

**From:** John H Vetne <johnvetne@comcast.net>  
**Sent:** Wednesday, December 16, 2009 12:15 PM  
**To:** ATR-Agricultural Workshops <agriculturalworkshops@usdoj.gov>  
**Subject:** A Question re dairy antitrust workshops in 2010

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Dear Attorney Tobey:

The major part of my law practice for over 35 years has been in administrative law and regulation of the dairy industry.

I plan to submit comments suggesting areas of inquiry for the dairy antitrust workshops. I have previously submitted observations to Karl Knutsen and Ali Ramadhan concerning DOJ's prior examination of DFA activities.

The Antitrust Division's 1979 publication "Milk Marketing," a report of the U.S. Department of Justice to President Ford's Task Group on Antitrust Immunities, continues to be a thorough, insightful and accurate treatise on the use and abuse of predatory practices to gain, hold, and expand market power. The report explained how USDA marketing order regulations enhance opportunities for predatory conduct. Milk Marketing Orders are rules issued by USDA's Agricultural Marketing Service that are generally adopted on request by dairy cooperatives, and must be approved by cooperatives to become effective. The continued existence of a large bureaucracy within AMS Dairy Programs depends upon AMS continuing to maintain rules that the cooperatives approve. In 2004, DFA disapproved of certain milk pooling rules recommended by USDA for the Western Milk Marketing Area. DFA asserted that USDA did not go far enough in denying market share to its competitors (my paraphrase). As a consequence, the Western Marketing Order was terminated, and several employees of the AMS Milk Market Administrator lost their jobs. DFA's shot-across-the-bow in 2004 was successful. USDA has not since strayed too far from DFA's position on proposed rules that affect DFA's ability to gain market share or to deny market share to competitors.

The Department of Justice's 1979 analysis concluded that?

The [federal milk] order system, particularly those features which protect high price levels, creates incentives as well as opportunities for cooperatives to extend and maintain cartelization of the dairy industry.

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Dairy cooperatives are more prone to use market orders for predatory purposes and in exclusionary fashion in areas where they have a large market share and face competition mostly from independent farmers, small local cooperatives, or regional cooperatives without a substantial share in any one market?. Thus, it is particularly important to understand the incentives and means provided cooperatives by the order system to achieve and protect a larger share of the market.

DOJ Milk Marketing Report at 292, 294. With specific reference to so-called pooling standard rules (such as have been at issue in litigation with USDA since DFA was created 10 years ago), DOJ explained: "The most fertile ground for tailoring order provisions to the cooperative's needs, other than the diversion provisions discussed above, is in the area of pool plant qualification. DOJ Milk Marketing Report at 333

Now, my question: Which sub-agency or unit within USDA is participating, or which USDA employees are participating, with DOJ in the workshops next year? The Office of the Chief Economist would be good. AMS would be not so good.

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