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DAF/COMP/GF/WD(2006)29



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

18-Jan-2006

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/GF/WD(2006)29
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Global Forum on Competition

CARTEL CASE STUDIES

Case submitted by Indonesia

-- Session III --

This case is submitted by Indonesia in view of its discussion in GFC Sub-Session 2 on Thursday 9 February 2006 (from 9:15 am).

JT00200098

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KPPU CARTEL CASE WITHOUT DIRECT EVIDENCE: CASE NO. 02/KPPU-I/2002

1. Allow me first of all to express our appreciation to the OECD Global Forum on Competition for your invitation to join in this Forum and also to give us this opportunity to make our presentation. I hope that you understand that our competition agency is relatively inexperienced, compared to other countries that have been enforcing competition laws for a longer period. On behalf of the Commission for the Supervision of Business Competition of the Republic of Indonesia I convey to you our good wishes for the success of this Forum.

2. This Forum is valuable as a means for exchanging experiences on the implementation of the functions of competition authorities in respective countries, particularly in handling business competition cases.

3. In our country, pursuant to our Law No. 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, a case can begin on the basis of a report, or complaint, by a party who knows or suspects that a violation of the Law has taken place. The report should be clear and complete concerning the violation and should state the reporter's identity.

4. In addition, the Commission can conduct an examination of business actors if there is an allegation of a violation of the Law No. 5/1999 without any report. The information of potential business practices in violation of Law No. 5/1999 could be obtained from reports in the news media or as a result of the Commission's research.

1. Case Reported

5. The case basically concerned an allegation of a price fixing cartel involving Day Old Chicks (DOC) final stock. A report was received from a business association alleging that the cartel participants were JCI Ltd (Reported party I), CPI Ltd (Reported party II), SP Ltd (Reported party III), LASP Ltd (Reported party IV) and WJC Ltd (Reported party V).

6. The report alleged that:

- Each of the five reported parties was vertically integrated poultry businesses. Their operations included breeding farms, grand parent stock and DOC final stock farms, poultry vitamins and medicines, poultry feed and feed raw materials, slaughter houses and chicken meat processing. The organisation of these businesses is shown in Figure 2 below.
- The price of DOC final stock was set collectively by the reported parties.
- Independent, small and medium sized breeding farms could not set their own prices, since the supply of parent stock was dominated by the reported parties, and it was reported that supply of parent stock would be terminated if the small and medium breeding farms sold their DOCs at other than at the decided price.

2. KPPU Clarification

7. The Secretariat of the KPPU conducted an initial assessment on the basis of the report. In the assessment, the Commission Council did not obtain any letter or document confirming the price fixing agreement alleged in the report. There was one document that the Commission hoped to find, which would

have indicated the existence of a cartel. It would have confirmed that the reported parties refused to supply parent stock to a breeding farm that failed to observe the agreed upon selling price. Unfortunately, the Commission did not find such evidence.

8. Having failed to obtain such direct evidence of agreement, the Commission declared the report to be incomplete. The investigation was cancelled and placed into the List of Reports Book (Book II).

9. The Commission nonetheless pays close attention to the poultry industry, which it considers to be a strategic one. Therefore the Secretariat of the Commission recommended organising a public hearing into the issues raised by the report. Based on the information obtained in the public hearing, the Commission determined that it was necessary to conduct monitoring and evaluation of the DOC livestock market.

3. KPPU Monitoring

10. In performing the monitoring activities, the Monitoring Team found the existence of a violation of Article 11 of the Law no. 5/1999. Based on that finding, the Monitoring Team recommended to the Commission to continue an examination of the market in DOC final stock. The Commission agreed with the recommendation of the Monitoring Team.

11. The following is a summary of the evidence considered by the Commission Council in its examination:

- Figure 1 below describes the process by which DOC livestock is produced. Grand parent stock is used to produce parent stock, which is then sold to DOC breeding farms. The breeding farms produce DOCs, which are sold to independent breeding farmers. These farmers fatten the chickens and sell them in the market.
- JCI Ltd (Reported party I), CPI Ltd (Reported party II), SP Ltd (Reported party III), LASP Ltd (Reported party IV) and WJC Ltd (Reported party V) dominate the production of grand parent stock and parent stock. There exist some small and medium sized breeding farms in addition to those operated by the reported parties, but these independent breeding farms purchase their parent stock from the reported parties.
- As shown in Figure 2, the reported parties are integrated vertically, to the level of the breeding farms. The breeding farms sell their DOCs both to independent breeding farmers and to plasma breeding farmers (the equivalent of independent breeding farmers in figure 1). The plasma breeders enter into a written core-plasma agreement with the integrated (core) producer. This agreement is an exclusive dealing arrangement, whereby the core company will provide all production inputs and the plasma in turns sells all of its output to the core. The profit margin of the plasma will be calculated and paid by the core after all outputs are sold and the revenue determined.
- Exclusive dealing is prohibited by Law No. 5/1999.
- The reported companies differentiate their DOC final stock price selling between plasma breeders and independent breeders.
- DOC final stock prices from breeding farms were in some instances different and in others, similar.

