



DEPARTMENT OF JUSTICE

A SHARED VISION FOR AMERICAN AGRICULTURAL MARKETS

CHRISTINE A. VARNEY
Assistant Attorney General
Antitrust Division
U.S. Department of Justice

Remarks as Prepared for the
Opening of the Department of Justice and
Department of Agriculture Joint Workshops

Ankeny, Iowa

March 12, 2010

Hello and good morning. It is my great pleasure to welcome you to the first of these unprecedented joint workshops between the Department of Justice and the Department of Agriculture on the state of agricultural markets. This really is a historic undertaking. These workshops have brought together all the governmental agencies with a stake in the improvement of agricultural markets—Congress, the Department of Agriculture, the Department of Justice, the Commodity Futures Trading Commission, state executives and state law enforcement—and they have elicited an impressive level of popular engagement. We have received voluminous comments, and are extremely enthusiastic about the energy and initiative that all involved have shown in bringing these workshops together. It gives us confidence that we will be able to achieve our goal: a holistic and interdisciplinary look into how we can all work better, *together*, to strengthen and support fair and efficient markets in American agriculture.

Put simply, we have come here to learn. This is an occasion for us in Washington to put down our pencils, to come out closer to the cornfields, and to cultivate a greater understanding of the forces at work in the modern day agricultural economy. I want to particularly thank Secretary Vilsack, who has welcomed us to his home state so that we at the Department of Justice can learn alongside USDA about the ways that our agencies can work better together in promoting healthy agricultural markets. We hope that the conversations we will have today and at our future sessions will help to grow our knowledge in this important sector, and will allow us to use the tools we have to better serve our farmers and our consumers. Indeed, I'd like to speak briefly today about why that is such an important mission—about our shared appreciation for the issues affecting

the agricultural sector and the vision we share about where to begin and where we are going.

Shared Vision

First, we at the Antitrust Division appreciate that agriculture is an essential part of the American economy. That, of course, is readily apparent here in Iowa, but in other parts of the country, it can be further from people's minds. Agriculture provides the livelihood for an enormous portion of the workforce, and sustenance for the rest. We should always remember that American agriculture puts food on the table of American families, that we have the ingenuity, productivity, and efficiency of its farmers to thank, and that—for that reason—well functioning agricultural markets are not only a matter of economic efficiency, but a matter of national security and public health.

Second, and even more important, I want to specifically note that we recognize the terrible toll that last year—and other years like it—have taken on the nation's farmers. The economic downturn is sharpening our focus on the problems that plague agricultural markets, especially in leaner times. We understand that, according to USDA's most recent figures, net farming income fell by 35% last year,¹ leaving many to scramble to make ends meet or to cover their loans. Certain sectors of the industry are being hit even harder than others. Farm prices for some commodities have dropped from historic highs to dispiriting lows, creating losses that many if not most family farms will lack the capacity to carry. The vast majority of American farms are owned by small

¹ Economic Research Service, U.S. Dep't of Agric., Farm Income and Costs: Farm Income Data (Feb. 11, 2010) *available at* <http://www.ers.usda.gov/Briefing/FarmIncome/Data/Va0810us.htm>.

family farmers, a large share of overall production comes from these small farms, and they hold almost 70% of all the farm land and farming assets.² The upshot is that unexpected years like the last may not just erase a portion of family income, but a family's way of life.

This is all to say that we at the Department of Justice understand the high human cost of agricultural volatility and unexpected falls in farm prices. Our role at the Antitrust Division is to protect competition broadly, and because of that perspective, we are frequently forced to be agnostic about the fact that some firms close up shop from time to time—exit is a part of the competitive process. Yet given the widespread and essential role that small, local and family farms play in creating competition in agricultural markets, we believe that neither the market nor the country has anything to gain from the impoverishment or failure of family farms or their agricultural co-ops.

Indeed, as some of our public enforcement actions and investigations indicate, antitrust may have a major role to play in preserving the kind of open market that allows farmers to negotiate for fair input prices and competitive returns on their investment.³ Many of the businesses with which farmers interact are significantly more concentrated than farming, creating a dynamic where farmers lack the ability to bargain for fair prices and making further concentration in those industries a potential antitrust problem. Thus,

² Economic Research Service, U.S. Dep't of Agric., *Structure and Finances of U.S. Farms: Family Farm Report, 2007 Edition* (Jun. 2007) *available at* http://www.ers.usda.gov/Publications/eib24/eib24_reportssummary.pdf (“Small family farms (sales less than \$250,000) accounted for 90 percent of U.S. farms in 2004. The also held about 68 of all farm assets, including 61 percent of land owned by farms.”).

³ *See* Complaint, *United States v. Dean Foods* (filed Jan. 22, 2010), *available at* <http://www.justice.gov/atr/cases/f254400/254455.pdf>.

as I told the Senate Judiciary Committee in my testimony in Vermont, one thing we hope to learn from the farming community in these workshops is whether and how traditional antitrust tools might be needed under current conditions to protect against the creation or use of anticompetitive market power by buyers and processors in the agricultural sector, and how the current dynamics among small farmers, co-ops, processors, and consumers are all playing out.

