



The Packers and Stockyards Act; *Best bet for market reform*

BY FRED STOKES, EXECUTIVE DIRECTOR

After a protracted period of producer bloodletting, cattle prices have recently made a remarkable recovery. While this is too late for many who were forced out of business, it is a lifesaver for scores of ranchers and feeders who were just barely hanging on.

The price increase for cattle seems justified by market fundamentals, but I am still suspicious. It seems that every time there is a really big fuss over

"During its annual conference in at the Omaha Double Tree Hotel on August 10-11, OCM is planning special emphasis on the dysfunctional cattle marketplace ..."

depressed cattle prices that might prompt some sort of action, prices spontaneously rebound. It also seems that when prices recover to breakeven or better, efforts to fix things by both cattle producers and government enforcement agencies just fade away. Shortly thereafter, prices are in the tank again. Hopefully this time will be different.

For the first time ever, the U. S. Department of Agriculture (USDA) (which

administers the Packers and Stockyards Act and the U. S. Department of Justice (USDOJ) are working together to investigate anticompetitive practices in agricultural markets. The ongoing joint USDA/USDOJ workshops on these markets are unprecedented. It seems clear after the first workshop conducted in Ankeny, Iowa last month that they mean business. The USDA's Grain Inspection and Packers and Stockyards Administration (GIPSA) are teaming up with the Antitrust Division of DOJ and I'm betting that something significant is going to result.

The Packers and Stockyards Act of 1921 is a little-used, but powerful piece of antitrust legislation which is intended to protect livestock producers rather than consumers. Yet, during its almost 90 years of existence, it has provided little help in addressing the ills that brought it into existence.

President Woodrow Wilson ordered the Federal Trade Commission (FTC) to investigate the meatpacking industry from "hoof to the table" to determine if there were "manipulations, controls, trusts, combinations or restraints out of harmony with

the law of the public interest." At the time (1918), five meatpackers (Armour, Swift, Wilson, Morris and Cudahy) slaughtered 70 percent of all livestock.

As a result of the FTC investigation, the five packers were forced to enter a consent decree in 1920, which helped curb many of the anticompetitive practices. The consent decree notwithstanding, the congress passed the Packers and Stockyard Act in 1921, giving the Department of Agriculture administrative authority over this antitrust legislation.

The consent decree of 1920 has now long been vacated; the P&S Act of 1921 has so far been of little utility and today the industry is more concentrated than ever with the "big four" controlling more than 80 percent of the market. Meatpackers are once again engaged in "manipulations,

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Packers Put on a Lilly White Shirt

BY RANDY STEVENSON
PRESIDENT



The cattle market can be somewhat surprising sometimes. Certain events can suddenly impact the market in such a way that is totally unpredictable. The discovery of a Canadian cow in Washington State with BSE was one such event. The market immediately reacted but now we have a situation in the cattle market that is not quickly and apparently explainable. While the fundamentals in the cattle market are essentially the same as a year ago, the prices are much higher.

Beef supplies are nearly identical with last year's tonnage numbers. We are now in a period of double digit unemployment, whereas last year that depth had not yet been reached. Nevertheless, beef cutout values are \$25 to \$30 higher than last year. In short, everything is pretty much the same as last year or a little worse, except prices, which are dramatically higher. Why?

Some market pundits attribute this bonanza to changing attitudes and habits of the consumer. It seems strange to conclude that the average consumer nationwide would ignore the current economic downturn and return to pre-recession spending patterns. There must be some other reason.

We think the best reason for changes in the market beneficial to the producer is the interest shown by the

Department of Justice (DOJ) and the Packers and Stockyards Administration (PSA) in investigating antitrust and market manipulations violations committed by dominant corporations. After a joint antitrust workshop held by the DOJ and PSA in Iowa in February, Monsanto significantly lowered the price farmers had to pay on its genetically modified seed corn. Now the beef cutout value has increased. Perhaps the packers now know they are being watched. It's much like children behaving differently when adults are watching.