- DOC final stock prices are influenced by demand and supply; it is difficult to determine the companies that are either price leaders or price followers.
- The reported companies could not control DOC final stock production in the short run because it could not be predicted. The supply of DOC final stock is relatively constant in the medium term (one month or longer), however.
- In 1999, the breeder cooperative in Bogor requested the Director General of Breeder Production Cultivation, a government agency, to appeal to the integrated breeders to lower their DOC prices. After discussions between the Director General and the breeders, the prices were reduced.

4. Conclusion of the Monitoring

12. Based on the evidences above, the Commission Council come to the conclusion that:

- The agreements between JCI Ltd (Reported party I), CPI Ltd (Reported party II), SP Ltd (Reported party III), LASP Ltd (Reported party IV) and WJC Ltd (Reported party V) and plasma breeders were in violation of the provision of Law no. 5/1999 prohibiting exclusive dealing.
- The Commission Council did not conclude that the reported parties had engaged in a cartel in violation of Law No. 5/1999.
- The Commission Council recommended that the Commission (KPPU) conduct an examination focusing on the exclusive dealing between the Core Companies and their plasma breeders.

4.1 KPPU Examination

13. The decision of the Commission was based on the consideration of all the facts discovered during the examination, including the agreement between the breeders resulting in reductions in the prices of DOC final stock to livestock cooperatives in Bogor. However, the Commission Council concluded that this agreement was incidental, that it occurred at the end of 1999 and that it did not extend after that period. Thus, this agreement, considered together with the other evidence developed in the examination, was not sufficient proof that there had been a cartel agreement in violation of Article 11 of the Law No. 5/1999

4.2 Closing Statement

14. The KPPU failed to develop evidence sufficient to prove that there had been a cartel in the DOC livestock supply. The KPPU did recommend to the Ministry of Agriculture to revise its regulation on industry partnership between core companies and their plasma breeders in order to avoid the negative impact of exclusive dealing business relationships. It was noted that the existence of the core-plasma partnerships increased the market power of DOC producers.

