

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OLEAN WHOLESALE GROCERY)	
COOPERATIVE, INC., JOHN GROSS)	
AND COMPANY, INC., and on behalf of)	
a putative class,)	
)	
<i>Plaintiffs,</i>)	No. 19 C 8318
)	
v.)	Judge Virginia M. Kendall
)	
AGRI STATS, INC., <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

MEMORANDUM OPINION AND ORDER

This is an antitrust case brought by direct purchasers of turkey products against several turkey wholesalers and a company that produces statistical reports about the agricultural industry. The Complaint alleges that Defendants conspired, in violation of Section 1 of the Sherman Act, to exchange competitively sensitive information and that this exchange caused Plaintiffs to pay more for turkey than they would have under normal market conditions. Defendants now move to dismiss the Complaint for failure to state a claim. For the reasons set forth below, the Joint Motion (Dkt. 144) is largely denied, Kraft’s Motion (Dkt. 146) is granted, Farbest’s Motion (Dkt. 150) is denied, and Cooper’s Motion (Dkt. 148) is denied.

BACKGROUND

I. The Parties

Plaintiff Olean Wholesale Grocery Cooperative, Inc. (“Olean”) is a retailers’ cooperative, the members of which are independent, family-owned supermarkets located in New York, Pennsylvania, and Ohio. (Dkt. 1 ¶ 38.) Olean purchased turkey from one or more of the Turkey

Defendants¹ during the Class Period.² (*Id.*) John Gross and Company, Inc. (“John Gross”) is a food distributor located in Pennsylvania that purchased turkey directly from one or more of the Turkey Defendants during the Class Period. (*Id.* ¶ 39.)

The Turkey Defendants are the leading suppliers of turkey in the United States, together controlling approximately 80% of the country’s wholesale turkey market. (*Id.* ¶ 1.) Defendant Agri Stats is a company that provides “secretive information exchange services” to companies in a variety of agricultural sectors, including the turkey sector. (*Id.* ¶ 2.) Plaintiffs allege that the Turkey Defendants entered into an agreement between 2010 and 2017 to exchange competitively sensitive information—namely, production and sales data. (*Id.* ¶ 3.) They exchanged this data with one another through Agri Stats. (*Id.*)

According to slides from a 2010 Agri Stats presentation, each Turkey Defendant (or brands associated with each of them), provided data to Agri Stats, which Agri Stats used to produce industry reports. (*Id.* ¶¶ 8–9.) The data provided to Agri Stats was “current and forward-looking.” (*Id.* ¶ 10.) Agri Stats identified the participants that provided data for each report, so Turkey Defendants understood which companies contributed data to the reports. (*Id.* ¶ 81.) Although Agri Stats reports do not specifically connect particular data sets to individual producers, the data was sufficiently detailed such that each Turkey Defendant could infer the company to which each data set referred. (*Id.* ¶ 18.) The reports provide information specific to each turkey producer as to profits, prices, costs, and production levels. (*Id.* ¶ 10.) One confidential witness explained that one company had five separate facilities listed in an Agri Stats report, which made it simple to

¹ The Court uses the term “Turkey Defendants” to refer collectively to: Butterball LLC (“Butterball”), Cargill, Inc. and Cargill Meat Solutions Corp. (together, “Cargill”), Cooper Farms, Inc. (“Cooper”), Farbest Foods, Inc. (“Farbest”), Hormel Foods Corp and Hormel Foods, LLC (collectively, “Hormel”), House of Raeford Farms, Inc. (“Raeford”), Kraft Heinz Foods Company and Kraft Foods Groups Brands, LLC (collectively, “Kraft”), Perdue Farms, Inc. and Perdue Foods, LLC (collectively, “Perdue”), and Tyson Foods, Inc., the Hillshire Brands Company, Tyson Fresh Meats, Inc., and Tyson Prepared Foods, Inc. (collectively, “Tyson”).

² The Class Period is January 1, 2010 through January 1, 2017. (Dkt. 1 at 4.)

determine the identity of that company even though the report did not specifically state the name of the company. (*Id.* ¶ 18.)

Agri Stats marketed its reports as giving the Turkey Defendants the ability to improve their profitability. (*Id.* ¶ 11.) Its reports identified opportunities for the Turkey Defendants to raise prices to meet those of their competitors. (*Id.*)

Agri Stats reports were only made available to turkey producers and not to any buyers in the market. (*Id.* ¶ 10.) In order to receive the reports, Agri Stats its clients charged “hefty fees.” (*Id.*) The information in the reports was not otherwise publicly available. (*Id.*) Agri Stats only allowed a company to access the data in its reports if the company contributed its own data to the report, thus ensuring that only the Turkey Defendants and similarly situated producers would have access to the data. (*Id.* ¶ 29.) Producers that comprise ninety-five percent of the turkey market used Agri Stats’s turkey reports during the Class Period. (*Id.* ¶ 74.) Turkey Defendants received monthly detailed reports and graphs from Agri Stats that allowed each of them to compare their performance, prices, and costs to those of other Turkey Defendants. (*Id.* ¶ 76.) Agri Stats also issued reports regarding live operations, processing, further reprocessing, feed costs, and sales. (*Id.*) The sales data contained in those reports was less than six weeks old. (*Id.* ¶ 78.)

