

The Antitrust Review of the Americas

2014

Published by Global Competition Review
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GLOBAL COMPETITION REVIEW

United States: Private Antitrust Litigation

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The US agriculture and food market has become increasingly concentrated in several sectors and across multiple levels. This market structure, along with the potential for decreased competition, has been an impetus for several recent private and government antitrust actions. As is often the case, these types of antitrust actions are not only costly to defend but can also, if successful, lead to substantial damages or conduct restraints on the defending parties. Concentration and coordination is expected to continue to increase, leading to fewer independent entities as they are replaced by larger retailers, processors and producers. For those not prepared for an increasingly concentrated and coordinated agribusiness market, there will likely be more litigation and government enforcement risk, expense and exposure.

Market structure and competition in US agribusiness

Market concentration

Concentration is a measurement of the aggregate market share of the firms in a market to reflect the extent to which sales or purchases are controlled by the largest firms in the market.¹ Economists argue that concentration can have two opposing impacts on US agriculture and food products. On the one hand, high levels of concentration can contribute to market power, susceptibility to coordination among competitors on the same or different market levels and less than competitive prices for agricultural products or foods;² on the other hand, concentration can contribute to economies of scale, greater efficiencies and lower prices.³

While historically the focus of concentration analyses in agriculture has been on processors and producers, the emergence of national food retailers makes them particularly relevant. At the national food retailer level, the shares of the four largest firms⁴ increased from 16.8 per cent in 1992 to 50 per cent in 2009.⁵ Moreover, the average four-firm concentration in 2006 for 229 US metropolitan areas was 79.4 per cent, which reflects relatively high concentration in many local consumer markets.⁶ The expansion of the few largest retailers drove much of this increased concentration during the most recent years.⁷

At the national processor level, a small number of companies account for a large and growing proportion of purchases or sales in each of the five major agricultural sectors (beef, pork, poultry, dairy and grains), which account for almost 90 per cent of the market value of food-related agricultural products sold by US farms.⁸ In the beef sector, the market share of the largest four processors firms increased from 41 per cent in 1982 to 79 per cent in 2006.⁹ In the pork sector, the market share of the four largest firms increased from 36 per cent in 1982 to 63 per cent in 2006.¹⁰ For the poultry sector, the four largest firms accounted for 57 per cent of the processing market in 2006, compared to 27 per cent in 1982.¹¹ In the dairy sector, the shares of the four largest fluid milk processors increased to 48.7 per cent in 2002,¹² following the combination of the two largest processors.¹³ Finally, in the grains sector, the four largest processor shares in 2006 ranged from 46 per cent to 69 per

cent depending on the grain, compared to a range of 34 per cent to 86 per cent in 1982.¹⁴

This increased processor concentration is primarily the result of industry consolidation. Virtually every major agricultural sector has experienced recent combinations of significant market participants. For example, in 2007, JBS, an international beef processor, combined with Swift & Co to create the largest US beef processor, with about 30 per cent of the market,¹⁵ and this combination pushed the four-firm concentration to over 80 per cent for beef processing.¹⁶ Also in 2007, Smithfield Foods, then the largest pig producer, processor and packer, acquired rival Premium Standard Farms, resulting in Smithfield holding more than 30 per cent of the US pig processing market¹⁷ and increasing the four-firm concentration to 67 per cent by 2010.¹⁸ Similarly, in 2001, Dean Foods and Suiza Foods, then the two largest fluid milk processors, combined to create a national processor, named Dean Foods, with at least 34 per cent of the fluid milk processing market.¹⁹

At the producer level, farms have increased in size over time, although they remain small relative to retailers and processors. About 90 per cent of the 2.2 million US farms generated sales of less than \$250,000 in 2007, while a few large farms (12 per cent of the total) account for 84 per cent of the value of US agriculture production.²⁰ However, meaningful increases in producer level concentration have occurred in the form of larger farmer cooperatives. Since 2000, the number of cooperatives has fallen by nearly 50 per cent but cooperative turnover has steadily increased, topping \$170 billion in 2009.²¹ This is the result, in part, of cooperative mergers, such as the formation in 1998 of Dairy Farmers of America (the DFA) through the merger of four regional dairy cooperatives.²² This merger helped boost the four-firm concentration for dairy cooperatives to 57 per cent.²³ By 2008, dairy cooperatives had increased their share of US farm milk marketing to 83 per cent, with 79 per cent of the milk produced marketed by the largest cooperatives.²⁴

