

Fighting for the U.S. Cattle Producer!



R-CALF United Stockgrowers of America
P.O. Box 30715
Billings, MT 59107
Fax: 406-252-3176
Phone: 406-252-2516
Website: www.r-calfusa.com
E-mail: r-calfusa@r-calfusa.com

March 9, 2016

The Honorable Charles E. Grassley
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Lee
Chairman
Senate Judiciary Committee Subcommittee on
Antitrust, Competition Policy, and Consumer
Rights
330 Hart Senate Office Building
Washington, DC 20510

The Honorable Amy Klobuchar
Ranking Member
Senate Judiciary Committee Subcommittee on
Antitrust, Competition Policy, and Consumer
Rights
825 Hart Senate Office Building
Washington, DC 20510

**Re: Third Follow-up Letter to the Senate Judiciary Committee Regarding
Request for an Investigation Into the 2015 Cattle Price Collapse**

Dear Committee Chairman Grassley, Subcommittee Chairman Lee, Committee Ranking Member Leahy, and Subcommittee Ranking Member Klobuchar:

In 2010 the U.S. Department of Justice (Justice Department) and the U.S. Department of Agriculture (USDA) embarked on a 10-month investigation into possible antitrust practices in agricultural markets. The two agencies jointly sought public input at five public workshops held across the United States. In lieu of initiating any antitrust enforcement action in response to the public's input, the Justice Department issued a report that identified hypothetical circumstances that would purportedly trigger antitrust scrutiny.¹

For example, the Justice Department stated that the sharing of competitively sensitive price information can facilitate collusion and "agreements to limit bidding competition or divide territories would trigger antitrust scrutiny."² Although R-CALF USA provided information to both the USDA and the Justice Department indicating that such practices were not hypotheticals, but rather, were pervasive in the U.S. fed cattle market, no meaningful investigation or examination was ever conducted. As discussed below, R-CALF USA believes these antitrust

¹ See Competition and Agriculture: Voices from the Workshops on Agriculture and Antitrust Enforcement in our 21st Century Economy and Thoughts on the Way Forward, U.S. Department of Justice, Antitrust Division, May 2012, available at <https://www.justice.gov/sites/default/files/atr/legacy/2012/05/16/283291.pdf>.

² *Id.*, at 24.

practices either contributed to or directly caused the unprecedented price collapse that occurred in the U.S. cattle market in 2015.

R-CALF USA previously provided anecdotal evidence to the two agencies that was proffered by a cattle feeder who revealed that packers made daily or even more frequent calls to feedlots not for the purpose of offering to buy cattle, but rather, for the exclusive purpose of learning from the feedlot operators what prices other packers were bidding for cattle. This practice of extracting competitively sensitive price information from feedlot operators, who could be subject to retaliation should they ever refuse to divulge such competitively sensitive price information, should be scrutinized to determine if it is facilitating collusion in the U.S. fed cattle market and if it either contributed to or caused the price collapse in 2015.

An article published yesterday in *Drovers* adds to the body of evidence R-CALF USA has previously provided the two agencies in an attempt to show that the concentrated packers were engaged in practices to limit bidding competition and divide territories.

The *Drovers* article states:

The company [Cargill, Inc.] on Feb. 26 started eliminating 20 percent of antibiotics deemed important for human medicine and farm animals from its four feed yards in Texas, Kansas and Colorado, according to the company. **It is making the same reductions at four feed yards operated by Friona Industries, which supplies Cargill with cattle.** (Emphasis added.)³

With a one-time capacity of 300,000 head, Friona Industries, LP, is ranked by *Cattle Buyers Weekly* as being tied with Cargill Cattle Feeders, LLC, as the third-largest cattle feeding company in the United States.⁴ The foregoing excerpt from the *Drovers* article suggests that Cargill, Inc., not only “controls” the feeding practices of what appears to be one of the nation’s largest “independent” cattle feeding companies, but also, Cargill, Inc., appears to be the exclusive recipient of that company’s cattle.

However, in testimony before the joint Department of Justice and USDA livestock industry workshop held August 27, 2010 in Fort Collins, Colorado, the president of Friona Industries, LP (Friona), Mr. James Herring, appeared to suggest that Friona is immersed in a highly competitive marketplace where four packers are competing for Friona’s cattle on a daily basis. Mr. Herring stated, “[W]e have an active participating marketplace out there with four

³ Cargill says to cut antibiotic use in cattle by 20 percent, Reuters, *Drovers*, March 9, 2016, available at <http://www.cattlenetwork.com/news/industry/cargill-says-cut-antibiotic-use-cattle-20-percent>.

