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Restoring Economic Health to Beef Markets[1]

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Introduction—Market Power in the Food Industry

Concentration in major markets for agricultural products is dramatic. In beef, four firms control at least 83% of all beef slaughter in the United States. They buy cattle in settings displaying even more control, leaving the true cash market very thin, with little or no negotiation occurring between a handful of powerless sellers against fewer powerful buyers. Packers have "chickenized" swine production so pervasively that the cash market for hogs is only a razor-thin fraction from complete disappearance.

These anticompetitive markets deliver processed foods to consumers and retailers by using market power to demand higher prices; this causes price increases for consumers. Meatpackers use market power against producers to keep them from receiving a fair share of the cost of food. The highly concentrated structure of the American food processing markets drives producer prices down dangerously, while increasing consumer costs unnecessarily and unfairly, and reducing consumer choices. This same concentration drives producers from the farm and ranch, deprives businesses essential customers in rural communities, and contributes to the ghoulish abandoned look of too many buildings in too many towns in too many places across rural America. Citizens and the national character ache for what has been, and is being, lost.[3]

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[1] Report prepared for the Joint U.S. Department of Justice and U.S. Department of Agriculture/GIPSA Public Workshop on Competition Issues in the Livestock Industry, August 27, 2010, Ft. Collins CO.

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[3] For a broader analysis, see Domina & Taylor, *The Debilitating Effects of Concentration on Markets Affecting Agriculture,* 15 Drake Ag Law J 68 (2010).

Monopsony power exists where too few consumers of raw goods control the market and can engage in the practice of "under-demanding" their full need, thereby creating an artificial impression and causing sellers of perishable goods to accept unfair lowered prices. Major ag markets are controlled by companies with monopsony power.

Anticompetitive market power is wielded against beef producers in several ways. These include: capturing cattle and pork supplies long before slaughter, withdrawing from the market, bidding only on a controlled basis for only a few minutes a week for beef, and refusing to negotiate at all for pork. Further, packers appear to divide territories or feed yards, control delivery times, pay producers on carcass quality terms known only to the packer since the producer does not participate in the pricing-relating grading process, change specifications, impact commodities markets by their domination, bid to create an illusion of market interest but not to buy, and by direct cattle and feedyard ownership.

For pork producers, the choice is even more stark; producers must contract hogs well in advance or risk not having an outlet for "ripe" perishable, ready to sell fed hogs. The cash market for hogs is largely a figment of history. Its existence is too spotty, now, to be a real "market" for slaughter-weight swine. The pork sector of the livestock industry is mentioned intermittently in this paper, but the focus is primarily on beef cattle raised and sold for slaughter.

Livestock producers are thwarted by monopsony buyer market power produced by disparate information, opaque markets, and intensive market concentration. There are simply too few firms engaged in beef or swine slaughter. The firms that exist do not engage, in competitive bidding. The structure of meat processing is the consequence of two things: failure by public officials to police the markets and demand competition by doing so; and judicial failure to respect undeniable and historical differences between the nation's general antitrust laws and its particularized laws designed to assure competition among manufacturers of processed beef, pork, broilers and, though different, dairy products.[4]

Consumers are poorly served by existing market structures. The spread between the price paid to producers and the cost paid by the consumer increases steadily as concentration increases in food processing and retailing. The winners are in the middle—they are the monopsonists. The losers are producers and consumers.

The monopsony problem is not new to American agricultural, but it is extremely acute, early in the 21st century. A hundred years ago a similar problem led to enforcement of the newly-enacted antitrust laws and the adoption of the *Packers and Stockyards Act* of 1921, all in an effort to rid the nation of monopsony's gripping the same major agricultural markets then as find themselves gripped by the monopsony problem now. Concern must focus on the basic

[4] The authors have written separately about the broiler industry. See, Taylor, Domina, *Restoring Economic Health to Contract Poultry Production, May 2010,* Organization for Competitive Markets, *www. competitivemarkets.com.*

purposes of antitrust laws. The authors believe the most significant evil at which antitrust laws are aimed, is concentration. Antitrust laws serve the fundamental purpose of ensuring freedom of business opportunity. They are not designed to prevent growth, or success. They are designed to prevent monopolies, monopsonies, and abuse of market power.

Market concentration in too few corporate hands poses risks of price, biosecurity, and lack of redundancy to all American consumers. Corrective action is an urgent national priority.[5]

The Status of the U.S. Beef Market For Slaughter Animals in 2010

The domestic market for slaughter beef is dominated by four firms controlling more than 81% of total beef production in the United States. Tyson Fresh Meats, Inc.; JBS Swift, a Brazilian company; Cargill; and National Beef have been identified as the dominant four in statements issued by USDA's Grain Inspection Packers & Stockyards Administration.[6] In addition, far more than half of all cattle slaughtered by meat processors are purchased through either contract arrangements in which cattle are sold well in advance of slaughter or acquisition of cattle from feedyards selling most of their production to a single slaughter house. These are identified as "Tyson Yards," or feedyards called upon by a single packer, leaving those who sell feed cattle in the yard vulnerable to compulsory sale of their cattle to a single producer, even if they have not made advanced sales. The authors believe it is reasonable to estimate no fewer than 80% of all beef sold for slaughter are sold either under contracts made more than 14 days before the livestock are delivered, or by producers who feed their cattle in yards and settings leaving no alternative but to accept the offered price, if a price is offered at all.

In addition, meat packers have become dramatically vertically integrated. Packers now directly own large feedyards, large numbers of cattle, and have standing arrangements with ostensibly privately owned, but wholly captive, feedyards for a large portion of their remaining production.[7] Tyson and other major firms have widely-known, longstanding relationships with major feedyards. As a result of these relationships, the feedyards associated with them sell all, or substantially all, their cattle to the associated meat packer on a regular basis. Indeed, packing plants require the cattle and feedyards have no alternative destination for the fed animals. While legal title to assets may not be integrated, for economic purposes and purposes of market structures, these arrangements have the impact of integrative ownership.

The dominant business arrangement in the cattle feeding business requires a producer to place cattle in a feedyard with the expectation the cattle will be sold to a particular packer because there is no alternative destination for sale of the cattle. The packer knows this. It tracks the number of cattle on feed in its associated feedyards, sees those cattle as its "inventory" even

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[5] See, Domina & Taylor, *The Debilitating Effects of Concentration of Markets Affecting Agriculture,* Drake Ag Law Journal (Aug. 2010).

[6] Press releases, USDA, GIPSA, May 2010.

[7] JBS Swift owns control of Five Rivers Cattle Feedyards, a major feedyard. It has been active in the market seeking to acquire other feedyards. *www.fiveriverscattle.com/About_History.aspx*

though the cattle are owned by others, and operates its plant with awareness the cattle will be shipped to it when the processor wants them. Both the producer and the processor know there will be no price negotiation. Unless the cattle are sold in advance and become actual captive supplies, the producer is required to take the price offered at time of slaughter.[8] Increasingly, the packing company directs and oversees the cattle feeding process and serves as the feeder's overlord. Precise carcass sizes, feeding regimes, and uses of medicines are often directed by processors. Unlike both swine and poultry, the beef industry is not yet invaded by non-negotiable standardized contracts demanded of producers by meat packers.

Perhaps equally bad, however, transparent contracts are not available to beef producers. They must take what the packer offers or have no market access. They do not have a one year commitment; the packer posses, and wields market power each week, causing the beef producer to worry, each week she wants to sell fed cattle whether the packers will take the animals or leave her hanging. The weekly "cattle market" is no market at all. At virtually every feedyard producers report that the "market" consists of a call – generally only one – from a single buyer for a single packing plant. The caller offers a single price, generally non-negotiable, for cattle on the feedyard's "showlist" of animals ready for slaughter. Facing "no sale" of animals weighing 1350 lbs and at risk to be too large to meet slaughter specs in just a week or two, the producer does not dare to negotiate and cannot chose any path but to take the offered price. There is no other choice.