Vertical coordination and integration

In addition to increased concentration, the US agriculture and food market has experienced increased vertical coordination and integration across the marketing chain. Vertical coordination is the synchronisation of successive stages of production and marketing, which, in agriculture, often includes quantity, quality and timing of produce. Vertical integration is when a single firm controls two or more successive stages of vertical coordination.²⁵

Contracts between processors and producers governing the production and sale of produce have recently become widespread, and the share of the agriculture market subject to them has increased. In 2008, 40 per cent of US agriculture production value was covered by vertical contracts, a substantial increase over prior years.²⁶ The livestock sectors in particular have become increasingly subject to vertical contracts.

Poultry has led the surge in vertical coordination. Today, poultry is the most tightly coordinated system among the three major

meat sectors (poultry, beef and pork) and involves the fewest firms responsible for production-to-market coordination.²⁷ Ninety per cent of the production value of poultry and eggs are marketed under contracts.²⁸ As with poultry, most pig production now is under contracts. From 1993 to 2001, pigs procured by contracts increased from 10 per cent to 72 per cent of the total pigs sold.²⁹ As with the other industries, beef has been moving to contracts. By 2010, contracts accounted for about 53 per cent of beef sales to meat packers, an increase from about 15 per cent in 1988.³⁰

During the same time, US agribusiness has become more vertically integrated. Processors in the meat industries have become producers (as well as marketers) of poultry, beef and pork.³¹ And, producers have increasingly become processors, usually in the form of producer cooperative owned facilities.³² Some of the largest milk processors, for example, are owned by dairy producer cooperatives.³³ In addition, producer cooperatives have increasingly entered federations and alliances with other cooperatives as a means of competing with external changes in US agribusiness.³⁴

The net effect of vertical coordination and integration in agriculture remains to be seen. Some economists argue there can be risk reduction, efficiency and economy of scale rationales for integration and coordination.³⁵ Other agricultural experts acknowledge such vertical arrangements can limit the economic freedom of farmers, reduce competitive price discovery for produce, create buyer market power by processors over producers and facilitate collusion among vertically coordinated market participants.³⁶ The specific types and lengths of contracts will often determine their consistency with US antitrust law, with exclusivity and most favoured nations pricing provisions raising concerns of late.³⁷

Recent antitrust litigation and enforcement actions in US agribusiness

Recent litigation and enforcement actions illustrate how increased concentration, horizontal and vertical coordination, and the widespread use of supply contracts in US agribusiness can lead to and support antitrust claims.

Market concentration and coordination were bases for antitrust claims in the recent *In re Southeastern Milk Antitrust Litigation*, for example. There, dairy farmers filed a class action litigation against Dean Foods, the largest US fluid milk processor, the DFA, the largest US milk cooperative, as well as entities they controlled and several high level executives, for conspiring to monopolise and monopsonise the milk market in the Southeastern US by refusing to compete with others to purchase farmer milk, allocating markets, implementing exclusive, full supply contracts, and artificially fixing and suppressing prices paid to dairy farmers.³⁸

Specifically, the dairy farmers alleged that Dean Foods and the DFA obtained market power, in part, through acquisitions and mergers,³⁹ resulting in Dean Foods and the DFA controlling over 40 per cent of the fluid milk processing and 80 per cent of the milk marketing markets respectively in the Southeastern US.⁴⁰ The dairy farmers further alleged that vertical coordination in the form of exclusive supply agreements between the DFA, Dean Foods and other fluid milk processors, as well as vertical integration in the form of the DFA's ownership of fluid milk processors that stopped competing with Dean Foods and other fluid milk processors, enabled Dean Foods, the DFA, and others to carry out the conspiracy alleged.⁴¹ On this point, the dairy farmers alleged that vertical coordination and integration by the DFA resulted in it controlling almost 90 per cent of the milk in the Southeastern US.⁴²