In fact, we are acutely aware of the dynamic—not unique to agriculture—where a small number of large buyers are able to exert undue influence on the price of commodities. Agricultural cooperatives play a key role here, helping to level the playing field in negotiations between small family farmers and large buyers who may have either superior information, superior market position, or often, both. Yet buyer power in agriculture is still an important antitrust problem on which we keep a watchful eye. Undue concentration of buyer power, which we call monopsony, poses a threat to farmers and consumers alike. It enables pricing that is not competitive—in this case, a price that is *too low* to sustain the efficient amount of production—and that means that farmers will produce less, or that some farmers will go out of business. That eventually leads to shorter supply delivered to consumers, and that can raise their prices. Congress crafted our nation’s competition laws with these exact problems in mind,⁴ and there is thus no question that protection of consumers goes hand in hand with the protection of farmers from undue concentration in the agricultural marketplace. To put it simply: where the Division’s powers can be used to ensure fair and efficient prices on the farm, they will be.

⁴ See, e.g., 21 Cong. Rec. 4098 (1890) (Rep. Taylor); *id.* at. 2645 (Sen. Reagan).

Indeed, our hope is that antitrust enforcement will not only promote diversity and competition among American farmers, but will also help to keep food plentiful and affordable for American consumers. My role in the federal law enforcement system is first and foremost to protect American consumers' choices and to secure for them the benefits of competition in the marketplace. We should not lose sight of the fact that just as the economic downturn has taken a dramatic toll on the farm community, it has also taken a tremendous amount of money out of the pocket of the average American consumer. For them, high food prices can be devastating.

Let me share a personal anecdote. I had a chance recently to speak to the director of a soup kitchen in Washington D.C. that supplies two meals a day to the Capitol's homeless. What she told me was staggering. In a city with one of this country's highest costs of living, her kitchen endeavors to serve healthful and nutritious meals to five hundred people or more on six hundred dollars or less. They rely, obviously, on some largess from local businesses, but they also need to be able to rely on staple foodstuffs at stable and reasonable prices to have any hope of meeting the overwhelming need. Similarly, when three feet of snow blankets the nation's Capitol, it doesn't just supply the federal government with a few extra paid vacation days. Struggling local families need to find a way to stretch an extra gallon of milk, loaf of bread, or pound of meat out of an already dwindling paycheck to make up for the missed school lunches on which they so heavily rely. They literally cannot afford to do without the benefits of efficient competition in agriculture.

This brings us, I think, to the premise that we should all share as we embark on these workshops. Low prices for farmers can swell the ranks of the nation's unemployed

and endanger the stability and adequacy of its food supply. At the same time, higher food costs can swell the ranks of the nation's hungry and endanger the nutrition of its children and its poor. The measure of a well-functioning agricultural marketplace is therefore clear: it must put enough food on the table of American families at prices sufficient to ensure a living and dignified wage for the people responsible for putting it there. The purpose of these workshops is to bring the many governmental players with a role in that project together, so that we might listen to and learn from those who are buffeted by these market forces every day. My hope is that the end of that effort is an interdisciplinary and holistic approach sufficient to meet this essential public policy challenge.

Sharing Strategies

Indeed, because we all share the same goal, we hope to be able to better align the different perspectives, tools, and areas of expertise available among the different agencies assembled here to secure the best policy outcomes possible for farmers and consumers in this important area. At the Antitrust Division, of course, we are dedicated to one tool above all others—a free market with robust competition is, without a doubt, the best way to ensure the best outcomes for producers and consumers. In an ideal world, the intersection of supply and demand alone ensures that the right amount is produced and sold at the right price. Of course, the real world rarely even approaches the ideal world of economics textbooks, and in fact, antitrust itself exists to protect against one of the typical sources of market failure—that is, undue exercises of market power. Yet antitrust enforcement is different from traditional regulation in that its aim is only to ensure that the free market can function, rather than to push the outcome in one direction or another.

Our institutional perspective is thus to think very cautiously and carefully about how regulation might alter market incentives and create unintended consequences that might ultimately hurt consumers and producers—even the people whom the regulation is intended to protect. We use our economic expertise to try to inform the regulatory process.

That general perspective—which can fairly be called critical in the sense of thinking critically about regulation—should not be confused with injudicious cynicism about the importance of government regulation. Informed by a historical perspective, we recognize, for example, that agriculture is one realm in which government regulation surely has an important role to play. When disaster struck the American economy 80 years ago during the Great Depression, some of the New Deal’s most important and ambitious programs were aimed at stemming the damage on family farms, where an enormous proportion of the American populace both lived and worked. The catastrophic collapse in farm prices was leading to widespread foreclosure, pushing many families either off their farms or towards mere subsistence levels. At the time, the USDA employed the most accomplished economists in Washington, and leading lights from around the nation—including the newly minted Berkley Ph.D. in agricultural economics John Kenneth Galbraith—flocked to USDA to help build the New Deal programs that would work to reverse this trend, ensure liquidity and credit flows in agriculture, and buoy prices against seemingly endless deflation.⁵ In fact, the New Deal programs that helped to protect farming families from poverty included not only direct farming

⁵ See RICHARD PARKER, JOHN KENNETH GALBRAITH: HIS LIFE, HIS POLITICS, HIS ECONOMICS 56 (2005).

interventions like the Agricultural Adjustment Act, the Farm Security Administration, and the Rural Electrification Administration, but also programs like the Civilian Conservation Corps whose projects included farm support and whose jobs gave displaced farm labor a place to earn vital, family-supporting wages.⁶

Of course, that same historical perspective also informs the Division's cautious approach to regulation, and meticulous efforts to ensure that well-intended policies actually create their intended effects. Galbraith tells a story about his work in the early days of the Agricultural Adjustment Act that stayed with him throughout his life. As many here will know, that scheme involved government compensation to farmers who were willing to abstain from planting, with the hope of restricting supply and raising prices. What plagued Galbraith was not the issue of whether the program as a whole was successful, but whether the right parties actually received the government checks. At that time, huge portions of southern agriculture were still share cropping arrangements, with tenant farmers living, planting, and working on plots owned by larger plantation owners. Tenant farmers and their owners were separated by class, and often also by race, and the owners were able to successfully lobby the government to make sure that the checks for participating in the Agricultural Adjustment Act scheme went to them. The result was the exact opposite of the regulatory intent: landowners took government money not to plant and, since the land was now required to lay fallow, they evicted the tenant farmers who would otherwise have been living and planting on their farms. The program thereby

⁶ *Id.* at 56-57.

contributed to Southern agricultural unemployment, homelessness, and the end of the farming careers of countless American families.⁷

Of course, I am not suggesting that problems of that scope exist in any modern programs, only that considerable care and vigilance is required to ensure that good intentions eventually become good policy. In fact, the same is true in antitrust enforcement, where careful economic and policy thinking is crucial to ensure that our own interventions preserve appropriate market incentives and structures, rather than distorting them. Yet I believe that dedicated public servants are capable of achieving such care and precision if we give them the resources and the opportunity, and it is that belief that has animated my approach to these workshops and to the business of the Antitrust Division.⁸

What I hope these sessions create is a conversation about working together to make good intentions into good policy in agricultural markets—a conversation where the various governmental players in that game can listen to and appreciate the lived experience of those who interact with agricultural firms, agricultural markets, and agricultural regulation every day of their lives. The result should be a fresh look at our approach to American agricultural markets, one that is guided not only by abstract economic theory, but also by the realities that our many commenters and participants will be sharing throughout the months ahead. And part of that fresh look should be an

⁷ *Id.* at 64-67.

⁸ See Christine A. Varney, Assistant Attorney General, Vigorous Antitrust Enforcement in This Challenging Era (May 11, 2009) *available at* <http://www.justice.gov/atr/public/speeches/245711.pdf>.

examination of how we can bring the different perspectives and different tools of different agencies together to reach outcomes that are best for farmers and consumers.

In fact, our preparations for these sessions have already taken us far down this road. The Antitrust Division recently provided input and guidance to the USDA as it devised rules under the Packers and Stockyards Act, helping to ensure that those rules will promote maximally efficient competition among packers and middlemen in beef, pork, and poultry, while sustaining review by the courts. In preparing for these sessions, we also received many complaints about transparency in agricultural price-discovery markets, and so we have welcomed the Commodity Futures Trading Commission into the conversation, hoping that their perspective would help all of us to understand these markets and to ensure that these mechanisms are functioning in the appropriate ways. We have incorporated the local expertise of the state attorneys general, and of course, the extensive and essential resources of the Department of Agriculture, on whom we have always relied in understanding agricultural products and markets, to help create the broadest and best-informed conversation possible. I think we all hope that the result will be even *greater* cooperation, and a unified vision of how all of our tools—antitrust enforcement and competition policy; rulemaking and regulation; market oversight and state enforcement—can work together to promote strength and stability in American agricultural markets, to the benefit of farmers and consumers alike.

We have no illusions about the difficulty of that task. Agricultural markets are complicated, with significant regulatory overlays and a long history of governmental involvement, and given the number of important entities with a stake in the process, a holistic and integrated approach can be a difficult object of pursuit. Yet here we are.

This unprecedented effort has brought us together in unprecedented ways, and I am extremely encouraged by the benefits that we have already realized—before we have even really begun. I know that Secretary Vilsack and I both believe that we can use both sets of tools available to us *together* to ensure that we best implement a shared vision of congressional policy and sound market principles in American agriculture. And I know that this effort can only be advanced by better incorporating the unique insights of the hardworking men and women for whom agriculture is both a living and a way of life. For my part, I can pledge that my staff and I are here to learn, to seek cooperation throughout the government on a shared vision for fair and efficient agricultural markets, and to pursue the outcomes that are best for this essential sector of our economy, from farm to fork. I hope that, together, we can make that goal a reality.

Thank you.