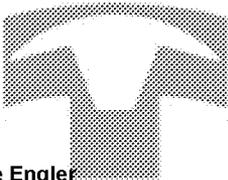


From: Ross Wilson <Ross@tcfa.org>
Sent: Thursday, December 31, 2009 6:07 PM
To: ATR-Agricultural Workshops <agriculturalworkshops@usdoj.gov>
Subject: TCFA Comments DOJ GIPSA workshop final 123109 with lth and sig.doc

Please find attached comments presented by Texas Cattle Feeders Association.

**TEXAS
CATTLE
FEEDERS
ASSOCIATION**

5501 I-40 W.
Amarillo, TX 79106-4617
(806) 358-3681
FAX (806) 352-6026
info@tcfa.org
www.tcfa.org



Mike Engler
Chairman

Bo Kizziar
Chairman-Elect

James M. Peters
Vice Chairman

Ross Wilson
President & CEO

DIRECTORS

Scott Anderson
David S. Baumann
Raymond Brown
Sammy D. Brown
Kevin Buse
Monte Cluck
Dave DeLaney
Chris Hitch
Robby Kirkland
Walter E. Lasley
Bill Roser
Patrick Schwab
Dale A. Smith
Mike Thoren
Monty Wheeler
Warren White

December 31, 2009

Legal Policy Section, Antitrust Division
U.S. Department of Justice
450 5th Street, NW, Suite 11700
Washington, DC 20001

The Texas Cattle Feeders Association (TCFA) appreciates the opportunity to provide comments regarding the 2010 workshops to explore competition and regulatory issues in the agricultural industry. TCFA represents cattle feeders and feedyards in Texas, Oklahoma and New Mexico. Our members produce and market more than 6.5 million head of fed cattle annually, or approximately 30% of the nation's fed cattle supply. Marketing issues, including an efficient, competitive and fair marketplace are of paramount importance to our members. TCFA also supports comments and related documents filed by the National Cattlemen's Beef Association.

TCFA appreciates the Department of Justice's (DOJ) initiative in promoting dialogue and educating producers and the public on the broad spectrum of agricultural commodity markets in the United States. For beef producers and the U.S. beef industry, "competition issues" are by no means a new or easy topic of discussion. Debate about maintaining a competitive market structure without implementing burdensome and market-distorting government restrictions on ownership and marketing alternatives for livestock producers has been going on for many years.

The Federal Register notice of August 27, 2009 cited specific topics that DOJ was interested in discussing including monopsony buyer power, vertical integration, legal doctrines and jurisprudence, economics and examples of potentially anti-competitive conduct. These are all appropriate but complex and highly technical economic and legal issues, and there are a limited number of qualified experts on these topics as they relate to the cattle and beef industry structure and marketing alternatives.

In addition, TCFA believes that the educational aspects of these workshops should also focus on risk management and capital requirements necessary in today's beef industry. The banking and risk management component of today's beef industry is an integral part of this discussion, and we urge that it be included in these discussions. The complexity of risk management at the cow-calf producer, stocker and particularly the feedlot, processing and retail segments of the beef industry must be considered and well understood by regulators, consumers and producers.

These topics cannot be adequately discussed or presented by those who do not have either decades of daily involvement in cattle and beef markets or academicians who have published peer-reviewed research on such topics.

Legal Policy Section, Antitrust Division
U.S. Department of Justice
December 31, 2009
Page Two

Those chosen to be panelists for these workshops must be qualified and recognized as leaders in their

respective areas of industry expertise.

Although agriculture at the macroeconomic level is depicted as one segment of the U.S. economy, today's agricultural commodity markets are all distinctly different and should be treated as such for the purposes of these workshops. In the livestock industry, each of the species should be treated as separate, unique and distinctly different markets. As such, we concur with DOJ's announcement to have a separate and distinct workshop for beef marketing to be held August 26, 2010 in Fort Collins, Colorado.