After years of litigation, the parties in *Southeastern Milk* reached settlements on the eve of the scheduled trials. In 2011, Dean Foods agreed to pay \$140 million to settle the farmers' claims.⁴³ More recently, in 2013, the District Court approved a settlement with the DFA and related entities that includes a payment of \$158.6 million plus conduct changes designed to reverse the effects of the DFA's control of the Southeastern US market.⁴⁴

A number of similar antitrust litigations following *Southeastern Milk* also have been based, at least in part, on increased concentration or vertical coordination and integration in US agribusiness. For example, in *In re Fresh and Process Potatoes Antitrust Litigation*, plaintiffs allege that a number of potato producer cooperatives, processors and marketers entered into vertically (and horizontally) coordinated agreements to reduce the supply of potatoes in order to raise prices in violation of the Sherman Act.⁴⁵ Similarly, in *In re Processed Egg Products Antitrust Litigation*, plaintiffs allege a number of egg producer cooperatives and industry trade groups entered into vertical (and horizontal) agreements in the form of animal welfare programs to restrict egg output and unlawfully increase egg prices.⁴⁶ Also, in *In re Mushroom Direct Purchaser Antitrust Litigation*, after the US Department of Justice (DoJ) filed suit, plaintiffs initiated litigation alleging that mushroom producers, producer cooperatives and mushroom marketers illegally fixed mushroom prices through the use of 'supply control' covenants imposed by producer cooperatives and minimum pricing provisions in agreements with marketers.⁴⁷ *Fresh and Process Potatoes*, *Processed Egg Products* and *Mushrooms*, all commenced years ago, continue to be contentiously litigated.

Increased market concentration and coordination also have been bases for recent investigations and litigations by the DoJ. In 2011, for example, the DoJ filed suit to undo George's Foods' acquisition of a chicken processing facility from competitor Tyson's Foods. The DoJ alleged that this acquisition lessened competition because it resulted in George's Foods controlling 43 per cent of the chicken processing and facilitated monopsony in the purchase of chicken growing services from farmers in the relevant market. In support of these allegations, the DoJ pointed to the increased market concentration resulting from the merger and the difficulty for farmers, who were required to enter into production contracts with processors, to switch to another processor.⁴⁸ The DoJ and George's Foods quickly reached a settlement, which included commitments to make relatively expensive investments in the chicken processing facility to ensure strong demand for chicken growing services.⁴⁹

George's Foods followed other DoJ investigations and litigations based on concern with concentration or coordination in US agribusiness. In January 2010, the DoJ, joined by a group of states, filed a suit challenging Dean Foods' acquisition of Foremost Farms' dairy processing plants. Plaintiffs alleged that Dean Foods and Foremost Foods were the first and fourth-largest fluid milk processors in the relevant market, and the acquisition would give Dean Foods 57 per cent of the fluid milk sales and make it easier for it to coordinate with other processors.⁵⁰ After a year and a half of litigation, a settlement required Dean Foods to divest a processing plant and assets.⁵¹ Also, in October 2008, the DoJ and several states challenged the acquisition of National Beef, then the fourth-largest US beef processor, by JBS, then the third-largest beef packer.⁵² The acquisition, if consummated, would have placed 80 per cent of domestic cattle processing capacity in the hands of three firms.⁵³ After several months of litigation, the parties abandoned the transaction.

Emerging trends in US agribusiness antitrust litigation and enforcement

Concentration and coordination will likely increase

Concentration at all levels of US agribusiness will likely continue to increase, leading to fewer but larger retailers, processors and producers. The perceived benefit of consolidation-related efficiencies, economies of scale and synergies will likely drive agribusiness firms to continue to pursue acquisitions, mergers, joint ventures, and vertical coordination and integration. In this environment, processors will continue to seek to increase their scale to be better positioned in relation to increasingly powerful retailers like Walmart.⁵⁴ Likewise, producers and their cooperatives will continue to turn to business arrangements such as mergers and alliances in response to consolidation at other agribusiness levels.⁵⁵

