

**R-CALF USA 2006 Position Paper:**  
**Competition in the Cattle and Beef Market**

**The Problem: Packer Concentration and Contracting Practices**

- Consolidation in the meatpacking industry has grown rapidly over the past few decades, as have contracting practices which reduce the functioning of market forces on live cattle prices. Market concentration and packer-dominated contracting practices have systematically undercut cattle producers and denied them an honest price in a competitive market.
- Concentration among meatpackers has more than tripled since the late 1970s, and today just four beef packing companies control more than 83 percent of the industry. This level of concentration far exceeds other industries, and the rate of growth in concentration in recent decades is unmatched among other industries for which the Census Bureau collects such data. Such a high level of concentration is indicative of a severe lack of competitiveness in the industry, given that many economists believe competitive conditions begin to deteriorate once the four-firm concentration level exceeds 40 percent.
- At the same time that the meatpacking industry has been consolidating dramatically, packers have increasingly used non-traditional contracting and marketing methods that further erode the ability of cattle producers to obtain an honest price for their animals. Packers use their enormous leverage as the few concentrated buyers of product from hundreds of thousands of disaggregated cattle producers to obtain advantages which distort the price of live cattle.
- Such methods include purchasing cattle more than 14 days before slaughter (packer-fed cattle), forward contracts, and exclusive marketing and purchasing agreements. All these “contracts” have one thing in common – they take live cattle out of the cash market, reducing the volume of cattle that “establish” the market price and permitting manipulation of prices through the ability of packers to stay out of the cash market for extended periods of time.
- Together, the four largest packing companies employed such forms of “captive supply” contracting methods for a full 44 percent of all cattle they slaughtered in 2002. It is believed that the percent of cattle caught up in captive supply was even higher in 2005. In the most recent period studied, 1999 – 2002, use of these captive supply methods rose 37 percent.
- Captive supply practices, by reducing the size of the cash market for cattle, increase the risks of price instability borne by cattle producers and hold down prices for cattle sold on the open cash market by limiting the need to make purchases in that market. As prices for cattle are artificially depressed and become more volatile, it is cattle producers who pay the price, even when broader demand and supply trends should be increasing returns to producers.
- Other meatpacker contracting practices of concern to cattle producers include onerous confidentiality, termination, and arbitration clauses. In addition, cattle producers are concerned that packers retaliate against producers who speak out for producer interests.
- The impact of packer concentration and new contracting practices is evident in the declining share of each beef retail dollar that reaches cattle ranchers. The rancher’s share of each retail dollar earned on beef was 45 cents in 2004, down from 56 cents in 1993.

### **Existing Remedies Inadequate**

- Numerous studies have criticized the failure of the USDA's Grain Inspection, Packers, and Stockyards Administration (GIPSA), the Department of Justice, and Fair Trade Commission to work together more aggressively to scrutinize mergers and acquisitions in the industry and to pursue a proactive strategy for preempting and remedying anticompetitive practices.
- A recent investigation by the USDA's own Inspector General found widespread enforcement problems within GIPSA. Employees were directed to artificially inflate reported "investigations" by logging routine activities such as monitoring and phone calls as "investigations." Of the 1,842 investigations reported, only one was referred to the Office of General Counsel for formal action in 2005. The General Counsel has filed no formal complaints against meatpackers since 1999 due to the lack of referrals. Furthermore, requests from staff for policy guidance were often ignored. The Inspector General found 64 separate policy issues, regarding all types of investigations, awaiting decisions in the agency. The vast majority of these issues had been awaiting action for a year or more.
- In addition to agency enforcement problems, some recent court decisions are also limiting the enforceability of the Packers and Stockyards Act of 1921 (P & S Act). For example, a recent Eleventh Circuit decision in a price-manipulation case against the nation's largest meatpacker (*Pickett v. Tyson Fresh Meats*) requires that a business practice have an absolute anti-competitive impact and no legitimate business justification in order to violate the Act.

### **The Solution: Strengthen Regulation and Enforcement**

- Given the serious problems identified within GIPSA, Congress and the Administration should urgently reconsider how best to allocate enforcement responsibility and shield it from undue political influence. In addition to such restructuring, policymakers should consider:
  - Providing additional funding to enforce the P&S Act in the meatpacking industry;
  - Requiring regular reporting to Congress on cases referred, pursued and prosecuted; and
  - Establishing market consolidation thresholds that trigger enforcement action.
- On market coordination and distortive contracting practices, the law should be strengthened in order to prohibit packer ownership, end captive supply, and guarantee a minimum open market volume. In addition, the P & S Act should be clarified to ensure that there are no undue burdens on enforcement such as required demonstrations of competitive injury.
- The law should also require processors to bargain in good faith and end unfair practices by:
  - Requiring a fixed base price in formula contracts and banning "tournament" or "ranking system" payments;
  - Ensuring cattle purchase contracts include a clear disclosure of producer risks and duration, termination, renewal, and payment factors;
  - Requiring contracts be traded in open markets and prohibiting confidentiality clauses;
  - Improving termination and arbitration provisions to ensure cattle producers can retain and enforce their rights; and
  - Prohibiting discriminatory, retaliatory and other intimidating tactics against producers based on their membership in producer associations or public policy positions.
- Finally, Congress and the Administration should help promote transparency in the market by extending and strengthening Livestock Mandatory Price Reporting.