⁴ Top 30 Cattle Feeders 2015, *Cattle Buyers Weekly*, available at <http://r-calfusa.com/wp-content/uploads/2013/04/160125-Top-30-Cattle-Feeders.pdf>.

interested parties [packers] that are trying desperately to fill up their capacity every single day and every single week. And that creates a pretty stimulative marketplace.”⁵

The veracity of Mr. Herring’s claim was soon challenged by another workshop witness, Mr. David Domina, who stated it was his belief that Cargill, Inc., purchases 100 percent of Friona’s cattle and, “if that’s so, there’s no bidding for those cattle by those other three packers.”⁶

R-CALF USA believes that if it is true that 100 percent of Friona’s cattle are obligated to Cargill, Inc., and that other packers continually refrain from bidding for Friona’s cattle pursuant to either a stated or unstated agreement among the packers, then this is at least prima facie evidence of an antitrust practices that would likely have contributed significantly to the 2015 cattle price collapse.

In 2010 R-CALF USA submitted a complaint to the Department of Justice and the USDA alleging that a Reuters article provided evidence of an earlier agreement involving National Beef Packing Co., LLC, that likewise limited bidding competition and resulted in a division of the marketplace. The cattle feeding company involved in this earlier arrangement was Hitch Enterprises, which is ranked as the 22nd largest cattle feeding company in the United States.⁷ Below is a copy of the entire Reuters article.

09:47 12Jan10 -INTERVIEW-Hitch in cattle deal with National Beef
Hitch Enterprises to sell cattle to National Beef
Fewer beef plants made deal necessary
Cash cattle market shrinking

By Bob Burgdorfer

CHICAGO, Jan 12 (Reuters) - Hitch Enterprises, a privately held livestock operation, has reached a deal whereby it will sell cattle from its three feedyards solely to National Beef Packing Co. LLC, an agreement that Hitch leaders believe will produce better prices for its customers. The “hand-shake” agreement started in January and will continue indefinitely, Hitch Chairman Jason Hitch told Reuters in an interview.

The marketing agreement is similar to those used at other large cattle feeding operations. Hitch operates three feedyards, two in Oklahoma and one in Kansas, for a total one-time capacity of about 160,000 head. “We agreed, for a nonspecified period of time, to sell 100 percent of our cattle to National,” said Hitch.

⁵ Transcript of the Colorado Workshop, August 27, 2010, at 209 (14-18), available at <https://www.justice.gov/sites/default/files/atr/legacy/2012/08/20/colorado-agworkshop-transcript.pdf>.

⁶ *Id.*, at 215 (13-17).

⁷ Top 30 Cattle Feeders 2015, Cattle Buyers Weekly, available at <http://r-calfusa.com/wp-content/uploads/2013/04/160125-Top-30-Cattle-Feeders.pdf>.

March 9, 2016

Page 4

Such agreements can provide feedlots premium prices for higher-grading cattle and can assure beef plants of a ready supply of quality cattle. Hitch ranks among the top 15 largest U.S. cattle feeding operations, according to the Livestock Marketing Information Center. Five Rivers Cattle Feeding, a unit of Brazilian meat company JBS SA, is the largest with a one-time capacity of more than 800,000 cattle, said LMIC.

National Beef is the fourth largest U.S. beef company and operates beef plants in Liberal and Dodge City, Kansas, and in Brawley, California. Cattle marketing arrangements with beef companies have drawn criticism because they reduce the number of cattle traded in the open market, thereby lessening the bargaining power of feedlots to negotiate prices.

Hitch is aware of the criticisms, but he said the loss of two beef plants in Kansas had already hurt competition for his cattle to the extent that he was missing top market prices. "I am just trying to keep my business alive," he said. "I would love to see things more competitive, but I don't think that is going to happen."

In 2000, a beef plant in Garden City, Kansas, burned down, and more recently Tyson Foods Inc. suspended cattle slaughter at its Emporia, Kansas, plant.⁸

Also in 2010, The Associated Press published an article describing how several fed cattle sellers "reported having no choice but to sell the vast majority of their cattle to one buyer."⁹ R-CALF USA strongly believes that the circumstances described in the AP article, along with those described in the *Drovers* and Reuters articles, demonstrate that the U.S. fed cattle market has already been territorially divided by the largest packers and, consequently, those packers had both the means and the motive to cause the collapse of the U.S. cattle market in 2015.

R-CALF USA appreciates your ongoing consideration of our request for an investigation into the 2015 cattle price collapse. Please let me know if there is any additional information we can provide.

Sincerely,



Bill Bullard, CEO

⁸ The Reuters article is also available at <http://www.agcanada.com/manitobacooperator/2010/01/21/hitch-in-cattle-deal-with-national-beef>. For additional examples of how R-CALF USA believes competition is being reduced by antitrust practices by packers, see Under Siege: The U.S. Live Cattle Industry, Bill Bullard, South Dakota Law Review, Vol. 58, Issue 3, 2013, at 604-606, available at <http://r-calfusa.com/wp-content/uploads/2013/04/130101UnderSiegeSDIAWrEVIEWBillBullard.pdf>.

⁹ Beef industry woes may mean poorer meat, Christopher Leonard, AP Agribusiness Writer, Oct. 19, 2010, available at <http://www.mprnews.org/story/2010/10/19/beef-decline>.

Committee Chairman Grassley, Subcommittee Chairman Lee, Committee Ranking Member
Leahy and Subcommittee Ranking Member Klobuchar
March 9, 2016
Page 5