We have suggested for quite some time that the market needs adult supervision. Now that the children are behaving differently because the adults have peeked in, we have more proof than ever that more supervision is required.

If as, we contend, the market has been manipulated with downward pressure, we expect the same kind of reaction that we would see with cattle that have been fed a little short of their maximum. When given full feed, such cattle respond with "compensatory gain." The market could respond to less manipulation with a similar compensatory market gain. It could be a good year for cowboys.^{RS}

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I don't recognize the face of Agriculture

BY RICHARD OSWALD

An hour before departure time in the airport at Minneapolis I was reading a book at Gate 4. That's when a guy sitting two seats down looked my way.

"Excuse me --Sir-- haven't we met?" he said

We were both on the way to Rapid City. His name was Zeke. He asked if I was from South Dakota. "Nope" I said. "I'm from Missouri". He did look familiar. We compared notes for awhile and we agreed it was just a case of mistaken identity.

That happens a lot. Whether we're at home or hundreds of miles away, it's nice but unexpected to see a familiar face in the crowd. Sometimes, someone you thought was an old friend turns out to be a new one instead.

We've tried to keep up on our farm by making new friends and keeping some old ones. We've adopted technology and new practices on the same familiar soil. We even plant GMO seeds. That's about all we can buy. Just like the guy in the mirror, farming for us has matured over the years, but I still know it when I see it even though the crowd has thinned.

Farm-wise, we're kind of like the 4 faces carved into Mount Rushmore; time worn, washed by rain and wind-swept, but recognizable.

Some erosion to an ancient edifice like farming is inevitable I suppose. That's how Mother Nature made the soil we call home. We navigate the sands of time as best we can, but it's darned hard to negotiate with them.

That's what bothers me most about our negotiated positions on food and

farming these days, because it's getting harder and harder for these old eyes to recognize the face of US agriculture.

We're supposed to be the good guys in white hats, a little like the friendly home bound Wyoming rancher named Zeke. We feed the nation and sell a few leftovers to a world that would really rather feed itself. At the same time our government signs away our own home marketing rights with trade agreements that are far from free. That's because they cost us more in terms of our domestic markets than we'll ever hope to gain in exports.

Thanks to current trade policy the only things I feed the world are the things I can't sell here. In the meantime more and more of what Americans consume come from someplace else. Demand once measured need for a product. These days demand for products is structured by bureaucratic hurdles that raise the bar so high we can't walk out of the barn without tripping over it.

Over the next 40 years world populations will grow from 6.8 up to 9 billion souls. As that day approaches third world countries will need all the food they can grow. America will too. But our government seems bent on taking the wheels off American agriculture by opening our borders to everything the third world has. Just as we are with foreign debt and foreign oil, our nation is becoming more dependent on imported food at a time when food need everywhere is growing.

That's why free trade agreements look to me like a case of mistaken identity.

Every year a new farm crisis depletes the country of more farm talent. When livestock markets or dairy prices fail, old acquaintances are disappeared by failed policy. When prices of patented seeds or petroleum climb too high, still more slip away. When we try to find new markets for the things we grow here at home, no sooner than we do, free traders and corporate raiders go after the fruits of our labor.

Like Claus, our yellow lab that loves to fetch, farmers are bred to do a job we love. America never needed genetic modification to produce the people who won the war on hunger at home. But big companies, faceless business suits that control much of our food supply, do things strictly for money. Monopoly and market domination are in their genes.

They call it "efficiency", but as a familiar face to Missouri agriculture, Jim Foster of Montgomery City, Missouri, said; ⁽¹⁾ "We found out from the banks that it doesn't work that way. They keep that efficiency in their pocket."

Financial institutions proved two years ago that it's bred into them to take the money and run. Corporate bonuses are paid even as stock prices, companies, and even nations, collapse. But corporations are immortal. They can rise again, disguised as someone new.

