DEPARTMENT OF JUSTICE

Antitrust Enforcement and Agriculture

Address by

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I appreciate the opportunity to discuss the role that the antitrust laws play in the agricultural marketplace. In recent years, agricultural producers and others have expressed concern about competitive conditions, about levels of concentration, and about the impact on farmers of particular mergers and acquisitions. We take those concerns very seriously. We know that the agricultural marketplace is undergoing significant changes, including major advances in technology and productivity, an increasingly global marketplace, changes in business relationships between producers and their packers or processors, and in many sectors, a trend toward consolidation or vertical integration. I know you are continuing to develop and refine policy positions for consideration by your full membership, and I hope a description of agriculture-related enforcement activity at the Antitrust Division will be useful to you.

I. Introduction

By any measure, the Antitrust Division has been spending a significant amount of time, energy, and resources on agricultural issues in the past several years. When warranted by the facts, our efforts result in enforcement actions, a few of which I will describe shortly. Antitrust Division officials have also traveled to various places around the country to meet personally with producer groups, and have met and spoken with individual producers and farm organizations and testified at hearings in Washington and in the field, to hear producers' concerns directly and to improve everyone's understanding of how the antitrust laws operate and how the Division works to protect competition under them. Since taking over as Assistant Attorney General in June 2001, Charles James has maintained the Division's focus on this sector of the economy.

There are three basic kinds of violations of the antitrust laws. First, the antitrust laws prohibit conspiracies to suppress competition. Second, they prohibit the use of predatory or exclusionary conduct to acquire or hold onto a monopoly. Third, they prohibit mergers that are likely to substantially lessen competition in a market. The ultimate goal in each instance is to promote competition to ensure that consumers get the benefit of competitive prices, innovation, and efficiency, free from artificially imposed restraints. I will describe each of these types of violations in a little more detail in a minute.

The antitrust laws apply in the same way in every industry, with a very few exceptions where their application is limited by specific statute; an exception important for agriculture is the Capper-Volstead Act, which permits agricultural producers to market their produce jointly through cooperatives. A number of industries are also regulated by government agencies under statutes that go beyond the antitrust laws to establish additional, industry-specific rules for appropriate behavior in the marketplace; for example, the livestock, meat-packing, and poultry industries are regulated by USDA's GIPSA. When I talk about the antitrust laws, I mean the laws that we enforce at the Antitrust Division -- the Sherman and Clayton Acts. I do not include the Packers and Stockyards Act, which is enforced by GIPSA rather than by DOJ.

While we often speak of consumers as the targeted beneficiary of antitrust enforcement, producers also benefit, by having healthy incentives to provide the best products and services they can, with the expectation that they will be able to do so free from anticompetitive interference. And the overall U.S. economy benefits, as the products and services desired by consumers are produced more efficiently, in greater quantities, and at competitive market prices.

In this regard, let me emphasize that we do look at so-called "monopsony" concerns -- the potential for sellers to be harmed by anticompetitive conduct or mergers at the buyer side. If buyers obtain market power through merger or restrain trade, and thereby depress prices for the inputs they purchase below competitive levels, producers of those inputs will have depressed incentives to produce, which will result in reduced quantities of those inputs available for consumers compared to what would be available in a competitive market. So a focus on promoting competition as our guiding principle is entirely compatible with our taking enforcement action in a monopsony case when the facts warrant.

We are very much aware of the trends toward increasing concentration in some agricultural sectors. In particular, the steer-heifer side of the cattle slaughter market has been highly concentrated for some time, with four meatpacking firms now controlling over 80 percent of the market. Lamb slaughter is also quite concentrated. Hog slaughter, and processing for crops such as corn, wheat, and soybeans, are also moderately concentrated, at least at the national level, and may be more concentrated in some local areas. High concentration in a market is not in and of itself a violation of the antitrust laws. On the other hand, a high level of concentration increases the potential for antitrust scrutiny. It is an important backdrop in all of our analyses.

