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February 11, 2010

U.S. Department of Justice
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Legal Policy Section, Antitrust Division
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Re: *DOJ/USDA Antitrust Enforcement Issues*
*Public Hearings; Comment Opportunity*
*74 Fed. Reg. 43725820 (August 27, 2009)*
Our File No. 09-0103

Gentlemen:

1. On January 5, 2010, after the term for public comments invited by the US DOJ/ USDA notice published at 74 *Fed Reg* 43725, the American Meat Institute (AMI) submitted a nine (9)-page letter. The problematic letter is executed by Mark D. Dopp, AMI's Senior Vice President, Regulatory Affairs & General Counsel. While it may not be appropriate to offer comments in the ebb and flow of rebuttal, generally, AMI's statements are pointed expressly at the producers of livestock in the United States. AMI asserts many of its members are directly involved in the acquisition of livestock and all are involved in the production and sale of meat and meat products. Simply put, AMI represents America's slaughterhouse[1] industry and its meat purveyors. It does not represent livestock producers. AMI does not compete in a market, though some of its members do.

2. The Organization for Competitive Markets (OCM) is a non-profit, public policy research organization headquartered in Nebraska. I respectfully write as its lawyer. OCM strives to think through, comment upon, and where appropriate, publish on matters impacting

[1] OCM respectfully uses the term "slaughterhouse" in this correspondence. It does so for purposes of historical accuracy. The workshops planned by USDA and DOJ will examine market structure, and antitrust enforcement. America's antitrust laws were enacted in an era in which the operative term descriptive of the meat industry was "slaughterhouse". Since the words injected in the antitrust statutes when they were enacted at the turn of the 20th century, and in 1921, will be focal to USDA/DOJ analysis, the industry is also best described, and its attributes are best expressed, in historically accurate terms.

levels and effectiveness of competition in U.S. food and agricultural products markets. OCM's focus is to make markets for the products of production agriculture open and competitive. It extends its resources to the domestic producers of our national food supply.

3. OCM responds, respectfully, to AMI's submission. It is prompted to do so because OCM perceives significant deficiencies in AMI's analysis and a misguided perception of the law's role in assuring market fairness for food producers. AMI's submission is also startlingly simplistic and dismissive of the serious subjects under study by your Department. OCM's comments are submitted with respect for AMI, and deference for the Justice Department's important work.

**AMI Overlooks Structural Risks Caused by Concentration**

4. The AMI submission overlooks important structural risks in the food processing and distribution systems in the nation. Those systems were once dominated by small and intermediate entities, providing high levels of redundancy and much safety against single firm failures – whether scientific or financial. Now, those systems are so highly concentrated that a single firm failure poses a significant risk to the constancy and reliability of food processing and distribution to the American population. This risk is driven by concentration of market power[2] that far exceeds levels in banking, insurance and financial services sectors. Those sectors suffered failures dramatically impairing the U S and world economy during the past 18 months.[3]

**AMI's Misperceptions of the Antitrust Laws**

5. AMI's submission suggests to OCM a fundamental unawareness or lack of appreciation for the antitrust laws. "The antitrust laws were enacted for the protection of competition, not competitors."[4] These laws exist to assure that self-regulation incentives, and private remedies against excesses, are in place. They exist to preserve *for everyone* the right of freedom of trade.[5] Antitrust jurors get this typical introduction to antitrust law in their earliest jury instruction when an antitrust case is tried in an American Court:

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[2] A 77-page report, *The Debilitating Effects of Concentration in Markets Affecting Agriculture,* published for OCM by Auburn University Economist C. Robert Taylor Ph.D., and me, can be viewed at http://www.dominalaw.com/ew_library_file/Domina-Taylor%20Report.pdf

[3] The concentration warning about banking was not heeded. See, Stern & Feldman, *Too Big To Fail: The Hazards of Bank Bailouts (*Brookings Institution Press 2004).

[4] *Juneau Sq. Corp. v. First Wisconsin Nat'l Bank*, 624 F.2d 798, 809 (7th Cir.), cert. denied, 449 U.S. 1013 (1980).

[5] *Gordon v. New York Stock Exchange*, 422 U.S. 659, 692 (1975) (antitrust laws are designed to safeguard strong public interest in free and open competition); *United States v. Parke, Davis & Co*., 362 U.S. 29, 36 (1960) (purpose of Sherman Act is to prohibit monopolies, contracts and combinations that probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—"in a word to preserve the right of freedom of trade")

> The purposes of the antitrust laws are to preserve and advance the system of free and open competition and to secure to everyone an equal opportunity to engage in business, trade, and commerce. This policy is the primary feature of the private free enterprise system.[6]

The presence of these laws and their vibrancy as remedies are essential to prevent the need for extensive government regulations and enforcement of a regulatory scheme at a cost to be borne by the whole population rather than the impacted industry. AMI contends "existing antitrust & competition statues are equally applicable and effective for the meat industry as with all other industries." It ignores the fact that antitrust enforcement largely abated in agriculture during the recent years.

6. The *Sherman Act*, *Clayton Act*, *Robinson-Patman Act*, and *FTC Act* do not exempt the meat industry from their antitrust ambit. These laws may work well in litigation between giant corporate citizens like Apple versus Microsoft, but they provide no genuine remedial assistance to the small producer who is discriminated against because a packer refuses to engage in business with him or her by purchasing fed animals, or accepting them timely, or paying the same price as is paid favored producers of animals of comparable quality. Simply, the problem is that the antitrust statutes require, as currently enforced by the courts, elements of proof that defy the means of injured producers to litigate their claims.

7. Even in class action contexts, appellate trial court and appellate jurisprudence is so centered on support from major industries one must conclude the current statutes offer no remedial protection for livestock producers.[7] More than a few people think this lack of protection contributes to the annual loss of farmers, and growth of concentration in agriculture that continues at breakneck speed.[8]

8. This is borne out by the paucity of cases attempted by livestock producers against the concentrating packing industry or any of its participants. We can find no antitrust claims successfully brought, and are aware of none filed, by private producers or the Department of Justice against meat packers for more than a decade, and perhaps as long as three (3) decades. Producer class actions brought under the *Packers and Stockyards Act* have proven unsuccessful. The balance must be restored. The key to the whole question of an antitrust remedy is of course the discovery of measures effective to restore competition. [9]

9. AMI suggests persons with what it apparently perceives as immature interests in antitrust law often mistake mere correlations between events as causatively connected. This may

[6] *Pattern Instructions of the District Judges' Ass'n of the Fifth Circuit,* Instr. No. 6.1 (1999).
[7] *Wheeler* v. *Pilgrim's Pride Corp*., --- F.3d ---, 2009 WL 4823002 (5th. Cir.2009*). Pickett* v. *Tyson Fresh Meats Inc.*, 420 *F.3d* 1272 (5th Cir. 2005).
[8] USDA, *The 20th Century Transformation of U.S. Agriculture and Farm Policy*, EIB No. 3 (June 2005).
[9] *See, e.g., United States v. E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961) ("The key to the whole question of an antitrust remedy is of course the discovery of measures effective to restore competition.")

be true if, for example, the two events are the appearance of Christmas decorations before Christmas and the subsequent occurrence of Christmas. These correlate; the former does not cause the latter though it might appear that way to one dropped onto the planet from outer space in late November. The same cannot be said of agriculture, where market forces grow bigger and more concentrated, and wield more power, while the number of producers dwindles and small towns die. More money at money centers means less in production centers. The economy's limits, after all, are finite. Weak evidence of correlation does not trump strong proof of causation. And, where there is doubt, the decisional institution should be an American jury, not a "Chicago School" jurist.

10. AMI sides with Academicians who seek statistical certainty before reaching conclusions. It does so while its own members gobble up other companies, expand operations, concentrate more and more market power, and wield that power to break producers. While Academicians engage in important polemics, the market moves – daily. Yet, theory moves only when the financial engine of sponsored scholarship hits a real world economic rock in the road, and goes in the ditch for a time. This forces "rethinking" … as with financial derivatives. The truth is that "thinking" and not "rethinking" is in order.

11. AMI's cited references suggest, in some instances, that size produces efficiency. Theoretically, this is so. Karl Marx espoused this economic theory; it has been universally debunked after several failed national experiments. What is more, if AMI members genuinely seek high quality, reliable, reasonably priced-to-consumer meat products, why do they refuse to make acquisition transactions and all aspects of their business public? Little can be "proprietary" about buying live cattle, hogs or poultry, then slaughtering and butchering them, and finally, offering them for sale. In one way or another, humans are thought to have been doing this since the invention of money.

**AMI Misses the Point with its Contention that Regulatory and Food Safety Policies Affect the Structure of the Meat Industry**

12. AMI contends food safety policies affect the meat industry's structure. This should be the case, but this does not mean food safety impacts the economy in a way that makes the markets for raw food goods transparent, competitive, or safe. Indeed, the *Federal Meat and Poultry Inspection Acts* are designed to assure meat products are safe, processing systems are clean, and production personnel are accountable. They have nothing to do with markets. Structurally, achievement of careful management, safety, and the ability to respond immediately to questionable circumstances by shutting down production, are all matters favoring reasonably-sized production facilities and not massive ones. In a massive meat processing plant where, for example, 5,000 cattle might be slaughtered per day, or 15,000 hog might be killed daily, the personnel and other overhead costs are so substantial that the processor is dramatically disincentified to close down for minutes, much less hours, to investigate or remediate a potentially dangerous circumstance.

13. To the extent food safety laws deter further market concentration and impact the structure of the slaughter industry by giving some small slaughterhouses some chance to survive, the food safety laws provide two (2) beneficial outcomes: (1) safer food for America's citizens, and (2) reasonably sized plants, providing some production redundancies that might be lost if a large plant is closed down for a massive food outbreak.

