

Testimony of
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I am Will Hughes, Administrator of the Agricultural Development Division, of the Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin DATCP). The mission of the division is to: promote and advocate for the interests of agriculture through programs and services that support agricultural business and market development and provide assistance in responding to the rapidly changing economic environment affecting agriculture. We believe that helping create new businesses in agriculture will help both producers and consumers benefit from new products, other innovations, and healthy competition.

Thank you Chairman DeWine and members of the committee for the opportunity today to share with you perspectives from a state agency on issues related to concentration in food and agriculture. On behalf of the State of Wisconsin and its 77,000 producers, I especially want to thank Senator Kohl for his excellent leadership and representation of Wisconsin agriculture, and for his invitation to us to speak about issues related to concentration and its implications for agricultural producers.

My testimony today will focus primarily on policy issues and policy recommendations that we hope Congress will consider as it establishes national agricultural and antitrust policy.

Let me first provide you with some background on the Wisconsin DATCP. The agency is unique in its scope of authority compared to other agricultural agencies among states. Its main regulatory authorities relate to protecting consumers through safe food, animal health, natural resource protection, and prevention of unfair business practices. The most powerful law administered by Wisconsin DATCP is the "Little FTC Act" (ch. 571, Laws of 1921) which provides the department with sweeping authority to protect consumers and competition. Under that law, the department may prohibit "unfair" business practices and prescribe "fair" practices affecting consumers and competition.

Being an agricultural state, the consumer protection authorities vested in the department, benefits both consumers and agricultural producers. In recent years, the Wisconsin DATCP has used these authorities in some very relevant ways concerning business practices of major buyers in dealing with agricultural producers.

« Established rules for vegetable contractors which govern vegetable procurement practices including contracting (1992). The rules were established following a study and investigation of trade practices in the vegetable processing industry.

« Major enforcement action against price discrimination by milk buyers in purchasing milk from producers. Price discrimination in milk purchasing is explicitly prohibited under s.100.22.

« Established labeling rules for rBST-free milk to prevent deceptive or misleading labeling and advertising of rBST-free labeled milk and dairy products (1995).

« Conducted a major investigation into business practices of the National Cheese Exchange and its trading participants (1996). New administrative rules were proposed following an in-depth study and investigation, but were not adopted with the closing of the National Cheese Exchange.

In each of the above matters, Wisconsin DATCP exercised its authorities to improve competition and to protect consumers. In each case it was Wisconsin acting on its own, without help from the federal government, when in fact each of these issues were foretelling of national issues and had national implications.

But in the last decade concentration has increased rapidly, particularly in food retailing, but also in food manufacturing and marketing. The rise of Walmart to the number one position in food retailing has many implications for consumers and back through the supply chain to food manufacturers and to producers.

There are increasing concerns being expressed in the heartland by producers and consumers over these trends: 1) concerns over matters of contracting practices of major buyers across an increasing number of agricultural sectors; 2) concerns over the tendency towards increased market power due to the rapidly declining number of food manufacturing or handling firms that compete for and buy from producers; and 3) concerns over unfair trade practices that may result from greatly uneven bargaining power.

In Wisconsin we are fortunate to have remaining a fairly large number of dairy buyers actively competing among themselves for the purchase of milk from producers. There is strong anecdotal evidence that having a large number of buyers results in higher milk prices for Wisconsin's 16,500 dairy producers. The graph above illustrates this fact. Mailbox prices paid by buyers in the Upper Midwest, where competition for a dwindling supply of milk among multiple competing buyers is high, consistently exceeds the minimum prices that are dictated by the federally regulated pricing system. Many other areas where competition for producer milk among competing buyers is low are regularly at or close to the minimum federally regulated milk prices. For example, over the past 5 years mailbox prices in the Upper Midwest have exceeded the western region by \$1.03 per hundredweight. These mailbox prices illustrate the value of preserving competition in agricultural markets.

However, the trends in the dairy sector are of increasing concern in Wisconsin and other dairy states. Between 1985 and 2001 the number of dairy farms declined from 43,000 to 17,000 and the number of dairy plants in Wisconsin declined from 400 to 200. It is important to work proactively about increasing consolidation and concentration before there are only one or two buyers left in a market. In Wisconsin, we want to preserve a competitive environment for dairy producers. Wisconsin DATCP's priority is to revitalize and grow the dairy industry with diverse dairy farm production systems including grazing, facility upgrades and specialty artisan dairying.