II. What the Antitrust Laws Prohibit

A minute ago, I referred to three different types of antitrust violations. Let me state them more specifically. First, it is a violation of section 1 of the Sherman Act for separate firms to agree among themselves not to compete with each other, but instead to join forces against consumers or suppliers. Second, it is a violation of section 2 of the Sherman Act for a firm to monopolize or attempt to monopolize a market. Third, it is a violation of section 7 of the Clayton Act for a firm to merge with another firm or acquire its assets if to do so would be likely to substantially lessen competition in any market. I'd like to describe each of these types of violations in a little more detail, and discuss some of our enforcement actions, to give you a better idea of how these violations come up in practice.

A. Collusion

The first type of antitrust violation, when firms that are holding themselves out to the public as competing against each other instead agree with each other to unreasonably restrain competition among themselves, is often referred to as collusion. Collusion is a willful subversion of the normal operation of free markets, and can result in serious harm to consumers, suppliers, and the economy. It virtually always results directly in inflated prices to consumers and denial of choices in the marketplace; indeed, that is its purpose. The most common types of collusion are agreements to fix prices, agreements to allocate markets, and agreements to boycott particular customers, suppliers, or competitors.

Price fixing can include agreeing on the specific price, or rigging a specific bid, but it can also include agreeing to increase or depress price levels, or agreeing to follow a formula that has the intended effect of raising or depressing prices or price levels. Allocation of markets can include agreeing to divide up geographic areas to avoid competition, or agreeing to divide up customers or suppliers within an area, or agreeing to divide up a sequence of bids. Group boycotts can include any agreement among competitors that they will deal with their customers or their suppliers only on particular terms in order to suppress competition.

It is important to remember that with any of these forms of collusion, proving a case requires evidence of an agreement among competitors. It is not enough, for example, just to show that two buyers or sellers offer similar or identical prices, or that they habitually go to different locations to buy or sell.

Price-fixing and other forms of collusion are often subject to criminal prosecution, with stiff fines and prison sentences. Let me describe a few of our recent prosecutions in the agricultural sector.

1. Lysine. The first I'll describe is our prosecution beginning in 1996 of Archer Daniels Midland and others for participating in an international cartel organized to suppress competition for lysine, an important livestock and poultry feed additive. The cartel had inflated the price of this important agricultural input by tens of millions of dollars during the course of the conspiracy. ADM pled guilty and was fined $100 million -- at the time the largest criminal antitrust fine in history. Two Japanese and two Korean firms also were prosecuted for their participation in the worldwide lysine cartel and were assessed multi-million dollar fines. In addition, three former ADM executives were convicted for their personal roles in the cartel; two of them were sentenced to serve 36 and 33 months in prison, respectively, and fined $350,000 apiece for their involvement, and the other executive had 20 months added to a prison sentence he was already serving for another offense.

2. Vitamins. The next prosecution I'll describe is our 1999 prosecution of the Swiss pharmaceutical giant, F. Hoffmann-La Roche Ltd., and a German firm, BASF Aktiengesellschaft, for their roles in a decade-long worldwide conspiracy to fix prices and allocate sales volumes for vitamins used as food and animal feed additives and nutritional supplements. The vitamin conspiracy affected billions of dollars of U.S. commerce. Hoffmann-La Roche and BASF pled guilty and were fined $500 million and $225 million, respectively. These are the largest two antitrust fines in history -- in fact, the $500 million fine is the largest criminal fine ever imposed in any Justice Department proceeding under any statute. Six former executives from the two firms agreed to submit to U.S. jurisdiction, to plead guilty, to serve time in a U.S. prison, and to pay substantial fines for their roles. This investigation has resulted in 24 corporate and individual prosecutions to date, including convictions against Swiss, German, Canadian, Japanese, and U.S. firms, and convictions of 11 American and foreign executives who are serving or have served time in federal prison and another executive who received two years' probation; another executive agreed to plead guilty and is awaiting sentencing.

