

ANTITRUST AND AGRICULTURE

Antitrust law regulates the conduct and organization of business corporations, generally to promote fair competition for the benefit of consumers. The first antitrust law, the Sherman Act, was passed in 1890 to address concerns about railroad and mining business practices.

There are three types of antitrust violations:

- **Collusion**: when separate firms agree among themselves not to compete with each other, but instead join forces; price fixing is one common type of collusion.
- **Monopolization**: when a firm monopolizes or attempts to monopolize a market;
- **Anti-competitive mergers**: when a firm is likely to lessen competition in a market substantially by merging with or acquiring the assets of another firm.

The Department of Justice (DOJ) AND THE Federal Trade Commission (FTC) are responsible for antitrust enforcement. In the agricultural sector, the DOJ is responsible over the producing and processing sectors while the FTC oversees the retail sector, primarily groceries.

As the size and scale of agricultural operations have increased to realize economies of scale, questions have arisen as to whether this consolidation restricts competition in the agricultural sector, injuring farmers and consumers as well as small to medium processors and retailers. Critics blame patent law, agricultural subsidies that benefit multi-national agribusinesses, weak antitrust laws and enforcement and political influence for the agricultural consolidation they see as poor public policy. However, it is important to note that antitrust laws focus on *competition and the competitive process* and do not directly serve other policy goals like fairness, safety, promotion of foreign trade and environmental welfare. The ultimate goal of antitrust law is to promote competition to ensure that consumers get the benefit of competitive prices, innovation and efficiency. Also, high concentration in a market is not *in and of itself* a violation of antitrust laws.

Antitrust Enforcement

Collusion

The LWVUS Agriculture Update Study's antitrust focus is on the agricultural (as opposed to retail) sector. The DOJ has successfully prosecuted collusion (the willful subversion of the normal operation of free markets), securing fines and criminal penalties for those involved. The most common type of collusion is price-fixing which often means competitors agreeing on a specific price for a product but can also include agreeing to divide up geographic areas to avoid competition. Arthur Daniels Midlands, for example, was fined \$100M and three of its executives were imprisoned and fined. In this and other cases, it became clear that independent entities joined forces to restrain competition.

Monopoly and anticompetitive mergers can be less clear, as when use of strategic alliances, joint ventures and aggressive use of intellectual property rights (i.e., patents) may have legitimate business justifications.

Monopoly

In the case of monopoly (or attempted monopolization), there are two requirements for antitrust action:

1. The firm has a monopoly (“an extremely high share of the market all to itself”), and
2. The firm is engaged in restrictive conduct in order to acquire or maintain the monopoly.

Additionally, the market share must be in the hands of a single firm. The fact that four firms have an enormous (83%) of the beef market, for example, is not a monopoly.

Monopolization requires demonstration that the conduct is *harming competition*, not just disadvantaging rivals.

Anticompetitive Mergers

A merger or acquisition that is likely to substantially lessen competition in a particular product or geographic market has a different legal standard from collusion and monopoly in that it does not require proof of anticompetitive conduct that has already occurred. The focus is on whether the merger changes the market to such a degree that competition would likely be substantially lessened.

The remedy here is not civil or criminal penalties but to stop or modify the merger.

Conclusion

One caveat from DOJ Special Counsel for Agriculture Douglas Ross: “The responsibility entrusted to us as enforcers of the antitrust laws is not to design the best possible structure for the marketplace. ... Our job is to stop specific kinds of private-sector conduct.”

Sources

1. LWVUS document: Antitrust Enforcement Agencies and Legislation. 2013
2. USDOJ. Antitrust Enforcement and Agriculture. 2002