**KANSAS LIVESTOCK ASSOCIATION**

*Since 1894*

December 31, 2009

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

RE: DOJ/USDA workshops to explore competition issues in agriculture

The Kansas Livestock Association (KLA) appreciates this opportunity to provide comments regarding the DOJ/USDA workshops to explore competition issues in the agricultural industry. KLA is a trade association representing the business interests of beef and dairy producers. KLA members are involved in many aspects of livestock production, including cow-calf producers, stocker operators, cattle feeding and dairy production. The beef industry generates more than $6 billion in cash receipts in Kansas each year and includes more than 6.3 million head of cattle.

The Federal Register notice of August 27, 2009, cites 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 all are important and highly technical aspects of agricultural markets. They also are topics that have received considerable discussion within the beef industry.

Other topics we recommend for discussion include capital requirements and risk management. Both topics are critical issues for the beef industry. Access to capital is critical for beef producers, especially with escalating input prices. Additionally, many financing agreements require increasing use of risk management tools. The complexity of risk management at the cow-calf, stocker, cattle feeding, processing and retail segments of the beef industry must be considered and well understood by regulators, consumers and producers.

Such topics cannot adequately be discussed or presented by industry participants and academics who lack year of experience and peer-reviews research in the areas of interest. Those chosen to be panelists for these workshops must not only be qualified, they should be widely recognized as being leaders in their respective areas of industry expertise. We recommend several qualified individuals for workshop panels later in these comments.

Although agriculture at the macroeconomic level is depicted as one segment of the U.S. economy, today's agricultural commodity markets all are 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 the decision to have a separate and distinct workshop for beef marketing to be held August 26, 2010, in Fort Collins, Colorado.

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

1. Production Panel – including producers, cattle feeders and banking and risk management experts.
2. Marketing Panel – including packer/processors and retailers.
3. Economist Panel – including economists who have published peer-reviewed research specific to the operation of cattle and beef markets.
4. Legal Panel – including attorneys with real world experience in litigation and regulation of cattle and beef marketing.

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. We suggest these workshops include the ability for participants to garner a larger understanding of risk management practices in cattle and beef markets.

Workshop attendees also would benefit from an explanation of the application of anti-trust laws to the agricultural sector including that of legal cases and precedents and research into constitutional questions and the outcome of court cases. 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:

1. An explanation of the very different nature of production contracts versus marketing contracts, 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.
3. The critical role 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 that technology (e.g. internet, video auctions) plays in creating additional marketing alternatives for producers.

KLA supports a workshop dedicated to a better understanding of margins between producers and retailers of agricultural commodities. One of the least understood issues for producers is the lack of quality data available to interpret true volume-weighted farm-to-retail price spreads and profit margins. This workshop could be of enormous educational impact if it includes discussion about retail marketing of beef, including the role of featuring.

We recommend panelists who can thoroughly explain differences between such data sets as those 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 also should be explored.

KLA recommends the following individuals be selected as panelists for the Fort Collins workshop. Each individual is a recognized leader in their area of expertise. The recommended economists all have published peer-reviewed research on topics of interest for this workshop. For the sake of brevity, we are simply listing the names of each individual. Detailed biographical information is provided in the comments of the National Cattlemen's Beef Association.

**Production Panel**

William H. Rishel, Rishel Angus Genetics, North Platte, NE, *Cow-Calf Producer*

Mike Milicevic, Lykes Ranch Division, Lake Placid, FL, *Cow-Calf Producer alternate*

Jerry Bohn, General Manager, Pratt Feeders, Pratt, KS, *Cattle Feeder*

James Herring, President and CEO of Friona Industries, Amarillo, TX, *Cattle Feeder alternate*

Steve Owens, Owner, Joplin Regional Stockyards, Carthage, MO, *Livestock Market*

Gordon Arnold, formerly with Rabobank, *Banking*

Randy Blach, CEO of CattleFax, Centennial, CO, *Risk Management*

John Nalivka, President of Sterling Marketing, Vale, OR, *Risk Management alternate*

**Marketing Panel**

Ken Bull, Vice President of Procurement, Cargill Meat Solutions, Wichita, KS, *Large Packer*

Robert Rebholtz, President & CEO, Agri Beef Co., Boise, ID, *Small Packer*

**Economist Panel**

Dr. Stephen Koontz, Dept. of Agricultural and Resource Economics, Colorado State University

Dr. Clem Ward, Department of Agricultural Economics, Oklahoma State University

Dr. Ted Schroeder, Department of Agricultural Economics, Kansas State University

**Margins Workshop**

Dr. Gary Brester, Department of Agricultural Economics, Montana State University

Dr. Steve Meyer, Paragon Economics, Adel, IA

**SUPPLEMENTAL INFORMATION**

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 arguably is 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 Fort Collins workshop.

We have attached to our comments a summary of studies specific to the beef industry compiled by Dr. Stephen Koontz of Colorado State University. Please note that Drs. Koontz, Ward and Schroeder are listed multiple times in this summary of research specific to beef industry market power research.

Of particular interest is the GIPSA Livestock and Meat Marketing Study (http://tiny.cc/MvJch) published in January 2007. This study is a comprehensive research effort that specifically speaks to many of the issues surrounding the marketing of cattle and beef.

An excellent summary of the GIPSA study published by the Livestock Marketing Information Center can be found at http://tiny.cc/fcfmt. There also is a considerable amount of supplemental information included in USDA's annual report of the Packers & Stockyards Program, which can be found at http://tiny.cc/8lFkH.

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 USDA in measuring the quality of U.S. beef via the grading standards.

However, consumers and the marketplace today require product differentiation beyond the traditional USDA quality grades. As consumer interest in branded beef products with specific quality attributes has increased, it has pulled the beef industry away from a commodity system toward a value-based system, increasing the need for coordinated supply chains and alliances. The number of cattle marketed through such programs has increased significantly in recent years as beef producers have sought to more closely match their production to consumer desires. The GIPSA Livestock and Meat Marketing study identifies these marketing methods as "Alternative Marketing Arrangements" (AMAs).

The obvious objective of the producers utilizing AMAs 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 reduced marketing costs. They may also include USDA process verified programs, differing production or processing practices or programs that seeks to improve product consistency and consequently consumer acceptance.

**SUMMARY**

KLA members oppose attempts to narrow the business options or limit the individual freedom of livestock producers to innovate in the management and marketing of their production. They believe the livestock industry is best served by free enterprise and free trade which is more equitable than regulated and subsidized markets which retard innovation and distort production and market signals.

We have attached to this document comments submitted by the National Cattlemen's Beef Association and the previously referenced research summary by Dr. Stephen Koontz. If you have any questions, please contact Matt Teagarden at 785-273-5115.

Sincerely,

Mark E Smith

Mark E. Smith
President

BEEF USA
NATIONAL CATTLEMEN'S BEEF ASSOCIATION
1301 Pennsylvania Ave., NW, Suite #300 • Washington, DC 20004 • 202-347-0228 • Fax 202-638-0607

December 31, 2009

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

The National Cattlemen's Beef Association (NCBA) appreciates this opportunity to provide comments regarding the 2010 workshops to explore competition and regulatory issues in the agricultural industry. Producer-directed and consumer-focused, NCBA is the trade association representing 230,000 of America's cattle farmers and ranchers, and the marketing organization for the largest segment of the nation's food and fiber industry.