3. Monochloroacetic Acid & Sodium Chloroacetate ("MCAA"). The third prosecution I'll describe is our prosecution beginning in June 2001, under AAG James's leadership, charging Dutch chemical company Akzo Nobel Chemicals BV, along with an Akzo Nobel executive of Swedish citizenry, with participating in an international price fixing and market allocation scheme involving the chemicals monochloroacetic acid and sodium chloroacetate -- collectively MCAA -- which are used to produce herbicides among other things. The United States consumes $50 million of these chemicals annually. The company pled guilty and agreed to pay a $12 million criminal fine, and the company executive, Erik Anders Broström, was sentenced to three months in federal prison and a $20,000 fine. In March of this year, French-based chemical conglomerate Elf Atochem S.A. pled guilty to participating in the same scheme and agreed to pay fines totaling $8.5 million. An Elf Atochem executive also pled guilty, and agreed to serve 90 days in federal prison and pay a $50,000 fine, and two weeks ago another Elf Atochem executive pled guilty and agreed to the same sentence.

4. Nebraska Cattle Procurement. On a smaller scale, we also successfully prosecuted two cattle buyers in Nebraska a few years ago for bid-rigging in connection with procurement of cattle for a meat packer, after an investigation conducted with valuable assistance from the Department of Agriculture, which was investigating some of the same conduct under the Packers and Stockyards Act. This case differed from the others I've described in that the direct victims of the conspiracy included agricultural producers in their role as sellers rather than as consumers. While sellers generally do not figure prominently as victims of collusion as often as buyers do, the somewhat unusual structure of the agricultural marketplace -- with relatively more producers selling to relatively fewer packers and processors -- presents more possibilities for sellers to be victims. And the Antitrust Division keeps a lookout for violations of this kind and will prosecute them when the facts warrant.

5. Other Potentially Anticompetitive Conduct. My summary a minute ago of the principal kinds of section 1 violations was a bit of an oversimplification. There may be other kinds of violations in which the anticompetitive intent and effect are less clear-cut. All section 1 violations share the same basic characteristic, that firms who are supposed to be independent actors in the marketplace are instead agreeing to join forces to restrain competition. But in these less clear-cut situations, involving such things as strategic alliances, joint ventures, and aggressive use of intellectual property rights, which also often have legitimate business justifications, the law requires us to determine and prove that the conduct is actually having a significant net anticompetitive effect -- what is known as applying the "rule of reason" to the conduct in question. And in these situations, when we do decide enforcement action is warranted, we proceed through civil action rather than criminal prosecution, to stop the conduct but not to punish the actors. In September 2000, for example, the Antitrust Division filed suit to challenge a non-compete agreement between developers of long-shelf-life tomato seeds because we concluded that the agreement was interfering with the development of new seeds for use by American farmers. The trial court has dismissed our complaint, but we are appealing the court's ruling.

6. Capper-Volstead. Let me return to the Capper-Volstead Act for a minute. As I mentioned, this law allows producers of agricultural commodities to form processing and marketing cooperatives -- in effect to engage in joint selling at a price agreed to by the producer members of the co-op -- subject to certain limitations enforced in the first instance by USDA. There have been efforts in recent years by some cattle producers to organize cooperatives to slaughter and process their own beef for the wholesale market. Not only would such a cooperative, or a similar one in another agricultural commodity, most likely be protected under the Capper Volstead Act; but if established packers or processors attempted to drive it out of business by cutting off access to transportation or to wholesale markets, that would raise serious antitrust issues and we would certainly want to investigate.

B. Monopolization or Attempt to Monopolize

Let me now turn to the second type of antitrust violation, monopolization or attempt to monopolize. This might occur, for example, by a packer or processor with a monopoly attempting to drive rival packers or processors out of business by illegally interfering with their ability to engage in the business. Under section 2 of the Sherman Act, it is not necessary to prove an agreement among two or more firms. One firm can illegally monopolize by itself.

