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Beyond Antitrust — The Case for Change

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My placement on the program is itself an indication of my approach to competition policy–I am an antitrust hawk. America's history shows that allowing highly concentrated markets to develop when such structures are avoidable imposes unnecessary costs on our society. The costs are social, political and economic.

In arguing for the Sherman Act, Senator Sherman warned of the danger of economic kings who could oppress America as much as the king of England had in the days before our revolution. Sherman recognized that the maintenance of our political democracy and open social system depended on retaining an unconcentrated, competitive market system in which no firm or group of firms could dominate.

In the first substantive decision interpreting the Sherman Act, Justice Peckham, no liberal or protectionist, wrote that the dynamics of markets can bring unavoidable hardships to particular classes of business. Such transformations are inevitable and must be endured. However, he condemned "combinations of capital whose purpose . . . is to control . . . production or manufacture . . . and . . . dictate price. . . ." In addition to the harm to consumers, he identified the harmful effect of "driv[ing] out of business . . .independent dealers . . ." He concluded:

> **"[I]t is not for the real prosperity of any country that such changes should occur which result in transferring an independent business man . . . into a mere servant or agent of a corporation. . . ; having no voice in shaping the business policy . . . and bound to obey orders issued by others."[1]**

I want to renew these warnings in the context of what is happening to agricultural markets today. Past failure to enforce antitrust law has resulted in increased concentration in both the markets supplying agriculture and in those that process and market its products. Moreover, subsequent, large scale vertical integration through both ownership and contract has impaired the working of transactional markets in agricultural goods. More and more, we see a handful of firms dominating a larger number of markets on both sides of the farmer and rancher. Further, those firms in turn are entering into "strategic alliances" with each other to make more secure their joint control over and allocation of markets. These changes encourage, indeed, may make inevitable, conduct that further weakens not only the viability of existing agricultural producers but also has a strongly negative impact on the dynamics of our economy as a whole. Fearing the strategic behavior of its rivals, each agricultural behemoth responds with actions that it believes will protect its position even though this imposes costs on producers and consumers. These 800 pound gorillas trash the agricultural economy to protect and entrench their present and future position in the market. The farmer and rancher increasing has "no voice in shaping the business policy" but is simply "bound to obey orders issued by others." Once independent farmers and ranchers are becoming the serfs of the 21st century.

These changes in structure and conduct may shift wealth between producers and others; they certainly

[1] U. S. v. Trans-Missouri Freight Ass'n., 166 U.S. 290, 323-324 (1897).

impose enormous dislocation on agricultural producers; and they increasingly destroy the transparency of markets thus obscuring or hiding the underlying transactions. But they do not yield real economic gain in the short run and they impose avoidable economic costs in the long run. In addition, this transformation threatens core political and social values that have been at the foundations of this nation. To combine and alter Robert Frost and Mao's great dicta: There are many roads to capitalism, and we must take the most socially and economically desirable one.

The most fundamental proposition that I would advance is that no specific market structure is essential to achieve either economic efficiency or growth and change in the economy. There is a continuum of methods of organizing the production and distribution of goods that ranges from transactional markets to completely integrated single enterprises. Overtime, any particular form of legal market organization can adapt to the needs of technological efficiency. To be sure, at any point in time, some structures can respond more immediately while others will require creative use of legal systems and perhaps even revision of the law to achieve the same result. It is one of the greatest mistakes of the post-Marxist world of economics to assume that there is only one possible answer to optimal efficient organization of production.

On the other hand, some market structures enhance other values — independence and individual freedom of opportunity — while others impose greater regimentation and control over individuals. The later structures create greater risks to our political institutions and democratic social values. They also make innovation and dynamic change in economic behavior more difficult. Large economic institutions like dinosaurs of old are monolithic, bureaucratic and resistant to change. It is ironic that as the former Soviet Union desperately tries to undue its inefficient centralized agriculture America seems headed toward a new form of agricultural collectives.

The starting point of my analysis is that as a society we can make choices among potential structures. Moreover, such choices should consider the social, political, and dynamic implications of the alternatives. The least relevant consideration is productive efficiency because in time almost any system can achieve similar results.

The process of selection can be self conscious with a goal of advancing certain long run social, political or economic objectives. Or, as is often the case, it can an ad hoc response to the latest technological change based on current allocation of economic and legal powers. The second course creates a reactive trajectory that seems inevitable until one looks closely at the details. When thus observed, it is apparent that there were choices and options which could have led to the same long run efficiency but would have done so with different structures and consequences for those involved in the changing economic context.

