

December 30, 2009

Legal Policy Section
Antitrust Division
U.S. Department of Justice
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Washington, D.C. 20001



To Whom It May Concern—Legal Policy Section:

The National Pork Producers Council (NPPC) submits, on behalf of its members, these comments in response to the November 13, 2009, Press Release Announcing Dates for Workshops to Explore Competition and Regulatory Issues in the Agriculture Industry. NPPC is a national federation of 43 state pork producer organizations and represents the interests of the nation's 67,000 pork producers. The U.S. pork industry represents a major value-added activity in the agricultural economy and a major contributor to the overall U.S. economy.

Clearly define the goals of these workshops.

It is not presently clear whether these workshops are being held so that a panel of “experts” can answer questions from producers and others regarding the state of competition in agricultural markets or so that producers and others can tell USDA/DOJ about their perceptions of the state of competition in agricultural markets. Are these hearings for USDA/DOJ or are they knowledge-sharing events? There is a need for both.

Structure of the workshops

While structure will obviously be determined primarily by the agencies' goals, it is imperative that whatever format is used, market participants feel they have been heard by policy-makers. Some participants will bring legitimate concerns and personal experiences that warrant consideration and exploration. Some will merely criticize suppliers and downstream market participants based on a narrow view of facts and a strong belief in their given position. USDA and DOJ personnel must carefully review all comments to discern what is and is not worthy of attention. The agencies also must be aware that any hearing format, if not controlled, has the potential to devolve quickly into a witch hunt based, as most witch hunts are, on half-truths and fear mongering. Worse, the workshops could easily become antagonistic, intimidating shouting matches, much like the recent animal identification workshops. Neither of these scenarios serves the needs of producers, market systems, government personnel or consumers.

Market participants also need to hear the results of sound, factual economic theory and research on livestock markets. Many industries have a rich history of market research that, while not always reaching the same conclusion, illuminates issues unique to the industry and explores all variables affecting prices, recognizing that structure and conduct are only two of those variables.

We believe that the agencies' attention should be focused on research that has been done and any needs for further research, thus favoring the format utilizing an expert panel and question/answer approach. Some limited time for statements and requests from market participants could be included at the end of the day to allow feedback and suggestions for further work.

Key issues for hog and pork market discussion

1. Keep the species separate. Focusing on separate topics at separate locations increases the likelihood of this, but USDA/DOJ should be forceful in keeping presentations and discussions focused on one species at a time. Most species have separate issues. Even when two species share an issue (such as contractor-grower relationships in the poultry and pork industries), the specifics of that issue are frequently very different between the species. Do not allow issues to be broad-brushed across species. It is critical that the nuances of each business be considered.
2. Clearly define the market and terms being discussed. An example of great importance to the pork industry is the term "contracts." There are two distinct types of contracts in the pork industry, and each deals with a different market.
 - Production contracts exist between owners of pigs and owners of pig buildings. They involve the sale of services provided by the pig building owner (the "contract grower"), which include buildings/shelter, labor, utilities and manure management. No animals change hands in these contracts, and contract growers accept no market risk. Contract growers may accept varied degrees of animal performance risk, depending on the specifics of the contract.
 - Marketing contracts exist between the owners of pigs and the purchasers of pigs, whether those pigs are small and in need of further feeding or market-weight pigs going directly to packers. These contracts involve the actual transfer of ownership, and payment is made for the pig and, possibly, other services such as transportation.

It should be noted that most pigs are affected by both types of contracts. A pig owner may have contracted with one or more contract growers to produce the pig (i.e. a contract sow farm) and/or grow it to market weight. The same pig owner may have a marketing contract with a packer that defines the terms of transfer of that pig when it reaches market weight.