TCFA believes this workshop should be separated into several different panel discussions including:

1. A Production Panel that includes producers, experts in cattle feeding and a banking and risk management component as part of the discussion.
2. A Marketing Trends panel that includes Packer/Processors and the Retail segment of our industry.
3. A Panel of Economic Experts that have published peer-reviewed research specific to the operation of cattle and beef markets.
4. A Legal Panel of lawyers who have real world experience in litigating and regulatory aspects of the cattle and beef industries.

The beef industry is highly reliant upon the banking sector and the ability to borrow both working capital and capital for fixed assets. In today's world, bankers require an increasingly sophisticated level of risk management and these requirements do influence what happens in the marketplace. TCFA would suggest that these workshops include the opportunity for participants to gain greater understanding of risk management practices in cattle and beef markets.

Workshop attendees would also benefit from an explanation of the application of anti-trust laws to the agricultural sector including that of court cases and precedents and research into constitutional questions. This would include a discussion regarding the appropriate role for anti-trust and regulatory enforcement.

Other areas that need to be examined as part of these panel discussions include:

1. An explanation of the very different nature of production contracts versus marketing contract agreements and/or alliances in the beef industry.
2. An explanation of cash, formula/grid and forward contract pricing at the live level as well as a understanding of how wholesale and retail beef prices are established. A discussion of mandatory price reporting requirements including how they could be improved to aid in the role of price discovery.

Legal Policy Section, Antitrust Division
U.S. Department of Justice
December 31, 2009
Page Three

3. The critical role that the Chicago Mercantile Exchange plays in price discovery for feeder and live cattle and as one of several risk management tools available to producers.
4. The fixed costs of compliance with government regulations in the cattle feeding and processing sector should be strongly considered as to their impact on the economics of firm size.
5. The role of technology (ex: internet, video auctions) in creating additional marketing alternatives for producers.

TCFA also supports a separate workshop regarding the topic of margins between producers and retailers of agricultural commodities. One of the least understood issues for producers is the lack of quality data to interpret true volume-weighted farm to retail price spreads and profit margins. This workshop will offer significant educational value by providing an explanation of how retailers market beef, and the role of featuring in particular.

TCFA recommends panelists who can thoroughly explain differences between data sets kept by the Bureau of Labor Statistics, volume weighted or "scanner" data and/or actual volume weighted retail prices after bonus cards and other discounts are applied. Topics such as market power and the use of private labels by retailers and how these have affected beef demand should also be explored.

The beef market is one of the most researched and scrutinized agricultural markets in the United States. In fact, competition within the beef processing sector is arguably the most heavily researched topic of all agricultural markets. Therefore, there is a considerable body of research specific to this area available that we would encourage DOJ, USDA and interested participants to study prior to the August 26, 2010 livestock industry workshop in Fort Collins, CO.

Monitoring of U.S. cattle and beef markets occurs through a wide variety of government regulatory enforcement statutes and authorities including but not limited to the Packers and Stockyard Act, state regulated weights and measures, and the Commodity Futures Trading Commission. Equally important is the role of government in measuring the quality of U.S. beef via the grading standards. There is probably no other commodity that relies as heavily upon the role of USDA in providing (Prime, Choice and Select) quality grades to ensure that there is no question as to the veracity of these value-added labels.

There may be no other agricultural commodity that depends so heavily upon marketing claims, labels and standards to differentiate itself than the beef industry. In today's beef business, one of the most critical aspects of the marketplace is a producers' ability to differentiate themselves via marketing alternatives, including alliances.

As consumers demand for specific and often times branded beef products with specific quality attributes has increased, it has pulled our industry away from a commodity system toward a value-based system, increasing participation in supply chains or alliances. The number of cattle marketed through such programs has increased significantly in recent years and today there may be as much as 25 percent of the nation's cattle involved in some form of vertical coordination or alliance.

