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Milk Processors Soured After Federal District Court Rules They Must Face Monopsonization Claims at Trial

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Nearly five years into a wide-ranging monopsonization suit accusing milk processors of conspiring to depress and fix the prices paid to independent and cooperative milk suppliers, Judge Christina Reiss of the District of Vermont ruled that a narrowed set of the dairy farmers' class claims will proceed to trial.*Allen v. Dairy Farmers of Am., Inc.*, 2014 U.S. Dist. LEXIS 81193 (D. Vt. June 11, 2014).[1] The Court held that the Plaintiffs' conspiracy, monopsonization, attempted monopsonization, and damages claims survived the Defendants' summary judgment motion, but that the Plaintiffs' price fixing claims failed as a matter of law.

Rarely do plaintiffs file, and courts decide, antitrust cases against alleged monopsonists, but this issue often arises in mergers, such as the pending

Comcast/TimeWarner transaction. A monopsony is essentially the reverse of a monopoly — that is, instead of being only one seller as in a monopoly, there is only one buyer in a monopsony. As a result, the monopsonist is able to wield its position as sole purchaser to dictate terms to the sellers or suppliers. As Judge Reiss noted, "monopsony may exist when buyers exert unlawful control over where suppliers may sell their products or the prices at which they can sell them." 2014 U.S. Dist. LEXIS 81193, *26. Here, the Plaintiffs allege that the conspiring milk processors exercised their control over the market to drive down prices for Grade A raw milk.

Background

Plaintiffs, a certified class of independent and cooperative dairy farmers, alleged that several milk processors conspired to monopsonize the market for Grade A raw milk in violation of Section 2 of the Sherman Act and that the milk processors agreed to fix the prices they would pay for Grade A raw milk in violation of Section 1 of the Sherman Act. Plaintiffs challenge the milk processors' use of most favored nations clauses, full supply agreements, price uniformity, and other activity, claiming it caused a reduction in the over-order premium afforded to dairy farmers and suppressed prices paid for Grade A raw milk in the Northeast and mid-Atlantic regions. Dean Foods Company, a co-defendant, settled with the dairy farmers for $30 million in May 2011. The district court granted class certification on November 19, 2012. Defendants moved for summary judgment and the Court heard oral argument on May 8, 2014.

Geographic Market

Due to its overarching significance to the Plaintiffs' claims, including both the monopsonization and price fixing claims, the Court first determined whether Plaintiffs established a relevant geographic market. Plaintiffs alleged that the geographic market was the Federal Milk Market Order 1 ("Order 1") — consisting of Delaware, District of Columbia, Connecticut, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia — but only if the dairy farmer was physically located within one of those states.

The Court disregarded this market definition because it did not comport with the realities of the market. Dairy farmers not physically located in Order 1 are still able to pool milk with cooperatives in Order 1 and sell their raw milk to milk processors. To ignore these producers would create a meaningless distinction, according to the Court.

The Court, instead, found the relevant geographic market to be all of Order 1, absent the Plaintiffs' unnecessary restriction on a dairy farmer's physical location. Order 1, as are other federally-regulated milk market orders, is subject to certain price regulations that lead market participants to believe it is a specific, limited geographic market. Further, the commercial realities of dealing with a perishable product, including transportation and timing, led the court to find that there was sufficient evidence to allow Plaintiff's expert's geographic market to survive Defendant's motion for summary judgment.

Plaintiffs' Sundry Antitrust Claims: Conspiracy, Monopsonization, Attempted Monopsonizaton, and Price Fixing Claims

For Plaintiffs' remaining claims, the Court effectively split the baby. After an exasperated admonishment of both sides' extensive lists of undisputed facts (336 paragraphs for Plaintiffs and 130 paragraphs for Defendants, with a 120-page comparison chart), the Court ultimately found that genuine issues of material fact persisted and the conspiracy, monopsonization, and attempted monopsonization claims must be decided by a jury. Plaintiffs' price-fixing claim did not survive due to a lack of evidence and the price-fixing immunity granted to dairy cooperatives under the Capper-Volstead Act.

This case addresses an exceedingly rare (but increasingly discussed) issue in antitrust enforcement — monopsony and its potential to create anticompetitive effects. As consolidation persists in a variety of industries, the federal enforcement agencies will be forced to grapple with the implications of monopsony power, rather than simply the monopolistic effects of a potential acquisition. This decision, though far from providing any definitive guidance, outlines the struggle between protecting suppliers from the monopsonist and the lower prices such behavior may create for consumers. And, such a tension inevitably may sour the agencies and the courts on monopsony enforcement.

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[1] Bruce Sokler and Farrah Short recently discussed a Sixth Circuit decision in a similar milk processing antitrust class action suit. *See* Bruce Sokler & Farrah Short, "Sixth Circuit Spoils Milk Processor's Win by Reinstating Class Action Alleging Conspiracy to Restrict Milk Supply," Jan. 8, 2014,