



February 26th, 2020

U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: U.S. Department of Justice and the Federal Trade Commission; Draft Vertical Merger Guidelines; Released for Public Comment on January 10, 2020

Dear Assistant Attorney General Delrahim, Chairman Simons, and Members of the Commission,

On behalf of Wisconsin Farmers Union (WFU), I want to thank you for the opportunity to comment on the proposed Vertical Merger Guidelines released on January 10, 2020. We appreciate that the Department of Justice (DOJ) and the Federal Trade Commission (FTC) have issued draft guidelines that seek to address how the agencies will review vertical mergers and evaluate whether such mergers violate antitrust law. The 1984 Non-Horizontal Merger Guidelines are outdated and need to be replaced. However, we feel the proposed guidelines must be strengthened to adequately address harm to competition from vertical integration.

Vertical integration is a major concern in the agriculture and food industry for both farmers and consumers. This type of consolidation is common in livestock, particularly the poultry and pork industries, and is increasingly common in dairy. Grocery retailers, such as Costco and Walmart, have begun creating their own supply chains for certain agricultural products like chickens and fluid milk. This activity is driven by the ability to exclude competitors and control the entire supply chain from farmers to retailers to consumers.

As proposed, the draft guidelines are insufficient to address competitive concerns in the agriculture and food sectors. For example, the explanation that “The Agencies are unlikely to challenge a vertical merger where the parties to the merger have a share in the relevant market of less than 20 percent, and the related product is used in less than 20 percent of the relevant market.” While the draft guidelines point out that there may be circumstances where mergers below the 20 percent threshold suggest competitive concerns, it is worrisome that this threshold is offered without clear justification or evidence supporting its inclusion.

The draft guidelines describe theoretical harm to competition from vertical mergers, however they do not objectively describe how the Agencies will prevent such harm. A more concrete presumption of illegality for any merger involving significant transformation of the market with upstream or downstream concentration would be preferable. Such an approach would be clear and easily enforceable. The merging parties should bear the burden of providing persuasive proof to justify a proposed merger. Further, an analysis of past enforcement decisions is needed to strengthen the proposed guidelines.

The draft guidelines are helpful in that they recognize the potentially damaging effects of vertical mergers. But policy regarding vertical integration should be more robust than what is proposed in the draft.

Again, I want to thank you for the opportunity to provide input on the draft Vertical Merger Guidelines. If you wish to discuss our position further, please contact Bobbi Wilson, Government Relations Associate, at [bwilson@wisconsinfarmersunion.com](mailto:bwilson@wisconsinfarmersunion.com) / 608-234-3741.

Sincerely,

Darin Von Ruden,

President