The Status of Contract Swine Production in 2010

This paper's primary focus is the cattle industry. Brief comments on swine production in 2010 are offered. Comments distinguishing, or pointing out, similarities between the beef and pork industries appear intermittently.

The swine industry largely resembles the chicken industry as of 2010. It is integrated vertically. This means ownership and control of essentially all aspects of production in the vertical chain, from 14 lb. introductory nursery weight pigs to processed swine carcasses, is controlled by pork meat packers and processors. The swine industry is not quite as vertically integrated as poultry, but it is catching up rapidly.

Pork meat packers generally do not directly own or control sow herds. But, their control starts with the nursery-weight pig and continues through the finishing floor. Packers integrate all decisions affecting swine production, direct the course of action in all key areas of production, largely manipulate the sourcing for nursery weight pigs by imposing varying criteria, and control the number of swine a processor can deliver to market by constraining and compelling the

[8] Each segment of agriculture has its own "lingo." What beef and pork producers call "packers" or "slaughterhouses" are called "integrators" by poultry producers. For cattle, a "feedyard" is a place where cattle are raised from 600-800 lbs. to slaughter weight. A "background" yard grows the animals from 300-600 lbs. A "custom" or "commercial" feedyard is one where cattle on feed are owned, generally, by persons different from those who operate the feedyard itself. A "nursery" to a swine producer grows piglets from 14 to approximately 40 lbs. A "finisher" completes the task and grows the animal from 40 lbs. to slaughter weight.

numbers of deliveries through one-sided, non-negotiable contracts. Increasingly meat packers dictate physical size of production facilities, equipment specifications, and locations or placements of finishing facilities.

In swine, the dominant business arrangement permits the producer to own the swine but commands the animals be contracted to the meat packer when they are acquired for the nursery unit as infants. The swine producer must deliver a minimum number, but not more than a maximum number, of pigs or breach the producer's contract with the packer. Dead swine belong to the producer. So do live ones exceeding the contracted number. Environmental risks associated with disposing of concentrated livestock wastes have also been shifted to the producer. Disposition of carcasses from swine operations can be particularly vexatious.

Packers routinely impose demands on each producer concerning the kind, type, and nature of the nursery and finishing facilities. Packer representatives may call on the facilities to demand compliance. The producer has no choice but to contract the swine because the spot market is so unreliable and so thin it provides no assurance as an alternative to contract swine production. The producer who does not forward contract may find himself without a way to dispose of his animals when they are market ready. The one who does greets a day of reckoning when the packer demands new capital investment, rejects swine grown from piglets acquired from a now-disapproved source, changes the carcass specifications, or finds other faults. If these fates are escaped, the hog producers must take what the packer offers at contract renewal time because the barns the animals occupy remain mortgaged and useless for any other purpose. The producer works and responds, is told and does what he is told to do. The producer "owns" title to assets wholly committed to, and controlled by, the packer. Only the numbness of not thinking about the circumstances can give the swine producer any peace.

And the same is true of the large cattle feeder though the iterations of facts differ. The reality is that the cattle feeder's options do not differ. Like the swine producer, the cattleman, large or small, is essentially owned by the packer.

The Beef Market Does Not Work

For a market to work, the buyers of a particular commodity must be distinct from the sellers. In a sense, a fence separates buyers from sellers, and the market works as a gate to pass goods and money from one side of the fence to the other. This should work in transactions involving buyers and sellers with relatively equal compulsions to engage in an exchange of goods for funds. Merger standards and antitrust analyses, in general, consider the possibility that buyer power can be exerted from either side of the fence, or that monopoly power can be asserted from one to create imbalance. But, economics, industrial organization, and antitrust theory do not apply very well where a firm jumps routinely back and forth across the fence, acting as both buyer and seller.

In the cattle business, a sector in which a fence is a stereotypical fixture of the industry, fences have historically separated buyers of slaughter cattle from their sellers. The paradigm for the cattle business has been simple: producers breed and feed cattle to market weight. Slaughterers kill, cut up, and box cattle carcasses for sale to the public. The two do not mix.

But, the fence between the two has been torn down by vertical integration and consolidation of market power during the past two decades. This has happened, in part, because major packers own and feed cattle. But, their ownership comes in more forms than a simple, specific, direct, and outright procurement of cattle as calves so they can be fed to market weight. Packers have developed ownership arrangements to gain control over cattle long before they pay for them. Their primary tools are contract arrangements whereby the cattle are sold to the packer well in advance of slaughter, either at a committed price, or a formula price to be determined after delivery, but with stringent requirements that delivery must occur. In this way, the packer procures the cattle, even without paying for them, long before the slaughter date, and in many instances even before the calf is in a feedlot, so the packer need not participate in the cash market to the extent it has already captured the supplies it needs well in advance.[9]

Captive supply gives the processor an additional incentive to depress the cash price downward since the ultimate formula price to be paid for cattle may be impacted by the cash price. As one representative of a packer said to a feeder upon declining to pay a premium price for premium quality cattle:

> In the old days I would have been able to offer you $67.50 for these cattle (on a $66 market), but now paying more would screw up 20,000 formula cattle.[10]

Suppose the base price for the 20,000 head of formula cattle was the top-of-the-market price. Such contracts exist. Also suppose another packer—maybe a very small packer—already established the weekly top-of-the-market price at $66.00. If the packer's buyer pays the feeder an additional $1.50/cwt ($18/head) for his pen of 1,000 high quality cattle, then the "additional cost" is the extra $18,000 for the feeder's cattle, *plus an extra* $360,000 on the 20,000 head of formula cattle. Paying the feeder an extra $1.50 on 1,000 head would have cost the packer an extra $378,000. Obviously, the packer would not bid $67.50 in a $66.00 market. Looked at another way, offering $67.50 for the feeder's pen of high quality cattle would have been the equivalent of offering $117.00/cwt in a cash market without the captive arrangement. Such arrangements lower bids, in this illustration costing the feeder $18,000. In the jargon of economics, the marginal cost of slaughter cattle is higher to the buyer because of the marketing agreements tied to cash price, *causing* cash price to be lower than it would be without such captive arrangements.

Packers, with their contract supplies of cattle, are literally on both sides of the weekly cash market. They procure a few cattle in the cash market as buyers. But, they push the cash

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9 For further discussions see C. Robert Taylor, *The Many Faces of Power in the Food Systems*, Presentation at DOJ/FTC Workshop on Merger Enforcement (2004).

10 Affidavit, J. Randall Stevenson, cattle feeder, Wheatland, Wyoming.

market down because they already control other cattle more favorably priced if the cash price is lowered, and in that sense, they are suppliers motivated to drive price downward. A packer with excessively-committed captive supply cattle is a seller of the extra cattle.

In a competitive market one would expect net returns averaged over a long time period, such as a 12-13 year cattle cycle, to be the same for different cycles. Ignoring the negative returns for the past year, inflation adjusted net returns to cattle feeding averaged $36/head over the 1981-1994, but only $9/head over the 1995-2009 period. Taking out the spike due to a ban on importation of Canadian cattle in 2003, returns to feeding averaged a *loss* of $9 over the 1995-2009 period. This comparison suggests that prices paid for slaughter cattle have been depressed by 4-5% in the past decade.

Today, the "negotiation" for cattle consists of a phone call made by a single packer representative to a feedyard offering a specific take it, or leave it, price. The feedyard can take the price, notify customers if necessary, and call back in 15 minutes to confirm sale. Or, the cattle feeder can keep the cattle and hope for the best next week, recognizing that at a 5 lb daily gain rate in the large, market ready animals, the investor has only a week to hope for a better price and to worry about what will occur if there is no bid at all next week. This is the "15 minute" market. It is no market at all; instead, this event window is the take-it or leave-it decision window, but it does not involve negotiation that yields price discovery.

Cattle feeders all know how this "market" works. They are powerless to change it Even a modest group of cattle, maybe 200 head, will represent an investment of nearly $250,000 and a potential loss or gain of ± $100 hd. In the past decade negative returns have dominated and positive ones have been rarities.

