

# CME vs. AMS: Contrasting Weekly Cheddar & Butter Averages

by Pete Hardin

The short-term, up-and-down cycles of Cheddar cheese prices call into question the integrity of cash market trading at the Chicago Mercantile Exchange. And butter trading may not be far behind.

Increasingly, sources are pointing to the June 26, 2017 advent of electronic cash market trading at CME as the culprit. Shielded by complete anonymity, electronic traders may drive cash market events almost at will. Old-fashioned rules of thumb such as “supply and demand” are commonly jettisoned. Instead, it appears that driving cash markets to give favorable end results for previously staked-out futures and options may be the prevailing ethic that’s propelling CME’s cash Cheddar trading.

Since the advent of electronic trading, one cheese industry player cynically comments that, “Nothing makes sense anymore. It doesn’t add up. It’s not about supply and demand any more. Something is wrong.”

Curiously, the ups and downs of CME’s Cheddar cash market antics since early August have not been mirrored in the weekly survey data for manufacturers’ sales volumes and prices for Cheddar. Each week, USDA’s Agricultural Marketing Service (AMS) surveys manufacturers’ sales of Cheddar, to gain commodity price data for formulas used to calculate the monthly manufacturing Class prices in the federal milk order system.

Note the contrast during August and early September 2017 between the CME’s gyrations and AMS’ relatively stable prices. (Important to note: AMS’ prices tend to be a week old when reported. CME quotes are the final prices for the cited trading day.)

**Block Cheddar Average Prices, CME vs. AMS  
August – Early September 2017  
(Prices/lb.)**

	CME	AMS
Aug. Week #1	\$1.7420	\$1.6208
Aug. Week #2	\$1.6935	\$1.6813
Aug. Week #3	\$1.7410	\$1.7375
Aug. Week #4	\$1.7020	\$1.7429
Sept. Week #1	\$1.5325	\$1.7551
Sept. Week #2	\$1.6300	\$1.7342

The following table demonstrates that a somewhat similar pattern holds true for CME cash butter market trading for the period stretching from the first week of August into the second week of September 2017.

**Butter Price Averages – CME vs. AMS  
August – Early September 2017  
(Prices/lb.)**

	CME	AMS
Aug. Week #1	\$2.7100	\$2.6471
Aug. Week #2	\$2.6680	\$2.6456
Aug. Week #3	\$2.6605	\$2.6715
Aug. Week #4	\$2.6125	\$2.6750
Sept. Week #1	\$2.5660	\$2.6317
Sept. Week #2	\$2.4575	\$2.6505

(Note: CME trading is conducted for Grade AA butter. AMS surveys manufacturers’ Grade A butter sales prices.)

Both for Cheddar and butter, the CME price antics did not track in parallel fashion with AMS’ weekly survey prices at the end of August and early September. This measure is short-term. But the shouts of frustration from long-term traders of dairy commodities are clear in their condemnation of CME dairy commodity price antics since the start of electronic trading on June 26, 2017.

Many sales contracts are based upon daily or weekly CME cash prices or averages. That’s another angle to ponder as we watch the divergent fortunes of CME and AMS dairy commodity prices.

It’s too early to know whether the recent divergence of prices is an anomaly, or a trend.

## Saputo Buys SMI’s ESL Business

Montreal-based Saputo, Inc. has acquired the extended shelf-life (ESL) business of Southeast Milk, Inc. (SMI — the Florida-based dairy co-op.)

SMI’s single ESL facility is located at Plant City, Florida. SMI has stated that the business volume for that ESL plant was \$47 million for the 12 months ending June 30, 2017.

Saputo is a global dairy giant, primarily producing and marketing Italian-style cheeses. Saputo’s operations include North America, South America, and Oceania. Saputo is hunting for additional acquisitions in dairy.

## Big Decisions in Long-Running Milk Powder Price Mis-Reporting Case

by Pete Hardin

The long-running civil lawsuit involving mis-reporting of nonfat dry milk prices by Defendants DairyAmerica and California Dairies, Inc. (CDI) was hopefully expedited by a pair of federal court decisions in late August.

From a lay perspective, it appears that the judges have lost their patience with the stalling tactics and misrepresentations by Defendants and their attorneys.

The bottom line of these recent decisions is that Defendants and their attorneys have been chastised by the court for failing to provide requested information to plaintiffs’ attorneys. Further, the request for certain “RICO” coverage in the case by plaintiffs’ attorneys has been granted. (“RICO” stands for “Racketeer Influenced and Corrupt Organizations” — a federal body of law that was originally designed to protect citizens and businesses from predatory acts by organized crime. If upheld by the Court, RICO violations bring triple damages plus legal fees to successful plaintiffs.)