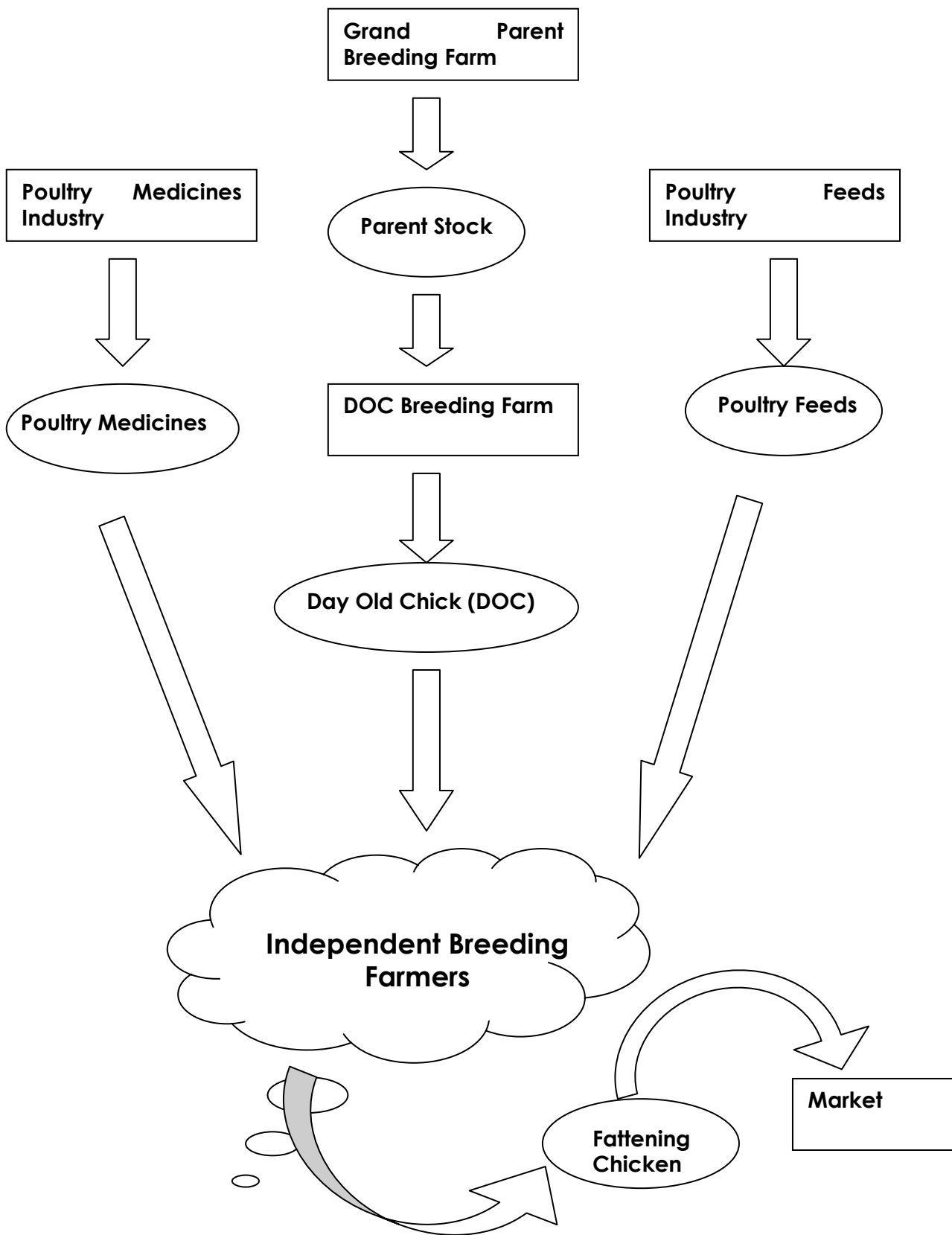


Fig 1. Supply Chain of Independent Breeding Farmers

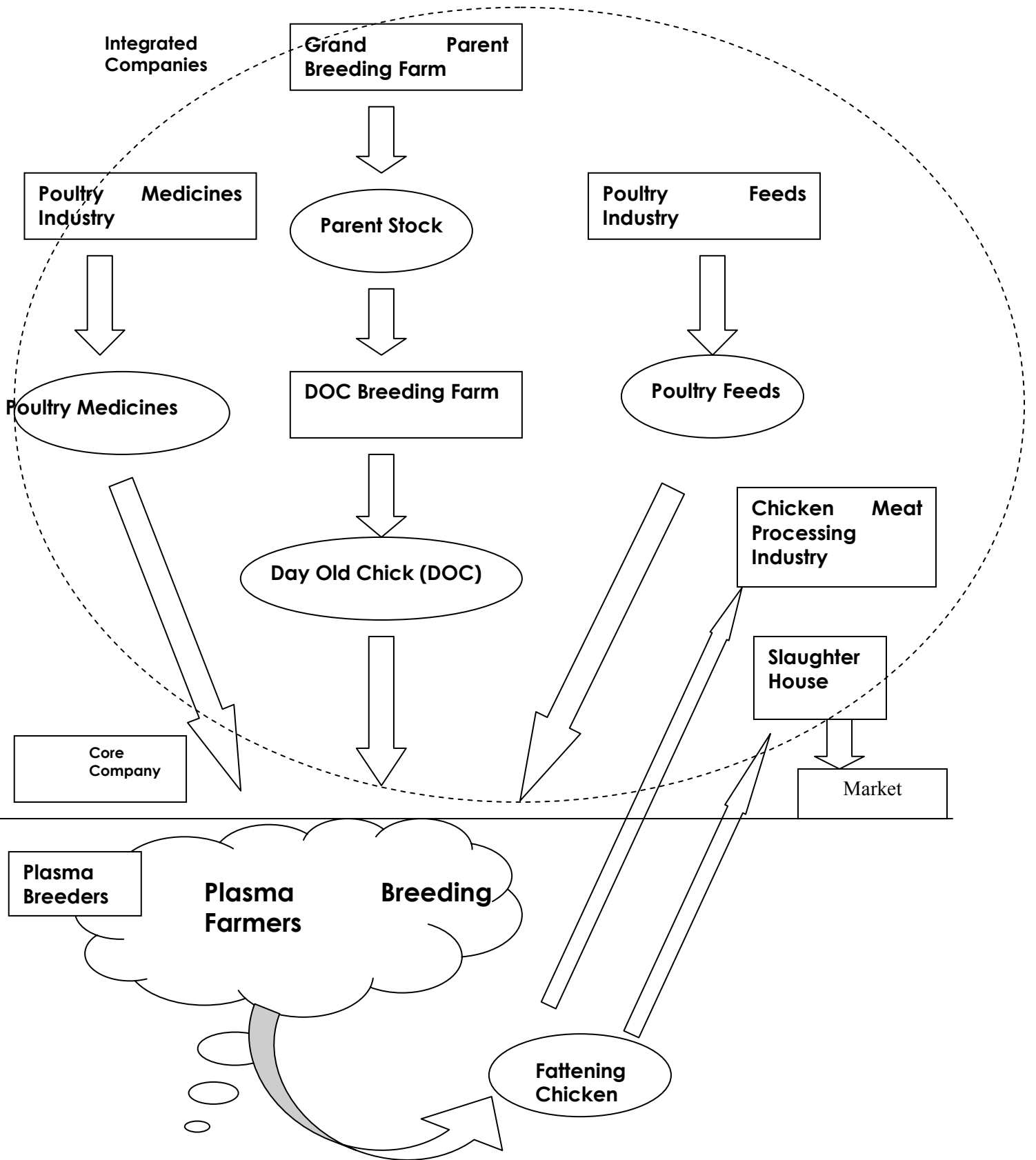


Fig 2. Supply Chain of Plasma Breeding Farmers