That's how the most powerful patented seed company in the world came into being.

Just as I was created by my Maker to do an important task, earning profits at any cost is solely what they were created for. Now, the very laws that once protected my rights to competitive, efficient markets have been turned inside out. My right to succeed has become a corporate need for me to fail so that corporate growth and profit can be sustained... at my cost.

Please see AGRICULTURE on page 5



The DOJ-USDA Session on Agricultural Competition

MARCH 12, ANKENY, IOWA

Eric Nelson, Farmer, Cattle Feeder, Seed Salesman and Crop Advisor was on the panel and this what he said:

"AGRICULTURE & ANTITRUST ISSUES IN OUR 21ST CENTURY ECONOMY"

Issues of Concern to Farmers

Philosophies: Before I begin my presentation on competition issues in ag, let me first tell you a little more about myself

- Strong supporter of technology and it's early adoption
- Strong believer in economies of scale, but am also aware of diseconomies of scale.
- I believe bringing young people into production agriculture is vital to our future food supply and is as simple as insuring them a fair, fighting chance at a profit
- I believe our government has an obligation written in law, not to pick winners and losers, but to act as a "referee" and to insure laws and regulations dealing with anticompetitive practices are enforced for as Henry Thoreau once wrote, "the corporation has no conscience." and thus is singularly driven for profit. That has become problem for the seed industry today.
- Monsanto has raised technology fees to seed partners mid-contract in violation of the very contract the parties had with each other with Monsanto's response being, "if you want to continue to have access to our technology, you'll do as we ask."
- Companies have signed non-exclusive marketing agreements with Pioneer only to have their license to sell Monsanto products discontinued in retaliation by Monsanto.
- I've witnessed Monsanto's misuse of confidential biotech seed stewardship agreements
- I've seen pricing schemes using free seed hugely benefiting large farmers
- I've seen a reduction in basic corn research in favor of biotech research which has put future yields at risk for farmers.

Please see ISSUES on page 5



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WEDNESDAY, AUGUST 11TH, 2010

DOUBLETREE HOTEL, OMAHA, NE

Problems With Today's Seed Industry

- Hybrid corn provides a vehicle for increase like no other crop and has been key to the U.S. becoming the breadbasket of the world, but the U.S. seed industry, I believe, is being taken advantage of.

More information to follow





ISSUES (continued from page 4)

- I recently compared the corn yield on the same farm comparing yields from the year 1987 to the year 2009. Bushel yield increased 25% but the price of the seed and weed control had increased 153 % during that same time even though consolidation within the seed and chemical industry was supposed to spur "efficiencies."
- I've seen technology being sold with little or no considerations for ill affects caused by the products. I have copies of studies, one by Dr. Huber at Purdue, and one by Kremer & Means as published in the European Journal of Agronomy that show increased fusarium and mycotoxins caused by
- I've seen the effectiveness of a new technology be overstated at the expense of the farmer. Monsanto Genuity RR2 Yield soybeans are an example. Initially touted in advertisements to offer 7-11% more yield, then promoted to have 7-11% more yield potential, Monsanto's own Asgrow brand offers only 3 RR2 soybeans out of 30 total varieties offered for the northern soybean belt. At the same time they informed seed licensing partners that they had to quickly convert to the new RR2 varieties, even though the retail price to the farmer was higher and many times yields have been less. If seed partners could complain (without fear of losing their contract), they would.
- Due to budget constraints, land grant institutions are no longer able to conduct the introspective research on seed they once did and much of the research they currently do is funded by the seed companies themselves.

Fixing The Seed Industry

- Disallow any monopolies and the anti-competitive activities that come with them
- Require germplasm be made available

- to the public through Land Grant Universities or other public entities
- Enforce the Robinson-Patman act of 1936 which prevents predatory pricing of like products
- Require technology be proven safe and effective which could be accomplished by properly funding experiment stations and land grant institutions

I believe the statement: "the corporation has no conscience" is also very relevant to the U.S.

