oMc

Organization for Competitive Markets
RR2, Box 73
Hickman, NE 68372

Tel: (860) 738-9755
Fax: (860) 379-6196

email: the.ocm@snet.net
web site: www.competitivemarkets.com

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Class Certification for Pickett v. IBP, Inc.

On April 28, Judge Lyle Strom granted the plaintiff's amended motion for class certification in the case entitled Pickett v. IBP, Inc. The Pickett case was filed on behalf of several plaintiffs, including OCM members Mike Callicrate, Jim Bower, Paul Horton and Sam Britt, claiming abuse of market power by IBP arising from captive supplies of cattle among other things.

Captive supply includes three practices: forward contracts, marketing agreements and packer-owned cattle. The plaintiffs contend that IBP unfairly sets a low price for cattle and when producers reject that price as too low, IBP slaughters or threatens to slaughter cattle from its own captive supply, leaving producers without a buyer for their cattle. Prior court records indicate that, at times, IBP had 122% of its needs committed through captive supplies.

The USDA has repeatedly been criticized for promoting industrialization and failing to enforce laws against anticompetitive practices. The Pickett case gives producers a chance that an independent forum will declare that certain common meat packer practices are anticompetitive and illegal. As a result of the decision, the class of plaintiffs now includes: "All cattle producers who sold fed cattle directly to IBP from February 1994 through and including the date of certification [April 28, 1999]."

GIPSA fines Excel on hog pricing

The USDA's Grain Inspection, Packers & Stockyards Division (GIPSA), which is charged with enforcing the Packers & Stockyards Act, fined Excel Corp. in a complaint filed April 9. The complaint alleged that Excel lowered prices paid to producers after changing its calibration equation for measuring percent lean, a critical factor in pricing hogs, and failing to notify producers of the change.

Excel, the meat packing subsidiary of Cargill, Inc., said it will appeal the matter to an administrative law judge. GIPSA claims that 19,942 lots of pigs were involved and that $1.8 million was owed to the 1,250 producers selling those hogs.

GIPSA has been severely criticized for failing to enforce the Packers & Stockyards Act. Past investigations of GIPSA by the USDA's Office of Inspector General and the General Accounting Office have concluded that GIPSA is not organized properly, lacks sufficient talent, and is underfunded. GIPSA has reorganized since then but Congress wants $700 million cut from ag programs next year.

CBB and NCBA to make changes?

The Cattlemen's Beef Promotion & Research Board sent 200 questionnaires in April to more than 200 beef and dairy groups and related organizations seeking input on how to change itself and the checkoff program. The Beef Board's principal contractor, the National Cattlemen's Beef Assn. (NCBA) has established a "blue ribbon commission" to gather information from producers on how to make NCBA efficient and more relevant to producers.

The efforts appear to result from the Livestock Marketing Assn. (LMA) petition drive to collect sufficient signatures from cattle producers to force a referendum on the beef checkoff program. LMA has been joined by the Western Organization of Resource Councils in seeking the referendum. They assert that the checkoff funds go to support the NCBA which pushes the interests of meat packers and large feedlots at the expense of smaller producers.

One recalls the 1957 novel entitled "The Leopard" written by a Sicilian prince which describes the groundswell of opposition to the decadent culture of the Sicilian elites. The upper class struggled to make changes just enough to remain the same.

IBP profits up 62% in 1998

IBP, inc. had a huge increase in profits in 1998 - a whopping 62%. The increase resulted primarily in "much improved pork margins" and strong food service penetration. The drastic drop in hog prices last year made IBP's procurement costs very low - to the extreme disadvantage of hog farmers.

A recent report by Dr. William Heffernan, OCM member and professor of rural sociology at the University of Missouri, revealed three vertically integrated clusters of agribusinesses controlling most food in this country. IBP is not a part of those clusters and there is some speculation about how they will fare without such alignment.

The successful short term IBP strategy appears to be moving upstream in the food chain - a strategy successful at ConAgra. IBP purchased Foodbrands America, a foodservice business, and DFG Foods, a manufacturer of gourmet snacks, in 1997 which accounted for a tremendous amount of sales. IBP has recently acquired Russer Foods, a leading national manufacturer of supermarket deli meat products. IBP has been chasing the consumer dollar shift from groceries to meals.

Smithfield is nation's largest pork packer AND producer

Little more than a month after Smithfield Foods - the nation's largest pork packer - became the nation's largest pork producer by acquiring Carroll's Foods, it has purchased J&K Farms, a 12,000 sow enterprise. Smithfield now has a breeding herd of 350,000 sows.

The Iowa Attorney General's Office sent a notice to Smithfield Foods inquiring about how they intended to comply with Iowa's ban on packer-owned hogs after it purchased Carroll's which produces thousands of hogs in Iowa. It is not clear how Smithfield intends to comply with Iowa law.