Government enforcement will likely increase

The expected increase in agribusiness concentration will likely draw extraordinary scrutiny by US government enforcers, at least for the remainder of the Obama administration. DoJ leaders recently pledged to promote 'free and fair competition' in agriculture,⁵⁶ and observed that 'agriculture markets are not only a matter of economic efficiency, but a matter of national security and public health.'⁵⁷ Consistent with this, the DoJ, along with the US Department of Agriculture, recently hosted a series of workshops focused on competition in US agribusiness. Following the workshops, the DoJ reported that they 'confirmed that a healthy agricultural sector requires competition and, consequently, vigorous antitrust enforcement', and that the DoJ is 'committed to taking all appropriate investigatory and enforcement action against conduct threatening harm to competition in agricultural markets.'⁵⁸

The DoJ's increased focus on enforcement in agriculture is demonstrated by its recent investigations of the George's Foods and Dean Foods acquisitions. Both were relatively small transactions involving only a couple processing facilities, but they nonetheless drew intense scrutiny and litigation by the DoJ.⁵⁹ Moreover, the DoJ's commitment to enforcement in agriculture can only be bolstered by information received during the workshops. Over the course of two years, the DoJ heard from numerous witnesses and received approximately 18,000 comments – many of which explained concern with agriculture market concentration.⁶⁰

In addition, the DoJ will likely be increasingly attuned to potential monopsony situations in agribusiness. Monopsony, the converse of monopoly, refers to market power on the buying side of a market as opposed to the selling side. Monopsony power can develop in concentrated agricultural markets in particular since producers are typically much smaller than processors or retailers. This potential for monopsony is enhanced in vertically coordinated markets, as has emerged in agriculture, where produce is marketed via contracts that can be dictated by processors or retailers.⁶¹ The DoJ recently declared that it 'stands vigilant' against monopsony offences,⁶² and this was demonstrated in the DoJ's recent *George's Foods* litigation, which centred on concern that George's Foods's acquisition would give it buying power and enable it to force chicken growers to take lower prices and less favourable contract terms.⁶³

Private litigation will likely increase and ensnare more market participants

Increased agribusiness concentration will likely invite and engender antitrust litigation. Increased concentration – and presumed decreased competition – is often blamed by producers for low or

falling agriculture produce prices. This was amply documented by producer comments during the DoJ's workshops.⁶⁴ Likewise, lawyers who appreciate that concentrated markets might support allegations of anti-competitive conduct are more likely to investigate and pursue antitrust litigation on behalf of producers or consumers. There is a good chance that such litigation will not be dismissed at the onset because legal precedent and economic literature recognises that concentrated markets, with few participants and high market shares, can be susceptible to potential conspiracy and coordination.⁶⁵

Agribusiness firms will likely be increasingly drawn into antitrust litigation based on those with which they do business. With increased concentration, agribusiness firms will be more likely to do business with each other. The recent surge in vertical coordination and integration in particular links many agribusiness firms across industry levels. These links can support alleged collusion in violation of US antitrust laws, which can be costly to defend. For example, as referenced, in *Southeastern Milk*, defendants recently paid over \$300 million to settle antitrust claims based, in part, on milk supply contracts between Dean and the DFA.⁶⁶ Similarly, in *Fresh and Process Potatoes*, the largest US potato marketer has spent several years defending antitrust claims based on its agreement to distribute potatoes that allegedly enabled potato producers to sell potatoes at unlawfully fixed prices.⁶⁷

Also, agribusiness litigation likely will ensnare more of the remaining participants in an increasingly concentrated market. As consolidation continues by acquisition or combination, US agriculture markets continue to become more global in nature, as foreign firms enter or expand their presence and become directly subject to US antitrust laws. This is illustrated by Chinese Shuanghui International Holdings' planned entry into US agribusiness through the recently announced acquisition of Smithfield Foods,⁶⁸ and by Brazilian JBS' entry into the US market through its 2007 acquisition of Swift.⁶⁹

Conclusion

The increasing concentration and coordination in US agribusiness heightens the potential for antitrust litigation and enforcement actions. Recent cases illustrate the risk, expense and exposure for the retailers, processors or producers ensnared in antitrust litigation and enforcement actions. Firms in US agribusiness or considering entering the business would be well advised to assess their antitrust risk exposure, including, at a minimum, a review of the structure of the market in which they operate or may enter, their current or potential business partners, and the forms of their current and possible agreements with others in the market.

