

USDA and State AGs Join Forces to Target Competition Concerns in Food and Agriculture

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The U.S. Department of Agriculture (USDA) and the attorneys general of 31 states and the District of Columbia launched an “Agricultural Competition Partnership” on July 19, 2023, to “enhance competition and protect consumers in food and agricultural markets.”^[1] This partnership between USDA and a bipartisan group of states is dedicated to helping states identify and respond to anticompetitive and anti-consumer behavior in food and agricultural markets, including in grocery, meat and poultry processing, and other sectors.

By combining federal and state resources, the Partnership seeks to “enhance the capacity of state attorneys general to conduct on-the-ground assessments of competition and consumer issues, enhance coordination between federal and state agriculture and competition authorities, create new and more independent research programs, and ultimately result in fairer and competitive markets and more resilient supply chains.” USDA has allocated \$15 million in funding to the initiative, which includes funds to be provided to state attorneys general to promote cooperation with USDA.^[2]

Focus areas of the Partnership, as announced in a USDA [press release](#), include:

- Anticompetitive market structures and practices, as well as price gouging and other anti-consumer practices, in food, retail, meat and poultry processing, and other agriculture industries.
- Lack of choices for consumers and producers.
- Conflicts of interest, misuse of intellectual property, and anticompetitive barriers across the food and agriculture supply chains, such as in seed markets.

USDA’s announcement identifies some of the ways in which it is enlisting support and committing resources to the Partnership. The Center for State Enforcement of Antitrust and Consumer Protection Laws, a nonpartisan, nonprofit organization with a similar mission of providing support to state antitrust enforcement authorities, has been announced as a partner in the initiative, with the Center establishing mechanisms for federal-state coordination, such as an “oversight committee” to establish standards for the partnership, and a “project selection advisory committee” to review project requests and recommend approval. This partnership with the State Center is to receive the bulk of the \$15 million that the USDA is dedicating to competition-related partnerships. The American Antitrust

Institute, another nonprofit competition advocacy organization, is also identified as a resource supporting the states, although its role is less clearly defined.

This Partnership is just one of many ways in which the Biden Administration has been directing resources and attention to competition concerns in the food and agriculture sectors.

- On the same day it announced the Agricultural Competition Partnership, the USDA announced the formal establishment of the Farmer Seed Liaison Initiative, as part of USDA's efforts to implement recommendations from a [March 2023 report](#) prepared by its Agricultural Marketing Service regarding competition in seeds and other agricultural inputs. This initiative provides a point of contact within the USDA for those working with seeds, aiming to “connect seed growers and intellectual property administrators, antitrust regulators, licensing and labeling enforcers, and other federal partners to ensure that farmers have the choices they need to be successful.”^[3] This has included, for example, the launch of an online resource facilitating access to, and understanding of, the US Patent and Trademark Office's Pre-Grant Publication system and Patent Center so that stakeholders can view applications for patents on new plants, traits, and non-transgenic breeding methods.^[4]
- Announcements of the Farmer Seed Liaison Initiative and the Agricultural Competition Partnership both come on the heels of USDA Secretary Tom Vilsack announcing that USDA is “making investments to increase independent meat and poultry processing capacity, expand market opportunities for farmers and support a growing workforce in rural areas.”^[5]
- The Biden Administration has also sought to reinvigorate the Packers and Stockyards Act, including through the recent Proposed Rule on Inclusive Competition and Market Integrity, aimed at “promot[ing] inclusive competition and market integrity in the livestock, meats, poultry, and live poultry markets.”^[6]
- The Biden Administration has pursued multiple antitrust enforcement actions affecting food and agriculture products, including against agricultural pesticide manufacturers, beef processors, and poultry processors, with some of these actions brought in coordination with state attorneys general. However, the Administration's aggressive approach has had limited litigation success to date, obtaining some settlements and pleas, while having other actions rejected by juries or abandoned by the government after extensive proceedings. Several cases remain pending.

This large-scale coordination between the USDA and state governments is in line with the “whole-of-government” approach to competition signaled in President Biden's July 2021 [Executive Order on Promoting Competition in the American Economy](#)—an approach the Biden Administration calls “necessary to address overconcentration, monopolization, and unfair competition in the American economy” and “supported by existing statutory mandates.”^[7]

TAKEAWAYS

The announcement of the Partnership demonstrates the Biden Administration's commitment to leveraging resources towards identifying market structures that state and federal actors, now in greater coordination, perceive to threaten competition with the result of increased prices and reduced consumer choice in the agricultural sector specifically. The Partnership is still at an early stage, but the specific allocation of \$15 million in funding indicates that the Biden Administration is putting money behind its rhetoric, and more activity is likely to follow. Companies should be mindful that a wide range of business practices—from acquisition of intellectual property rights, to corporate consolidations and restructuring—may come under increased scrutiny.

State attorneys general—now with increased moral and monetary support from the federal government—may become increasingly active in investigating and challenging alleged anticompetitive conduct in the food and agriculture sectors. Moreover, though [31 states and the District of Columbia have announced their participation](#) in the Partnership at the time of this post, all states remain eligible to join. Therefore, businesses in the food and agriculture sectors—regardless of where they operate or sell in the United States—should remain vigilant in reviewing, refining, and preparing to defend, if necessary, business practices that could be viewed as anticompetitive by the Administration.

^[1] <https://www.usda.gov/media/press-releases/2023/07/19/usda-launches-historic-partnership-with-artisan-state-attorneys>. Please contact a member of the Winston & Strawn Antitrust/Competition Practice or your Winston relationship attorney for further information.

^[2] <https://www.ams.usda.gov/about-ams/fair-competitive/competitive-partnership-faqs>.

^[3] <https://www.ams.usda.gov/rules-regulations/seed-liaison>.

^[4] <https://www.ams.usda.gov/rules-regulations/seed-liaison/uspto-pending-patents>.

^[5] <https://www.usda.gov/media/press-releases/2023/06/29/biden-harris-administration-partners-agricultural-producers-promote>.

^[6] <https://www.ams.usda.gov/rules-regulations/unfair-practices-violation-packers-and-stockyards-act>.

^[7] For background regarding the issuance of this Order, and the specific initiatives targeting the agriculture industry, [visit the Competition Corner post](#).

4 Min Read

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