



From its inception, the OCM annual conference has played a substantial role in communicating our message. Essentially, that message is that we want a fair game to be called for the working rancher and

hard-hitting, but short on ceremony and fluff. While our panels and programs have generally been well-received, attendance and press coverage have been disappointing in the past. In a time when farmers

concentrated market power, if we want to make a real difference in the lives of the small farmers and ranchers, we must have not only the right message, but it must be heard beyond the walls of our grass roots organization.

The OCM board, at its mid-year board meeting, resolved to go all out for this year's conference. We decided to build the program around our basic mission of fair play and true supply and demand competition, hence the title, "Confronting Threats to Market Competition." We committed ourselves to developing an outstanding program (which included invitations to top government enforcement officials) and to having better attendance and more press coverage. I believe all these goals were achieved.

The conference began with founding



If you weren't there, You missed a good one

BY FRED STOKES, EXECUTIVE DIRECTOR

farmer. We want the prices that farmers and ranchers pay for their equipment, fertilizer, seed, and other production input and those they receive for their livestock, corn, soybeans and other commodities to be fair and competitive, and to reflect current and accurate market value.

Our conferences have always been

and ranchers are struggling just to make ends meet, in an era when they have to fight large, international mega corporations to stay in business, perhaps it is understandable that they are reluctant to spend \$500 or more to attend yet another meeting or conference. But, if we want to confront the issue of international con-

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PANEL - Competition Issues in Food Retailing
From right to left: Mary Hendrickson, Bob Taylor, Greg Gundlach and Bill Heffernan



Q&A for Competition Issues

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The Farmers Friend

BY RICHARD OSWALD

Aesop, the ancient Greek story teller told a fable about a farmer who found a stork along with a host of other birds eating seeds from his newly planted field. The stork tried to persuade the farmer that he was still the farmer's friend even though he was living at the farmers expense.

Aesop summed it up with the observation that the stork was no better than the other birds-- Birds of a feather flock together.

Thanks to modern farm equipment, seed placement has been improved so that about the only fowl eating my seed dollars these days are a few locally grown wild turkeys... and some corporate hawks from St Louis.

"Farmers are our friends" was the response from Monsanto spokesman Lee Quarles following last weeks meeting held by Organization for Competitive Markets in St Louis where the issue of agricultural market concentration drew the attention of farmers and government regulators.

Since then Monsanto announced that seed prices are going up again based on demand. Of course, anytime someone controls most of a market, demand is always good for them.

Monsanto said that seed prices are headed to about \$74 for an acre of Roundup Ready 2 soybeans.

I have a good mind to do what I did in 1989 when commercial seed costs were only \$10 per acre. Still, it was cheaper just to take a few dollars worth of seed from my own bin and save about three dollars per acre. That same act would cost me \$10 today, but instead of saving a few bucks, I'd save a whopping \$64, or about 640%.

Don't tell Monsanto my plan, be-

cause they pay detectives to spy on farmer friends who might be tempted to plant home grown grain as seed.

It is illegal to plant the seed that grows as grain on my own farm. The catch is that even though I may not want the Monsanto genes, if they find their way into my crop via birds or wind or nature the courts say I'm guilty just the same. These days it's virtually impossible to guarantee that any crop isn't contaminated with patented genes. If Monsanto's detectives catch me transferring seed from granary to planter, I'll be sued.

Speaking to a group of farmers in Missouri near Mark Twain Lake a couple of years ago, a farmer from Indiana, Troy Roush, said that when Monsanto sued him they took samples of Roundup Ready soybeans in his neighbors field and claimed they were his.

Troy was damned if he did, and damned if he didn't

Before seed patents, I had a choice between buying seed or using my own. Today I have no choice at all. I simply have to pay what seed companies ask. If I don't, my friends in St Louis can pick my carcass barer than my planting options.

The big picture here is that we've gotten to the point that a handful of corporations can decide what something is worth without really having a test of the market. I'm sure Monsanto would say "Go ahead Friend, plant a different seed if you can't afford ours". The problem is that according to speakers at the meeting in St Louis, Monsanto controls nearly 96% of the patented trait market for seeds.

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THE GUARANTOR OF MARKET LIBERTY

BY RANDY STEVENSON

*"Without liberty, law loses its nature and its name, and becomes oppression.
Without law, liberty also loses its nature and its name, and becomes licentiousness."*

--James Wilson, Of the Study of the Law in the United States, 1790

At the Organization for Competitive Markets (OCM) annual meeting held in the first week in August in St. Louis, the Department of Agriculture (USDA) and the Department of Justice (DOJ) announced that they will be holding joint workshops on competition in agriculture markets. The workshops will address buyer power (monopsony) and vertical integration in addition to the usual concerns about horizontal concentration.

Farmers and ranchers will be able to address their concerns and the task forces will be looking for input and anecdotal evidence of unfair and illegal market practices in all areas of agriculture. The discussion will not be limited to livestock, but will cover all commodities and input items such as seed and fertilizer.

It is ironic that the sessions on the National Animal Identification System (NAIS) were called listening sessions while these endeavors are called workshops. It was obvious that the NAIS sessions were intended for the government to

dispense information, not receive it. The joint USDA/DOJ sessions are not called listening sessions, yet they are specifically designed to garner information from the public.