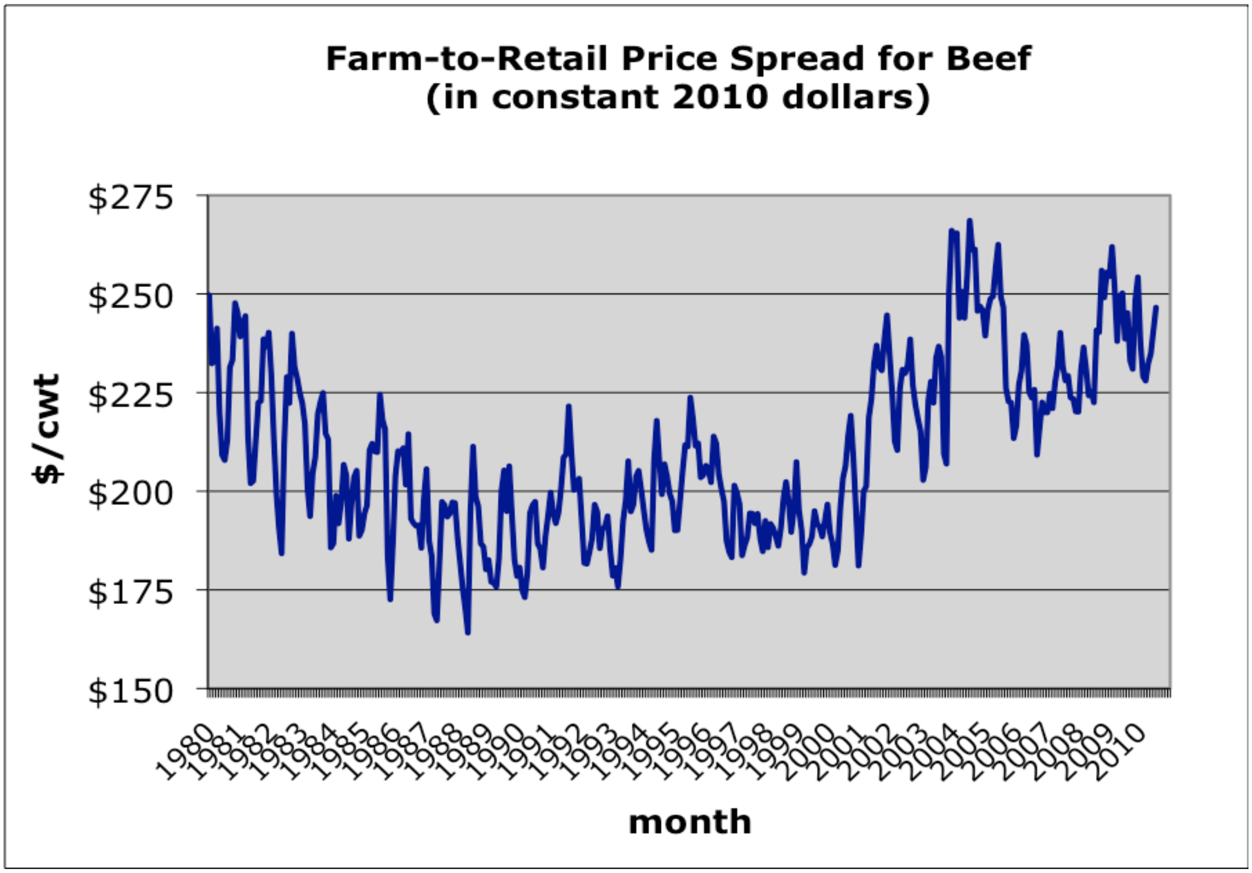
This information is not just anecdotal. Specific data, compiled in tabular form, is supplied by the Department of Agriculture's Economic researchers. USDA ERS data discloses these facts.[11]

Beef prices and spreads, in nominal dollars [Not Adjusted for Inflation]

	Prices					Spreads			
Year	Retail value	Wholesale value	Gross farm value	Byprod. allow.	Net farm value	Total	Whl. to retail	Farm to whl.	Farmers' share
	Cents per pound of retail equivalent								Percent
2004	406.5	218.9	203.5	19.8	183.7	222.8	187.6	35.2	45.2
2005	409.1	226.1	211.3	19.6	191.7	217.4	183.0	34.4	46.9
2006	397.0	228.0	206.6	19.3	187.3	209.7	169.0	40.7	47.2
2007	415.8	231.0	222.6	24.8	197.8	218.0	184.8	33.2	47.6
2008	432.5	234.7	223.2	26.2	197.0	235.5	197.8	37.7	45.5
2009	426.0	217.2	200.4	19.4	181.0	245.0	208.8	36.2	42.5

11 http://www.ers.usda.gov/Data/MeatPriceSpreads/ last updated August 14, 2009. Data not corrected for inflation.

The inflation adjusted gross farm-to-retail margin declined during the 1980s (See the chart below). This downward trend is consistent with a competitive market in which there are efficiency gains or lower real wages paid to packing plant and retail meat counter employees. Beef packers achieved efficiency gains in the 1980s as they switched to larger plants. Wages paid to animal slaughter and processing facility workers also declined substantially during this period. Food processing and marketing costs also generally declined, after adjusting for inflation. But the steep upward trend for the past decade follows the trend in captive supplies and consolidation of meat retailing.



Fundamental economic theory establishes that market power exertion is manifested in widening margins, other things equal.[12] Economic theory also establishes that formula arrangements by powerful meat packers will be manifested in increasing margins. [13]

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[12] See, for example, Beattie, Bruce R., C. Robert Taylor and Myles J. Watts. The Economics of Production, Kreiger Publishing Company, 2009

[13] Taylor, C. R. "Aggregate Economic Efficiency of Marketing Agreements: A Static Analysis," Working Paper ES-0107, Auburn University, Jan. 2007. See also, Taylor, C. R. , "The Effect of Captive Supplies on the Critical Value of the Herfindahl-Hirschman Index of Market Power," Auburn University, Working Paper ES-0207, February, 2007

Research by economists supplies more information about the status of the beef market in 2010. Empirical studies all show a strong, statistically significant negative relationship between captive supply and cash price in recent years.[14] This proves matters are worse in 2010 as the stranglehold on demand produces an imbalance of market power that has eliminated price discovery and reduced producers to simple price takers.[15] They take what they can get and have no voice, and no choice, in the matter. This is proven empirically with packer data and is illustrated in more detail later.

Packers often claim they need captive supplies "to be assured of a dependable supply of slaughter animals." This claim is false. The figure below shows domestic beef production. This chart shows the amplitude of production changes is greater with extensive captive supply than during the 1980s when captive supplies were small or nonexistent. Actual production data strongly suggests the packers' claim that captive supplies assure a dependable supply is nothing more than pretext. In fact, the supply of animals to slaughter is consistently sufficient; the packer's issue is price, and market power, not availability of raw goods.