14. AMI's suggestions about the costs of FSIS compliance have nothing to do with antitrust enforcement. This is apparent from a simple review of FSIS' mission statement:

> *Our Mission:* The Food Safety and Inspection Service (FSIS) is the public health agency in the U.S. Department of Agriculture responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged.[10]

**AMI Contends Research has been Done**
**Examining and Explaining the Rationale for Existing Market Structure**

15. AMI contends past studies sponsored by USDA and GIPSA have produced favorable views of the current meat market structure. They say these views support the concept that massive slaughterhouses, controlled by only a few owners, are best suited to serve the needs of the U S population. First, the assertion really is false as the analysis of AMI's bibliography, discussed and explained below, elucidates. AMI overlooks the inherent risks, both to competitive markets and food safety, posed by this market structure. Those risks include the ever-present incentive to use monopsonistic market power against producers. Price leadership, captive supplies, market withdrawal, and a host of other tactics all threaten the liability of livestock markets. Major problems include:

    15.1. Packer-producer alliances are fostered. Such alliances favor select producers over others, by furnishing better prices, more favorable deliver timing and conditions, or other incentives. These circumstances make markets dysfunctional.

    15.2. When *e. coli* or other pathogens survive through the slaughterhouse and reach the packaged product, then the public, massive quantities of food are adversely affected and huge populations are placed at risk. The magnitude of these risks are directly proportionate to the size of the slaughter facilities. Even the absence of actual experience does not mitigate against the simple mathematical fact.

    15.3. Financial instability, operational instability, or plant destruction by natural or other forces pose risks to the American population when the number of processing facilities in existence is inadequate to assure sufficient redundancies to meet the needs of the American public in emergency circumstances. The number of

[10] http://www.fsis.usda.gov/About_FSIS/index.asp

slaughterhouses processing America's beef and pork are now so finite that concurrent loss or destruction of a few significant plants would, in a short period of time, disrupt the flow of meat and deprive the American public of a food staple. The risk of this disruption has been little appreciated. But, the meat industry is *dramatically* more concentrated than banks. Meat companies face no financial regulation. A meltdown in their financial structure due to management improprieties is one more risk posed to the food supply by market concentration. It is an unregulated risk. Only sufficient redundancies to assure the flow of food to the population can avert it. Rigorous antitrust enforcement can create a climate for new market entrants to enter, and enjoy success where no real chance is present now.

16. AMI's letter includes, as Exhibit B attached, a compendium of publications as Attachment B. With the assistance of expert agricultural economists, OCM analyzed the studies identified in AMI's Attachment B. Attached to this letter, as Attachment A is OCM's analytical response to AMI's list of publications. Suffice it to say, here, AMI's contention a "plethora of studies" have effectively examined and described the meat and livestock industry, is inaccurate. Many publications have been produced. Few are descriptive of the industry and most are sponsored and concentrated on the benefits of the current structure to its corporate slaughterhouse participants.

**AMI Misses the Boat by Overlooking the *Packers & Stockyards Act***

17. AMI's letter's footnote concedes no review has been made of the *Packers & Stockyards Act of 1921.* AMI's General Counsel, and its letter's author, concedes he knows little or nothing about the *Act.* The problem is that appellate courts dealing with the *Act* in recent years repeatedly ignore its literal language and infer the need to prove injury to the market.[11] The critical statutory language is straight forward, and worth recalling:

> It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form or for any live poultry dealer with respect to live poultry, to:
>
> (a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
>
> (b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; or
>
> (c) Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such

[11] See, e.g., *Wheeler* v. *Pilgrim's Pride Corp*., --- F.3d ---*,* 2009 WL 4823002 (5th. Cir. 2009*). Pickett* v. *Tyson Fresh Meats Inc.*, 420 *F.3d* 1272 (5th Cir. 2005).

apportionment has the tendency or effect of restraining commerce or of creating a monopoly; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person

(1) to apportion territory for carrying on business, or

(2) to apportion purchases or sales of any article, or

(3) to manipulate or control prices; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a), (b), (c), (d), or (e) of this section.

18. Reinvigoration of the P & S Act would move antitrust enforcement in agriculture markets, and specifically meat markets, back into the important realm of public awareness and expectation. This should occur.

**Workshop Participants**

19. OCM respectfully declines to comment on AMI's list of proposed participants in the Department's panels. It does, however, respectfully note that AMI's suggested panelists often have long histories of lack of objectivity.

Respectfully,

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Addendum Attached.

cc: Mark D, Dopp, AMI General Counsel
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dad/pjr

## Addendum

**Comments of Dr. C. Robert Taylor & David A Domina for OCM**
**Concerning the AMI List of References**
**in Its December 31, 2009 Submission to US DOJ/USDA**

**Taylor, Domina Summary Comments on AMI citations:**

**While AMI's letter infers that authorities cited in its Attachment B are supportive of the AMI position that "everything is just fine" and no review of U.S. agricultural markets is necessary, the fact is that the authorities themselves make the case *against*** AMI.

**On balance the studies and reports cited by AMI actually provide clear and convincing evidence that the markets are broken, and the need for federal intervention is urgent. The AMI studies eclipse any "preponderance of evidence" concept and leave an objective reader clearly convinced that agriculture is at great risk, the food processing and distribution business is eerily too concentrated, and the time for a repair is now.**

**Putting off until tomorrow what needs to be done today to the nation's ag markets and food processing status will perpetuate avoidable financial, health, welfare, and social risks that can be avoided by a return to fair markets and open, free competition. The time for food trusts to control its basic economic sector should come to a close.**

| **Key:** | |
|---|---|
| **AMI's Cited Reference:** | **Red Regular Type** |
| **References not cited by AMI:** | **Blue Regular Type** |
| **Quotations from cited articles:** | ***Italics*** |
| **Taylor, Domina Comments:** | **As Noted** |

### Recent Studies on U.S. Meat Industry Structure

**GAO "BEEF INDUSTRY: Packer Market Concentration and Cattle Prices." (1990)**
http://161.203.16.4/d22t8/142827.pdf

**Taylor, Domina: This is essentially a compilation of other studies. There is no new quantitative or theoretical analysis. The paper emphasizes that most studies reviewed relate to the 1970s and may not be applicable to the 1980s (or later). Changes in the industry in the 20 years since this review was published, make it marginal except for historical perspective.AMI did not cite it for this. GAO appropriately noted that it was inappropriate to draw conclusions for many reasons. Nevertheless, 5 of 8 studies reviewed show that increased beef-packer concentration led to decreased prices paid for slaughter cattle. The preponderance of evidence cited in the report, although dated contradict the AMI position and supports OCM. The report cautioned that, "…*future changes in market and industry conditions could result in beef packers enhancing their market power.*"**

*Excerpts from the report:*

*Economic theory suggests that, other things being equal, a high level of market concentration in the beef-packing industry could result in lower cattle prices than would prevail with less concentration. Some of the empirical evidence we reviewed is consistent with this theoretical expectation. However, we refrain from drawing firm conclusions based on the literature we reviewed because (1) the number of relevant studies is small, (2) many of the studies relate to the 1970s and may not be applicable to market conditions in the 198Os, and(3) most have certain methodological limitations.*

*Generally, industry representatives with whom we spoke believe that, to date, concentration in the 1980s has not been associated with decreases in cattle prices. We contend the potential exists for large packers to exert market power over the prices they pay for steers and heifers. Interviewed Representatives of the cow-calf and feeder believe that the horizontal concentration, along with increased vertical coordination, on the part of the large packing companies will enhance market power that could enable the packers to influence cattle prices.*

*Empirical Study Results: We analyzed ten empirical studies on market concentration in the beefpacking industry. Seven of the studies expressly consider price as it relates to an indicator of market concentration. The other three studies assess market power as reflected by price. As is often the case with empirical work, the studies we reviewed have certain limitations relating to scope, underlying assumptions, and age of the data. Consequently, we do not draw any overall conclusions from this body of work regarding whether packer concentration has lowered steer and heifer prices.*

*For our analysis we identified 10 studies most of which pertain to the period of the 1970s. Two of the studies fell out of our results analysis because in one case the results are primarily intended to illustrate a particular methodology, and in the other case the study aggregates all meat packing. Of the remaining eight studies, five suggest that beef-packer concentration has resulted in decreases in the prices packers pay for cattle, and three do not find such a relationship between packers and cattle prices.*

*For several reasons, we chose not to draw conclusions from the above body of work. There are relatively few studies on the subject, and many of the studies may not be applicable because they relate to the 197Os, when industry conditions were much different from those in the 1980s. Further, we have concerns about the methodological limitations of some of these studies. For example, the geographic market is defined at a state level in one case and at a national level in several other cases. Most analysts believe that cattle markets are regional-typically larger than individual states. Additionally, some of the studies focus on measures of beef-packer concentration, but do not directly address the extent to which beef packers may or may not have influenced cattle prices.*

*Future changes in industry and market conditions could increase the likelihood that the beef-packing industry will lower the prices it pays for cattle. For example, if cattle supplies expand by several million head, as they have in the past, without a corresponding increase in consumer demand and processing capacity, the few controlling beef packers will have less of an incentive to compete aggressively for available*

*Conclusions: According to economic theory, other things being equal, the high level of concentration in the beef-packing industry could result in lower cattle prices than would occur with less concentration. Nonetheless, our review of empirical studies did not lead us to draw any overall conclusions regarding the impact that market concentration in the beefpacking industry has on the prices packers paid for steers and heifers in the 1980s. Industry analysts and experts we spoke with said that recent packer concentration has not lowered steer and heifer prices in the 1980s. Some industry analysts believe that cattle prices may be higher because the increased efficiencies that accompanied increased concentration enabled beef packers to pay more for cattle when supplies were short relative to beef-packer capacity. Nevertheless, future changes in market and industry conditions could result in beef packers enhancing their market power.*

**"Implications of Increased Regional Concentration and Oligopsonistic Coordination in the Beef Packing Industry" (1991)** Azzam, A.M. and J.R. Schroeter
*Western Journal of Agricultural Economics*. 16(2): 374-381.