Notes

- 1 See, eg, ABA, *Antitrust Law and Devs.* 347 (7th ed. 2012); see also *Brown Shoe Co v United States*, 370 US 294, 340 (1962) (applying concentration analysis).
- 2 See, eg, US Gov't Accountability Office, *Concentration in Agriculture*, Publ'n No. 46R 31 (2009).
- 3 See id.
- 4 One measurement of concentration developed by economists is the 'CR4.' This is the per cent of the total industry value of output represented by the four largest firms in that particular industry. CR4 results do not constitute proof of monopoly or anti-competitive conduct. However, economists contend that a CR4 in excess of 40 per cent indicates an agriculture market that is not competitive. See, eg, Brian Gould, *Consolidation and Concentration in the US Dairy*

- Industry, 25(2) Choices 5 (2010).
- 5 See Steve Wood, Revisiting the US Food Retail Consolidation Wave: Regulation, Market Power and Spatial Outcomes, 13 J. of Econ. Geography 299-326 (2013).
- 6 See Tina Saitone and Richard Sexton, Market Structure and Competition in the US Food Industries: Implications for the 2012 Farm Bill 3 (2012), available at www.aei.org/files/2012/04/02/-market-structure-and-competition-in-the-us-food-industries_102234192168.pdf.
- 7 See Wood, *supra* note 5, at 313.
- 8 See US Gov't Accountability Office, *supra* note 2, at 2.
- 9 See *id.* at 18.
- 10 See *id.*
- 11 See *id.*
- 12 See Dennis Shields, Consolidation and Concentration in US Dairy Industry, Publ'n No. R41224, Cong. Research Serv. 13 (2010).
- 13 See Gould, *supra* note 4, at 8-9.
- 14 See US Gov't Accountability Office, *supra* note 2, at 18.
- 15 See John Anderson and Darren Hudson, Acquisitions and Integration in the Beef Industry, P12 Policy Issues 1-2 (2008).
- 16 See Clement Ward, Assessing Competition in the US Beef Packing Industry, 25(2) Choices 2 (2010).
- 17 See Timothy Wise and Sarah Trist, Buyer Power in US Hog Markets: A Critical Review of the Literature, Publ'n No. 10-04 Global Dev. and Env't Inst. 3, 6 (2010) (working paper), available at www.ase.tufts.edu/gdae/Pubs/wp/10-04HogBuyerPower.pdf.
- 18 See *id.* at 4.
- 19 See Shields, *supra* note 12, at 12-13.
- 20 See Robert Hoppe and David E Banker. Structure and Finances of US Farms: Family Farm Report, Publ'n No. EIB 66, US Dep't of Agric. Econ. Research Servs. iv (2010).
- 21 See USD.A., Understanding Cooperatives: Farmer Cooperative Statistics, Publ'n No. CIR 45, USDA Rural Dev. 1 (2009).
- 22 See Gould, *supra* note 4, at 5.
- 23 See *id.* at 6.
- 24 See Shields, *supra* note 12, at 11.
- 25 See, eg, Steve Martinez, Vertical Coordination of Marketing Systems: Lessons from the Poultry, Egg, and Pork Industries, Publ'n No. AER 807, US Dep't of Agric. Econ. Research Servs. 2 (2002).
- 26 See James McDonald and Penni Korb, Agricultural Contracting Update: Contracts in 2008, Publ'n No. EIB 72, US Dep't of Agric. Econ. Research Servs. 8 (2011).
- 27 See Ward, *supra* note 16.
- 28 See McDonald, et al, *supra* note 26, at 12.
- 29 See, eg, Martinez, *supra* note 25, at 2.
- 30 See Ward, *supra* note 16, at 3.
- 31 See, eg, Anderson, et al., *supra* note 16; Martinez, *supra* note 25, at 5.
- 32 See USD.A., Agricultural Cooperatives in the 21st Century, Publ'n No. CIR 60, US Dep't of Agric. Econ. Research Servs. 11-16 (2002).
- 33 See Shields, *supra* note 12, at 13.
- 34 See USD.A., *supra* note 32, at 11-16.
- 35 See, eg, James MacDonlad, et al., Contracts, Markets, and Pprices, Publ'n No. AER 837, US Dep't. of Agric. Econ. Research Servs. 31-48 (2004).
- 36 See, eg, *id.* at 50-59; Saitone, et al., *supra* note 6, at 4-5.
