

*Los Angeles Division*

49. The headquarters of Creameries' Los Angeles Division was located in Los Angeles, where Creameries also operated an ice cream plant. The Division, in addition, had a milk processing plant at Pasadena (CX 16-Z 218). The milk plant was operated under the name Crown City Dairy, and the ice cream plant operated as Valley Maid Creameries (CX 16-Z 23, 24). The Los Angeles Division distributed its ice cream under the brand names Valley Maid and American Hostess. It distributed its milk, buttermilk, cottage cheese and butter and eggs under the brand name Valley Maid-Crown City (CX 16-Z 218).

50. At the time of the acquisition, the Valley Maid ice cream plant in Los Angeles was located in a well-constructed building and was in good condition. It manufactured bulk and package ice cream and ice cream novelties. It had a freezing capacity of 600 gallons per day. The processing equipment was relatively new and well maintained. The volume of the plant was capable of being expanded by the addition of hardening room space (CX 16-Z 23). The Crown City milk plant in Pasadena was located in an old building and was in poor condition. It processed about 7,500 gallons a day and had HTST pasteurizing equipment and automatic paper and glass filling equipment. However, most of this equipment was in only fair condition, and the refrigeration equipment was in poor condition (CX 16-Z 24). Respondent operated a combination milk and ice cream plant in Pasadena, the plant being known as the Fosselman plant (R. 3758, 3786). Shortly after the merger, respondent transferred its milk processing from the Fosselman plant to Creameries' Crown City plant in Pasadena (R. 3786). It continued to operate Creameries' Valley Maid ice cream plant in Los Angeles until late 1954 or early 1955, when it moved all of its ice cream production to its own Fosselman plant in Pasadena and sold the Valley Maid plant (R. 3843, 3792).

51. The Los Angeles Division was Creameries' smallest and least profitable division in California. Its net sales in 1951 were \$2,959,186, compared to net sales of \$3,629,182 by the San Jose Division and \$4,829,065 by the Bakersfield Division. The sales of the Los Angeles Division in that year represented 6.67% of the company's total sales (CX 16-Z 114). In 1952 the Los Angeles Division had a loss of \$82,251, compared to net earnings, before taxes, of \$250,764 for the Bakersfield Division, and \$48,073 for the San Jose Division (CX 16-Z 214). In the first four months of 1953, the Los Angeles Division

had net sales of \$1,121,401 out of total company sales of \$14,897,453 (CX 16-Z 122). It had a loss on such sales of \$13,196.

52. As in the case of the other divisions selling dairy products, the largest proportion of the sales of the Los Angeles Division consisted of fluid milk and cream products. For the 12 months ending December 31, 1952, the milk sales of the Los Angeles Division amounted to 2,157,971 gallons, compared to ice cream sales amounting to 703,915 gallons (CX 16-Z 206). During the first 10 months of 1950, the Division had a net loss of \$107,247 on its ice cream sales, compared to a loss of \$17,821 on its milk sales (CX 16-Z 118).

53. Respondent and Creameries distributed dairy products from their respective Los Angeles and Pasadena plants, predominantly in the Greater Los Angeles Area, although respondent has distributed frozen dairy products as far south as San Diego through an arrangement with a dairy company affiliated with a group of grocery chain stores (R. 3805, 3810, 3794). Although selling within the same general area in southern California, respondent and Creameries catered to somewhat different types of customers. Insofar as it distributed at wholesale, Creameries sold largely to restaurants, "Mom and Pop" grocery stores and other small retail establishments (R. 3838). Creameries had little supermarket business (R. 3847). Respondent, on the other hand, had a substantial amount of supermarket business. A large proportion of its ice cream production was distributed through another company, Jersey Maid Milk Products Co., which was owned by a number of supermarkets and for which respondent manufactured ice cream under a special arrangement pursuant to which it received a fee for the use of its facilities (R. 3793).

54. In 1952 there were 135 companies distributing fluid milk in the Los Angeles market area, as defined by the State of California. Of these, 17 companies were considered to be respondent's and Creameries' "principal competitors" (CX 16-Z 252, pp. 10-13). The six companies with the largest volume in the area were: Arden Farms, Golden State, Carnation, Knudsen Creamery, Adohr Milk Farms and Challenge Cream & Butter Association. In addition to the 17 principal competitors, there were four so-called "captive creameries" affiliated with retail grocery chains. There were approximately 200 distributors of frozen dairy products in the area, of which 14 were considered to be Creameries' "principal competitors" in that line of commerce. The largest of these were: Arden Farms, Golden State, Carnation, Challenge, Beverly Dairies, Minick Ice Cream, Balian Ice Cream and Swift. In addition to these companies there were nine specialty companies distributing frozen dairy products through their

own or affiliated stores, or selling directly to the consumer, such as Good Humor (CX 16-Z 252, pp. 14-16).

