

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
October 30, 2003

Opening Statement of Senator Patrick Leahy  
Ranking Member, Senate Judiciary Committee  
Hearing on "Monopsony Issues in Agriculture: Buying Power of  
Processors in Our Nation's Agricultural Markets"  
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Mr. Chairman, I want to thank the Committee for convening this hearing to examine the buying power of processors in our nation's agricultural markets. I would also like to thank our witnesses today, especially Dr. Ronald W. Cotterill, Professor of Agricultural and Resource Economics at the University of Connecticut, who I have enjoyed working with on dairy policy over the years.

The focus of this hearing is the increasing power of large concentrated agriculture processing firms, and their ability to lower the prices received by farmers who supply them with milk and meat and grain. This trend is having a tremendous impact on the lives and livelihoods of American farmers in virtually every region of the country.

In my own State of Vermont, agriculture is a vital industry and dairy is king, accounting for roughly three-quarters of our state's net farm income. For decades, dairy farmers seemed immune from the consequences of restructuring because, through their cooperatives, they also served as milk processors for their local or regional markets. National markets did not exist. That structure has changed dramatically over the past several 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 anti-competitive profits as they simultaneously raise prices to consumers.

My major concern in New England relates to Dean Foods Inc., which merged with Suiza Foods in 2001 to form the largest milk processing company in the world. I was surprised and disappointed when the Justice Department's Antitrust Division approved this merger, because it meant the new company would control almost 70 percent of the milk supply in New England. It achieved this market dominance by buying up local dairies and then closing them down.

Moreover, Dean Foods now controls more than 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 cooperative now representing 22,000 dairy farmers in 43 states. DFA was formed in 1998 through the mergers of a number of cooperatives, including Mid-America Dairymen, Milk Marketing Inc., and the Western Dairymen Cooperative. DFA also owns Borden Foods. Dean Foods also has an alliance

with Land O'Lakes, which was recently expanded to include 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 fluid milk and cultured dairy products, including all basic fluid dairy products, as well as a variety of other value-added products. Sales through these inter-locking deals between Land O=Lakes, DFA, and Dean Foods total over \$12 billion annually.

More recently, I have been concerned about last year's proposed merger between H.P. Hood Inc. and National Dairy Holdings, which is why I led a bipartisan group of 10 Senators in asking the Justice Department's Antitrust Division to investigate the merger. H.P. Hood, a New England icon, attempted to acquire the much larger National Dairy Holdings from Dairy Farmers of America and other investors. DFA owns a controlling interest in National Dairy Holdings, which was created as a spin-off in the Dean Foods/Suiza Foods merger. As a condition of the sale, DFA would have had an exclusive right to supply milk to all H.P. Hood plants -- including those currently supplied by other dairy cooperatives, such as Agri-Mark. DFA has similar exclusive-supply agreements with Dean Foods and other fluid milk processors. This merger would have allowed one company -- DFA -- to control more than 90 percent of the New England fluid milk supply, with exclusive supply agreements with both Dean Foods and Hood Milk.

Fortunately, as a result of government antitrust scrutiny, H.P. Hood withdrew its original plan to merge with National Dairy Holding in May. While the merger is currently being restructured, we continue to be in a position where 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 eliminated. Today, two cooperatives 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. 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 prices farmers receive for their milk fell nearly fifty cents per gallon over an 18 month period in 2002-2003.

I continue to believe that the Justice Department and other government agencies should investigate why lower farm prices for milk have not been passed on to consumers. That is why I have asked the watchdog agency of Congress - the General Accounting Office - to investigate the widening disparity between farm and retail milk prices that has caused such financial hardship for northeast dairy farmers.

It is important for Vermont, and the dairy industry countrywide, to establish greater protections against market abuses by powerful agribusiness interests. The American people and the farmers who produce America's agricultural goods deserve strong watchdogging by their government to protect against abuses, and strong watchdogging works. In 1989, I asked for a Federal Trade Commission 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, I cosponsored legislation with Senator Daschle and 14 of our colleagues to enhance fair and open competition in the production and sale of agricultural commodities. Our bill, S.20,

would strengthen 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 by adding provisions related to price discrimination, whistleblower protection, and limitations on the use of a right of first refusal@ contract provisions. Among its many provisions, our bill would expand 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 our work on last year's Farm Bill, I also 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 being negotiated in conference committee last year.

In addition, last year's 2002 Farm Bill came close to taking another important step to level the playing field for independent producers by providing protections for producers who use production contracts. Many farmers are forced to sign mandatory arbitration clauses, as part of a take-it-or-leave-it, non-negotiable contract with a large, vertically integrated processing firm. In doing so, farmers are forced to give up their basic constitutional right to a jury trial, and instead must accept an alternative dispute resolution forum that limits their rights and is often prohibitively expensive. The Farm Bill would have ensured that the decision to arbitrate is truly voluntary and that the rights and remedies provided for by our judicial system are not waived under coercion, much like the car dealer arbitration provision passed by this Committee in 2002. While this provision was removed in conference, Senator Grassley and Feingold have reintroduced the Fair Contracts for Growers Act (S.91), which would simply give farmers a choice of venues to resolve disputes associated with production contracts.

As the Farm Bill debate demonstrated, powerful interests are opposing our efforts to provide free and fair markets for all agricultural producers. And that is why hearings like this are especially important. I look forward to the testimony of today's witnesses as we continue to seek new ways to address these problems, to improve market opportunities for America's farmers and ranchers, and to protect both farmers and consumers against those who are able to wield enormous power against their interests.

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