**Taylor, Domina: The study concludes that the most plausible effects of packer procurement on regional cattle prices are small *but significant*. The study emphasizes that quite small cattle price effects can have substantial effects on packer profit. It overlooks the same truth for producer profit.**

*Excerpts from the study:*

*How do our results compare with those obtained using other methods? The three most often cited econometric studies of the effects of packer concentration on regional cattle procurement are Ward (1981); Menkhaus, St. Clair, and Ahmaddaud; and Quail et al. As Connor notes in his summary of these studies, they are in general agreement with respect to magnitudes of price effects. Each of them finds a price range between the samples' least and most concentrated market areas/time periods of 1.2% to 2.5% of the price level. In the simulations reflecting our judgment about "most plausible" parameter values (lines 1 and 2 of table 2), price effects are less than 1%. Note that the Ward/Menkhaus, St. Clair, and Ahmaddaud/ Quail et al. price effects represent differences between the least and the most concentrated market areas present in their samples. It is highly unlikely that firm conduct across these areas actually spanned the range delineated by the baseline and test cases of the simulation reported in line 2 of table 2: from completely noncooperative to perfectly monopsonistic. Yet our projected price effects are smaller*

*than their measurements. Therefore, our results indicate less danger of falling cattle prices, as a result of increased packer concentration or coordination, than do those from conventional econometric studies.*

*It should be noted, however, that even quite small price effects can have significant effects on packer and feeder profit. AMI figures for the years 1979-86 report that livestock costs were nearly 88%, and before-tax earnings only about 1.25%, of total beef packing sales during this period. Thus a fall in cattle prices of only .5% has the potential to increase packers' profit by about 35%.*

**"Packer Concentration and Captive Supplies." (1994),** Clement E. Ward, Oklahoma State University and Ted C. Schroeder, Kansas State University.
http://cals.arizona.edu/arec/wemc/cattlemarket/PckrConc.pdf

**Taylor, Domina: Simply, this article is helpful to OCM position and contradictory of AMI.**

*Excerpts from the article:*

*Over a year-long period, captive supplies may account for about 25 percent of fed cattle slaughter. In some weeks, the percentage is much larger and the percentage is much higher for some plants. One limitation of the most recent captive supply study was not being able to estimate the very short-run effects often described by cattle feeders. When one or more of the largest three-to-five packers have a substantial portion of their slaughter needs for a week or short-term period coming to a specific plant in the form of captive supplies, a series of short-run events may be observed. First, meatpacker-buyers may become much less aggressive in the cash market. Second, buyers may say, in an effort to negotiate lower market prices, that they do not need cattle. Third, the psychological effect on the market may be negative in the short run, until buyers again bid on cash market cattle.*

*Research to date suggests price impacts both from packer concentration and captive supplies have been negative in general, but small.*

**"Statement of DAVID TURETSKY, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice." (1995)**
Committee on Commerce, Science, and Transportation United States Senate
http://www.usdoj.gov/atr/public/testimony/0651.htm
www.usdoj.gov/atr/public/testimony/0651.pdf

**Taylor, Domina: This testimony reviews DOJ legal authority and a includes superficial discussion of a few very old investigations. It is not relevant to current markets.**

**"Concentration in the Red Meat Packing Industry." (1996)**
Packers and Stockyards Programs
Grain Inspection, Packers and Stockyards Administration
http://archive.gipsa.usda.gov/pubs/packers/conc-rpt.pdf

**Taylor, Domina: Data on which the analysis was based is almost 20 years old, and covers a very short time span. This document is neither conclusive nor valuable in view of its limitations.**

> *Excerpt: The study, and data upon which it is based, cover only a limited period of time--mostly April 1992 through March 1993*

S. Murthy Kambhampaty, Paul J. Driscoll, Wayne D. Purcell, Everett B. Peterson, Grain Inspection, Packers Stockyards Administration RR 96-4
http://archive.gipsa.usda.gov/pubs/packers/rr96-4.pdf

**Taylor, Domina: This study contains data helpful to OCM. We cannot imagine why AMI cited it unless AMI failed to read the paper. It notes:**

> ***Excerpt: It certainly is possible, though, that their (packer) actual behavior may be such that it does not lend itself to feasible tests of the market power hypothesis****. In part, this is why the profit maximization assumption is so appealing and so widely used; it lends itself to feasible tests of market power. But the results of this analysis, using plant-level data heretofore not available, suggest the test is not appropriate as a test for market power or as an aid to Federal agencies charged with monitoring and/or regulating the beef packing industry.*

**"Agricultural Concentration." (1998),** James Mintert, Ph.D. James Mintert, Ph.D. Dept. of Agricultural Economics – Kansas State University,
http://www.agmanager.net/livestock/marketing/presentations/files/ConcentrationInAg.pdf

**Taylor, Domina: This is a slide presentation with few literature citations. The bullet points lend support to the OCM position.**

> ***Slide 17* :shows the inflation adjusted farm-to-wholesale spread. Data only goes through 1998. The inflation-adjusted spread has increased 16% from the 1990s to the 2000s, yet processing costs have decreased.**
>
> **Slide 19: *"Research indicates: Anticompetitive effects of a 50% increase in beef packing concentration is at most 2.4% BUT this is well below the cost savings of 4% associated with 50% increase in size of representative plant." Source: Azzam and Schroeter, AJAE, 1995***

**Taylor, Domina: The statement in Slide 19 confuses "plant" size with concentration. A problem is market power arising from multi-plant firms, and not just market power arising from larger plants.**

**"Packer Concentration, Captive Supplies and Fed Cattle Prices." (1998),** Summarized by John D. Lawrence**,** Extension Livestock Economist**,** Director, Iowa Beef Center
www.econ.iastate.edu/classes/econ135/lawrence/Captive%20Supplies%20and%20price.ppt

**Taylor, Domina: This is a slide presentation with many summary points that are contrary to the AMI position.**

*Slide 6:*
*Concentration and Price:*
*Reason for concern if over 4 firms have over 55-60% or the market*
*Positive relationship between number of bids and prices*
*-Regions with multiple bids had higher prices than regions with one bid*
*–Regions with 5+ bids not significantly different from regions with 2-5 bids*

*Slide 7:*
*Possible Solutions*
*Ongoing and improved regulation*
*-GIPSA changes will help*
*-Better information flow*
*Mandatory Price Reporting can help*
*Need more timely source of information*
*Utilize professional marketers*
*Electronic markets*

*Slide 14:*
*·Packers may discriminate among producers by not offering captive supply agreements to all producers.*

## GIPSA: the *known* effects of captive supply on markets

- ✓ Negative statistical relationship between levels of captive supply and spot market prices paid by packers for fed cattle.
- ✓ *However, the studies **have not shown that increases in the use of captive supply cause spot market prices to fall**, or that packers' use of captive supply causes spot market prices to change.*

*See GIPSA pp. 60-61 for summary*

## GIPSA: the known effects of captive supply on markets

- ✓ Relationship between captive supply and spot market prices differs according to the type of captive supply arrangement
  - Forward contracts mixed: negative, no effect, and positive
  - Marketing agreement generally negative
  - Packer fed mixed: negative and positive

*See GIPSA pp. 60-61 for summary*

**"Econometric Analysis of Fed Cattle Procurement in the Texas Panhandle." (1999)**
John R. Schroeter, Azzeddine Azzam, Grain Inspection, Packers Stockyards Administration, http://archive.gipsa.usda.gov/psp/issues/txpeer/part1.pdf

**Taylor, Domina: The AMI Link only goes to first part of study, which defines the research questions. The analysis is based on a very short data period and is accordingly unreliable.**

> *Excerpts :*
> *GIPSA collected detailed data on the cattle procurement activities of four large beef packing plants in the Texas panhandle region (the Excel plants at Friona and Plainview, the IBP plant at Amarillo, and the Monfort plant at Cactus) over the period from early February 1995 through mid-May 1996. The results of this analysis indicated that all four plants appear to pay quality-adjusted delivered price premia for marketing agreement cattle, relative to spot market cattle, that ranged from a low of $0.52/cwt. (on a carcass-weight basis) to a high of $2.26/cwt.also appear to pay quality-adjusted price premia for forward contract cattle, relative to spot market cattle. Estimates of these premia range from about $2.OO/cwt. to about $2.5O/cwt.*

**Taylor, Domina: There is a fundamental conceptual oversight in the study. It notes a quality-adjusted price premia for forward contract cattle, but does not grasp its economic**

**implications. Price premia for captive supply cattle increases supply, which decreases price and lowers price to both captive feeders and cash feeders. This is very basic economic reasoning, but simply comparing cash price to captive price will not reveal this effect. The study reaches more soft conclusions:**

> *Excerpts: Up to this point, the analysis has established that there is a negative relationship between the use of non-cash procurement methods and spot market cattle prices, but that this negative relationship does not necessarily mean that higher levels of non-cash cattle deliveries will cause lower spot prices. By the same token, the results of the analysis do not absolve packers of noncompetitive conduct. ... The agency should be cognizant, however, that certain pricing mechanisms may be more conducive to noncompetitive conduct than others. For example, it stands to reason that when the formula base price is derived from an "in-house" average hot cost rather than a USDA reported price, there is a potential for manipulation of the formula base through spot market pricing conduct. We make this cautionary note in spite of the fact that we found no clear evidence of such abuse in the Texas panhandle data.* ***Also, should the trend toward increased use of non-cash procurement methods continue, thus further thinning the spot market, spot prices will become increasingly less reflective of the forces of supply and demand.*** *Under those circumstances, the cash market may no longer be the appropriate point in the beef marketing channel at which the formula base price should be derived.*

**Taylor, Domina: The spot market has thinned, dramatically in the ten years since 1999, and is thus "less reflective of the forces of supply and demand."**

**"Packer Concentration and Captive Supplies." (1999),** Clement E. Ward, Oklahoma State U
http://pods.dasnr.okstate.edu/docushare/dsweb/Get/Document-1733/F-554web.pdf

**Taylor, Domina: This study really does not support AMI. It notes:**

> *In summary, fewer and larger meatpackers have resulted in increased plant and industry efficiency. Several studies have also suggested that larger meatpackers have exercised a small degree of market power in livestock procurement. One study indicates the "most plausible" estimate of noncompetitive pricing is less than 1 percent of prices paid for livestock (Azzam and Schroeter 1991).*
>
> *While research to date generally shows small negative impacts from increased concentration, one recent study showed that the gains from cost efficiencies in meatpacking more than offset any likely market power impact*

**Taylor, Domina: There has been no substantive increase in beef packer concentration since this study was published, and no substantial changes in size of most packing plants. Yet gross margins have gone up, suggesting that the market power impact among current packers has grown.**

