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Currently, a handful of corporations dominate the American food system. The concentration of market control in the top four firms in U.S. food retailing, grain processing, red meat processing, poultry processing, milk processing and nearly every category of food processing has reached unprecedented levels.

Moreover, the rapid trend toward vertical integration, especially in hog production, further exacerbates the horizontal concentration in packing, processing and production. As the livestock sector has become increasingly concentrated and integrated, packers and processors increasingly control production at all stages.

In many rural places where livestock are raised there are only a few, or even just one, packer or processor for a given livestock species. This is especially true in the livestock and poultry sectors. At the same time there has been a dramatic increase in the use of production and marketing contracts that further diminish the bargaining power of farmers and ranchers. Currently, fully 89% of hogs are either owned outright by packers or tightly controlled through various contracting devices. Many farmers and ranchers face price discrimination and severely limited market access as a result.

USDA has demonstrated a nearly complete inability to enforce the Packers and Stockyards Act and other livestock market competition laws. The audit of the Packers and Stockyards Administration performed by USDA's Office of Inspector General that was released in February 2006 revealed that the Packers and Stockyards Administration has utterly failed to enforce the very law that gives the agency a reason to exist.

The Packers and Stockyards Administration has become anything but an enforcer of competition in livestock markets – robbing farmers and ranchers of the best assurance they have that livestock markets will be fair, open and competitive.

Senior officials in the Packers and Stockyards Administration blocked investigations from being referred to USDA lawyers or the Justice Department. Agency employees were instructed to create the appearance of enforcement activity by recording everything from routine correspondence and review of public data as “investigations.”

Over 1,800 so-called investigations were documented between 1999 and 2005. According to the Inspector General’s audit, 1,739 of those so-called investigations could not be traced to a specific complaint, producer, packer, or to other details that a true

investigation would contain.

The Packers and Stockyards Administration perpetrated a lie and disillusioned farmers and ranchers in the process. It is wrong for government to turn a blind eye to citizens' concerns. It is worse when government tells citizens that their concerns are valid and, through pretense and deception, leads them to believe that their concerns are being addressed when they are not.

USDA has proven, again, that they lack the wherewithal, courage and political will to effectively enforce the Packers and Stockyards Act. And they certainly cannot be trusted to use the considerable authority vested in the Packers and Stockyards Act more expansively and, thereby, breathe life back into American livestock markets.

Repeated calls for competition reforms from farmers and ranchers as well as the National Commission on Small Farms, General Accounting Office, and Inspector General have fallen on deaf ears at USDA.

That is why Congress must act to define the rules of livestock market competition and provide clear direction for USDA's enforcement. Congress should not let another farm bill go by without making changes in the Packers and Stockyards Act and Agricultural Fair Practices Act that are necessary to breathe some life and competition back into livestock markets.

The Packers and Stockyards Act should be amended to:

- prohibit packer ownership of livestock more than seven days prior to slaughter;
- prohibit use of production contracts that do not fix base prices, with adjustments for quality, grade or other factors outside of packer control, at the point of sale;
- require the Secretary to write regulations defining the statutory term "unreasonable preference or advantage" to ensure that small and mid-sized farmers and ranchers are not forced to accept volume based price discrimination;
- establish that producers need not prove anti-competitive injury to an entire market in cases involving unfair or deceptive trade practices which have harmed them individually;
- provide USDA administrative authority to investigate and file complaints against violations of the Act regarding all types of poultry transactions.

The Agricultural Fair Practices Act should be amended to:

- make it unlawful for any firm to refuse to deal with a producer for belonging to or attempting to organize an association of producers or a cooperative;
- prohibit the use of binding mandatory arbitration clauses and restrictions on other legal rights available to farmers and ranchers involved in production and marketing contract disputes;
- expand the prohibition on confidentiality clauses to cover all agricultural marketing and production contracts, not just those for livestock and poultry, and to ensure that farmers and ranchers can share information about the details and terms of contracts with other farmers and producer associations;

- require that contracts include clear disclosure of producer risks. In addition, prohibit premature cancellation of contracts without a showing of good cause and providing for the recapture of producer capital investment, and ban unfair trade practices including “tournament” or “ranking” system payments that are calculated by the packer or processor and result in unpredictable and arbitrary payments.

Limiting Packer Control and Manipulation of Livestock Markets

1. *Captive Supply Reform Act*: This legislation would bring secret, long-term contracts between packers and producers into the open and create a market for these contracts. The Captive Supply Reform Act would restore competition by making packers (and livestock producers) bid against each other to win contracts. Currently, formula contracts and marketing agreements are negotiated in secret, where packers have all the information and power. These formula contracts and agreements depress prices and shut small and independent producers out of markets. The Captive Supply Reform Act would require such contracts to be traded in open, public markets to which all buyers and sellers have access. And it would require that forward contracts establish a fixed base price at the time the contract is executed.
2. *Prohibition on Packer-Owned Livestock*: Meat packers such as Smithfield, Cargill and Tyson use packer-owned livestock as a major tool for exerting unfair market power over farmers and ranchers. This practice fosters concentrated industrial livestock production, and the environmental nightmares that goes along with it. Packer-owned livestock artificially lowers farm gate prices to farmers and ranchers while consumer food prices continue to rise – as demonstrated repeatedly by USDA, land grant and non-profit research and analysis, most recently the GIPSA Livestock and Meat Marketing (RTI) Study released in January 2007. Despite a clear vertical integration and packer bias among the researchers that conducted that report, the conclusion that, “...the use of [captive supplies] is associated with lower cash market prices...”

Packers and processors claim that vertical integration increases efficiency. That is a lie. Small and mid-sized farms and ranches have demonstrated, time and again, that they can match or beat the cost of production in the packers’ industrial facilities.

Packers use vertical integration and captive supplies to manipulate livestock markets, depressing cattle and hog prices across the board by killing their own when prices are high and turning to independent producers as residual suppliers when prices are low – to the detriment of farmers, ranchers and rural communities.

Prohibiting packer ownership of livestock dramatically reduces the ability of packers to manipulate livestock markets and helps secure increased market access for small and mid-sized family farms and ranches – access that is often severely limited today by the levels of vertical integration, particularly in hog production.

3. *Clarification of "Undue Preferences" in the Packers & Stockyards Act:*

Packers commonly make unjustified, preferential deals that provide unfair economic advantages to large volume livestock production over small and mid-sized family farms and ranches. Courts have been unwilling to enforce current undue preference standards. Additional legislative language is needed in the Packers and Stockyards to strengthen the law and clarify that preferential pricing structures (those that provide different prices to different producers) are justified only for real differences in product value or actual and quantifiable differences in acquisition and transaction costs. Specifically, we are asking to:

(a) Make clear that farmers damaged by packers unfair and deceptive practices need not prove "harm to competition" throughout an entire economic sector to receive a remedy for harm done to them individually.

(b) Make clear that "pro-competitive effects" or "legitimate business justifications" are not recognized packer defendant defenses, and not necessary for farmer-plaintiffs to prove the absence of, in a court case under the Act.

In the end, it comes down to this. In a nation where packers and processors own and control all of the livestock, what need is there of farmers and ranchers? And what hope have we for revitalizing family farming, ranching and rural communities, if we have no hope of revitalizing family farm and ranch livestock production? What hope, if we cannot breath life and competition back into our livestock markets?

My father always told me, "Say what you mean, and mean what you say." If we hope to create a farm bill that can be held up as a solution to some of the challenges that family farmers, ranchers and rural communities face, then we should all support a federal ban on packer ownership of livestock and a comprehensive competition title in the farm bill... in other words, we should mean what we say.