The fact that there are many roads to efficiency is liberating for public policy. It means that decision makers need be much less concerned about long run adverse efficiency effects of their decisions. If something is truly efficient, the market will find a way to achieve that outcome. A decade ago I reviewed a number of the claims by scholars about the adverse effect of antitrust actions on the economy.[2] These cases were largely ones that had emphasized non-efficiency values. The historical record simply did not support the claim that those decisions had caused serious losses or other negative effects. Regrettably, I should also report that it is a little difficult to find strong evidence that antitrust interventions standing alone had had clearly positive effects on efficiency. More often than not, it was the interaction of antitrust, which had retained a more open and accessible market context, with changes in technology and/or other regulation that produced significant improvements.

Illustrative of the interactive process involving antitrust, technological change, and other regulatory

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[2] Peter C. Carstensen, How to Assess the Impact of Antitrust on the American Economy: Examining History or Theorizing, 74 Iowa L. Rev. 1175 (1989).

innovation was the old meat packers oligopoly which the Justice Department challenged in 1920. The resulting limits on what the old line firms could do interacted with the advent of government grading of meat (a regulatory innovation that replaced private grading) and the development of refrigerated trucks. This combination made possible the rapid deconcentration of meat packing in the 1940s and 1950s. Slaughter houses no longer had to be located on rail lines. New entrants could establish that their product was as good as that of the established firms because it had the same government grades. The business was transformed. The old firms left the market and new ones entered. Sellers had real choices and thus greater autonomy.

Unfortunately, in the 1970s and 1980s the government failed to police the mergers among these firms. It mistakenly assumed that downstream markets would somehow police the upstream strategic buying conduct of regionally dominant firms. It ignored the lost choices that these combinations imposed on farmers and ranchers. Today, we again have highly concentrated markets on both a national and regional basis. The result is strategic buying behavior which harms farmers and ranchers, denies them a transparent transactional market place for their products, and may now require more direct regulation of buying practices. Indeed, I read that the meat packers want to return to private grades which would make new entry even more difficult.

Further undermining the vitality of the market system was the tolerance of mergers among grocery retailers which allowed greater and greater concentration of buying power in the hands of large enterprises. This created a symbiotic vertical relationship between retail oligopoly and the slaughter house oligopoly. The result is the increasing spread between the price paid the farmer the price charged the housewife.

In framing and enforcing a policy to retain and enhance individual autonomy and freedom of action, it is also important to recognize the broader implications of context. If large firms dominate a market sector, then it is irresponsible to look only at the specific points of competitive interaction without considering how to maintain effective overall competition in that sector. Illustrative of this error is the recent settlement of the Continental Grain merger. The government insisted on isolated divestitures where it identified specific overlaps between the merging firms. This ignored the overall operation of grain trading in which large integrated firms have come to dominate. By allowing the dismemberment of one of the leaders, the government has effectively reduced the number of real competitors in a significant way. This is a failure to consider the overall context because of blinders of a theory of competitive effect that ignores the larger and longer run implications of these combinations. There is no reason to believe that any increased efficiency will result from this merger. The government position is only that it did not see a significant present danger to narrowly defined competitive concerns arising from the combination less its divestitures. This is a bad decision because it reinforces the aggregate concentration of the market and thus entrenches the kind of oligopoly that will have resources to protect itself against equally efficient, socially more desirable alternatives. Moreover, by reducing in the long run the choices available to sellers, it will further limit the potential for autonomy and choice.

Unsupervised market structures are the result of historical accident far more than of rational economic decisions. The immediate actions of firms reflect strategic responses to opportunities and rivalries confronting those firms. The external legal context can magnify or diminish the impact of such actions. These include the legal structure governing market conduct including disclosure of prices and constraints on opportunistic actions; the rules defining the scope of intellectual property rights; and the rules governing upstream or downstream conduct in markets that directly effect agricultural markets–for example, slotting allowances paid to large grocery chains.

Thus, on the one hand we have many potential routes to the same efficient outcomes, but on the other hand we know that some routes create greater economic cost and impose worse social and political results. There is no reason for government to be indifferent about these choices. Yet today, those who enforce antitrust law are unwilling to recognize these historically important concerns. Moreover, wedded as they are to the indefensible idea that there are uniquely efficient market structures, they fear greatly the "false

negative"–blocking a merger or practice that in fact has no adverse competitive effect–because of the concern that this will deny the American consumer a more efficient marketplace that can not be achieved in any other way.