But it is important to understand how rarely we see a true case of monopolization. Monopolization means more than just that a firm has engaged in restrictive conduct. The law also requires that the firm have a monopoly -- and that means an extremely high market share all to itself -- and that it engaged in the restrictive conduct in order to acquire or maintain the monopoly. Or, in the case of attempted monopolization, the firm must stand a "dangerous probability" of acquiring a monopoly as a result of the restrictive conduct. And for "dangerous probability," the courts generally require, for starters, that the firm involved in the restrictive conduct already have a quite large market share -- a 50-percent share for a single firm might not be enough, a 60-to-70 percent share may be enough, depending on the circumstances. That's not the four-firm combined share familiar to agricultural producers from USDA publications and elsewhere; that's the share for a single firm. And even a large market share might not be enough, if other factors indicate that the restrictive conduct is unlikely to succeed in creating a monopoly.

Just as important, section 2 monopolization means more than just that the market is highly concentrated. Under our antitrust laws, a firm may lawfully have a monopoly, as long as the firm has not acquired it or maintained it illegally. So both things -- very high market share, plus restrictive conduct to exclude competition -- must be present. One or the other by itself is not enough.

I should also emphasize that monopolization requires demonstrating that the conduct is harming competition, not just that it is disadvantaging rivals. It is quite rare that we encounter it. And I don't have any recent cases to cite you in agriculture. But if we ever did find it in agriculture we would take appropriate enforcement action as warranted by the facts.

C. Anticompetitive Mergers

The third type of antitrust violation, a merger or acquisition that is likely to substantially lessen competition in a particular product market and geographic market in violation of the Clayton Act, has a different legal standard from the other two in that it does not require proof of anticompetitive conduct that has already occurred. Here, the principal focus is not on whether the merging parties have engaged in wrongful conduct, but on whether the merger would change the market structure to such a degree that competition would likely be substantially lessened. The Clayton Act enables us to prevent anticompetitive mergers before they are consummated, to prevent harm to the competitive market structure that would otherwise result but would be difficult to fix after the fact. The remedy we seek for a merger that violates the Clayton Act is to sue to stop the merger, or to insist that it be modified to remove the cause for antitrust concern.

Merger reviews require a careful analysis of the markets involved. The Antitrust Division analyzes mergers pursuant to Horizontal Merger Guidelines developed jointly by the Department of Justice and the Federal Trade Commission, with whom we share merger enforcement responsibility, except for certain industries in which the FTC's jurisdiction is limited by statute.[1] The analysis is aimed at determining whether the merger is likely to create or increase market power, or to facilitate the exercise of market power, in any market. The Merger Guidelines define market power as the ability of a seller or coordinating group of sellers to profitably maintain prices above competitive levels for a significant

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[1] The Antitrust Division and the FTC use a clearance process to work out which agency will review a particular merger. The primary determinant is agency expertise about the product or service at issue, so that a merger will usually be reviewed by whichever of the two agencies is most knowledgeable about the relevant product or service. As a result of this clearance process, the Antitrust Division has investigated most of the mergers affecting agriculture, with one prominent exception being grocery store mergers, which are usually investigated by the FTC.

period of time, or the ability of a buyer or coordinating group of buyers to depress prices below competitive levels and thereby depress output.

An important first step in analyzing a merger is to determine the scope of the product markets and geographic markets that would be affected by it. Once we know the size and shape of an affected market, we can then determine how big the various firms' market shares are, and more accurately predict how that market would be affected by the restructuring that would result from the merger. The scope of a geographic market is generally defined by the smallest area in which a hypothetical firm, assuming it faced no competition for its product in that area, could make a small but significant change in price stick. Usually, we are looking at that firm as a seller, and determining the smallest area within which the firm's customers would be unable to thwart the firm's inflated pricing by going outside that area to purchase -- unable to, that is, because it would be economically impractical to travel to or receive shipments from outside that area. But, as our Merger Guidelines expressly note, we also look at the firm as a buyer, and determine the smallest area in which sellers to the firm would be unable to thwart the firm's depressed prices by selling to others outside that area -- unable to, that is, because it would be economically impractical to travel or ship outside that area.[2] (Product markets are defined in a similar fashion, focusing on an array of products rather than a geographic area in order to determine which products are close enough substitutes for each other to be considered in the same market.)