NCBA applauds the Department of Justice's (DOJ) initiative in promoting dialogue and fostering learning across the broad spectrum of agricultural commodity and other 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 to discuss. In fact, it was 90 years ago that Senator John B. Kendrick from Wyoming stated, "This squall between the packers and the producers of this country ought to have blown over forty years ago, but we still have it on our hands…"

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 important and highly technical aspects of agricultural markets. With the exception of the last topic, NCBA is struck by the extremely complicated and highly technical aspects of these topics and the fact that there are but a handful of true experts on these topics as they relate to the beef industry.

In addition, NCBA would like to emphasize the educational aspects of these workshops and focus on the risk management components necessary to be successful in today's beef industry. In fact, we find it surprising that the absolutely critical capital requirements (banking) of today's beef industry were not mentioned in DOJ Federal Register notice. The risk management component of today's beef industry is an integral part of this discussion. We sincerely hope is not overlooked. 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.

Such topics absolutely cannot be adequately discussed or presented by those who do not have either decades of daily involvement in cattle and beef markets or academics who have published peer-reviewed research on such topics. Those chosen to be panelists for these workshops must be not only qualified, they should be solidly recognized as being leaders without peer 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.

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

1. A <u>Production</u> Panel that includes producers, experts in cattle feeding and a banking and risk management component as part of the discussion.
2. A <u>Marketing Trends</u> panel that includes Packer/Processors and the Retail segment of our industry.
3. A Panel <u>of Economic Experts</u> that have published peer-reviewed research specific to the operation of cattle and beef markets.
4. A <u>Legal</u> 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. NCBA would suggest that these workshops include the ability for participants to garner a larger 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 legal cases and precedents and research into constitutional questions and the outcome of court cases. 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:

1. An explanation of the very different nature of production contracts versus marketing contracts 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.

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 that technology (ex: internet, video auctions) plays in creating additional marketing alternatives for producers.

NCBA is pleased that DOJ will include a specific 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 could be of enormous educational impact if it is explained exactly how retailers market beef, and the role of featuring in particular, is explored.

NCBA recommends panelist who can thoroughly explain differences between such data sets as those 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 should also be explored.

For the **August 26, 2010 workshop in Fort Collins, Colorado**, NCBA strongly suggests that the economists chosen for this panel have peer-reviewed published research specifically in the area of cattle and beef market structure. The following panelists that we're recommending for the **PANEL OF INDUSTRY ECONOMISTS** are well recognized experts in this specific area:

**Dr. Stephen 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

For the August 26, 2010 workshop in Fort Collins, Colorado, NCBA would recommend the following panelists for the **PRODUCTION PANEL**:

**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.

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 and was a member of the 1966 PSU National Champion Livestock Judging Team.

**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. He 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 also 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.

## Banking Industry Representative

**Mr. Gordon Arnold, Rabobank**

## Cattle Feeding Industry Representative

**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 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 MANAGER

**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 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.

**Small processor**
**Robert Rebholtz, President and CEO, Agri Beef Co., Boise, Idaho**
http://www.agribeef.com/Agribeef/history

## Livestock Market Industry Representative

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

**For the December 8, 2010 MARGINS workshop in Washington, DC** we would 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).

**Dr. Steve Meyer, President, 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, NCBA 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 banking, legal expertise and in retail marketing.

**SUPPLEMENTAL INFORMATION**

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.

Included in a separate attachment to our comments is a summary of studies specific to the beef industry complied by Dr. Stephen Koontz of Colorado State University. Dr. Koontz directly provided these (Market Power Synthesis) comments to DOJ on December 30, 2009. Please note that Drs. Koontz, Ward and Schroeder are listed multiple times in this summary of research specific to beef industry market power research. NCBA would point in particular to the Livestock and Meat Marketing Study completed in 2007 http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=lmp&topic=ir-mms as a considerable research effort that speaks specifically and comprehensively to many issues that have been raised over the years.

If participants chose not to read the entire six volume document we would point to a summary of findings found at http://www.lmic.info/memberspublic/LMMA/LM-2%20Fact%20Sheet_Beef.pdf. There is also a considerable amount of supplemental information included in USDA's annual report of the Packers & Stockyards Program, which can be found at http://archive.gipsa.usda.gov/pubs/2008_psp_annual_report.pdf.

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 absolutely 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. Long ago, all segments of the beef production and marketing chain understood the value proposition associated with product differentiation to create value.

NCBA believes that in today's beef business one of the most critical aspects of the marketplace is producers' ability to differentiate themselves via marketing 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 the need for 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 seeks to improve product consistency and consequently consumer acceptance.

**SUMMARY**

As a matter of policy, NCBA members believe that direct federal involvement in cattle and beef production business should be minimal. NCBA member-driven policy states that the right of individual choice in the management of land, water and other resources should be preserved and that livestock contracts should provide for the use of arbitration to settle any controversy only if, after the controversy arises, both parties consent in writing to use arbitration to settle the controversy. NCBA members believe that a national agricultural policy should be oriented to a free, private enterprise competitive market system and that any farm 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. It is not in the national, ranch or individual producers' interest to vest the government with authority to set prices, underwrite inefficient production, or manipulate domestic supply, demand, cost or price. For additional information regarding NCBA's position on the marketing structure of the livestock industry please see the attached NCBA's testimony before the House Agriculture Committee on April 17, 2007.

NCBA would appreciate any opportunity to meet with DOJ staff at the appropriate time to further discuss these 2010 workshops. Please contact Mr. Colin Woodall in our DC office at (202) 347-0228 for any additional information.

Sincerely,

Gary C Voogt

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President

Testimony

on behalf of the

**National Cattlemen's Beef Association**

with regard to

Market Structure of the Livestock Industry

submitted to the

United States House of Representatives - Committee on Agriculture
Subcommittee on Livestock, Dairy, and Poultry

The Honorable Leonard Boswell, Chairman

submitted by

Mr. John Queen

President
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BEEF USA National Cattlemen's Beef Association

Mr. Chairman, members of the Committee, my name is John Queen and I am a cattle producer and livestock market operator from Waynesville, North Carolina. I am President of the National Cattlemen's Beef Association (NCBA) and am pleased to be with you today to discuss the market structure of the livestock industry.

When it comes to market structure and competition issues, NCBA's position is simple – we ask that the government not tell us how we can or cannot market our cattle. The way we market cattle has changed significantly over the years, and it has come from a recognition within our industry that we are not just cattle producers, but beef producers, and must be in tune with what our consumers prefer to purchase from their local retail meat case. This focus on consumer preferences has led to many innovative marketing programs that have improved the quality of beef, given the consumer what they are asking for, and made many of America's ranchers more profitable and efficient. Some of these innovations have come in the form of alternative marketing arrangements (AMAs) such as forward contracting, marketing alliances, and packer ownership. These marketing arrangements offer producers the opportunity to get paid for the value that they add to the animal.