The trends in the markets supplying and buying from American agricultural producers are all negative in terms of both likely impact on the dynamics of our economy and on the other values that we desire in our economy for social and political reasons.

Horizontal concentration: Over the last two decades there has been a marked increase in the concentration of the various industries serving agriculture–from farm equipment to seeds and herbicides or pesticides. Similarly the markets into which farmers and ranchers sell have become more concentrated both at the immediate level of processors and marketers and at the ultimate level of retailing. The late Leonard Weiss in 1989 collected all the studies he could find concerning the comparative impact of concentration on price.[3] The overwhelmingly consistent outcome was that prices were higher in concentrated markets even though profits were not consistently higher. The implication of these results is that concentrated markets impose costs on consumers and suppliers who must sell into such markets, but such markets are not more efficient. The oligopolists waste enormous resources in striving to retain, protect and entrench their market positions. Thus, there is no social gain. There is only social cost.

The implications of increased concentration are particularly negative for farmers and ranchers because they lack the capacity to create effective counter power. An individual farmer or rancher is not well situated to bargain effectively with a single large customer. Only if they dealt in open, transactional markets with a number of competing buyers were farmers and ranchers in a position to approximate the fair market value of their product. The disparity in bargaining capacity–both power and information–means that reduction of real competitive options on either the supply or buying side of the market is far more devastating in this context than in others.

Concentrated markets also invite strategic rivalry. The patterns of contracting for supplies can be explained in terms of strategic behavior–rivals concerned that others might foreclose their supplies and seeking also to make new entry into their regional market more difficult because supplies are tied up. In a large, well-supplied transactional market, processors or slaughter houses would not need such contracts in order to be assured of adequate supplies. Even if special features were required–e.g., no genetic engineering or special feeding, such certification could, like other grading, be provided by third parties–public or private. The process of creating such new certification might be more time consuming, but it would produce the same level of information and do so in way that produces more favorable opportunities for entry and exit by individual processes or suppliers.

Sectoral concentration: Even a cursory review of the data on agricultural products or sales to agriculture shows that the same companies appear again and again. Thus DuPont provides insecticides and herbicides as well as providing Pioneer Hybrids. Monsanto is also a leading producer of seeds and crop protections. On the other side, Cargil, ADM, or ConAgra appear again and again among the leading firms in various kinds of food processing and distribution. Several implications follow from this kind of sector dominance as well as cross linkages among supply and processing markets. The first is that such firms have the potential to deal in multiple ways with their customers. Monsanto has employed contracts to limit the use of herbicides on the soy beans it sells to its particular brand. Thus, such a firm has an incentive to distort and restrict competition in order to further its owns economic interest.

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[3]Lenord Weiss, ed., Concentration and Price (1989); see also Peter C. Carstensen, While Antitrust Was Out to Lunch: Lessons from the 1980s for the Next Century of Enforcement, 48 SMU L. Rev. 1881 (1995).

In addition, the potential exists for linked oligopoly. Firms recognize each others' "sphere of influence" and refuse to enter or compete vigorously in each others' dominant area. This has proven to be a noticeable consequence of interstate bank mergers.[4] It seems increasingly likely in the area of agriculture. Further, limiting the number of firms in any sector reduces the incentive to engage in dramatic innovations in technology or marketing. The firms have a shared interest in stability within their sector. They can define and limit the scope of their competition with less risk that someone will come up with a new way to do things. This kind of concentration therefore chokes off the scope of innovation and competition among potential alternatives.

Vertical integration: Increasingly producers have integrated backward into the production of agricultural commodities. The pending merger between Smithfield and Murphy Farms that will consolidate the largest pork processor with the dominant pig raiser illustrates the kind of combinations that are occurring across a large number of fields. Such integration will not produce efficiency gains. It will raise barrier to entry into both processing and raising hogs. As such integration increases, the transactional market will be marginalized. Independents will face greater obstacles in marketing their hogs and lower prices. The spot market will become the place in which the packer seeks only the extra supplies when there is unexpected demand. This is likely to result in a higher cost on average for the processor, but the gain will be in controlling more fully the market context–less risk of new entry, less risk of direct competition for supplies and thus more apparent predictability for the market process. On the retail end, the large chain buyer is as interested in being assured that its price is as favorable as its competitors price. Thus, the inefficiency of the system can be passed on to the final consumer.

