

Enforcement: Best Bet for Fixing the Current Market Competition Problems

BY FRED STOKES, EXECUTIVE DIRECTOR

OCM is a staunch advocate for competition and fairness in all markets that affect the prices farmers and ranchers receive for the livestock, grain and fiber they produce and the prices they pay for their production inputs.

The marketplace has become increasingly biased against the farmers and rancher and their plight has steadily worsened.

In pursuit of this mission we have opposed mergers, supported class action suites, worked for remedial legislation and urged enforcement of antitrust laws. This notwithstanding, farmers and ranchers have continued to be gouged and short-changed by an anticompetitive and unjust marketplace.

The profusion of agribusiness mergers have all been rubberstamped, the favorable jury decisions in court were reversed

(either by the presiding judge or upon appeal), implementation of the few legislative successes were nullified or delayed by congressional or regulatory skullduggery and enforcement of our antitrust laws has been nonexistent. The marketplace has become increasingly biased against the farmers and rancher and their plight has steadily worsened.

These are desperate times for those who tend the herds and till the fields! Back in the mid-1980s, there was a bloody purge in production agriculture. But even the hearty souls who survived those dark days are now in trouble. The dairy and independent pork industry is on its knees. Cattlemen have suffered very heavy losses. Many grain farmers have a good crop in the field but protracted wet weather jeopardizes its harvest. The costs for seed, fertilizer, diesel and other inputs have skyrocketed while farm commodity prices have retreated. Producers are hurting and they're caught in a lethal squeeze.

For the past forty years or so, the courts and government have not been the farmer and rancher's friend. Their decisions and policies have clearly favored big business

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Happy Thanksgiving

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Leadership

BY RANDY STEVENSON
PRESIDENT



I've been giving some thought to what kind of organization OCM should be. Not in terms of structure, nor in terms of policy, but what should be our public demeanor.

A new organization starts off with very little to influence or impact public policy. In such a situation, making a lot of noise can help gain attention. For OCM, those days are past. We have the attention and respect of many influential policy makers. We don't need to make big splashes in the media to puff ourselves up to appear bigger than we really are in order to be heard.

Another important concept is focus. A few years ago OCM expanded its mission of addressing competition in the marketplace to include trade issues. We saw it as a problem of international competition. Having initiated the creation of the Coalition for a Prosperous America, a non-partisan group dedicated to concentrating on trade issues, OCM is now able to re-focus on domestic marketplace competition while still being able to see trade concerns tackled.

our resources on every possible thing we find wrong in the marketplace, we need to narrow our efforts somewhat so that what we endeavor to do is effective. Narrowing our efforts could entail something like our seed concentration project where we can promote precedent setting changes in the marketplace. Or it can entail working with a small group of people such as those at DOJ or PSA, because they are the engine that will drive the shape of the marketplace to come. In whatever manner we decide to narrow our efforts, it needs to be done by the application of intelligence and wisdom. Reason and judgment used together will help us choose our courses of action and use of our resources wisely.

Another important thing to consider is the question of whom we debate or how we defend ourselves in public forums. I have a friend who once engaged in a rather heated exchange with a US Senator on the pages of the letters to the editor of a statewide

Because of the impossibility of using Please see STEVENSON on page 6

OCM BOARD MEMBERS & STAFF

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Wheatland, WY 307-331-1980
double_s_livestock@lycos.com
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St. Francis, KS 785-332-8218
mike@nobull.net
- Brother David Andrews**, Secretary
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STAFF:

- Fred Stokes**, Executive Director
Porterville, MS • 601-527-2459
tfredstokes@hughes.net
- Pat Craycraft**, Office Manager
Lincoln, NE • 402-817-4443
ocm@competitivemarkets.com

PROJECT ASSISTANTS

- Bob Carskadon, Starkville, MS
Roberto Gallardo, Starkville, MS
Jody Holland, Starkville, MS
Dennis Hoyle, Starkville, MS
Eric Lister, Brentwood, TN

**"Talk low, talk slow and
don't talk too much."**

- John Wayne



Farmers and Ranchers Need Fair Contacts and a Level Playing Field.



A handful of meatpackers and poultry companies dominate the livestock industry. This near-monopoly limits competition and makes it hard for farmers to get a fair deal or a fair price.

