Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on September 22, 2020, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Thursday, October 8, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 23, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on October 7, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 30, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 19, 2020. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 19, 2020. On November 10, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 13, 2020, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 27, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–11763 Filed 6–1–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States, et al. v. Dairy Farmers of America, Inc. and Dean Foods Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois in *United States of America, et al.* v. *Dairy Farmers of America, Inc., et al., Civil Action No. 1:20-cv-02658.* On May 1, 2020, the United States filed a Complaint alleging that Dairy Farmers of America, Inc.'s (''DFA'') proposed acquisition of certain assets from Dean Foods Company would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires DFA to divest three dairy processing plants and related tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment, Competitive Impact Statement, and a letter the United States considered determinative in formulating the proposed Final Judgment are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the Northern District of Illinois. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Eric D. Welsh, Acting Chief, Healthcare and Consumer Products Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4100, Washington, DC 20530 (telephone: 202–598–8681).

Suzanne Morris,

Chief, Premerger and Division Statistics.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA, COMMONWEALTH OF MASSACHUSETTS, and STATE OF WISCONSIN, Plaintiffs, v. *DAIRY*

FARMERS OF AMERICA, INC. and DEAN FOODS COMPANY, Defendants.

Case No. 1:20-cv-02658

Complaint

The United States of America, the Commonwealth of Massachusetts, and the State of Wisconsin (''Plaintiff States''), bring this civil antitrust action to prevent Dairy Farmers of America, Inc. (''DFA'') from acquiring certain fluid milk processing plants from Dean Foods Company (''Dean'').

I. Introduction

DFA's acquisition of most of Dean's fluid milk processing plants would further consolidate two highly concentrated fluid milk markets: (1) Northeastern Illinois and Wisconsin and (2) New England. The acquisition would make DFA the largest player in each market, with nearly 70% market share in northeastern Illinois and Wisconsin and over 50% in New England. DFA is the largest dairy cooperative in the United States, with nearly 14,000 farmer-members located in dozens of states. DFA also owns numerous fluid milk processing plants, including plants in Cedarburg, Wisconsin; New Britain, Connecticut; and Portland, Maine. Dean, the largest fluid milk processor in the nation, owns competing plants in Harvard, Illinois; De Pere, Wisconsin; and Franklin, Massachusetts.

DFA and Dean compete head-to-head to sell fluid milk to customers in the geographic areas served by these plants, including supermarkets, schools, convenience stores, and hospitals, among others. In these areas, DFA and Dean are two of only three significant competitive options for these customers. Competition between DFA and Dean has benefitted these customers by lowering fluid milk prices and improving service. The acquisition would eliminate competition between DFA and Dean in these geographic areas, threatening to increase prices for supermarkets, schools, and other fluid milk customers—price increases that would ultimately be passed on to millions of individual consumers.

For these reasons and those set forth below, DFA's proposed acquisition of assets from Dean threatens to lessen competition substantially in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Background

A. Fluid Milk Processing

1. Approximately 10 million dairy cows produce over 200 billion pounds of raw milk in the United States each year. Dairy farmers sell the raw milk that their cows produce to processing plants that convert the raw milk into fluid milk, ice cream, cheese, and other dairy products. Fluid milk is raw milk that has been processed for human consumption. It is the ordinary fresh milk that can be found in supermarket and convenience store refrigerators.

2. Fluid milk processing plants purchase raw milk from dairy farmers, pasteurize and package the milk, and sell and distribute the processed product. Processors sell fluid milk to supermarkets, schools, convenience stores, hospitals, and others—sometimes through distributors and sometimes directly. The demand for fluid milk in the United States has declined, causing the closure of fluid milk processing plants around the country and, among other factors, leading to the pending bankruptcy of Dean and other fluid milk processors. Despite this reduction in demand, a significant group of consumers remains loyal to traditional fluid milk, and their demand for fluid milk continues to be largely unaffected by changes in price.

3. Fluid milk customers pay different prices based on a variety of factors, including the number of competitive alternatives available to the customer. Large customers and school districts typically request bids from fluid milk processors. The prices quoted by processors in these bids depend on the number and strength of competing processors, the processor's product, transportation and service costs, the processor's capacity utilization, and the ability of the processor to deliver directly to the customers' locations, among other factors. Distance between processors and purchasers also affects fluid milk pricing because fluid milk has a limited shelf life and is costly to transport. As a result, most customers purchase fluid milk from nearby processing plants.

B. The Defendants and the Merger

4. Dairy Farmers of America is the largest cooperative of dairy farmers in the country, with nearly 14,000 members. In 2018, DFA marketed 64.5 billion pounds of raw milk—approximately 30% of all raw milk produced in the United States. DFA had 2018 revenues of $13.6 billion.

5. DFA is also vertically integrated through its ownership interests in milk processing plants. DFA owns a number of dairy processing plants around the country, including eight fluid milk processing plants and a significant stake in a joint venture that owns twelve additional fluid milk plants. In the northeastern Illinois and Wisconsin area, DFA owns a fluid milk plant in Cedarburg, Wisconsin. In the New England area, DFA owns fluid milk plants in New Britain, Connecticut and Portland, Maine. These plants compete directly against certain processing plants that DFA proposes to acquire from Dean.

6. Dean Foods is the largest fluid milk processor in the country. It currently operates 57 fluid milk processing plants in 29 states. Dean's fluid milk processing network includes plants in the northeastern Illinois and Wisconsin area in Harvard, Illinois and De Pere, Wisconsin, and in the New England area in Franklin, Massachusetts. Dean had 2018 revenues of $7.75 billion.

7. Dean filed for Chapter 11 bankruptcy protection on November 12, 2019. Simultaneous with the bankruptcy filing, Dean announced that it was in discussions to sell some or all of its fluid milk plants to DFA. Dean's financial position continued to worsen in the months after its bankruptcy filing and was exacerbated by the coronavirus pandemic, which caused demand for milk by schools and restaurants to plummet. The growing financial crisis caused the bankruptcy process to be accelerated in order to find buyers for Dean's assets before the company ran out of money to continue operating. By order of the bankruptcy court, Dean accepted bids for its assets and selected winning bidders on March 30, 2020. Dean selected DFA as the winning bidder for the majority of Dean's assets.

8. On April 6, 2020, DFA and Dean entered into an asset purchase agreement whereby DFA agreed to purchase 44 of Dean's 57 fluid milk plants, along with various other assets, for a total value of $433 million. The purchase price consists of $325 million in cash and $108 million in forgiveness of debt owed by Dean to DFA.

III. Jurisdiction and Venue

9. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. The Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The Plaintiff States, by and through their respective Attorneys General, bring this action as *parens patriae* on behalf of and to protect the health and welfare of their citizens and the general economy of each of their states.

11. DFA and Dean process, market, sell, and distribute fluid milk in the flow of interstate commerce, and their

sale of fluid milk substantially affects interstate commerce. This Court therefore has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

12. DFA and Dean both transact business in this district, including by selling fluid milk to customers in this district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22 and under 28 U.S.C. 1391(c).

IV. The Merger Would Substantially Lessen Competition in the Sale of Fluid Milk

13. DFA's acquisition of Dean's plants in northeastern Illinois, Wisconsin, and New England is likely to lessen competition substantially for fluid milk customers. DFA and Dean are two of only three significant fluid milk processors that can serve customers in these areas. If the acquisition were permitted to proceed, DFA would control nearly 70% of the fluid milk market in northeastern Illinois and Wisconsin, and approximately 51% in New England. DFA and Dean compete head-to-head to supply fluid milk customers in these areas today, and those customers rely on competition between DFA and Dean to get lower prices and better terms. The acquisition would eliminate this competition and lead to higher prices and inferior service for supermarkets, schools, and other fluid milk customers and, ultimately, millions of individual consumers.

A. The processing and Sale of Fluid Milk Is a Relevant Product Market

14. The processing and sale of fluid milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. Consumers have long-held cultural and taste preferences for fluid milk over other beverages, and fluid milk has particular nutritional benefits and qualities for use in cooking. Consequently, consumer demand for fluid milk is relatively inelastic; that is, fluid milk consumption does not decrease significantly in response to a price increase. Fluid milk is distinct from extended shelf-life milk, ultra-high temperature milk, and aseptic milk, which are produced by different processes, have numerous significant differences, and generally cost significantly more than fluid milk.

15. Retailers, supermarkets, distributors, and other fluid milk customers are unlikely to substitute other products for fluid milk because the individual consumers that they serve continue to demand fluid milk. Schools are similarly unlikely to substitute away from fluid milk in response to even a substantial price increase because they are required by federal regulations to offer fluid milk to students to receive federal reimbursements for meals served to lower-income students.

16. For these reasons, the processing and sale of fluid milk satisfies the well-accepted ''hypothetical monopolist'' test set forth in the U.S. Department of Justice and Federal Trade Commission *2010 Horizontal Merger Guidelines* (''*Horizontal Merger Guidelines*''). A hypothetical monopolist processing and selling fluid milk likely would impose a small but significant and non-transitory price increase (*e.g.,* five percent) because an insufficient number of customers would switch to alternatives to make that price increase unprofitable.

B. The Two Relevant Geographic Markets Are (1) Northeastern Illinois and Wisconsin and (2) New England

17. Fluid milk processors charge different prices to buyers in different areas. They negotiate prices individually, and fluid milk's high transportation costs and limited shelf life mean that customers cannot practically buy fluid milk from each other to avoid a higher price charged by processors. In other words, fluid milk processors can engage in ''price discrimination.'' When price discrimination is possible, relevant geographic markets may be defined by reference to the location of customers. In particular, a relevant geographic market for the processing and sale of fluid milk is a region within which customers can be targeted for a price increase. Most customers purchase fluid milk from suppliers and processing plants located near them because transportation costs and shelf life make sourcing from more distant suppliers prohibitive.

18. Northeastern Illinois, which includes Chicago and its suburbs, and the state of Wisconsin together comprise a relevant geographic market and section of the country within the meaning of Section 7 of the Clayton Act. Similarly, New England—including the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont—is a relevant geographic market and section of the country within the meaning of Section 7 of the Clayton Act. A hypothetical monopolist selling fluid milk in either of these two areas likely would find it profitable to impose a small but significant and non-transitory price increase (*e.g.,* five percent), because customers could not economically switch their source of supply to more distant sources.

