

Antitrust Suit Reinstated Against Dean Foods

TRAVIS LOLLER, Associated Press

NASHVILLE, Tenn. (AP) — A federal appeals court has reinstated a lawsuit that claims Dean Foods conspired with another milk processor and a dairy cooperative to reduce competition in the milk industry.

Dallas-based Dean Foods merged with Suiza Foods in 2001. At the time, they were the country's two largest bottlers of processed milk. The Department of Justice allowed the merger with certain conditions that were intended to ensure competition in the industry. That included selling some bottling facilities to a newly formed partnership called National Dairy Holdings, also based in Dallas.

The suit claims that National Dairy Holdings is controlled by Kansas City, Mo.,-based Dairy Farmers of America. According to the suit, those two companies and Dean Foods have made an agreement not to compete, driving up the price of bottled milk for retailers like the plaintiffs — Salisbury, N.C.,-based Food Lion and Jonesborough, Tenn., resident Fidel Breto, doing business as Family Foods.

The suit says that Dean Food, National Dairy Holdings and Dairy Farmers of America controlled 77 percent of processed milk bottling capacity in the Southeast In 2007, when the legal action was filed.

The U.S. District Court in Greeneville dismissed the suit in 2012. In his ruling, U.S. District Judge Ronnie Greer said the plaintiffs had not shown that they were sufficiently injured by the arrangement between the three companies. Greer also ruled that the plaintiffs had not established that the arrangement had produced an anti-competitive effect in the relevant geographic region. The second conclusion was largely due to the judge's decision to exclude expert testimony, according to court records.

In Friday's ruling, a three-judge panel of the 6th U.S. Circuit Court of Appeals in Cincinnati found that the expert testimony should not have been excluded. They also said the plaintiffs had met their burden of proof in raising "a genuine issue of material fact as to whether Dean Foods violated the antitrust laws."

And they disagreed that the plaintiffs could not show injury, citing testimony that, after controlling for natural cost increases, prices for bottled milk in the relevant area increased by 7.9 percent between 2002 and 2007.

The Appeals Court sent the case back to the District Court for further proceedings.

A separate 2007 suit filed by southeastern dairy farmers against Dean, Dairy Farmers of America and others made similar claims. That suit was settled, with the various defendants agreeing to pay famers \$303 million and make several changes to the way they did business.

Antitrust Suit Reinstated Against Dean Foods

Published on Food Manufacturing (<http://www.foodmanufacturing.com>)

Source URL (retrieved on 04/21/2015 - 9:22am):

<http://www.foodmanufacturing.com/news/2014/01/antitrust-suit-reinstated-against-dean-foods>