Conduct consequences: the combination of these structural changes in turn make possible new kinds of conduct that are rational self-protection by such firms. These actions achieve both protection and entrenchment of their positions in the market. They produce no gains for consumers or farmers and ranchers. Indeed, this conduct is likely to harm the long run best interests of both classes.

Strategic alliances: Non-merger collaborations among large firms allow them to coordinate their competition in order to create mutual power. The intended effect is to obtain a stronger market position. A few of these alliances might provide economically useful coordination if they create an efficiency enhancing joint venture to produce or distribute new products. Such joint ventures also show that merger is not an essential element to effective entry into new lines of business. Other alliances, to the extent that we have any reliable information, are merely a mechanism to coordinate efforts among firms to limit their direct competition and ensure mutual strategies to build market power.

It should be a source of real concern that we know so little about the scope and content of these alliances. The parties, except as required by law, do not make public disclosure of their agreements or how they are implementing them. Given the high levels of concentration both within markets and industry sectors as well as the growing vertical integration in these industries, such disclosure is essential to proper evaluation of these relationships.

Vertical contracts: The growth of contracts between processors and producers in a variety of agricultural commodities has produced an additional set of harms. These contracts have arguable utility by providing the producer with greater assurance of sale at a known price and by assuring the buyer that particular products will be available when desired. However, these contracts often have substantial non-efficiency motivation as I have discussed. In particular, if a producer can tie up a substantial segment of the existing supply under contract, it will be much more difficult for a new entrant to open up in the area because of the limited supply available. If a substantial segment of supply is controlled, it will destroy a workable transactional

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[4]Gary W. Whalen, Nonlocal Concentration, Multimarket Linkages, and Interstate Banking, 41 Antitrust Bulletin 365 (1996).

market; thus forcing the remaining producers to scramble to seek similar contracts. In the end, such rivalry can destroy the more efficient and flexible means of linking producers to processors. The choices are not efficiency driven but the consequence of the rivalry that occurs in concentrated markets.

Slotting and other special deals at retail: Recent congressional hearings have focused on the emergence of slotting payments as yet another device that creates problems throughout the agricultural marketing system. Large food processors pay large retail chains for the privilege of having their products displayed favorably. Such transactions occur because there are large producers with multiple lines of goods dealing with very large retail chains. Buying a favorable location in a single store for a single product of small firm does not produce either foreclosure or likely gain. In such a situation, the store owner will decide based on his or her own judgment what to place on the shelf and the producer will compete on price and quality. When a large producer can deal with a handful of chains so that it gets a favored position, this enriches the chain and protects the large producer from the threat of competition that arises from consumer choice. Again, this problem exists because of the concentrated markets in retailing and production.

Intellectual property abuse: Increasingly, suppliers of seeds and other inputs to agriculture are trying to control the production and resale of the resulting crops and animals along with specifying the methods and products to be used in connection with raising these items. Here the problem is an expansive definition of the legal rights that patents and other intellectual property confer on their "owners." When a soy bean developer wants to control the herbicide or pesticide used with the beans its customer plants, we see the kind of distortion that such rights create. We have new technology in plants and animals protected by legal systems developed in another time to define rights in different contexts. These rights confer vast opportunities to exploit the user. This is true across the board in areas of high technology. By licensing rather than selling the idea, the owner can exercise comprehensive control over the scope and nature of the use made. In the concentrated markets of agriculture with the broad range of activities controlled by a single firm, these rights encourage a expansive and abusive exploitation of the user. Indeed, once one firm starts down this path, its rivals are forced to follow because otherwise, they risk losing out in the race to survive. Thus, badly defined rights and concentrated markets induce the maximum in exploitation.

In sum, the present structure and conduct of the markets supplying agriculture and buying its products impose substantial but avoidable costs on farmers and ranchers as well as consumers. Moreover, the gain in terms of innovation or efficiency are not uniquely associated with the present system. Indeed, it seems likely that the country would gain on both counts from a different system that reduced concentration and opened up alternative routes. Finally, the cost of this transformation is not only economic. It makes the farmer or rancher, in the words of Justice Peckham, "into a mere servant or agent of a corporation."