The obvious objective of the producers involved in these marketing alliances is to increase profitability. This can occur via many different mechanisms including increasing marketing opportunities for cattle of specific types, improving the health and efficiency of cattle and improved marketing. They may also include USDA process verified programs, differing production or processing practices or programs that seek to improve product consistency and consequently consumer acceptance.

TCFA believes that direct federal involvement in cattle and the beef production business should be minimal. TCFA members believe that a national agricultural policy should be oriented to a free, private enterprise competitive market system and that any agricultural policy that guarantees profit or restricts the operation of the competitive marketplace should be discouraged. Private enterprise alternatives in marketing and risk management should be developed and encouraged as the preferred alternative to government programming.

For the August 26, 2010 workshop in Fort Collins, Colorado, TCFA strongly suggests that the economists chosen for this panel have published peer-reviewed research specifically in the area of cattle and beef market structure.

PANEL OF INDUSTRY ECONOMISTS that we recommend are well recognized experts in this specific area and include:

Dr. Steve Koontz, Associate Professor, Department of Agricultural and Resource Economics at Colorado State University

Dr. Koontz has a B.S. and M.S. in agricultural economics from Virginia Polytechnic Institute and State University and a Ph.D. in agricultural economics from the University of Illinois. He has been on the faculty at Colorado State University since January 1998. He was on faculty at Oklahoma State University for six years and Michigan State University for two years prior to joining Colorado State University.

Dr. Koontz works in the area of commodity marketing, risk management, price analysis, and industrial organization. He has co-authored the second edition of *Agricultural Futures and Options: Principles and Practice*, with Wayne D. Purcell.

His responsibilities at Colorado State University include research, teaching, and outreach. His teaching program includes graduate courses in research methods and agricultural markets and undergraduate courses in agricultural and commodity

marketing. His research and outreach programs are in the areas of commodity market and price analysis, futures markets and risk management, and market organization and performance. His research focuses largely on livestock and meat product markets.

He was a member of multi-institution research team that worked on the cattle and beef portion of the 2007 USDA Grain Inspection Packers and Stockyards Administration *Livestock and Meat Marketing Study*. And he

was part of the Oklahoma State, Kansas State, and Iowa State University faculty team that worked on parts of the 1996 USDA Packers & Stockyards Administration *Concentration in the Red Meat Industry Study*.

Dr. Clem Ward

Link: <http://agecon.okstate.edu/faculty/profile.asp?id=clement.ward&type=faculty>

Dr. Ted Schroeder, Kansas State University, Manhattan, Kansas

Ted Schroeder is a University Distinguished Professor of Agricultural Economics at Kansas State University. He is director of the North American Institute for Beef Economic Research (NAIBER.org). Ted has done extensive research in livestock market risk management, beef demand, cattle and beef marketing, and price discovery with more than 90 published journal articles and more than 200 other publications. He has worked as a consultant on numerous beef and cattle value added projects and he has also been the principal investigator on a large number of externally funded grants. He has a B.S. from University of Nebraska and Ph.D. from Iowa State University. He has been on the faculty in Agricultural Economics at Kansas State University since 1986 teaching and conducting research. He teaches graduate agricultural marketing and nine of his former Ph.D. students are faculty members at major Land Grant Universities.

Link to Dr. Schroeder's CV: <http://www.ageconomics.ksu.edu/DesktopModules/ViewDocument.aspx?DocumentID=4222>

PRODUCTION PANEL participants include for the August 26, 2010 workshop in Fort Collins, Colorado should include:

Beef Producer

William H. Rishel, Rishel Angus Genetics, North Platte, Nebraska

Bill has been a leader in the beef industry for many years including serving as a member of the Board of Directors and as Chairman of Certified Angus Beef and on the Board of the American Angus Association. Bill spent six years on the Cattlemen's Beef Board, and 12 years on the Board of the Nebraska Cattlemen Research and Education Foundation including two as its President. Bill will serve as President of the Nebraska Cattlemen's Association in 2010.