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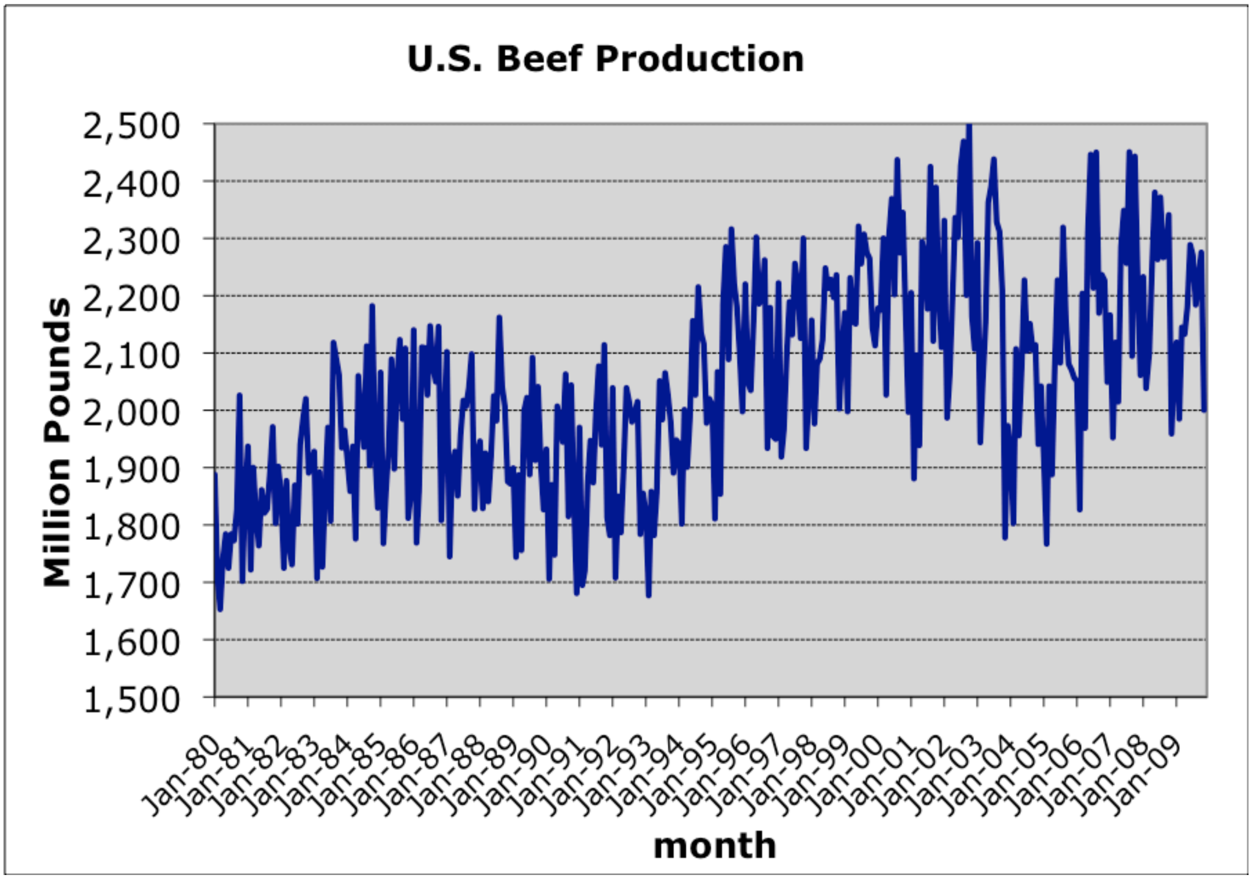
[14] Robert Peterson was president of IBP, Inc. acquired by Tyson Foods, Inc., IBP became Tyson Fresh Meats. Peterson made essential admissions about use of market power. Peterson first worked within the industry as a cattle buyer and, as CEO of IBP (now Tyson), was responsible for acquisition of about one-third of fed cattle slaughtered nationally over 17 years. Peterson emphasized the leverage the packer obtained in the cash market with captive supplies in talks to cattlemen in 1988, just before IBP had significant captive arrangements, then again in two talks to cattlemen in 1994. Matters have only gotten much worse since Peterson's admissions were made.

[15] This is not the classical "price taker" discussed in competitive market theory, but a producer whose only option is to "take" the price offered by a monopsonist or oligopsonist.



Packers also claim captive supplies allow them to reward production of better quality cattle. There is no empirical evidence to support this claim. Inferential proof contradicts the packers' claim. This falsehood is discussed in detail below.

Concentration

Concentration statistics place control of the beef slaughter industry under the control of four firms at 83% or slightly more.[16] These statistics refer to *buyer* side market concentration, i.e. meatpackers as purchasers of animals for slaughter. It does not describe, and may grossly understate *buyer* concentration in regional markets for slaughter animals. This figure also offers no expression to the meatpackers' market power as *sellers* of processed meat. Since the Big 4 packers kill nearly 5 of 6 cattle, they *control and sell* more than 5 of 6 steaks, roasts, and hamburgers, too. The 17% of cattle not killed by the biggest four packers include slaughter for personal use, small coops, niche organic users, etc. Their consumption is outside the market big packers dominate for their processed meat goods.

Packer concentration increases for several reasons. These reasons include mergers and acquisitions. Tyson's acquisition of IBP; Smithfield's multiple acquisitions in swine, and JBS' acquisition of Swift, are all recent examples. Over the last 25 years, large plants have become vastly more important in slaughter industries, as evidenced by two different measurement bases. GIPSA data sort cattle slaughter plants by size; the largest plants slaughter more than half a million cattle in a year, while large hog plants slaughter more than a million. The definition of "large" can change over time; the USDA did not separately report cattle plants that slaughtered more than a million animals until 1987; by 1997, 14 plants were in that newly established category.

The consequences are undeniable. The figure below shows what cattle feeders receive for slaughter animals, expressed on a dressed (not live) weight basis, adjusted for inflation.[17]

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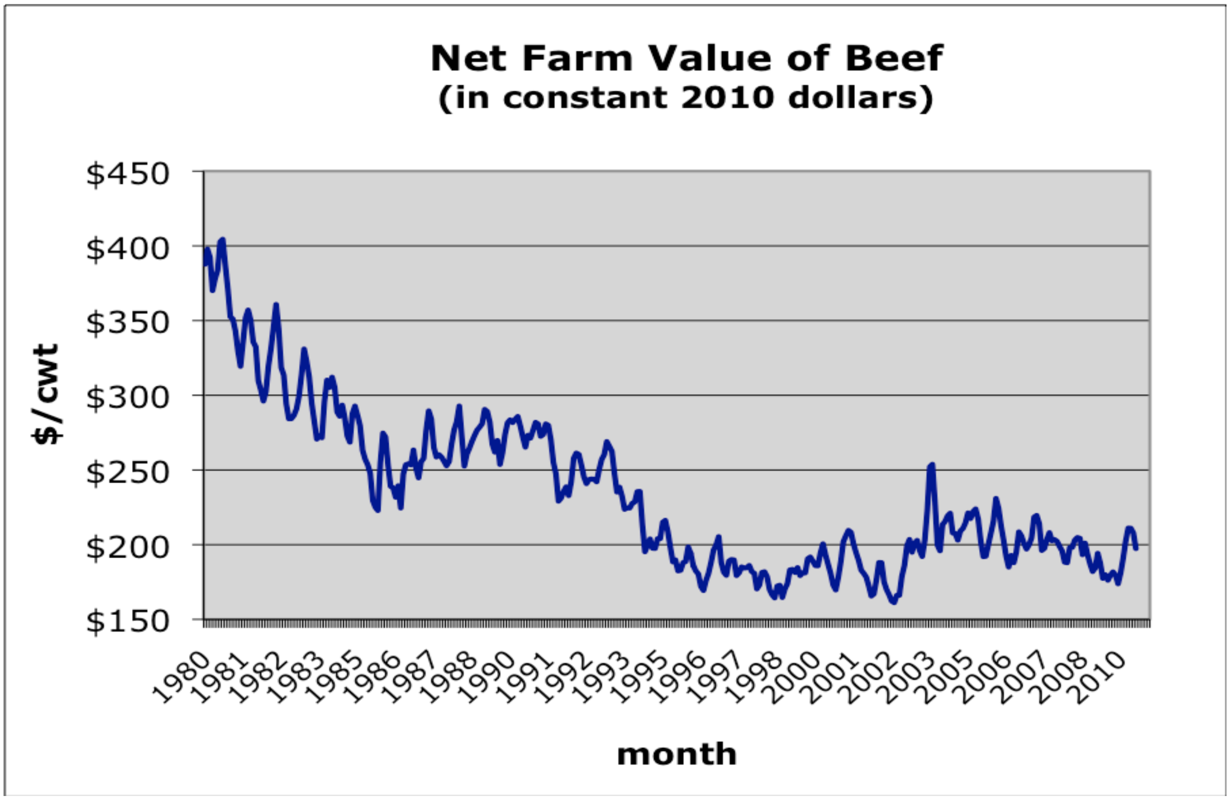
[16] Mary Hendrickson and William Heffernan , CONCENTRATION OF AGRICULTURAL MARKETS , April 2007 , *Department of Rural Sociology -- University of Missouri , Columbia, MO*
[17] http://www.ers.usda.gov/Data/meatpricespreads/index.htm



What consumers have paid for beef in the grocery store in current dollars is shown below. Beef industry spokesmen often point to the substantial decline in the retail price of beef in the 1980s and 1990s and claim that it is due to their wonderful "efficiency." In fact, at least two-thirds of the decline is due to decreases in the cost of feed, and not to processing efficiencies. It is important to note that both of these charts are for an animal produced to packer specifications and on cuts of beef trimmed into market specification sizes and shapes to be sold at the grocery store for at-home consumption. Equally importantly, it must be understood that these "specs" described nearly all beef slaughter in the country. Producers suffer deep price penalties for "out of spec" carcasses. Packers cannot expect to sell conglomerations of beef cuts; their plants are assembly, or perhaps disassembly lines were hundreds of workers reduce carcasses to boxed beef, trim, and offal in a matter of seconds.

