

## Tyson Chicken 'tournament' system, promises, under fire by growers

PaRR Strong evidence

- Growers' Packers & Stockyards Act case proceeds against Tyson in Kentucky
  - PSA action has 'broad implications' for factory animal farming and meat industry—lawyer
  - Integrators' payment structure 'fundamentally unfair and anticompetitive'—lawyer
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A group of Kentucky farmers is using a century-old statute to challenge **Tyson Chicken's** allegedly abusive business practices, with a view to reforming the relationships between vertically-integrated national companies like Tyson and farmers who raise animals for food.

Charles Morris, a farmer in Sebree, Webster County, Kentucky, owns **Morvatt Enterprises**, one of Tyson's largest Kentucky poultry growers with 52 growing houses on seven separate farms. He is among the group suing Tyson under the Packers & Stockyards Act (PSA) and other tort claims.

David Muraskin, a staff attorney at Public Justice, a Washington, DC-based non-profit national public interest law firm which represents the plaintiffs in this case, told *PaRR* that the case "has very broad implications" beyond the growers in western Kentucky.

"The core of the PSA case is arguing that the payment structure under which these growers is paid is fundamentally unfair and anticompetitive," Muraskin said. "This is a system that is writ large across all of Tyson's enterprises, and across the poultry industry, and something very similar is used in other meats agriculture. Thus this case has broad implications for the whole industry," he said.

A Tyson spokesperson said that the company does not comment on pending litigation. According to its website, Tyson has contracted with poultry farmers since the 1940s and currently pays USD 15bn annually to independent farmers who supply it with cattle, hogs and chickens. Tyson depends on more than 11,000 independent farmers across the country, including more than 4000 chicken growers.

Not strictly an antitrust statute, the PSA provides a regulatory framework for the vertical relationships between farmers and packers or poultry integrators. The US Congress enacted the law in 1921 to supplement the antitrust laws because of the way meat packers exploited farmers and consumers, according to Peter Carstensen, a senior fellow at the American Antitrust Institute.

Poultry integrators are vertically-integrated regional entities that own hatcheries, processing plants and feed mills. They contract with farmers to raise chicks to market weight – so-called "broiler chickens" – and to produce replacement breeder hens for their hatcheries. Under these contracts, the integrator provides the farm with chicks, feed and veterinary and transportation services. The farms raise, house and feed the birds.

The integrators then pay farmers for the broiler chickens under a complicated—and controversial—performance-based "tournament system" which, presuming a level playing field, ranks the farmers and is supposed to favor the best producers.

The Kentucky chicken grower plaintiffs in this case claim that Tyson manipulates this payout system by pitting grower against grower, thereby abusing its monopsony power – that is, its position as the only buyer in

this geographic market. They allege that Tyson “dupes farmers into believing they can carve out a livelihood as growers, and then works the system against them,” Muraskin said.

John Whitfield, a principal at Whitfield Bryson & Mason which represents Morris and the other plaintiffs, said the effect of Tyson’s system “is a concentrated effort to keep these growers under its thumb so they cannot go anywhere else.” Apart from doing well for our clients, “it’s time for some fundamental change in this industry across the board,” he said.

Carstensen said that the complaint raises “almost all the issues under the PSA that I could imagine.” He said that the plaintiffs identified the monopsony issues that make exploitation of growers fit even the incorrect, but controlling, requirement of competitive effect for some violations of the PSA.

Antitrust lawyers who back farmers said that appellate opinions in the US Fifth and Sixth Courts of Appeals assert that the PSA requires a showing of competitive harm.

Muraskin said that what he finds “exciting about the PSA case in Kentucky is that we are working within those confines...to figure out how to do a mass change that will not just benefit our growers but hopefully all the growers in western Kentucky and then hopefully have a more systemic reform.”

Carstensen said that the complaint “asserts that violation of US Department of Agriculture’s PSA rules would be per se anticompetitive. This is a position that I think is correct and relies on the analogy to conduct that is per se illegal under antitrust law”—which is to say that no specific harm to competition need be shown because it is irrebuttably presumed, he said.

The case, originally filed in a Kentucky state court, was removed to the US District Court for the Western District of Kentucky in Owensboro last June. It survived a motion to dismiss in November and currently is in discovery.

The class plaintiffs are represented by Public Justice, Whitfield Bryson & Mason, and Butler Farm & Ranch Law Group

Tyson is represented by Wells & Wetzel, and Shook, Hardy & Bacon.

The case is *Morris et al. v Tyson Chicken et al.*, no. 15cv77, in the US District Court for the Western District of Kentucky.

by Peter Geier in Washington DC

- Companies

- Tyson Foods, Inc, Shook, Hardy & Bacon L.L.P. (Lawyer) Wells & Wetzel (Lawyer)
- Morvatt Enterprises LLC Whitfield Bryson & Mason LLP (Lawyer) Public Justice (Lawyer)

- Agencies

- US Department of Agriculture