Times and places for the meetings have not been determined yet, but they are intended to cover the whole country. Those with concerns about the markets or stories to tell need to make sure to be ready when a meeting is held in their area.

OCM has been working hard to get the marketplace better refereed. This is not a government takeover of the market, where the government sets prices and determines supply or demand. It is the government being the guarantor of marketplace liberty, to ensure that no private entity robs other participants of their market liberty.

We look forward to what comes out of this effort. We think it has been generated in the interest of true liberty in the marketplace and can benefit all participants in agriculture markets.^{RS}

OSWALD (continued from page 2)

That's just about all of it.

Moe Parr was in St Louis too. Moe's story is told in the recently released movie "Food, Inc". Moe isn't acting on screen when he tells about being sued for what Monsanto said was illegally enticing farmers to plant patented seeds. Other seed producers and cleaners were in St Louis to tell of being 'warned' about the consequences of their actions.

If Monsanto really doesn't control the market, why do they sue seed cleaners, the guys that make a living visiting farms to help their friends, the farmers, prepare their grain for use as seed?

Well, it's because intimidation is a big part of market control.

The truth is that in its fairly short history of being a seed seller, Monsanto has purchased more than fifty seed businesses. Some of them were pretty big players. If nothing else, that's proof that any corporation can be whatever they can buy.

Monsanto isn't alone in St Louis, because its chemical company spin off Solutia is there too. Solutia was planted from seed sown by Monsanto in 1997, and contained some of Monsanto's chemical businesses. Burdened by old lawsuits against Monsanto over environmental contamination from stuff like PCB and Dioxin, Solutia took bankruptcy in 2003.

I guess Monsanto forgot to give them enough money to pay the fines.

Things are looking up for Solutia now that its liabilities have disappeared, and it has emerged from bankruptcy with a clean balance sheet and stronger profits just like its parent company Monsanto.

That might be a good strategy for the farmers who've been threatened and sued by Monsanto, except once a family farm disappears it's pretty hard to come back as something else the way Monsanto has.

For most farmers, the greatest benefit of Roundup Ready corn and soybeans was weed control. Now pests for both crops, once held at bay by crop rotation, overwinter in fields where volunteer crops survive the following year. That means higher herbicide costs, more insect pressure, and higher profits for our friends in the seed and chemical business.

In a paper drafted in November of 2008 by Jack Kloppenburg of the University of Wisconsin-Madison, Kloppenburg states "Who controls the seed gains a substantial measure of control over the shape of the entire food system". Kloppenburg goes on to state that for true food sovereignty, control of genetic resources must be wrested from corporations and governments and returned to the public, for the public good.

It's not just seeds, but all of agriculture that needs a make-over. Small dairy and pork producers continue to lose money even as corporate food processing profits are rising. Pork producers like David Ketsenburg of Monroe City, MO struggle daily with markets that are becoming less and less farmer-friendly. Even some large farms struggle, but vertically integrated corporations that produce and market food directly not only control markets, but the direction profits flow.

Right now those profits are flowing away from farms into some pretty big pockets.

That brings up another of Aesop's fables, about the wolf in sheep's clothing. The power of large corporations to control public debate and steer standard

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DAVID KRUSE

PRESIDENT, COMSTOCK INVESTMENTS
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Theodore Roosevelt believed that government should play a significant role as the referee of market competition, not to pick winners or losers, but to see to it that a free market could make those choices. Anti-trust laws exist, but have been unenforced, allowed to languish in the shadows of regulatory inactivity. Government hasn't been doing its job, the referee has been absent.

One result has been the integration of the poultry and hog industries where public markets have been virtually eliminated and access to entry is now controlled by a few commercial entities that dominate the supply chain. Technology is a good thing. Biotechnology is the hope as to how we continue to feed a growing world population, improving the standard of living of the human race, without exhausting natural resources or degrading the environment. It is such a key primary asset to the future of world food production that it could be extrapolated that whoever controls biotechnology, the company that owns this technology, controls the lever to strategically move the world in whatever direction benefits its commercial interest.

That's not a remote possibility. It is a quickly developing reality. A balance must be struck between providing the financial incentive necessary to commercially develop new biotechnology and limiting the rights of ownership against the monopolization and commercial control of the world's food production system. There

is shrinking competition in ag biotechnology, the industry has few major players, its resources are concentrated in tight hands and its commercial power is being concentrated as well so that those who safeguard competition are alarmed and challenged.

Monsanto is testing the limits of ag biotech concentration not only in its control of seed patents, but in its control of market access. Monsanto gives every reason to believe that they will take everything that they can get. They are not bashful about seeking maximum advantage in control of intellectual property, market access, market structure and enforcing their perceived property rights. Monsanto deserves to profit from the biotech benefits that it has brought to agriculture and food production. . .but is there public interest in them dominating seed genetics, production and distribution so that meaningful competition ceases to exist? Do they have the ability to take it all?

It's primary competitor, DuPont, thinks so. Monsanto and DuPont have had skirmishes in and outside of the court as each recognize what is at stake, profits of billions of dollars with market share equating to market control. DuPont suffers from envy almost as much as it does competitive disadvantage with Monsanto. If you look back into a history of corporate conduct, neither of these companies has taught any Sunday School lessons. Monsanto's production of PCB's is a source of great controversy they would like everyone to forget. Monsanto and DuPont are now increasingly going head to head.

