

Little to show from USDA-Justice 2010 competition hearings

Those five “workshops” on competition in agriculture that USDA and the Department of Justice held around the country in 2010 generated a flood of commentary at the time and now, nearly two years later, a 24-page [report](#) from the DOJ Antitrust Division that sums it all up.

What emerges from “**a wealth of discussion and information on the state of competition in the agricultural sector**” is that the DOJ antitrust arm has gained “an enhanced understanding of agricultural markets and “remains committed to taking all appropriate investigatory and enforcement action against conduct threatening harm to competition in agricultural markets.” In other words, the report is a major letdown to critics of concentration of economic power in the seed business, livestock slaughter, poultry production and food retailing. Advocates of change once entertained hope that the Obama administration would move more forcefully to prevent further concentration and enhance the market power of “independent” producers who shy away from growing on contract.

The DOJ report cites only two antitrust cases that it has brought since the workshops – a challenge to Dean Foods’ acquisition of a mid-size milk bottling plant in Milwaukee and a suit to block the sale of a Tyson Foods chicken plant in Virginia to a competitor. In both cases, government lawyers accepted partial settlements that fell short of their original goals.

Perhaps the most telling conclusion from the report is that **the law and court rulings don’t give DOJ the leeway to move more forcefully against such practices as “captive supplies” – packer ownership of livestock that activists blame for holding down prices paid to farmers – or to roll back mergers in highly concentrated industries such as meat packing and seed marketing.**

“Participants identified an array of challenges facing the agriculture sector, many, if not most, of which fall outside the purview of the antitrust laws,” DOJ says, and “do not serve directly other policy goals like fairness, safety, promotion of foreign trade and environmental welfare. Many of the workshop issues may require public or private solutions beyond the antitrust laws.”

The report goes through the complaints raised mostly by small-scale, “independent farmers” and their advocates – that few packers are willing to bid on livestock in the spot market, that poultry integrators abuse contract growers, that dairy processors manipulate milk prices or that grain producers have fewer competing local grain elevators to which they can market commodities. Others said retail concentration takes “a greater and greater share of the consumer food dollar.”

“On the other hand, some producers, including some cattlemen in the High Plains and some dairy producers in the Upper Midwest, reported that they have an adequate number of competing buyers in their local market areas,” the report continues. Yet others “described how larger farming, processing, and retail operations have created efficiencies that have benefited producers and consumers alike.” And while some poultry growers objected that they are “forced to accede to draconian contract terms” and face “unfair or deceptive treatment at the hands of processors,” others saw benefits – guaranteeing a buyer and enabling producers to access capital. A number of farmers and ranchers at the hearings seemed to wish for a breakup of some large-concentrated firms, the report noted. But their hopes appear largely quixotic in the face of the economic and legal realities of the day. **“However desirable, today’s antitrust laws do not permit courts or enforcers to engineer an optimal market structure, breaking up firms simply because one might prefer there be more of them (or for other similar reasons),”** DOJ concludes.