> *Over a year-long period, captive supplies may account for about 25 percent of fed cattle slaughter. In some weeks, the percentage is much larger and the percentage is much higher for some plants. One limitation of the most recent captive supply study was not being able to estimate the very short-run effects often described by cattle feeders. When one or more of the largest three-to-five packers have a substantial portion of their slaughter needs for a week or short- term period coming to a specific plant in the form of captive supplies, a series of short-run events may be observed. First, meatpacker-buyers may become much less aggressive in the cash market. Second, buyers may say, in an effort to negotiate lower market prices, that they do not need cattle. Third, the psychological effect on the market may be negative in the short run, until buyers again bid on cash market cattle.*

**Taylor, Domina: The three factors listed above are causality explanations for the negative statistical relationship between captive supply and cash price. In fact, these causal mechanisms are precisely what Bob Peterson, CEO of IBP (now Tyson), referred when he described abuse of market power to in talks to cattlemen in 1998 and again in 1994.**

**"The U.S. Beef Industry Cattle Cycles, Price Spreads, and Packer Concentration." (1999),** Kenneth H. Mathews, Jr., William F. Hahn, Kenneth E. Nelson, Lawrence A. Duewer, Ronald A. Gustafson http://www.ers.usda.gov/Publications/TB1874/

**Taylor, Domina: This is a 1990s era study by USDA economists. It used seller concentration in an attempt to measure buyer power, which is inappropriate and may nullify all conclusions.**

> *The effects of market concentration are widely debated and were included in the analyses here, with interesting results. Slaughter concentration effects were represented in our model specifications by the HHI. Coefficient estimates for the HHI indicate that: (1) increasing HHI was significantly associated with higher prices and narrower farm-to-wholesale spreads, (2) increasing slaughter concentration is associated with higher farm prices, and (3) other factors not identified in our analysis were associated with size and concentration have been more important than monopsonistic price effects. Despite these results that suggest that packers do not appear to be exercising market power* ***, it is also clear that with concentration measures of 80 percent or higher, the potential for exercising market power in the industry does exist. Continued monitoring of market concentration and additional research into better measures of the existence and use of market power would be helpful.***

**"USDA ACTIONS ON CONCENTRATION" (1999)**
http://www.usda.gov/news/releases/1999/04/0155

**Taylor, Domina: This is nothing more than a news release. It is some evidence of problems and some regulatory activity, contradictory to AMI's position.**

> *Enforcing the Law*
>
> *USDA filed a complaint charging Excel Corporation with "unfair trade" practices in violation of the Packers and Stockyards Act.*
>
> *After USDA filed a complaint, a Judicial Officer ordered IBP to stop entering into agreements that contain a right of first refusal, under which IBP may obtain livestock by matching the highest previous bid rather than increasing the bid to purchase livestock.*
>
> *A recent USDA-Department of Justice bid rigging investigation resulted in the conviction of two people for violations of the Sherman Anti-Trust Act and federal mail fraud statutes.*

**"Vertical Coordination in the Pork and Broiler Industries: Implications for Pork and Chicken Products" (1999)**
Steve W. Martinez
Agricultural Economics Report No. (AER777)
http://www.ers.usda.gov/publications/aer777/

**Taylor, Domina: This study does not analyze effects of vertical integration on farm level prices or contract poultry grower pay.**

**"Consolidation in U.S. Meatpacking." (2000)**
James M. MacDonald, Michael E. Ollinger,Kenneth E. Nelson, and Charles R. Handy
Agricultural Economics Report No. (AER785)
http://www.ers.usda.gov/publications/aer785/

**Taylor, Domina: No analysis of farm prices is made.**

> *The policy challenge for the future is to ensure that a result of the process, high concentration, does not erode a key contributing factor—price competition among packers. The analytical challenge is to* ***continue to update the evidence*** *so that we can effectively monitor competitive conditions in an industry that is now concentrated, and to ensure that we adequately understand causes and effects….*

**Taylor, Domina: A much more recent study by James MacDonald shows "a small but meaningful" impact of monopsony power.**

**"Structure Change and Competition in Seven U.S. Food Markets." (2000)**
A.J. Reed, J.S. Clark, Economic Research Service Technical Bulletin Number 1881
http://www.ers.usda.gov/publications/tb1881/tb1881.pdf

**Taylor, Domina: The statistical tests employed in this study have extremely weak power to detect market power exertion. The study also has methodological and data flaws in that no measures of concentration were used, and captive supplies were not considered.**

**The article is also misleading in that what the authors call "farm price" for poultry is not what the grower receives, but actually the wholesale price received by poultry integrators from retailers.**

**"Structural Change in U.S. Chicken and Turkey Slaughter" (2000),** Michael Ollinger, James MacDonald, and Milton Madison**,** Agricultural Economic Report No. (AER787)**,**
http://www.ers.usda.gov/publications/aer787/

**Taylor, Domina: This report overtly neglects the problem of inadequate compensation to growers without which its value is negligible.**

**"Understanding Structural Change in the Food Industry" (2000)**
FoodReview Vol 23, Issue 2.
http://www.ers.usda.gov/publications/foodreview/may2000/

**Taylor, Domina: This report similarly overtly neglects the problem of inadequate compensation to farmers or producers, without which its value is negligible.**

**"Statement of JoAnn Waterfield, Deputy Administrator, P&S Programs, GIPSA." (2001)**
http://www.gipsa.usda.gov/GIPSA/webapp?area=newsroom&subject=landing&topic=cc-ch01

**Taylor, Domina: This study was discredited by the USDA Inspector General and GAO who found the so-called competition studies cited were fabricated.**

**"The effects of U.S. meat packing and livestock production technologies on marketing margins and prices." (2001),** Brester, G.W., & Marsh, J.M., *Journal of Agricultural and Resource Economics*, *26*, 445-462.

**Taylor, Domina: This study focused on technological improvements. Data covered 1970-1998. The study inappropriately used seller concentration measures as an indication of buyer power. The study did not have measures of buyer concentration in regional markets. Furthermore, conclusions are contradicted by increasing farm-to-wholesale price spreads for beef since 1998.**

**"Comments on Economic Impacts of Proposed Legislation to Prohibit Beef and Pork Packer Ownership, Feeding, or Control of Livestock." (2002),** Fuez, D., G. Grimes, M.S. Hayenga, S.R. Koontz, J.D. Lawrence, W.D. Purcell, T.C. Schroeder, and C.E. Ward. http://www.econ.iastate.edu/faculty/lawrence/Acrobat/Johnsonamendment.pdf.

> *Excerpts: Several economists have addressed captive supplies from theoretical and empirical perspectives. A recent summary of all such research suggests some theoretical support for negative price effects and empirical evidence on price impacts have usually been negative but small (Ward 2002b). Some studies have found small, positive price effects associated with contracting. None of the impacts have approached what the Department of Justice and Federal Trade Commission use as a regulatory standard to assess non-competitive behavior.*

**Taylor, Domina: This is a PSA issue that does not invoke the SSNIP--Small Significant Non-transitory Impact on Price--test used in DOJ/FTC merger studies. (Applied to monopsony power, this would be a price decrease). The DOJ/FTC threshold of 5% may seem small to academics, but it is the difference between a very modest profit and substantial losses for a feeder and is therefore too high for monopsony power threshold.**

**"Consolidation in Meatpacking: Causes & Concerns" (2002),** Economic Research Service Agricultural Outlook pp. 23-26
http://www.ers.usda.gov/publications/agoutlook/jun2000/ao272i.pdf

> *Excerpts: Real spreads fell in the 1970's, reflecting meatpacking productivity growth. The trend continued during the period of rapid concentration increase, through 1992, as cost declines realized through scale economies were passed through to meat buyers and livestock producers. From 1993 to 1998, spreads fluctuated much more widely, but showed no long-term increase. The picture tells a strong story: if large increases in concentration had important effects on packer pricing and profits, they don't show up in the price-spread statistics. Sufficient competition apparently prevailed, such that packer cost declines were passed on to consumers or producers.*
>
> *Short-term spikes in the farm-to-wholesale spread have occurred before, but previous sharp increases in 1980, 1991, and 1995 didn't last long. Short-term fluctuations usually result from sharp changes in livestock supplies or meat demand, and the spikes quickly fell as packers, buyers, and producers adjusted. Such spikes don't necessarily indicate any significant change in the nature of competition in an industry.* ***Spreads have remained high through the first quarter of 2000, and the coming months will tell whether the spike is short-term, to be eroded by continuing competition.*** *The policy challenge for the future is to ensure that a highly concentrated industry—a result of consolidation—does not limit price competition among packers.*

**Taylor, Domina: This data is simply wrong. Since the 1990s, the inflation adjusted farm-to-wholesale spreads for beef has increased 27%, and the wholesale-to-retail beef price**

**spread has increased 16%. For producers going out of business the "temporary" spike noted in this article is not temporary enough.**

**"Controversies in Livestock Pricing" (2002),** Economic Research Service Agricultural Outlook**,** http://www.ers.usda.gov/publications/agoutlook/Dec2002/ao297f.pdf

> *Excerpt: Information flow is key to the efficient performance of an economic system, and livestock prices are the key information that coordinates producer and packer behavior.*

**Taylor, Domina: Yes, but asymmetric information prevails. Also, packers do not give feedback on quality to all sellers.**

> *Excerpt: A potential problem with vertical coordination is that it weakens or disperses the availability of price information. In many types of coordination, the task of livestock pricing is solved by what is called "formula pricing." The packer pays the producer using a formula that includes quality premiums and discounts around some "base" price. The "base" price is usually some selected spot-market or futures-market information. As spot markets disappear, fewer price signals are available to convey messages to producers and consumers concerning available quantities, qualities, cost and value. Formula pricing in con- tracts also becomes problematic as too few animals are traded in public transactions to generate confidence in the prices. This leads to concerns about packers using vertical arrangements to artificially suppress the spot-market price. Market participants typically turn to other price series (e.g., meat or grain markets) when a market becomes too thin.*
>
> *At the USDA Forum on Captive Supplies in 2000, economist and attorney Neil Harl gave a summary of objections to packer control of livestock production in 2000.*
>
>> *'On the face of it, captive supplies are discriminatory in effect... It is also reasonable to conclude that captive supplies are "unfair" to independent producers and that some features of captive supplies are "deceptive" in the operation and functioning of markets for cattle destined for slaughter. ... there is general agreement that increasing levels of concentration correlate with lower price levels.'*
>
> *In fact, economic studies of the effects of increasing packer concentration and "captive supplies" on livestock prices, despite Harl's contention, produce mixed results and often show little or no price-depressing effects of captive supplies or packer concentration.*

**Taylor, Domina: This reflects a USDA bias. It does not state any evidentiary or statistical standard.**

**"The U.S. Food Marketing System, 2002: Competition, Coordination, and Technology Innovations Into the 21st Century". (2002),** J. Michael Harris, Phil R. Kaufman, Steve. W. Martinez, and Charlene Price**,** Agriculture Economic Report No. 811
http://www.ers.usda.gov/publications/aer811/aer811.pdf

**Taylor, Domina: This article is basically a presentation of data with no meaningful analysis of concentration.**

**"Vertical Coordination of Marketing Systems: Lessons From the Poultry, Egg and Pork Industries" (2002),** Steve Martinez**,** Agricultural Economic Report No. (807)
http://www.ers.usda.gov/publications/AER807/

> *In the pork industry, most marketing contracts between "independent" producers and processors are directly related to a spot price, such as the Iowa/Southern Minnesota quote, which facilitates adaptations to the changing market. However, spot prices may become less reliable indicators of market conditions as less trading occurs on spot markets, which may lead to conflicts between producers and processors. Furthermore, the ability of large buyers and sellers to manipulate spot prices is enhanced because spot prices will be based on fewer trades. Unless alternative base prices are found, producers and processors will seek greater control through production contracts or vertical integration. Prices from a thriving spot market, perhaps a wholesale price, that can serve as a base price in a marketing contract would enable producers to survive as separate entrepreneurial entities.*

**Taylor, Domina: Definitely opposite to the AMI position.**

**"Where's the Beef: Small Farms Produce the Majority of Cattle" (2002)**
Economic Research Service
Agricultural Outlook
http://www.ers.usda.gov/publications/agoutlook/Dec2002/ao297g.pdf

**Taylor, Domina: There is no analysis of competition issues in this article.**

**"Economic and Structural Relationships in U.S. Hog Production" (2003),** William D. McBride and Nigel Key**,** Agricultural Economic Report No. (AER818)
http://www.ers.usda.gov/publications/aer818/

**Taylor, Domina: This report expresses concerns similar to those expressed by OCM, but provides no substantive analysis of competition or regulatory issues but did analyze factors associated with hog production efficiency.**

> *Excerpts from Executive Summary: These findings paint a picture of an industry increasingly concentrated among fewer and larger farms, and becoming more economically efficient. However, these changes have not come without problems.*

*Concerns about the increasing market control and power concentrated among packers and large hog operations, and from the manure management problem posed by the increasing concentration of hog manure on fewer operations, are paramount.*

*Other Excerpts: A concern about contracting in hog production is the matter of a disparity of market power, and hence bargaining power, between the parties in the contract arrangement. Contracting between parties of approximately equal or somewhat unequal bargaining power can work satisfactorily. However, contracting between parties of vastly unequal power, with one party more economically vulnerable, can potentially pose serious problems if the more powerful party uses market power to extract concessions from the weaker party (Hayenga, Harl, and Lawrence). If the weaker party (e.g., a grower) cannot shift to other enterprises without added costs or loss of income, the weaker party is economically vulnerable and has a potential problem. For example, a contract relationship between the only large producer or packer offering contracts in an area and growers with a substantial fixed investment in production facilities may lead to a pattern of concessions by growers when contracts are up for renewal.*

**"Interstate Livestock Movements" (2003),** Dennis A. Shields and Kenneth H. Mathews, Jr.**,** Electronic Outlook Report from the Economic Research Service LDP-M-108-01**,** http://www.ers.usda.gov/publications/ldp/jun03/ldpm10801/ldpm10801.pdf

**Taylor, Domina: This study is largely irrelevant to market power and competition issues. We are unable to discern why AMI cited it.**

**"Social Welfare and the Market Power – Efficiency Tradefoff in U.S. Food Processing: A Note." (2003),** Professor in the Department of Agriculture and Resource Economics, University of Connecticut**,** USDA No. 2001-34178-10542

**Taylor, Domina: The AMI reference is incomplete and, in part, wrong. The reference should be to Rigoberto A Lopez and Carmen Liron-Espana, Journal of Agricultural & Food Industrial Organization, 2003**

*The sample consists of annual data for the period 1972-1992 for 35 U.S. food manufacturing industries at the 4-digit SIC level*

**Taylor, Domina: Data on which the study was based are old.**

*Much of the increase in both social welfare and producer surplus is due to efficiency gains that are not passed on to consumers.*

**Taylor, Domina: The study did not consider oligopsony (buyer) power, just oligopoly (seller) power. See their footnote 2.**

**Taylor, Domina: The study showed that "efficiency gains … are not passed on to consumers," which is counter to the AMI position that consumer interests have been served.**

**"Technological Changes in Beef and Pork Production: Effects on Marketing Margins and Prices" (2003),** John M. Marsh and Gary W. Brester.
http://www.choicesmagazine.org/2003-4/2003-4-06.htm

**Taylor, Domina: The study is based on old data, 1970-1998. As the title indicates, the study deals with technological change; there is no meaningful analysis of competition issues in the report.**

**"U.S. Hog and Poultry Marketing: Similar Paths, Similar Outcomes?" (2003),** Economic Revenue Service**,** Amber Waves – Diet and Health
http://www.ers.gov/amberwaves

**Taylor, Domina: The AMI link is wrong. The correct link is**
http://www.ers.usda.gov/AmberWaves/June03/Findings/USHogandPoultry.htm
**The article does not address competition issues. In fact it is a very brief summary of other reports previously cited by AMI.**

> *As noted in the brief summary, it is drawn from: Vertical Coordination of Marketing Systems: Lessons From the Poultry, Egg, and Pork Industries, by Steve W. Martinez, AER-807, April 2002, and Vertical Coordination in the Pork and Broiler Industries: Implications for Pork and Chicken Products, by Steve W. Martinez, AER-777, April 1999.*

**"Agricultural Concentration." (2004),** USDA**,** Part of the Farm Bill Forum Comment Summary & Background**,** www.usda.gov/documents/Agricultural_Concentrationd.doc

**Taylor, Domina: This document expresses OCM concerns, and not studies that in any way support the AMI position. In fact, one of the detailed suggestions reported is that, "*GIPSA, DOJ, and FTC need to work together to aggressively scrutinize mergers and acquisitions in the livestock industry and pursue a proactive strategy for remedying anticompetitive practices.*" This is exactly what AMI is lobbying against!**

> *Excerpts:*
>
> *The Packers and Stockyards Act of 1921 (P&S Act) prohibits anticompetitive behavior and unfair trade practices in the marketing and procurement of livestock and poultry and provides for financial protection for livestock sellers. Although evidence of high levels of concentration is not a violation of the P&S Act, high concentration indicates a high level of market power in a few firms, and indicates that monitoring for anticompetitive behavior is warranted.*

*General Opinions Expressed*

- *Many thought that factory farms should not be subsidized (or subsidies to these firms should be reduced), and that they should be taxed heavily. These commenters also stated that maximum payment limits to corporate farms should be enforced. These participants also expressed the belief that current policies encourage corporate growth.*
- *Many people stated that factory farms should be eliminated (or more strictly regulated) and small farms should be promoted. These respondents stated that factory farms degrade the environment, end in serious health consequences, and treat animals poorly.*
- *Participants generally expressed the view that corporate farms are growing too rapidly and farm consolidation is a challenge to new farmers and ranchers. These commenters want the Government to help put small farms on a level playing field with corporate farms.*
- *Participants generally stated that too many young farmers and farmers with small farms are being forced to work for these larger conglomerates. These commenters suggested that young farmers cannot compete against big business. Some of these participants also stressed that large corporate farms are acquiring large amounts of land, which drives up land rental rates and land values.*
- *Many commenters asserted that USDA should promote small farms in the belief that they can operate more efficiently than factory farms.*
- *Others suggested that USDA should not discriminate against large corporate farms. Family farms are now commonly also corporate farms. These commenters asked that the Government not penalize farmers for growing.*
- *Many discussed concentration of market power by major agribusiness firms in meats, poultry, grain, feedstuffs, and food processing—leading to a loss of transparency in the market, manipulation of prices, and concentrated political power.*
- *Some mentioned that agribusiness corporations have too much influence over the farm bill process compared to producers and producer groups.*
- *Some asked for elimination of trade negotiations that are whittling away at U.S. competitive advantage and serving the international corporate interest.*
- *Some mentioned the importance of reinstating the Mandatory Price Reporting Act.*
- *Many asked for a national ban on packer ownership of livestock.*
- *Others opposed a packer ownership ban because it would limit or eliminate grid and formula pricing.*
- *Some suggested the farm bill needs a title to address competition and fair business practice issues in the domestic livestock market.*
- *Some expressed the view that captive supplies push price instability risk onto producers and hold down prices.*
- *Many were concerned that consolidation of processors, packers, and large retailers diminished farmers' bargaining power. These participants also thought that the government should provide for fair profits for both producer and processors.*

- *Many stated that the trend of vertical integration in animal agriculture, combined with unfair contractual relationships (especially in livestock), has resulted in financial losses for farmers.*
- *Others commented that contract growing in poultry had actually saved their family farm operation.*
- *Some asked for better enforcement of anti-trust laws and the P&S Act to reduce the influence of market concentration. Some asked for greater power and funding to be given to GIPSA to police the livestock industry. These commenters expressed the view that food distribution and marketing monopolies are the top obstacle to competitive agriculture.*
- *Many asked for four specific protections:*
  - *(a) Producer Protection Act—This legislation would include minimum standards for contract fairness including clear disclosure of producer risks, a prohibition on confidentiality clauses, a prohibition of binding mandatory arbitration in contracts of adhesion, recapture of capital investment so that contracts that require a significant capital investment by the producer cannot be capriciously canceled without compensation, and a ban on unfair trade practices including tournament or ranking system payment.*
  - *(b) Legislation closing poultry loopholes in the P&S Act—USDA should have authority over poultry dealers, similar to its current authority over packers and livestock dealers. This authority should cover not only broiler operations, but also growers raising pullet or breeder hens.*
  - *(c) Bargaining rights for contract farmers—Loopholes should be closed in the Agricultural Fair Practices Act of 1967—require processors to bargain in good faith with producers' organizations; promote bargaining rights; and prevent processor retaliation.*
  - *(d) Captive Supply Reform Act—This legislation would require captive supply contracts to be traded in open, public markets to which all buyers and sellers have access.*

