

THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF AGRICULTURE HELD JOINT PUBLIC WORKSHOPS THROUGHOUT 2010 ON COMPETITION ISSUES FACING THE AGRICULTURE INDUSTRY

By Todd R. Seelman¹

The Antitrust Division of the U.S. Department of Justice ("Antitrust Division") is paying keen attention to the agricultural industry and promises to elevate antitrust enforcement in that sector to ensure a competitive playing field.

Throughout 2010, the Antitrust Division and the U.S. Department of Agriculture ("USDA") jointly examined competition issues facing the agricultural sector.² The Antitrust Division and the USDA held five joint public workshops in various states assessing the proper role of government regulation (particularly antitrust enforcement) in agriculture.

The first joint workshop, focused on crop and hog farming, was held in Ankeny, Iowa and included an examination of seed technology, vertical integration, market transparency, and buyer power. The second joint workshop, focused on the poultry industry, was held in Normal, Alabama which included discussions on production contracts, concentration, buyer power, and farm upgrades. The third joint workshop, focused on the dairy industry, was held in Madison, Wisconsin which included discussions on concentration at the processor and retail levels, marketplace transparency, thin spot market for cheese, milk-marketing order system, and market dynamics.³ The fourth joint workshop, focused on the livestock industry, was held in Fort Collins, Colorado which included discussions on livestock markets, buyer power, and enforcement of the Packers and Stockyard Act. The final workshop was held in Washington, DC which integrated the lessons from the first four workshops as well as examining the issue of downstream agricultural margins, from producers to consumers.

The Antitrust Division and USDA heard concerns expressed from a broad spectrum of market participants, including farmers, ranchers, cooperative members, processors and consumers. All-in-all, over 3,500 people participated in the workshops. The overarching concerns centered on low agricultural prices and the lack of transparency in price-setting mechanisms. In reiterating the government's affirmative role in ensuring a competitive process, Christine Varney, Assistant Attorney General for the Antitrust Division, stated:

The Antitrust Division emerges from these workshops better equipped to ensure that our nation's farmers, processors, and consumers reap the benefits of competitive agricultural markets. It is our role to enforce the antitrust laws and advocate for competition in the agricultural sector, and the stories we heard at the workshops confirmed the importance of these efforts. We currently are challenging the Dean Foods acquisition of Foremost Farms, and we stand vigilant against violations of the antitrust laws. The knowledge we

gained at the workshops will aid us in identifying and prosecuting conduct that violates the antitrust laws, and enforcement in the agricultural sector remains a priority.⁴

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² "Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy" reported in the Federal Register at <http://edocket.access.gpo.gov/2009/pdf/E9-20671.pdf>. "Joint DOJ and USDA Agricultural Workshops: Concluding Remarks" can be found at <http://www.justice.gov/atr/public/speeches/264911.pdf>. Links to other related materials can be found at <http://www.justice.gov/atr/public/workshops/ag2010/index.html>.

³ Two smaller meetings were also held in Vermont and New York, focused on the dairy industry in the Northeast. Christine Varney met with Senators Patrick Leahy and Bernie Sanders in St. Albans, Vermont to discuss competition issues confronting dairy farmers in Vermont. Ms. Varney also met with Senator Charles Schumer in Batavia, New York to discuss competition issues confronting the New York dairy industry.

⁴ <http://www.justice.gov/atr/public/speeches/264911.pdf>. Coincidentally, on December 9, 2010, the day after Ms. Varney's presentation in Washington, DC (December 8, 2010), Dean Foods announced that it had agreed to pay \$30 million to settle a proposed class action lawsuit alleging that Dean Foods and the Dairy Farmers of America, Inc. had conspired to monopolize milk distribution in the Northeast. See *Allen v. Dairy Farmers of America, Inc.*, 5:09-cv-00230, U.S. District Court, District of Vermont. In commenting on the Dean Foods settlement, Senator Patrick Leahy stated that: "This settlement is significant both for what it does now and for what it means for the future of our dairy industry. Economic concentration opens the door to anti-competitive practices that hurt farmers and consumers and skew dairy markets. This puts big processors on notice that there's a price to pay for that. Economic concentration in agriculture also is getting new scrutiny from the Justice Department and at several other levels. For farmers and all Vermonters, it all adds up to a changing picture and a welcome way to close out a difficult year." http://leahy.senate.gov/press/press_releases/release/?id=1c41d1be-838d-4f23-81e2-4d53a0faf22e.