C. The Merger Is Presumptively Unlawful in Both Geographic Markets

19. DFA's acquisition of Dean's fluid milk processing plants would result in a substantial increase in the concentration of processors that compete to supply fluid milk to customers in the northeastern Illinois and Wisconsin geographic market and the New England geographic market. DFA and Dean are two of only three significant fluid milk processors that sell into each of these geographic markets. In both geographic markets the acquisition would eliminate one competitor, leaving just two remaining competitive options for fluid milk customers, with DFA controlling a significant majority of fluid milk sales. Although there are small or fringe fluid milk processors in each market, these processors are not competitive options for most fluid milk customers because they are much smaller and lack the capabilities necessary to compete against processors like DFA and Dean.

20. The Supreme Court has held that mergers that significantly increase concentration in already concentrated markets are presumptively anticompetitive and therefore presumptively unlawful. To measure market concentration, courts often use the Herfindahl-Hirschman Index (''HHI'') as described in the *Horizontal Merger Guidelines.* HHIs range from 0 in markets with no concentration to 10,000 in markets where one firm has a 100% market share. According to the *Horizontal Merger Guidelines,* mergers that increase the HHI by more than 200 and result in an HHI above 2,500 in any market are presumed to be anticompetitive and, therefore, unlawful.

21. The acquisition of Dean's plants by DFA is presumptively unlawful in northeastern Illinois and Wisconsin. For fluid milk customers in this geographic market the combined market share of Dean's processing plants in Harvard, Illinois, and De Pere, Wisconsin, and DFA's processing plant in Cedarburg, Wisconsin is estimated to be approximately 70%. The result is a highly concentrated market with an HHI of nearly 5,200 and an increase in HHI of nearly 1,900.

22. The acquisition is also presumptively unlawful in the New England geographic market. For fluid milk customers in New England, the combined market share of Dean's processing plant in Franklin, Massachusetts, and DFA's processing plants in New Britain, Connecticut, and

Portland, Maine is estimated to be approximately 51%. The result is a highly concentrated market with an HHI of approximately 3,300 and an increase in HHI of over 1,000.

D. The Merger Would Reduce Competition That Benefits Fluid Milk Customers in Northeastern Illinois and Wisconsin and in New England

1. The Merger Would Eliminate Head-to-Head Competition Between DFA and Dean

23. DFA's acquisition of Dean's plants in northeastern Illinois and Wisconsin and in New England would eliminate head-to-head competition that has benefitted and would otherwise continue to benefit supermarkets, schools, and other fluid milk customers in the relevant geographic markets. Especially for large customers like supermarkets, DFA and Dean are two of only three competitive fluid milk processors, and they are often the two lowest-price options in these geographic markets. For reasons related to service and delivery capabilities, some fluid milk customers consider DFA and Dean to be their only practical options.

24. Many customers solicit bids from fluid milk processors and select the bidder that offers the lowest price. These customers often leverage a lower-priced bid from one supplier to obtain improved offers and lower prices from other bidders in individual negotiations. Even customers who use less formal procurement processes benefit from the presence of competitive alternatives, which constrain the prices that fluid milk processors can charge. Fluid milk customers in the relevant geographic markets have historically used competing bids from DFA and Dean to obtain lower prices.

25. As described above, customers typically purchase fluid milk from processing plants located near them because of shelf life and the costs associated with transportation. These costs comprise a significant portion of the prices that fluid milk processors offer to customers. Therefore, the lowest-price fluid milk processors available to customers typically are the processing plants located closest to them. For many fluid milk customers in the relevant geographic markets, DFA and Dean are two of the closest processing plants and, therefore, two of the most competitive options. The only other significant competitors selling fluid milk to customers in these markets are unlikely to substantially mitigate the loss of competition between DFA and Dean.

26. Many customers also have particular product and service requirements that not all fluid milk processors can meet. Many supermarkets, convenience stores, schools, and other customers require processors to arrange direct-store delivery, or ''DSD,'' where the processor delivers fluid milk to each of the customer's locations on a set schedule—sometimes as often as daily. Schools typically require milk to be packaged in small half-pint containers that require a separate bottling line and dedicated equipment. DFA and Dean, along with the third significant competitor in each of the relevant geographic markets, can satisfy these complex product and service requirements, while other smaller processors cannot.

2. The Merger Would Increase the Likelihood of Anticompetitive Coordination

27. The acquisition would result in easier and more stable coordinated interaction among DFA and the remaining fluid milk competitors in northeastern Illinois and Wisconsin and in New England. By reducing the number of significant fluid milk processors in these areas from three to two, the acquisition would make it easier for the remaining two processors to coordinate. Coordination is more likely to occur where it would be particularly effective and profitable, as in markets with few significant competitors, relatively homogenous products, and where demand for the product is not significantly affected by an increase in its price. Fluid milk markets exhibit each of these characteristics.

28. There is a history of anticompetitive coordination, including price-fixing, bid-rigging, and customer allocation in fluid milk markets in the United States and, in particular, in the sale of milk to schools. Numerous fluid milk processors, including Dean itself, have engaged in criminal collusive activities at various times over the last 40 years. Given this history of coordination among fluid milk processors and the reduction in the number of significant competitors, DFA's acquisition of Dean's assets makes coordination more likely to occur in these geographic markets.

E. Entry by Other Fluid Milk Processors Is Unlikely To Prevent an Anticompetitive Price Increase

29. Entry by fluid milk processors outside the relevant geographic markets is unlikely to be sufficient or timely enough to offset the anticompetitive effects of the acquisition. Processors who do not currently serve these markets are unlikely to begin shipping a significant quantity of fluid milk into the relevant geographic markets due to the same factors that make them uncompetitive in these markets today, including transportation costs and the lack of necessary capabilities or levels of service. Any milk that could be shipped into the relevant geographic markets likely could not be competitively priced because of high transportation costs, nor could it be economically delivered to customers like schools without local distribution networks.

30. The construction of a new fluid milk processing plant to serve customers in either of the relevant geographic markets is very unlikely because of the high costs of building a dairy processing plant—especially as fluid milk consumption has declined. Numerous fluid milk processing plants have closed in the last ten years across the United States, while only a few new plants have been built, largely for retailers to supply their own stores. The two largest fluid milk processors in the country, Dean and Borden, have filed for bankruptcy.

V. Countervailing Factors Do Not Offset the Anticompetitive Effects of the Merger

31. The proposed merger is unlikely to generate verifiable, merger-specific efficiencies sufficient to outweigh the anticompetitive effects that are likely to occur in the provision of fluid milk in the relevant geographic markets.

VI. Violations Alleged

32. The acquisition by DFA of certain Dean assets likely would lessen competition substantially for the processing and sale of fluid milk in the two relevant geographic markets alleged above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

33. Unless enjoined, the acquisition likely would have the following anticompetitive effects, among others, in the relevant geographic markets:

(a) competition for the sale and processing of fluid milk between DFA and Dean would be eliminated;

(b) prices for fluid milk would increase; and

(c) quality and service levels would decrease.

VII. Request for Relief

34. Plaintiffs request that the Court:

(a) adjudge and decree that DFA's proposed acquisition of assets from Dean would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminary and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the planned acquisition or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine DFA and Dean in the relevant geographic markets alleged above;

(c) award Plaintiffs the costs of this action; and

(d) award Plaintiffs other relief that the Court deems just and proper.

Dated: May 1, 2020

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA, COMMONWEALTH OF MASSACHUSETTS, and STATE OF WISCONSIN, Plaintiffs, v. *DAIRY FARMERS OF AMERICA, INC. and DEAN FOODS COMPANY, Defendants.*

Case No. 1:20–cv–02658

[Proposed] Final Judgment

Whereas, Plaintiffs, United States of America and the State of Wisconsin and the Commonwealth of Massachusetts (collectively, the ''Plaintiff States''), filed their Complaint on May 1, 2020, the United States and Defendants, Dairy Farmers of America, Inc. and Dean Foods Company, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by a party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants represent that the divestitures and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom Defendants divest any of the Divestiture Assets.

B. ''DFA'' means Defendant Dairy Farmers of America, Inc., a Kansas cooperative marketing association with its headquarters in Kansas City, Kansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Dean'' means Defendant Dean Foods Company, a Delaware corporation with its headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Fluid Milk'' means raw milk that has been processed for human consumption as a beverage, but does not include organic milk, soy milk, extended shelf life milk, ultra-high temperature milk, or aseptic milk.

E. ''De Pere Plant'' means Dean's dairy processing plant located at 3399 South Ridge Road, Ashwaubenon, Wisconsin 54115.

F. ''Franklin Plant'' means Dean's dairy processing plant located at 1199 West Central Street, Franklin, Massachusetts 02038.

G. ''Franklin Purchase Option'' means Dean's non-assignable option to purchase the real estate on which the Franklin Plant is located.

H. ''Harvard Plant'' means Dean's dairy processing plant located at 6303, 6306, and 6313 Maxon Road, Harvard, Illinois 60033.

I. ''Exclusive Territory'' means (1) the states of Illinois, Wisconsin, and Indiana; and (2) the Upper Peninsula of Michigan.

J. ''Non-Exclusive Territory'' means (1) the states of Minnesota and Iowa; and (2) the Lower Peninsula of Michigan.

K. ''Transitional Dean's Brand License'' means a non-exclusive, royalty-free, paid-up, irrevocable, nationwide license to use the ''Dean's'' brand name (and all associated trademarks, service marks, and service names) for all products for two (2) years from the date that the De Pere Divestiture Assets are divested to an Acquirer.

L. ''Dean's Brand Licenses'' means:

1. An exclusive (subject only to the rights of the Acquirer of the De Pere Divestiture Assets under the Transitional Dean's Brand License, if applicable), royalty-free, paid-up, irrevocable, perpetual license to use the ''Dean's'' brand name (and all associated trademarks, service marks, and service names) for all products in the Exclusive Territory; and

2. A non-exclusive, royalty-free, paid-up, irrevocable, perpetual license to use the ''Dean's'' brand name (and all associated trademarks, service marks, and service names) for all products in the Non-Exclusive Territory.

