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Sent: Thursday, December 31, 2009 11:46 AM
To: ATR-Agricultural Workshops <agriculturalworkshops@usdoj.gov>
Subject: RE: CFU and CDC Comments on USDA and DOJ Agricultural Workshops
Attach: USDA DOJ Ag Workshop Comments.doc

January 30, 2009

Legal Policy Section,
Antitrust Division,
U.S. Department of Justice
450 5th Street, NW,
Suite 11700,
Washington, D.C. 20001.

RE: USDA and DOJ Agricultural Workshop Comments

On behalf of the farmer and rancher members of the California Farmers Union and the California Dairy Campaign we provide the following comments on the upcoming agricultural workshop relating to dairy issues. Dairy markets have become captive entities to a few consolidated retailers and marketers. Due to the lack of competition in the marketplace, we believe producers lack the market power to receive the true value of their milk. We commend USDA and DOJ for holding hearing to address these issues that are critical to the future of farming nationwide.

Mandate Greater Market Transparency:

In order to establish an effective dairy price discovery system the federal government must restore fair, transparent and open dairy markets. The consolidation that has occurred over the past couple of decades has eliminated market competition to the point that now the last one percent of daily domestic milk production determines the price of all of the milk produced regardless of prevailing market demand for dairy products.

A handful of traders set the prices for cheese and butter on the Chicago Mercantile Exchange (CME). This thinly traded market operates for only a few minutes five days per week yet it is the mechanism that sets all milk futures contracts. The CME completely lacks transparency. Traders use code names to guarantee their anonymity. Capitalism and the interests of society are trumped by a handful of traders that are self-regulated with virtually no oversight. Dairy producers across the country are very concerned that the lack of federal oversight and transparency at the CME has led to market manipulation, and created a highly volatile market that negatively impacts dairy producers.

Due to the lack of transparency at the CME, producers that may be economically impacted by anti-competitive trading practices, have no recourse to independently inquire or investigate the lack of competition in the marketplace. If the CME was more open and transparent, more businesses would trade, and the sales volume would increase fostering a more accurate and reliable market that better reflects the actual value of milk in the United States.

In June 2007, the Government Accountability Office (GAO) issued a report on the spot cheese market titled, "*Market Oversight Has Increased, But Concerns Remain about Potential Manipulation.*" The 2007 GAO report documented that few daily trades occur on the CME and a small number of traders

account for the majority of trades. The report further concluded that the CME is susceptible to potential price manipulation.

Chicago Mercantile Exchange (CME) Reforms

The Chicago Mercantile Exchange (CME) sets the price dairy farmers receive for their milk, despite the fact that a very small percentage of dairy products are traded on the market. Dairy producers across the country are very concerned that the lack of federal oversight and transparency at the CME has led to market manipulation, which may be resulting in a highly volatile market, negatively impacting producers.

Due to the lack of transparency at the CME, producers that may be economically impacted by anti-competitive trading practices, have no recourse to independently inquire or investigate the lack of competition in the marketplace. If the CME was a more open and honest market, more businesses would trade and increase the volume to create a more accurate and reliable market that better reflects the actual milk production in the United States. We call upon federal lawmakers to take immediate action to investigate the alleged anti-competitive trading practices of the CME.

Address Increasing Consolidation and Concentration:

One of the greatest challenges facing U.S. producers and every other producer in the world is consolidation and concentration of the marketplace, which also drives market globalization. Capitalistic markets function properly when there is a balance of buyers and sellers. There are about 60,000 dairy farms marketing milk today through 200 cooperatives. Half a century ago, there were 180,000 dairy producers marketing through 1,000 cooperatives. While the number of farms and cooperatives continue to decline, the marketing presence of farmer-owned dairy cooperatives has actually expanded during the past generation. Despite this expansion there is less competition vying for producers at the co-op level, with more intervention by non-cooperatives and non-farmer controlled businesses.

Dairy cooperatives continue to grow in size and form strategic alliances with private entities. For example, Land O' Lakes sells a large portion of their cheese to Kraft Foods. The largest cooperative, Dairy Farmers of America, has ongoing agreements to supply milk to Dean Foods and Leprino Foods, and continues to expand its relationship with Fonterra. Cooperatives justify their actions by claiming they are subject to the growing demands of retailers. Wal-Mart, for example, wishes to consider no more than two suppliers for each food product it features in its stores across the U.S. The consolidation and concentration not only harm producers through lower prices, but also negatively impacts consumers with less choice at the grocery store.

In most U.S. metropolitan areas, one company, Dean Foods, has acquired the majority of fluid plants. Two corporations dominate the cheese sector; Kraft Foods at the retail level and Leprino Foods at the food service level. Regardless of which cooperative a U.S. producer markets his milk, at the end of the day the vast majority of milk is purchased by only three major buyers that dictate each market. Dean Foods dominates the fluid market, Kraft owns the retail market and Leprino runs the food service market. Until steps can be taken to end the stranglehold that these three entities have on the three major components of the dairy sector, competition will be stifled and producer prices depressed.

Economic power concentrated in the hands of a few players has essentially eliminated the price system, which capitalism is thought to rest. The farm-gate price is no longer cost plus profit; instead it is a command economy with a few corporate players dictating farm price. The loss of producer economic power is best illustrated by the widening gap between retail prices and farm-gate prices. While consumers continue to experience sticker-shock on dairy products, dairy producers are left with a shrinking percentage of the consumer dollar.