"DuPont is accusing Monsanto of illegal anti-competitive practices, while Monsanto counters that DuPont is engaging in a covert smear campaign that borders on fraud." DuPont calls Monsanto an illegal monopoly saying, "This is not just a DuPont problem. This is

a competition problem." In that they are right. Monsanto employs an effective legal department to protect that monopoly. As far as producers are concerned, being limited to Monsanto and DuPont for biotechnology traits provides little competition, limiting choice in the market place. I don't see DuPont

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setting for organic, sustainable, or other food production ends up making food appear to be something it's not; produced in a friendly partnership with family farmers.

Really understanding the products in those heavily advertised, plastic wrapped packages of food is tough to do, especially when big profits are more important than little people.

But here's a something that most people should understand; Next year, farmers who buy all their seeds from Monsanto could easily pay more to Monsanto for seed than the profit they, the farmers, hope to earn.

With friends like that, who needs enemies?^{RO}

- <http://www.bloomberg.com/apps/news?pid=20601103&sid=awCN.VdrOJ8g>
- http://www.biotech-info.net/indiana_law-makers.html
- <http://cleveland.metromix.com/movies/photogallery/food-inc/1100022/photo/1348188>
- http://www.monsanto.com/monsanto_today/for_the_record/maurice_parr.asp
- http://www.filmjournal.com/filmjournal/content_display/reviews/specialty-releases/e3i8c1b0c018a8f12984a0e198d62c09544
- <http://www.pnj.com/article/20090726/NEWS01/90726006>
- <http://www.library.wustl.edu/units/spec/archives/guides/pdf/monsanto.pdf>
- <http://stlouis.bizjournals.com/stlouis/stories/2009/07/20/story1.html?b=1248062400^1862344>
- <http://www.gurufocus.com/news.php?id=61196>
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as being different in motive than Monsanto, as each would like to control the seed industry in order to acquire full pricing power from farmers who function as captured clients.

DuPont's primary problem is that Monsanto is winning. I don't see an oligopoly as being better than a monopoly. If DuPont and Monsanto control market access, they control what comes to market and how it is priced. I think their market power passed the point of dominance some time ago and the question will be how or if they are pushed back. This battle is not about adoption of GMO's, although fringe elements would like to make it so.

GMOs are good. Just ask Norman Borlaug. Both the U.S. Department of Agriculture and the Justice department said this month they will launch an examination of competition and antitrust concerns in the seed industry.

The Government's anti-trust enforcement is so rusty that I think the first thing they will have to do is unfreeze the bolts securing the doors closed by previous administrations. The government hasn't done its regulatory job in such a long time it has forgotten what the job is along with how to do it. It will take a renaissance in committed effort in order to challenge the ag biotech monopoly. Monsanto says that it welcomes the added anti-trust scrutiny.

Monsanto lawyers have been so successful in surmounting legal challenges to Monsanto's business plan that they have to be arrogant by now. There is no limit to their financial resources to pursue their ends. If they can beat down this developing anti-trust challenge, who will be able to stop them from dominating the global seed industry and by extension, gain control of global food production? They are ready to fight this fight because they think they can win and the reward could be everything. ^{DK}

DISCLAIMER: The opinions of the author are his own and are not intended to imply the organizations position on this or any other issue. OCM has membership with diverse viewpoints on all issues. OCM is committed to one and only one principal, competition.

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OCM member Bill Heffernan presenting the results from his highly regarded market concentration study. Bill's numbers showed intense market concentration across the board. He was followed by Quindi Franco, senior research analyst for the U. S. General Accountability Office, who summarized a recent study on concentration in the food industry. The GAO study confirmed the increased market concentration, and showed a declining share of the food dollar year after year for farmers. However, the study stopped short of indicting concentration or lack of competition as a cause for the decline. Those in attendance were shocked and disappointed, and we are currently in the process of writing a stinging rebuttal that will be released very soon.

Space here doesn't allow me to adequately describe the speeches and panels, but they were all outstanding. The presence of Phil Weiser, Deputy Assistant Attorney General and J. Dudley Butler added considerably to the event, and their statements concerning the new administration's plans for anti-trust enforcement were most encouraging. The luncheon speech by Bert Foer, President of American Antitrust Institute and the keynote by prominent Omaha Trial Attorney David Domina were excellent. David is a founding OCM member and was the lead plaintiff's attorney in the Picket vs. Tyson case. David has now signed on as OCM's General Counsel, for he believes we have an opportunity to make long-delayed change and he wants to be a part of OCM's involvement in bringing about that change.

Again this year, we had a medley of patriotic songs by Carol Mudd. She was simply awesome! Anyone who wasn't misty-eyed afterwards needs help.

We have some nine hours of the conference and banquet recorded on video, and plan to have segments available on DVD soon. Let me know if you are interested in obtaining copies. (Note: There may be a small charge to cover the various costs).

While we had a great crowd at this year's event (more than likely a record),

there were some 300 million folks that weren't there. They need to hear our story, and we have since put a lot of effort into generating press and publicity to tell them what OCM, and our mission, is all about. Below are a few links to some of the many media pieces concerning the conference. I especially recommend the first three.