M. ''Transitional Dairy Pure Brand License'' means a non-exclusive, royalty-free, paid-up, irrevocable, nationwide license to use the ''Dairy Pure'' brand name (and all associated trademarks, service marks, and service names) for all products for two (2) years from the date that the relevant Divestiture Assets are divested to an Acquirer.

N. ''TruMoo Products'' means all products sold by Dean under the TruMoo brand name at any time from January 1, 2019 to the date that the relevant Divestiture Assets are divested to an Acquirer.

O. ''Transitional TruMoo Brand License'' means a non-exclusive, royalty-free, paid-up, irrevocable, nationwide license to use the ''TruMoo'' brand name (and all associated trademarks, service marks, and service names) for TruMoo Products for two (2) years from the date that the relevant Divestiture Assets are divested to an Acquirer.

P. ''TruMoo IP'' means all intellectual property, product formulas, technology, know-how, or other rights used in the manufacture or formulation of any TruMoo Products.

Q. ''TruMoo IP License'' means a non-exclusive, royalty-free, paid-up, irrevocable, perpetual, nationwide license to the TruMoo IP.

R. ''Divestiture Assets'' means the De Pere Divestiture Assets, the Franklin Divestiture Assets, and the Harvard Divestiture Assets.

S. ''De Pere Divestiture Assets'' means:

1. All of Defendants' rights, title, and interests in the De Pere Plant and the ancillary facilities listed in Appendix A;

2. All tangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the De Pere Plant or the ancillary facilities listed in Appendix A, including, but not limited to: research and development activities; all manufacturing and processing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

3. All intangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the De Pere Plant or the ancillary facilities listed in Appendix A, including, but not limited to: all patents; licenses and sublicenses; intellectual property (except the TruMoo IP); copyrights; trademarks, trade names, service marks, and service names (including the ''Morning Glory'' and ''Farm Fresh'' brand names and all associated trademarks, service marks, and service names), except the ''Dean's,'' ''Jilbert,'' ''Dairy Pure,'' and ''TruMoo'' brand names; technical information; computer software and related documentation; customer relationships, agreements, and contracts (or portions of such relationships, agreements, and contracts that relate to the De Pere Plant or the ancillary facilities listed in Appendix A); know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Dean provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments;

4. A Transitional TruMoo Brand License;

5. The Transitional Dean's Brand License;

6. A TruMoo IP License; and

7. A Transitional Dairy Pure Brand License;

Provided, however, that the assets specified in Paragraphs II(S)(1)-(7) above do not include any rights, title, or interest in (i) Dean's corporate headquarters located at 2711 North Haskell Avenue, Dallas, Texas 75204 or (ii) Dean's dairy processing plant located at 1126 Kilburn Avenue, Rockford, Illinois 61101.

T. ''Franklin Divestiture Assets'' means:

1. All of Defendants' rights, title, and interests in the Franklin Plant and the ancillary facilities listed in Appendix B, except the Franklin Purchase Option;

2. All tangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the Franklin Plant or the ancillary facilities listed in Appendix B, including, but not limited to: Research and development activities; all manufacturing and processing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

3. All intangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the Franklin Plant or the ancillary facilities listed in Appendix B, including, but not limited to: all patents; licenses and sublicenses; intellectual property (except the TruMoo IP); copyrights; trademarks, trade names, service marks, and service names (including the ''Garelick Farms'' brand name and all associated trademarks, service marks, and service names), except the ''Dean's,'' ''Dairy Pure,'' and ''TruMoo'' brand names; technical information; computer software and related documentation; customer relationships, agreements, and contracts (or portions of such relationships, agreements, and contracts that relate to the Franklin Plant or the ancillary facilities listed in Appendix B); know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Dean provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments;

4. A Transitional TruMoo Brand License;

5. A TruMoo IP License; and

6. A Transitional Dairy Pure Brand License;

Provided, however, that the assets specified in Paragraphs II(T)(1)-(6) above do not include any rights, title, or interest in Dean's corporate headquarters located at 2711 North Haskell Avenue, Dallas, Texas 75204.

U. ''Harvard Divestiture Assets'' means:

1. All of Defendants' rights, title, and interests in the Harvard Plant and the ancillary facilities listed in Appendix C;

2. All tangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the Harvard Plant or the ancillary facilities listed in Appendix C, including, but not limited to: research and development activities; all manufacturing and processing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

3. All intangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the Harvard Plant or the ancillary facilities listed in Appendix C, including, but not limited to: all patents; licenses and sublicenses; intellectual property (except the TruMoo IP); copyrights; trademarks, trade names, service marks, and service names, except the ''Dean's,'' ''Dairy Pure,'' and ''TruMoo'' brand names; technical information; computer software and related documentation; customer relationships, agreements, and contracts (or portions of such relationships, agreements, and contracts that relate to the Harvard plant or the ancillary facilities listed in Appendix C); know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Dean provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments;

4. The Dean's Brand Licenses;

5. A Transitional TruMoo Brand License;

6. A TruMoo IP License; and

7. A Transitional Dairy Pure Brand License;

Provided, however, that the assets specified in Paragraphs II(U)(1)–(7) above do not include any rights, title, or interest in (i) Dean's corporate headquarters located at 2711 North Haskell Avenue, Dallas, Texas 75204 or (ii) Dean's dairy processing plant located at 1126 Kilburn Avenue, Rockford, Illinois 61101.

V. ''Relevant Personnel'' means all full-time, part-time, or contract personnel whose job responsibilities related in any way to the processing, marketing, sale, or distribution of Fluid Milk or any other products by the Divestiture Assets, at any time between July 1, 2019 and the date on which the Divestiture Assets are divested to Acquirer.

III. Applicability

A. This Final Judgment applies to DFA and Dean, as defined above, and all other persons, in active concert or participation with any Defendant, who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include any of the Divestiture Assets, Defendants must require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer(s).

IV. Divestitures

A. Defendants are ordered and directed, within 30 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total and will notify the Court of any extensions. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of some or all of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process; provided, however, that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make this information available to Plaintiffs at the same time that the information is made available to any other person.

C. Defendants must cooperate with and assist each Acquirer in identifying and hiring all Relevant Personnel associated with the particular Divestiture Assets that each Acquirer is acquiring, including:

1. Within ten (10) business days following receipt of a request by Acquirer or the United States, Defendants must identify all Relevant Personnel to Acquirer and Plaintiffs, including by providing organization charts covering all Relevant Personnel.

2. Within ten (10) business days following receipt of a request by Acquirer or the United States, Defendants must provide to Acquirer and Plaintiffs the following additional information related to Relevant Personnel: name; job title; current salary and benefits, including most recent bonus paid, aggregate annual compensation, current target or guaranteed bonus, if any, and any other payments due to or promises made to the individual; descriptions of reporting relationships, past experience, responsibilities, and training and educational histories; lists of all certifications; and all job performance evaluations. If Defendants are barred by any applicable laws from providing any of this information, within ten (10) business days following receipt of the request, Defendants must provide the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information.

3. At the request of Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any efforts by Acquirer to employ any Relevant Personnel. Interference includes but is not limited to offering to increase the salary or improve the benefits of Relevant Personnel unless the offer is part of a company-wide increase in salary or benefits that was announced prior to November 12, 2019 or has been approved by the United States, in its sole discretion, after consultation with the Plaintiff States. Defendants' obligations under this paragraph will expire six (6) months after the divestiture of the Divestiture Assets pursuant to this Final Judgment.

5. For Relevant Personnel who elect employment with Acquirer within six (6) months of the date on which the Divestiture Assets are divested to Acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including but not limited to any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

D. Defendants must permit prospective Acquirers of some or all of the Divestiture Assets to have reasonable access to make inspections of the Divestiture Assets for which they are prospective Acquirers and access to all environmental, zoning, and other permit documents and information, and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants must warrant to Acquirer(s) that each asset to be divested will be fully operational and without material defect on the date of sale.

F. Defendants must not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants must assign, subcontract, or otherwise transfer all contracts, agreements, and customer relationships (or portions of such contracts, agreements and customer relationships, including but not limited to relevant portions of national contracts) related to the Divestiture Assets, including all supply and sales contracts, to Acquirer(s); *provided however,* that for any contracts or agreements (including but not limited to customer contracts and supply contracts) that require the consent of another party to assign, subcontract or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or other transfer.

1. For any customer of the Divestiture Assets with which Dean does not have a written contract, within five (5) business days of the closing of the divestiture of each set of Divestiture Assets, Defendants must send a letter, in a form approved by the United States in its sole discretion and signed by representatives of Dean and of the relevant Acquirer, to that customer, notifying the customer that the Acquirer will be the customer's new supplier pursuant to this Final Judgment.

2. Defendants must not interfere with any negotiations between Acquirer(s) and a customer or other contracting party, and Defendants must not encourage any customer of the Divestiture Assets to terminate a contract that has been assigned or otherwise transferred to Acquirer.

3. Notwithstanding any other provision in this Paragraph IV(G), Defendants must release each Acquirer from any of Dean's obligations to purchase raw milk from DFA that would otherwise be assigned to that Acquirer as part of the divestiture required by this Final Judgment.

H. For any governmental license, permit, registration, authorization, approval, or the discontinuation of any obligation thereunder that cannot be transferred to the relevant Acquirer (collectively, the ''Non-Transferred Licenses''), Defendants must use best efforts to assist Acquirer(s) in applying for and securing all necessary government approvals for the issuance of the Non-Transferred License(s) to Acquirer(s).

I. At the option of each Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which some or all of the Divestiture Assets are divested to that Acquirer, DFA must enter into a supply contract or contracts for raw milk sufficient to meet that Acquirer's needs, as determined by that Acquirer, for a period of up to three (3) months, on terms and conditions reasonably related to market conditions for the supply of raw milk. The United States, in its sole discretion, may approve one or more extensions of any supply contract, for a total of up to an additional three (3) months. If Acquirer seeks an extension of the term of a supply contract, Defendants must notify the United States in writing at least one (1) month prior to the date the supply contract expires. Acquirer may terminate a supply contract without cost or penalty at any time upon commercially reasonable notice.

