

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
 Terrell McSweeney**

<p>In the Matter of</p> <p>National Association of Animal Breeders, Inc. a corporation.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. C-4623</p>
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COMPLAINT

The Federal Trade Commission (“Commission”), pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, having reason to believe that the National Association of Animal Breeders, Inc. (“Respondent” or “NAAB”), a corporation, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

NATURE OF THE CASE

1. NAAB is a trade association of cattle artificial insemination firms. NAAB entered into a Cooperative Research and Development Agreement (“CRADA”) with the United States Department of Agriculture (“USDA”) to cooperate with a USDA laboratory project that was developing a new technology for evaluating the genetic merit of dairy bulls. The CRADA granted NAAB exclusive access to the new technology for five years.

2. Over two years after entering into the CRADA, and after the USDA laboratory developed the new technology, NAAB approved a resolution that regulated the ability of its regular members (“Members”) to use or sell access to the new technology. The resolution impeded the development of a market in which NAAB Members could sell access to the new technology to non-members of NAAB, and dampened competition among NAAB Members when buying dairy bulls for semen production.

RESPONDENT

3. Respondent National Association of Animal Breeders, Inc. is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Missouri, with its office and principal place of business located in Madison, Wisconsin.
4. Respondent is a trade association with about twenty-four Members that are in the business of collecting, processing, freezing, marketing or selling dairy cattle semen for artificial insemination. Except to the extent that competition has been restrained as alleged herein, many of Respondent's Members have been and are now in competition among themselves and with other artificial insemination organizations.
5. Respondent's Members buy dairy bulls from dairy farmers and breeders that are not members of NAAB (collectively "Non-Members") to produce semen for artificial insemination.
6. Respondent's Members account for over ninety percent of dairy cattle semen sales in the United States.

JURISDICTION

7. Respondent conducts business for the pecuniary benefit of its Members and is therefore a "corporation" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.
8. The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

NAAB ENTERS INTO A CRADA WITH USDA TO COOPERATE WITH A PROJECT TO DEVELOP TECHNOLOGY THAT PREDICTS THE GENETIC MERIT OF DAIRY BULLS

9. In September 2006, NAAB entered into a CRADA with USDA. NAAB agreed therein to contribute funds and certain logistical support to a USDA laboratory project that would develop technology to determine the genomic predicted transmitting ability ("GPTA") of a dairy bull.
10. The GPTA of a dairy bull is determined by analyzing the genetic makeup of the bull. It consists of information about the commercially relevant traits, such as milk yield, that the bull is expected to transmit to its daughters.
11. The USDA laboratory substantially developed the technology that generates GPTAs for dairy bulls by April 2008.
12. The new GPTA technology became the best indicator of a dairy bull's commercial value for transmitting genetic traits.

13. The traditional method to predict the ability of a dairy bull to transmit commercially desirable traits, such as milk yield, to its daughters involves observing the traits of several dozen daughters of the bull when they start producing milk. This method is costly and takes about four to five years to complete.
14. The CRADA, as amended, granted NAAB exclusive access to the resulting GPTA technology from March 1, 2008, to February 28, 2013 (the “Five-Year Period”).
15. The CRADA did not restrain in any way the ability of NAAB or its Members to use the new technology or to sell access to it, nor did it authorize NAAB or its Members to adopt rules that restrain in any way the ability of its Members to use the new technology or to sell access to it.
16. During the Five-Year Period, the USDA laboratory was the only source of GPTAs and pursuant to the exclusive access that USDA granted to NAAB in the CRADA, the USDA laboratory could provide GPTAs only in response to requests submitted through NAAB.

THE CHALLENGED CONDUCT

17. On October 14, 2008, NAAB approved a resolution that regulated the access to GPTAs during the Five-Year Period (the “Resolution”). In so doing, NAAB acted as a combination of its Members.
18. The Resolution specifies that a NAAB Member must have one of the following interests in a dairy bull to obtain the GPTA of the bull: (a) own the bull, (b) have an agreement to purchase at least a 30% interest in the bull, (c) have a lease on the bull, or (d) have an exclusive marketing agreement for the bull (any one of these four interests is henceforth referred to as an “Interest” in the bull).
19. The Resolution requirement that NAAB Members have an Interest in a dairy bull to obtain the GPTA of the bull impeded NAAB Members from selling GPTAs to Non-Members for the Non-Members’ bulls in which the NAAB Members did not have an Interest.
20. The Resolution impeded the development of a market in which NAAB Members sell to Non-Members GPTAs for the Non-Members’ bulls without having an Interest in the Non-Member’s bull.
21. The Resolution caused NAAB Members to obtain the GPTA of dairy bulls for semen production only after acquiring an Interest in the bull, and Non-Members to sell bulls without first knowing the GPTA.
22. Selling dairy bulls for semen production in this environment – without the NAAB Member or the Non-Member knowing the GPTA – dampened competition among NAAB Members when buying dairy bulls for semen production. Access to GPTA information would tend to drive the price of the bull toward its true value.

23. The Resolution expired on February 28, 2013. After the Resolution expired, GPTAs became available to Non-Members for a fee through an industry organization.

VIOLATION CHARGED

24. The purpose, effect, tendency, or capacity of the combination, agreement, acts and practices alleged in Paragraphs 17 through 23 was to restrain competition unreasonably among Respondent's Members. These restraints injured Non-Members by depriving them of the benefits of free and open competition among Respondent's Members.
25. The combination, agreement, acts and practices alleged in Paragraphs 17 through 23 constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts and practices, or the effects thereof, will recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-sixth day of September, 2017, issues its Complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: