

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
September 19, 2009

Senate Judiciary Committee
Hearing on "Crisis on the Farm: The State of Competition and Prospects for Sustainability in the
Northeast Dairy Industry"
Saturday, September 19, 2009

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While this hearing focuses on competition and the dairy industry in the Northeast, it is very relevant to Wisconsin and any other dairy region. I thank Chairman Leahy for holding this hearing on a topic I have wrestled with since I was a State Senator.

My State Senate district included a significant rural area and many family dairy farms. On the wall of my office, I had a graph showing the growing spread between retail and farm prices with the margins of the middlemen and retailers increasing and the farmers' share decreasing. This graph has stuck with me these 28 years because I continue to hear from farmers about these problems.

Farmers are at the end of one supply chain for their inputs and at the beginning of the food production chain, but in each case they do not have a chance to set the prices they pay or receive. This helps make it a challenging profession, but also means that any time a segment along either of these chains lacks enough competition and someone is able to leverage market power to increase his or her margins, the farmer sees either an increased cost or reduced share of the retail dollar. To paraphrase an expression that you'd hear on the farm--manure runs downhill.

While I have concerns about the concentration and potential for inadequate competition in dairy farmers' inputs, such as seed, biotech traits in seed and the associated herbicides, these are not unique to dairy, so I will focus on what happens between the farmer and the consumer who buys a dairy product.

There are certain times in the market cycle when the farmers' share shrinks more than others; we are in the midst of one of those periods for dairy. In general, increases in prices for milk and the corresponding wholesale dairy products are quickly and fully transmitted to the consumer via higher prices in the store. But when the price of milk and dairy commodities falls, as occurred in December 2008 and January 2009, the retail prices either remain level or fall more slowly and less completely than would be expected. Economists would describe this as 'sticky prices' and in addition to meaning that consumers pay more than they should for dairy products, the sticky prices short-circuit the normal supply and demand signals. So when consumers don't see the drop in price, they don't respond by increasing consumption and the damaging low prices at the farm

level are prolonged even further. A February 27, 2009, Cheese Report editorial, "Sometimes, Retail Dairy Prices Do The Strangest Things," that I have submitted for the record provides several specific examples from this year.

While it is clear to me and many in the dairy industry that there is a serious problem with these retail and farm price patterns and there is a feeling that it is likely due to inadequate competition, with significant concentration at the cooperative, processor and retail levels, depending on the region, it is extremely difficult to know which entity is taking an undue share. Both during Ms. Varney's March confirmation hearing and at a meeting beforehand, I raised this issue with her and was encouraged by her interest and commitment to investigate. I was further encouraged in the months since the hearing by Ms. Varney's willingness to meet with and listen to dairy experts and farmers from Wisconsin. Following Ms. Varney's confirmation, I sent her a letter in May, which I would like included in the record, reiterating some of my past concerns along with highlighting the potential impact of acquisitions by dominant firms of small competitors and suggested that the Division should consider examining these even if they were too small to trigger a reporting threshold. Specifically, I highlighted concern about the acquisition by Dean Foods of processing plants in Wisconsin and the potential impact on competition in the school lunch milk supply. Similarly, I was glad to join Senators Bernie Sanders and Chuck Schumer in sending a letter in August that reiterated some of these concerns in more specifics.

Also in August, the USDA and Department of Justice announced that they will examine competition in the dairy industry through a series of joint hearings and consider what actions can be taken to crack down on any abuses. This is the type of cooperation and improved oversight that are sorely needed, and it's something I urged throughout the previous administration. While this partnership is a good start, it should go beyond DOJ and USDA to consider the entire dairy system and also bring in the Federal Trade Commission to consider concentration at the retail level, and the Commodity Futures Trading Commission to consider steps to ensure that cash markets for dairy markets are not manipulated. Still, the responsiveness and seriousness that Ms. Varney and the current Antitrust Division bring to oversight of agricultural markets including dairy are a sea change from the previous eight years and should be commended.

Finally, I would be remiss if I did not mention the terrible situation facing thousands of dairy farmers in Wisconsin and every other dairy region of the country. The combination of relatively high input costs, prolonged low prices for milk and shrinking availability of credit has put many producers on the brink. Given this situation, immediate assistance is needed in the short term even as we take steps to address the systemic issues such as competition. Since January, I have been working with my colleagues to encourage the U.S. Department of Agriculture to take a variety of short-term and long-term actions to help dairy farmers cope with this crisis. The USDA responded by implementing several of our suggestions including shifting surplus dairy products to nutrition programs, utilizing the Dairy Export Incentive Program and taking emergency action to boost the Dairy Product Price Support Program. Unfortunately, even these actions may not be enough to completely address this crisis, and I continue to support additional relief for dairy farmers such as including an additional \$350 million in the Agriculture Department appropriations bill for the upcoming fiscal year.