J. At the option of each Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which some or all of the Divestiture Assets are divested to that Acquirer, Defendants must enter into a contract or contracts, on terms and conditions reasonably related to market conditions, to provide transition services (including but not limited to back office, human resource, accounting, employee health and safety, and information technology services and support) for a period of up to six (6) months to facilitate the transfer of the relevant Divestiture Assets to that Acquirer or to allow that Acquirer to operate the relevant Divestiture Assets. The United States, in its sole discretion, after consultation with the Plaintiff States, may approve one or more extensions of a contract for transition services, for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of a contract for transition services, Defendants must notify the United States in writing at least one (1) month prior to the date the contract expires. Acquirer may terminate a contract for transition services without cost or penalty at any time upon commercially reasonable notice. The employee(s), contractors, or other personnel of Defendants tasked with providing these transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

K. Defendants must warrant to Acquirer(s) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets. Following the sale of any of the Divestiture Assets, Defendants must not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

L. For a period of one (1) year following the divestiture of each set of Divestiture Assets to the relevant Acquirer, Defendants must not initiate customer-specific communications to solicit any customer for the portion of that customer's business covered by the contract, agreement or relationship (or portion thereof) that is included in the Divestiture Assets; *provided, however,* that:

1. Defendants may respond to inquiries initiated by customers and enter into negotiations at the request of customers (including responding to

requests for quotation or proposal) to supply any business, whether or not such business was included in the Divestiture Assets; and

2. Defendants must maintain a log of telephonic, electronic, in-person, and other communications that constitute inquiries or requests from customers within the meaning of Paragraph IV(L)(1) above and make it available to the United States for inspection upon request.

M. DFA will not exercise the Franklin Purchase Option except that, upon Acquirer's request, DFA will (1) exercise the Franklin Purchase Option and (2) sell to Acquirer all of DFA's resulting rights, title, and interest in the property covered by the Franklin Purchase Option at the same price that DFA pays for that property under the Franklin Purchase Option.

N. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV or by a Divestiture Trustee appointed pursuant to Section V of this Final Judgment must include (1) the entirety of the De Pere Divestiture Assets and the entirety of the Harvard Divestiture Assets to a single Acquirer and (2) the entirety of the Franklin Divestiture Assets to a single Acquirer, and must be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that the Divestiture Assets can and will be used by the relevant Acquirer as part of a viable, ongoing business of processing and selling Fluid Milk and will remedy the competitive harm alleged in the Complaint. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States, after consultation with the Plaintiff States, that the Divestiture Assets will remain viable and that the divestiture will remedy the competitive harm alleged in the Complaint. The divestiture(s), whether pursuant to Section IV or Section V of this Final Judgment,

(1) must be made to Acquirer(s) that, in the United States' sole judgment, after consultation with the Plaintiff States, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of processing and selling Fluid Milk; and

(2) must be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that none of the terms of any agreement between Acquirer(s) and Defendants give Defendants the ability unreasonably to raise the costs of Acquirer(s), to lower the efficiency of Acquirer(s), or otherwise to interfere in the ability of Acquirer(s) to compete effectively.

O. If any of the terms of an agreement between Defendants and Acquirer(s) to effectuate the divestiture required by this Final Judgment varies from a term of this Final Judgment then, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the period specified in Paragraph IV(A), or if Defendants waive their right to first attempt such divestiture of (1) the De Pere Divestiture Assets and the Harvard Divestiture Assets or (2) the Franklin Divestiture Assets, Defendants must immediately notify Plaintiffs of that fact in writing. Upon application of the United States, the Court will appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture(s) of any of the Divestiture Assets that have not been sold during the period specified in Paragraph IV(A).

B. After the appointment of a Divestiture Trustee by the Court, only the Divestiture Trustee will have the right to sell the Divestiture Assets that the Divestiture Trustee has been appointed to sell. The Divestiture Trustee will have the power and authority to accomplish the divestiture(s) to Acquirer(s) acceptable to the United States, in its sole discretion, at a price and on terms that are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who will be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture(s). Any such agents or consultants will serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants may not object to a sale by the Divestiture Trustee on any ground other than malfeasance by the Divestiture Trustee. Objections by Defendants must be conveyed in writing to Plaintiffs and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee will account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for any of its services yet unpaid and those of agents and consultants retained by the Divestiture Trustee, all remaining money will be paid to Defendants and the trust will then be terminated. The compensation of the Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture(s) and the speed with which it is accomplished, but the timeliness of the divestiture(s) is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. Within three (3) business days of hiring any agent or consultant, the Divestiture Trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

E. Defendants must use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture(s). The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee must have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets the Divestiture Trustee is responsible for selling, and Defendants must provide or develop financial and other information relevant to the Divestiture Assets as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants may not take any action to interfere with or to impede the

Divestiture Trustee's accomplishment of the divestiture(s).

F. After appointment, the Divestiture Trustee will file monthly reports with Plaintiffs, setting forth the Divestiture Trustee's efforts to accomplish the divestiture(s) ordered by this Final Judgment. Reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the Divestiture Assets and will describe in detail each contact with any such person. The Divestiture Trustee will maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture(s) ordered by this Final Judgment within sixty (60) days of appointment, the Divestiture Trustee must promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report will not be filed in the public docket of the Court. The Divestiture Trustee will at the same time furnish such report to Plaintiffs. Within five (5) days of receiving the Divestiture Trustee's report, the United States, in its sole discretion, may extend the period of the trust for no more than sixty (60) additional days by written notice to the Divestiture Trustee and the Court. If, at the expiration of the initial time period and any extension thereof, the Divestiture Trustee has not secured a definitive agreement for the sale of the Divestiture Assets consistent with this Final Judgment and acceptable to the United States, in its sole discretion, DFA may file a motion with the Court, which the United States will not unreasonably oppose, requesting that, solely with respect to any Divestiture Assets for which the Divestiture Trustee was unable to secure a definitive divestiture agreement, (i) the Asset Preservation and Hold Separate Stipulation and Order be terminated and (ii) this Final Judgment be modified to permit DFA to retain those assets.

H. If the United States determines that the Divestiture Trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting any divestiture required herein, must notify Plaintiffs of a proposed divestiture required by this Final Judgment. If the Divestiture Trustee is responsible for effecting the divestiture, the Divestiture Trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of this notice, the United States may request from Defendants, the proposed Acquirer(s), other third parties, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and other prospective Acquirer(s). Defendants and the Divestiture Trustee must furnish the additional information requested to Plaintiffs within fifteen (15) calendar days of the receipt of the request, unless the United States provides written agreement to a different period.

C. Within forty-five (45) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), other third parties, and the Divestiture Trustee, whichever is later, the United States will provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not the United States, in its sole discretion, after consultation with the Plaintiff States, objects to the proposed Acquirer(s) or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object or upon objection by the United States, a divestiture may not be consummated. Upon objection by Defendants pursuant to Paragraph V(C), a divestiture by the Divestiture Trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to Section VI may be divulged by Plaintiffs to any person other than an authorized representative of the executive branch of the United States or the Plaintiff States, except in the course of legal proceedings to which the United States is a party (including grand-jury proceedings), for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

F. If at the time a person furnishes information or documents to the United States pursuant to Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VII. Financing

Defendants may not finance all or any part of Acquirers' purchase of all or part of the Divestiture Assets made pursuant to this Final Judgment.

VIII. Asset Preservation and Hold Separate

Until the divestiture(s) required by this Final Judgment have been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court. Defendants will take no action that would jeopardize the divestiture(s) ordered by the Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture

required by this Final Judgment has been completed, Defendants must deliver to Plaintiffs an affidavit, signed by each Defendant's Chief Financial Officer, Dean's General Counsel, and DFA's Chief Legal Officer, describing the fact and manner of Defendants' compliance with this Final Judgment. Each affidavit must include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in some or all of the Divestiture Assets, and must describe in detail each contact with such persons during that period. Each affidavit also must include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers. Each affidavit also must include a description of any limitations placed by Defendants on information provided to prospective Acquirers. If the information set forth in the affidavit is true and complete, objection by the United States to information provided by Defendants to prospective Acquirers must be made within fourteen (14) calendar days of receipt of the affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants must deliver to Plaintiffs an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants must deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to Section IX within fifteen (15) calendar days after the change is implemented.

C. Defendants must keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after the divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of related orders such as an Asset Preservation and Hold Separate Stipulation and Order, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, must, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy or, at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to Section X may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States or the Plaintiff States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to Section X, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XI. Notification

A. Unless a transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendants may not, during the term of this Final Judgment, directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity, or management interest, in an entity involved in Fluid Milk processing in the United States without providing advance notification to the United States and to any Plaintiff State in which any of the assets or interests are located or whose border is less than 150 miles from any such assets or interests; provided that notification will not be required pursuant to this Section where the assets or interest being acquired generated less than $1 million in revenue from the processing, marketing, sale, and distribution of Fluid Milk in the most recent completed calendar year.

B. Defendants must provide the notification required by Section XI in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about Fluid Milk processing. Notification must be provided at least thirty (30) calendar days before acquiring any such interest, and must include, beyond the information required by the instructions, the names of the principal representatives who negotiated the agreement on behalf of each party, and all management or strategic plans discussing the proposed transaction. If, within the 30-day period following notification, representatives of the United States make a written request for additional information, Defendants may not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all requested information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. Section XI will be broadly construed and any ambiguity or uncertainty

regarding the filing of notice under Section XI will be resolved in favor of filing notice.

XII. No Reacquisition, Limitations on Collaborations

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment without the prior written consent of the United States in its sole discretion, after consultation with the Plaintiff States. In addition, Defendants and Acquirer(s) may not, without the prior written consent of the United States, enter into a new collaboration or expand the scope of an existing collaboration involving any of the Divestiture Assets during the term of this Final Judgment. The decision whether to consent to a collaboration is within the sole discretion of the United States.