All in all, we had a great conference, one that I believe signals the start of significant advancement of our mission of true reform in the marketplace.^{FS}

<http://www.cncb.com/id/32404907>

<http://www.npr.org/templates/story/story.php?storyId=112035045>

<http://www.rnw.nl/english/article/obama-stand-small-farmers>

<http://sanders.senate.gov/newsroom/news/?id=d93d65be-0085-48f1-8735-d00da477d852>

Antitrust Enforcers Begin Visiting Farm Belt (Wall Street - US ...

<http://www.mainjustice.com/2009/08/10/anti-trust-ventures-into-farm-belt/>

Antitrust Ventures Into Farm Belt - Main Justice <http://bereagardens.blogspot.com> - Berea Gardens Agriculture Ministries Blog

<http://www.conspiracyplanet.com/channel.cfm?channelid=123&contentid=6138&page=2>

Conspiracy Planet - #1 Public Enemy - Farmers Target Monsanto Seed ...

http://washingtontimes.com/news/2009/aug/18/monsanto-chief-accuses-rival-dupont-of-deceit/?feat=article_top10_read&page=5

EXCLUSIVE: Monsanto chief accuses rival DuPont of deceit ...

<http://www.genet-info.org/information-services/special-topics/genet-news-seed.html>

GENET news: Seed

<http://journals.democraticunderground.com/grantcart/205>

grantcart's Journal - Farmers respond positively to Obama AG ...

<http://www.olneydailymail.com/news/x931217118/Group-focuses-ire-on-Monsanto>

Group focuses ire on Monsanto - Olney, IL - Olney Daily Mail

<http://www.istockanalyst.com/article/viewarticlepageid/articleid/3429462/pageid/2>

Hot Stocks: Monsanto Focused On Long-Term Growth, But DuPont ...

<http://www.dailyonder.com/letter-langdon-farmers-friend/2009/08/18/2295>

Letter from Langdon: The Farmer's Friend | Daily Yonder | Keep It ...

<http://www.irishseedsavers.ie/article.php?artid=747>

Monsanto

http://www.soyatech.com/print_news.php?id=15155

Monsanto CEO Accuses DuPont of Using Third Parties to Attack the ...

<http://www.bizjournals.com/stlouis/stories/2009/07/27/daily26.html>

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OCM ANNUAL CONFERENCE – SPEAKER

Philip J. Weiser

Deputy Assistant Attorney General
Antitrust Division
U.S. Department of Justice

“Toward a Competition Policy Agenda for Agriculture Markets”

Remarks as Prepared for OCM’S Conference - St. Louis, Missouri

August 7, 2009

I. Introduction:

I am very happy to be here with you today. In terms of her priorities for the Justice Department’s Antitrust Division, Christine Varney, my boss and the new Assistant Attorney General, has emphasized the importance of competition issues affecting agriculture as one area on which she will focus. It is thus appropriate that my first speech as the Deputy Assistant Attorney General in charge of Policy, Appellate, and International Matters is before this important conference.

In speaking with you all today, I will share my understanding of the current state of affairs in agriculture markets and invite your suggestions as to how the Antitrust Division should approach these issues. In particular, I will outline our plans for learning more about these markets in the upcoming workshops that we will conduct with the US Department of Agriculture (and will include participation from other interested stakeholders, such as State Attorneys General) to examine the state

of competition in agriculture markets. Before outlining some of the key areas we and the USDA expect to examine in our workshops, I will begin by discussing the role that concerns about agriculture markets played in spurring the enactment of the Sherman Act and the Division’s recent activities in the agriculture marketplace.

II. American Antitrust Enforcement and Agriculture Markets

The Department of Justice’s interest in competition issues affecting agriculture markets is longstanding. Indeed, the history of the Department and the laws it enforces is filled with connections to the concerns of farmers and ranchers. Going on 120 years strong, the Sherman Act remains the primary legal authority supporting the Department’s enforcement efforts. On all accounts, it is a remarkable piece of legislation—it can be printed on a single page and it functions as the “Magna Carta of free enterprise.”⁽¹⁾

Like the Constitution itself, the Sherman Act was built for “ages to come”⁽²⁾ and has proved itself capable of withstanding the test of time. Consequently, the law first created to address the trusts of the late 1800s now addresses effectively both traditional markets and the challenges to competition in our modern, high technology economy.

Stated generally, the Sherman Act provides sound medicine for a free market economy and has thus been rightly celebrated as a very successful piece of legislation. Put in its broadest terms, the Sherman Act prohibits two things: (1) anticompetitive combinations or coordination among actual or potential market competitors; and (2) anticompetitive practices as well as exclusionary conduct by firms that have monopoly power in a particular market.⁽³⁾

Congress enacted the Sherman Act in 1890 to respond to the emergence of trusts in many industries. Such combinations restricted total output, raised prices for consumers, and excluded new entry. Most famously, John D. Rockefeller spearheaded the development of the Standard Oil trust, which was ultimately broken up as a result of a case launched by President Theodore Roosevelt’s administration. It is also well known that concerns about monopoly power and trusts in agriculture markets were essential to securing the passage of the Sherman Act. In particular, during the debates on the Sherman Act, several representatives noted their great concern about the efforts of the beef trust in Chicago to control the price of livestock.⁽⁴⁾ Representative Henderson of Iowa, for example, noted that the beef trust controlled “the stock-yards, the cattle-yards, and the transportation in Chicago” and were apparently able “to keep up the price of every beefsteak that is used in this country.”⁽⁵⁾ Explaining how this trust adversely impacted both farmers and consumers, Rep. Ezra B. Taylor added that the “beef trust fixes arbitrarily the daily market price of cattle, from which there is no appeal, for there is no other market. The farmers get from one-third to half of the former value of their cattle and yet beef is as costly as ever ...