Historically, cattle were marketed in lots or pens with every animal in the lot receiving the same average price. Since producers did not benefit from providing higher quality beef, they had no incentive to supply a higher quality product or meet consumer demands. As our industry struggled through the 1970s, 80s, and early 90s with decreasing demand, we did not see any market driven signals to produce the leaner, more consistent beef the consumer demanded. Many producers, however, took significant steps to produce high quality lean beef by making investments in genetics, management, and herd health to meet the demand we began to recognize. To pay for this investment, producers demanded a premium. This demand for premiums has manifested itself today into a system of value-based marketing that is reflected in the multitude of premiums, discounts, grids, contracts, formulas, and alliances that have become commonplace in the beef industry. Some of the marketing programs that producers participate in are:

- Certified Angus Beef
- U.S. Premium Beef, Ltd.
- Ranchers' Renaissance
- Harris Ranch

These are just a handful of the innovative marketing programs available. Many of the country's ranchers have made the choice to participate in a program that will offer them an opportunity for a larger share of the consumer's dollar. These arrangements are market and consumer driven, and in many cases, led by producers themselves. There are many more, particularly in areas where producers are teaming with other segments of the industry to take advantage of national, regional, and even niche market opportunities ranging from breed or genetics programs to natural and organic production. Process and source verified programs are utilizing today's technology, such as electronic identification of animals, allowing producers to become more efficient at raising high quality animals that yield the beef products that consumers will pay a premium for.

This growing number of innovators are ranchers who came together in a proactive way to address their desire for a growing, viable beef industry by developing bold new marketing strategies. Not only are ranchers, feeders, and packers working together in these programs to market cattle, but this innovation is also visible in the meat case. Consumers not only demand leaner, tender, more consistent products, but they demand convenience as well. The meat case is beginning to be filled more and more not by fresh beef, but by products that are pre-prepared and ready for the microwave.

In addition to being responsive to our consumers, participation in these marketing arrangements provide the producer with several tools that help improve their operations and herd management in an effort to capture the premiums I mentioned above. The ability to manage price risk is probably one of the most valuable of these tools. Taking advantage of marketing arrangements such as forward contracting allows producers to make a price that allows them to be profitable. If the price does not fit their needs, they can walk away and find another buyer. Being a "price maker" rather than a "price taker" puts ranchers in control of their business. Traditional routes of cattle marketing do not always offer that flexibility. Knowing that you have a guaranteed buyer and a price you can live with makes it easier to manage your day-to-day business and focus on operational improvements instead of always worrying where your money will come from.

Along those same lines, many producers rely on operating loans from their local bank to get the financing needed to run their operation from year to year. If a producer can go to their banker and show that they have secured a buyer for their cattle and can obtain a premium for those cattle, the banker is much more inclined to approve that loan than if he were dealing with a producer with no marketing plan.

Entering into these marketing agreements also has the added bonus of being able to pick up on operational efficiencies that make the most of your cattle, streamline your operation, and potentially save money. Many ranchers who participate in these programs get information back from the feedlots that tell them how their cattle performed while being fed. Information also comes back from the packer in the form of yield and quality grades. This information is critical in managing the herd to ensure that the traits which provide the higher quality animals and beef are the ones in which you focus on.

The benefits of alternative marketing arrangements are being seen everyday in the cattle business, and they were recently supported by the results of the Grain Inspection Packers and Stockyards Administration's (GIPSA) Livestock and Meat Marketing study conducted by RTI International and released in February. This three and a half year study was funded by four and a half million taxpayer dollars and was billed as the "definitive answer" on these issues. The study supports what many ranchers across the country have known all along – a market-driven system works. This study was based on over half a million transactions representing more than fifty-eight million head of cattle[1]. The overwhelming conclusion of this study is that overall, alternative marketing arrangements help all sectors of the industry, not just those that participate.

[1] RTI International, *GIPSA Livestock and Meat Marketing Study,* Vol. 1, Executive Summary, page 4

With all of the taxpayer money and time invested in this project, I think the livestock industry and Congress need to give serious consideration to its conclusions. The report states that the leading reasons producers participate in alternative marketing arrangements are the ability to buy or sell higher quality cattle, improve supply chain management, and obtain better prices[2]. All three of these tie into the topics we discussed above – higher quality cattle produce the beef products that the consumers desire. Providing this consumer preferred product allows us to capture more of that consumer dollar in the form of a premium. That bigger share of the consumer dollar is being passed down to the producer. The producer is getting a better price for their cattle and can use that money to continue to improve their operation.

When talking about improved supply management, we have to once again go back to the consumer. The consumer does not come into their local Safeway looking for "Rancher's Reserve" beef only on Tuesdays. The consumer demands the convenience of picking up a package of "Rancher's Reserve" beef any day of the week. To meet that demand, the retailer and packer need a steady and consistent supply of cattle that meet the qualifications of the store-branded program. This allows them to ensure this product is available daily. If the packer is limited in its ability to source these cattle, they cannot ensure that there will be a steady supply of animals coming through their processing plants. In turn, they can not supply "Rancher's Reserve" beef everyday, and the consumer chooses another source of protein for the center of the plate.

Thus far, I have only talked about alternative marketing arrangements and the benefits they have provided to our industry. One of the conclusions in the study, however, was that only a minority of the cattle marketed to the twenty nine largest packers was done so with AMAs. RTI International's results show that approximately twenty nine percent of cattle are marketed through marketing agreements, almost five percent through forward contracting, and only five percent were packer owned. Approximately sixty two percent of cattle marketed were done so through the cash or spot market[3].

Auction markets are a critically important part of the U.S. cattle industry. They have been the primary arena for marketing cattle for over a hundred years. In this method, a willing seller takes the highest bid for his cattle when he decides it is the right time to bring them to the auction barn. Ranchers who market this way cite several reasons for their choice. One reason is independence. By using the cash or spot market, you have no restrictions or cattle quality concerns that would keep you from selling your cattle – unlike marketing arrangements that require certain criteria be met before cattle qualify for filling the contract. Flexibility is also important to these producers. Selling on the spot market gives ranchers the opportunity to participate in market rallies whereas those who have already contracted their cattle lose that opportunity because they are already locked into a price agreement. We must remember, however, that this only gives them the opportunity to catch the rally. Timing the market is always a difficult task and adds to your price risk.

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[2] RTI International, *GIPSA Livestock and Meat Marketing Study,* Vol. 1, Executive Summary, page 4
[3] RTI International, *GIPSA Livestock and Meat Marketing Study,* Vol. 1, Executive Summary, page 5

Even with traditional means of marketing, we have seen innovations and improvements that have been market-driven. One of these innovations is video livestock auctions. With this method, ranchers can auction their animals by video and reach customers across the country and not just those that come to the sale barn that week. This style of spot market stemmed once again from ranchers who produce a higher quality product and want to make sure they are getting paid for the value they are adding to their cattle.