55. As in the case of the northern California area, complaint counsel and respondent are in disagreement concerning the area of effective competition in which to weigh the probable competitive impact of the acquisition, insofar as it involves the operations of Creameries' Los Angeles Division. Complaint counsel contend that the area of effective competition is the Los Angeles marketing area, as defined by the State of California for purposes of establishing minimum prices on fluid milk. This market consists essentially of Los Angeles County, including the city of Los Angeles. Complaint counsel propose the same geographic market area for both fluid milk and frozen dairy products. Respondent likewise proposes an "almost identical" area of effective competition for both products, but contends that the area is all of southern California. Essentially, this includes not only Los Angeles County, but seven or eight counties contiguous to and south of Los Angeles, including San Diego County.<sup>61</sup> As in the case of the northern California areas previously discussed, respondent relies principally on the testimony of Dr. Clarke, in support of its position that all of southern California is one marketing area.

56. It is the opinion of the examiner that the entire southern California area does not constitute a single area of effective competition, in either the fluid milk or frozen dairy product line. The heart of the market insofar as Creameries' and respondent's southern California operations are concerned is, as Dr. Clarke's testimony suggests, the geographic area which is "centered around the Los Angeles area" (R. 4118). Dr. Clarke's report, prepared for the State legislature, indicates that only 8.7% of the standard fluid milk processed in the Los Angeles marketing area was shipped out of the area for sale elsewhere (RX 162-G). Of the counties which might be expected to be on the receiving end of milk processed in the Los Angeles area, Dr. Clarke's report indicates that San Diego County's receipts of processed milk amounted to only 13.2% of the milk processed and sold within the area (RX 162-P). The three marketing areas adjacent to Los Angeles received greater amounts of out-of-area milk, with Ventura receiving more milk from out of the area than it processed within the area, and San Bernardino-Riverside and Orange receiving

<sup>61</sup> Although respondent contends that the geographic limits of the area are almost the same for both milk and ice cream, it may be noted that the area proposed for milk is somewhat broader than that proposed for ice cream, in that it includes all of San Bernardino County (east and north of Los Angeles), and all of San Luis Obispo County (northwest of Los Angeles), whereas the area proposed for ice cream includes only the southern half of San Bernardino County and does not include San Luis Obispo County (RX 95 and 96).

38% and 43%, respectively, from out of the area. This would indicate substantial interarea shipments in the counties contiguous to Los Angeles, but relatively small shipments to the more remote counties.

57. It is the conclusion and finding of the examiner that Los Angeles County is the appropriate geographic market area in which to gauge the competitive impact of the acquisition of Creameries' Los Angeles Division. This is the area in which Creameries made all of its sales, and in which respondent made all of its milk sales and that part of its ice cream sales which was not distributed through the captive creamery, Jersey Maid (R. 3805, 3810, 3794). The smaller companies competing with Creameries and respondent had limited distribution in Los Angeles County or portions thereof (CX 16-Z 252, p. 12). While some of the larger companies may have distributed beyond the confines of Los Angeles County, their distribution to more remote areas was generally from separate plants or distributing branches in those areas. Thus in 1951 Arden, Carnation, Challenge and Knudsen had separate plants or distributing branches in San Diego; Arden, Carnation, Golden State and Challenge had branches in San Bernardino or Riverside; and Arden, Challenge and Golden State had a plant or distributing branch in Ventura or Santa Barbara (CX 409).<sup>62</sup> There were also separate groupings of smaller companies operating single plants in each of the above separate areas. It may be that a slightly broader area of effective competition could be marked out, so as to encompass some of the communities or portions of the counties adjacent to Los Angeles County. However, in the opinion of the examiner, a delineation on this basis would not materially affect a determination of the issues in this case since Los Angeles County accounted for the overwhelming bulk of the milk and ice cream distributed in southern California. For example, in 1952 sales of milk in Los Angeles County accounted for approximately 70% of the milk sold in southern California.<sup>63</sup> In the same year, plants in Los Angeles County accounted for approximately 75% of all frozen dairy products produced in southern California.<sup>64</sup>

#### Market Shares

58. Set forth below are two tables reflecting the respective market shares of respondent and Creameries within the area of effective competition. Although that area has been found to be the Los Angeles

<sup>62</sup> Even in 1962 most of these companies had multiple processing plants and distributing branches in southern California (CX 412, including Multiple Unit Section).

<sup>63</sup> There were 236,669,790 gallons of fluid milk products (including cream and skim products), sold in southern California in 1952 (RX 108-A), of which 163,052,235 gallons were sold in Los Angeles County (CX 421).

<sup>64</sup> There were 33,309,000 gallons produced in southern California plants (RX 115-A), of which 25,056,700 gallons were sold in Los Angeles (CX 16-Z 252, p. 17).

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marketing area, the tables also contain market share data in terms of the broader market proposed by respondent in order to provide a basis for gauging the order of magnitude of any difference in market shares which would result from the use of the geographic market proposed by respondent. The first table contains a comparison in terms of the fluid milk product line, and the second in terms of the frozen dairy product line.