Modern antitrust, however, operates from an unrealistic and narrow vision of isolated markets and an even more constrained conception of the harms that may be considered in deciding whether a merger or restrictive agreement should be challenged. The result is an antitrust law that fails to take into account real harms because they are not included in its theoretical calculus. Antitrust enforcers acquiesce in the destruction of competition and the market framework within which independent businesses can transact because their models do not allow them to see the reality of what is happening. Moreover, its implicit economic determinism leads antitrust to be unduly solicitous of any claimed efficiency gain even as it ignores the social and political costs that will result from its failure to act. Finally, antitrust assumes that the primary or only relevant context in which to appraise a merger or other combination is a narrowly defined product and geographic market. Even if the merging firms operate in many markets and bring a capacity based on that size and diversity, the antitrust enforcer will only object to the narrow overlap. If that is resolved the firms can combine. The loss to overall competition is however understated. Divesting certain specific assets that related to certain limited geographic areas do not and cannot restore the overall market place with a major player in the market which would be

capable of competing effectively.

Antitrust today, therefore, rests on some key myths:

1. A high level of direct, narrowly defined market concentration is the primary source of competitive problems. Hence, there need be little or no concern for concentration in larger sectors, vertical relationships, or the impact on future competitive potential. This justifies narrowly framed settlements focused on particular assets rather than blocking entire transactions.
2. Large size is a sign of efficiency. How else could a firm become big the economic determinist reasons. If size is efficient, then antitrust must intervene sparingly in combinations and must accept high concentration because it is essential to efficiency. This is at the core of a minimalist policy on merger and monopoly.
3. Contractual relationships have only or primarily an efficiency objective. If one assumes workably competitive markets in which firms are not engaged in strategic behavior to protect and entrench their positions, then the logical explanation for any contract, except a naked restraint on competition among competitors, is that it must serve some legitimate interest in efficiency. This account of restraints ignores the incentives and relational power of large oligopolistic firms operating in multiple markets with substantial market shares.

This leads to the question of what can be done to change the trajectory of our legal regulatory system?

One option currently under discussion is new legislation that would explicitly address agricultural concerns and empower the Secretary of Agriculture to act to protect the workability of those markets against massive structural change and unfair contracting practices. Another option is to return to the historic standards of antitrust law and enforce those standards with vigor. While the second option is less viable in today's judicial climate, I emphasize it because it underscores that the point that today's law enforcers have abandoned the hard-earned learning of many decades of antitrust experience and substituted abstract theories based on unrealistic or irrelevant assumptions. I turn first to the antitrust options.

Antitrust law starting with Justice Peckham's decision has had a strong strand of skepticism about the inherent necessity for particular market structures or conduct when adverse effects are possible. In cases stretching over many decades judges have articulated the understanding that antitrust law reflects a choice on the part of this nation to have open, competitive markets. This traditional view insisted that firms can find ways to organize production within the constraints of strict antitrust and achieve efficiency and dynamic growth without unnecessarily sacrificing the well-being of independent dealers.

It is not too late to return to that earlier learning. Its implications would be a tougher policy on mergers–vertical, horizontal and conglomerate. Absent a clear showing that merger, alone of all mechanisms, is the essential element to a clear and demonstrable gain to efficiency, mergers creating measurable increases in horizontal concentration should be stopped. Similarly, when a merger increases significantly concentration within a sector of the market or contributes substantially to the proportion of a market that is vertically integrated, antitrust law could just say no. Preserving the entire enterprise will ensure that the full dynamic implications of its presence in all its markets and sectors will be retained. Finally, antitrust should return to its historic concern with the ways in which contracts restrain the freedom of action of suppliers or dealers. If the goal of economic independence is taken seriously, such contracts are objectionable unless they provide a truly important contribution to efficiency that can not otherwise be achieved.

Such an agenda for antitrust is, I confess, unlikely to occur. The judiciary has written the narrow conceptions into the case law. Those charged with enforcement have, too often, become the apologists for concentration and the justifiers of restrictive contracts. It would take a major culture change to restore a pro-active enforcement agenda today and it would probably fare badly in court.

I should note that at the margin some progress is occurring. The FTC has recently blocked Ahold's acquisition of Pathmark thus retaining some better competition in the grocery business. The FTC also insisted that the divestiture of gas stations by Exxon and Mobil in the northeast go to a single buyer so that the resulting

entity would have a greater potential to be an effective competitive force. The Antitrust Division in the Continental Grain merger did at least acknowledge that adverse effects on suppliers are legitimate antitrust concerns in addition to adverse effect on consumers. Moreover, it has in some mergers in high technology and telecommunications recognized that both vertical and conglomerate dimensions of the transactions raised competitive concerns and required remedy. Much more would need to be done before the current enforcement of antitrust law could be regarded as a primary means to protect the existing structure of American agriculture from unnecessary disruption and potential destruction.