This monster robs the farmer on the one hand and the consumer on the other.”⁽⁶⁾ This concern was underscored by a Senate select committee that examined beef prices and recommended passage of the Sherman Act, concluding that “the principal cause of the depression in the prices paid to the cattle raiser, and of the remarkable fact that the cost of beef to the consumer is not decreased in proportion, comes from the artificial and abnormal centralization of markets.”⁽⁷⁾

Other agriculture concerns also fueled support for the Sherman Act. Although it was not a large trust, the Cottonseed Oil Trust raised concerns among Southern representatives and led to the passage of local antitrust legislation that was a predecessor of the Sherman Act. Indeed, on June 23, 1889, the New York Times reported on a judicial decision in which a New Orleans court issued a permanent injunction restraining the Cotton Oil Trust from doing business or writing contracts in Louisiana, reporting that Wall Street was “worried a good deal” about the decision.⁽⁸⁾ But the Sherman Act, which took inspiration from this law, focused on Main Street consumers, not Wall Street profits. As Senator John H. Reagan of Texas explained in advocating for the passage of the Sherman Act, the Cottonseed Oil trust “put down the price of cotton seed about one-third and put up the price of oil to whatever they please.”⁽⁹⁾

The early years of Sherman Act enforcement addressed a number of agriculture markets. A very significant early case involving the Sherman Act, for example, was its application to the Beef Trust in 1903-06. In 1903, under President Theodore Roosevelt, the Justice Department filed a civil suit seeking an injunction against members of the Beef Trust based upon their coordination in violation of the Sherman Act. In an important precedent, the district court ruled that the Sherman Act applied to the trust’s operations. On appeal, Attorney General William Moody argued the case himself and the Supreme Court substantially upheld the injunction against the trust.⁽¹⁰⁾

III. The Changing Agriculture Marketplace

Over the last twenty years, changes in technology and the marketplace have revolutionized agriculture markets, producing some substantial efficiencies as well as concerns about concentration. Notably, farmers today increasingly turn to patented biotechnology that is used to produce seeds resistant to herbicides and insects, producing larger crop yields than ever before. At the same time, this technological revolution and accompanying market developments have facilitated the emergence of large firms that produce these products, along with challenges for new firms to enter this market.

The Antitrust Division recently evaluated a series of mergers in the agriculture industry, obtaining relief to remedy identified anticompetitive concerns. In the market for cottonseeds, for example, the Antitrust Division required Monsanto and Delta & Pine Land to divest a significant seed company, multiple cottonseed lines, and other valuable assets before allowing them to proceed with their merger. Also, because DPL had had a license allowing it to “stack” a rival’s trait with a Monsanto trait, Monsanto was also required to amend certain terms in its current trait license agreements with other cottonseed companies to allow them, without penalty, to stack non-Monsanto traits with Monsanto traits. As a result, producers of genetically modified traits gained greater ability to work with these seed companies.⁽¹¹⁾ Going forward, the Division will continue to examine developments in the seed industry.

With regard to pork, the Division evaluated and declined to challenge Smithfield’s acquisition of Premium Standard in 2007. In so doing, the Division investigated its impact on the prices of pork products to consumers, the competitive consequences related to the purchase of hogs from farmers, and the merger’s likely effects on the purchase of services from farmers who raise hogs. Ultimately, the Division concluded that the merger would not undermine competition in the marketplace, but empha-

sized it would maintain a watchful eye on the marketplace.⁽¹²⁾

With regard to beef, the Division filed a complaint in federal court in Illinois in October 2008 that opposed the proposed merger of JBS and National Beef Packing Company. The Division opposed that merger because it found that by eliminating one of only four competitively significant packers, the merger would place more than 80% of domestic fed cattle packing capacity in the hands of the remaining three major firms and enable them to exercise market power against producers and sellers of livestock. Consequently, the Division concluded, the consummation of this merger would have resulted in lower prices paid to cattle suppliers and higher beef prices for consumers. After several months of litigation, the parties abandoned the deal.

IV. Current Areas for Examination

As I mentioned at the outset, the Antitrust Division is planning to look, in cooperation with the USDA, into the state of competition in agriculture markets. This undertaking, which will include a number of workshops, will touch on a set of important questions that will include, but not necessarily be limited to:

1. evaluating the state and nature of competition in a range of agricultural markets;
2. the impact of vertical integration;
3. concerns about “buyer power”;
4. relevant regulatory regimes; and
5. questions about the nature of transparency in the marketplace.

I should emphasize at the outset that these areas are, by no means, the only ones we will consider nor will we necessarily consider only those issues where antitrust action may be appropriate or feasible. They are, however, ones where we believe a careful evaluation is in order so that we are able to fulfill our mission of enforcing the antitrust laws, serving as an effective advocate for competition, and protecting consumers.

