

From: Robert Drachman <rhd141@vermontel.net>
Sent: Thursday, January 14, 2010 10:59 PM
To: ATR-Agricultural Workshops <agriculturalworkshops@usdoj.gov>
Subject: Comments on Competition in the Dairy Industry

To: Legal Policy Section, Antitrust Division,
USDOJ

January 2, 2010

Comments on Competition in the Dairy Industry

I am a concerned layman interested in the many issues having to do with competitiveness in the dairy industry, particularly in Vermont. It appears that distortions in the industry are seriously hurting our dairymen. My hope is that this renewed interest will lead to a more intensive and objective review than has occurred previously. However, at the outset, I am puzzled by the workshops proposed by the USDA and DOJ and particularly the expansion to other commodities. Dairy is my principal interest and no other commodity is as closely price controlled as raw milk. Monthly payments to dairy farmers are determined by an "arcane" formula which is an integral part of the "Federal Milk Marketing Order" (FMMO) system. Subsequent milk processors and retailers have no such pricing constraints. This has allowed what the GAO has called "pricing asymmetry" (see below), and substantial profits to the highly consolidated milk processing industry. Since no other agricultural commodity is as tightly price controlled as raw milk full attention should be given to it and not diluted with concern for other commodities. If the USDA and DOJ suggestions are followed, using a broad brush approach, the result is likely to produce a blunting of the dairy thrust leaving dairymen with milk payments far below their costs of milk production.

My data sources are from direct observation of retail milk prices in local supermarkets and monthly review of the several reports from Federal Milk Marketing orders (FMMO) for the Northeast marketing area.

Fifteen or twenty years ago a member of the Vermont Agency of Agriculture began tracking the monthly minimum milk prices paid to farmers derived from the FMMO formula. He plotted these concurrently with the retail price paid by consumers. This display was used to show the declining percentage of the retail price of milk which became the payment to the dairy farmer.

Many others have used this construct to study the price of milk at various steps in the market. A GAO report published in December of 2004, entitled, "Dairy Industry Information on Milk Prices; Factors Affecting Prices, and Dairy Policy Options." "Price asymmetry" was noted (p. 155), wherein a fall in the farm price was not equally reflected in the retail price of milk. However, an increase in the farm price was promptly transferred to the retail price. This "price asymmetry," was said to reflect a "noncompetitive market" according to the GAO analysts. No formal response from USDA was given at the time.

Recently, in Rutland, Vermont, comparisons were similarly made between FMMO determined prices paid to farmers, using the pooled calculations, and retail prices charged to consumers in a supermarket. On July 31, 2009 a gallon of whole milk sold for \$3.05 in a local supermarket while the farmer received about \$0.97 per gallon, 31.8% of the retail price. On September 16, a gallon of whole milk sold for \$3.15 in that same market while the farmer received about \$1.06 per gallon, 33.7 % of the retail price. On October 28, milk sold for \$3.35 per gallon while the farmer received about \$1.15 per gallon, 34.3% of the retail price.

Whether or not the \$2.00+ per gallon received by the processor and retailer is excessive or results from monopolistic practices, e.g. monopsony, is for the judicial system to determine. However, it is hoped they will consider the extensive consolidation of processors permitted during the past eight years allowing one operator to manage 70% of New England raw milk. Or that during 2009 more than 80 dairy farms were forced to close down due to the low price of milk in Vermont. If the very pretentious FMMO milk pricing formula was designed to assure an inexpensive supply of milk to the public it has mainly assured a large profit to milk processors and retailers.

The 1998, "Report of the USDA National Commission on Small Farms, A Time To Act", repeated the observation of the 1981 Report, "A Time to Choose", that USDA has an "historical large farm bias," (P. 17). Nowhere is that bias more evident than in the impact of the USDA FMMO system on dairy farms with its wide swings and deep, unpredictable valleys in farm milk prices. Failure to rationalize this system now will very likely assure the appearance of more large dairy farms at the expense of the public and many currently struggling small and medium sized dairy farms.

Robert H. Drachman

141 East Road

Tinmouth, VT 05773-01106

Email: rhd141@vermontel.net

Phone: 802-446-3157