It is always a bonus when both the consumer and rancher can benefit from innovations in the cattle industry. Many of these new marketing methods and tools are great successes. The consumer is getting the beef products they prefer and ranchers are getting paid for that added value. The results are quantifiable as shown by the Livestock and Meat Marketing Study and by the numbers. Demand for beef has grown substantially over the past decade – twenty percent since 1998. Consumer expenditures on beef are at record levels of seventy-one billion dollars for 2006. More importantly, consumer confidence in beef is at ninety-one percent. This is greater than it was in September of 2003 (before the December 23rd BSE case in Washington state) when it was eighty-eight percent. All of this has translated into profitable market conditions for ranchers. In 1980, the average price for a 650 pound feeder steer was $73.11 per hundredweight. That price dropped to $65 per hundredweight in 1996. We saw tremendous improvement in the market over the next ten years resulting in an average price of $117.73 per hundredweight in 2005 and only a slight drop from that in 2006. This price increase was affected by many things, but one of those factors was meeting consumer demands with alternative marketing arrangements.

Demand is high, prices are at more profitable levels, and the market-driven innovations our industry has put in place are proving successful. Yet today, we continue to discuss legislation that would interfere with a market-driven structure. In today's marketplace, producers need the freedom and flexibility to market their cattle in ways that provide the best return on their investment. As I have already mentioned, ranchers can market their cattle in different ways and see additional economic benefits – all while maintaining a strong and viable cash market. The study shows that government-enacted restrictions on the market-driven system would be detrimental to all sectors of our industry[4].

The study concludes that reductions or restrictions on alternative marketing arrangements would cause a decrease in the supply of cattle, a decrease in the supply and quality of beef, and an increase in retail beef prices[5]. These are all results that would set our industry back rather than move it forward. The study continues by concluding that feeder cattle prices would decrease because of higher operating costs resulting from restrictions on alternative marketing arrangements[6]. That means that in the end, it is the individual cow/calf producers across this country that will bear the brunt of government restrictions. At the same time, we continue to see an increase in feed costs due to competition with ethanol for corn, and an increase in fuel costs. In a time of these additional costs and strains on the bottom line, the last thing we need to do is think about adding more burdens to our ranchers. On the surface, these restrictions and bans on alternative marketing arrangements, including a ban on packer ownership of cattle, look

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[4] RTI International, *GIPSA Livestock and Meat Marketing Study,* Vol. 1, Executive Summary, page 3
[5] RTI International, *GIPSA Livestock and Meat Marketing Study,* Vol. 1, Executive Summary, page 8
[6] RTI International, *GIPSA Livestock and Meat Marketing Study,* Vol. 1, Executive Summary, page 8

appealing, but in both the short and long-term, they will unintentionally hurt those it was intended to protect.

Rather than talk about restrictions on innovation, NCBA would prefer to talk about ways we can partner with Congress to keep the marketplace working fairly and efficiently. One program that has proven useful in making the marketplace more transparent and fair is mandatory livestock price reporting (MPR). Mandatory price reporting has been in place since 2001, and since then we have seen increased and more readily understandable information regarding pricing, contracting for purchase, and supply and demand conditions for livestock. This user-friendly information is essential to ranchers as they evaluate the marketplace and determine when and how to sell their cattle.

Fortunately we were able to work with Congress to get mandatory price reporting reauthorized last year after more than a year of the program being voluntary. As of today, however, we have still not seen the final rule from USDA that will once again require mandatory reporting. Although we appreciate the beef packers' continued voluntary reporting, we would like to see the rule to re-implement the program expedited and put back in place. We also thoroughly studied the Government Accountability Office's (GAO) report on mandatory price reporting. We thought the program was appropriately reviewed and that the GAO's recommendations were productive. We let the Agricultural Marketing Service (AMS) at USDA know of our support of the recommendations and have urged them to implement those changes as quick as possible. They already have several in place and we will continue to monitor their progress. Mandatory price reporting needs to remain an effective, viable, and reliable tool for producers to utilize when making their marketing decisions.

NCBA continues to look at additional legislation and programs that will help foster more competition in our industry. One of those priorities is the ability for small, state-inspected beef packers to ship their product across state lines. Smaller plants that currently operate under state-inspected programs are precluded from taking advantage of market expansion because they cannot ship across state lines. In order to take advantage of interstate shipment of their products, they must first make the necessary, and often expensive, steps to become federally inspected. NCBA recommends that meat inspected under state programs be accorded the same freedom of movement in interstate commerce that is accorded foreign-inspected imported meat.

This change would provide smaller packers with the ability to expand their trade area and open new markets. Accessing new markets always provides economic benefit, and it will allow these packers to stay viable, grow, and provide more competition in the fed cattle market. These packers will also have the opportunity to develop local, state, or regionally branded beef products, which, in turn, will allow them to benefit from alternative marketing arrangements and help build a niche demand for their products.

Another avenue where Congress can be helpful in growing the cattle industry is in regards to trade. We just discussed how access to new markets can be economically beneficial, and in the world market, over ninety-six percent of the consumers live outside of the United States. Your support of the Market Access Program (MAP) and Foreign Market Development (FMD) program will help the beef industry regain demand in markets we lost after the 2003 BSE case, and to develop new markets. Congress can also be helpful in holding our trading partners accountable and making sure trade is fair and based on sound science.

Probably the most effective way for industry and Congress to ensure that the marketplace stays fair and competitive is to just ensure that the laws already on the books are readily enforced. The Packers and Stockyards Act (PSA) was passed to ensure that the marketplace stays competitive. USDA's enforcement of PSA and other anti-trust laws and regulations are critical in identifying, investigating, and prosecuting anti-competitive actions by packers, dealers, markets, and others who fall under its jurisdiction. To add additional support, it is also important that USDA work with the Department of Justice to bring to justice those who collude against the individual rancher.

There has been evidence over the past number of years that USDA has not been as effective as it could be in investigating allegations of anti-competitive activities, and even less effective at recommending cases for prosecution. We believe some beneficial changes have been made, but we encourage Congress to look at ways to help USDA overcome this issue and put the personnel and resources in place to make sure all cases are actively worked through the legal system. Increased activity in this effort would go a long way in discouraging people from engaging in anti-competitive acts.

NCBA supports a free market system and we trust in the ability, adaptability, and innovative skills of the U.S. rancher to be able to prosper in a relatively unregulated domestic and international marketplace. We rely on federal regulators to ensure that the marketplace is free from anti-trust, collusion, price fixing, and other illegal activities that damage the viability of the market and interfere with market signals, but also to keep the playing field level for cattle producers.

Our membership has consistently said that we want access to business opportunities that will help us improve our bottom line. Accordingly, keep in mind that for every agreement made by a packer, there is an individual rancher on the other side of that transaction who has decided that the agreement is in their own best interest, and they should be allowed to conduct that business privately, just like any other industry. Those cattlemen have exercised their personal right to willingly engage in that agreement because they perceive it to add value to their operation, to their business, to their livestock, and ultimately to their family. That opportunity in the end will help to continually improve their management, genetics, and long-term profitability. The opportunity to engage in and benefit from new advancements is good for the individual producer and good for the industry as we strive to supply the consumer with beef products they demand.