Industry participants relied on Agri Stats reports in the analysis of their business operations. (*Id.* ¶ 12.) Hormel, for example, stated in a 2011 presentation that “Jennie-O Turkey Store³ is consistently one of the top companies in operating profits (Agri Stats).” (*Id.*) A confidential witness who was a sales executive at Butterball explained that Butterball used the Agri Stats reports to “evaluate—by item, item group, price, distribution—where we stood against other turkey companies” and that the reports played an important role in Butterball’s price-setting

³ Jennie-O is a Hormel turkey brand. (Dkt. 1 ¶ 9.)

process. (*Id.* ¶ 13.) A confidential witness who was an accountant at Cooper explains that Cooper executives met with Agri Stats representatives every six months and that information received from Agri Stats helped Cooper improve its returns per pound. (*Id.* ¶¶ 14–15.)

In the chicken industry, Agri Stats’s reports contain data on “the number of broilers placed, chick mortality by week and percentage, chick cost, days between flocks provided to contract farmers, feed conversion rates, and average daily weights. (*Id.* ¶ 17.) The information provided in reports for the turkey industry is substantially similar. (*Id.*) Having access to this data enabled the Turkey Defendants to monitor industry-wide supply levels. (*Id.*)

In the pork industry, Agri Stats’s reports enable subscribers to compare the prices they charge against the national average net price and against the national top 25 percent average price. (*Id.* ¶ 79.) These details enabled subscribers to see how much more they could charge if they charged the national average or a top-25-percent price. (*Id.*) The information provided in Agri Stats’s turkey reports—the uses to which the information can be put—is substantially similar in the turkey market. (*Id.*)

The Agri Stats turkey reports served to improve Turkey Defendants’ profitability. (*Id.* ¶ 83.) The reports accomplish this by ranking the companies by profitability and providing each subscriber with its variance from the average profitability. (*Id.*) A confidential witness explains that Agri Stats gave live presentations to Turkey Defendants to explain to them how to use the reports to compare themselves against competitors. (*Id.* ¶ 87.)

Throughout the Class Period, the number of turkeys slaughtered remained relatively stable, but prices increased dramatically. (*Id.* ¶¶ 20–21, 30, 108.)⁴ In other words, demand appeared to rise, but turkey production did not rise to meet that demand. (*Id.* ¶ 21.)

⁴ The Complaint says that “industry supply decreased significantly from 2009 to 2015, but Figure 1 shows that the market experienced small rates of changes year-over-year in terms of heads slaughtered. (*Id.* ¶ 108.)

During earnings calls during the Class Period, Hormel repeatedly discussed the industry's success in cutting production and maintaining industry-wide production discipline. (*Id.* ¶ 23.)

In addition to contributing to Agri Stats's reports, the Turkey Defendants had frequent opportunities to communicate because they were members of various trade associations. (*Id.* ¶ 22.) The National Turkey Federation held annual meetings during the Class Period; these meetings were widely attended by executives of the Turkey Defendants. (*Id.* ¶¶ 22, 126.) These meetings gave industry participants regular, informal opportunities to meet in-person and discuss pricing and production in the turkey industry. (*Id.* ¶ 126.) Butterball, Cargill, Foster, Tyson, and Perdue all have representatives on the Board of Directors of the U.S. Poultry & Egg Association, and that Board holds quarterly meetings. (*Id.* ¶ 129.) Butterball, Cargill, Hormel, and Tyson also have representatives on the North American Meat Institute (NAMI), an organization that represents 70% of the turkey industry and which holds annual summits. (*Id.* ¶ 130.)

Plaintiffs allege that the turkey industry has several characteristics that make it likely that information exchanges will cause anticompetitive effects; namely, the product is fungible, the market has price-based competition, demand for turkey is relatively inelastic, and the market features a trend toward price uniformity. (*Id.* ¶¶ 28, 103–07.)

Beginning in 2010, the turkey industry experienced upward price movements that cannot be explained by increased costs. (*Id.* ¶ 109.) Jennie-O Turkey for example, began experiencing a divergence between revenue and costs in or around 2010. (*Id.* ¶ 111–13.) At this same time, prices for turkey began to increase across the market, but production did not increase accordingly. (*Id.* ¶ 115.)

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