This purchase further highlights the fact that vertical integration is squeezing out the family farm. Packers are filling up scarce shackle space with captive supply - their own hogs, and hogs committed to them through marketing agreements and forward contracts. The best way to stop it is to prohibit packer feeding nationally and to create a system where contracts are part of the open market for bidding.

Callicrate's Oklahoma testimony

On April 22, OCM Board Member Mike Callicrate addressed the Oklahoma legislature. Prior to his presentation, some economists and extension agents testified that concentration in agriculture was really not a problem. Callicrate presented facts to rebut the methods and conclusions of the academics including court documents which showed the IBP's captive supply in 1994 was 122% of its slaughter needs. It is common for economists to use average or aggregate data which are not the proper tools to determine illegal behavior.

To the applause of legislators, Callicrate also presented information that the academics were directly or indirectly influenced by packer interests and, thus, their conclusions could not be trusted. Legislators further admitted that the Seaboard Corporation should never have been allowed to establish itself in Oklahoma. They need to pass a strong packer feeding or corporate farming ban to remedy the situation. Such a bill has not been presented as of yet.

Some biotech crops may not find a fall market

International efforts to prevent further marketing of biotech foods may be gaining steam. The practical result is that farmers who plant certain types of genetically modified (GM) seed produced by Monsanto, Novartis or DuPont/Pioneer may not have a fall market. There are several fronts in which concern over GM food is building.

Europe has been increasingly resistant to imports of GM crops causing grain merchandisers A.E. Staley, ADM and Cargill to announce that they would either reject unapproved crops or divert them out of the usual processing channels. Nearly 2300 of Japan's 3300 local government assemblies have called upon the Tokyo government to require mandatory labeling of GM foods.

An international meeting of entomologists (insect scientists) called for a moratorium on Bt crops warning that they give off 10-20 times more toxins than contained in conventional Bt sprays thereby risking harm to beneficial insects and bird populations. Portugal's Burger King restaurants, several UK fast food chains and - rumor has it - some McDonald's USA franchises have told potato processors not to deliver Bt potatoes to them.

Iowa Secretary of Agriculture Patty Judge issued an April press release warning farmers to be sure their crops are marketable before purchasing GM seed. Meanwhile, Monsanto showed a first quarter 1999 decline in profits of 33%.

Mandatory price reporting in the states

The Missouri House passed mandatory price reporting legislation as well as a bill requiring country of origin labeling of meat. This action followed a large farmer rally at the Capitol Building in Jefferson City on March 24, 1999. It seems that only large turnouts of farmers and ranchers in the legislative offices is effective in circumventing the lobbying of corporate agribusiness and the big ag cooperatives.

The Missouri legislation passed with only one vote against it. However, it must still go to the state senate and be signed by Missouri Gov. Mel Carnahan. There is plenty of time for the packers and the commodity groups to weaken the legislation with a strategic amendment.

In Iowa, the result was bleaker. OCM founding member Sen. Jack Kibbie introduced strong legislation for mandatory price reporting, country of origin labeling, and prohibition of packer discrimination against small producers. However, only a price reporting bill was passed with language so weak that it may be entirely ineffective.

Mandatory price reporting in Washington

Representative Larry Combest, (R. Tex.), chair of the House Agriculture Committee, is not a supporter of mandatory price reporting. He spoke before the Iowa Farm Bureau Federation in April stating that he wanted a voluntary, not mandatory, price reporting bill.

Subsequently, Combest hastily announced a hearing on mandatory price reporting scheduled for April 29. He refused to allow producers or private citizens to testify. Rather, he held a short hearing with witnesses only from the big commodity organizations, industry groups and major farm organizations.

George Swan, president of the National Cattleman's Beef Assn., testified in support of mandatory price reporting legislation which was surprisingly weak and which would preempt all related state legislation. The NCBA proposals are arguably worse than the present voluntary price reporting system.

According to Dr. John Helmuth, OCM founding member, the NCBA proposals would result in a further erosion and/or demise of the cash (spot) market because strong incentives would be created for packers to increase their use of short term contracts. Under the proposals, the short term contracts need only be reported on a weekly, not daily, basis, long after the contract transaction was relevant to market price and supply-demand considerations. Dr. Helmuth's full critique can be viewed soon on the OCM web site.

Country of Origin Labeling

Larry Combest (R. Tex.), chairman of the House Ag Committee, scheduled a hearing on country-of-origin food (not just meat) labeling for April 27, 1999. Just as in the price reporting hearings, he refused to allow the committee to hear producer or citizen testimony. Rather he is only allowed the leadership of farm organizations and industry groups to testify. Helen Chenoweth (R. Id.) sent a letter to Combest protesting the freeze out and suggesting a more balanced witness list. Combest refused to budge.

