Smithfield Acquisition of Farmland Foods:
Proposed Pork Processing Acquisition
Raises Cutting Edge Antitrust Issues

Contact: Warren Grimes, Senior Research Fellow, American Antitrust Institute
213-738-6804

The Antitrust Division of the Justice Department has under review a bid by Smithfield Foods, the nation’s largest pork processor, to acquire Farmland Foods’ pork division, the nation’s sixth largest pork processor. The Antitrust Division’s handling of this proposed acquisition warrants close scrutiny, according to the American Antitrust Institute, because it involves two cutting edge issues for antitrust.

Monopsony Power in Agriculture

The first issue is how to respond to an acquisition that would increase buying power (monopsony power) in agriculture. Although the Antitrust Division follows Merger Guidelines that acknowledge the need for enforcement directed at buyer power and has in the past successfully challenged mergers that would create monopsony power,¹ such mergers tend to get less attention than those involving an increase in selling power (monopoly power). Antitrust enforcement is particularly important to small farmers (and to small businesses of all sorts) because small players lack the strategic options of power buyers or sellers to respond to threatened abusive exercises of market power. Aside from consumers, the most likely victims of competitive abuse are small farmers and other small players in our economic system. This is particularly true when buying power is at issue because small sellers occupy a position that in many respects mirrors that of consumers when seller power is exercised.²


Hog farmers are particularly affected by increased buying power because they sell a perishable commodity: hogs that are kept too long lose value and raise care and feeding costs for the farmer. Thus, during the narrow window of time for the most efficient sale of a hog, it is critical that farmers have alternative buyers to assure a competitive price. Over the past decade, there is substantial evidence that farmers have been forced to sell at suppressed prices to the small number of processors that have gained an increased share of the market. The Organization for Competitive Markets has gathered evidence that the prices received by hog farmers have trended lower while both wholesalers and retailers have increased their markups, with the result that the consumer is paying more for pork products.3

According to information supplied to the AAI, the acquisition of Farmland’s pork processing plants will give Smithfield, already the largest firm, a market share of roughly 30 percent of all slaughtered hogs. By itself, this market share may not raise serious antitrust concerns. However, the acquisition may have a substantial anticompetitive effect on the market for hogs in Iowa and Southern Minnesota, the market that apparently is used to set the price for the large number of hogs that are delivered to processors under contract. These contracts have become the preferred way of doing business for many pork processors. One of Farmland’s three plants is located in Iowa and a second, a plant in Nebraska, obtains stock from this region. The loss of Farmland as an independent processor in the Iowa/Southern Minnesota market will increase the oligopsony structure of the industry (reducing the number of major buyers from six to five). In an auction setting, the “market” price is determined by the marginal bidder, so this loss of Farmland can have a greater impact on competition than would occur in other marketplace settings.4

This information cannot be independently verified by the AAI, but suggests that serious and credible issues are at stake in this acquisition. The Antitrust Division should carefully examine these matters in its review of this pending acquisition.

Bankruptcy and Antitrust Merger Law

A second issue raised by Smithfield’s proposed acquisition is the interaction between bankruptcy law and antitrust law. Farmland Foods is currently in Chapter 11 bankruptcy proceedings in a court in Kansas City. Smithfield’s bid to purchase Farmland Foods’ pork division is favored by the creditors because it will increase the pool of assets upon which creditors may draw. Farmland’s pork business was profitable and apparently the healthiest of the firm’s activities, one that could be the basis for a reorganization that

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3 See the testimony of Michael C. Stumo, General Counsel, Organization for Competitive Markets, before the Subomm. on Antitrust, Competition Policy and Consumer Rights, Senate Comm. On the Judiciary (July 23, 2003).

4 Auctions have proven to be a particularly fertile area for collusive buyer behavior. See Roger D. Blair & Jeffrey L. Harrison, Monopsony 4-7 (1993)(describing Justice Department prosecutions and other cases involving collusive buyer behavior at auctions).
would allow Farmland to emerge from the Chapter 11 proceedings as a viable independent firm.

The problem with the Smithfield bid to acquire Farmland’s pork division is that, while it may serve creditors’ interests, it may harm competition to the detriment of farmers and consumers. Smithfield may offer a premium price for the pork division because it expects to reap the gains of oligopsony power (lower prices to pork farmers). Consumers may be harmed by the depressed output of hogs and higher prices for pork in the retail stores.

The interaction between bankruptcy law and antitrust law raises many important unresolved issues. Although the precise terms of this interaction have yet to be worked out, it is clear that the legitimate but narrow interests of the creditors in maximizing the assets of the bankruptcy estate should not be pursued at the expense of society’s overriding interest in maintaining a competitive economy.