*Detailed Suggestions Expressed*

- *Sponsor the rebuilding of processing plants and mill/elevators that have been disappearing in the last 10 years.*
- *By supporting local slaughterhouses in each county, local distribution issues would be helped.*
- *Agribusinesses should be broken up and their resources redistributed among small, family farm operations.*
- *Give assistance to create more cooperatives so multiple farmers can own portions of these enterprises.*
- *The U.S. farm economy needs a viable supply management structure, much like that in Canada.*
- *Eliminate the use of mandatory arbitration in contracts for the livestock industry.*

- *Restrict a packing entity from having more than 25 percent of its slaughter mix from captive supplies on a per plant, per day basis.*
- *Packers should only be able to own cattle 1 week prior to slaughter, which is enough time to secure adequate supply.*
- *Guarantee bargaining rights for contract farmers.*
- *Conduct in-depth antitrust investigations into large multinational corporations that control a larger percentage at any level of any given agricultural product, through incorporation of a Competition Title in the farm bill.*
- *The Competition Title of the farm bill should address prohibition of discriminatory pricing by outlawing any transaction containing an unreasonable preference or advantage in the procurement of products, when terms are offered to one producer and denied to another.*
- *Enact reforms to protect producers in contracts by requiring contracts be written in plain language (including producers' risks, duration, termination, renewal, and payment factors), prohibit termination of a contract if done as retribution, improve arbitration clauses, and make unenforceable any provision in a contract that would waive the rights of the producers.*
- *GIPSA, DOJ, and FTC need to work together to aggressively scrutinize mergers and acquisitions in the livestock industry and pursue a proactive strategy for remedying anticompetitive practices.*
- *GIPSA should regularly report to Congress on cases referred, pursued, and prosecuted, and on the establishment of market consolidation thresholds that trigger enforcement action.*
- *To strengthen the livestock sector, an initiative should be announced to federally fund pilot projects on mini-packing facilities.*
- *To increase competitiveness, current law should be reformed to allow for the interstate shipment of State-inspected meat.*

**"Market Integration of the North American Animal Products Complex" (2005)**
William F. Hahn, Mildred Haley, Dale Leuck, James J. Miller, Janet Perry, Fawzi Taha, and Steven Zahniser, Electronic Outlook Report from the Economic Research Service LDP-M-131-01
http://www.ers.usda.gov/publications/ldp/may05/ldpm13101/ldpm13101.pdf

**Taylor, Domina: This is report is about the "North American" market. It does not address competition issues.**

**"Spot and Alternative Marketing Arrangements in the Livestock and Meat Industries" (2005),** Mary K. Muth, Gary Brester, John Del Roccili, Stephen Koontz, Brigit Martin, Nicholas Piggott, Justin Taylor, Tomislav Vukina, Michael Wohlgenant**,** RTI International Contract No. 53-32KW-4-028**,** Grain Inspection, Packers Stockyards Administration
http://151.121.3.117/psp/issues/livemarketstudy/LMMS_Interim_Report.pdf

**Taylor, Domina: This is an interim report that is no longer relevant because the final report was released in 2007.**

**"Structural Change in the Meat, Poultry, Dairy, and Grain Processing Industries" (2005),** Michael Ollinger, Sang V. Nguyen, Donald Blayney, Bill Chambers, and Ken Nelson**,** Economic Research Report No. (ERR3)
http://www.ers.usda.gov/publications/ERR3/

**Taylor, Domina: This government report deals with change in processing industries, not farm level competition issues**

**"Effect of Food Industry Mergers and Acquisitions on Employment and Wages." (2006),** Michael Ollinger, Sang V. Nguyen, Donald P. Blayney, Bill Chambers, and Ken Nelson**,** Economic Research Report No. 13**,** Http://www.Amc.gov

**Taylor, Domina: AMI link is wrong. The correct link is**
**http://www.ers.usda.gov/publications/err13/**
**The report deals only with the labor market in the processing industry, and not with cash or futures markets for agricultural commodities.**

**"Food Industry Mergers and Acquisitions Lead to Higher Labor Productivity" (2006),** By Michael Ollinger, Sang V. Nguyen, Donald Blayney, Bill Chambers, and Ken Nelson**,** Economic Research Report No. (ERR-27)**,** http://www.ers.usda.gov/Publications/ERR27/

**Taylor, Domina: This USDA study deals with labor productivity only; competition issues are not addressed.**

**"GIPSA Livestock and Meat Marketing Study Final Reports" (February 2007)**
RTI International Health, Social, and Economics Research**,** Research Triangle Park, NC 27709**,** RTI Project Number 0209230
http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=lmp&topic=ir-mms

**Taylor, Domina: This very expensive consulting report is problematic for several reasons. First, the authors never articulate the standards--statistical, legal, government policy or academic—on which their conclusions are based. Econometric conclusions appear to be based on the near certainty statistical criterion used by the academic livestock economists hired for the study. Second, the study was based on a short time period, October 2002**

**through March 2005, which the authors stated was an *"unusual time for the U.S. meat industry."* Therefore, applicability of the study to the last 10-20 years is in doubt. Third, the study totally ignores considerable qualitative information related to competition issues and reaches conclusions based only on statistical tests with weak power. Fourth, the conclusions are, on balance, strongly supportive of the OCM position.**

*Excerpts from the lengthy report and additional OCM comments follow*

> *"… reported cash prices are frequently used as the base for formula pricing for cash market and AMA (alternative marketing arrangements) purchases of livestock and meat."* Note: AMA's are typically called captive supply arrangements.

**Taylor, Domina: The economists- authors overlook the most fundamental of all economic theory establishing that, for large buyers, tying contract prices for captive supply distorts buyer incentives, generally causing cash price and cash purchases to be lower than in a truly competitive market.**

> *The use of AMAs is associated with lower cash market prices, with a much larger effect occurring for finished hogs than for fed cattle.*

**Taylor, Domina: OCM maintains that is evidence of a business practice—captive supply--that violates Section 202(e) of the PSA, to wit *"(a) course of business … for the purpose or with the effect of manipulating or controlling prices…"***

> *Neither the producers nor packers surveyed expected the use of AMAs to change dramatically in the next 3 years.*

**Taylor, Domina: Bad forecast by the packers; use of AMA has increased dramatically, particularly in 2009.**

> *The packers surveyed that used AMAs said that their top three reasons for using AMAs were to improve week-to-week supply management, secure higher quality cattle, and allow for product branding in retail stores.*

**Taylor, Domina: The packers claim that captive supply allows them to *"improve week to week supply management"* contradicted by the fact that under the dominant arrangement, it is the feeder, not the packer, who decides the week of slaughter.**

**Taylor, Domina: Detailed data made public in Pickett v. Tyson revealed that IBP/Tyson was actually acquiring lower quality cattle, on average, from captive arrangements compared to their acquisitions on the cash market. Since this data covered about 1/3 of domestic beef slaughter for almost 9 years, the packer survey results in the RTI report are suspect.**

**Taylor, Domina: Significantly, the RTI study overlooked the fact that *"secure higher quality cattle, and allow for product branding in retail stores"* can be accomplished equally well in the cash market.**

> *Regression analysis accounting for cattle quality and sales month found that auction market and forward contract prices were more volatile than direct trade, marketing agreement, and packer owned cattle prices.*

**Taylor, Domina: The above conclusion implies that the residual cash market has become the shock absorber for the industry.**

> *Hypothetical reductions in AMAs, as represented by formula arrangements (marketing agreements and forward contracts) and packer ownership, are found to have a negative effect on producer and consumer surplus measures. Beef and cattle supplies and quality decreased and retail and wholesale beef prices increased because of reductions in AMAs.*

**Taylor, Domina: For their "hypothetical" study, the authors assumed the conclusion. There is no reason for quality to change with elimination of AMAs because quality can also be achieved in a properly functioning, competitive market. Moreover, quality changes are difficult to effect in the short-run, which is what their analysis is based on.**

**Taylor, Domina: The RTI study used the HHI (seller concentration) in the wholesale market to measure the potential effects of buyer power. This is inappropriate as noted previously. Furthermore, the HHI does not change much over the observation period. One must have variation in potential explanatory variables to come to any statistical conclusions.**

> *Because of data limitations, the following beef market power equation is specified …*

**Taylor, Domina: Precisely. Data severely limited their econometric analysis. And data limitations reflected in their econometric model specification mean that the tests will favor accepting the null hypothesis of competition, a fact they do not mention in the report.**

> *Estimates of Oligopsony Markdown Price Distortions" Published estimates of the degree of oligopsony markdown power are available for the beef industry and are used in the equilibrium displacement model. Schroeter (1988) extended Appelbaum's (1979, 1982) model for estimating monopoly market power to the problem of estimating monopsony price distortions in the slaughter cattle market. Using annual datafrom 1951 to 1983, Schroeter reported markdown price distortions ranging from 0.009% to 0.025% depending on the year. The average price distortion for the reported years was 0.013. This corresponds to an estimate of ρ of 1.013. Azzam and Schroeter (1991) considered the degree of oligopsony price distortions across 13 regional slaughter cattle markets in 1986. Their estimate of markdown price distortions was less than 1%. This was a lower estimate of price distortionsthan the 1.2% to 2.5% estimates reported by earlier research*

