

Testimony of

# **The Honorable Patrick Leahy**

August 23, 2002

STATEMENT OF SENATOR PATRICK LEAHY,  
CHAIRMAN, SENATE JUDICIARY COMMITTEE  
HEARING ON  
"ENSURING COMPETITIVE AND OPEN AGRICULTURAL MARKETS:  
ARE MEAT PACKERS ABUSING MARKET POWER?"  
AUGUST 23, 2002

I want to thank Senator Durbin for chairing this hearing of the Senate Judiciary Committee. The issues of concentration and competition in agriculture are extremely important. They affect producers of most commodities in nearly every region of the country.

In Vermont, agriculture is a key industry. Vermont farmers who produce a variety of agricultural products can all be affected by anticompetitive market conditions. Approximately 74 percent of Vermont's net farm income comes from dairies. For decades smaller dairy farmers have relied on their local or regional cooperatives to provide them some market power. National markets did not really exist and there was some counterbalance of the power of the larger processors. That structure has changed dramatically over the past three years. As a result, our farmers are not getting a fair share of the retail price of milk, while giant, corporate processors are raking in windfall profits as they raise prices to consumers.

In New England last year Suiza Foods merged with Dean Foods to form by far the largest milk processing company in the world. Despite the concerns so many of us expressed, the Justice Department approved the merger. The resulting milk processing company now controls almost 70 percent of the milk supply in New England. It achieved its market dominance through the merger and by buying up local dairies and then closing them down.

The new Dean Foods controls over 30 percent of all milk production nationally, in addition to having strategic alliances with other entities that expand its influence even further. Dean Foods has an alliance with Dairy Farmers of America (DFA), a massive coop now representing 22,000 dairy farmers in 43 states. Formed in 1998, the DFA was involved in a number of mergers among cooperatives, including Mid-America Dairymen, Milk Marketing Inc., and Western Dairymen Cooperative. Of course, DFA also owns Borden Foods. Dean Foods also has an alliance with Land O'Lakes that now includes a new licensing arrangement that grants Dean Foods a perpetual license to use the Land O'Lakes brand name nationally on a broad range of products. Sales through these inter-locking deals between Land O=Lakes, DFA, and Dean Foods total over \$12 billion annually.

Thus, a handful of affiliated firms control access to a majority of the markets for milk in this country. Opportunities for dairy farmers to market their milk independently have been all but

wiped out. In addition, two coops now control access to most of the nation's processing facilities and are using this access to expand further. This is not good for dairy farmers, it is not good for other market participants, and it is not good for consumers.

As dairy farmers continue to suffer from low milk prices, Dean Foods is recording record profits. Just this month, Dean Foods reported that its profits for the second quarter of 2002 grew by 55 percent over the second quarter of 2001, due largely to plummeting milk prices. In most competitive markets, this would never happen. In a competitive market, when input costs fall, competition tends to drive consumer prices lower, thus ensuring that manufacturers do not realize windfall profits. But not so in the dairy industry -- retail prices for fluid milk are virtually unchanged this year, even though wholesale prices have fallen nearly \$.50 per gallon since last September. I continue to believe that the Justice Department should investigate why lower farm prices for milk have not been passed on to consumers.

Similar concerns have been raised about the effects of consolidation in the livestock and poultry industries. That is the subject of this hearing. Concentration in the meatpacking industry is relatively high and has been rising. According to USDA, the four largest packers' share of steer and heifer slaughter rose from 36 percent in 1980 to 81 percent in 1999. Concentration in hog slaughter is lower but also is on the rise, increasing from 32 percent in 1980 to 56 percent in 1999. The disappearance of meatpacking plants and firms reduces the number of choices producers have to sell their livestock and increases concerns that the remaining firms may have greater opportunities to engage in anti-competitive or discriminatory behavior.

But the most dramatic structural changes in the livestock and poultry industries relate to vertical integration. The poultry industry is almost completely vertically integrated with poultry slaughtering facilities owning the birds from breeding through slaughter. Over 60 percent of hogs are now sold through some type of forward sales agreement. Until recently, the beef industry has been more resistant to vertical integration and coordination pressures. The trend toward greater packer control is increasing, and, according to the testimony of one of our witnesses, at times exceeds 60 percent in certain markets.

As meat packers gain even greater market power, a major concern is whether they will be able to manipulate market prices. Fewer and fewer sales are being made through cash markets. Yet cash market prices are used as a basis to determine marketing contract prices. So, for example, there would be an incentive for meat packers to depress cash market prices, thereby lowering the costs of animals purchased through marketing contracts. As the cash markets for livestock shrink, and the volume of livestock controlled by meat packers through captive supply arrangements grows, it may become easier for such manipulation to occur.

I would like to know whether the Department of Justice considers the possibility for market manipulation during the course of its merger reviews, and whether there is any ongoing effort to monitor agricultural markets to protect against such abuses. If such abuses were discovered, what remedies could the Justice Department or the Department of Agriculture impose?

For many years I have believed we need greater protections against market abuses by powerful agribusiness interests. In 1989, I asked for an FTC investigation and authored legislation, which became law, to impose massive fines on manufacturers of infant formula for anticompetitive

behavior. In 1992, I authored legislation, which became law, to bar companies convicted of school lunch milk price fixing from participating in the school lunch programs.

Last year and again this year, I co-sponsored with Senator Daschle, Senator Durbin, Senator Johnson, Senator Dayton and a number of others legislation designed to enhance fair and open competition in the production and sale of agricultural commodities. Our bill, S.20, strengthens laws prohibiting anti-competitive activities currently in the Packers and Stockyards Act by broadening their scope to protect producers of all commodities (rather than only covering cattle, hogs, and sheep) and adding provisions related to price discrimination, whistle blower protection, and limitations on the use of A right of first refusal@ contract provisions. Among its many provisions, it expands the standard of review for mergers and acquisitions to include impacts on rural communities--similar to the manner in which the Surface Transportation Board and the Federal Communications Commission consider other factors when reviewing railroad and telecommunications merger proposals.

During Senate consideration of the farm bill, I supported bipartisan efforts led by Senator Tim Johnson and Senator Charles Grassley to ban the ownership of livestock by meatpackers for more than 14 days prior to slaughter. Unfortunately, the packer ban provision was killed by House conferees while the farm bill was negotiated in conference committee earlier this year.

As the farm bill debate demonstrated, powerful interests are opposing our efforts. And so I look forward to the testimony of today's witnesses as we continue to seek new ways to address these problems and improve market opportunities for America's farmers and ranchers.

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