What Do These Numbers Mean? How Do They Take Their Toll?

Some scale for the problem might be helpful. A 1% change in the distribution of cash from live cattle sales represents a distribution of the money for enough cattle to feed about 3.1 million people. This is roughly 250,000 head of cattle, or 5% of the cattle furnished annually out of either Texas, or Kansas, or Nebraska, for slaughter. The 1% change occurs with the concentrated processors who control 81% of the market. In hogs, this means roughly 1 million animals, enough to meet the needs of roughly 3 million people, are impacted. These are small, incremental fractions, but huge volumes, and they have a massive impact on markets were active bidding has already come to a virtual standstill.

Horizontal concentration combined with vertical control is occurring at a precipitous rate while the segment of the retail dollar passed back to U.S. food producers shrinks. While this undeniable occurrence is telling, and discloses a prominent weakness in the economy's structure, it proves more. The negative experiences of producers are the rest of the story. Concentration begets concentration. As the bottlenecks in the supply chain process become narrower and narrower, with monopsony power concentrated in the hands of fewer and fewer processors, more and more pressure exists in the production and retail sectors to consolidate. This means family farms get bigger, ranches consolidate, and on the other side of the processor bottleneck, retailers also become more concentrated.

When an industry first starts to consolidate, economic efficiencies (economies of size) are often the driving force. But as the industry reaches a certain level of consolidation, further consolidation is often driven by market power gains, not by efficiency gains. Few family-sized businesses can coexist where market conditions forcefully challenge the production level of commodity suppliers to funnel their raw goods through the remarkably concentrated controls of the companies identified above in each major agricultural product sector. The decline in numbers of farms and the limited countervailing growth in hobby farms, yields these undisputed facts:

> Changes in the counts of farms by constant-dollar sales class–from 1982 onward–are consistent with the trends in the counts by acreage class that were discussed earlier. Only one sales class grew consistently over the 16-year period. Large farms increased their numbers by 53,000, growing from 104,000 in 1982 to 157,000 by 1997. The share of all farms in this group also grew, from 5 percent to 8 percent over the same period. Most farms in the large farm group had sales between $250,000 and $499,999, but the number of farms with sales of at least $500,000 grew more rapidly.

The number of farms in the other sales classes declined in each inter-census period, with the exception of farms with sales less than $10,000…. There, the number of farms declined from 1982 to 1987 and from 1987 to 1992, but increased from 1992 to 1997. As shown in tables 3-1, most of the increase from 1992 to 1997 occurred among "point farms," or farms with sales less than $1,000 that might normally have sales that high and satisfy the criteria necessary to be considered a farm. (See the box, Defining Point Farms.) Because of this growth, farms with sales less than $10,000 now account for half of all U.S. farms.[18]

But, "efficiency" continues to be the justification for monopsonies to be allowed to exist. The rationale requires examination. Sometimes, when food prices do not rise as fast as the overall cost of living index, the monopsonists claim an "efficiency" triumph they claim justifies their behavior. This claim withstands no scrutiny.[19] At least 6,000 feedyards went out of

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[18] USDA Agricultural Factbook 2001-02 (most recent data).

[19] A paper in the mid-90s by a Nebraska ag economist attempts mathematical assessment of the impact from market concentration. The paper reaches dubious conclusions, but displays an intense mathematical methodology. See, Azzam, *Testing the Monopsony-Inefficiency Incentive for Backward Integration,* Am J Ag Econ (Aug 1996).

business between 2003 and 2005.[20] Often the expired feedyard was lifeblood to a small town where it provided jobs, a market for grain, and support for community businesses and services.[21] This means the grocery store, lumberyard, hardware store, veterinarian, implement dealer, repair shop, and eventually the dentist, doctor and bank, are all shorted, and all fail over time, too. Quickly, the hometown offers no opportunities, the population grays and amuses itself by lunching after funerals, and the lifeblood that flowed through a community becomes the efficient cash that flows through a slaughterhouse.

The large feedyards who remain are also squeezed by the monopsony power of the packer. This squeezing of farmers and ranchers by giant multi-national corporations take profits out of rural communities and moves them into international financial centers. It is the very nature of monopsony that the vendor who sees himself as among the favored few for awhile becomes the victim when the voracious buyer wields market power against an ever-thinner market. The packer's advocate becomes the packer's victim. The wise see this coming and look for protection, even at the expense of repositioning assets and leaving meat production behind. The arrogant gloat for awhile, but their time always comes.

The packers, united in voice through the National Cattlemen's Beef Association and the American Meat Institute, and several state organizations of packers and their controlled feedyards, declare that this transformation from community-based economic health to executive based wealth is "the free market working as it should", or "capitalism at its best", or "progress" or even "the American way". They fail to recognize the anguishing truth that the selfish ox that gores becomes the gored ox sooner or later.

The "efficient" food supply system today employs fewer people, furnishes fewer pensions, and provides less redundancy. "Just in time" inventory has become sacrosanct in the food sector. Grocery store backrooms now shrink to nothing, and grocery wholesalers practice inventory turns at dramatic levels. At the same time, the nation's slaughter plants, particularly in beef, generate more profit per animal by owning a steer three days than the cattle feeder can make in six months, or the rancher, who owns the mother cow, can make in two years.

The bankers suffer, too; but only after contributing to the problem. For a while it seems like "good credit policy" to demand that producers use "price protection" and forward contracting to the powerful packers. But, the bankers nearly always fail to match their loan terms with the producer-packer contract terms. As the chicken bankers know, and the hog bankers are learning, this spells credit risks and unhappy outcomes for both borrowers and lenders when the

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See also, National Farmers Union Study on Concentration, http://www.nfu.org/wp-content/2007-heffernanReport.pdf

[20] USDA Cattle Herd Data, http://usda.mannlib.cornell.edu/usda/nass/SB989/sb1019.pdf, p 77.

[21] Dimitri, *The 20th Century Transformation of U S Agriculture & Farm Policy, http://www.ers.usda.gov/publications/eib3/*

binding market power of the packer overtakes them. The chicken banker now long for a vibrant cash market. Hog bankers are just now seeing the dawn of the concentration and market power problem in their note cases. Cattle bankers could learn by reading. But few do.

When the beef product reaches the consumer, the processor's "value added" steak, roast, or loin might cost nominally less than ten years ago, as a percentage of total living costs. But the margins it commands for the retailer and the processor are significantly enhanced. The farmer, rancher, and factory worker pay dearly for this enhancement. The U.S. Department of Justice recognizes suppliers and consumers are both losers in this process:[22]

> Consider first how a merger may lower the true economic cost of purchasing. An example might be where a merger enables the firm to commit to larger orders and thereby permits its supplier to save on its costs by scheduling longer and less costly production runs. These cost savings typically will benefit both the merged firm and its suppliers, and to the extent they lower the buyer's marginal cost of production, will tend to be passed along to some extent to final consumers. The case where a merger lowers input prices for no reason other than that the merged firm can now exercise monopsony power is entirely different. If a buyer obtains market power through merger, and thereby is able to depress prices for the inputs it purchases below competitive levels, then producers of those inputs will have depressed incentives to produce, which will result in too few resources utilized to produce the inputs compared to what would be available in a competitive market. This is likely to harm both suppliers and consumers.
>
> While we often speak of consumers as the targeted beneficiary of antitrust enforcement, suppliers also benefit, by having healthy incentives to provide the best products and services they can, with the expectation that they will be able to do so free from anticompetitive interference. And the overall U.S. economy benefits, as the products and services desired by consumers are produced more efficiently, in greater quantities, and at competitive market prices. A focus on promoting competition goes hand in hand with our taking enforcement action in a monopsony case when the facts warrant.