*(Menkaus, St. Clair, and Ahmaddaud, 1981; Quail et al., 1986; Ward, 1981). Koontz, Garcia, and Hudson (1993) used data from 19 80 to 1986 and estimated slaughter cattle pricedistortions of 0.5% to 0.8% in a dynamic model of two-phasecollusive pricing strategies. Muth and Wohlgenant's (1999) estimate of oligopsony markdown price behavior was not statistically different from zero using a variety of functional forms for the beef industry. Using quarterly data from 1978 to 1993, Weliwita and Azzam (1996) estimated oligopsony price distortions of 2.7% for fed cattle markets during a time of declining beef demand. Stiegert, Azzam, and Brorsen (1993) reported monopsony markdown pricing estimates ranging from0.0% to 3.8% depending on the year considered. The average of their annual estimates was 1.31%.*

*The above estimates of oligopsony markdown price distortions in slaughter cattle prices range from 0.0% to 3.8%.*

*We assume that the data used in the model have been generated by a beef processing industry that has been able to exercise small amounts of oligopsony pricing power in the slaughter cattle industry. Therefore, although a restriction on the amount of a given AMA is likely to increase processing costs, it could also have an offsetting effect of reducing market power.*

**Taylor, Domina: Their conclusion that AMA's reduce processing costs is logically inconsistent with who and when decisions are made, at least for marketing agreement cattle. The RTI study and most other academic and government studies of agricultural competition issues are based on the faulty presumption that economies of size cannot be realized without attendant market power abuses. We disagree. Market framing rules and market perfecting rules can be designed to reduce or eliminate market power abuse while still achieving economies of size.**

**"Antitrust Modernization Commission: Report and Recommendations." (April 2007),** D. Garza, J. Yarowsky, B. Burchfield, W. Cannon, Dennis Carlton, M. Delrahim, J. Jacobson, D. Kempf, S. Litvack, J. Shenefield, D. Valentine, J. Warden
http://www.amc.gov/report_recommendation/amc_final_report.pdf

**Taylor, Domina: The AMI link will not work. This one will**
**http://govinfo.library.unt.edu/amc/report_recommendation/toc.htm**

**Taylor, Domina: Apparently no one on the commission was knowledgeable about agriculture. The focus of the report seems to be on antitrust as it relates to innovation, intellectual property and technological change, none of which dominate livestock and poultry competition issues.**

**Taylor, Domina: OCM agrees that repeal of Illinois Brick is essential. Curative legislation should be enacted.**

**Recent Studies NOT cited by AMI**

Nigel Key and James M. MacDonald, "Local Monopsony Power in the Market for Broilers: Evidence from a Farm Survey," Selected Paper, Annual meeting of the AAEA, Orlando, FL, July 27-29, 2009.

**Taylor, Domina: This study supports the OCM position that poultry growers have been harmed by the contracting power of poultry companies (integrators).**

> *There appears to be small but economically meaningful effects of concentration on grower compensation.*

Jared G. Carlberg and Clement E. Ward, Applying Game Theory to Meatpacker Behavior in an Experimental Market: Implications for Market Regulation, Research Institute on Livestock Pricing, Agricultural and Applied Economics, Virginia Tech University, Research Bulletin 2-2002, November 2002.

**Taylor, Domina: Experimental models stylized for the beef industry allow complexities that cannot be analyzed with available empirical data. The "packer-feeder" experimental analysis by Carlberg and Ward found buyer power (monopsonistic behavior) and collusive behavior on the part of packers.**

> *"... beef packing firms were able to achieve various levels of successful tacit collusion in the experimental market ... it was further discovered that the level of collusive behavior in such a framework varies according to supply conditions for fed cattle. Even at its most competitive, however, industry conduct was still substantially more collusive than would be the case under perfect competition. The most competitive behavior discovered followed a Cournot pattern, which lies midway between perfectly competitive and (pure) monopsonistic behavior.*
>
> *"A second (experimental) model, the first of its kind applied to the beef packing industry, examined the strategic interaction among individual beef packers. For this, packer conduct was modeled at the firm level using a reaction function framework. Results of that model also indicated collusive behavior on the part of packers."*

Clement E. Ward, "Feedlot and Packer Pricing Behavior: Implications for Competition Research," Selected Paper presented at the Western Agricultural Economics Association Annual meeting, July 29-August 1, 2007.

**Taylor, Domina: This study, also from a complex experimental model, establishes that the current level of beef packer concentration is at or beyond a threshold for significant negative effects on price of slaughter cattle.**

*"… halving the number of buyers from 4 to 2 … had a significant negative effect on prices paid (for slaughter cattle)."*

**STATUS, CONFLICTS, ISSUES, OPPORTUNITIES, AND NEEDS IN THE U.S. BEEF INDUSTRY, Recommendations to National Cattlemen's Beef Association, May 1999, Coordinated by Wayne D. Purcell,** Clement E. Ward, Ted C. Schroeder, Rodney Jones, James Mintert, James N. Trapp, Barry K. Goodwin, Matthew T. Holt, and DeeVon Bailey.

**Taylor, Domina: This study sets forth important recommendations by a group of livestock economists that have been ignored for over a decade.**

*Recommendations to NCBA (National Cattlemens' Beef Association) on policies and programs to help revitalize the beef business are presented and justified in this section. In general, these recommendations reflect recognition of the loss of market share in beef, the related disinvestment and downsizing that has been occurring since the 1970s, concerns about performance of a highly concentrated beef processing sector, and the long standing loss of respect and credibility afforded the price system and price discovery in the beef sector as we move toward the year 2000 and beyond. The information base for these recommendations is comprised of research financed and/or coordinated by the Research Institute on Livestock Pricing (RILP) along with the broad array of research efforts conducted by the land-grant universities in each state, other research universities, private firms and consultants, plus the Economic Research Service, Agricultural Marketing Service, Grain Inspection and Packers and Stockyards Administration, all in the U. S. Department of Agriculture. The RILP research studies are available at http://www.aaec.vt.edu/rilp on the Internet or can be attained by contacting the Institute director, Wayne D. Purcell, at (540) 231-7725, fax (540) 231-7622 or by e-mail to purcell@vt.edu at Virginia Tech. Citations of these and other research efforts occur throughout the "white paper," an effort to examine important issues in beef that accompanies these recommendations and involves a number of leading land-grant university researchers and extension educators.*

*Excerpts: Adopt a policy position opposed to contractual arrangements between cattle feeder/producer and packer when the base price is tied to a cash market in which the buying packer is active in buying fed cattle and/or when the base price is tied to plant or firm prices paid or cattle costs into the plant(s) for some time period prior to the date of delivery with the reasons for the policy position coming from the inappropriate incentives of this approach and from the need to restore integrity to the pricing system.*

*The incentives facing buyers when price is tied to markets in which they are large buyers are not consistent with confidence and integrity of the pricing process. If there are benefits of scheduling cattle into packing and processing facilities, and the research clearly shows such benefits directly to the packer and indirectly to the cattle feeder and to the producer, the scheduling can be accomplished in a number of ways. Resorting to an arrangement that has the perverse economic incentives that attach to a contract with*

*the base price tied to a cash market in which the packer is active or to some measure of prices paid by the firm or plant is not essential or necessary. The effective removal of this approach to contracting or formula pricing would mitigate many of the negatives associated with captive supplies while leaving open the possibilities of realizing the cost-reducing benefits of even flow of cattle into a slaughtering and fabricating facility via basis contracts with price tied to the live cattle futures, hedged contracts specifying time of delivery, (flat price) cash forward contracts with a cash price established at the time of contracting, or other and similar arrangements.*

**CONTRACTS AND CAPTIVE SUPPLIES IN LIVESTOCK: WHY WE ARE HERE, IMPLICATIONS, AND POLICY ISSUES,** Wayne D. Purcell, Denver Captive Supply Forum, 2002.

**Taylor, Domina: This paper is antithetical to the AMI position and sets out good advice.**

*Given where we are and the future we face, I would encourage consideration of:*

- *Policy to discourage formula price arrangements in which the base price is tied to a cash market in which the buyer is an active buyer of slaughter livestock. The incentives, as I noted earlier, are wrong and this approach breeds and encourages mistrust and adversarial attitudes and the beef and pork sectors would be better off without it.*
- *Policy to improve the transparency of prices and terms of trade between buyer and seller, including contract arrangements, so that buyers and sellers can more effectively compare alternatives while protecting what is legitimately proprietary data. Improving "transparency" without exposing proprietary data is not easy, but it is a worthwhile goal.*
- *Policy to encourage slaughter animal transactions on a carcass or other in-the-meat basis to eliminate the guessing of value in live weight transactions. The widely seen "average" price for most slaughter livestock that are sold each week on a live-weight basis, especially in cattle, does not price to value and is most ineffective in communicating needed changes in genetics or in management regimes to producers.*

**CME Trader Urges Cattlemen To Reject Captive Supplies, By Colleen Schreiber, Livestock Weekly, 1997**

**Taylor, Domina: This is a news article in which a well-known CME trader discussed how captive supply was used to manipulate the market. The lack of convergence of cash and futures prices for slaughter cattle in recent months suggest that there are problems with the futures market as well.**

*NASHVILLE – Packer concentration and captive supplies remain contentious issues within the cattle industry, spawning everything from animated discussions to lawsuits.*

*Despite heated denials from the packer sector and some industry leaders, along with government investigations that purport to prove otherwise, there are still those in the industry who believe there is more to the story than is being told.*

*Cattlemen attending the Live Cattle Market Committee meeting at the recent summer meeting of the National Cattlemen's Beef Association here heard one such perspective from Les Messinger, a cattle trader at the Chicago Mercantile Exchange.*

*For the past two years Messinger has been vocal in relating to the cattle industry just how damaging he believes captive supplies and formula pricing have been to the cow-calf man.*

*"At the risk of sounding melodramatic, I can think of no product in history that is marketed in a manner so devastating to its own producers," Messinger told listeners. "The only worse deal I could think of was when the Indians sold Manhattan to the settlers for $26 worth of junk jewelry, but then I realized that the Indians never owned Manhattan, and the $26 was pure profit."*

*The increased use of contract and formula priced cattle by the big three packers, he said, has systematically forced down fat cattle prices, which ultimately spills over to the cow-calf producer.*

*As examples he cited trading activity on several occasions when IBP was noticeably absent from the open market.*

*"During March and April 1994, fat cattle prices from mid-March to early June went from $77 to $62," Messinger said, "for a loss of $180 per head. During this same period feeder prices for an 800-pound yearling broke over $82 and then dropped to $72 for a loss of $80 per head.*