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WEISER (continued from page 7)

A. Particular Market Segments

For many farmers and consumer advocates, we understand that there are concerns regarding the levels of concentration in the seed industry--particularly for corn and soybeans. In studying this market, we will evaluate the emerging industry structure, explore whether new entrants are able to introduce innovations, and examine any practices that potentially threaten competition.

Let me mention two other industry segments that will receive attention. First, we recognize that the dairy market has experienced considerable consolidation over the past decade and there are questions about the state of competition in that market. Second, as I noted above, livestock markets, such as the beef market evaluated in the JBS/National merger, are ones where the Division is keeping a close watch. In analyzing developments in these markets, we are cognizant of the fact that competition is frequently local or regional in nature, meaning that the nature and extent of competition-related concerns will differ across different parts of the country and that broad national statistics can be misleading.

B. Vertical Integration

Over the last 15-20 years, a number of agriculture markets have become more vertically integrated. For those unfamiliar with the term, "vertical integration" is when a firm operates at multiple levels in the chain of production. Vertical integration takes place, for example, when a manufacturer expands on its own or purchases a company that provides the raw material or a component part used in production (i.e., it integrates "upstream") or a distribution channel (i.e., it integrates "downstream"). In many cases, such activity can lead to greater efficiencies and savings for consumers, making vertical integration ubiquitous in our modern economy (think, for example, of Gap producing its own jeans and marketing those jeans in its own stores). Under certain conditions, however, vertical integration can protect or facilitate the exercise of monopoly power.⁽¹³⁾

C. Buyer Power

Many have raised concerns about the exercise of what is called monopsony power or, to use a more descriptive term, "buyer power." Traditional monopoly power concerns a dominant firm that produces the goods or services that consumers want to buy. Where a firm possesses monopoly power, it may be able to charge prices higher than would be the case in a competitive market. Monopsony is the other side of the coin. When there are a number of producers in an "input market" and a dominant buyer of those products, the buyer may exert its power to press the prices lower than they would be if the buying market were more competitive--i.e., if the sellers had more choices of where and to whom to sell their products.⁽¹⁴⁾ Buyer power is thus a form of market power and can disadvantage sellers and create inefficiencies just like "seller power," more commonly known as monopoly power.⁽¹⁵⁾ In the workshops, we will examine the competitive impact of buyer power.

D. Other Legal Regimes

One important area to review is the implementation of the Packers and Stockyards Act. Even after the beef trust was broken up, Congress passed the Packers and Stockyards Act in 1921 to place limits and controls on the way that markets for livestock operate separate and apart from the strictures of the Sherman Act. We are interested in learning whether the controls of the Act are relevant to the way businesses are run today and whether the law is being implemented effectively to promote competition. We will also be interested in evaluating the impact of any regulatory regimes that may serve to protect particular producers at the expense of consumers.

E. Transparency in the Marketplace

Finally, I want to touch on the nature of transparency in agriculture markets. I am a firm believer that markets work better and attempted harms to competition are more likely to be thwarted when there is increased transparency to consumers and government about what is going on in an industry.⁽¹⁶⁾ A question we will thus be asking is whether there are parts of the agriculture business that

lack sufficient transparency. Notably, some have suggested that trading in agriculture markets has shifted from organized exchanges to a greater reliance on vertical integration and bilateral trading. To be sure, such a change could enhance efficiency and may not raise any competition concerns. (Indeed, there are instances where increased transparency can actually facilitate anticompetitive coordination, such as in markets with homogeneous products and high concentration.⁽¹⁷⁾) To the extent that these changes in trading raise any competition concerns, however, we will welcome suggestions and strategies for promoting greater levels of transparency.

V. Conclusion

The Antitrust Division recognizes that the agriculture marketplace continues to change. To be sure, many of the ongoing marketplace and technological changes promote efficiencies and benefit consumers. At the same time, however, we are aware that there are important concerns about the competitive consequences of how the marketplace is evolving and we believe that we can improve our work through careful evaluation of the relevant market conditions, informed by input from those in the agricultural community who live with and have to deal with these developments every day. We are thus approaching the upcoming workshops without any preconceptions and cannot promise any particular answers or results. I can assure you, however, that we are committed to a careful examination of the marketplace. As we go forward, I look forward to hearing more from you, continuing this very important dialogue, and working to improve our efforts in this area. Thank you.^{PW}

FOOTNOTES

1. *United States v. Topco Associates, Inc.*, 405 U.S. 596, 610 (1972).

2. *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819).

3. 15 U.S.C. § 1-2 (1890). As I noted, this is a simplification of the law's impact as it also

Please see WEISER on page 9



addresses other issues, including attempts to monopolize.

4. See Gregory Werden, *Monopsony and the Sherman Act: Consumer Welfare in a New Light*, 74 Antitrust L. J. 707, 714-15 (2007) ("In both houses of Congress, participants in debates often singled out the beef trust for condemnation, and they condemned it for reducing the prices paid to cattle farmers more than for prices paid to consumers").

5. 21 Cong. Rec. 4091 (1890) (statement of Rep. David B. Henderson). Senator William Boyd Allison of Iowa commented, to similar effect, that: "It is the common and the current belief among farmers of the State in which I reside and of all of the West that there is a combination in the city of Chicago which not only keeps down the price of cattle upon the hoof but also has such relations and situations as respects the internal commerce of the country that its members are enabled to make the consumers of beef pay a high price for that article." 21 Cong. Rec. 2470 (1890) (statement of Sen. William Boyd Allison).