Legal Policy Section, Antitrust Division
U.S. Department of Justice
December 31, 2009
Page Six

Angus sires from the Rishel Angus program have played a dominant role in the Angus breed and beef industry over the past decade. Bill is an industry trailblazer in value-based marketing systems. Sires carrying the "B/R" prefix currently rank #1, #2, #14, #16 and #29 in the Angus breed for economic merit based on \$Beef Value. Bill's role as a stockholder in U.S. Premium Beef <http://www.uspremiumbeef.com/> would also provide a very important perspective for this workshop.

Bill has a B.S. and M.S. in Animal Science from Pennsylvania State University.

Alternate: Mike Milicevic, Lake Placid, Florida

Mike is General Manager of Lykes Ranch Division, Lykes Bros. Inc. He has been employed with Lykes Bros. since December 1986. He is responsible for overall management of the operations for cattle, sugar cane, forestry, turf and landscape divisions.

Mike graduated in 1984 from Texas A&M University with a Master's degree in Agriculture-Feedlot Management received his Bachelors' degree of Science-Agronomy at the University of Florida in 1982 and attended Abraham Baldwin Agricultural College from 1978-1980.

Mike has served as President of the Florida Cattlemen's Association (2004-2005), on the Florida Cattlemen's Foundation, Inc. (2005-2006) and is currently a Director for Cattle-Fax. He is currently Vice President and board member of Florida Agricultural Council, Inc. and a member of Highlands Regional Medical Center Board of Trustees.

Mike has been recognized by the industry with awards including: Cow/Calf National Vision Award by Micro-Beef Technologies/NCBA Foundation; national winner of Beef Magazine's 2008 Trailblazer Award; Outstanding Cattleman 2006, Alachua County Lions Club; 2004 Outstanding Agriculturalist by Association of County Agricultural Agents; and 2003 Reach Out Award by the Florida Cattlemen's Association.

Cattle Feeder

Jerry Bohn, General Manager, Pratt Feeders, Pratt, Kansas

Mr. Bohn has been the General Manager of Pratt Feeders, an 115,000 head cattle feeding operation in Pratt, Kansas, since 1982. Prior to this, he was the Director of Market Analysis for Cattle-Fax in Denver, Colorado. He is a member of the Board of Directors of U.S. Premium Beef, the Kansas Beef Council and the Cattlemen's Beef Board and a past President of the Kansas Livestock Association. He is a graduate of Kansas State University and a retired Lt. Colonel in the U.S. Army Reserve.

Alternate: James Herring, President and CEO of Friona Industries, Amarillo, Texas

Friona is the fourth largest cattle feeding operation in the United States with four commercial feedlots in the Texas Panhandle with one-time capacity of 275,000 head. Mr. Herring was formerly President and Chairman of the Board of Marcom International, Inc., a Dallas, Texas based conglomerate which included a commodity brokerage

Legal Policy Section, Antitrust Division

U.S. Department of Justice

December 31, 2009

Page Seven

company, an agricultural finance company and subsidiaries with various interests in oil and gas, cattle and real estate.

Mr. Herring was a Founding Shareholder of First National Bank of Park Cities in Dallas, Texas and served as a Director from 1985 until 1991. Mr. Herring is past president of Texas Cattle Feeders Association, has served several terms on the Executive Committee and as a Director since 1990. He has served as a Director and member of the Executive Committee of the National Cattleman's Beef Association. He also serves on the Rabobank North American Agribusiness Advisory Board, and is currently President elect of Cattle-Fax Board of Directors. In January 2004 Mr. Herring was appointed to the Texas Water Development Board and, in 2008, was named its Chairman by Governor Rick Perry.

Mr. Herring holds a Bachelor of Business Administration degree from the University of Texas at Austin and an MBA from the Harvard Business School.

