



CORNUCOPIA
I N S T I T U T E

Citizen Complaint Center
Antitrust Division
950 Pennsylvania Ave., NW
Room 3322
Washington, DC 20530

August 10, 2016

Dear Department of Justice, Citizen Complaint Center:

The Cornucopia Institute is a non-profit that acts as an organic industry watchdog. We are engaged in research and educational activities supporting the ecological principles and economic wisdom underlying sustainable and organic agriculture. Through research and investigations on agricultural and food issues, The Cornucopia Institute provides needed information to family farmers, consumers, stakeholders involved in the good food movement, and the media. As a non-profit, we represent both farmers and consumers who have a direct interest in the organic dairy market. This interest extends to keeping the market for organic dairy products free from anti-competitive practices that confine market growth.

The French company Groupe Danone (i.e., the Dannon Company in the U. S.) announced on July 7th, 2016, that it plans on acquiring WhiteWave Foods. This deal is estimated to be worth \$12.5 billion and would radically shape the market for organic dairy products. Danone owns the brands Activa, Oikos, Dannon and Stonyfield Yogurt. Danone is already one of the biggest players in the organic dairy market. Danone's Stonyfield Yogurt brand is the largest organic yogurt producer in the world, and a major player in the organic fluid milk market in the U.S. In addition, Danone holds a 21% equity stake in the organic kefir (liquid yogurt) manufacturer Lifeway Foods.

WhiteWave Foods owns both the Horizon Organic brand of dairy products and Wallaby Organic Yogurt, and is the major competitor to Danone's organic dairy brands. The Horizon Organic brand controls a larger market share than any other organic dairy brand in the U.S..

This acquisition raises serious questions about the future of the organic milk supply market as it will have a chilling impact on both competition in the consumer marketplace and the wholesale market for organic milk. We have specific concerns that this acquisition would

have a serious anti-competitive effect on the organic yogurt and organic fluid milk markets in the U.S.

Free markets are the foundation of a vibrant economy and competition among sellers in an open marketplace gives consumers many benefits of lower prices, higher quality products and services, more choices, and greater innovation. However, when an economic player controls a large percentage of the market they can easily push out smaller competitors. The Danone acquisition of WhiteWave is likely to severely lessen competition in the organic milk market and would therefore be illegal under the Clayton Act.

Danone reported net sales of fresh organic dairy of more than €11 billion in 2015, with a net profit of €1.28 billion.¹ WhiteWave reported adjusted net sales were \$3.87 billion for 2015.² While both these companies control significant shares of the dairy market in total, our primary concern is for the market for organic dairy. This market must be considered apart from conventional dairy because there are fewer large players in organic dairy and the market is more sensitive to consumer choice.

WhiteWave's Horizon Brand controls an estimated 25% of the organic fluid milk market in the U.S. Setting aside private-label competition, Horizon is the largest branded organic milk option in the marketplace. In fact, some media reports have suggested that Horizon is the largest dollar volume of any brand in the entire organic market (not just dairy). When combined with their market share of Stonyfield, adding the Horizon and Wallaby brands to Danone's portfolio will only increase the company's market dominance.

With this acquisition Danone would control a significant majority of the organic dairy market, allowing them to easily push out smaller companies or farmstead dairies who would have difficulty competing with Danone's superior economy of scale. This is especially true with organic dairy, as small brands are more heavily impacted by the high up-front cost of organic grain and limited consumer recognition, in comparison to a large corporation.

Another impact on competition in the marketplace is whether producers can obtain a fair price for their milk. WhiteWave is known for lowering the price paid to producers already.³ These practices have a chilling effect on a free market, and are expected to get worse with this acquisition.

After the acquisition, Danone would control the Horizon, Stonyfield, and Wallaby organic yogurt labels. This would additionally impact Organic Valley, which would be left as Groupe Danone's primary rival in the marketplace; for comparison, Organic Valley reported sales

¹ http://www.danone.com/fileadmin/Danone_FY_2015_Results_UK_02.pdf

² <http://www.whitewave.com/wp-content/uploads/2016/03/WhiteWave-Foods-Q4-FY-2015-Earnings-Release-2.11.2016.pdf>

³ Northeast Organic Dairy producers Alliance. *Organic Milk Pay, Feed and Retail Price Update for July 2016*, by Ed Maltby, NODPA Executive Director. Last accessed 7/27/16 at: http://www.nodpa.com/feed_payprice_update_07262016.shtml

of \$1.04 billion in 2015. Currently, Organic Valley supplies Stonyfield yogurt production with raw milk and has a licensing agreement to market packaged, fluid milk under the Stonyfield label.

It is possible, that Danone will transition to acquiring milk only from the Horizon suppliers for Stonyfield branded products rather than continuing their agreements with Organic Valley. Phasing-out the supply and marketing arrangements with Organic Valley might materially weaken the only other national competitor for WhiteWave or Groupe Danone.

As a result of these effects, this acquisition would “substantially lessen competition” in the organic yogurt market, raising concerns that the acquisition is in violation of Section 1 of the Sherman Act. It is vital that the organic dairy sector is kept free of monopolies.

We request that the Department of Justice investigate the potential for anti-competitive actions surrounding the acquisition of WhiteWave Foods by Groupe Danone.

The market for organic milk should be considered separately from other areas of the dairy market. The organic dairy market is already very concentrated, with few big players. It is imperative that Danone is required to provide certain additional information about the likelihood that the proposed transaction would substantially lessen competition in violation of Section 7 of the Clayton Act and whether this raises any antitrust concerns in the organic market that warrant closer examination.

Thank you for investigating this matter.



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ADDENDUM

Specific to the organic yogurt market, a respected industry analyst (who requested anonymity), stated that Stonyfield currently controls 65% of the market already. WhiteWave’s brands’ market share in organic yogurt are as follows: Horizon yogurt has a market share of 1% and Wallaby a 3% share. The plant-based yogurt made by the SoDelicious brand, also owned by WhiteWave, has a 3% market share.

If these figures are accurate, Danone will have a **Herfindahl Index** of 4244 if SoDelicious’ market share is included in the calculation of the organic yogurt market (and 4235 if SoDelicious is not included). Keeping in mind that a market with a **Herfindahl Index** under 1,000 is considered competitive, it is clear that Danone already dominates in a non-competitive industry. This does not take into account the market for fluid milk or other

organic dairy products like cheese. It will be paramount that organic dairy products, like organic yogurt, are considered as a separate market from conventional dairy products since the markets and economics are very different.

What these ***Herfindahl Index*** numbers do show is that this acquisition gives Danone increasing prominence in the organic yogurt market. It also illustrates how the rest of the market is made up of small, economically vulnerable businesses. Maintaining a strong competitive market benefits consumers, dairy farmers and small businesses.