XIII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs, including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIV.

XV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and the continuation of this Final Judgment no longer is necessary or in the public interest.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment, the Competitive Impact Statement, comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

_____

United States District Judge

Appendix A—DePere Ancillary Facilities

1. 1118 N. 17th Street, Sheboygan, Wisconsin 54115 (Garage/Parking)
2. 1233 Contract Drive, Ashwaubenon, Wisconsin 54304 (Warehouse)

Appendix B—Franklin Ancillary Facilities

1. 10 DiNunzio Road, Watertown, Connecticut 06795 (Cross-Dock/Warehouse)
2. 1376 West Central Street, Franklin, Massachusetts 02038 (Warehouse/Sales Office)
3. 1701 Hammond Street, Hermon, Maine 04401 (Distribution Depot)
4. 131 Rand Road, Portland, Maine 04102 (Parking)
5. 10 Creek Brook Drive, Haverhill, Massachusetts 01832 (Warehouse)

Appendix C—Harvard Ancillary Facilities

1. 3600 River Road, Franklin Park, Illinois 60131 (Depot)
2. 23914 and 23916 Center Street, Harvard, Illinois 60033 (Parking/Part of Plant)
3. 24114 Route 173, Harvard, Illinois 60033 (Part of Plant)
4. 965 S. Wyckles Road, Decatur, Illinois 62521 (Depot/Office)
5. 450 Comanche Circle, Harvard, Illinois 60033 (Warehouse)
6. Dry Storage, 6303 Maxon Road, Harvard, Illinois 60033
7. Sludge Site, 6303 Maxon Road, Harvard, Illinois 60033
8. Alco (Alders) Storage Area, 6303 Maxon Road, Harvard, Illinois 60033
9. Railroad Encroachment Area, 6303 Maxon Road, Harvard, Illinois 60033

UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA, COMMONWEALTH OF MASSACHUSETTS, and STATE OF WISCONSIN, Plaintiffs, v. *DAIRY FARMERS OF AMERICA, INC. and DEAN FOODS COMPANY, Defendants.*

Case No. 1:20–cv–02658

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature And Purpose of the Proceeding

Dean Foods Company (''Dean'') filed for bankruptcy on November 12, 2019, in the United States Bankruptcy Court for the Southern District of Texas. The

bankruptcy court ordered an auction and then accelerated the auction process because of Dean's liquidity condition. On March 30, 2020, Dairy Farmers of America, Inc. (''DFA'') bid for 44 of Dean's plants for a total value of $433 million. No other bidder submitted a bid for the 44 Dean plants, or anything even close to that number of plants, under the bankruptcy court's schedule. The bid was accepted by Dean and was the only transaction for those 44 plants approved by the bankruptcy court.

The United States, along with the state of Wisconsin and the Commonwealth of Massachusetts (collectively, the ''Plaintiff States''), filed a civil antitrust complaint on May 1, 2020, seeking to enjoin the proposed transaction. Based on a comprehensive investigation, the Complaint alleges that the likely effect of this transaction would be to substantially lessen competition for the processing and sale of Fluid Milk in areas encompassing (1) northeastern Illinois and Wisconsin and (2) New England in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. ''Fluid Milk'' is raw milk that has been processed for human consumption as a beverage, but does not include organic milk, soy milk, extended shelf life milk, ultra-high temperature milk, or aseptic milk.

At the same time the Complaint was filed, the United States filed an Asset Preservation and Hold Separate Stipulation and Order (''Stipulation and Order'') and proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, DFA is required to divest Dean's Fluid Milk processing plants, ancillary facilities, and related tangible and intangible assets located in Franklin, Massachusetts (''Franklin Plant''); De Pere, Wisconsin (''De Pere Plant''); and Harvard, Illinois (''Harvard Plant'') (collectively the ''Divestiture Plants''). Under the terms of the Stipulation and Order, Defendants will take certain steps to ensure that, during the pendency of the required divestitures, the Divestiture Plants will remain independent and ongoing business concerns that will remain uninfluenced by Defendants and the level of competition for the processing and sale of Fluid Milk that existed between Defendants prior to the transaction will be maintained.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

(A) The Defendants and the Proposed Transaction

35. Dean is a Delaware corporation with its headquarters in Dallas, Texas. Until its recent bankruptcy filing, Dean was the largest Fluid Milk processor in the country, operating at that time 57 Fluid Milk processing plants in 29 states. Dean had 2018 revenues of $7.75 billion.

36. DFA is organized under the laws of the State of Kansas and is the largest cooperative of dairy farmers in the country, with nearly 14,000 members. In 2018, DFA marketed 64.5 billion pounds of raw milk—an amount that accounted for approximately 30% of all raw milk produced in the United States. DFA had 2018 revenues of $13.6 billion.

37. DFA is vertically integrated through its ownership interests in milk processing plants. DFA owns eight Fluid Milk processing plants around the country and has a significant stake in a joint venture that owns twelve additional Fluid Milk processing plants. In the northeastern Illinois and Wisconsin area, DFA owns a Fluid Milk processing plant in Cedarburg, Wisconsin. In the New England area, DFA owns Fluid Milk processing plants in New Britain, Connecticut and Portland, Maine. These plants compete directly against the Harvard Plant, De Pere Plant, and/or Franklin Plant that DFA proposes to acquire from Dean.

38. Dean filed for Chapter 11 bankruptcy protection on November 12, 2019. Simultaneous with the bankruptcy filing, Dean announced that it was in discussions to sell some or all of its Fluid Milk processing plants to DFA. Dean's financial position continued to worsen in the months after its bankruptcy filing and then was exacerbated by shrinking school and restaurant demand for milk caused by the coronavirus pandemic. Dean informed the bankruptcy court of its worsening financial condition and that it would not be able to pay farmers for raw milk or be certain that it could continue to process Fluid Milk beyond May 2020. Dean's worsening financial condition caused the bankruptcy court to accelerate the bankruptcy auction process to allow Dean to find buyers for its assets before the company would have to cease operations due to a lack of funds. By order of the bankruptcy court, Dean accepted bids for its assets and selected winning bidders on March 30, 2020. Dean selected DFA as the winning bidder for most of Dean's assets and began the process of closing down some plants that no one had sought to acquire during the bankruptcy process.

On March 31, 2020, DFA and Dean entered into an asset purchase agreement whereby DFA agreed to purchase 44 of Dean's 57 Fluid Milk processing plants, along with related assets, for $433 million. The purchase price includes $325 million in cash and $108 million in forgiveness of debt Dean owed DFA.

(B) The Competitive Effects of the Proposed Transaction

DFA's existing Fluid Milk processing plants overlap with two Dean plants that it proposes to acquire in northeastern Illinois and Wisconsin—the Harvard Plant and the De Pere Plant—and with Dean's Franklin Plant in New England. The Complaint alleges that DFA and Dean are two of only three significant Fluid Milk processors that can serve customers, including supermarkets and schools, in each of these geographic areas. If the acquisition were permitted to proceed, DFA would control nearly 70% of the Fluid Milk market in northeastern Illinois and Wisconsin and approximately 51% of the Fluid Milk market in New England. DFA and Dean compete head-to-head to supply Fluid Milk customers in these areas today, and those customers rely on competition between DFA and Dean to get lower prices and better terms. If DFA's and Dean's plants in these areas were owned by a single entity, this competitive dynamic would no longer exist, leading to higher prices and inferior service for supermarkets, schools, and other Fluid Milk customers and ultimately, millions of individual consumers.

1. The Processing and Sale of Fluid Milk Is a Relevant Product Market

39. The Complaint alleges that the processing and sale of Fluid Milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. Consumers have long-held cultural and taste preferences for Fluid Milk over other beverages, and Fluid Milk has particular nutritional benefits and qualities for use in cooking. Consequently, consumer demand for Fluid Milk is relatively inelastic, which simply means that Fluid Milk consumption does not decrease significantly in response to a price increase. Fluid Milk is distinct from organic milk, soy milk, extended shelf-life milk, ultra-high temperature milk, and aseptic milk, which are produced

by different processes, have numerous significant differences, and generally cost much more than Fluid Milk.

40. The Complaint alleges that retailers, supermarkets, distributors, and other Fluid Milk customers are unlikely to substitute other products for Fluid Milk because the individual consumers that they serve continue to demand Fluid Milk. This means, for example, that a grocery store would not substitute to other beverages because its customers will not buy other beverages as an alternative to Fluid Milk. Schools are similarly unlikely to substitute away from Fluid Milk in response to even a substantial price increase because they are required by federal regulations to offer Fluid Milk to students in order to qualify to receive federal reimbursements for meals served to lower-income students.

41. For these reasons, the Complaint alleges that the processing and sale of Fluid Milk satisfies the well-accepted ''hypothetical monopolist'' test set forth in the U.S. Department of Justice and Federal Trade Commission *2010 Horizontal Merger Guidelines* (''*Horizontal Merger Guidelines*''). This test asks whether a hypothetical monopolist processing and selling Fluid Milk likely would impose a small but significant and non-transitory price increase (*e.g.,* five percent) because an insufficient number of customers would switch to alternatives to make that price increase unprofitable. The Complaint alleges that this test is satisfied.

2. The Two Relevant Geographic Markets Are Northeastern Illinois and Wisconsin and New England

42. The Complaint also alleges two relevant geographic markets: (1) northeastern Illinois and Wisconsin and (2) New England. Fluid Milk processors charge different prices to buyers in different areas. Prices are negotiated individually, and Fluid Milk's high transportation costs and limited shelf life mean that customers cannot practically buy Fluid Milk from each other to avoid a higher price charged by processors. In other words, Fluid Milk processors can engage in ''price discrimination,'' meaning that they can charge different prices to different customers. When price discrimination is possible, relevant geographic markets may be defined by reference to the location of the customer. In particular, a relevant geographic market for the processing and sale of Fluid Milk, as alleged in the Complaint, is a region within which customers can be targeted for a price increase. Most customers purchase Fluid Milk from suppliers and processing plants located near them because transportation costs and shelf life make sourcing from more distant suppliers prohibitive.