The General Accounting Office (GAO) revealed a report on April 20 which considered country-of-origin labeling for fresh produce (not meat). It noted that approximately 80% of consumers support such labeling. However, it stated that labeling may contravene free trade agreements and cost too much.

GAO further claimed that there was limited food safety benefits to labeling with regard to the ability of the Food and Drug Administration (FDA) and the Centers for Disease Control (CDC) to recall contaminated produce. The consumer group Center for Science in the Public Interest supports pending legislation supporting country of origin labeling for all FDA regulated foods as a food safety measure.

OCM provided information and facts in support of labeling to Congress. All major farm organizations, except the National Pork Producers Council and the National Corn Growers Association, are in favor of labeling. However, the USDA Foreign Ag Service has been consistently opposed to labeling.

Consolidation problems - more than economics

In the April 30 issue of the *Chronicle of Higher Education*, University of Iowa anthropologist Kendall M. Thu calls for anthropologists to investigate the effects of food industry consolidation. He states that the "shock waves from the global industrialization of food production are dramatic".

In the 1940's, anthropologist Walter Goldschmidt revealed the "social pathologies that arise in communities associated with an industrial form of food production" including increasing socio-economic stratification, more worker-employer conflict, less-representative local government and decreased participation in local civic and religious organizations. Other scholars have replicated this work over the past 50 years.

Thu argues that it is established that industrial agriculture is bad for rural communities. The next challenge is to understand the relationship between the concentration of food production and the centralization of political power in the U.S. and around the globe.

NFU Ag Summit

Leaders of 29 of the nation's farm organizations, including OCM, gathered in St. Louis on April 27 to seek agreement on a variety of current ag issues. OCM was represented by Max Waldo, Fred Stokes, Brother David Andrews, Steve Cady and Mike Callicrate. The four broad topics were concentration, risk management, safety net, and trade.

OCM was particularly concerned about the concentration issues as directly related to our mission of fostering a fair and truly competitive marketplace. The other issues were addressed by OCM to the extent that they impacted the competitiveness of independent producers in an industry increasingly dominated by big agribusiness.

The moderators of the panels were former U.S. Secretary of Agriculture Bob Bergland, former governor of North Dakota George Sinner, Iowa State University professor Neal Harl, and Auburn University professor Robert Taylor. The organizations ratified a common set of "Principles of Agreement" which were statements arrived at by consensus, i.e. everyone had to agree and everyone had veto power.

The most progress was made in the area of concentration where the boldest statements were made. Thanks to OCM vice president Fred Stokes, included was a call for the repeal of the Supreme Court's Illinois Brick decision which currently immunizes food retailers from antitrust suits brought by farmers. The full text of the "Principles of Agreement" can be found at the National Farmers Union website at www.nfu.org.

USDA's Junk Science

In January, 1998, USDA Economic Research Service (ERS) researchers finished a study that analyzed annual data as to cattle price levels in the 1990's in light of "a long list of negative factors" including weather, grain price, farm-retail price spreads, etc. The ERS researchers concluded that the price levels during the cattle cycle of the 1990's were bad but not the worst on record.

The publicly released report was made available 16 months later on May 4, 1999 and further stated the absurd conclusion that there was no evidence of negative effects of packer concentration on cattle prices during the 1990's.

Ag economist Dr. John Helmuth revealed that the ERS methodology was only suited for comparing present cattle cycles with past ones. He says that it is "negligently misleading" for ERS to even address the further question of negative packer concentration effects because the publicly available annual data are in no way suited to address that issue.

Others find it curious that the ERS never released this report, though it was nearly complete 16 months ago, until after the Pickett v. IBP, Inc. suit received class certification on April 28.

To put it more colorfully, Dr. Helmuth concludes, "asking USDA researchers to address the question of the exercise of market power in the beef industry using annual, public data is the equivalent of asking NATO air forces to hit precise military targets in Serbia using only National Geographic maps from five years ago."

Farmland, Cenex merger talks

The Wall Street Journal reported on May 7 that the nation's two largest coops were holding merger talks. As these big coops continue selling out their farmer members, they are also interested in pursuing alliances between the merged entity and a biotech company such as Dupont or Novartis.

OCM Annual Meeting

Remember that the OCM Annual Meeting will be in Omaha, Nebraska on August 20 and 21. Although details are not yet available, please plan to attend. It will be a very important and substantive session dealing with the cutting edge issues in agriculture today.

Additionally, new officers and board members will be elected and bylaws and resolutions will be adopted.

[Compiled by Michael C. Stumo]