- The relevant markets and competition issues are vastly different for these different contract types. USDA/DOJ should demand that any discussions of contracts in the pork sector clearly delineate the type of contract being discussed. Further, the agencies must consider the unique aspects of each market (i.e. the market for pigs versus the market for pig-growing services) separately.
3. USDA/DOJ must listen to people directly involved in production and marketing contracts. Prior surveys have indicated that producer satisfaction with these types of contracts is high (Lawrence, et. al). While this doesn't mean that conditions are perfect, it does call into question the "doomsday" scenarios proffered by those who are not actually involved in contractual relationships. Seek out the parties who know first-hand the benefits and disadvantages of production and marketing contracts.
 4. USDA/DOJ must carefully consider the spatial price relationships in the pork industry, as prices in some areas are directly tied to prices in others. The best and most important example of this is the price of pigs in markets on the eastern seaboard. There is practically no "eastern seaboard" market for pigs. Pigs in the Carolinas, Virginia and Pennsylvania are almost always priced off one of three markets: Iowa-Minnesota, Eastern Cornbelt or the National Cutout Value. The question of whether prices in these eastern markets are "competitive," therefore, raises two issues: Whether the underlying market is competitive, and whether the price in the eastern market differs from the underlying market by an amount equal, on average over some reasonable time frame, to transportation costs.

Broader market issues

USDA/DOJ must not ignore the vast research that already has been done in livestock markets in general and hog/pork markets in particular. The 1996 GIPSA Concentration in the Red Meat Packing Industry and 2007 GIPSA Livestock and Meat Marketing Study were comprehensive projects that cost millions of taxpayer dollars. These were well-conducted, peer-reviewed scientific studies, using some of the best data sets ever used by economists. They involved qualified people who, if anything, had a slight bias toward finding market power and deleterious impacts.

Yet, these studies have largely been ignored by policy-makers. The reason for the apparent disdain? The studies found no monopoly or monopsony power. That is, the studies failed to arrive at politically acceptable answers and, the thinking goes, they must be wrong. This kind of thinking is as dangerous as it is common in Washington. It is critical that USDA/DOJ consider ALL of the relevant literature. If there are gaps, certainly those should be filled by additional research. However, if previous projects relating to a particular issue have been peer-reviewed and published, they should not be ignored.

USDA/DOJ must consider the retailers' role in its review of the markets. There has been widespread discussion in recent years about the potential market power of retailers in general and discount retailers in particular. Concerns have been raised about both monopoly (selling) power and, of more concern to agricultural producers, monopsony (buying) power. These issues deserve attention, but great care must be taken to consider all relevant factors.

Chief among these is the consumer's role in pricing efficiency. Markets will not be competitive if consumers do not behave in ways that facilitate competitive pricing. The recent literature in economics is full of articles showing that the assumption of consumer rationality is, in many cases, inappropriate – at least in the context of some market situations. One recent article (Bonanno, et. al.) showed that ancillary supermarket services (banking, florists, pharmacy, dry cleaning, etc.) resulted in non-competitive milk prices. Clearly, more than just the price of an individual supermarket item motivates consumer purchasing behavior, thus leaving the question open as to whether an individual item's price can be used to judge the competitiveness of a particular market.

In addition to consumer behavior, USDA/DOJ must look at the impact of today's risk environment on output and price decisions. A corollary to this issue is financing and the clear drive on the part of financial institutions for borrowers to reduce risk as a condition of financing. The role of risk and financing must be considered when judging the performance of markets, and that role has become much more critical since the financial crisis began in September 2007.

USDA/DOJ must recognize that there are usually good reasons that markets evolve the way they do. The hog and pork markets have been generally free of government intervention. Pork producers have generally fared well in these markets despite times of loss in the late '80s and early '90s caused by cyclical lows or industry evolution such as the rationalization of packing capacity.

USDA/DOJ should not allow the losses incurred by hog producers since 2006 to heavily influence their review of these issues or any resulting decisions since these losses were primarily caused by federal bio fuels policy and the corresponding increase in feed costs. According to Iowa State University, the average Iowa farrow-to-finish producer would not have lost money in any month over the past two years had feed prices and hog production costs been at the average level they had been for 2000 through 2006. Market power may still have been a factor but, if present, its impact will almost certainly pale in comparison to the impact of higher feed prices. This issue underscores the need for economic research that parses out the impacts of the multitude of factors that affect market prices.