A decision as to the dimensions of this area can sometimes be reached by examining recent buying and selling patterns in the marketplace. But the decision can also depend on a variety of other, more subtle factors, because the ultimate question is not how far the buyers and sellers have traveled or shipped in the past, but how far they could or would travel or ship in response to anticompetitive price changes.

Once we have defined the market, we turn to the question of market concentration and how it would be affected by the merger. There is no automatic threshold of market concentration that will always result in a determination that a

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[2] Market power by a buyer is addressed by the Merger Guidelines under the same analytical framework as a seller's market power that may result from a merger:

> Market power also encompasses the ability of a single buyer (a "monopsonist"), a coordinating group of buyers, or a single buyer, not a monopsonist, to depress the price paid for a product to a level that is below the competitive price and thereby depress output. The exercise of market power by buyers ("monopsony power") has adverse effects comparable to those associated with the exercise of market power by sellers. In order to assess potential monopsony concerns, the Agency will apply an analytical framework analogous to the framework of these Guidelines.

Merger Guidelines § 0.1.

merger would violate section 7 of the Clayton Act. Other factors also play an important role in analyzing the impact of the merger – such as other structural features of the market that make anticompetitive effects more likely or less likely; and the ease or difficulty of entry into the marketplace by new competitors who could neutralize any anticompetitive potential.

But market concentration is the first factor we look at, because as a market becomes highly concentrated, not only are price fixing and other collusion easier to coordinate; there is also a dampening effect on competitive rivalry, even in the absence of collusion.

I'll now briefly describe some recent merger challenges in the agriculture sector.

1. Monsanto/DeKalb. The first one I'll describe is our 1998 challenge to Monsanto's proposed acquisition of DeKalb Genetics Corporation. Both companies were leaders in corn seed biotechnology and owned patents that gave them control over important technology. We expressed strong concerns about how the merger would affect competition for seed and biotechnology innovation. To satisfy our concerns, Monsanto spun off to an independent research facility its claims to agrobacterium-mediated transformation technology, a recently developed technology used to introduce new traits into corn seed such as insect resistance. Monsanto also entered into binding commitments to license its Holden's corn germplasm to over 150 seed companies that currently bought it from Monsanto, so so that they would be free to use it to create their own corn hybrids if they chose.

2. Cargill/Continental. In 1999 we challenged the proposed acquisition by Cargill of Continental's grain business, which would have significantly reduced competition in the purchase of grain and soybeans from farmers in a number of local and regional markets. The parties were buyers of grain and soybeans in various local and regional domestic markets, and also sellers of grain and soybeans in the United States and abroad. We carefully looked at all of the potentially affected markets and ultimately concluded that the proposed merger could have depressed prices received by farmers for grain and soybeans in a number of regions of the country; we were also concerned that the transaction could have had anticompetitive effects with respect to certain futures markets.

Our written response to the public comments we received in this case gives a good picture of the thoroughness with which the Division investigated all the potentially affected markets and sought relief wherever we concluded that the transaction was competitively problematic.[3] A team of about 20 attorneys, economists, and paralegals reviewed over 400 boxes of documents furnished by the

[3] The responses were published in the Federal Register at 65 Fed. Reg. 15982-16033 (3/24/00) and are posted on the Antitrust Division's website at http://www.usdoj.gov/atr/cases/f4100/4172.htm.

parties in response to formal requests we made; we deposed the parties' executives; we consulted with officials of USDA, CFTC and state attorney general offices; and we interviewed over 100 farmers, farm organization officials, agricultural economists, grain company executives, and other individuals with knowledge of the industry and competitive conditions.