- Three beef packers currently have 80% of the slaughter capacity
- Captive supply agreements reduce competition to the point that I have only about 30 minutes per week when I can sell cattle. Some weeks no market is established.
- The geographic center of cattle feeding (and meat packing) is illogically located away from key feed sources but rather located closer to available captive supplies
- Unlike grain, cattle are perishable and can't be stored until markets improve and due to that fact, domestic prices are very susceptible to small changes in foreign demand.
- Retail margins appear excessive. When I sell a beef animal it's worth around \$1200 after having invested time and feed for 18 months. Within 3 or 4 days, the packing, wholesale and retail segments double that amount to around \$2400. I don't believe that would happen in a truly competitive environment.

Helping the U.S. Cattle Industry

- Break up the beef packing monopoly
- Require captive supply cattle transactions be transparent
- Require a certain percent of daily slaughter be purchased each day
- Revisit FTA's to adjust imports in times of weak foreign demand or in times of surging U.S. supply.

- Enforce Country of Origin Labeling
- Spur retail competition and thus beef demand

In closing, at Gettysburg, President Lincoln referred to:

- "...Government of the people, by the people and for the people, not government of the corporation, by the corporation, and for the corporation.
- I've asked myself, "would all of those who died before Gettysburg and since preserving this republic want only a hand full of corporations completely controlling our country, it's economy, and it's food supply?" I don't believe they would and I further believe laws exist to prevent that very thing from happening as long as they're enforced.

AGRICULTURE (continued from page 3)

In fact, it seems like the only time they appreciate me these days is when they want what I have. But lately our government has been looking into antitrust laws and agriculture ⁽²⁾. Detractors say the lack of enforcement over the last 50 years means that's just not an option; unenforced laws are rendered unenforceable. Others like Senators Saxby Chambliss and Pat Roberts caution against acting too hastily lest corporations take a hit.

A corporation saved is a penny earned.

Attorney General Eric Holder ⁽⁴⁾ thinks he might see a problem for independent family farmers. Time will tell if looking for problems results in real oversight from courts, the Department of Justice, and USDA.

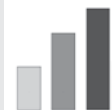
I sure hope they recognize us.

(1) <http://www.wbur.org/npr/124604147>

(2) <http://iowaindependent.com/29950/producer-convinced-dojusda-workshop-not-a-dog-and-pony-show>

(3) http://www.porkmag.com/directories.asp?pgID=675&ed_id=9011

(4) <http://www.nytimes.com/2010/03/13/business/13seed.html>

**DAVID KRUSE**

PRESIDENT, COMSTOCK INVESTMENTS

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It's not surprising that the Wall Street Journal (WSJ) backs Monsanto in its contest with DOJ anti-trust enforcement. In all the years that I have read the WSJ, I have never seen them write negatively of monopolies or concentration. To them, that's just the natural evolution of capitalism to have the biggest and most powerful control it all and if anyone complains or thinks that is unfair, they are just whiners or socialists.

To suggest, as the WSJ did, those who are crying foul over Monsanto's heavy handed market practices are using charges

**MARKET
ACCESS IS THE
LIFE BLOOD OF
COMPETITION AND
IT'S THE ANTI-
TRUST REGULA-
TOR'S JOB TO
KEEP IT FLOWING.**

of monopoly as an excuse to take Monsanto down, misses the point. DOJ has been con-

fronted with evidence of abuse of market power by Monsanto. It's their job to investigate and enforce anti-trust law.