6. 21 Cong. Rec. 4098 (1890) (statement of Rep. Ezra B. Taylor).

7. S. Rep. No. 829, at 33 (1890).

8. *Cottonseed Oil Trust; A Circular Explaining the Effect of A Recent Court Decision*, N.Y. Times, June 23, 1889.

9. 21 Cong. Rec. 2645 (1890) (statement of Sen. John H. Reagan).

10. *U.S. v. Swift*, 122 Fed 529 (N.D. Ill. Cir. Ct. April 18, 1903), *aff'd (in large part)*, *Swift v. U.S.*, 196 US 375 (1905).

11. Competitive Impact Statement, *U.S. v. Monsanto Company and Delta Pine and Land Company*, Case No. 1:07-cv-00992 (D.D.C. May 31, 2007); see also Ken Heyer & Dennis W. Carlton, *The Year in Review: Economics at the Antitrust Division, 2006-2007*, 31 Rev. Ind. Org. vol. 2, p. 121 (2007) ("[A]vailable evidence [about the relationship between Monsanto and Delta & Pine Land] suggested that, going forward, the two firms were not so much close partners as they were one another's chief rivals.").

12. See *Statement of the Department of Justice Antitrust Division on its Decision to Close its Investigation of Smithfield Inc.'s Acquisition of Premium Standard Farms Inc.* (Press Release dated May 4, 2007) (available at http://www.usdoj.gov/atr/public/press_releases/2007/223077.htm).

13. For a discussion of both contexts, see Joseph Farrell and Philip J. Weiser, *Modularity, Vertical Integration, and Open Access Policies: Towards a Convergency of Antitrust and Regulation in the Internet Age*, 17 Harv. J.L. & Tech. 85 (2003).

14. For a recent study of this issue, see Werden, *supra*, n. 4.

15. To be sure, simply having a degree of market power--whether on the buyer or the seller side--does not by itself present competitive concerns or give rise to antitrust liability. Indeed, where market power results from superior efficiency, for example, the resulting high profits are a legitimate reward under our free enterprise system.

16. For a discussion of how transparency can play an important role promoting competition and protecting consumers in the context of broadband Internet access, see Philip J. Weiser, *The Next Frontier for Network Neutrality*, 60 Admin. L. Rev. 273, 291-97 (2008).

17. The Division previously filed comments highlighting this very concern with the Federal Energy Regulatory Commission, see <http://www.usdoj.gov/atr/public/comments/223049.htm>.

STOKES (continued from page 5)

Monsanto likely topic at competition conference - St. Louis ...

http://gmwatch.org/index.php?option=com_content&view=article&id=11425:monsanto-dupont-square-off-in-turf-war

Monsanto, DuPont square off in turf war

<http://feineandsugar.newsvine.com/news/2009/07/28/3082830-monsanto-even-worrying-big-ag-now>

Newsvine - Monsanto Even Worrying BIG Ag Now!

<http://www.northplattebulletin.com/index.asp?show=news&action=readStory&storyID=17088&pageID=29&showTB=true>

North Platte Nebraska's favorite newspaper - The North Platte Bulletin

<http://fairfoodfight.com/blog/el-drag%C3%B3n/opening-can-o-whupass-monsanto>

Opening Up a Can o' Whupass on Monsanto? | Fair Food Fight

<http://randomnotes.newswires-americas.com/?p=3270>

Randomly Noted ¡ Blog Archive ¡ Obama's Antitrust Overreach

http://mobile.salon.com/tech/htww/2009/08/26/the_doj_versus_monsanto/index.html

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<http://www.sott.net/articles/show/188356-Farmer-group-focuses-ire-on-Monsanto>

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The U.S. versus Monsanto? - How the World Works - Salon.com

<http://www.washingtontimes.com/news/2009/aug/18/monsanto-chief-accuses-rival-dupont-of-deceit/print/>

Washington Times - EXCLUSIVE: Monsanto chief accuses rival DuPont ...

<http://ko-kr.facebook.com/notes.php?id=65767589879>

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ARTICLE PUBLISHED IN THE DAILEY YONDER, Austin, TX

by Bill Bishop and Julie Ardery – summarizing OCM Conference

Is Obama Putting the ‘Anti’ Back Into Antitrust?

During the George Bush years, the federal government backed off enforcement of antitrust laws. The Obama Administration says it is reversing those policies, beginning with the business of agriculture.



Jim Foster tells a meeting of the Organization for Competitive Markets in St. Louis that he has raised hogs in Missouri for over 50 years, but says meat packers no longer need operations like his.

ST. LOUIS - The room was filled. There were Nebraska hog raisers, corn farmers from Missouri, Colorado feed lot owners and ranchers from Wyoming. They were Republicans and Democrats, pro-life and pro-choice, church-goers and agnostics. The one thing they had in common is a belief that the markets for food and agriculture are dominated by a few big companies and, as a result, the prices paid to farmers and charged to consumers aren't fair.

The members of the **Organization for Competitive Markets** have been denouncing big business for years. OCM has issued press releases and joined lawsuits. Their annual meetings have been small, however, and the organization's influence has been weak. OCM has had few successes convincing a largely uninterested federal government aggressively to enforce antitrust

laws and the rules governing market concentration in the livestock business.

