

# The Milkweed



Issue No. 301  
August 2004

The farmer's milk marketing report

## Nationwide Antitrust Probe Launched Against DFA

by Pete Hardin

*FINALLY!*

The Antitrust Division of the U.S. Department of Justice, in tandem with attorneys general offices in several states, has commenced a national investigation against Dairy Farmers of America (DFA).

The investigation follows almost a decade of predatory behavior by DFA and its predecessor co-op against competing milk marketers and non-member producers. For years, federal Antitrust investigators have received complaints about DFA's anti-competitive actions. Federal Antitrust Division employees have spent much time during the last six years interviewing industry persons about DFA's alleged violations. DFA was formed in late 1997 by merger of four dairy cooperatives.

**Subpoenas have gone out to a several regional super pools and Florida dairy producers.**

Why have DFA's misbehaviors *finally* gained scrutiny of federal and state legal officials? Perhaps DFA's brazen, anti-competitive actions have become too blatant to ignore.

- For nearly a decade, *The Milkweed* has exposed the misdeeds of DFA and its predecessor cooperative, Mid-America Dairymen. This publication has repeatedly documented DFA's anti-competitive actions and clear violations of a binding Consent Decree still in effect with federal Antitrust officials.

- Great credit for establishing the federal/state task force investigating DFA must go to the members, board and management of Southeast Milk, Inc. (SMI—the dairy co-op based in Florida). In February 2003, SMI members unanimously agreed to check off a couple cents per cwt. on their milk to fund legal costs involved in protecting SMI from DFA's predations. During the past year, SMI's leadership—particularly president Joe Wright and CEO Calvin Covington—have spent great time and energy alerting state and federal officials, as well as legislators, to DFA's apparent illegal actions.

- On April 1, 2004, New York dairy farmer/writer John Bunting assembled a national conference in

Syracuse, New York that focused on market abuses by DFA and Dean Foods (the nation's largest fluid milk processor). This conference provided a national focus to widespread, anti-competitive violations by DFA. New York State Attorney General Eliot Spitzer attended. Spitzer's office is participating in the federal/state Antitrust probe. (The National Family Farm Coalition did huge work organizing the April 1 conference.)

### Louisiana: good place to start

No better locale could exist to start public hearings about DFA's market abuses than in the dairy parishes of eastern Louisiana. DFA (and before it, Mid-Am) have tried to hog-tie and gut dairy farmers in the Deep South. (See *The Milkweed's* web site, [www.themilkweed.com](http://www.themilkweed.com) for the May 2004 "article of the month"—a speech by former Louisiana dairy farmer Carole Knight about how DFA persecuted Knight's family.)

On August 5, lawyers and economists from the federal Antitrust Division, as well as representatives from the state Attorneys General offices, met near Franklinton, Louisiana to hear farmers' testimony about abuses by Mid-Am and DFA.

In the mid-1990s, Mid-Am commenced with a series of moves that gobbled up virtually all the local milk markets and access to milk plants in this surprisingly dairy farm-rich corner of the Deep South. In short order, through acquisitions and deals, Mid-Am controlled over 98% of all milk produced in Louisiana. Mid-Am then started deducting unexplained "marketing costs"—sometimes more than \$1.00/cwt. from those producers. Without competition, Mid-Am ... and then DFA ... literally stole from its members' milk checks. DFA continues to use its control over the Southeast dairy industry to drain revenue from producers' milk checks.

### Too early for many details

It's too early in the process to have clear details about where the federal/state antitrust investigation against DFA is headed. But *The Milkweed* can make a few obvious guesses:

that may support an enforcement action."

"Our job as lawyers at Antitrust is to police the economic landscape." Ramadahn said. "We have had an interest in DFA over the years, but in the broader context of mergers and large scale activities. This investigation has changed that. It is now about specific DFA behaviors." The trigger event that attracted DOJ's interest, Ramadahn said, was the takeover last winter of Dairy Fresh of Hattiesburg (Mississippi) by National Dairy Holdings (NDH—a company affiliated with DFA).

Accompanying Ramadahn to the Louisiana meeting were DOJ economist Dr. Ari Gerstle and attorney Mitch Glende. Representatives of the Florida and Louisiana Attorneys General also attended.

As explained by the DOJ team, the current theory of potential violation of Antitrust statutes by DFA falls into two categories. The first appears to be a violation of the basic Antitrust act; the other relates to types of coercion.

