
market because Perdue’s and Coleman’s facilities did not overlap in any local regions. The DOJ also considered whether the transaction might increase the possibility of coordination under several theories, including a “multi-market contact” theory, which suggests that firms may find it more feasible to coordinate on terms, such as payment for grower services, as they interact in more numerous regions. The DOJ determined, however, that adding an additional point of contact was not likely to increase the risk of coordination in this case. In a closing statement, the DOJ indicated that, while the multi-market contact theory did not apply given the specific facts of this matter, the DOJ will continue to consider its application in future transactions, especially those involving agricultural markets where processors interact in numerous local markets for the purchase of goods or services from producers.

2.1.4 *Milk*

13. In January 2010, the DOJ filed a civil antitrust lawsuit against Dean Foods Company, challenging its April 2009 acquisition of Foremost Farms USA’s Consumer Products Division, alleging that the merger eliminated substantial competition between the two companies in the sale of milk to schools, grocery stores, convenience stores, and other retailers in Illinois, Michigan, and Wisconsin.¹⁰ Dairy processors, such as Dean and Foremost, purchase raw milk from dairy farms and agricultural cooperatives to pasteurize and package. The processors then distribute and sell the milk to school districts, supermarkets, grocery stores, and other commercial customers. In the school milk market, the DOJ alleged that the merger left many districts with a monopoly provider and in others reduced the number of bidders from three to two. In the market for sale of milk to supermarkets, grocery stores, and other commercial customers, the DOJ alleged that the acquisition eliminated the substantial competition between Dean and Foremost and that it made it easier for Dean to coordinate with the remaining milk processors. In March 2011, the DOJ reached a settlement with Dean that required it to divest a significant milk processing plant and related assets that it acquired from Foremost, as well as a popular brand name.¹¹

14. In April 2003, the DOJ filed a civil antitrust lawsuit challenging Dairy Farmers of America’s (DFA’s) significant partial investment in two rival dairies (Flav-O-Rich and Southern Belle).¹² DFA is a multi-billion dollar cooperative of thousands of dairy farmers. Its primary mission is to secure a steady sale

evidence that refiners conspired to restrict supply or otherwise violated the antitrust laws”¹⁹ and found, rather, that the “price increases were caused by a confluence of factors reflecting the normal operation of the market.”²⁰

19. The FTC also performs studies on its own initiative of industries, such as gasoline, that are of particular importance to consumers. These studies frequently build on experience the agency has gained in

supply would lead to non-competitive pricing effects and resource misallocations. The Department of Agriculture ultimately determined not to promulgate the hops marketing agreement.²⁵

24. The Agencies in certain instances also express support for proposed legislation that would benefit consumers by protecting or promoting competition. In 2010, FTC staff submitted comments to the New Jersey State Senate expressing support for a bill that would modify the law to allow gasoline retailers to set their prices below cost in certain circumstances. New Jersey law prohibited a “retail dealer” from selling motor fuel “at a price which is below the net cost of such motor fuel to the retail dealer plus all selling expenses.”²⁶ The proposed legislation would change New Jersey law to allow below-cost pricing to meet competition, so long as such prices are not set “with intent to injure competition or destroy or substantially lessen competition.”²⁷ The FTC staff explained that because below-cost pricing can benefit consumers, and because the proposed legislation would allow New Jersey gasoline retailers to compete more aggressively on price, New Jersey consumers will likely benefit from the proposed legislation.

25. By working with and advising federal and state legislators and regulators, the Agencies promote competition and, when appropriate, raise awareness of the potential competitive impact of particular proposed laws and regulations, including in the commodities sector.

²⁵ United States Dep’t of Agriculture, News Release, USDA Terminates Proposed Hops Marketing Order Proceeding (June 20, 2005), *available at* <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateU&navID=LatestReleases&page=Newsroom&topNav=&leftNav=&rightNav1=LatestReleases&rightNav2=&resultType=Details&dDocName=STELDEV3004036&dID=42805&wf=false&description=USDA+Terminates+Proposed+Hop+Marketing+Order+Proceeding+>.

²⁶ See <http://www.ftc.gov/os/2010/09/100928gasolineretailers.pdf>.

²⁷ *Id.*