

brought at the direction of the Assistant Attorney General for the Antitrust Division in January 2010.

3. On April 20, 2009, the Antitrust Division opened a preliminary investigation into the Dean Foods Company's ("Dean") acquisition of Foremost Farms USA's ("Foremost") fluid milk processing business. I served as the lead investigative attorney for the matter.

4. The United States gathered school milk bidding documents from school districts throughout Wisconsin and the Upper Peninsula of Michigan ("UP") by making informal requests on the telephone or using local public records request. On May 14, 2010, Plaintiffs voluntarily produced to Dean all 4,870 pages of school milk bid material that Plaintiffs had gathered from these school districts. Ex. 1.

5. During the course of the investigation, the United States served two document Civil Investigative Demands ("CIDs") on Dean and took ten CID depositions of Dean employees. The United States also served document CIDs on 16 third-parties and took four third-party CID depositions. In response to the CIDs, Dean produced 79,021 documents comprising approximately 1.1 million pages. Third-parties produced an additional 9,107 documents comprising 44,866 pages.

6. On May 27, 2010, Plaintiffs made their Rule 26(a) Initial Disclosures. As part of their disclosures, Plaintiffs produced to Dean all of the documents, data, deposition transcripts, and declarations that they had received from third parties that related to competition for school milk in Wisconsin and the UP and fluid milk in Wisconsin, the UP, and northeastern Illinois. Plaintiffs produced these materials without regard to whether they supported Plaintiffs' claims or Dean's defenses. Ex. 2 .

7. As part of its investigation, Plaintiffs conducted interviews with approximately 170 third-party customers, distributors, dairy processors, and other industry participants. I attended approximately one-half of these interviews and am aware of the content of the other interviews either by reading the interview memoranda or being briefed on the interviews by members of my investigative staff. Attorneys led the questioning during almost all of the interviews. When an interview was held so a potential testifying expert could interview customers or dairy processors, or to help an economist understand a third party's data sets, the interviews were conducted under the direction of attorneys. United States Justice Department personnel always attended the interviews even when a Plaintiff State led the interview.

8. The interviews were not tape recorded, nor was any attempt made to create a verbatim statement of the information conveyed. Instead, the participants took notes and, after the interview, a participant drafted an internal memorandum summarizing the relevant information. When a paralegal drafted the memoranda, one or more of the attorneys participating in the interview typically reviewed the draft memorandum to ensure that the information important to the legal and economic theories being investigated was included. In some instances, the attorney conducting an interview made a decision that there was no need to draft a memorandum because the interview did not further the United States' understanding of the issues. In addition to summarizing the attorneys' understanding of the information conveyed during the interview, many of these interview memoranda also state the reasons the interview was conducted, characterize the importance of the information learned, evaluate the interviewee as a possible witness, or identify potential areas of further inquiry.

9. The United States Department of Justice has not shown the interview memoranda from this investigation to the persons who were interviewed, any of the Plaintiff States, or any consulting or testifying expert retained by Plaintiffs.

10. Since filing its Complaint with this Court on January 22, 2010, the United States has conducted approximately 45 additional interviews of third parties.

11. On January 28, 2010, six days after the Complaint was filed in this case, I participated in a telephone call with Paul Denis, Dean's lead outside counsel. In that call, Mr. Denis stated that Dean was likely to seek the "fact base" on which Plaintiffs relied in making their decision to file this lawsuit. I interpreted that comment to mean that Dean would seek to obtain the facts from Plaintiffs' investigatory interviews of third-parties.

12. On February 26, 2010, my colleagues Jon Jacobs and Ryan Kantor attended a meeting with two attorneys representing Dean, Steve Bradbury, and Mike Farber. I did not attend this meeting but was later briefed on what had occurred. At this meeting, Dean's attorneys expressed a concern about the potential for burdensome third-party discovery on the fluid milk claim, given the number of fluid milk purchasers in Plaintiffs' relevant geographic market. To address this concern, Dean asked Plaintiffs to identify either the fluid milk purchasers most likely to be harmed by the acquisition or the geographic areas within the market most likely to be affected.

13. On March 8, 2010, I received an e-mail from Steve Bradbury, Dean's counsel, setting forth a proposed procedure for holding a Rule 26(f) conference in this case. In that proposal, Dean requested that Plaintiffs describe in detail all facts known to the individuals and

entities whom Plaintiffs interviewed in their investigation that are relevant to Plaintiffs' claims in this action.

14. On May 3, 2010, I participated in the Rule 26(f) conference in this case. During that conference, Dean's attorneys justified their request for the facts recorded in Plaintiffs' interview notes and memoranda based on their perceived need to "catch up" to Plaintiffs' understanding of the market after our nine-month investigation.

15. On May 27, 2010, Plaintiffs served their Initial Disclosures on Dean. In those disclosures, Plaintiffs attempted to address Dean's concerns about the potential for burdensome third-party discovery on the fluid milk claim by limiting the number of fluid milk purchasers (such as retailers, distributors, and institutions) on whom Plaintiffs would rely at trial. Ex. 2.

