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From: Steve Etko [mailto:steveetka@gmail.com]

Sent: Monday, October 12, 2009 6:25 PM

To: ATR-Agricultural Workshops

Cc: Becky Ceartas

Subject: comments from Campaign for Contract Agriculture Reform

CAMPAIGN FOR CONTRACT AGRICULTURE REFORM

a voice for contract farmers, ranchers and their communities

(Mailing address: c/o RAFI USA, P.O. Box 640, Pittsboro, NC 27312)

(submitted electronically to: agriculturalworkshops@usdoj.gov)

October 12, 2009

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Attorney General Holder and Secretary Vilsack:

On behalf of the member organizations of the Campaign for Contract Agriculture Reform, I would like to commend you for your August announcement regarding the series of workshops on agriculture sector competition, to be held jointly by the U.S. Department of Justice and the U.S. Department of Agriculture.

The Campaign for Contract Agriculture Reform is a national alliance of organizations working to provide a voice for farmers and ranchers involved in contract agriculture, as well as the communities in which they live. The goal of the campaign is to assure that the processor-producer relationship serves as a fair partnership, rather than a dictatorship.

Your announcement comes at a critical time, where the trends of vertical and horizontal integration have reached a point in which buyer power is severely constraining farmers' options for selling their goods and services, and monopoly power is severely limiting consumer choices in the marketplace. As sellers of raw commodities and buyers of inputs, farmers are caught at the collision point of both of these trends.

Traditionally, discussions of buyer or monopsony power in the agricultural marketplace have focused on how the lack of competition among agricultural handlers or processors results in an anti-competitive reduction in prices paid to farmers for raw agricultural products. Without a doubt, this is a critical problem for many sectors of agriculture.

However, we would like to draw your attention to a growing sector of agriculture that has received somewhat less attention, and that is the area of production contracting, which has long been the focus of our organization. Under this model, growers are not paid for their product, because the integrator firm maintains ownership of the production throughout the production process. Instead, farmers are paid for their services in growing the animal or crop until it is ready for processing, using their own capital, equipment, facilities. Therefore, the contract terms, payments, and relationships between the grower and the integrator are the main focus of anti-competitive behavior, rather than product price *per se*.

Because the poultry sector was the first to become fully vertically integrated, it represents the best example of the dangers of monopsony in conjunction with total vertical integration. The poultry model is rapidly spreading to other sectors of agriculture, as processors see the opportunity to shift risk and costs to the growers as a strategy to maximize profits for themselves. Not surprisingly, a 2007 Congressional Research Service report stated that “[i]n 2003, contracts (production or marketing) covered 47% of all livestock production value, up from 33% in 1991-93. This compares with 31% of all crop production in 2003 and 25% in 1991-93, according to USDA.”

The poultry industry has been fully vertically integrated and dominated by contract production for almost forty years. Poultry growers can document the evolution of contracting in the poultry industry from a mutually beneficial agreement among neighbors to a one-sided, legalized form of debt bondage, a trend that has coincided with the consolidation of poultry integrators and the increasing dominance of the contract production model. Decades ago, when there were many poultry firms competing to buy product from farmers, and a mix of independent production and contract production still existed, the contract terms, payments, and relationships were attractive to growers. Companies had an incentive to make the contract terms look as attractive as possible to encourage farmers to give up their independence and sign production contracts. But now that nearly 90 percent of poultry is produced under contract, and growers have few (if any) choices of poultry companies with which to contract in their area, they are faced with contracts of adhesion under terms that are very one-sided and abusive.

One of the challenges that has hindered enforcement of anti-trust laws with respect to the poultry sector has been the awkward statutory division of authority under the Packers and Stockyards Act between the U.S. Department of Agriculture and the U.S. Department of Justice.

The Packers and Stockyards Act makes it unlawful for a livestock packer or live poultry dealer “to engage in or use any unfair, unjustly discriminatory or deceptive practice or device, or to give any unreasonable advantage to any particular person or locality.”

When violations of the Act are discovered in the livestock industry, USDA’s Grain Inspection, Packers and Stockyards Agency (GIPSA) has the authority to take administrative actions, including holding hearings and assessing civil and criminal penalties. However, GIPSA does not have this administrative enforcement authority in the poultry industry. In poultry, when violations of the Act are discovered, GIPSA can only issue an order to cease illegal conduct and must forward the case to the Justice Department to take further action.

This bifurcated authority has historically resulted in a lack of enforcement of the Packers and Stockyards Act with regard to the poultry sector. From the poultry company’s perspective, breaking the law and increasing company profits through fraudulent or deceptive practices carries little financial or legal risk.

Since both USDA and DOJ have publicly announced intentions to increase scrutiny of anti-competitive practices and structures in the livestock and poultry sectors, we are urging that a memorandum of understanding (MOU) be developed between USDA and DOJ explicitly outlining the procedures for cooperation on poultry Packers and Stockyards Act enforcement cases, and that someone in the Office of the Assistant Attorney General for Antitrust be designated as the point person on this matter.

In closing, as you move toward an announcement about the structure and focus of the upcoming workshops, we urge you to include at least one hearing focusing on the problems of production contracting, with a particular focus on the poultry model, given its unique example of the dangers of full vertical integration and consolidation, and its rapid replication in other agricultural sectors. Such a hearing should be based geographically in the Southeast, where the overwhelming majority of poultry is produced.

Thank you for your attention to these concerns. We look forward to working with your agencies through these workshops and beyond.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven D. Etkin". The signature is written in a cursive, slightly slanted style.

Steven D. Etkin
Legislative Coordinator