“Those times may be changing. This is a narrow moment in history when a difference can be made”, Omaha, Nebraska, attorney David Domina said near the end of OCM's annual meeting, held this year in St. Louis.

This moment arrived with last November's election. The Department of Justice under President George Bush was slow to prosecute under long-standing antitrust laws. The Obama Administration, however, has promised stricter interpretation of those statutes. And the Democrats have shown a particular interest in competition (or the lack of it) in agriculture markets.

The Department of Justice and the Department of Agriculture announced last week that “they will hold workshops to openly discuss legal and economic issues associated with com-

petition in the agriculture industry”, said Christine Varney, the Assistant Attorney General in charge of antitrust issues at Justice. And two top Obama Administration officials charged with enforcing antitrust and competition laws in the agriculture and livestock sectors came to speak to the farmers and ranchers at the OCM annual meeting.

The workshops will begin in January. These will be evidence gathering sessions for a government investigating ways that competition is currently restricted, from the sale of seed to the ownership and control over grocery-store shelves. Both DOJ and USDA officials said they are eager to receive comments on agriculture markets across the country, including anonymous statements. To find more information on these workshops and see where to send your comments, look here. - http://www.usdoj.gov/atr/public/press_releases/2009/248797.htm



Top Obama Administration antitrust lawyer Philip Weiser gave his first public speech to the meeting of the Organization for Competitive Markets, saying the Department of Justice would pay particular attention to the agriculture business. To the right is attorney David Balto with the Center for American Progress and OCM.



The Obama Administration appears to be looking at four areas in the agriculture markets:

- **Dairy** Last week, Vermont Sen. Bernie Sanders wrote to the Department of Justice asking that it investigate major milk buyers to see if they violate antitrust laws.

- **Seeds** That is, Monsanto. Monsanto now controls almost all the genetically modified soy, cotton and corn seed. Philip Weiser, the new Deputy Assistant Attorney General who spoke at the OCM conference, said the Justice Department would be taking a hard look at market concentration in the seed industry. "For many farmers and consumer advocates, we understand that there are concerns regarding the levels of concentration in the seed industry--particularly for corn and soybeans," Weiser said. (A copy of Weiser's speech can be found here - <http://www.usdoj.gov/atr/public/speeches/248858.htm> and in this newsletter.)

That is an understatement. Farmers across the Midwest have been meeting to protest Monsanto's control of the seed market. OCM attorney David Balto reminded Weiser that Democrats in the Clinton Administration filed an antitrust action against Microsoft, the software maker. "Back then, you started off suing Microsoft," Balto said. "That's a nice letter to begin with."

Surely it wasn't lost on St. Louis-based Monsanto that Weiser came to its hometown to give his first public speech after joining the Obama Administration, and that his speech was in part about the seed business.

- **Livestock** Dudley Butler, administrator for USDA's Grain Inspection, Packers & Stockyards Administration, told the OCM meeting that he planned to "get out in the countryside. We know we have an imbalance of power in some of the industries now."

Livestock raisers have been fighting consolidation among packing firms. Weiser said specifically that the Department of Justice was "interested in learning whether the controls of the (Packers and Stockyards Act of 1921) are relevant



Dudley Butler, administrator for USDA's Grain Inspection, Packers & Stockyards Administration, asked farmers and ranchers to bring him their stories of anti-competitive practices

to the way businesses are run today and whether the law is being implemented effectively to promote competition".

Butler gave a populist-tinged speech that sat well with the latter-day populists in the crowd. Asking for comments from farm producers who are often afraid to cross their buyers and suppliers, Butler said, "I understand the concept of retaliation."

- **Food Costs** The DOJ says it will investigate whether the vertical integration of the food business where the same company can control a product from seed genetics to the grocery shelves violates antitrust rules.

"We recognize this is a very important sector," Weiser said of the department's interest in agriculture. He said antitrust chief Christine Varney "has put a huge emphasis on the ag sector and has set no preconditions on the inquiry." "We can say we're really committed to learning and hearing from as many people as we can," Weiser said, adding, "I can't go much deeper."

If the OCM conference was any indication, the USDA and DOJ are likely to get an earful when they begin their workshops. Jim Foster, a Missouri hog raiser for more than five decades, told the conference that the big meat packers had gained control of so many animals that they could do without the independent producers. "They own

enough hogs that they don't need us," Foster said.

An Indiana seed dealer grew so disturbed by the prices Monsanto charged to farmers growing in different parts of his service area that he simply stopped selling the company's seed.

The stories are all the same, as competition declines, farmers and ranchers have fewer choices about where to sell their crops or cattle or where to buy their seed. As competition declines, farmers are finding their prices decline and their costs increase.

The farmers and ranchers at the OCM meeting represent an older style of politics and economics. (Long before Monsanto developed into a seed-selling giant, George Washington said, "It is miserable for a farmer to be obliged to buy his seed...") While some economists now argue that monopolies may be a product of efficient markets, David Domina reminded the ranchers and farmers at the OCM conference that having just a few corporations dominate markets is probably not good for the country. "You can't combine a field using a machine with just three moving parts," the Omaha attorney said, "You need thousands."

The farmers and ranchers who met in St. Louis are anxious to see if the federal government and courts agree. ^{BB/JA}

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