

January 18, 2022

Subcommittee on Antitrust, Commercial, and Administrative Law  
6240 O'Neill House Office Building  
Washington, DC 20515

Chairman Cicilline, Ranking Member Buck and members of the Subcommittee,

Our organizations represent organic farmers in Maine, Vermont, New Hampshire and New York. We would like to share with the Subcommittee a specific example of the impact that consolidation in the food supply chain has on farm families, by describing a crisis in the organic dairy market in the Northeast that is happening right now.

In August 2021, Horizon Organic (owned by Danone North America) notified organic dairy farms in Maine, Vermont, New Hampshire and several counties in New York that it would terminate their contracts in the summer of 2022. This decision is directly impacting 89 organic family farms. Since the original announcement, Danone announced that it will keep the impacted farms on contract for an additional six months (for a total of 18 months from the original notice), but will still be pulling out of Maine, Vermont, New Hampshire and several counties of eastern New York.

This is a crisis for the 89 farm families who have to cope with the loss of their milk contract, but will also have a devastating effect on the rural communities where these farms are located, other organic farmers who supply these operations with feed and local businesses who provide services to these farms. And we believe it is a useful example of the damage done by the extreme levels of consolidation that are present in every sector of agriculture, even a specialized market such as organic, where many assume that farmers must be better off because organic products are sold for a premium.

While the crisis caused by Horizon's decision to exit the Northeast is focused in one region of the country, extreme consolidation plagues the entire organic dairy sector nationwide. In the organic dairy market there are two national brands: Horizon Organic owned by Danone North America, whose parent company is Danone that is headquartered in France, and Organic Valley, owned by CROPP Cooperative based in Wisconsin. The leading retail seller of organic dairy products is store brand/private label products supplied by CROPP Cooperative and very large, confinement-style, vertically integrated organic dairies, such as Aurora Dairy farms and milk plants in Texas, Colorado and Missouri. The vertically integrated dairies have the economies of scale that allow them to undercut competitors in the price sensitive store brand/private label retail market, which by its nature has a lower retail price than branded organic product. In addition to economies of scale, there are ongoing problems with the enforcement of organic standards at

these large operations, including requirements that organic dairy cows receive access to pasture and rules for how conventional animals can be transitioned into organic production. This enforcement is the responsibility of the U.S. Department of Agriculture (USDA), which oversees organic certification. This enforcement problem goes hand in hand with the consolidation of the organic dairy sector – as these large vertically integrated operations entered the market, weaknesses in USDA’s enforcement system became more pronounced, and small-scale operations now compete on an unlevel playing field that puts them at a significant economic disadvantage in a market dominated by a few large buyers.

Previous decisions by other federal regulators have allowed consolidation in organic dairy to worsen and should be revisited. When Danone purchased White Wave in 2017, the Department of Justice mandated that a condition of purchase was that Stonyfield Organic (owned by Danone with a supply contract with CROPP Cooperative) would have to be sold as a remedy to prevent monopsony in the region. Stonyfield Organic was sold to Lactalis, the second largest dairy company in the world. This means that the exit of Horizon from the Northeast leaves only one major alternative buyer for the organic milk from the 89 farms that are losing their contracts, CROPP Cooperative. CROPP’s major customer in the northeast for their raw milk is Lactalis. Lactalis purchases 80 percent of its total milk supply from CROPP and purchases the other 20 percent by direct procurement from Northeast farms or other sources. CROPP milk from New England and eastern New York is also used in packaged product under the Stonyfield Organic label licensed to CROPP by Lactalis.

The consolidation of the organic dairy market gives disproportionate power to international companies to dominate both the supply side and the retail market, which has resulted in a lack of regional processing infrastructure in the Northeast and only one buyer for organic milk. That one buyer can set the price and conditions of any contract or cooperative agreement, leaving the organic dairy farmer only two choices, take the deal or leave organic dairy (or dairy farming altogether), with the resulting repercussions on their family and their rural community.

We appreciate the subcommittee’s work to investigate the effects of concentration on the food supply, and hope that this dramatic example of the consequences of extreme consolidation offers useful insight into why regulators must do a better job to address the growing market power of a small handful of firms. We also urge you to coordinate with other committees such as the Agriculture Committee, which has oversight over the USDA, which is responsible for ensuring that products bearing the organic label are meeting the same high standards, no matter where they are from or what size operation produced them.

In addition to the failed federal oversight of the mergers that led to the extreme consolidation in the Northeast organic dairy sector, there are other regulatory efforts needed to address this problem:

- The Department of Justice should investigate the effect of lack of competition in New England and eastern New York in light of Danone’s decision to exit the region, and propose new remedies to restore competition in the region. The results of this investigation should inform future updates to federal guidelines on horizontal and vertical merger approvals.
- The U.S. Department of Agriculture and the Department of Justice should work with the inter-departmental White House Competition Council (established by President Biden’s Executive Order on Promoting Competition in the American Economy) to examine the organic dairy market in the Northeast as a case study of loss of resilience and harm to farmers caused by consolidation.
- The U.S. Department of Agriculture should immediately finalize long-delayed standards governing the transition of dairy cows into organic production and step up enforcement of organic pasture standards to level the playing field for smaller organic dairy operations.

Thank you for your attention to the critical issue of consolidation in agriculture and the food system. Please contact Patty Lovera of the Organic Farmers Association if you need more information or have questions about this testimony, [patty@organicfarmersassociation.org](mailto:patty@organicfarmersassociation.org), (202) 526-2726.

Respectfully submitted,

Maine Organic Farmers and Gardeners Association

National Organic Coalition

Northeast Organic Dairy Producers Alliance

Northeast Organic Farming Association of New Hampshire

Northeast Organic Farming Association of New York

Northeast Organic Farming Association of Vermont

Organic Farmers Association