Disparate Access to Information

The problems do not end here. Monopsonists know what quantity of raw goods is needed for production during the next production cycle… a week, a month, etc. Producers might know only how many inputs, i.e., head of cattle, hogs, poultry, or pounds of milk are used in a year, and perhaps even what fraction is handled by each processor.

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[22] Speech by Douglas Ross, US DOJ Special Counsel for Agriculture, Antitrust Division, to R-Calf convention (January 19, 2007).

Packers are required to disclose cattle trades under certain circumstances. Their data is compiled and accumulated by the USDA, after the fact. But, the reported data does not include forward contracts, except where written. Arrangements whereby particular feedyards deliver all their production to a single packer, on a consistent and unerring basis, are not disclosed. This means producers have little or no true information about the economics of meat packing. The number of cattle needed is known only generally, but the number contracted, or arranged for, is not. Instead, producers simply know they may not get a bid if they do not forward contract. They cannot meet the packer on common ground to discuss, or deal, at a fair marketplace and exchange information.

As noted previously, bankers contribute to the problem and, while doing so, generate a yet-unrecognized problem of their own. The credit industry is concerned about "cash flow" which is not the same as generating a competitive or fair return for a producer's labor, management, risk, or equity. Feedyards are major investments and equity must be withdrawn from them over a 20-30-year life cycle. But, contracts for cattle are short term, and as history in poultry and swine proves, packers can be fickle. Forward contracts become financing tools like commercial leases. Feedyard loans are structured to individual groups of cattle for payment and may be relatively short term, but the producer has no way to pay off the loan by simply selling the cattle. Doing so leaves the producer with an unusable, single purpose facility, latent with long-term debt.

The bankers' approach makes good short-term credit viability, but produces dangerous credit arrangements for the intermediate and long-term period the producer is stuck with the packer, and both he and the banker are at risk as a result. Bankers, however, have not recognized this risk. They have favored the simplicity of contracting, despite their short-sightedness at recognizing it has destroyed market viability making the enterprises they are financing less than viable on a long-term basis. It is time for the bankers to awaken from their stupor and face the fact that material weaknesses in the economy and their loan cases are present when they insist on a single sales methodology that has dried up the cash market.

Marketing agreements account for 80% of captive supply. And captive supplies account for nearly 80% of cattle procurement by packers.[23] These marketing agreements do not have a specified base price, although they typically do set quality premiums and discounts. Agricultural bankers often will not make loans to cattle feeders unless they have an agreement with a packer. Such an arrangement assures the feeder and thus the banker of market access only. Price is not assured. Bankers must wake up to the fact that marketing agreements guarantee temporary market access while destroying market vibrancy and opportunities for transactions of mutual benefit to packers and producers and consumers, to occur.

In 2008, the PEW Commission report on industrialized farm animal production emphasized the limited choices producers have. "*Once the commitment is made to such a capital*

[23] See, e.g., dashboard.nass.usda.gov reports on cattle movement for any day during August 2010.

investment, many farmers have no choice but to continue to produce until the loan is paid off. Such contracts make access to open and competitive markets nearly impossible for most…."[24]

Livestock feeding for both beef and swine producers requires a significant initial capital contribution. The barrier to entry is great and can only be met with a dependable market for the product produced. Once, contracts with producers seemed dependable, but as packers have gained understanding of their market power, their ability to manipulate the feeder, and the price for the product, has made the barrier to entry even greater, though its elevation may not be thoroughly understood. Exiting the business is extremely difficult. Disastrous sales of cattle feedyards in recent years prove this fact. Inability to sell swine facilities, rusting aware in many locations in the central part of the United States, is also proof of this problem.

Producers are wed to their feedyards, buildings and mortgages. Once they commence with the hope for success in their entrepreneurship, they find themselves in the dogged trough of life without exit. Owner of swine barns without packer contracts have nothing. Those with contracts have mortgaged their buildings to the bank, and their lives to the packer who holds the contract.

Producers do not know how much of the processor's supply is committed with marketing agreements, forward contracts, or "captive supplies" reducing processor participation in the market for raw goods. And they do not know the processor's immediate need. This is a critical information imbalance since the producer must sell a perishable product. Processor arrangements for future delivery of raw goods are not reported as public market activity; these private contracts move animals or crops to market without any transparent price discovery.

So, in a given week, even longer, processors may be in the cash market for only a small fraction of their need. This allows them to control markets by creating uncertainty, actually withdrawing from purchasing, and wielding market power against sellers of perishable goods.[25]

Consumers Are Harmed Too

Consumers are also harmed. Harm befalls them in several ways. First, they pay more to get less. Second, what they buy has diminished quality. Third, they cannot purchase quality because the size and magnitude of processing facilities is so great recognition cannot be given to individual animal differences. No reward is available for the producer of high quality animals. And, fourth, food safety is compromised. No food safety lapses affects only a few people;

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24 *Putting Meat on the Table: Industrial Farm Animal Production in American*, a report of the PEW Commission on Industrial Farm Animal Production, The PEW Charitable Trusts and Johns Hopkins Bloomberg School of Public Health, April 29, 2008, p49.

25 Meat bearing animals are "perishable goods." They must be slaughtered within a short time period or their optimum weights and values are surpassed, and their maintenance costs eradicate all profits.

America's processing facilities for meat are so huge that each lapse affects millions of pounds of product spread quickly to the corners of the nation.[26]

The product furnished to the producer is not distinguishable in quality terms. "Prime," "premium," "choice," "select," and even "organic" are not specific terms. They are not known to producers. Unlike circumstances that may have existed 40 years ago, the words appear intermittently in a bewildering array of advertisements, none of which seem to have a relationship to quality, and all of which are simply terms of advertising hype. They do not denote quality or gradations and are not generally understood.

"USDA choice" and "USDA select," each appearing in an identical advertisement, about a week apart, or each colored identically and displayed identically in a grocery store do not connate a difference in product quality. They simply connate meat is for sale. Consumers do not, and they cannot, distinguish between, or among, the products offered through the use of these nondescript marketing terms.

Producers pay more, too. As the charts above indicate, the producer's share of the retail dollar has decreased dramatically, while the packer's has increased exponentially. The consumer pays more at the same time. So this is the paradigm. The consumer pays more for a product he or she cannot differentiate. The packer makes more. The producer cannot negotiate the price. Neither can the consumer. The packer wins two ways. What is more, production of a slaughter-weight beef animal is a two-year process. The packer's turn around time to make a larger per head profit than the producers of the animal is a couple of weeks or less. Individual animal profit is part of the problem. The timing of the turn on investment is where the real money is made.

Packers contend their contracting programs permit them to reward the production of quality animals. This is not true. Even a superficial examination of the industry discloses it cannot be true. The largest slaughter facilities in the United States kill as many as one million head of beef animals per year. This means individual animals are killed at 8 second intervals, while the plant operates. This speed requires the animals be undifferentiated and their meat not be segregated. Instead, cuts from a variety of animals, appearing to be a general type, can be boxed separately, sold to restaurants, and marketed as meat of a higher quality. This differentiation occurs as cuts from several animals pass on a conveyor belt for boxing. It does not result from differentiation among slaughter-weight animals themselves.

Packers claim they need captive supply arrangements to provide feeders quality incentives, to obtain quality cattle, and to have branded beef programs. These are not true. Packers already obtain cattle on the cash market with a quality "grid." In fact, their own records show that they have obtained about 2 million head annually for the past 6 years. Moreover, the

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[26] As this paper is finalized a massive recall of billions of eggs dominates national news and concern. The egg recall is perfectly characteristic of the problem in meat protein processing, too. Nearly a dozen significant meat recalls of huge dimensions can be identified in the past 30 months.

cattle they have obtained in the cash market are, on average, of ***higher*** quality than cattle they have obtained under formula arrangements.