43. The Complaint alleges that northeastern Illinois, which includes Chicago and its suburbs, and the state of Wisconsin together comprise a relevant geographic market and section of the country within the meaning of Section 7 of the Clayton Act. Similarly, New England—including the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont—is a relevant geographic market and section of the country within the meaning of Section 7 of the Clayton Act. A hypothetical monopolist processing and selling Fluid Milk in either of these two areas likely would find it profitable to impose a small but significant and non-transitory price increase (*e.g.,* five percent) because customers could not economically switch their source of supply to more distant sources.

3. The Acquisition Results in Large Combined Market Shares

44. DFA's acquisition of Dean's Fluid Milk processing plants would result in a substantial increase in the concentration of processors that compete to supply Fluid Milk to customers in the northeastern Illinois and Wisconsin geographic market and the New England geographic market. The Complaint alleges that DFA and Dean are two of only three significant Fluid Milk processors that sell into each of these geographic markets. In both geographic markets, the acquisition would eliminate one competitor, leaving only two remaining competitive options for Fluid Milk customers, with DFA controlling a significant majority of the Fluid Milk sales. Although there are also small or fringe Fluid Milk processors in each market, these processors are not competitive options for most Fluid Milk customers because they are much smaller and lack the capabilities necessary to compete against processors like DFA and Dean.

45. The Supreme Court has held that mergers that significantly increase concentration in already concentrated markets are presumptively anticompetitive and therefore presumptively unlawful. To measure market concentration, courts often use the Herfindahl-Hirschman Index (''HHI'') as described in the *Horizontal Merger Guidelines.* HHIs range from 0 in markets with no concentration to 10,000 in markets where one firm has a 100% market share. According to the *Horizontal Merger Guidelines,* mergers that increase the HHI by more than 200 and result in an HHI above 2,500 in any market are presumed to be anticompetitive and, therefore, unlawful.

46. The Complaint alleges that the acquisition of Dean's plants by DFA is presumptively unlawful in northeastern Illinois and Wisconsin. For Fluid Milk customers in this geographic market, a conservative estimate of the combined market share of Dean's Harvard Plant and De Pere Plant and DFA's processing plant in Cedarburg, Wisconsin is 70%. The result is a highly concentrated market with an HHI of nearly 5,200 and an increase in HHI of almost 1,900.

47. As alleged in the Complaint, the acquisition is also presumptively unlawful in the New England geographic market. For Fluid Milk customers in the New England geographic market, a conservative estimate of the combined market share of Dean's Franklin Plant and DFA's processing plants in New Britain, Connecticut, and Portland, Maine is 51%. The result is a highly concentrated market with an HHI of approximately 3,300 and an increase in HHI of over 1,000.

4. The Merger Would Eliminate Head-to-Head Competition Between DFA and Dean

48. The Complaint alleges that DFA's acquisition of Dean's plants in northeastern Illinois and Wisconsin and in New England would eliminate head-to-head competition that has benefitted and would otherwise continue to benefit supermarkets, schools, and other Fluid Milk customers in the relevant geographic markets. For reasons related to service and delivery capabilities, some Fluid Milk customers consider DFA and Dean to be their only practical options. Especially for customers like large supermarket chains, DFA and Dean are two of only three competitive Fluid Milk processors in these geographic markets, and they are often the two lowest-price options in these geographic markets.

49. Customers often solicit bids from Fluid Milk processors and select the bidder that offers the lowest price. These customers often leverage a lower-priced bid from one supplier to obtain improved offers and lower prices from other bidders during individual negotiations. Even customers who use less formal procurement processes benefit from the presence of competitive alternatives, which constrain the prices that all Fluid Milk processors can charge. The Complaint alleges that Fluid Milk customers in the relevant geographic markets have historically used competing bids from DFA and Dean to obtain lower prices.

50. As described above, the Complaint alleges that customers typically purchase Fluid Milk from processing plants located close to them because of shelf-life restrictions and the costs associated with transportation of the product. These transportation costs comprise a significant portion of the prices that Fluid Milk processors charge customers. Therefore, the lowest-price Fluid Milk processors available to customers typically are the ones located closest to them. For many Fluid Milk customers in the relevant geographic markets, DFA and Dean are two of the closest processing plants and, as the Complaint alleges, two of the most competitive or lowest-price options. The only other significant competitors selling Fluid Milk to customers in these markets are unlikely to substantially mitigate the loss of competition between DFA and Dean that would result from the acquisition.

51. Many customers also have particular product and service requirements that not all Fluid Milk processors can meet. Supermarkets, convenience stores, schools, and other customers often require processors to arrange direct-store delivery, or ''DSD,'' where the processor delivers Fluid Milk to each of the customer's locations on a set schedule—sometimes as often as daily. Schools typically require milk to be packaged in small half-pint containers that require a separate bottling line and dedicated equipment. Only DFA and Dean, along with the third significant competitor in each of the relevant geographic markets, can satisfy these complex product and service requirements, while other smaller processors cannot.

5. The Acquisition Would Make It Easier for Competitors To Coordinate

52. The Complaint alleges that by reducing the number of significant Fluid Milk processors in northeastern Illinois and Wisconsin and in New England from three to two, the acquisition would make it easier for the remaining two significant processors to coordinate. Markets, such as Fluid Milk markets, with few significant competitors, relatively homogenous products, and where demand for the product is not significantly affected by an increase in its price are susceptible to coordination because these features are among those that make coordination more likely to be effective and profitable.

53. In addition, there is a history of anticompetitive coordination, including price fixing, bid rigging, and customer allocation in Fluid Milk markets in the United States and, in particular, in the sale of milk to schools. Numerous Fluid Milk processors, including Dean itself, have engaged in criminal collusive activities at various times over the last 40 years. Given this history of coordination among Fluid Milk processors and the reduction in the number of significant competitors in each of the relevant geographic markets, the acquisition makes coordination more likely to occur in these markets.

6. Potential Entrants and Merger Efficiencies Do Not Offset Competitive Harm From the Merger

54. As alleged in the Complaint, entry by Fluid Milk processors outside the relevant geographic markets is unlikely to be sufficient or timely enough to offset the anticompetitive effects of the acquisition. Processors who do not currently serve these markets are unlikely to begin shipping a significant quantity of Fluid Milk into the relevant geographic markets due to the same factors that make them uncompetitive in these markets today, including transportation costs and the lack of necessary capabilities or levels of service. Any milk that could be shipped into the relevant geographic markets likely could not be competitively priced because of the high transportation costs. Nor could these processors economically deliver Fluid Milk to customers like schools because they lack local distribution networks.

55. The construction of a new Fluid Milk processing plant to serve customers in either of the relevant geographic markets is very unlikely because of the high costs of building a Fluid Milk processing plant—especially as Fluid Milk consumption continues to decline. Numerous Fluid Milk processing plants have closed in the last ten years across the United States, while only a few new plants have been built, and these newly-built plants were largely for retailers to supply their own stores. Finally, the two largest Fluid Milk processors in the country, Dean and Borden Dairy Company, have filed for bankruptcy.

The Complaint also alleges that potential harm from the proposed merger is unlikely to generate verifiable, merger-specific efficiencies sufficient to outweigh the anticompetitive effects that are likely to occur in the provision of Fluid Milk in the relevant geographic markets.

III. Explanation of the Proposed Final Judgment

The divestitures required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing independent Fluid Milk processing competitors in northeastern Illinois and Wisconsin and in New England. The proposed Final Judgment requires DFA to divest Dean's De Pere Plant, Franklin Plant, and Harvard Plant, related ancillary facilities (such as warehouses and sales offices), and tangible and intangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by each of the Divestiture Plants. The divestitures are to occur within 30 days (with extensions that may be granted in the sole discretion of the United States not to exceed 60 days) after the entry of the Stipulation and Order by the Court.

(A) The Divestiture Plants

The proposed Final Judgment defines three sets of divestiture assets, one for each Divestiture Plant. Each set of assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with the Plaintiff States, that they can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the market for the processing and sale of Fluid Milk in the relevant geographic market. Defendants must use their best efforts to accomplish the divestitures as expeditiously as possible and must cooperate with potential divestiture buyers.

The proposed Final Judgment requires that a single divestiture buyer acquire both the De Pere Plant and the Harvard Plant, unless the United States exercises its discretion to permit separate purchasers. The United States prefers that the Harvard Plant and De Pere Plant be sold together because the plants will likely be able to more successfully compete if operated jointly. Though the Harvard Plant and De Pere Plant could each operate independently, divesting them to the same buyer would more closely replicate for the buyer the advantages that Dean held before the transaction, including, among others, the ability for the plants to (1) assist each other with operations and distribution, including the capability to serve as backup for each other, (2) serve a contiguous set of customers, and (3) share the regional ''Dean's'' brand. The United States maintains the sole discretion to approve separate buyers for the Harvard Plant and De Pere Plant under the proposed Final Judgment if it can be demonstrated to the United States that separate buyers can restore the competition that the Complaint alleges would have been lost by the transaction. The Franklin Plant, which is in a different geographic market than the Harvard and De Pere Plants, may be divested to a different purchaser.

(B) Brands and Licenses

Branded milk represents a distinct minority of total Fluid Milk sales at the Divestiture Plants. The majority of Fluid Milk sales are for private-label products—that is, products labeled with the brand of the retailer rather than the manufacturer. Nevertheless, in order to protect the viability of the Divestiture Plants and related businesses that will be divested, the proposed Final Judgment requires a combination of brand divestitures and brand licenses that are based upon a fact-specific analysis of the historic sales by each individual Divestiture Plant.

The brands used at each of the Divestiture Plants varies among a combination of local or sub-regional, regional, and national brands. The local or sub-regional brands include Garelick Farms, which is used at the Franklin Plant, and Morning Glory and Farm Fresh, which are both used at the De Pere Plant. The regional ''Dean's'' brand is used at the De Pere Plant and the Harvard Plant. Dean's national brands—used at all three Divestiture Plants—are Dairy Pure and Dean's chocolate milk brand, TruMoo. Dean typically uses Dairy Pure as a cobrand with local or sub-regional brands and regional brands, including the Garelick Farms, Morning Glory, and Farm Fresh brands used at the Divestiture Plants.

