

Testimony of

The Honorable Patrick Leahy

May 21, 2003

I want to join the Chairman, and my colleagues on the Antitrust Subcommittee - Senators Kohl and DeWine - in welcoming Mr. Pate this morning. The Antitrust Division is charged with a critically important role in protecting our nation's consumers and their markets, and I look forward to the dialogue we can have here today on these topics.

The geographic boundaries of our marketplaces are being pushed further and further out, and many of the competitive issues that were once only local have become regional, national, or even global in their impact. At the same time, the economy itself is suffering, and in down times the temptation to act anti-competitively is extraordinary. We also live in a world increasingly dominated by high tech and information industries. In those arenas, technological change and innovation are taking place at a dizzying speed, and we are seeing new and creative products and services developed every day. Fair and efficient policing of corporate behavior in those swiftly evolving markets is particularly important to ensure that the early entrants do not preclude competition from later rivals, and that a rapid accumulation of market power cannot be used to harm consumers.

Another hallmark of antitrust problems arising in recent years has been the increasing number of situations in which suppliers and distributors join forces, possibly to the detriment of consumers. Many of us may be accustomed to thinking of antitrust enforcement as focused on mergers of competitors, but as more and more vertical arrangements are entered into, we must be aware - and be wary - of such deals. I do not mean to imply that they are all anti-competitive, and indeed in some cases they may permit consumers a greater range of choice than they would otherwise enjoy, but I must caution everyone to examine them carefully. As we all move more and more of our acquisition of information, of goods, and of services to the Internet, the on-line businesses and markets will need the scrutiny of the Antitrust Division to help guarantee that those marketplaces provide digital-age consumers with the quality and quantity of offerings that have long been the promise of the Internet.

Sometimes, of course, such arrangements can work substantial harm. As you know, Mr. Pate, I am particularly concerned about the recent proposal by H.P. Hood and National Dairy Holdings - two very large milk processors - that would have left a single entity - Dairy Farmers of America, a very large co-operative and a significant investor in National Dairy Holdings - in control of 90 percent of the fluid milk market in New England. A deal like that would have left other co-ops and farmers without a local market for their milk. And if that were to happen, wholesale milk prices would drop even further. Those prices are already at a 25-year low, and we need to increase our vigilance, both here in Congress and in the Department of Justice, to ensure that dairy farmers and other agricultural producers are not harmed further by anticompetitive practices on the buying side of their markets.

I know that I and other Members are anxious to discuss many issues with you, and I look forward to a conversation that continues beyond this morning's hearing.

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