Our industry's reliance on a market-based, market-driven, consumer focused approach has and will provide opportunities for beef producers to be successful. By meeting customer needs, we can best create opportunity for ourselves. With all the choices today's consumers have, we must strive to meet their needs and demands. We have to compete in a global environment and meet global customer needs. To do that, we need to have the flexibility to adjust business plans and practices that help us meet global demand. We must continue to have a world class infrastructure that ensures safe, healthy, and wholesome beef to consumers. We must have a business and regulatory climate that ensures commerce is fair, open, transparent, and not overly burdensome. In the end, we must have a government that works to help our industry and not one that limits or removes choices for cattlemen in the marketing of their cattle.

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**Date**: 30 December 2009

**To**: Legal Policy Section
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450 5th Street, NW, Suite 11700
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**From**: Stephen R. Koontz

**Re**: Comments Regarding Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy

Increasing concentration in agriculture and the potential exercise of market power is one of the most important issues that agriculture faces and it has been for years. Because of the importance of this issue, it is a topic of much research. The research encompasses years and a multitude of studies. After this letter is a document that is offered to synthesize much of the research on concentration and market power in the cattle and beef industries and specifically with respect to the beefpacking and captive supplies.

I have worked on market power questions as related to the cattle and beef industry for much of my 20 year career as an agricultural economist. I have worked on the two largest and Congressionally-mandated studies. I have published the results of these works in peer-reviewed scientific journals. I also understand that the body of research on this issue is far flung and that it is hard to find a concise and useful summary of its findings. The document is offered in that spirit.

I would also offer that these comments are not mine alone. I have had this document reviewed by a group of peers, they find my summary sound and consistent with scientific research literature, they concur with my assessment, and would be willing to state this. My peers that have reviewed the document are: Clement E. Ward at Oklahoma State University, Ted C. Schroeder at Kansas State University, John D. Lawrence at Iowa State University, Gary W. Brester at Montana State University, and Glynn T. Tonsor at Michigan State University. These professionals are knowledgeable on this topic and have conducted much research on livestock and meat industries.

I hope the document is useful to the DOJ and USDA in seeking information on this important policy issue.

***A Synthesis of Market Power Research on the Cattle and Beef Industry***

Stephen R. Koontz*

December 30, 2009

Comments Submitted to the
U.S. Department of Justice and U.S. Department of Agriculture
Regarding
Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy

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### *A Synthesis of Market Power Research on the Cattle and Beef Industry*

The purpose of this document is to contribute to the call for comments regarding the USDA & DOJ public workshops on competition issues in agriculture industries. The question of competition within agriculture industries is a well-researched topic. Thus, what this document will do is offer a synthesis of published research that is relevant to the cattle and beef industry. The author has an interest in public service with particular regard to the Land-Grant University mission, the economic well-being of the cattle and beef industry, and seeing facts based on scientific knowledge contribute to the discussion.

All agricultural production, processing, marketing, food, and service sectors are becoming increasingly concentrated – that is populated by fewer and larger firms. In fact, it is difficult to identify an agricultural industry of any economic size where increasing concentration is not the case. It is occurring in the agricultural production as well as processing and marketing industries. However, the meatpacking industry draws some of the most intense criticism with respect to this ubiquitous trend. Producers are concerned that the economic environment of increasing concentration results in the exercise of market power to their detriment.

This document will present a summary of research evidence addressing the question: Is there evidence that beefpackers exercise market power? Further, what evidence is there that any packer anti-competitive conduct has resulted in producers and consumers being economically harmed? A large number of studies have been conducted. This summary reviews a large portion of the research pertaining to these questions and offers some interpretive insights. The studies use alternative approaches and varying data sources. However, overall conclusions are possible.

Some of the first comprehensive research on industry organization and assessment of economic performance addressed issues in agriculture and specifically the meatpacking industry (see Nicholls 1941). Nicholls (1940) states, "Only after considerable further investigation will we know whether or not reform in the packing industry is necessary. It is conceivable that such monopoly elements as exist yield desirable results. A less extreme possibility is that results are undesirable but not sufficiently bad to bother about." The considerable further investigation has occurred. Does the research community know the answer? We believe so.

But first there is a need to present a synthesis of the evidence from which the answer is drawn. If you are impatient then read the conclusions but how the conclusions are obtained is important and is thus the core of this document. There is a considerable amount of different research that will be categorized into four areas: 1) Structure-Conduct-Performance Research, 2) Oligopoly/Oligopsony Market Power Research, 3) Cost Economies Research, and 4) Captive Supplies Research. Of course, much research fits more that one category but much also has a main contribution. These categories also follow the timing of how research has emerged and how the thinking on market power has evolved. The synthesis here is not unique. We draw on the important previous literature reviews offered in Ward (1988), Azzam and Anderson (1996), Ward (2002), and Muth et al. (2005). Each of these is deserving of a read by anyone interested in cattle and beef industry concentration and market power.

*Structure-Conduct-Performance Research*

Some of the first works on industry concentration within the cattle and beef industry followed the founding Structure-Conduct-Performance (SCP) work of Bain (1968). In the cattle and beef industry research, market prices and margins were explained by structural variables. For example, variation in prices and margins were examined to see if they could be explained by variations in the number of buyer and sellers, the amount of industry concentration, and information on supply and demand. Concentration was believed to lead to collusion, and to higher prices and profits. Structure is easy to measure, performance is easy to measure, but there were few direct measures of conduct. Therefore, conduct is implied through the relationship between structure and performance.

Much cattle and beef research finds that higher concentration is associated with lower fed cattle prices and higher margins. Menkhaus, St. Clair, and Ahmaddaud (1981), Quail et al. (1986), Marion and Geithman (1995) find this in cattle prices. However, Multop and Helmuth (1980) find higher concentration was associated with higher fed cattle prices. These studies must often use annual price data as concentration measures are not available more frequently. These studies have used national prices and prices for different cattle feeding regions. Quail et al. (1986) also found that higher concentration in the cattle feeding industry was associated with higher fed cattle prices and say the result may imply countervailing power. Results from this body of research suggest that prices are lower in less important cattle feeding regions with high packer concentration.

Hall, Schmitz, and Cothern (1979) and Multop and Helmuth (1980) found higher concentration was associated with higher wholesale-to-retail margins supporting an argument that larger firms had power to raise the beef price to consumers. Ward (1988 and 1990) found higher concentration was associated with lower farm-to-wholesale margins supporting an argument that larger packers are more efficient and pass some of these gains to producers. Ward (1987, 1988, and 1990) found no relationship between concentration and profits or between concentration and productivity. Thus, larger packers were not persistently more profitable or more innovative.

The two most recent and comprehensive looks at margins are as follows. Ward and Stevens (2000) examined price linkages between the producer-to-retail margin and found that increased meatpacker concentration did not weaken the price linkage between producers and packers or between packers and wholesalers. Most of any pricing behavior change occurred at the retail level and that increased beefpacker concentration had little effect on price behavior between producers and packers. Matthews et al. (1999) examined the effect that concentration has on farm-to-wholesale and wholesale-to-retail margins in the beef industry. Concentration has no significant effect on marketing margins. However, there were periods where increased concentration was associated with higher fed cattle prices and lower farm-wholesale marketing margins. This is evidence that economies of size in packing resulted in higher fed cattle prices.