- 37 For example, in 2011 and 2013, defendants in *In re Southeastern Milk Antitrust Litigation* agreed to pay more than \$300 million to settle allegations that their use of exclusive agreements, among other acts, violated the Sherman Act. See *infra*, notes 42-46. The article authors and BakerHostetler represent the dairy farmer class in Southeastern Milk. Also, in *United States v Blue Cross Blue Shield of Michigan*, the DOJ brought suit alleging a health insurer's contracts with various hospitals that include most favoured nation pricing clauses violated the Sherman Act. See, eg, 809 F.Supp.2d 665 (E.D. Mich. 2011).
- 38 See, eg, *In re Southeastern Milk Antitrust Litigation*, 801 F. Supp. 2d 705 (E.D. Tenn. 2011).
- 39 Dean Foods was formed in 2001 through Suiza Food's acquisition of Dean Foods, and the DFA was formed in 1998 through the merger of four regional dairy cooperatives. See, eg, Gould, *supra* note 16; Shields, *supra* note 13.
- 40 See *In re Southeastern Milk Antitrust Litigation*, 801 F. Supp. 2d 705 (E.D. Tenn. 2011); *In re Southeastern Milk Antitrust Litigation*, 555 F. Supp. 2d 934 (E.D. Tenn. 2008).
- 41 See *id.*
- 42 See *id.*
- 43 See www.bakerlaw.com/news/dean-foods-settles-with-dairy-farmers-for-140-million-7-12-2011/.
- 44 See www.bakerlaw.com/news/federal-court-approves-final-settlement-in-southeast-dairy-litigation-5-21-2013/.
- 45 See, eg, 834 F. Supp. 2d 1141 (D. Idaho 2011).
- 46 See, eg, 821 F. Supp. 2d 709 (E.D. Pa. 2011).
- 47 See, eg, 621 F.Supp.2d 274 (E.D. Pa. 2008).
- 48 See www.justice.gov/atr/cases/f270900/270983.pdf.
- 49 See, eg, www.justice.gov/atr/cases/f272500/272501.pdf.
- 50 See www.justice.gov/atr/cases/f254400/254455.htm.
- 51 See www.justice.gov/atr/cases/f273400/273469.pdf.
- 52 See www.justice.gov/atr/cases/f238300/238388.htm.
- 53 See *id.*
- 54 See, eg, US Gov't Accountability Office, *supra* note 2, at 30.
- 55 See, eg, Jennifer Vandenberg, et al, Driving Forces for Success Factors for Mergers, Acquisitions, Joint Ventures, and Strategic Alliances among Local Cooperatives, Publ'n No. DRD 202, US Dep't of Agric. Rural Dev. 8 (2004).
- 56 See Eric Holder, US Dep't of Justice, Remarks at the DOJ/USDA Iowa Agriculture Workshop (March 12, 2010), available at www.justice.gov/ag/speeches/2010/ag-speech-100312.html.
- 57 See Christine Varney, US Dep't of Justice, A Shared Vision for American Agricultural Markets 2 (March 12, 2010), available at www.justice.gov/atr/public/speeches/257284.htm.
- 58 US Dep't of Justice, Competition and Agriculture: Voices from Workshops on Agriculture and Antitrust Enforcement in Our 21st Century Economy and Thoughts on the Way Forward (2012), available at www.justice.gov/atr/public/reports/283291.pdf.
- 59 George's Foods' \$3.1 million acquisition of the Tyson's Foods' processing facility was well below the threshold for reporting transactions to government regulators. See, eg, www.justice.gov/atr/cases/f272500/272501.pdf.
- 60 See, eg, US Dep't of Justice, *supra* note 57, at 3.
- 61 See Wise, et al., *supra* note 17, at 8-10.
- 62 US Dep't of Justice, *supra* note 58, at 19.
- 63 See *id.*
- 64 See *id.* at 5-9.
- 65 See, eg, Phillip Areeda and Herbert Hovenkamp, IV Antitrust Law: An Analysis of Antitrust Principles and Their Application section 925, et seq. (2009) (reviewing economic theory and case law).
- 66 See *supra* note 43.
- 67 See *supra* note 45.
- 68 See, eg, <http://investors.smithfieldfoods.com/releasedetail.cfm?ReleaseID=769315>.
- 69 See *supra* note 15.