16. Dean's May 27, 2010 Initial Disclosure identify 55 of Dean's own employees who may have discoverable knowledge that may be used to support its claims and defenses in this case. Of those 55 persons, 25 have addresses in Wisconsin, the UP, and northeastern Illinois.

17. On May 21, 2010, the parties submitted their Joint Rule 26(f) Report. (Dkt. Number 31). In that report, Plaintiffs noted: "Almost a year before Plaintiffs began investigating in April 2009, Dean and Foremost Farms entered into a joint defense agreement in contemplation of potential litigation relating to the proposed transaction. Further, Dean has been collecting and exchanging information with Foremost since at least April 2008 about all processors' school bidding."

18. On December 23, 2009, the United States conducted a deposition of Foremost President and CEO David Fuhrmann. Mr. Fuhrmann testified to the following concerning the negotiations between Dean and Foremost: (a) Dean initially wanted Foremost to share the

antitrust risk from the Foremost transaction, (b) allocating antitrust risk was an important part of those negotiations, (c) Foremost refused to accept the antitrust risk, (d) Dean agreed to accept the antitrust risk as part of the transaction, and (e) Foremost would not have sold its fluid milk processing business to Dean if Dean had not accepted the antitrust risk. David Fuhrmann Dep. at 85-88. Ex. 3.

19. During Plaintiffs' investigation, Dean submitted multiple position papers comprised of over 175 pages of factual, legal, and economic analysis, with a similar volume of supporting materials. I received and reviewed the materials. The position papers argue that the Antitrust Division should close the investigation, respond to concerns that Antitrust Division staff had shared with Dean, and show detailed factual analysis and sophisticated economic modeling by Dean's attorneys and expert economists. (Material not attached due to volume.)

20. On June 3, 2010, this Court entered a Scheduling Order for this case. (Dkt. Entry 32). This Order includes several provisions to which Plaintiffs agreed in order to address Dean's stated need to conduct extensive third-party discovery in this case: a nine-month fact discovery period, 225 hours of deposition time for Dean, and an early exchange of tentative fact witness lists, with Plaintiffs' disclosing first.

21. During the July 13, 2010 meet and confer relating to this discovery dispute, Dean requested that Plaintiffs provide Dean with a list of people whom Plaintiffs either interviewed or tried to interview and stated that what it wanted was to know the identities of persons who did not support Plaintiffs' claims. On July 19, 2010, Plaintiffs provided Dean with a list of all persons Plaintiffs had interviewed or attempted to interview in an effort to avoid this discovery dispute. Dean Mem. Ex. 4.

22. On August 10, 2010, Plaintiffs provided Dean with its tentative witness list. The witness list consists of 20 people, including two Dean executives.

23. On August 11, 2010, Plaintiffs served their 63 page Response to Dean's Second of Interrogatories. In its response, Plaintiffs answered Dean's interrogatories in detail, including information about fluid milk processor capabilities and strategies as well as competitive bidding events. Plaintiffs do not attach the Response as an exhibit because it contains confidential business information from Dean and third-parties protected by this Court's Protective Order.

24. Over the course of my career at the Department of Justice, I have reviewed dozens of mergers. In my experience, Antitrust Division attorneys commonly utilize voluntary interviews throughout their investigations because they are an effective and efficient means to gather the information needed to enforce the antitrust laws. The purpose of interviewing industry participants is to learn (a) how business is done in the particular industry, (b) who are the important industry participants, (c) the current state of competition, (d) what effects, if any, would result from a price increase to the product(s) in question, (e) how pricing decisions are made, (f) developing leads to other sources of information, (g) whether the interviewee could effectively communicate important industry information to a Court, and (h) whether other interviewees have provided complete and credible information.

25. It is very common for third-parties to agree to be interviewed only after assurances that the United States will protect their information to the fullest extent possible. United States Department of Justice attorneys conducting civil antitrust investigations often begin voluntary interviews by describing how the United States protects confidential information. Many competitors also ask that their trade information and other strategic information be considered

confidential. Many third-party witnesses further note that they fear retaliation from the party or parties which the United States is investigating.

26. In the investigation of Dean's acquisition of Foremost, many interviewees raised concerns about the confidentiality of their business information and the fact that they were speaking with the Antitrust Division. In fact, the frequency in which interviewees expressed such concerns was significantly greater than usual in this investigation.

27. Based upon my thirteen years of experience conducting merger and other investigations at the United States Department of Justice Antitrust Division, including the hundreds of interviews I have conducted in my career and my experience speaking with witnesses in the investigation which led to this action, I believe that if it were to become routine for courts to require the United States to disclose all of the factual information it obtains through third-party interviews, many market participants would decline to participate in voluntary interviews in connection with civil antitrust investigations.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 13, 2010, in Washington, DC.

s/ Karl D. Knutsen
Karl D. Knutsen