The remainder of this section discusses studies that use transaction prices. The data are unique because detail. Conclusions are clearly about the impact of market structure on prices received by producers. Ward (1981 and 1982), using 1979 data, found higher fed cattle prices were associated with more bids received and more buyers bidding. Also, larger buyers did not pay significantly lower prices than smaller rivals. Ward (1992), using 1989 data, examined if the beefpacker mergers through the 1980s had an impact on transaction prices. Similar results were found regarding numbers of bids and buyers. Also, the largest three packers – after the mergers – paid the lowest prices for fed cattle. But the result was not uniform between the largest three.

Williams et al. (1996) is the most recent study of fed cattle transaction prices. The data were from the Congressionally-mandated USDA GIPSA 1996 Concentration Study. All fed cattle transactions were obtained and used from the largest fed cattle slaughter plants for April 1992 to April 1993. The study found higher concentration was associated with the lower fed cattle prices but concentration is one of the least important factors. Transaction prices are primarily determined by market fundamentals and plant economics. Further, the concentration result is not similar across geographic regions. Concentration has no impact in the primary cattle feeding regions, has a negative impact as expected Pacific Northwest and the southwest U.S., but had an unexpected positive impact on prices in the Corn Belt.

The studies have clearly found that prices tended to be higher as the number of bids and bidders increased. But different studies found that larger packers paid lower prices or did not pay lower prices. Further, concentration has a mixed impact – in some regions higher concentration is associated with lower prices and in other regions with higher prices. No general conclusions can be drawn if results change across studies. Market conditions appear to be as important as structure variables and this is a weakness of the Structure-Conduct-Performance Research.

Structure-Conduct-Performance Research continues to be used and has provided important information about agricultural and food industries. But it can be subject to assumption errors, and it does not clearly deal with causality and simultaneity. For example, it may be that the less important cattle feeding regions have higher transportation costs and lower fed cattle prices but the methods associate the lower price result with the high concentration. The research has also criticized on conceptual grounds in that concentration allows collusion, but the approach does not address how this behavior manifests. The approach has the weakness that conduct is inferred from an association between structure and performance.

*Oligopoly/Oligopsony Market Power Research*

Starting in the 1980s, studies began attempting to measure conduct directly. Known as New Empirical Industrial Organization (NEIO), these studies measure the gap between prices and marginal costs as a conduct parameter. Conduct is not measured directly by data or a proxy such as structure but is measured by the departure from marginal cost pricing – competitive industries marginal cost price. This satisfies conceptual objections regarding a failure of SCP research to account for conduct. The conduct parameter generally and conveniently places an industry on the continuum between perfect competition and monopoly. However, there are a variety of methods to measure marginal costs and even a variety of prices. Thus, the variety of findings should not be surprising. The NEIO research has seen the most in terms of development of economic ideas and linkages between these concepts and measures of market power. Because of this, a simple outline of works is difficult.

Schroeter (1988) was the first to apply the conduct parameter approach to beefpacking. Monopoly and monopsony price distortions were relatively small, 3% of the wholesale meat price and 1% of the farm cattle price. The degree of the distortions had decreased during the later years of the sample, when beefpacking concentration was beginning to increase sharply. Whereas, Azzam (1992) showed there was oligopsony power in the live cattle input market, but no oligopoly power in marketing beef. Muth and Wohlgenant (1999 and 1999) generalize Schroeter (1988) and find negligible market power price distortions. Interestingly, these types of results are the most common. In some cases, market power is not found. And when it is found the magnitude tends to be small – on the order of 1-3% of price.

Schroeter, Azzam, and Zhang (2000) explore the market power question in relation to interaction between packers and retailers. This study was an effort to develop a framework to test market power at different stages in the marketing channel. The work finds that retailers exercise market power in sales to consumers, packer-retailer transactions were the result of bargaining, and meatpackers had no market power in animal purchases.

Across industry studies have the tendency to produce different findings. Schroeter and Azzam (1990) measure market in the entire red meatpacking industry. Several meatpacking firms operate both beef and pork plants. The decisions of a firm in the market for one product may affect and be affected by the other market. Such joint production of substitute products is a more complex source of market power. Market power is found and estimated to be approximately one-half of farm-retail price spreads for beef and pork (55% and 37%). Basic knowledge of margins in both industries makes these magnitudes difficult to believe. The authors recognize limitations in the model. Azzam and Pagoulatos (1990) also examine the entire red meat industry and find non-competitive behavior in both the animal and meat markets. The power was higher in live animal markets than in meat markets. Bhuyan and Lopez (1997) tested for market power using farm-to-retail margins across all food and tobacco industries. The work is one of the first to allow for and find economies of size. The effort is appealing in ranking the industries with the highest market power. For example, breakfast cereal, alcoholic beverages and snack foods rank the highest. However, the work suggests that 40% of the margin in the red meat industry is due to power.

A limitation of conduct parameter studies is the extent of data aggregation across regions and over time. Azzam and Schroeter (1991) address this problem and measure price distortions in 13 regional fed cattle procurement markets. The work finds small amounts of market power, less than 1% of the price. The work also evaluated the tradeoff between market power and efficiency gains as the industry consolidates and suggested that the benefits of efficiency increases during consolidation in beef packing offset any negative effects of increased market power. Similar results are also found for Azzam and Schroeter (1995), Azzam (1997), Lopez, Azzam, and Liron-Espana (2002), and Lopez and Liron-Espana (2003).

Koontz, Garcia, and Hudson (1993) expand the conduct parameter approach through developing a measure that is consistent with a dynamic pricing game. Game theory is used to explain tacit collusion among meatpackers. The dynamic game requires that collusive behavior be expressed by a two-phased strategy: there are cooperative phases where non-competitive prices are paid and non-cooperative phases where competitive prices are paid. Market power is found in daily fed cattle prices and the price distortion is 0.5% to 0.8%. However, they found a reduction in market power when buyer concentration was higher. Koontz and Garcia (1997) extend this work to multiple regional markets. Stronger tacit collusion can be exercised by coordinating across regions. Multiple-market oligopsony behavior was found across geographic fed cattle markets and evidence indicated coordinated behavior across markets. The oligopsony finding was consistent with previous research that the extent of oligopsony was small and that the effect was smaller when concentration was higher. Koontz and Garcia conclude that oligopsony behavior in fed cattle procurement is not constant over time and space. Azzam and Park (1993) and Weliwita and Azzam (1996) also use game theory explanation of conduct. The first study finds little to no evidence of market power in cattle markets. The second finds not much evidence of cooperative behavior implied by the dynamic model and that measures of market power were small and consistent with other studies –1-3% of price.

Several studies have recognized the important interaction between market power and costs within the packing industry. Stiegert, Azzam, and Brorsen (1993) suggest beefpacking firms follow average-cost pricing rather than marginal-cost pricing. Packers appear to bid to ensure that margins cover average processing costs, and continue with the strategy in the face of anticipated supply shortfalls and unanticipated small shortfalls. However, when there were large unexpected supply shortfalls, packers competed aggressively, margins narrowed, and this occurred frequently. The study is unique in examining expected and unexpected reductions in cattle numbers. They also conclude that decreasing buyer concentration is unlikely to result in improved fed cattle prices for producers.