An important factor is the role of the federal Capper-Volstead Act, Dr. Gerstle explained. That Act allows farmers to gather together, with immunity and protection from Antitrust considerations, to set prices and policy. "This makes an Antitrust action more

- Possible violations of the 1977 Consent Decree forged between federal Antitrust officials and Mid-America Dairymen. Some parts of the 27-year old document are still in effect.

- Abuses of DFA's ownership of fluid milk processing businesses, as well as exclusive milk supply deals with fluid processors involving DFA and a joint venture, Dairy Marketing Services.

- Extortionate threats against Southeast Milk, Inc.

Proceedings of an investigation of this nature are not a public process. Herculean efforts have been required to get an Antitrust investigation in the first place.

U.S. Attorney General John Ashcroft and DFA CEO Gary Hanman are reported to be close personal friends. Including state attorneys general in the investigation provides a healthier structure for the probe.

A nation-wide Antitrust investigation is believed to be without precedent in the U.S. dairy industry. DFA, amid tightening milk supplies east of the Mississippi ... and huge levels of indebtedness and other obligations ... faces a huge challenge immediately ahead.

## Class III Off Another \$2.83; Rise to Start in September

USDA announced the July federal order Class III (cheese milk) price at \$14.85/cwt., down \$2.83 from June, and off \$5.73 from May's record high. The July decline reflects almost all of the 84 cents-plus/lb. decline in cash Cheddar price quotes registered between late April and early July at the Chicago Mercantile Exchange.

CME cash prices have risen sharply since early July. However, because the USDA-NASS price surveys that determine the federal Class III value lag CME moves by a couple of weeks, the August Class III price will come in slightly lower than July's price. It won't be until September milk deliveries that the federal Class III value starts rising again.

USDA announced the July federal order Class IV (butter-powder) value at \$13.31/cwt., down 41 cents from June, reflecting continuing stagnation/weakness in butter markets.

The federal order Class I base price for July is \$17.95/cwt., and the August Class I base will drop to \$14.62.

## The Milkweed

8/04

Invest in your best source for dairy news and analysis. You can't afford not to know what's really going on!

To subscribe, send your check to:

The Milkweed  
P.O. Box 10  
Brooklyn, WI 53521

\$40 per year (12 issues);  
\$75 for two years, OR 2 subscriptions.  
Foreign rates, one year:  
Canada: \$50 U.S.; foreign air mail: \$75 U.S.

(Name)

(Street or Rural Address)

(City, state, ZIP)

## DOJ Antitrust Lawyer Explains DFA Investigation

**"On its face it doesn't appear that the producers joined (DFA) because they can do better in DFA rather than out. It is usually after the loss, or threatened loss, of their markets and ability to market their milk, and the choice is to be able to market their milk or not."**

**"We need to follow the money and we need your help about where to look."**

— Allee Ramadahn, senior trial attorney, United States Department of Justice Antitrust Division

Those welcome words cheered three dozen dairy farm men and women who gathered on August 5 at a dairy farm near Franklinton, Louisiana. Three representatives of the U.S. Department of Justice (DOJ) Antitrust Division met with the producers. Jerome Walker, Franklinton area dairy farmer, coordinated the event.

In the first of what was promised as a series of meetings, Allee Ramadahn, a 32-year veteran of trade and Antitrust issues with the federal government, told the invitation-only gathering that DOJ is formally investigating DFA's behavior in the area. Ramadahn, a senior DOJ trial attorney headquartered in Washington, D.C., described the investigation as "a full task force, state and federal, aimed at getting the facts

Continued on Page 2

# DOJ Official Asks Producers to Help with DFA Investigation

Continued from page 1

difficult in an agricultural action than in a non-agricultural situation," he said. "Cooperatives can argue that certain otherwise unavailable actions are being done for the farmers' best interests."

A question that Ramadahn returned to several times during the meeting was, "Why is DFA not a farmer owned and controlled organization?" This question is the basis for DFA's Capper-Volstead exemption, and Ramadahn was seeking answers from farmers because, he said, the answer is not obvious to outsiders.

There is a long history of people complaining about DFA's behavior, Ramadahn said, and he proceeded to explain a familiar DFA pattern for acquiring new members that DOJ has observed. "They acquire processors and execute an exclusive milk supply contract. Then they deny access to other cooperatives and independents unless they affiliate with DFA. Is that conduct a violation?"

Ramadahn recognized that one of the issues that arose with the acquisition of Dairy Fresh last winter was exactly that fear by the producers who gathered for the meeting with DOJ. The vast majority of them are independent producers who escaped from DFA and now are shipping to Dairy Fresh.