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Robert Abrams is the chair of BakerHostetler's antitrust group, a group with great depth and strength in the litigation and trial of antitrust cases, including class actions. The antitrust group also has significant experience in mergers and acquisitions, and its partners have been point persons in dealing with the Department of Justice and the Federal Trade Commission on antitrust aspects of clearing transactions.

Mr Abrams is a fellow of the American College of Trial Lawyers and has more than 30 years of trial experience in cases involving antitrust, patents, trade secrets, dealer terminations, contract disputes, tortious interference and environmental issues. In recent years, he has been lead counsel in lengthy jury trials focusing on, among other claims, antitrust, patent misappropriation, and conversion and copyright infringement. He was also co-counsel in a class action involving substantial and complex contract issues that was tried and then retried to a jury. Over his career, Mr Abrams was counsel in one of the largest FTC proceedings ever filed and was lead counsel in numerous other bench and jury trials and in governmental investigations initiated by the Department of Justice, EPA and the California Air Resources Board.

In the appellate area, Mr Abrams has argued in most of the US Courts of Appeal, presenting cases involving distribution and other business practices, the Alien Torts Claims Act and constitutional law issues.



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Gregory Commins is an established trial lawyer and has successfully represented clients in complex litigation, in multi-week trials and on appeal in both state and federal courts across the country.

Mr Commins focuses on complex litigation matters involving antitrust class action litigation; intellectual property disputes such as trade secret misappropriation, copyright infringement and patent infringement claims; product liability class actions; environmental claims; and other commercial issues such as breach of contract, fraud and tortious interference claims. Most recently, he was counsel in two five-week jury trials involving successful prosecution of breach of contract and trade secret misappropriation and claims involving proper ownership and inventorship of fuel injector patents, as well as a four-week jury trial involving copyright infringement, trade secret misappropriation and breach of contract claims. Mr Commins also has defended companies investigated by federal and state regulatory agencies and provided antitrust and environmental counseling to his clients.

Mr Commins has been named a 2012 Washington, DC, 'Super Lawyer' in the area of antitrust litigation.

Mr Commins is a member of the American Bar Association and has done pro bono work for the Archdiocesan Legal Network. In January 2012, Mr Commins presented a CLE programme to the Cleveland Intellectual Property Law Association (CIPLA) entitled 'The Intersection of Antitrust and Intellectual Property: Basic Principles, Standard Setting Organizations and Patent Pools'.

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Danyll Foix represents clients in a variety of commercial disputes in state and federal courts. His litigation experience ranges from investigations of potential claims to post-trial appeals.

Mr Foix is especially enthusiastic about his work on antitrust litigation and class action cases. He represents clients in private antitrust litigation, including plaintiffs in *Southeastern Milk*, and he has represented individuals and companies in government antitrust investigations. In the class action area, Mr Foix has represented individuals and businesses in complex and multidistrict class actions involving antitrust, fraud, discrimination and consumer protection claims. He has the distinction of experience representing both plaintiffs and defendants to class actions, providing insight concerning his adversaries and helping formulate strategies for his clients.

Mr Foix is the editor of BakerHostetler's antitrust and trade blog, www.antitrustadvocate.com, and he is an active member of the ABA's Antitrust Section, for which he recently published an article on the Capper-Volstead Act and agricultural litigation.



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