*Comparison of market shares in fluid milk, southern California areas, 1952*

Area	Total production (gallons)	Beatrice		Creameries	
		Production (gallons)	Percent of market	Production (gallons)	Percent of market
Los Angeles County <sup>65</sup> -----	144, 272, 076	1, 522, 666	1. 05	1, 650, 690	1. 1
Southern California <sup>66</sup> -----	213, 083, 739	1, 522, 847	. 71	1, 651, 381	. 77

<sup>65</sup> The figures used for the Los Angeles marketing area are based on CX 16-Z 252, pp. 17-18, which is the exhibit principally relied upon by complaint counsel as reflecting market-share data. Complaint counsel also offered in evidence CX 16-Z 245, according to which respondent's market share for Los Angeles was 1.4% and Creameries' was 1.7%. The figures in the latter exhibit are expressed in terms of pounds, rather than gallons. The examiner has used the figures in CX 16-Z 252, rather than those in CX 16-Z 245, because the total market figure appearing in the former exhibit is substantially identical with that appearing in the reported statistics of the State of California for the dairy industry in 1952. CX 421, which was also introduced in evidence by complaint counsel, indicates that Creameries' market share of all fluid sales (including skim and cream) was 1.2% and that respondent's was 1.0%.

<sup>66</sup> The figures used above are based on RX 108-A. There is a slight discrepancy between the production figures of Beatrice and Creameries in RX 108-A from the figures appearing in CX 16-Z 252. There is no explanation for this discrepancy, in the record. However, the differential is so slight that it does not affect the market share percentages. RX 108-A contains two tables, one for fluid milk alone and the other for fluid milk including cream and skim products. The above table is based on that portion of RX 108-A which contains figures for fluid milk alone, in order to make it comparable to the figures in CX 16-Z 252, which are based on fluid milk alone. It should be noted, however, that if the allied fluid products were included, this would not materially affect the market share statistics revealed above. The only difference appearing in the two tables is that the inclusion of all fluid products would increase Creameries' share from 0.77%, as reflected in the above table, to 0.81%.

Before discussing the table reflecting market shares in frozen products, it should be noted that respondent has raised an issue as to whether part of the production of frozen dairy products in its plant should be taken into consideration in determining its market share. As previously noted, part of the production of respondent's plant in Pasadena was devoted to the production of frozen dairy products for Jersey Maid Milk Products Company. The latter is a "captive creamery," which processes fluid milk for a group of grocery chain stores with which it is affiliated, but apparently does not produce its own ice cream (CX 16-Z 252, pp. 11-12; R. 3793). Respondent produced ice cream and other frozen dairy products for Jersey Maid in its own plant under an arrangement whereby Jersey Maid supplied the

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cartons and some of the ingredients and did its own delivery in its own trucks, paying respondent a fee for the use of the latter's facilities (R. 3793). It is unnecessary to determine at this point whether the volume produced for Jersey Maid should be considered as part of respondent's market share. However, the table set forth below contains a breakdown reflecting that portion of respondent's production which is attributable to the arrangement with Jersey Maid.

*Comparison of market shares in frozen dairy products, southern California areas, 1952*

Area	Total production (gallons)	Beatrice		Creameries	
		Production (gallons)	Percent of market	Production (gallons)	Percent of market
Los Angeles County <sup>67</sup>	25, 056, 700	*1, 172, 502	*4. 68	698, 952	2. 8
		†334, 959	†1. 33		
Southern California <sup>68</sup>	33, 309, 000	*1, 177, 593	*3. 53	696, 913	2. 09
		†340, 050	†1. 02		

<sup>67</sup> The figures for Los Angeles County are taken from CX 16-Z 252, pp. 17-18, which is the exhibit principally relied upon by complaint counsel. CX 16-Z 245 also contains market share data, but is limited to ice cream and does not contain data for other frozen dairy products including ice milk and sherbet. Since the market share figures offered by respondent include all frozen dairy products, the examiner has used CX 16-Z 252, instead of CX 16-Z 245, in the above table in order that the data of both parties may be comparable. It may be noted, however, that if the market share data were limited to ice cream there would be no significant deviation from the above market share figures.

<sup>68</sup> The figures for the Southern California area taken from RX 115-A. It should be noted that the production figures for respondent and Creameries differ somewhat from those in CX 16-Z 252. However, this difference is so slight that it does not significantly affect the market share percentages.

\*Includes Jersey Maid.

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### Concentration

59. As previously mentioned, the major companies distributing fluid milk in the Los Angeles area were Arden, Golden State, Carnation, Knudsen, Adohr, and Challenge. The record does not disclose the individual market shares of these six companies. However, it does appear that in 1952 these companies, as a group, accounted for about 60% of the fluid milk sold through wholesale channels, *i.e.*, milk sold through retail stores for resale to the public (CX 16-Z 252, p. 12). Four of these companies, *viz*, Arden, Golden State, Carnation and Adohr, accounted for about 60% of the fluid milk, cream, and fluid by-products sold through retail channels, *i.e.*, milk delivered directly to consumers in their homes. Arden, Golden State, Knudsen and Carnation were also the leading distributors of fluid milk in the southern California area as a whole (RX 112). In 1952 they accounted for 46.86% of the fluid milk sold in the entire southern California area (RX 109-A). In addition to the previously-named major companies, there were four so-called "captive creameries," distributing