The alternative then is to adopt legislation directly creating a new legal standard for protecting the interests of farmers and ranchers. The Secretary of Agriculture has the responsibility today to advance the best interests of American agriculture. However, the Secretary lacks the legal tools to carry out this mandate in the context of the current market situation.

Legislation is necessary and is under discussion. The current legislative focus is on two objectives. First, creating an additional mechanism for the review of mergers. Second, expanding the authority of the secretary to regulate the terms and conditions of market and contract relationships between buyers of commodities and the farmer or rancher who produces it.

In the merger area, the fundamental idea would be to authorize a review of proposed mergers explicitly based on their likely impact on farmers and ranchers. When a merger or an element of it had or was likely to have an adverse impact, that would be a basis to deny the merger or require that it be revised to avoid the problem. The standards for determining this impact are not easily articulated. Moreover, there is a significant question of how to balance a claim of economic efficiency resulting from a merger against the potential harm to farmers. In the area of banking, a similar test exists to justify anticompetitive mergers. There, the historical record suggests that no anticompetitive merger has ever been justified by the potential gains to other goals. In the case of agriculture, given that there are almost always other ways to accomplish legitimate efficiency enhancing objectives, I would anticipate that a finding of adverse effect on farmers and ranchers, if sustained on the record, would almost always outweigh any purported efficiency claim.

More troubling, the current proposals focus only on the marketing side of agriculture. That is they would build on existing legislation on meat packing and grain marketing to expand the Secretary's authority to include review of mergers. There would be no authority to examine supply side transactions involving seed and herbicide producers or equipment manufacturers. Similarly, there would be no authority to intervene in mergers further downstream–for example in the grocery retailing sector of the market. The limit of the proposed authority, while consistent with the scope of existing authority, would mean that the Secretary would be powerless to protect farmers and ranchers against adverse consequences of such mergers.

The other dimension of this proposal would expand the authority of the Secretary to regulate terms of trade governing the initial transfer of agricultural products from farm or ranch to processor. The growth of longer term requirements contracts, the reduction in direct market transactions, and the use of other contracting terms having strategic implications, create a clear need for a better set of rules to govern this area of the market. This need is even more compelling given the high levels of concentration in the buying markets and the fact that such concentration is very unlikely to decline in the short run.

All contracting takes place within the framework that the law allows. The central question is the structure of the legal system that defines the options available to the parties. In the context of agriculture, the growth in concentration on the buyers side and their new strategic interests has not been offset by increased capacity on the part of individual farmers to respond effectively to the new context. Only government regulation can preserve a workable market context. It can do so by defining the kinds of information and terms that are permissible and insisting on public disclosure of important information to ensure that both sides of these transactions have reasonable access to knowledge. A recent decision in a federal court of appeals further

supports the need to revisit the framework of regulation to ensure that it provides an appropriate context for both transactions and contracting.

The draft legislation building as it does on the traditional authority of the Secretary focuses on the marketing of agricultural products and does not address the equally worrisome supply side of the market. As discussed previously, it is important to review and evaluate the merits of the new contracts that seed producers and others are using to control choices of their customers. Such restrictions may well prove as harmful to the autonomy of farmers and ranchers as the restrictions on the buying side.

At a more fundamental level, it would be very desirable to reconsider the scope of rights conferred under patent and other intellectual property regimes. In the modern world of large enterprises acting in very strategic ways, such rights can create an infinite number of toll booths along the route of production. The impact will be to increase costs, fracture markets, deter innovation, and ultimately undermine the capacity of our economy to grow through the use of high technology. At the same time, an appropriate system for rewarding innovation is essential as an inducement to developing new products and technologies. The need for a better balance transcends agriculture and extends throughout the entire economy. It is a need that neither antitrust law nor the Secretary of Agriculture is well situated to address. I reference it here to emphasize the extent to which the issues affecting agriculture also affect the broader economy. It is another reason why I would prefer to see more global solutions to the problems made manifest in agriculture.

In sum, neither the proposed legislation nor current antitrust can provide a comprehensive solution to the kinds of problems that confront agriculture today. Past laxness in enforcing antitrust law combined with a range of economic and legal forces have created the present market context in which the oligopolies in supply markets and the oligopolies in the markets buying farm products have combined to impose enormous stress on traditional agriculture. It is time, indeed, long past time, that the law must attempt to rebalance the system. A more active antitrust enforcement program is part of that rebalancing, but it will take a good deal more to ensure the survival of the socially, politically, and economically desirable structure of American farming and ranching.