Risk Management

Randy Blach, CEO of Cattle-Fax, Centennial, CO

Mr. Blach is CEO of Cattle-Fax, an organization focused on helping member cattle producers make more profitable marketing and management decisions. Cattle-Fax (www.cattle-fax.org) is the cattle and beef industry leader on timely market information, analyses and research. Blach came to Cattle-Fax in 1981 and served as director of market analysis for 15 years and accepted his current role in 2001. During this time, he has been a keynote speaker at hundreds of cattle and beef industry conventions, meetings and seminars. A Colorado native, Blach and his family remain actively involved in cattle ranching with cow/calf, stocker and finished cattle. He was raised on his family's ranch in Yuma, Colo., and graduated from Colorado State University with a degree in animal science.

Alternate: John Nalivka, President and Owner of Sterling Marketing, Vale, Oregon

Mr. Nalivka became a partner in Sterling Marketing in 1991 to develop an economic advisory service for the

livestock and red meat industries. He purchased the firm in 1994. From 1988 to 1991, he was Director of Research at the Helming Group, a food industry consulting firm in Overland Park, Kansas. Nalivka was Extension Market Information Specialist at Oregon State University from 1986 to 1988 and a livestock economist with the Economic Research Service of USDA in Washington, D.C. from 1984 to 1986.

In addition to supplying ongoing market information services relating to supply, demand and price analysis, Nalivka has completed extensive research projects in topics concerning the livestock and red meat industries as well as research concerning the economics of agricultural resources over the past 25 years. He serves clients, U.S. and international, throughout the red meat and livestock industries including producers, processors, packers, banks, brokerage houses, and restaurants. He has both written

Legal Policy Section, Antitrust Division

U.S. Department of Justice

December 31, 2009

Page Eight

and presented extensively on topics and issues concerning the red meat and livestock industries, particularly those concerning structural issues.

Nalivka is also a principal partner in Land and Livestock Advisory Service LLC, a ranch resource management and advisory firm and Sterling Solutions, LLC, an affiliate to Sterling Marketing, Inc. formed to provide source verification and traceability for the beef industry (www.sterlingtraceback.com). The firm is approved by USDA in its Process Verified Program.

While Nalivka has provided professional economic services to the livestock and meat industries for the past 22 years, he also has solid work experience on large family and corporate-owned ranches throughout the western U.S. He appreciates the uniqueness as well as the importance of the many characteristics that define the economics of individual ranching operations and meat processing companies.

Mr. Nalivka has a B.S. degree in Animal Science from the University of Idaho and an M.S. degree in Agricultural & Resource Economics from the University of Nevada at Reno.

Beef Packer Processor

Large processor

Ken Bull, Vice President – Cattle Procurement, Cargill Beef Business Unit of Cargill Meat Solutions

Ken is responsible for the cattle supply to Cargill's fed cattle and cow plants in North America. Ken received his B.S. and Master – Agriculture degrees from Texas A&M University in College Station, Texas. Ken started his career with Cargill, Inc. in 1979 at Caprock Industries as a management trainee. During a five year period at Caprock, Ken managed grain merchandising and hedging as well as cattle sales and hedge strategies.

In 1984, Ken transferred to Cargill Investor Services in Chicago, Illinois as a market analyst in the livestock complex. In 1985, Ken was promoted to oversee the analysis and floor operations of the livestock complex for C.I.S. The next year, Ken transferred to Excel Corporation (now Cargill Meat Solutions Corporation) with responsibilities over cattle and beef market analysis for Cargill's cattle businesses.

In 1990, Ken gained responsibilities for Cattle Procurement. In this role Ken was appointed by USDA Secretary of Agriculture, Dan Glickman to a taskforce on Concentration in Agriculture. Additionally, Ken has testified to numerous State and federal legislative committees on issues relating to the cattle and packing industry. Some of these issues include Packer Ownership, Captive Supplies, Mandatory Price Reporting, Country of Origin Labeling, BSE, Global Meat Trade, and Agricultural Concentration.