To resolve our competitive concerns, Cargill and Continental agreed to divest a number of facilities throughout the Midwest and in the West, as well as in the Texas Gulf. A description of the relief we insisted upon illustrates the individualized attention that we paid to local and regional markets. We insisted on divestitures in three different geographic markets where both Cargill and Continental operated competing port elevators: (1) Seattle, where their elevators competed to purchase corn and soybeans from farmers in portions of Minnesota, North Dakota, and South Dakota; (2) Stockton, California, where the elevators competed to purchase wheat and corn from farmers in central California; and (3) Beaumont, Texas, where the elevators competed to purchase soybeans and wheat from farmers in east Texas and western Louisiana.

We also required divestitures of river elevators on the Mississippi River in East Dubuque, Illinois, and Caruthersville, Missouri, and along the Illinois River between Morris and Chicago, where the merger would have otherwise harmed competition for the purchase of grain and soybeans from farmers in those areas.

The Illinois River divestitures (and an additional required divestiture of a port elevator in Chicago) also prevented the merger from anticompetitively concentrating ownership of delivery points that have been authorized by the Chicago Board of Trade for settlement of corn and soybean futures contracts.

In addition, we required divestiture of a rail terminal in Troy, Ohio, and we prohibited Cargill from acquiring the rail terminal facility in Salina, Kansas, that had formerly been operated by Continental, and from acquiring the river elevator in Birds Point, Missouri, in which Continental until recently had held a minority interest, in order to protect competition for the purchase of grain and soybeans in those areas.

This relief was designed to ensure that farmers in the affected markets would continue to have alternative buyers to whom to sell their grain and soybeans. In this case, the focus of the competitive problem was the so-called "monopsony" concern -- that is, that the merger would harm producers as *sellers*.

3. Case/New Holland. Next I'll describe our 1999 challenge to New Holland's proposed acquisition of Case Corporation, which would have significantly reduced competition in the sale of tractors and hay tools to farmers. The parties manufactured and sold four-wheel and large two-wheel drive tractors (the Versatile and Genesis lines, respectively) that are used by farmers for a variety of applications, including pulling implements to till soil and cultivate crops -- part of the nation's $1.5 billion market for agricultural tractors. They also manufactured and sold a variety of hay and forage equipment, including square balers and self-propelled windrowers -- part of the $250 million U.S. market for hay tools. We concluded that the transaction would significantly lessen competition and lead to farmers having to pay higher prices and accept lower quality for this essential equipment.

The parties agreed to significant divestitures in order to address our concerns. Those divestitures included New Holland's large two-wheel-drive agricultural tractor business, New Holland's four-wheel-drive tractor business, and Case's interest in a joint venture that makes hay and forage equipment.

4. Monsanto/Delta & Pine Land. In late 1999, Monsanto abandoned its proposed acquisition of Delta & Pine Land Co., after the Antitrust Division advised that it was prepared to challenge the merger in court. The Antitrust Division concluded that the merger, which would have combined the two largest cotton seed companies, would have anticompetitively harmed farmers raising cotton.

5. Suiza Foods/Dean Foods. Last December, after an extensive investigation, the Division required Suiza Foods to change its originally proposed acquisition of Dean Foods in two significant ways. First, we required Suiza to divest 11 milk processing plants in 8 states (Alabama, Florida, Indiana, Kentucky, Ohio, South Carolina, Virginia, and Utah) to preserve competition in markets for milk sold at school and at other retail outlets. Second, we required Suiza to modify its supply contract with the cooperative Dairy Farmers of America Inc. (DFA), who would also own half interest in National Dairy Holdings, L.P., the new firm to which the processing plants were being divested, to ensure that dairies owned by the merged firm in the areas affected would be free to buy their milk from sources other than DFA.[4]

Taken as a whole, these enforcement actions provide a good picture of our merger enforcement efforts in agriculture-related industries. The Antitrust Division carefully reviews agricultural mergers for their competitive implications, and files suit if a merger is likely to lead to anticompetitive prices either for products purchased by farmers (New Holland/Case) or for products sold by farmers (Cargill/Continental). The Division's concerns are not limited to traditional agricultural products, but extend also to biotechnology innovation (Monsanto/DeKalb and Monsanto/ Delta & Pine Land). And, while the Antitrust Division considers proposed divestitures and other forms of relief that permit a merger to proceed as restructured (Cargill/Continental, Monsanto/DeKalb, Case/New Holland, Suiza/Dean), the Division is prepared to challenge a merger