At the end of this year, the United States Department of Agriculture will propose new rules that will restore some fairness to the marketplace, put livestock farmers on a level playing field, and keep companies from forcing farmers to spend thousands of dollars on unnecessary equipment. The 2008 Farm Bill requires the USDA to write these rules.

The USDA needs to hear from consumers, poultry growers, cattle ranchers and hog producers during the public comment period for these rules. Farmers and ranchers lose money, and sometimes their farms, because of unfair treatment by processing companies. These rules can help farmers regain profitability.

Your voice can make a difference.

Let the USDA know that fair treatment for farmers is important to you! We will send out action alerts when the proposed rules are released. To sign up contact:

Becky Ceartas
Rural Advancement Foundation
International - USA
(919) 542-1396 x209
becky@rafusa.org
www.rafusa.org

Jeri Lynn Bakken
Western Organization of
Resource Councils
(701) 376-7077
jerilynn@worc.org
www.worc.org

**Get more information and
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Background on New USDA Rules

The UDSA will propose new rules this fall. The rule changes will address two major issues: unfair mandatory upgrades and undue and unreasonable preferences.

UNFAIR MANDATORY UPGRADES

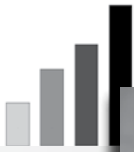
"One day, when the company approached me about upgrading my chicken houses, I said no. They said that I had to do it. I said no again. They asked me how I was going to pay for the houses if I didn't have chickens."

- Tim Brooks, a farmer in Siler City, NC. Brooks lost his contract, the chicken houses and 15 acres of land, and managed to keep his family's home only after taking out another loan.

Most poultry companies urge growers to build at least four poultry houses. These houses are built to the company's specifications and cost about \$300,000 each. After farmers build the houses and sign contracts, the company often requires them to add expensive upgrades to the buildings or equipment. These added costs deepen farmers' debt, often without bringing in any additional income.

In the past, farmers have lost their contracts with little or no warning when they refused to pay for upgrades. The new rule should state that companies cannot require additional capital investments from farmers beyond the original poultry or hog house specifications unless those farmers are given fair compensation at the time of the upgrade.

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**DAVID KRUSE**

PRESIDENT, COMMSTOCK INVESTMENTS

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The U.S. Attorney General is appointed by the President to be the chief lawyer representing the country, not the administration in the White House. They have their own lawyers. President Obama was not in favor of Attorney General, Eric Holder's decision to go back after Bush administration officials for sanctioning torture. The Justice Department is supposed to get its direction from the law and not the White House, so is reportedly pursuing potential charges anyway against the President's preference. While previous administrations have politicized the Attorney General's Office, this example of independence is welcomed.

Previous Attorney Generals roiled their office and creating internal dissension by writing legal opinions the way the White House wanted them instead of the way Justice Department officials believed were dictated by law. The independence of the

Attorney General's office, or lack of it, has become a source of great controversy. We expect the Obama Administration to avoid similar past misconduct.

The Obama administration has promised to move aggressively pursuing anti-trust enforcement. To that end, the Justice Department is cleaning the cobwebs out of the department's anti-trust offices. Under the direction of assistant attorney General Christine Varney, the department will give mergers and existing industry structure a long overdue anti-trust review. They are working with the USDA to investigate the

Monsanto monopoly. They plan to hold public anti-trust hearings on agriculture early next year. The Justice Department, not the White House, will ultimately make the decision after careful re-

view of what and how to proceed with any anti-trust action. The Justice Department anti-trust division had not been doing its job previously, instead practicing *laissez-faire* anti-trust enforcement.

That will change under Eric Holder and Christine Varney. Companies and industries

used the void in anti-trust enforcement to push the envelope concentrating and controlling industries making oligopolies the favored structure. Some were extremely unhappy that the Justice Department approved the JBS-Pilgrim's Pride merger, severely criticizing the White House for breaking political promises for aggressive anti-trust enforcement in agriculture.

No promises were broken. In fact, a promise to reaffirm the independence of the Justice Department is being kept. President Obama and the Justice Department are preparing to do what they said they would do which is to enforce anti-trust law. The JBS-PP merger didn't break any. It created a new company that looks a lot like Tyson with interests in beef, pork and poultry production and processing. I don't think that the Justice Department is investigating Tyson for anti-trust relative to its overall interests in beef, pork and poultry, so why would anyone be surprised that they approved the JBS-PP merger?

