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REMARKS ON DEAN FOODS/SUIZA MERGER

BY

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SENATE COMMITTEE ON JUDICIARY

FEBRUARY 13, 2003

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. FOR THE RECORD, I AM NICK ANTHONY, SENIOR RESEARCH ANALYST, WITH THE LEGISLATIVE COUNSEL BUREAU.

AT THE REQUEST OF CHAIRMAN AMODEI, I AM BEFORE YOU TODAY TO PROVIDE A BRIEF OVERVIEW OF THE SUIZA FOODS AND DEAN FOODS MERGER, AND THE RESULTING ANTITRUST LITIGATION.

SUIZA FOODS CORPORATION, HEADQUARTERED IN DALLAS, TEXAS, WAS STARTED IN 1993 WHEN GREGG ENGLES PURCHASED A PUERTO RICAN DAIRY AND TOOK ITS NAME "SUIZA." THROUGH THE NEXT 9 PLUS YEARS, SUIZA HAS CONTINUED TO GROW ITS HOLDINGS BY PURCHASING OTHER

DAIRIES. WITHIN SEVERAL YEARS, SUIZA BECAME THE LARGEST DAIRY PROCESSOR IN THE UNITED STATES.

IN REVIEWING ANTITRUST ISSUES RELATED TO SUIZA, IN 1999, THE JUSTICE DEPARTMENT FILED A LAWSUIT TO BLOCK SUIZA'S \$86 MILLION ACQUISITION OF AN OHIO MILK PRODUCER, CLAIMING IT COULD HAVE LED TO HIGHER MILK PRICES FOR SOME KENTUCKY SCHOOLS. SUIZA SETTLED THE LAWSUIT BY SELLING A KENTUCKY DAIRY.

IN 2000, SEVERAL DEMOCRATIC CONGRESSMEN PROPOSED LEGISLATION THAT WOULD MAKE FOOD-INDUSTRY ACQUISITIONS MORE DIFFICULT. IN RESPONSE TO GROWING CONCERNS OVER THE MILK MONOPOLY, SENATORS DASCHELE AND LEAHY INTRODUCED CONGRESSIONAL LEGISLATION TO ADDRESS AGRICULTURE ANTITRUST CONCERNS. SENATOR LEAHY NOTED THAT IN NEW ENGLAND, SUIZA HAD BEEN BUYING UP PROCESSING PLANTS AND CLOSING SOME OF THEM DOWN. AS A RESULT, THEY ENDED UP WITH NEARLY 70 PERCENT OF THE MILK MARKET IN NEW ENGLAND.

IN MARCH OF 2000, AN ANTITRUST INVESTIGATION WAS LAUNCHED BY THE ATTORNEY GENERALS OF CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND AND VERMONT TO INVESTIGATE A SUPPLY AGREEMENT BETWEEN SUIZA AND STOP AND SHOP. IN EARLY 2001, SUIZA EVENTUALLY SETTLED THE ANTITRUST INVESTIGATION. THE

SETTLEMENT ALLOWED THE CONTINUED SUPPLY OF SUIZA PRODUCTS TO STOP AND SHOP, AND REQUIRED STOP AND SHOP TO SELL ITS READVILLE, MASSACHUSETTS, DAIRY PLANT TO A BUYER OTHER THAN SUIZA. SUIZA THEN AGREED TO MAKE CERTAIN DAIRY PROCESSING CAPACITY WAS AVAILABLE TO OTHER NEW ENGLAND PROCESSORS FOR A FIVE-YEAR PERIOD, AND TO NOTIFY THE ATTORNEYS GENERAL OF ANY OF SUIZA'S PLANNED ACQUISITIONS OR PLANT CLOSINGS IN THE REGION.

ALSO IN 2001, SUIZA BOUGHT ITS CLOSEST COMPETITOR DEAN FOODS. AT THE TIME OF THE ACQUISITION, SUIZA HELD A 20 PERCENT MARKET SHARE, AND DEAN FOODS HAD APPROXIMATELY 14 PERCENT. AFTER THE MERGER, SUIZA ASSUMED THE NAME DEAN FOODS, A PUBLICLY TRADED COMPANY, AND MOVED ITS HEADQUARTERS TO SUIZA'S IN DALLAS, TEXAS. UNDER THE NAME DEAN FOODS, THE CORPORATION NOW CONTROLS OVER 1/3 OF THE U.S. MARKET FOR FLUID MILK, WITH OVER \$10 BILLION IN ANNUAL SALES.

IN DECEMBER 2001, AS A RESULT OF APPROVAL FOR THE PENDING SUIZA/DEAN FOODS MERGER, SUIZA SETTLED AN ANTITRUST INVESTIGATION CONDUCTED BY THE DEPARTMENT OF JUSTICE. BEFORE THE MERGER, SUIZA AND DEAN COMPETED TO PROVIDE MILK TO GROCERY STORES, CONVENIENCE STORES, AND OTHER STORES THAT SELL DIRECTLY TO CONSUMERS. IN MANY SCHOOL DISTRICTS, SUIZA

AND DEAN WERE THE ONLY TWO—OR TWO OF JUST THREE—COMPANIES THAT BID TO DELIVER MILK TO SCHOOLS.

AS A RESULT OF THE 2001 SETTLEMENT WITH THE DEPARTMENT OF JUSTICE, SUIZA AND DEAN FOODS AGREED TO SELL 11 DAIRY PROCESSING PLANTS IN ALABAMA, FLORIDA, INDIANA, KENTUCKY, OHIO, SOUTH CAROLINA, VIRGINIA, AND UTAH TO RESOLVE ANTITRUST CONCERNS ABOUT THE COMPANIES' PENDING MERGER. THE DEPARTMENT SAID THAT WITHOUT THESE DIVESTITURES, THE MERGER WOULD HAVE REDUCED COMPETITION IN MARKETS FOR MILK SOLD THROUGH SCHOOLS AND RETAIL OUTLETS IN THE AREAS AROUND THESE PLANTS.

“THESE DIVESTITURES ENSURE THAT CONSUMERS OF MILK, AN AMERICAN STAPLE, CONTINUE TO GET THE BENEFITS OF COMPETITION—INCREASED CHOICES FOR CONSUMERS RESULTING IN LOWER PRICES AND BETTER SERVICE,” SAID CHARLES A. JAMES, ASSISTANT ATTORNEY GENERAL OF THE DEPARTMENT'S ANTITRUST DIVISION. “MAINTAINING COMPETITION IN THE DAIRY INDUSTRY IS IMPORTANT FOR AMERICAN CONSUMERS.”

THANK YOU MR. CHAIRMAN, THIS CONCLUDES MY PRESENTATION.