

Insights

INCREASED SCRUTINY OF CROP INPUTS: USDA ANNOUNCEMENT SIGNALS A RENEWED PARTNERSHIP WITH DOJ ANTITRUST ENFORCEMENT

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At the Ag Outlook Forum in Kansas City, Missouri, Secretary of the U.S. Department of Agriculture (“USDA”) Brooke Rollins made the surprise announcement in her “View from USDA” that USDA and the U.S. Department of Justice (“DOJ”) have signed a memorandum of understanding to “take a hard look and scrutinize competitive conditions in the agriculture marketplace, including antitrust enforcement that promotes free market competition.”

The USDA’s main purview is to promote agricultural production while preserving the country’s natural resources. The Antitrust Division of the DOJ and the Federal Trade Commission have both brought antitrust enforcement actions in the agriculture / agricultural products space. USDA and DOJ’s collaboration shows a combined focus on anticompetitive activities that might impact the cost of agricultural inputs for growers and producers, which in turn can impact the price and quality of food for consumers.

Businesses in the industry should take note of this increased scrutiny and ensure that their activities would not trigger any concerns of anticompetitive behavior. It is important both to maintain a robust antitrust compliance policy and training program to prevent any misunderstandings or improper communications and to promptly address any concerns that arise.

Neither USDA/DOJ coordination nor federal antitrust enforcement focus on agriculture is a new phenomenon. For example:

- During the **Obama Administration**, USDA and DOJ teamed up to hold five public workshops, exploring “dynamics of competition in agriculture markets, including buyer power (monopsony) and vertical integration.”¹
- During the **Biden Administration**, USDA and DOJ took several steps to strengthen enforcement of the Packers & Stockyards Act of 1921 (the “Act”),² including launching an online tool through which farmers could anonymously report on anticompetitive practices in

the livestock and poultry markets.³ DOJ brought enforcement actions for allegedly anticompetitive practices under the authority of this seldom-used Act.⁴

- Early in the second term, the **Trump Administration** announced the Anticompetitive Regulations Task Force, which specifically sought to root out “unnecessary anticompetitive regulations [to] help farmers, growers, and ranchers.”⁵

While Secretary Rollins’s statement is just the latest in a long line of close antitrust scrutiny of agribusiness, companies in this space should take this latest comment as a good reminder to refresh their antitrust compliance programs and evaluate potential antitrust risks in their business. Agribusinesses should also be prepared to take action if they receive a civil investigative demand or even informal outreach from USDA or DOJ.

BCLP will continue to monitor any developments, including the announcement of specific enforcement actions. If you have any questions regarding these developments, please contact Rebecca Nelson, Emilee Hargis, Katherine Clemons, or any other member of our Antitrust and Competition Team at BCLP.

[1] [Public Workshops: Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy](#), US Department of Justice

[2] [USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act](#), US Department of Agriculture

[3] [USDA, DOJ Launch Online Tool Allowing Farmers, Ranchers to Report Anticompetitive Practices](#), US Department of Agriculture

[4] [Justice Department Files Lawsuit and Proposed Consent Decrees to End Long-Running Conspiracy to Suppress Worker Pay at Poultry Processing Plants and Address Deceptive Abuses Against Poultry Growers](#), US Department of Justice; [Justice Department Files Lawsuit and Proposed Consent Decree to Prohibit Koch Foods from Imposing Unfair and Anticompetitive Termination Penalties in Contracts with Chicken Growers](#), US Department of Justice

[5] [Anticompetitive Regulations Task Force](#), US Department of Justice

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