utilization under Foremost Farms' ownership. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 23.

24. Dean Foods admits that processors usually wish to utilize their capacity, but Dean Foods denies that unutilized capacity necessarily creates "an incentive to bid more aggressively." Dean Foods denies the allegations in sentence two of Paragraph 24.

Dean Foods admits that its subsidiaries did not have as much unutilized capacity as Foremost Farms' Consumer Products Division, but Dean Foods denies that it did not have the same incentive to utilize its capacity. Dean Foods denies the remaining allegations in Paragraph 24.

25. Dean Foods admits that Foremost Farms' Consumer Products Division was not a unique competitor. Dean Foods admits that Mr. Engles made the statements quoted in Paragraph 25, but Dean Foods denies the characterization of those statements and the remaining allegations in Paragraph 25.

26. Dean Foods denies the allegations in Paragraph 26.

27. Dean Foods denies the allegations in Paragraph 27.

28. Dean Foods admits that the language quoted in Paragraph 28 appeared in documents, but Dean Foods denies the characterization of that language and the remaining allegations in Paragraph 28.

29. Dean Foods admits that in 2008 Dean Foods engaged in a process that resulted in the 2009-2011 DSD Dairy Strategic Growth Plan. Dean Foods admits that in 2008 possible acquisitions included dairy processors. Dean Foods admits that the language quoted in sentence two of Paragraph 29 appeared in a preliminary draft of the Strategic Growth Plan but denies that the language is in the final 2009-2011 DSD Dairy Strategic Growth Plan. Dean Foods admits that the language quoted in sentence three of Paragraph 29 appeared in a document. Dean Foods denies the characterization of the quoted language and the remaining allegations in Paragraph 29.

30. Dean Foods admits that preliminary drafts of the 2009-2011 DSD Dairy Strategic Growth Plan contained a slide entitled "Potential Acquisition Targets" and that

Foremost was identified on that slide. Dean Foods denies that the slide is in the final 2009-2011 DSD Dairy Strategic Growth Plan. Dean Foods denies the remaining allegations in Paragraph 30.

31. Dean Foods denies the allegations in Paragraph 31.

32. Dean Foods denies the allegations in Paragraph 32.

33. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 33.

34. Dean Foods denies the allegations in sentence one of Paragraph 34. Dean Foods admits that individual school districts sometimes solicit school milk contract bids from milk processors. To the extent the allegations in sentence three of Paragraph 34 relate to Dean Foods, Dean Foods denies them. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 34, several of which are vague, imprecise, and ambiguous.

35. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of allegations about the number of parties bidding to supply school milk to particular school districts. Dean Foods denies the remaining allegations in Paragraph 35.

36. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of allegations about the number of parties bidding to supply school milk to particular school districts or the allegation that Dean Foods and Foremost were “next-lowest-cost suppliers.” Dean Foods denies the remaining allegations in Paragraph 36.

37. Dean Foods denies the allegations in Paragraph 37.

38. Dean Foods denies the allegations in Paragraph 38.

39. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 39, several of which are vague, imprecise, and ambiguous.

40. Dean Foods denies the allegations in sentence one of Paragraph 40, which are vague, imprecise, and ambiguous. Dean Foods admits the allegations in sentences two and three of Paragraph 40, except to the extent the allegations contain legal conclusions to which no response is required. Dean Foods admits that a portion of the fluid milk supplied to customers in Wisconsin, the Upper Peninsula of Michigan, and northeastern Illinois comes from milk processing plants located outside that region.

41. Dean Foods denies the allegations in sentences one and two of Paragraph 41. Dean Foods admits that Foremost Farms' Consumer Products Division sold fluid milk to purchasers located in Wisconsin, the Upper Peninsula of Michigan, and northeastern Illinois, but denies that this area constitutes a relevant geographic market. Dean Foods admits that Dean Foods' subsidiaries compete to supply fluid milk to customers in Wisconsin, the Upper Peninsula of Michigan, and northeastern Illinois. Dean Foods denies the remaining allegations in Paragraph 41.

42. Dean Foods admits the allegations in sentence two of Paragraph 42. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 42, several of which are vague, imprecise, and ambiguous.

43. Dean Foods admits the allegations in sentence one of Paragraph 43. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 43.

44. Dean Foods denies the allegations in Paragraph 44.

45. Dean Foods admits that Dean Foods' subsidiaries compete to supply fluid milk to customers in Wisconsin, the Upper Peninsula of Michigan, and northeastern Illinois. Dean Foods denies the allegations in sentence two of Paragraph 45. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 45.

46. Dean Foods admits that the Waukesha and De Pere milk processing plants had unutilized capacity under Foremost Farms' ownership. Dean Foods denies the remaining allegations in Paragraph 46.

47. Dean Foods denies the allegations in sentences one through four of Paragraph 47. Dean Foods is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 47.

48. Dean Foods admits that a Dean Foods employee made the statements quoted in sentences three and four of Paragraph 48, but Dean Foods denies the characterization of those statements and the remaining allegations in Paragraph 48.

49. Dean Foods admits that the language quoted in sentence one of Paragraph 49 appeared in a document and that a Dean Foods employee used the language quoted in sentence two of Paragraph 49, but Dean Foods denies the characterization of the quoted language and the remaining allegations in Paragraph 49.

50. Dean Foods admits that the language quoted in Paragraph 50 appeared in a document, but Dean Foods denies the characterization of that language and the remaining allegations in Paragraph 50.

51. Dean Foods denies the allegations in Paragraph 51.

52. Dean Foods denies the allegations in Paragraph 52.

53. Dean Foods admits, denies, and responds to the allegations incorporated into Paragraph 53 as set forth in the preceding paragraphs of this Answer.

54. Dean Foods denies the allegations in Paragraph 54 and its subparts.

55. Dean Foods denies the allegations in Paragraph 55 and its subparts.

56. Dean Foods admits that Plaintiffs seek the relief requested in Paragraph 56 and its subparts, but denies that Plaintiffs are entitled to such relief.

Dean Foods denies any allegation in the Complaint that has not been specifically admitted or denied above.

DEFENSES

The inclusion of any ground within this section does not constitute an admission that Dean Foods bears the burden of proof on each or any of the matters, nor does it excuse Plaintiffs from establishing each element of their purported claims for relief.

1. Efficiencies and other precompetitive benefits resulting from the challenged acquisition outweigh any and all proffered anticompetitive effects.

2. The Consumer Products Division of Foremost Farms USA was a failing division.

3. The Complaint contains numerous allegations that are so vague, imprecise, and ambiguous as to fail to provide adequate notice of the basis for Plaintiffs' claims.

4. Granting the relief sought is contrary to the public interest. Plaintiffs are not entitled to the relief sought in the Complaint or any relief.

Respectfully submitted,

Dated this 21st day of April, 2010.

s/Nathan A. Fishbach
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