ISSN: 1533-6026

## The Milkweed

The Milkweed is a monthly dairy marketing report for dairy farmers and other people with an interest in the dairy industry. The Milkweed is owned by The Milkweed, Inc. Peter Louis Hardin is the editor and publisher

All material is copyrighted 2004 by The Milkweed, Inc. Written permission is required before articles can be reprinted.

Subscription prices: \$40 for one year; \$75 for two years. Single issues: \$2.50.

Mailing address is: Box 10, Brooklyn, WI 53521. Telephone: 608-455-2400.

The Milkweed is published monthly for \$40 per year by The Milkweed, Inc., W717 Amidon Rd., Brooklyn, WI 53521. Periodical postage paid at Brooklyn, WI, and additional mailing offices. POSTMASTER: Send address changes to The Milkweed, P.O. Box 10, Brooklyn, WI 53521-0010.

## Abused by DFA? How to Contact DOJ!

Concerned dairy farmers and industry personnel who have important information about DFA's misbehaviors to pass along to federal Antitrust investigators may contact:

Allee Ramadahn, senior trial attorney,  
U.S. Department of Justice  
1404 H. Street, NW, Room 4800  
Washington, D.C. 20530

Phone: 202-307-1857

Fax: 202-307-5802

E-mail: allee.ramadahn@usdoj.gov

Ramadahn said that the Antitrust problem starts when there is no economic, quality or service advantage to the arrangement. "When we see that situation, we ask is there advantage to this change. On its face it doesn't appear that the producers joined (DFA) because they can do better in DFA rather than out. It is usually after the loss, or threatened loss, of their markets and ability to market their milk, and the choice is to be able to market their milk or not."

Ramadahn noted that the scenario has played out in the past. DOJ understands Louisiana dairy farmers' fears that DFA "may be waiting to see what we do before doing anything about the Dairy Fresh independents," such as forcing them to join DFA.

Ramadahn's explanations to the group revealed a thorough grasp of the issues farmers have about their relationships with DFA, either as members or independents. He outlined the "cozy" relationship that DFA had with executives of the Dean-owned handler in their market (Brown's Velvet), as well as NDH. "These people started out as executives with DFA and have long relationships with DFA. What part of their decisions grew out of this history? What rewards may be in place for cooperation that are not obvious or known? We want to make sure that there are independent agencies."

He asked dairy farmers at the meeting to think about ways that money could be skimmed from their proceeds. He also asked them how the system might be manipulated or abused to the advantage of handlers or the cooperative. "We need to follow the money and we need your help about where to look. Too much money is involved here," he explained.

"Benefits are flowing to someone, but you may

not see it. In this country we have recently had a number of very large corporations who got into trouble financially. And they were overseen by a number of agencies, such as the SEC and others. They were still able to abuse the system and lose a lot of money. This cooperative has more money than those companies and I am not sure who is looking at the cooperatives," Ramadahn explained.

Ramadahn cautioned against assuming that DOJ has any conclusions. "We are not saying they (DFA) has done anything wrong. But harm may be flowing from some of those issues and we are interested in looking at the facts. We encourage you and your associates to give us names and situations that may yield those facts."

"We are here to do the best we can to understand your specific problem," Ramadahn said, "and to help to tell your story to the people who will make decisions about what is going to be done."

He explained that representatives from the Attorneys General offices of Florida and Louisiana were present. Thomas Gray, senior assistant of the Florida Attorney General's Office and an antitrust attorney, explained that Florida's investigation has been underway for six months and they are coordinating with DOJ. Jane Johnson, a representative of the Louisiana Attorney General's Office in the public prosecution division, was non-committal about that state's current involvement, but expressed strong interest.

Many attendees expressed their concerns about DFA's actions at the meeting. *The Milkweed* chooses not to disclose their identities or their comments, to protect them from possible recrimination by DFA.

## Carr Valley Cheese Wins ASC Title

An aged, sheep's milk cheese produced by Carr Valley Cheese of La Valle, Wisconsin won top honors at the recent American Cheese Society annual meeting in Milwaukee.

Sid Cook, owner of Carr Valley (and a fourth-generation cheese maker), produced the cheese, which had been marinated in olive oil for three years. Carr Valley Cheese won 18 different awards in the ACS competition.

The ACS celebrated its 21<sup>st</sup> annual meeting at Milwaukee. A total of 726 cheeses were entered in its contest from over 100 producers in North America. The ACS focuses on upscale, innovative cheeses. The organization's growth mirrors the burgeoning development of specialty and artisan cheeses.