Many organic dairies throughout the country are also struggling due to the dairy crisis. Many have seen the price they receive for organic milk decrease substantially and are now subject to production caps. Organic dairy producers have invested heavily to meet organic standards, but now that many of the same corporate processors have entered the organic market, these producers are also struggling due increasing consolidation and concentration.

Foster Competition in the Dairy Sector

FOOD RETAILING CR5 = 46%*	
<u>Supermarket</u>	<u>Grocery Sales*</u>
1. Wal-Mart Stores	\$66.465 Billion
2. Kroger Co.	46.315 Billion
3. Albertsons, Inc.	31.962 Billion
4. Safeway, Inc.	29.572 Billion
5. Ahold USA, Inc.	25.105 Billion

Source: * *Progressive Grocer's Super 50* (5/1/04)

Unfortunately, consolidation within the agricultural industry has increased in recent years and has brought about the demise of thousands of family-run farms. Independent producers are finding it increasingly difficult to participate in a fair, open and competitive market. The consolidation trend has spread beyond the farm gate

and now threatens independent retailers. Since 1999, National Farmers Union has commissioned a series of studies by the University of Missouri-Columbia Department of Rural Sociology to gauge concentration in agricultural and retail markets. The latest update, released in February 2005, reveals that the top four firms in most agricultural sectors have tightened their strong-hold since the 2002 study.

Dairy Processors	
	<u>Annual Sales *</u>
1. Dean Foods	\$8,260 Million
2. Kraft Foods (Majority owner is Philip Morris)	\$4,300 Million
3. Land O'Lakes	\$2,969 Million
4. Schreiber Foods, Inc.	\$2,200 Million

Source: **Dairy Foods: Dairy 100* (2004)

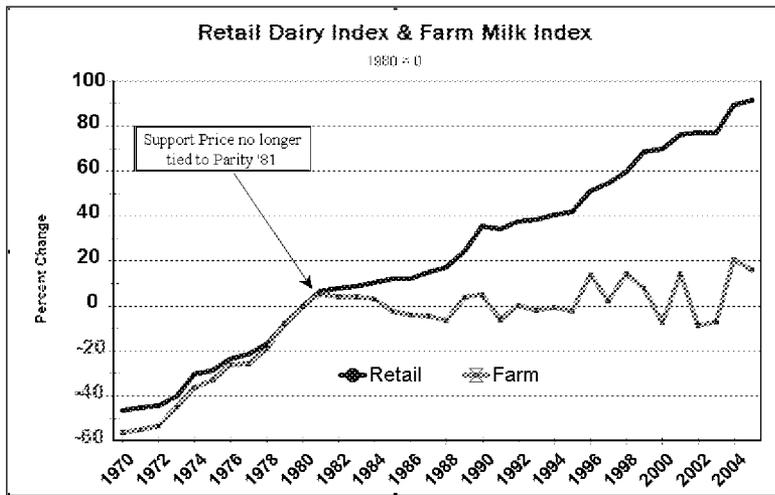
Due to increased levels of concentration and consolidation, there is a lack of competition in the dairy sector in the U.S. A few major companies dominate the market, leaving producers and consumers to suffer as a result. In order for the dairy industry to

be viable and sustainable in the future, policy decision-makers need to take immediate steps to foster and restore competition in the marketplace.

The United States is the worlds' largest market for dairy products today. However, we are second to India in total milk production. The approximate value of the nearly 170 billion pounds of U.S. milk produced for 2004 was \$27 billion dollars at the farm level. The top producing states include California (21%), Wisconsin (13%), New York (7%), Pennsylvania (6%) and Idaho (5%). Cooperatives in the U.S. handle over 80% of the total milk production. However, not all cooperatives actually process their members' milk; some only market the milk collectively for their members.

During the past two decades, annual U.S. per capita sales of fluid milk has fallen steadily from year to year; 233.76 pounds (1980) to less than 185.9 pounds (2003). During this same time U.S. per capita consumption of selected dairy products (fluid milk, cream, butter, frozen dairy and cheese) rose

steadily; from 541 pounds (1980) to 594 pounds (2003). Annual U.S. per capita consumption of milk has declined from yearly since 1970. However, the consumption of cheese has virtually doubled over the last 20 years, from roughly 15 to 30 pounds.



Economic power concentrated in the hands of a few players has essentially eliminated the price system, which capitalism is thought to rest. The farm-gate price is no longer cost plus profit; instead it is a command economy with a few corporate players dictating farm price. The loss of producer economic power is best illustrated by the widening gap between retail prices and farm-gate prices. While consumers continue to experience sticker-shock on dairy products, dairy producers are left with a shrinking percentage of the consumer dollar.

Many dairy products today contain imported milk protein concentrate (MPC), casein, caseinates and other ingredients that do not meet food safety standards and displace demand for high quality and nutritious US produced milk. We call for fair tariffs to apply to these imports and greater oversight of their use in food products.

Sincerely,

Joaquin Contente
 President
 California Farmers Union

Joe Augusto
 President
 California Dairy Campaign