

AntitrustConnect Blog

Justice Department Report Reaffirms Commitment to Competition in Agricultural Markets

Jeffrey May (Wolters Kluwer) · Wednesday, May 30th, 2012

The Department of Justice Antitrust Division “remains committed to taking all appropriate investigatory and enforcement action against conduct threatening harm to competition in agricultural markets,” according to a report released earlier this month.

The report, entitled “[Competition and Agriculture: Voices from the Workshops on Agriculture and Antitrust Enforcement in our 21st Century Economy and Thoughts on the Way Forward](#),” is intended to share with the agriculture and antitrust communities what the Antitrust Division learned at a series of five workshops hosted by the Department of Justice and the Department of Agriculture in 2010.

The report identifies recurring themes heard at the workshops: market concentration, merger enforcement, monopsony, bid rigging, potential market manipulation, market transparency, captive ownership, contracting, regulatory burdens, low or volatile prices for agricultural commodities, high input prices, a lack of capital, and a variety of issues with genetically modified seeds.

“As a result of the workshops, the [Antitrust] Division has redoubled its efforts to prevent anticompetitive agricultural mergers and conduct,” according to the report. The report points to recent challenges to agricultural mergers, including a 2010 federal/state challenge to Dean Foods Company’s acquisition of Foremost Farms USA’s Consumer Products Division, including its dairy processing plants in Wisconsin, and a 2011 challenge to George’s Foods’ acquisition of a chicken-processing facility in Harrisonburg, Virginia, from Tyson Foods.

Both cases were ultimately settled. In March 2011, the Antitrust Division settled with Dean Foods, requiring it to divest a plant and related assets, such as the Golden Guernsey brand name, to resolve concerns over the combination of the first- and fourth-largest milk processors in northeastern Illinois, the Upper Peninsula of Michigan, and Wisconsin ((CCH) [2011-2 Trade Cases ¶77,547](#)).

In the George’s case, the Antitrust Division reached a settlement that required George’s to make capital improvements to the Harrisonburg plant that the Antitrust Division anticipated would lead to a significant increase in the number of chickens processed at the facility, thereby increasing the demand for grower services and averting the likely adverse competitive effects arising from the acquisition ((CCH) [2011-2 Trade Cases ¶77,679](#)). The report explains that generally the Antitrust Division enforces Sec. 7 of the Clayton Act and other antitrust laws in the producing and

processing sectors, while the FTC generally takes the lead in the retail sector (including groceries). It also was noted that many of the issues raised during the workshops were outside the scope of the antitrust laws. The Antitrust Division might, however, be able to help advance solutions to non-antitrust these problems through competition advocacy and sharing expertise with other entities, it was noted.

European Commission Report on Competition in Food Sector

On the other side of the Atlantic, a 155-page European Competition Network (ECN) [report](#) was released on May 24, discussing competition law in the food sector across Europe. The report shows that the food sector has been a priority of competition authorities in Europe over the last few years and will remain a high priority. According to the report, European competition authorities have scrutinized all levels of the supply chain, with a near majority of the investigations focusing on the processing and manufacturing portions of the supply chain.

“Competition authorities across Europe are working hard to ensure that food markets work for suppliers and consumers alike,” said Joaquin Almunia, European Commission (EC) Vice-President in charge of competition policy, in [announcing](#) the report.

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