I would argue that packers' market activity conducted during past administrations has violated Packers and Stockyards statutes and the Justice Department will find enforceable violations in their review. Had there been any basis in the law to stop the JBS-PP merger, the Justice Department would not have approved it. *Newsweek* correctly described President Obama's governing persona as "methodical, thoughtful, cerebral, a believer in consensus and process... Barack Obama is an incremental man." This has disappointed firebrands who deceived themselves that the President had promised radicalism.

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President Obama didn't promise to stop every merger proposed in agriculture. He promised that his Justice department would investigate and enforce the laws where they applied. That would be a huge improvement over the past. I think that the Justice Department will do the thorough analysis of industry concentration, industry structure and market power that has not been done, going back several administrations. They have a big job and will use resources to affect the most return.

The Justice Department's approval of the JBS-PP merger was not a broken presidential campaign promise. Eric Holder, and Christine Varney intend to protect the interests of independent producers relative to anti-trust law. In that sense they will keep President Obama's promises to open competition in agriculture. They are charged with this task within the limits of the law which trumps Presidential wishes. If the President had ordered Attorney General Eric Holder to contrive a legal basis upon which to block the JBS/PP merger for political reasons, that would be no better than their predecessors who abused that power by politicizing the Attorney General's office.

DK

DISCLAIMER: The opinions of the author are his own and are not intended to imply the organizations position on this or any other issue. OCM has membership with diverse viewpoints on all issues. OCM is committed to one and only one principal; competition.

BACKGROUND (continued from page 3)

UNDUE AND UNREASONABLE PREFERENCE

"We have all been affected by packers who continually control the markets. It has been a primary factor in devastating our industry and our rural communities."

-Mabel Dobbs, a rancher from Weiser, ID, has been working to return competition to the livestock industry for nearly 20 years.

The Packers and Stockyards Act forbids "undue or unreasonable preference or advantage" in the actions of packers, swine contractors and live poultry dealers. The 2008 Farm Bill requires the USDA to define what that means. **We're asking the USDA to interpret the term "undue and unreasonable preference" broadly, as the law intended.**

The rule should not require an action to harm the market as a whole in order to be considered unlawful. We want the rule to highlight specific situations where undue or unreasonable preference may arise, such as in pricing, delivery locations and times, and more. Packers should not be allowed to give preference to large-volume livestock producers unless they can be justified by actual, verifiable quality differences or cost efficiencies, and any premiums offered for those differences should be available to all producers, regardless of the size of their operation. Packers should be required to offer all contracts in an open public manner that is accessible to the buyer, seller and other buyers.

The rule should not allow contract poultry growers to be penalized based on factors outside of their control and within the control of the poultry company, and growers should not be penalized for exer-

cising their lawful rights. Finally, the rules should adjust over time as industry practices change.

ABOUT US

The **Western Organization of Resource Councils**'s mission is to advance the vision of a democratic, sustainable, and just society through community action. www.worc.org

The **Rural Advancement Foundation International - USA** cultivates markets, policies and communities that cultivate thriving, environmentally sound and socially just family farms. www.rafiusa.org



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interests. Accordingly, OCM has on occasion taken an in-your-face approach to its advocacy efforts; sadly to little or no avail. There is feeling of gloom and despair in rural America.

However, **I believe there is now reason for hope.** For the first time in memory, the regulatory agencies, the United States Department of Agriculture (USDA), the Department of Justice (DOJ), the Federal Trade Commission (FTC), and the Commodity Futures Trading Commission (CFTC) seem to be sympathetic to our situation and posed for constructive action. We now have former associates and friends in key positions with the USDA, which we formerly believed to be captive to the big agribusiness interests it was supposed to regulate. J. Dudley Butler now heads the Grain Inspection and Packers and Stockyards Agency (GIPSA), the “**top cop**” for the livestock industry. I believe we can expect him to vigorously enforce the P&S Act rather than scandalously blocking its enforcement— as did a previous GIPSA administrator.