Panelists

With regard to specific issues about the U.S. pork industry, the National Pork Producers Council urges USDA/DOJ to choose as panelist's economists, swine lenders and attorneys familiar with swine contracts—they do differ from those found in other livestock sectors. Prospective panelists should be very familiar with the research literature and the actual business of lending to U.S. swine operations, as well as with case law in the field of livestock competition and anti-trust. We also recommend that pork producers be selected representing various marketing arrangements to ensure that a complete picture of the pork industry is presented. Simply “having an opinion” is an insufficient qualification for duty of this importance.

We suggest the following potential panelists for the hog/pork portions of the Ankeny, Iowa, and Fort Collins, Colorado, meetings:

Pork Producers:

Mr. Sam Carney, President Elect, NPPC, Chair Competitive Markets Committee,
Producer – Adair, IA

Mr. Marty Gingerich, Independent Pork Producer, farrow to finish – Parnell, IA

Mr. Todd Wiley, Independent Pork Producer, with contract growers – Walker, IA

Mr. Rueben Bode, Independent Pork Producer, with contract growers – Nicollet, MN

Mr. John Prestage, Senior Vice President, Prestage Farms, Pork Producer with contract growers, Clinton, North Carolina

Mr. Bob Ivey, General Manager, Maxwell Foods, Pork Producer with contract growers, Goldsboro, North Carolina

Mr. Tom Dittmer, Grandview Farms, Independent Pork Producer/Triumph Foods
Eldridge, IA

Julie and Ken Maschhoff, Maschhoff Family Farms, Pork producers with contract growers, Carlyle, IL

Mr. Mike VerSteege, Independent Producer farrow to finish – Inwood, IA

Anti-trust and Competition Research in Livestock

Dr. Azzadine Azzam, Professor of Economics, University of Nebraska – Lincoln, NE

Dr. John Schroeter, Professor of Economics, Iowa State University – Ames, IA

Dr. James McDonald, Economic Research Service – Washington, DC

Dr. Clement Ward, Professor Emeritus, Oklahoma State University

Competition Research in Hogs and Pork

Dr. John D. Lawrence, Assistant Dean for Extension and former Extension Livestock Marketing Economist, Iowa State University – Ames, IA

Dr. Ron Plain, D. Howard Doane Professor of Agricultural Economics & Extension, College of Agriculture, Food & Natural Resources, University of Missouri – Columbia, MO

Dr. Kelly Ziering, Professor, North Carolina State University

Dr. Steve Meyer, Economist, Paragon Economics Inc. – Adel, IA

Dr. Dennis DiPietre, Economist, KnowledgeVentures, LLC – Columbia, MO

Dr. Luther Tweeten, Professor Emeritus, The Ohio State University

Dr. Brian Buhr, Department Head Applied Economics, University of Minnesota

Dr. Christopher Hurt, Professor of Agricultural Economics, Purdue University

Livestock Legal/ Attorneys:

Mr. Eldon McAfee, Attorney, Beving, Swanson & Forest, P.C – Des Moines, IA

Mr. Phil Kunkel, Attorney, Gray, Plant & Moody, PC – Minneapolis, MN

Swine Financial/Lenders:

Mr. Rick Banes, Senior Lending Officer, Agribank – St. Paul, MN

Mr. Mark Greenwood, Vice President, Swine Lending, AgStar Financial Services – Mankato, MN

Mr. Richard Eason, President and Chief Executive Officer, Cape Fear Farm Credit – Fayetteville, NC

Mr. Kent Bang, Regional Vice President, Agribusiness Banking Division, Bank of the West – Omaha, NE

Mr. Tom Ricke, Market President, Great Western Bank – Des Moines, IA

Thank you for your consideration of these comments. Should you have any questions, please call either, Neil Dierks, CEO, National Pork Producers Council, at (515) 278-8012 or Audrey Adamson, Vice President, NPPC Domestic Public Policy, at (202) 347-3600.

Sincerely,



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Don Butler
President, National Pork Producers Council

The Global Voice for the U.S. Pork Industry