The Table below summarizes mandatory price reporting (MPR) data for 6+ years. Columns are from categories in MPR, and show grade ranges. This table reveals that only 12.5% of formula cattle obtained by packers fell into the "over 80% Choice" category, while 27.8% of cattle obtained by packers in the cash market with a quality grid where in the Over 80% Choice category. The packers own data prove that they can obtain quality in the cash market if they so choose.

Grade Composition for Different Types of Purchase Arrangements, MPR Data, 4/12/2004 through 8/16/2010

Purchase Type	0 - 35% Choice	35 - 65% Choice	65 - 80% Choice	Over 80% Choice
Formula	14.7%	54.8%	18.0%	12.5%
Cash Grid	10.6%	36.5%	25.2%	27.8%

Source: MPR weekly report LM_CT151. Data totals include pens of steers, heifers, and mixed steers and heifers. Dairy breeds excluded.

Beef animals sold on the cash market without a grid graded somewhat lower than those under a grid, but there are not appreciable differences between average quality of all cattle obtained under captive arrangements and all cattle obtined on the cash market for the past 6+ years.

Cattle for marketing in various "branded" beef programs are obtained under both captive arrangements and in the cash market. Verification of cash cattle for branding programs require only a brief affidavit from the feeder, which is more substantive verification than available under some formla arrangements.

Consumer misinformation and over-pricing produce substantial and ongoing problems. Producers and consumers share concerns, even if those concerns are not well known by them.

There is Strong Evidence That Packers Pay Preferential Prices

The *Packers & Stockyards Act*[27] contains specific provisions prohibiting packers from giving preferential payments or treatment to certain producers. Preferences are one of the unfair practices defined by the Act.[28] Yet, cattle producers are highly skeptical and profess actual awareness preferences are given, though they are seldom able to articulate details with precision.

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[27] 7*USC* § 181

[28] 7 *USC* § 192

But, data generated by producers,[29] themselves, strongly suggested preferential treatment is practiced and preferential payments are paid to cattle producers who are favored by major packers.

For the period from April 12, 2004, through August 16, 2010, all steers and hefiters sold on a dressed-weight basis and a grade basis, were studied. The average prices reported by packers under MPR were:

Average Prices by Type of Purchase Arrangement and Grade, MPR Data, Cattle Marketed on a Dressed Weight Basis Only, Averaged over 4/12/2004 through 8/16/2010.

Purchase Type	0 - 35% Choice	35 - 65% Choice	65 - 80% Choice	Over 80% Choice
Formula Net	$139.12	$140.77	$142.01	$144.31
Cash Grid Net	$136.72	$138.58	$139.98	$141.44
Difference ($/cwt)	$2.39	$2.19	$2.03	$2.86
Difference ($ per Head)	**$19.16**	**$17.53**	**$16.23**	**$22.92**

Source: MPR weekly report LM_CT151. Data totals include pens of steers, heifers, and mixed steers and heifers. Dairy breeds excluded. Cattle sold on a dressed weight basis only.

Similar price differences generally hold for subclasses, such as pens of steers only with 35-65% grading choice.

Weekly price differences are statistically significant at a confidence level of 99.99%. This confidence level is determined by the most basic economic test, i.e., using two means with paired data.

Furthermore, the packer reported data discloses that cash grid cattle were sold 20 lbs. lighter than cattle sold under formula contracts made far in advance of slaughter. This difference suggests independent cattle sellers, with cash grid sales marketing techniques, sold their cattle early because they were concerned that if they did not sell them a week before their slaughter was ideal they would get no bid the next week. Producers were too anxious buyers might not take their cattle the following week and they could become too heavy. This data suggests independent cattle producers lack confidence in the market or their access to it.

The packer data also discloses that producers selling on the grid got less money for their livestock than those without a grid. This fact suggests independents are encouraged to sell on a grid to be rewarded for "quality," but the packers have distorted the grid to their advantage. Of course, packers are highly incented to do so on two levels: (1) packer costs of goods go down as the price paid for live cattle declines, (2) the packer would be required to alter plant operations to account for individual groups of cattle and their carcasses through much of the slaughter and cut

[29] United States Department of Agricultural Marketing Service, Mandatory Price Reporting "MPR" Data. See mpr.datamart.ams.usda.gov/amsdashboard/.

up processes in order to make forthright payments under a quality-rewarding compensation arrangement.

The reader is urged to understand that *these paragraphs are based on data supplied by packers*. This data does not represent an outsider's attempt to extrapolate or manufacture facts.

Producers who sell on grid bases cannot verify their payments were calculated based on facts. Grade and yield premiums and discounts are generally based on post slaughter assessments recorded by the packer. Feeders typically have no way to verify the actual yield and grade of the cattle sold and have no option but to accept whatever the packer's slaughter house worker records. This breeds distrust. The solution is not abandonment of premiums and discounts for quality, but implementation of a system that sellers can observe and verify.

Many in the cattle business doubt the fidelity of the data packers disclose voluntarily. Nonetheless, the voluntarily-disclosed data is used in this section of this analysis. What goes on behind the packers' closed doors, where the producer cannot follow his animals through slaughter, the cooler, and the boning and boxing process, inevitably produces some skepticism. These circumstances also confuse the pricing of cattle—the producer's product, with meat—the packer's product. This distortion of price, due to pricing methods that confuse the packer's product with the producer's product, further debilitates cattlemen's ability to obtain and understand basic supply data and demand data on a basis free of distortion.

The packer's MPR data discloses approximately 31,286 head of cattle, out of the total, are obtained weekly under the cash grid. This represents approximately 8% of the total cattle purchased as disclosed by the MPR data.[30] .

Market Power is Abused by Packers

The facts described above are not *absolute proof* that abusive market power is being exerted, particularly in all individual food product markets. There are no *absolute proofs* in matters of economic behavior or policy; there is only good and bad evidence. What appears above is very good evidence. More appears below. There is no good evidence to suppport the packers. Instead, they use fear, and purchased influence to get their way.

Partial vertical integration through marketing agreements—the dominant captive supply arrangement in the beef industry—raises issues of market access. Marketing agreements generally insure the feeder a market, an assurance not given to feeders selling on the cash market. Marketing agreements raise fairness issues over both market access and competition issues about how they distort buyer incentives and are used to manipulate the cash market.

Long-term fixed-price contracts between food processors and retailers also raise competition concerns. The problem is that when demand shifts in the short term, as it often does, these contracts will limit market adjustments. In a truly competitive market, a shift in demand

[30] This data borrows from figures for average weekly slaughter, year-ending 7/19/2010, MPR data files ct_153-B

will result in both price and quantity adjustments at all market levels, i.e., retail, wholesale and farm. But with a fixed price contract, retail purchasers adjust the quantity bought, but not the price paid. This transfers the entire downward adjustment back to the farm level, leading to price and quantity variations larger than experienced in a competitive market.

Ultimately, concern must focus on the basic theory and purposes of antitrust laws. The GAO Report does not reach this issue, either. Reference to *The Antitrust Legacy of Thurman Arnold*, by Spencer Weber Waller, is enlightening. Arnold was a highly regarded Columbia University economist and author of the celebrated work, *The Folklore of Capitalism.*[31] Arnold believed in a number of non-economic justifications for antitrust as part of the attack on concentrated economic power in an inefficient democracy that both destroyed local business and drained away local capital. In 1955, Arnold wrote:

> The most significant evil at which the antitrust laws are aimed is the evil of absentee ownership and industrial concentration that makes for such depressions. We were slow to learn after 1929 that great corporate organizations cannot continue to take money out of local communities without somebody putting it back.
>
> The purpose of the antitrust laws is to ensure freedom of business opportunity. They are not designed to protect small business from larger and efficient competitors. They are not designed to prevent the growth of nationwide business enterprises so long as that growth is a product of industrial efficiency. Even if, through greater efficiency in operation and distribution, a corporation achieved a monopoly, that in itself would not violate the Sherman Act. But this has never yet happened. Monopolies have been built up by using financial strength to buy out competitors or force them out of business. It is this sort of growth and only this sort that the antitrust laws are designed to penalize … This process repeated in industry after industry during the period between the first World War and the depression created a system of absentee ownership of local industries which made industrial colonies out of the West and South, prevented the accumulation of local capital and siphoned the consumers' dollars to a few industrial centers like New York and Chicago." [32]

The need to rediscover the purposes for antitrust laws and their enforcement has never been more acute than now.[33] Agriculture's markets are besieged by lack of competition and

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31 Arnold, Thurmon, *The Folklore of Capitalism* (2000).