The local or sub-regional brands—Garelick Farms, Morning Glory, and Farm Fresh—will transfer to the divestiture buyers of the plants where the local or sub-regional branded products are sold. Garelick Farms will transfer to the buyer of the Franklin Plant. Morning Glory and Farm Fresh will transfer to the buyer of the De Pere Plant. Transferring ownership of these brands will place the divestiture buyers in the same position as Dean was before the transaction with respect to these local or sub-regional brands.

The buyer(s) of the Divestiture Plants will receive licenses—rather than ownership—to use the national and regional brands (*i.e.,* Dairy Pure, TruMoo, and ''Dean's'') in geographic areas that cover nearly all of each of the Divestiture Plants' existing sales footprints. The proposed Final Judgment provides licenses rather than ownership for these brands because the brands are used across the United States. Most Dean plants sell at least some TruMoo, ''Dean's,'' and Dairy Pure brand products, and an overwhelming majority of the sales for these brands come from Dean plants that DFA has acquired and is retaining. In contrast, the local or sub-regional brands that are being divested are used at a smaller number of Dean plants in smaller areas surrounding the Divestiture Plants.

The divestiture buyer of each Divestiture Plant will receive transitional licenses to the national brands, TruMoo and Dairy Pure. Because Dairy Pure frequently is cobranded, the divestiture buyer will be able to use the transitional license to continue to cobrand products while it changes its packaging and rebrands its products. The TruMoo brand makes up a small percentage of the sales at the Divestiture Plants and is not necessary for the future viability of the Divestiture Plants and related business. Therefore, the divestiture buyers will each receive a transitional license for the TruMoo brand. They will also receive a perpetual license to the intellectual property, product formulas, technology, and know-how for TruMoo because consumers value the taste of the TruMoo milk and the divestiture buyers will benefit from the ability to perpetually offer chocolate milk with the same taste. These TruMoo licenses will permit each buyer to transition chocolate milk sales to its local or sub-regional brand, the ''Dean's'' brand, or another brand of its choice while continuing to use the same chocolate milk formula perpetually.

If the buyer of the Harvard Plant and the De Pere Plant are the same, as the proposed Final Judgment anticipates, the buyer will receive a perpetual license to the ''Dean's'' brand that it could use for sales within a multistate area set forth in the proposed Final Judgment from either or both plants. If the buyers of the two plants are different, the buyer of the Harvard Plant, and not the buyer of the De Pere Plant, will receive a perpetual license to the ''Dean's'' brand. This accounts for the fact that the Harvard Plant sells more than two times the amount of ''Dean's'' brand Fluid Milk as compared to the De Pere Plant and the buyer of the Harvard Plant will not receive a perpetual license or ownership of any other brand. If a separate buyer acquires the De Pere Plant, it will receive a transitional license to the ''Dean's'' brand. This transitional license will give the buyer the opportunity to move sales to its local or sub-regional brands or another brand.

The proposed Final Judgment requires these transfers and licenses so that the divestiture buyers will be placed, to the greatest extent possible, in the same position as Dean prior to the transaction and will have the ability to operate the Divestiture Plants as independent and ongoing business concerns.

1. Franklin Plant

Under the proposed Final Judgment, the divestiture buyer of the Franklin Plant will own the local and sub-regional brands used at the Franklin Plant and receive transitional licenses for the national brands. The Franklin Plant currently uses the Garelick Farms brand and the national brands Dairy Pure and TruMoo. Garelick Farms branded products are sold throughout New England. Ownership of the Garelick Farms brand will transfer to the buyer of the Franklin Plant. The buyer of the Franklin Plant will also receive a non-exclusive, royalty-free, paid-up, irrevocable, nationwide two-year transitional license for both the Dairy Pure and TruMoo national brands. The Dairy Pure license ensures that the buyer will have sufficient time to transition away from the cobranding of Dairy Pure with Garelick Farms. Similarly, the TruMoo license will permit the buyer time to transition its chocolate milk to the Garelick Farms brand or develop its own chocolate milk brand. In order to ensure consistency in the quality of the TruMoo branded products and to allow the divestiture buyer to offer its own chocolate milk brand without altering the taste that consumers may prefer, the divestiture assets also include a non-exclusive, royalty-free, paid-up, irrevocable, perpetual, nationwide license to the intellectual property, including the formula and know-how, for the TruMoo products.

2. Harvard Plant

Under the proposed Final Judgment, the divestiture buyer of the Harvard Plant will receive perpetual licenses to the regional ''Dean's'' brand and transitional licenses for the national brands. The Harvard Plant currently uses the regional ''Dean's'' brand and the national brands Dairy Pure and TruMoo. Because the Harvard Plant relies on the ''Dean's'' brand for its branded sales, the buyer will receive an exclusive, royalty-free, paid-up, irrevocable, perpetual license to use the ''Dean's'' brand in Illinois, Wisconsin, Indiana, and the Upper Peninsula of Michigan. Further, the buyer will receive a non-exclusive, royalty-free, paid-up, irrevocable, perpetual license to use the ''Dean's'' brand in Minnesota, Iowa, and the Lower Peninsula of Michigan. The geographies where the buyer's license is exclusive represents the primary area where the Harvard Plant sells its products. The addition of the non-exclusive geographies ensures that the buyer will be able to offer the same brand to more distant customers

and will not be hampered in its ability to compete in those more distant geographies. The divestiture assets for the Harvard Plant also include the same transitional licenses to Dairy Pure and TruMoo, as well as the same perpetual license for the TruMoo intellectual property, as the divestiture assets for the Franklin Plant.

3. De Pere Plant

Under the proposed Final Judgment, the divestiture buyer of the De Pere Plant will own the local brands that are primarily used by the De Pere plant and will receive transitional licenses for the national brands and regional ''Dean's'' brand. The De Pere Plant currently uses the local Morning Glory, Farm Fresh, and Jilbert brands, the national brands Dairy Pure and TruMoo, and the regional ''Dean's'' brand. Ownership of the Morning Glory and Farm Fresh brands, both of which are strong local brands, will transfer to the buyer of the De Pere Plant. The buyer of the De Pere Plant also will receive the same transitional licenses to Dairy Pure and TruMoo, as well as the same perpetual license for the TruMoo intellectual property, as the buyers of the Franklin Plant and the Harvard Plant. In addition to ownership of the local brands and licenses to the national brands, the De Pere Plant buyer will receive a two-year non-exclusive, royalty-free, paid-up, irrevocable, nationwide license to use the ''Dean's'' brand. This transitional license will ensure that, in the event that the buyer of the De Pere Plant is not the same as the buyer of the Harvard Plant, the De Pere Plant buyer will have sufficient time to transition away from cobranding. If, as expected, the buyer of the De Pere Plant is also the buyer of the Harvard Plant, the buyer will also be able to use the perpetual ''Dean's'' license from the Harvard Plant divestiture to cover sales from the De Pere Plant within the applicable geography. Though the De Pere Plant also sells some products under the local Jilbert brand, those sales are *de minimis.* Because of the very limited use of that brand, which is used primarily by a plant that is not subject to divestiture, the Jilbert brand is not a part of the De Pere divestiture assets.

(C) Other Provisions

In order to preserve competition and facilitate the success of the potential divestiture buyers, the proposed Final Judgment contains additional obligations for Defendants. Paragraph IV(C) of the proposed Final Judgment requires Defendants to facilitate each buyer's hiring of employees whose jobs relate to the processing, marketing, sale, or distribution of Fluid Milk or any other products by the Divestiture Plants. In particular, the proposed Final Judgment requires that Defendants provide each buyer, the United States, and the Plaintiff States, with organization charts and information relating to the employees and make employees available for interviews. It also provides that Defendants must not interfere with any negotiations to hire these employees by a buyer of these assets. In addition, for employees who elect employment with a buyer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that the employees would generally have been provided if the employees had continued employment with Defendants. This provision will help to ensure that the buyers will be able to hire qualified employees for the Divestiture Plants and related businesses.

Paragraph IV(G) of the proposed Final Judgment facilitates the transfer of customers and other contractual relationships from Defendants to each buyer. Defendants must transfer all contracts, agreements, and customer relationships. For those contracts, agreements, or customer relationships that extend beyond the Divestiture Plants, Defendants must transfer the relevant portions of those contracts, agreements, or customer relationships. For contracts or agreements that require another party's consent to transfer, Defendants must use their best efforts to accomplish the transfer. The paragraph also requires Defendants to send a letter to any customer of a Divestiture Plant that does not have a written contract within five business days of the closing of the divestiture of the relevant Divestiture Plant. The letter, which is subject to the prior approval of the United States, must notify each such customer that the buyer of the Divestiture Plant will be the customer's new supplier. This provision will help initiate contact between the buyer and the customer so that a relationship can be immediately established. Defendants may not interfere with any negotiations between a buyer and a customer or another contracting party. Finally, Defendants must release each buyer from any of Dean's obligations to purchase raw milk from DFA, allowing the buyer to seek its own suppliers for raw milk and not be beholden to DFA. Defendants are, however, required to enter into a supply contract for raw milk for a transitional period at the option of each buyer, as described below, to ensure that the buyer has an adequate supply as it takes over operations.

Paragraph IV(H) of the proposed Final Judgment requires Defendants to use best efforts to help each buyer apply for and secure any necessary governmental approval for any governmental license or authorization that cannot be transferred to the buyer. This provision will help to facilitate the transition of the business to the buyer without disruption due to any issues involving governmental licensures or authorizations.

Paragraph IV(I) of the proposed Final Judgment requires Defendants, at the option of each buyer, to enter raw milk supply agreements sufficient to meet each buyer's needs for up to three months. The United States, in its sole discretion, and upon the buyer's request, may approve an extension for up to an additional three months. This provision will help to ensure that the buyers will not face disruption to their supply of raw milk during this important transitional period.