*"Then from Jan. 1995 to May 1995, fat prices broke from $77 to $59, or a loss of $192 per head. During this same period 800-pound feeders broke from $76 to $63 and lost $104 per head."*

*The break in the feeder market, he stressed, was not due to higher corn prices.*

*"During both those periods, corn prices remained between $2.50 and $2.60 per bushel."*

*Captive supplies, he said, can and will depress a good cattle market by $5 to $7 and a burdensome one by $5 to $12, if a packer begins every month with 30 to 50 percent of his needs in his hip pocket and the ability to call for them whenever he wants.*

*"The only reason a packer pays up for cattle is if he has to, to maintain supply. We continue to see long extended periods of packers staying out of the market, yet continuing to maintain heavy slaughters. Could these be captive supplies?" he asked listeners.*

*He recognized the industry's efforts in endorsing seven-day pickups.*

*"Why can't you see that formula and contract sales give the packer a 30-day pickup?" he asked.*

*Packers and defenders of captive supply attribute the depressed market to oversupply, but Messinger called such reasoning "a bunch of baloney."*

*"The December 1993 cattle on feed report showed 9.4 million cattle on feed. During that month, we sustained a $72 to $75 live cattle market. In December 1995, however, we had three percent less cattle on feed than in 1993 and our cash market was $6 to $7 under 1993."*

*Over the last couple of years, competition between the three big packers has been limited, at best, the speaker told listeners.*

*"The other packers simply sit back and wait for IBP to set the price," Messinger insisted. "And why would IBP want to raise the cash market when that automatically raises the formula price?" he asked.*

*He outlined various industry-wide rumors of blatant arrangements between packers.*

*"Rumor has it that there is a formula deal between IBP and Caprock, who is owned by Cargill, who also owns Excel. Now I know the corporate line would be to tell us how these divisions operate totally independent of one another, but those of us with devious minds might suggest that this allows IBP to call for Excel's cattle rather than pay up if they need cattle," Messinger said.*

*"This would be a win-win situation for both packers while leaving the same loser. How do they do this without excessive cooperation?"*

*Another example, which Messinger said displays the effects of captive supplies, occurred in May.*

*"According to well-founded rumors, during the first week in May, IBP was notified by their main formula supplier that his cattle were too green and he couldn't supply them any cattle for two weeks. Their other main supplier was also down on numbers, so IBP was suddenly forced to go out and compete for cattle," Messinger said.*

*"That caused the largest one-day jump in price in history as the market went from $55 to $60 in one day," Messinger continued. "In the next two days they put on another $2. That was a $7 rally in four days. Can you imagine what could happen if all of their formula suppliers suddenly cut them off?*

*Another example occurred recently in the Texas Panhandle, when all the packers except IBP were willing to pay $64. "Talk on the trading floor was that IBP had 25,000 cattle from Cactus, so they never budged from $63," Messinger told listeners.*

*"Producers were asking $66 after a bullish cattle on feed report and a $65 market the week before, but IBP never came to the table, and by Wednesday intimidated producers again caved in and sold for $64. After other packers bought a few head — but not IBP — they backed away and conformed to IBP's $63 bids."*

*Messinger also discussed data recently released by the Texas Cattle Feeders Association which showed that for a year's period ending February 24, IBP acquired 48 percent of their cattle in Texas through formula or contract buys. TCFA also reported that the average price paid by IBP for steers was ninety-two cents under Excel and 69 cents under Monfort, and their heifer price was $1.19 under Excel and $1 under Monfort.*

*"If packers acquire their best cattle on the formula, that means that the inferior cattle are left to determine the formula price. Can anyone deny that this creates a tremendous incentive to keep that price as low as possible?" he asked.*

*Messinger agreed with previous speakers that loss of the producer's share of total retail beef dollars is of great importance to the beef industry. The fact that from 1980 to 1996 the four major packers' share of steer and heifer slaughter went from 36 percent to 87 percent while the producer's share of the beef dollar went from 63 percent to 44 percent is a clear indication of who's absorbing the loss, he charged.*

*"The real competition," Messinger said, "appears to be who can grab the largest portion of the beef pie, the packer or the retailer. I honestly cannot say who's winning."*

*Messinger told listeners that he has long been accused of constantly blaming the packer.*

*"It's not entirely the packer's fault," he said. "Packers are just doing their job a whole lot better than we're doing ours by correctly reading a portion of our industry that for whatever reasons of their own prefer to say, 'I don't care about the damage I do to the industry; if I can get an extra 50 cents to $1 advantage, I'll take it.' Their reasons may range from feeling they get preferential treatment by the packer to not wanting to pay a feedlot manager to sell cattle," Messinger said.*

*Intimidation, the cattle trader insisted, is alive and well in the cattle industry today.*

*"Even the associations that are supposed to be representing ranchers and feeders find it safer to sit on the fence rather than run the risk of alienating packers or certain larger feeders. Why haven't the associations taken a stand against packer concentration? And how can you say that there's nothing wrong when the retailers and packers are working at record profit levels and the feeders and producers are going broke?" Messinger asked listeners.*

*He found more than a little to criticize USDA's packer concentration study and the recommendations that were released earlier this year.*

*"USDA mysteriously chose to cover the period of April 1, 1992 to March 31, 1993 when, due to the worst cattle feeding weather in history, we had the highest cattle price in history, $85," Messinger said. "From this study, for this time period, it concluded that captive supply had little or no effect on cattle prices. Now, three years later and $260 per head cheaper, we continue to be told that captive supply has no effect."*

*Calling the 21-member panel appointed to review the report, a "stacked deck", the cattle futures trader boldly suggested that various committee members simply represented their own agenda.*

*"The overall panel endorsed the right of cattle feeders to sell cattle any way they chose, along with calling for more accurate price reporting — either voluntary or mandatory. I don't understand this," Messinger said. "Will some packer choose mandatory reporting?" he asked. "And endorsing the rights of the cattle feeder to sell cattle any way he chooses is like endorsing apple pie and motherhood. Of course we all favor rights of individuals, but we also acknowledge that free speech doesn't include yelling 'fire' in a crowded theater."*

*He applauded the six committee members who refused to endorse the panel's overall findings unless they were also allowed to make public their minority opinion. The minority opinion, Messinger reminded listeners, called for a ban on formula and contract cattle sales along with packer feeding of their own cattle. It also called for "mandatory" live cattle and beef price reporting.*

*"I'll say again, the majority of that panel had their own agenda," Messinger continued, "either representing the packing industry which the panel was supposed to be investigating, or they were cattle feeders who sold cattle on formula or contracts, or worst of all, representatives from associations that are supposed to represent the feeder but instead are far more concerned with maintaining status quo for the association."*

*Messinger encouraged the industry to take an active stand against captive supplies.*

*"A person high up in in the USDA said it best to me in a discussion several months ago: 'What do you expect us to do when they won't even defend themselves?'*

*"I urge every cattle producer's association to take whatever steps necessary to eliminate the practice of formula or contract buying of cattle," he continued. "This is the main hammer that allows packers to totally dominate producers. I believe that whether they admit it or not, every person in this room knows of the damage done to the industry by captive supply. The only real argument is how much." Copyright © 1997 Livestock Weekly*

**Captive Supplies and Cash Market Prices for Fed Cattle: A Dynamic Rational Expectations Model of Delivery Timing, John R. Schroeter, January 2007**

**Taylor, Domina: The study by Schroeter and Azzam, commissioned by GIPSA, introduced a complex econometric model on which they opined a non-causal explanation for the significant negative relationship between captive supply and cash price. Their possible non-causal theory was used to trump numerous causal explanations as well as considerable testimony by independent cattlemen. The more recent study by Schroeter puts the non-causal explanation in proper light. The negative correlation "may" be a benign artifact. The argument is "suggestive." Schroeter's new analysis is even less persuasive. The model does not consider the possibility that a big packer-buyer is influencing the price expectations of a big captive feeder. This is a possible causal path that would invalidate the already weak conclusions of Schroeter and Azzam.**

*A paper by Schroeter and Azzam (SA, 2004) raises the possibility that the negative correlation **may** simply be an essentially benign artifact of cattle delivery timing decisions made by market participants who behave competitively. The **SA argument is suggestive** but is based on an incomplete analysis of the market's underlying economic mechanisms and, so, is not entirely convincing.*

*The simple version of the model, without active delivery timing decisions, can be solved analytically to show that, for certain parametrizations, results consistent with previous regression findings do obtain. In particular, given certain parameter scenarios, the implications of the simple model are qualitatively compatible with the regression results reported in the GIPSA - Texas Panhandle study (Schroeter and Azzam, 1999). Unfortunately, it is difficult to judge the realism of the parameter scenarios giving rise to these results because the modeling construct of the "nominally-ready-for-delivery" cohort, while intuitively plausible, is unobservable, leaving little concrete basis for calibrating the parameters of these processes. When active delivery scheduling decisions are incorporated into the model, it becomes analytically intractable, requiring numerical solution using the extended path algorithm. In the analysis of this version of the model, set parameters at values which would imply no correlation between spot price and captive deliveries if there were no active delivery scheduling. Starting from these benchmarks, a simulation/regression approach is used to discover the effects of inter-temporal arbitrage. The results provide only partial support for the SA conjecture: There is a strong tendency for inter-temporal arbitrage in delivery scheduling to induce*

> *negative correlations between spot market price and captive supply delivery volumes. The results do not fully rationalize market data regression findings like those in Schroeter and Azzam (1999), however. Although experimentation has been limited to only a few parameter scenarios, other key aspects of the Schroeter/Azzam regression findings have not, as yet, been replicated with data from the simulation model.*

**Measuring Market Power in Bilateral Oligopoly: The Wholesale Market for Beef**, John R. Schroeter, Azzeddine M. Azzam and Mingxia Zhang, Southern Economic Journal, 2000, 526-547.

**Taylor, Domina: This study supports exertion of market power by beef meat retailers. Thus, some evidence suggests the beef industry is characterized by stacked monopsonies, without much apparent monopoly power exertion.**

> *"Our application to the U.S. wholesale beef market showed the (packer price-taker, but NOT retail price-taking) solution concept to be most consistent with the data."*

**End.**