Plaintiffs’ attorneys request to include California dairy farmers among the list of plaintiffs was not granted. However, the court seemed to suggest an alternative — a separate complaint filed against DairyAmerica, Inc. and filing by California dairy farmers claiming to have suffered financial harm from Defendants’ mis-reporting of nonfat dry milk prices to USDA and the California Department of Food and Agriculture (CDFA) during a period of several years leading up to April 2007.

As background: USDA and CDFA both use weekly reports of manufacturers’ selling prices for certain dairy commodities to calculate monthly class values for farm milk in their respective pricing programs. By law, manufacturers are required to report

weekly volumes and sales prices to those agencies.

Investigative reporting by *The Milkweed* revealed how DairyAmerica mis-reported milk powder prices during a period from late summer 2006 through 2007’s first quarter.

USDA’s Agricultural Market Service and the Inspector General’s Office investigated the milk powder mis-reporting allegations. Both confirmed that DairyAmerica had acted in error. In March 2009, attorneys for plaintiffs filed civil charges against DairyAmerica, starting a long-running procession of legal events that continues to the present.

Major factors have seemingly soured the case against DairyAmerica.

Acknowledged mis-reporting of milk powder prices by DairyAmerica devolved to serious misrepresentations of fact in the case by that Defendant’s attorneys, according to the Courts. DairyAmerica’s attorneys have been called out by presiding judges for committing multiple, serious procedural errors in the case. Those errors included:

- Failure to provide a full list of names to plaintiffs’ attorneys of DairyAmerica employees involved in the process of reporting prices to USDA and CDFA during the period in question.

- Falsely claiming to legally represent former DairyAmerica sales manager Doug White, when, in fact, Defendants’ attorneys were not representing White. White ultimately contacted plaintiffs’ attorneys, and later submitted a damning statement under oath that detailed DairyAmerica’s historic failure to comply with milk powder price-reporting rules to government agencies.

- Two other former DairyAmerica employees — Candice Biemiller and Lani Ellingsworth — emerged, each submitting sworn declaration detail-

ing instructions from former DairyAmerica CEO Rich Lewis (and others) to ignore proper price-reporting procedures. Those allegations included hiding documents off-site when California’s state dairy auditors were due for their monthly visits to DairyAmerica’s offices.

- Failure to comply with full disclosure of documents. Plaintiffs attorneys have charged DairyAmerica’s legal team with negligent misrepresentation and intentional misrepresentation. The Court on August 23 cited such failure as a contempt of court.

The arrogance of DairyAmerica and its attorneys is reflected in the following excerpt from the August 23, 2017 order issued by the U.S. magistrate judge.

“DairyAmerica violated this order. Dairy America admits that it did not identify persons or documents “likely to contain discoverable information relevant to the subject matter of this litigation.” Instead, it only identified the information that supported its own position

“THE COURT: Let me ask you this. So when you — when you were interpreting initial disclosures under that order, are you saying that you were only providing the information that was just all relevant as the text was?”

“MS. DAVIS: That’s correct, your Honor . . .

(ECF NO 451 at p. 92) “The Court need look no further. In response to an order unambiguously asking for identification of all relevant information, DairyAmerica admits that it only included information helpful to its side, and thus concedes that it withheld unfavorable information. Withholding unfavorable information is a clear violation of the plan (sic) language of the order, as well as the purpose of such a disclosure. Moreover, to claim to abide by such an order while in fact withholding unfavorable information is an egregious form of concealment because Plaintiffs did not know to challenge DairyAmerica’s interpretation.” (P. 10, August 23, 2017 Order Granting in Part Plaintiffs’ Motion for Sanctions.”

In summary, the Courts have determined to let certain requests for RICO claims to stand. But the Courts have disallowed inclusion of California dairy producers as plaintiffs in this case. But the Courts appear to have lost patience with Defendants.

## “Something Big” Brewing in the NE, con’t

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ty — seems to be the end goal of the common lender for DFA, Agri-Mark and St. Albans Co-op. What other political model features no competition? Communism. DFA’s predations against independent Northeast dairy farmers are exactly what “Uncle Joe” Stalin did to farmers in Soviet Georgia — starve them into compliance or demise.

At DFA, members should understand that their milk checks come last, behind all financial claims levied against the co-op. At Agri-Mark, members should know that they are not “owners.” Agri-Mark’s directors, with their whopping investments of \$1 shares, dictate the fate of Agri-Mark’s members’ equities. St. Albans, at this stage of the game, is just along for the ride.