Paragraph IV(J) of the proposed Final Judgment requires Defendants, at the option of each buyer, to enter agreements to provide transition services for a period of up to six months (with an option for the United States, after consultation with the Plaintiff States, to extend the period for an additional six months, in its sole discretion) to facilitate the transfer and operation of the relevant divestiture assets. This paragraph further provides that employees of Defendants tasked with supporting these agreements must not share any competitively sensitive information of the buyers with any other employees of Defendants.

Paragraph IV(L) of the proposed Final Judgment prohibits, for a period of one year, Defendants from soliciting business from customers supplied from a Divestiture Plant by initiating customer-specific communications for the portion of that customer's business that is covered by a contract, agreement, or relationship that is included in the divestiture assets. This prohibition will help each buyer establish and maintain important customer relationships.

Paragraph IV(M) addresses the fact that the Franklin Plant is located on leased property. Dean had an unassignable option to acquire the land, which it had not exercised. Through the bankruptcy process, the otherwise unassignable option was assigned to DFA but cannot be further assigned to the divestiture buyer of the Franklin Plant. Paragraph IV(M) requires DFA, at the Franklin Plant buyer's request, to (1) exercise DFA's non-assignable option to purchase the real estate on which the

Franklin Plant is located, and (2) sell to the buyer of the Franklin Plant the real estate at the same price that DFA pays for the property under DFA's non-assignable option to purchase. This provision puts the buyer of the Franklin Plant in the same position as Dean before DFA acquired the Dean assets by providing the buyer with the same option to acquire the real estate that Dean had, even though the option is non-assignable and therefore cannot be included in the Franklin Plant divestiture assets.

If Defendants do not accomplish the divestitures within the period prescribed in the proposed Final Judgment, or if Defendants waive their right to first attempt to divest the Franklin Plant and related assets, or the Harvard Plant and De Pere Plant and their related assets, as permitted by Paragraph V(A) of the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestitures, or a portion thereof. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide monthly reports to the United States and Plaintiff States setting forth his or her efforts to accomplish the divestiture.

At the end of an initial term of 60 days (with extensions that may be granted in the sole discretion of the United States not to exceed an additional 60 days), if the divestiture of the Divestiture Plants and other divestiture assets has not been accomplished, DFA can file a motion with the Court requesting that the Stipulation and Order be terminated and the Final Judgment be modified to allow DFA to retain those divestiture assets. This option for the divestiture assets to potentially revert back to DFA is included because of Dean's dire financial circumstance, the distressed condition of the Fluid Milk industry, the likelihood of additional Fluid Milk processing plant closures, and the desire to keep the plants operating, rather than shutting them down if buyers cannot be found. This will allow customers to continue having an adequate supply of Fluid Milk.

The proposed Final Judgment contains a notification provision in Section XI designed to give the United States the opportunity to review all of Defendants' future acquisitions, including acquisitions of partial or indirect interests, that involve entities that have generated more than $1 million in revenue from the processing, marketing, sale, and distribution of Fluid Milk in the prior completed calendar year. Section XI requires DFA to notify the United States, and any Plaintiff State in which any of the assets or interests are located or whose border is less than 150 miles from any such assets or interests, in the same form, with some modifications, as it would for a Hart-Scott-Rodino Antitrust Improvements Act (the ''HSR Act'') filing, as specified in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations. Notice must be made 30 calendar days before the acquisition. Section XI further provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before such acquisitions can be consummated. This provision ensures that the United States and relevant Plaintiff States will have the opportunity to review, for example, any future acquisitions of additional Dean assets by DFA. In particular, this provision would require advance notice of any attempt by DFA to acquire the Land O'Lakes plants in Woodbury, Minnesota; Sioux Falls, South Dakota; and Bismarck, North Dakota, which DFA did not include in its present acquisition due to the competitive concerns expressed to DFA by the United States.

Section XII of the proposed Final Judgment prevents Defendants from reacquiring any part of or interest in the divestiture assets without prior consent from the United States, after consultation with the Plaintiff States. It also prevents Defendants from entering new collaborations or expanding existing collaborations involving the divestiture assets without prior consent.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIV(A) provides that the United States retains and reserves all rights to enforce the provisions of the Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIV(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to restore competition that the United States alleged would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIV(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Eric D. Welsh, Acting Chief, Healthcare and Consumer Products Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW, Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against DFA's acquisition of certain assets from Dean. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the processing and sale of Fluid Milk in northeastern Illinois and Wisconsin and in New England. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under The APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the

reaches of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.''' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

In formulating the proposed Final Judgment, the United States has considered one determinative document within the meaning of the APPA, a May 1, 2020 letter from Richard P. Smith, President and Chief Executive Officer of DFA, to the United States Department of Justice, Antitrust Division and to the Capper-Volstead Act Committee, United States Department of Agriculture (''Letter''). The Letter is included as Attachment 1 to this Competitive Impact Statement.

DFA has previously asserted that the Capper-Volstead Act, 7 U.S.C. 291–292, permits farmers and cooperatives collectively to market not only raw milk, but also processed Fluid Milk. The United States, however, does not agree with DFA's categorical assertion, which raises questions of fact and of unsettled law.

Through the Letter, DFA has committed not to jointly process, market, or sell Fluid Milk with agricultural cooperatives or producers (other than its own farmer members) and has waived any right to assert in any legal, regulatory, administrative, or adjudicative proceeding that such conduct is exempt from the antitrust laws or otherwise permissible under Section 6 of the Clayton Act or the Capper-Volstead Act. The Letter, which provides additional detail, decreases the likelihood that DFA would harm competition through coordination on output and prices of Fluid Milk.

Dated: May 26, 2020

Respectfully submitted,

Karl D. Knutsen
Nathaniel J. Harris
U.S. Department of Justice, Antitrust Division, Healthcare and Consumer Products Section, 450 Fifth Street NW, Suite 4100, Washington, DC 20530, 202–514–0976, karl.knutsen@usdoj

Attachment 1

BILLING CODE 4410–11–P

THIS MARK MATTERS. DFA Dairy Farmers of America

May 1, 2020

Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Capper-Volstead Act Committee
U.S. Department of Agriculture 1400 Independence Avenue, SW Washington, DC 20250

To the Capper-Volstead Committee and the Antitrust Division of the U.S. Department of Justice:

Dairy Farmers of America, Inc. ("DFA"), which is organized as an Agricultural Cooperative within the meaning of Section 6 of the Clayton Act, 15 U.S.C. § 17, and the Capper-Volstead Act, 7 U.S.C. §§ 291-292, hereby irrevocably commits that it will not, other than through its participation in a joint venture or other joint ownership entity:

1. Jointly process, market, or sell in the United States any Class I or Class II product with any Agricultural Cooperative or agricultural producer other than its own farmer members; or

2. Agree or otherwise coordinate with any other Agricultural Cooperative or agricultural producer other than its own farmer members with respect to the processing, marketing, or sale in the United States for any Class I or Class II product, including, but not limited to prices, output levels, or other terms of sale.

For the avoidance of doubt, DFA will not coordinate, in the manner described in Paragraphs (1) and (2) above, the activities of its independently owned operations with those of any joint venture or other joint ownership entity in which DFA holds a non-controlling ownership interest. Nothing in this letter prevents DFA from (a) purchasing milk from other cooperatives or agricultural producers for processing into Class I and Class II products, (b) selling milk to other cooperatives for their use in Class I and Class II processing, (c) directly and periodically selling or buying Class I and Class II products in the ordinary course of business from other cooperatives or agricultural producers, or (d) entering into marketing agencies in common with regard to raw milk or raw milk components.

Furthermore, with respect to any litigation or other action brought against DFA by the United States Department of Justice or Department of Agriculture or the Attorney General of any State, DFA, as to those parties, agrees not to contest a finding that the conduct described in Paragraph (1) and (2) above would be likely to unduly enhance the price of the relevant Class I and Class II products. In addition, as to those governmental parties, DFA irrevocably waives

any right to assert in any legal, regulatory, administrative, or adjudicative proceeding, including a proceeding instituted by the Secretary of Agriculture pursuant to 7 U.S.C. § 292, that the conduct described in Paragraph (1) or (2) above is exempt from the antitrust laws or is otherwise permissible under Section 6 of the Clayton Act, 15 U.S.C. § 17, or the Capper-Volstead Act, 7 U.S.C. §§ 291-292.

For the avoidance of doubt, DFA's intention is to waive, in the circumstances described above, Section 6 of the Clayton Act and the Capper-Volstead Act as exemptions from the antitrust laws. Nothing in this letter prohibits DFA from defending its conduct in any legal, regulatory, administrative, or adjudicative proceeding on the basis that its conduct does not violate the antitrust laws in the first instance.

Sincerely,

Richard P. Smith

Richard P. Smith
President and Chief Executive Officer

[FR Doc. 2020–11857 Filed 6–1–20; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Source Imaging Consortium, Inc.

Notice is hereby given that, on May 19, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Source Imaging Consortium, Inc. (''Open Source Imaging Consortium'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lyon Hospital, Lyon, FRANCE has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Source Imaging Consortium intends to file additional written notifications disclosing all changes in membership.

On March 20, 2019, Open Source Imaging Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 12, 2019 (84 FR 14973).

The last notification was filed with the Department on March 3, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 20, 2020 (85 FR 16131).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–11852 Filed 6–1–20; 8:45 am]
BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for New Hampshire, California, Georgia, Louisiana, Maine, Ohio, and Oregon

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit payment status under the EB program for New Hampshire, California, Georgia, Louisiana, Maine, Ohio, and Oregon.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)–693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

SUPPLEMENTARY INFORMATION: The following change has occurred since the publication of the last notice regarding each State's EB status:

- The 13-week insured unemployment rates (IUR) for New Hampshire, California, Georgia, Louisiana, Maine, Ohio, and Oregon, for the week ending April 25, 2020, rose above 5.0 percent and exceeded 120 percent of the corresponding average rates in the two prior years. Therefore, beginning the week of May 10, 2020, eligible unemployed workers will be able to collect up to an additional 13 weeks of UI benefits.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.