Economies of size suggest increased efficiencies have occurred over time in meatpacking as structural changes have taken place (Azzam 1997). Azzam and Schroeter (1995) address the tradeoffs in efficiency gains and oligopsony losses. The research suggests that consolidation leads to economies of size efficiencies and increased oligopsony pricing behavior, but that efficiency gains offset the market power losses. The later work finds that a cost savings of 2.4% or less offsets market power effects from a 50% increase in concentration. Further, the estimate of actual cost savings was 4%. Thus, they conclude structural changes have been beneficial to cattle and beef markets.

Driscoll, Kambhampaty, and Purcell (1997) test for profit maximizing behavior by beefpacking firms. The conduct parameter research assumes profit maximization by firms. Other research shows that costs are declining with volume and that average cost pricing may be followed. In this case, conduct parameters are biased measures of market power. Tests were applied to data from the 1996 Concentration Study. Results suggest plants and firms did not follow profit-maximizing behavior. Plants often operated at production levels below those needed to achieve profit maximization. Results were consistent with use of average cost pricing. The work found very little evidence of behavior required to exercise market power. The work further concludes the conduct parameter approach is inappropriate for short-term transaction data but many require periods longer than one month.

Morrison-Paul (2001) estimated oligopoly and oligopsony power with monthly, plant-level cost and revenue data for beefpacking plants over 1992-93 – using the 1996 Concentration Study data. Cost economies and market power was measured and the findings confirmed significant economies of size. There is also little evidence of price-depressing, market power distortions for fed cattle. The findings are consistent with the previous research on tradeoffs between cost efficiency gains and oligopsony losses.

The study by Holloway (1991) examined long-run market power by allowing for changes in the number and size of firms. The work makes use of farm-to-retail margins and finds close to perfect competition. The study is part of a larger body of theoretical work on marketing margins, work that starts with Gardner (1975). Margins between the farm-to-wholesale and farm-to-retail level are often used to as evidence of market power. Gardner shows this is clearly not the case. Margins will increase as more non-farm inputs are used to satisfy consumer demand for increased food-related services. Holloway expands Gardner's work to include non-competitive behavior. Other work (Hamilton and Sunding 1997) shows how increasing margins and increasing concentration are part of a competitive process.

A conclusion from this body of research is that comprehensive empirical models estimating market power, cost efficiency, technological change, and changing consumers will be difficult and unlikely. For example, Crespi, Xia, and Jones show a link between the cattle cycle and market power in that more power can be exercised during the large supply phase of the cycle. Rather, it is important for research to break the problem down into pieces that can be empirically addressed and then synthesize the empirical works into a comprehensive view.

A conclusion also from this work is that measures of market power are quite diverse. Many types of market power measures have been constructed. There are several studies which find no market power. There is a multitude of studies which find small amounts of market power. And there are a few studies that find large measures of market power. On whole, the small amounts of market power are the main finding.

*Cost Economies Research*

So, if it is not market power that is driving the beefpacking to higher levels of concentration then what is it? It appears to be the substantial cost economies of larger facilities and firms. There is a large body of research documenting the economies of size within the beefpacking industry. As with other research, the cost economy research has used a variety of methods and data sources. But the finding is ubiquitous: big firms have lower per unit costs than small firms. This cost difference allows the larger firm to make larger profits than smaller firms, potentially expanding operations, and potentially paying higher prices of inputs such as fed cattle.

A variety of studies use an economic engineering approach. Packing plant costs are constructed through components and costs are developed. Duewer and Nelson (1991) is a well-known example of this approach. Economies of size are seen between large and small plants. And the incentive for any sized plant to operate at larger volumes is also seen.

Most studies make use of secondary data from which cost functions can be estimated with statistical and econometric tools. The secondary data are collected from the firm or from the Census of Manufacturing. Beginning with Logan (1963), continuing with Ball and Chambers (1982), and most recently with Morrison-Paul (2001), these studies are good examples of representative research. The final work combines cost economy information with market power measures due to captive supplies. MacDonald et al. (2000), for which MacDonald (2003) offers a summary, are some of the more recent studies of packing and processing costs. All of the research on meatpacking costs reveals that the industry and the beefpacking specifically shows economies of size – larger facilities and larger firms are able to conduct processing operations at lower cost per unit than smaller facilities or firms. We are not aware of any study that does not show that meatpacking displays strong economies of size.

A minimal number of studies have surveyed firms regarding costs. Ward (1990 and 1993) surveyed packers as to slaughter and fabrication costs and constructed a long-run industry average total cost function. Economies of size are seen between large and small plants. And the incentive for any sized plant to operate at larger volumes is also seen.

Finally, Koontz and Lawrence estimate beef packer average total cost function using plant level profit and loss (P&L) data from the four largest meat packers. This study is unique because of the data are from actual plant P&L statements. This research was part of the USDA GIPSA-RTI 2007 Livestock and Meat Marketing Study. P&L statements were obtained from the four largest packers for the 20 months of the study period: October 2002 through March 2005. Plant level P&L data reveal strong economies of size within each plant, across large and small plants, and for the representative plant that could be reported with the confidential data.

*Captive Supplies Research*

One of the most contentious issues regarding concentration, market power, and fed cattle prices has centered on use of captive supplies or alternative marketing arrangements (AMAs). AMAs refer to non-cash market means of procuring fed cattle. In the cattle industry, captive supplies or AMAs are formula arrangements. Forward contracts and packer-owned cattle are the other two main means of procuring that is not through the cash market and these two sources are small and predictably 10% and 5% of marketings. Formula transactions are between 30% and 50% of marketings. The cash market is between 60% and 40% of marketings.

There are two principle studies on captive supplies. Both were Congressionally-mandated which required cooperation from the packing industry. The first study was Ward, Koontz, and Schroeder (1996) and the second was Muth et al. (2007). The first study is referred to as the USDA GIPSA "Concentration Study." The study was the first comprehensive look at the cost of AMA use to the fed cattle industry. The second study is referred to as the USDA GIPSA-RTI "Livestock and Meat Marketing Study." The study was the first comprehensive look at the cost and benefits of AMA use to the fed cattle industry. Research from both of these projects have been published in peer reviewed scientific journals – see Ward, Koontz, and Schroeder (1998) and Muth et al (2008), Liu et al (2009), and Koontz and Lawrence.

Both studies made use of a complete history of fed cattle transactions during the study periods. The 1996 study had data from April 1992 to April 1993 and the 2007 study had data from October 2002 to March 2005. Almost every fed cattle transaction that took place in the U.S. during the study periods was included in the analysis. Thus, there are no sampling or data aggregation issues. Captive supplies either impacted fed cattle transactions prices or not. The impacts were found to be small and depend of the type of AMA. Captive supplies were measured a variety of ways including actual deliveries and the size of inventories from which the packer could procure so there are a variety of captive supply impact measures. In the 1996 study, the maximum impact of captive supplies was to depress cash price by 1.2%. Other measures are smaller with most below 1% and with some being zero. In the 2007 study, the maximum impact of AMAs was to depress cash price by 0.3%. Both studies found that packers procured low-priced cattle from the portfolio of marketing alternatives and that there was little evidence of strategic use of AMAs to impact the market. A positive relationship between plant utilization and prices paid by packers was found suggesting that higher packing plant utilization through AMAs resulted in higher prices.