[4] For more information about the Suiza/Dean investigation, see the June 14, 2002 speech by Deputy Assistant Attorney General William Kolasky, on our website at http://www.usdoj.gov/atr/public/speeches/11304.htm.

outright if it concludes that lesser forms of relief are not likely to address fully the competitive problems raised by the merger (Monsanto/ Delta & Pine Land).

III. Coordination with USDA and Others

The Antitrust Division has a long-standing cooperative relationship with USDA, through which we have provided assistance to each other in a number of respects. Division attorneys and economists investigating particular mergers have made extensive use of the wealth of information about agricultural markets that USDA collects in the ordinary course of its work. USDA has also contacted the Division to provide other useful information regarding major agriculture-related mergers we were investigating, and has forwarded investigative leads to the Division, such as the one resulting in the prosecution of the two cattle buyers in Nebraska for price-fixing. The Division has assisted USDA by consulting on studies USDA has conducted regarding competition-related aspects of agricultural markets, such as the red meat studies a few years ago, as well as on USDA's recent efforts to revise its investigative processes at the Grain Inspection, Packers and Stockyards Administration.

In August, 1999, the Division entered into a memorandum of understanding with USDA, along with the FTC, to memorialize this working relationship and to reaffirm our commitment to work together and exchange information as appropriate on competitive developments in the agricultural marketplace.

Last year Assistant Attorney General James designated the Assistant Chief of the Chicago Field Office to be a special point of contact for USDA for criminal matters. The Assistant Chief maintains regular contact with USDA's Office of the General Counsel and Office of the Inspector General. In addition to receiving and responding to inquiries and complaints from USDA relating to potential criminal violations of the antitrust laws, the Assistant Chief conducts antitrust detection training sessions for agents of USDA's Office of the Inspector General.

The Antitrust Division also works with other relevant federal agencies and state attorneys general on specific matters of common interest. For example, the Division worked closely with the Commodities Futures Trading Commission and several states during the investigation of the Cargill/Continental merger.

IV. Role of Antitrust Division in the Agricultural Marketplace

Let me close with a few caveats about antitrust enforcement. The responsibility entrusted to us as enforcers of the antitrust laws is not to design the best possible structure for the marketplace. The antitrust laws are based on the notion that competitive market forces should play the primary role in determining the structure and functioning of our economy. Our job is to stop the specific kinds of private-sector conduct I have been discussing from interfering with those market forces.

We are law enforcers, not regulators. We do not have the power to restructure any industry, any market, or any company, or to stop any practice, except in a precise and focused fashion as necessary to prevent or remedy specific violations of the antitrust laws that we can prove in court. Our authority rests ultimately on our ability to bring enforcement actions in court, and when we bring an action, it is the court that decides whether the antitrust laws are being violated in the particular instance, and whether the remedy we are seeking fits the violation. And the court's decision depends on the particular facts in evidence. Therefore, we bring an enforcement action in court only when we are in possession of factual evidence that gives us good reason to believe that there is an antitrust violation.

While the antitrust laws play an important role in helping keep markets competitive, they are not going to, and should not be expected to, address all of the complex issues facing American agriculture in this time of change. That is why the government continues to focus on a broad range of agriculture policy issues.

Conclusion

Whenever I make a presentation such as this one about our work, I urge that anyone who has any information that they think is relevant to our enforcement activities to contact us. As a law enforcement agency, we treat conversations with us in confidence. If the information leads us to conclude that the antitrust laws have been violated, we will take appropriate enforcement action. The Antitrust

Division takes seriously its responsibility to protect the marketplace – including the agricultural marketplace – against anticompetitive conduct and against mergers that substantially lessen competition. As I hope I have made clear, the Division has a record of acting in this important sector when the antitrust laws are violated.