



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 13, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Department of Justice (DOJ) has reviewed Senate Amendment 3823 to H.R. 2419. DOJ works vigorously to ensure that the benefits of competition are maintained in all markets, including agricultural markets, to the benefit of American consumers. However, DOJ believes that certain provisions included in the amendment would not accomplish its stated goal of protecting rural communities and family farms and ranches, but instead would unnecessarily duplicate existing collaboration efforts, increase costs and uncertainty, and may hinder effective antitrust enforcement and harm competition in agriculture and other industries. Therefore, DOJ strongly opposes the Amendment.

Senate Amendment 3823 to H.R. 2419 calls on DOJ and the Federal Trade Commission (FTC) to issue agriculture merger guidelines. To date, the Federal antitrust laws apply unaltered to mergers across virtually all industries, with the overriding objective to protect competition to the benefit of consumers. As such, there is no need for any industry-specific merger guidelines. The Horizontal Merger Guidelines (Guidelines) issued by the DOJ and FTC apply consistently to mergers across the entire economy, and no need has been demonstrated to depart from that generally applicable approach. DOJ has not been prevented from challenging anticompetitive mergers in agriculture under the current legal standards. To the extent that there is a suggestion that monopsony is a problem particularly significant to agriculture, the guidelines address monopsony and thus no industry specific guideline is warranted for that concern.

DOJ believes that current merger policy is sufficiently flexible to address market conditions that may be unique to agricultural markets. For example, DOJ and FTC recently issued a Commentary to the Horizontal Merger Guidelines (2006), which provides several examples of how agricultural matters are reviewed. This commentary, DOJ's merger challenges in matters such as General Mills/Pillsbury (2001), Archer-Daniels-Midland/Minnesota Corn Processors (2002), Syngenta/Advanta (2004), and Monsanto/DPL (2007), competitive impact statements issued as part of those challenges, and the closing statements DOJ has issued for certain agricultural matters, demonstrate that merger policy under the Guidelines is effective at protecting consumers and maintaining competition in agriculture industries. Changing the well-established policy is not

necessary and could deter efficiency enhancing transactions that would benefit consumers by resulting in lower prices.

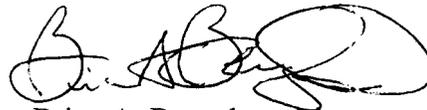
Subsection (c) of Senate Amendment 3823 creates an Agriculture Competition Task Force (Task Force), made up of representatives from DOJ, FTC, United States Department of Agriculture (USDA), State governments and attorneys general, small and independent farming interests, and academics or other experts. The Task Force is charged with devoting additional resources focused solely on agriculture industries to study competition issues, coordinate Federal and State activities to address “unfair and deceptive practices” and concentration, and work with representatives from rural communities to “identify abusive practices.” In addition, the Task Force shall report on the state of family farmers and ranchers. DOJ believes such a task force would at best duplicate existing enforcement activities, and at worst could impede existing coordination between DOJ, USDA, and state governments by creating a bureaucratic structure that would increase the cost to the American taxpayer without any benefit to competition or independent farmers. Furthermore, to the extent the amendment requires consideration of the effects on “rural communities” there is no clear explanation regarding how this factor should be considered, and such consideration could be inconsistent with overall antitrust objectives.

Subsection (e) of this amendment requires notification to the USDA of Hart Scott Rodino (HSR) filings with the FTC and DOJ as well as the sharing with the Secretary of Agriculture of any second request materials obtained under such merger reviews. Under this section, USDA may submit and publish comments on whether mergers “present significant competition and buyer power concerns,” such that further review by DOJ or the FTC is warranted. Congress provided essential confidentiality for HSR filings and for productions of documents under that process, and no need has been shown to change that important protection. Through the existing Memorandum of Understanding between DOJ, the FTC and USDA, the antitrust agencies seek expertise and information from USDA on agriculture matters, and as part of that cooperative relationship, USDA expresses its views regarding antitrust merger enforcement matters, and thus no need for radical change has been shown. In addition, concurrent jurisdiction likely would increase costs and time delays inherent in duplicative review and has the potential for inconsistent standards and outcomes.

DOJ shares the concern of the amendment’s sponsors that agriculture, as a key part of our economy, should maintain its competitive nature so that producers and consumers alike benefit from adequate supply and choice of agricultural products at competitive prices. Moreover, we take seriously concerns expressed in the agriculture community about competitiveness in the agriculture sector. However, because Senate Amendment 3823 has several provisions that raise concerns for DOJ, both about unintended consequences as well as about competition and public policy, DOJ strongly opposes these provisions.

Thank you for the opportunity to provide our views on this proposed legislation. The Office of Management and Budget has advised us that there is no objection to this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Benczkowski". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Cc: The Honorable Arlen Specter, Ranking Member, Committee on the
Judiciary
The Honorable Tom Harkin, Chairman, Committee on Agriculture,
Nutrition, and Forestry
The Honorable Saxby Chambliss, Ranking Member, Committee on
Agriculture, Nutrition, and Forestry