Different from the 1996 study, the 2007 study also measured the benefits of AMAs and the cost/benefit assessment is transparent. The cost of captive supplies was approximately $4.50 per head. Improved throughput, more predictable volumes, and better other input use resulted in packer slaughter and fabrication costs being $6.50 per head lower – these are benefits. AMAs are also shown to be associated with improved risk management, which is cost reducing, and improved animal quality, which is revenue enhancing. Thus, a major finding of the 2007 LMMS is that the benefits of AMAs substantially outweigh costs.

Another piece of notable research was the “Panhandle Study.” Schroeter and Azzam (1999, 2003, and 2004) had access to transaction data from four plants in the Texas Panhandle region from February 1995 to May 1996. Results suggest that packers expecting large deliveries of AMA cattle, paid lower prices in the cash market. However, the magnitude was small. A 10% increase in captive deliveries is associated with a $0.021/cwt lower price. The average price for the sample was $64.56/cwt. The authors state the finding is consistent across studies and caution that the negative relationship is not necessarily causal, nor is it an indicator of non-competitive behavior by packers. Packers simply deliver low priced cattle whether those cattle are contracted or purchased in the cash market. This research suggests that eliminating captive supplies would increase fed cattle prices approximately 0.1%.

The two earliest pieces of empirical research on captive supplies are Elam (1992) and Schroeder et al (1993). The first work examined monthly prices and captive supply volumes for Texas, Kansas, Colorado, Nebraska, and the nation. The study period was October 1988 to May 1991. The second work was the first to examine fed cattle transaction price data. The sample was for southwest Kansas for May to November 1990. While the data and sample period are different, the impact of captive supplies on fed cattle price is at most 0.4% of the price.

Ward (2005) provided a look at trends in captive supplies, described definitional issues, and is some of the most recent research. Importantly, that work examined the data available since Mandatory Price Reporting Legislation (MPR) was implemented by USDA’s Agricultural

Marketing Service in 2001. Those data are both more timely and detailed than was publicly available before. MPR provides increased market transparency at both the animal and meat levels both in quantities and prices. That work also found: 1) the significant week-to-week variability in marketing methods, 2) that marketing methods do change, and 3) there was a lack of "sweetheart deals" as was much discussed in the MPR legislation debate.

Empirical work estimating price impacts from captive supplies addresses the pressing question that producers have but has lacked a theoretical framework identifying the incentives for meatpacking firms to contract cattle supplies. Other work examines these incentives. Azzam (1996), Azzam (1998), and Love and Burton (1999) are important examples. These works show that market power can be one reason packers use captive supplies. In this case, the price impacts depend on a complex combination of variables, among them the cash market volume relative captive supplies. The work suggests that non-competitive conduct is not a necessary condition for a negative relationship between cash prices and captive supplies. Thus, eliminating captive supplies may not improve fed cattle prices to the extent measured by the empirical work – this is a very important point. Further, the work shows that firms benefit from efficiency gains associated with captive supplies and these benefits improve prices for cattle producers. Thus, the exercise of market power may not be the prime motive for captive supply use.

Some of the newer theoretical research Zhang and Sexton (2000) illustrate how meatpackers can use captive supplies strategically to influence cash market prices. Meatpackers can create geographic buffer which reduces competition in the cash market. Schroeter and Azzam examined the Texas Panhandle data to see if conditions matched those predicted by the Zhang and Sexton. The two predictions implied from Zhang and Sexton were not verified.

Crespi and Sexton (2004) examine the Panhandle Study transaction data from the standpoint of a competitive bidding process and find some non-competitive conduct. The work suggests captive supplies allow packers to reduce cash bids 5-10%. However, the empirical work requires assumptions that are not tested and not likely in fed cattle bidding. And possibly because of this, the measures of market power are some of the largest in the captive supply research.

Xia and Sexton (2007) examine top-of-the-market clauses that are common in formula AMAs. This work shows if packers can secure 50% or more of supplies through captive means then the fed cattle market price can be depressed to the monopsony level and maximum market power exerted. Recent research (see Zhang and Brorsen) generalizes the model and suggests that much more of the market must be secured through captive supplies. While the original work is interesting in that formalizes a known problem with formula pricing, the empirical captive supply research does not support the theoretical results. This suggests that it is likely that packers use AMAs for more purposes than to exercise market power. For example, to procure reliable – and therefore cost reducing – supplies, to procure higher-quality or specific quality animals, and for risk management. Other research also supports this idea.

Substantial portions of Muth et al. (2007) and Muth et al. (2005) are directed at discussions and developments of these potential benefits of AMA use – volume, quality, and risk. The 2005 report is that Interim Report for the 2007 LMMS Final Report. The interim report is a comprehensive literature review that digs into the economics, business, and supply chain literature. Alternatives to the cash market are well-used in many industries and used to the benefit of that industry. Livestock and fed cattle are simply not unique. The final report is a comprehensive look at why livestock industries – cattle, hog, and lamb – use AMAs. The conceptual justifications are examined with real world data and the existence of many of the benefits are measured and supported through the research.

*Summary and Conclusions*

So what is the answer to Nicholls question? There is market power exercised in the beefpacking industry. Almost every study that examines the question finds market power. However, most of these measures of market power are rather small. Most measures of market power in the cattle and beef industry are 1-3%. Most measures of market power associated with captive supplies are <1%. Further, any attempt that examines the tradeoff between market power and other benefits of larger firms – most notably the cost economies – finds that the benefits outweigh the costs. And more often then not, benefits far outweigh the costs.

The research clearly does not conclude the beefpacking industry needs aggressive antitrust action – for example that the larger packers should be required to divest. This is simply not a result found within the scientific literature. There will be some hard merger and acquisition questions in the future but the research evidence clearly shows that the exercise of market power is not a substantive problem. But not a problem does not mean not a concern. There is market power that is exercised. Currently, that market power is not large. But not substantive does not mean does not exist. The beefpacking industry is not a competitive industry in the economic theory sense of the definition and noncompetitive industries deserve regulatory surveillance.

The research also clearly says that the current policy focus – since the Johnson amendment to the 2000 Farm Bill – on legislation that prohibits captive supplies or alternative marketing agreements is misplaced. The costs associated with AMA use are minimum compared to the benefits. Such legislation would impose a substantial cost on the beefpacking industry and it is relatively simple economics that costs borne by marketers are ultimately paid by producers and consumers.

Finally, we would like to return to the fact that questions of concentration and market power in the beefpacking industry are not new and that there is a substantive body of scientific literature which address this issue. Findings may not be popular but they are the culmination of years of research and to ignore them is to ignore what science has to say about the important question of market power.

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