Legal Policy Section, Antitrust Division

U.S. Department of Justice

December 31, 2009

Page Nine

Small processor

Robert Rebholtz, President and CEO, Agri Beef Co., Boise, Idaho

<http://www.agribeeff.com/Agribeeff/history>

Livestock Market Industry Representative

Steve Owens, Owner, Joplin Regional Stockyards, Carthage, Missouri

Banking Industry Representative

Mr. Gordon Arnold, Rabobank (retired) bio to follow

For the December 8, 2010 MARGINS workshop in Washington, DC we recommend the following economists:

Dr. Gary Brester, Montana State University

Gary Brester is a Professor in the Department of Agricultural Economics and Economics at Montana State University. He was raised on an irrigated sugarbeet and malting barley farm near Laurel, Montana. He has two degrees from Montana State University -- a B.S. in Agricultural Business and an M.S. in Applied Economics. He received his Ph.D. degree in Economics from North Carolina State University.

Dr. Brester was an Assistant and Associate Professor in the Department of Agricultural Economics at Kansas State University from 1990-1997. Since 1997, he has been an Associate Professor and Professor in the Department of Agricultural Economics and Economics at Montana State University. His teaching responsibilities include farm and ranch management, agribusiness management, finance, and agricultural marketing. Brester's applied research program includes livestock and grain, risk management, international trade, agribusiness, and farm management issues. He served as the President of the *Western Agricultural Economics Association* in 2006-07 and his Presidential Address entitled "Research and Publishing: Relevance and Irreverence" was published in the *Journal of Agricultural and Resource Economics (JARE)*. Dr. Brester is currently serving as the Managing Editor of *JARE*.

Dr. Brester's refereed journal publications are available at: <http://www.montana.edu/econ/brester/>

He has authored or co-authored papers related to the farmer's-share-of-the-retail-dollar statistic (*JARE* 2009), livestock marketing margins (*JARE* 2001, 2004; *JAAE* 1995; *WJAE* 1983), vertical coordination in the food sector (*RAE* 1993, 1999, 2002, 2004, 2005, 2006, 2007), country-of-origin labeling (*JARE* 2004), and livestock trade issues (*RAE* 1996; *JARE* 1997; *CJAE* 2002).

Legal Policy Section, Antitrust Division
U.S. Department of Justice
December 31, 2009
Page Ten

Dr. Steve Meyer, Paragon Economics, Adel, Iowa

Dr. Steve Meyer founded Paragon Economics in 2002 to provide expert economic analysis of agricultural markets and business decisions. He brings a wealth of experience in the livestock industry to the enterprise. His breadth of work in the pork industry is unique.

Prior to founding Paragon Economics, Steve served as Director of Economics for the National Pork Producers Council from 1993 to 2001. He provided economic counsel to producers and NPB staff and coordinated staff and consultants' activities regarding meat industry production, price forecasts and the economic impact of pork production and processing. In addition, he administered NPPC programs dealing with marketing and pricing

systems, structure, pork industry coordination and competitiveness.

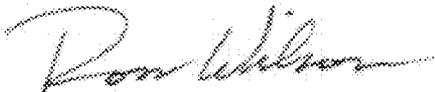
Prior to joining the National Pork Producers Council, Steve spent two years as a swine business specialist with Moorman Manufacturing Company. His work involved all aspects of swine production, including genetics, nutrition, facilities design, construction and management, production planning and marketing.

Dr. Meyer obtained both his bachelor's and master's degrees in agriculture economics from Oklahoma State University and a doctorate in that field from Iowa State University in 1987.

Since the beef industry and margins workshops are several months away, TCFA would appreciate an opportunity to interact with DOJ again on these workshops once we get closer to the actual event in order to offer for further details pertaining to our recommendations for panelists in the area of legal expertise and in retail marketing.

Please contact me or TCFA staff at (806) 358-3681 for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Wilson". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Ross Wilson
President & CEO