32 Letter from Thurman W. Arnold to Alfred Friendly, August 9, 1961, in Voltaire and the Cowboy: The Correspondence of Thurman Arnold, E. Gressley (1977).

33 The authors are well aware of, and are vocal supporters of, proposed Regulations of The Grain Inspection Packers & Stockyards Administration. These Rules will restore some of the P&S Act's vibrancy. But this paper's purpose is not to advocate for the proposed Rules so no more than this acknowledgement about them is made here.

monopsony power. Transparent, vibrant markets with no dominant buyer or seller wielding inappropriate, manipulative power are essential. Without balance being restored, market gyrations will continue, concentration will end with an unacceptable accumulation of more and more wealth in fewer and fewer hands, and both producers and consumers will continue to suffer.

Thurman Arnold, also said, *"The competitive struggle without effective antitrust enforcement is like a fight without a referee."* For decades, livestock producers have not had a referee for their competitive struggle. USDA has been absent from its post as the market's policeman. So have the US Department of Justice, and the Commodities Futures Trading Commission. Antitrust enforcement has bypassed the Nation's basic industry—production of its food supply. The food production and processing system has been weakened, the food supply suffers safety risks, and the Nation's citizens have not been well served. Now, they want the problem fixed.

Solutions: Restoring Economic Fairness to Markets

Cattle feeding is a proud, independent business. It requires large capital resources. Entry into to the business is possible by starting small and growing, in essence pursuing the American Dream. But the cattle produced must have a market. More and more, packers must allow new feeders into the business "by invitation." One who wants to produce cattle for slaughter must have a relationship to a packer to get the cattle sold, and must often be able to command millions in capital

Invitation (or rejection) can occur quickly. It is well known in the beef industry that producers dare not speak out against packers.[34] Fear among cattlemen is building to levels contract poultry growers have faced for two decades. This type of fear is not conducive to proper functioning of markets. A system that creates such fear is inimical to principles of the Founding Fathers of America.

Once a person becomes a feeder or hog producer, the packer has almost total economic control and determines profitability or lack thereof of the average operation. The producer's capital, labor, management and risk bearing are all captive to the processor. In economics the relationship between the cattleman and packer is an extreme power imbalance; in law this is a contract of adhesion; in colloquial terms this is serfdom—with a mortgage.

Supreme Court Justice Peckham, in one of the first substantive decisions interpreting the Sherman Antitrust Act, wrote

> *"[I]t is not for the real prosperity of any country that such changes should occur which result in transferring an independent business man . . . into a mere servant or agent of a*

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[34] Domina, Proving Unfair Competition in a U S Courtroom, 6 Journal of Agriculture Food & Industrial Organization Art 8 (2004).

corporation . . . having no voice in shaping the business policy . . . and bound to obey orders issued by others." [35]

The key to restoring economic fairness[36] is establishing a balance of power in economic relationships. At this time in mid-2010, the packer has almost complete economic power over cattle producers.

The PSA and antitrust challenge is to design a policy that will maintain efficiencies, but restore fairness. We believe that the following changes would go far too restoring competition and fairness in the beef industry.

Packer firm size must be controlled. No single packer should have control over more than 20% of the total national beef slaughter. Antitrust laws must be enforced vigorously, and regularly. This includes the *P & S Act*. The judicially imposed "harm to competition" element of a case against meatpackers must be debunked and eliminated; it is historically wrong and represents the toxic consequence of antitrust and historical misunderstanding and misinformation about the structure of the meat markets.

Obviously, information is power. Information asymmetry is power imbalance. This imbalance must be corrected. All contract arrangements, including implied contracts, carefully defined, must be publicly reported at the time they are made and again when cattle or swine are placed with a feeder. Finally, contracting arrangements with packers must be improved. Eliminating the huge power imbalance in the beef industry is imperative. Steps that need to be taken are, the authors think, defined in two distinct parts: Pricing Reform, and Contracting Reform. They are outlined, for introductory purposes, here.

Pricing Reform:

a. Pricing must be based on the live weight of the delivered animal and not what happens to it out of the producer's presence, inside the packing plant, or be based on quality assessments the seller can verify.

b. All packer-to-packer communications and transactions must be monitored and publicly reported.

c. Packers should be required to report their trades on the Chicago Mercantile Exchange, just as insider trading in corporate stock is reported.

d. Pricing must be based only off the cash market, and not the futures market.

[35] *U. S. v. Trans-Missouri Freight Ass'n*., 166 U.S. 290, 323-324 (1897).

[36] In the context of this article, fairness for contract poultry growers would be achieved if they earned a "competitive" return on labor, management, risk and equity over a long time period.

e. Agreements with a base price tied to the cash market must be prohibited because they distort buyer incentives, exacerbating the problem of buyer market power.

f. All price data collected by packers during the week must be reported twice daily on the day it is acquired.

i. Regulatory agencies should have this detailed information as it would allow them to perform confidential examinations of whether packers collude, practice conscious parallelism, or behave independently.

ii. Prompt public availability of this information would allow academics to analyze economic behavior, with peer review, and thereby provide public information on behavior and some semblance of public pressure for market participants to behave competitively.

Contracting Reform:

g. A balance of power in contracting is needed. This is a delicate problem, likely requiring some oversight to avoid an imbalance. Bankers should not be permitted to require forward contracting or commodities exchange sales to "hedge" cattle as a condition of lending, and should not be permitted to turn down producers as loan applicants or customers due to absence of historical or ongoing plans to hedge cattle or inputs.

h. Only firms or person who actually own cattle should be able to sell cattle, and only firms or persons who actually need to purchase cattle for slaughter, should be permitted to buy or sell fed cattle contracts on public exchanges. through commodities exchange transactions,

i. Contracts should be publicly available. Legislation similar to the swine contract library is needed. Transactions must be transparent. They must be reported to the Grain Inspection Packers & Stockyards administration within 24 hours after contracting occurs. Contracting should be deemed to occur when the cattle feeder seller and packer buyer agree that the contractor's cattle are sold to the packer.

j. No single packer should be permitted to buy more than 60% of a single feedyard's production based on its one time yard capacity as stated in its State operating permit. This rule should apply to feedyards with marketing more than 10,000 head of cattle during a any calendar quarter.

k. Beef processors should not own cattle or feedyards, just as they cannot not own market news reporting firms, trains or railroad cars to transport cattle, trucking lines to transport cattle, or brokerage commission firms that sell cattle for producers.[37] These prohibitions must be expanded to electronic information sources.

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[37] These prohibition are part of the *Packers & Stockyards Act of 1921*, 7 USC § 181 *et seq*.

Conclusion

Abuse of market power against beef producers threatens our family farms and ranches, and forces concentration of lands, cattle, and beef production in fewer hands. Major firms in each of our top food sectors are so large that a failure by any one of them would have major ripple effect across the entire sector, and all of agriculture. These risks make agricultural market structure, in concentrated hands, a risk to everyone.

In the long run, the concentration and integration risk will continue to drive food prices up, bring an end to the nation's affordable food policy and contribute to a rapidly deteriorating agricultural and rural economy. Market concentration in too few corporate hands poses price, biosecurity, and lack of redundancy risks to all American consumers. Corrective action is an urgent national need.

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