

Favorable egg antitrust verdicts could spur farmers, trade associations to seek more jury trials

Commentary and Analysis | 31 Dec 19 | 17:39 GMT

By Max Fillion

In Brief

US egg farmers were recently handed favorable verdicts by two federal juries that found they didn't conspire to jack up prices by limiting egg supplies. Pending appeals, the verdicts could encourage defendants to take to trial — rather than settle — similar cases that allege trade associations are used to reduce output.

US egg farmers were recently handed favorable verdicts by two federal juries that found they didn't conspire to jack up prices by limiting egg supplies. Pending appeals, the verdicts could encourage defendants to take to trial — rather than settle — similar cases that allege trade associations are used to reduce output.

"I think the verdict does help trade associations, agricultural cooperatives and their members feel a little bit better about creating legitimate standard-setting and legitimate programs and not necessarily being accused of being a pretext for some antitrust conspiracy," Jay Levine, who represented defendant Rose Acre Farms, told MLex.

Plaintiffs accused United Egg Producers and several of its members, including Rose Acre, of using an animal welfare program as a pretext for reducing the supply of eggs. After the program was instituted, egg prices increased by more than 19 percent, plaintiffs argued in one of the trials.

The allegations are similar to those in a string of antitrust cases brought over the last decade. Dairy, mushroom and potato farmers have been accused of conspiring through their cooperatives, or trade associations, to raise prices by decreasing output. Many of those allegations led to multi-million-dollar settlements.

But in the pair of jury verdicts, the animal welfare program provided a valuable defense. The other cases consisted of restraints of output such as "herd retirements" that required farmers to prematurely slaughter cows, resulting in a case that yielded a \$220 million settlement from the National Milk Producers Federation (see here).

The egg farmers said the welfare program was voluntary and didn't impose any restrictions on egg production or the

number of chicken coups a farmer could possess. The program was adopted because key customers such as McDonald's and Walmart insisted on them, they argued (see here).

Though many egg producers reached million-dollar settlements with purchasers, two cases went forward. In a case brought by several large grocers, including Giant Eagle and Safeway that wrapped up this month, a jury found that United Egg Producers, Rose Acre Farms and industry group United States Egg Marketers didn't participate in the alleged conspiracy (see here).

The other case, a class action brought by direct purchasers against three farms, yielded a June 2018 verdict that found farms R.W. Sauder and Ohio Farm Fresh did not participate in the alleged conspiracy. The same jury found that a conspiracy did exist and Rose Acre Farms participated in it. But Rose Acre's conduct, the jury said, didn't amount to an unreasonable restraint on supply (see here).

Typically, any conspiracy among competitors is evaluated under a "per se" standard — meaning if it occurred, it violated antitrust laws. US District Judge Gene Pratter found, however, that because there was no express agreement to restrict supply through actions such as animal welfare programs, the conduct should be evaluated using the rule of reason (see here).

Direct purchasers are appealing the verdict on the grounds the jurors were given bad instructions by the judge (see here). Any horizontal conspiracy is per se illegal, they argue. It's unclear whether the grocers will file an appeal of last week's jury decision. For now, UEP and Rose Acres can rest assured that their defense worked in front of a jury.

"I don't know that it clarifies the law, per se, but I do think that people can feel a little bit better that yes, juries can see through a lot of what plaintiffs tend to throw at them," Levine said.

Tags

Subjects: Antitrust

Industries: Consumer Industries, Food

Regulators / Courts: 3rd Circuit, US Courts

Jurisdiction: North America, USA

Related case file(s)

Antitrust litigation - In re: Processed Egg Products