Dupont also responded to the WSJ column saying, "Your March 29th editorial "Seeds of Anti-trust Destruction" ignores an obvious and important fact. Our field tests show that seeds with Optimum GAT and Roundup Ready 1 combined produce 6% more yield than the equivalent seed with only Roundup Ready 1 as a biotech trait. That's a potential improvement in U.S. soybean productivity of over \$2 billion each year to American farmers and consumers. That's real innovation - allowing the market to choose the best products. Yet Monsanto Co, with a monopoly share of the biotech trait markets for soybeans and corn (according to its own numbers, 98% and 79% respectively) uses contractual terms with seed companies to exclude the best seed and competitors from the marketplace. We would not expect that the manufacturers of flour would dictate to a chef the kinds of other ingredients he can use to bake bread. But that is precisely how Monsanto uses its monopoly power - blocking competition today and generic competition tomorrow. Anti-trust enforcement is needed now for the benefit of innovation, competition and yes, farmers."

Monsanto is innocent until proven guilty. Yes, DuPont is jealous of Monsanto's success, so DuPont would love DOJ to slow Monsanto down. It will be most

interesting to see the conclusions of the DOJ investigation. There are those in both the WSJ and DuPont, who would rush to judgment.

The WSJ wrote, "An anti-trust assault against Monsanto and the broader farm industry will do nothing to advance the competition that Mr. Holder claims to protect. Federal interventions against market leaders typically target companies most likely to innovate and create products that drive progress. Those who invest in research and development have a right to reap what they sow."

The WSJ already passed its judgment without the results of the investigation. Monsanto is an innovative company who has a right to the financial reward from the products they create. I don't hold that against them. If those products dominate the market driven by consumer demand, all is well. The problem is, if Monsanto has such a tight hold on market access to the seed distribution system that they gain unfair leverage, able to deny other innovators access to the market, then they are breaking the law. Market access is the life blood of competition and it's the anti-trust regulator's job to keep it flowing.

The WSJ attitude is that Monsanto would or could do no wrong. Monsanto should be treated fairly and I'm not concerned that it is not adequately lawyered up. I'm not worried that Monsanto is the underdog in the investigation with DOJ.

David Kruse is president of CommStock Investments, Inc., author and producer of The CommStock Report, an ag commentary and market analysis available daily by radio and by subscription on DTN/FarmDayta and the Internet. CommStock Investments is a registered CTA, as well as an introducing brokerage. Mr. Kruse is also president of AgriVantage Crop Insurance and Brazil Irova Farms, an investor owned farming operation in Bahia, Brazil. (Futures Trading involves risk. Past performance is not indicative of future performance.) For information on subscribing to the daily CommStock Report, contact: CommStock Investments, Inc., 207 Main St., Royal, IA, 712-933-9400, www.commstock.com. E-mail to: info@commstock.com

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STOKES (continued from page 1)

controls, trusts, combinations or restraints out of harmony with the law of the public interest." Using their tremendous market power and devious practices, they have severely crippled a once thriving domestic beef cattle industry.

Nevertheless, I am heartened at the prospects for reform and better days ahead. Christine Varney, current head of USDOJ's Antitrust Division seems likely to be tough on antitrust violations and has shown keen interest in the meatpacking industry.

Unlike his predecessors, Dudley Butler who currently heads the Packers and Stockyards Administration is sure to vigorously enforce the P&S Act. This new cooperation between the two agencies has great potential for reform.

However, the potential for positive results can be diminished by at least two things; (1) Political push-back; and (2)

Lack of support from cattle producers.

The Packers are putting heavy pressure on congress. A letter to Secretary Vilsack from Senators Pat Roberts (R-KS) and Chambliss (R-GA) regarding the workshops is a good example. It can be fairly paraphrased to read, "things are great, don't mess with them". This sort of congressional pressure can be expected to intensify.

If cattle producers follow their usual pattern and assume that now that prices are better they can relax and let up on the effort at market reform, they can undermine the GIPSA/DOJ initiative.

During its annual conference in at the Omaha Double Tree Hotel on August 10-11, OCM is planning special emphasis on the dysfunctional cattle marketplace and supporting the Livestock Workshop in Ft. Collins on August 26th. We ask that you join us in this effort to finally fix a broken system. ^{FS}

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