If Assistant Attorney General Christine Varney is true to her promises, the market riggers have good reason for concern. Her deputy, Phil Weiser, reinforced her message at our OCM Conference in St. Louis on August 7th. His words were very encouraging! The new special counsel for agriculture in DOJ, Mark Tobey, has been accessible and receptive to OCM’s suggestions and participation in planned meeting and workshops. This new partnership represents a big improvement!

In a recent meeting with a representative of the Federal Trade Commission, an agency that has jurisdiction in matters pertaining to mergers, food retailing, chemicals and

fertilizer, I came away with the impression that we could expect more favorable consideration from that agency in the future. There is to be joint FTC/DOJ workshops on merger guidelines next year. Hopefully, the rubberstamped, competition-destroying mergers of the past couple of decades will cease.

Gary Gensler, the new chair of the CFTC, appears to be intent on restoring the commodities markets to its original purpose— as a tool for risk management and price discovery rather than the speculator driven global crap game it has become.

Prospects for legislation, such as a ban on packer ownership or captive supply

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STEVENSON

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newspaper. The exchange did not enhance the status of the Senator, but rather brought my friend, who was a relatively unknown citizen, into the limelight and onto the same level as the Senator. Even if the Senator had won the debate on the issues, he lost status because he elevated his opponent. We need to be careful in that area, too.

We also need to be careful how we engage our opponents when it is appropriate to debate them publicly. Personal attacks are taboo. We debate issues, principals, or philosophies. There are people who have sat across the table from OCM, figuratively speaking, who are now having friendly conversations with us about market competition. Had we attacked them on a personal basis, those conversations would have been

much more difficult to begin. Yes, there are certain people who have promoted erroneous ideas, and those situations need to be pointed out from time to time. But there is a vast difference between naming names and making personal attacks. I think that sometimes personal attacks can be caused by a lack of our own personal conviction of the soundness of our positions. We should be able to engage those who oppose us and sit down across the table from them because we are confident in our own ideas, not fearing that their contrary ideas will somehow rub off on us or pollute our thinking. Personal attacks can be nothing more than a cover for our own lack of conviction.

Another very important idea is that we need to be promoting solutions and not just decrying problems. Whether decision makers are in business or government, what they like to hear from those who come to them is the presentation of a solution. Without the presentation of well thought out solutions, we would be perceived as being an organization that is just against everything, a group of noisy whiners.

We also need patience. In the time OCM has been in existence, we have made significant progress. Rarely have we seemed to be moving forward very fast. Every other area of life moves at light speed compared to the federal government. Effecting policy change on the federal level is a slow process. Much change looks promising now. We need to continue the pressure with patience.

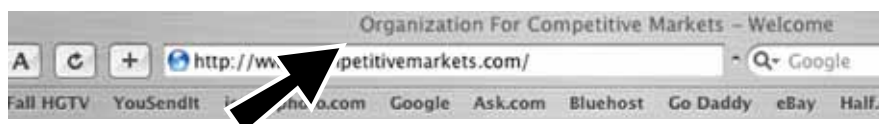
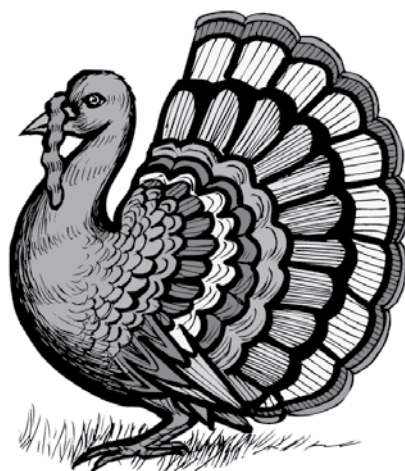
Whether you want to call it maturity, leadership or some other descriptive adjective, the public demeanor OCM presents is important. It also needs to be more than a façade. We really are mature adults working together to accomplish our mission.

John Wayne expressed some of these ideas well when he said, “Talk low, talk slow and don’t talk too much.”^{RS}

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reform are currently very slim. But, there is reason for optimism about the USDA rule-making process, especially concerning the Packers and Stockyards Act.

I see the regulator agencies as our best hope for market reform. We need to support the upcoming joint USDA/DOJ and DOJ/FTC meetings and workshops and consider them a source of remedy rather than harbingers of more of the same. **For now, let's be hopeful, cooperative and speak in soft tones.**^{FS}



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