Increased concentration up through the supply chain to retailers makes dairy renewal difficult. One ramification of concentration is to reduce business opportunities for traditional and medium sized dairies. The opportunities seem to be at the extremes for either large scale production that is attractive to larger buyers or very specialized, small scale dairying that focuses on value adding, artisan style production. The middle sized producer and food manufacturer is getting squeezed.

From the graph above on farm-to-retail spreads you can see why producers desire more of the retail value of the products derived from their commodity. However, the reasons for the trend of lower farm value and higher retail values are complex. The important issues are to help farmers who are willing and able to take the risks of adding value vertically in the supply chain and at the same time prevent the situations where market power arising from concentration exacerbates the trend lines.

We have a vision in Wisconsin to bolster our heritage of producer involvement in agricultural cooperatives by working to enhance producer-owned businesses in value-added products and markets. We are working with producers based on vision of a fellow producer in Iowa whom has a vision to market 100 percent of his production through processing, marketing and distribution businesses in which he has ownership interests. It is easy to frustrate this vision as the playing field becomes increasingly unlevel.

Wisconsin DATCP has several recommendations for your policy considerations as it relates to agricultural and antitrust policies. These recommendations include:

- 1) Improve and tighten coordination on antitrust and concentration issues between the US Department of Justice, USDA and states. Rather than in a reactive framework when a major acquisition or merger arises, as is currently the system, establish an on-going working group among federal and state agencies to proactively address antitrust and competition issues, to formulate policy and regulatory recommendations, and to improve coordinated approaches both nationally and internationally. It seems more logical and effective to structure an antitrust and competition approach to prevent monopolization and unfair trade practices rather than address problems after the fact.
- 2) Increase the funding committed to research on agricultural concentration and antitrust issues. It appears that funding commitments to research in industrial organization is grossly under-funded given these times of increasing concentration. Such research should be stepped up to help build better approaches to regulating antitrust and competition issues as well as analyzing policies that should improve competition and benefit both producers and consumers. For example, too little antitrust and competition research is being done in the highly concentrating food retailing sector or on the increasing complex strategic alliances among formerly competing businesses. While there are no simple categorical answers to the impacts of these arrangements, there ought to be the light of good research shed on them.
- 3) Continue and increase programs and funding for the development of producer owned businesses in value added agriculture. For the first time in decades, the US has begun to positively support the development of producer owned businesses. Cooperative development grants and cooperative research, as well as launching the new value added agricultural development grants have been positive new program and funding developments. It is important to continue and increase funding for these programs to help stimulate innovation and diversification in the food business so that producers and consumers can benefit.
- 4) Strengthen competition by authorizing the interstate shipment of state-inspected meat and poultry products. For decades there has been a federal prohibition on interstate shipments of state inspected meats while there is clear evidence that most of the 28 states with state inspection programs are "at least equal to" the federal inspection program. Wisconsin has nearly 300 state inspected meat plants many with thriving in-state businesses. If we are truly committed to fostering competition in the meat business in a positive manner, while protecting food safety, allowing these meats to be shipped interstate should not be a question.
- 5) Ensure that producers have continued ability to bargain for fair prices for their production and for fair terms of trade. There are federal protections for agricultural producers, including the Capper-Volstead Act, that allows producers to bargain for or establish prices and other terms of trade. These protections are increasingly important as producers look at new and innovative ways to obtain a more level position in market power while the supply chain around them consolidates.

This does not mean that producers should have cart blanche with their business practices.

6) Ensure transparency of pricing for agricultural commodities. As contracting and other less public trading arrangements evolve it is important to develop new methods for price discovery and for price transparency.

7) Ensure that clear standards are established concerning business practices and for mergers and acquisitions so that a more public role is taken to ensure fairness for both producers and consumers.

There clearly needs to be consistency and coordination between agricultural policies on the one hand and antitrust and competition policy on the other. It is ironic for federal farm policy to provide direct payments to producers on the one hand, and to help producers build new value added food businesses, when antitrust and competition policy may be frustrating those efforts. It is also important to work both offensively to help stimulate innovation and diversification in the food sector, as we believe especially in producer owned businesses, and to also work defensively to establish rules and policy frameworks that prevent injury to producers and consumers that may result from over-concentration.

Thank you for the opportunity to share these perspectives.