# Attempts to restore the Packers and Stockyards Act to its original intent

In talking about the price/income problems that farmers experience, we often point out that they are caught between oligopolies and oligopsonies. The word oligopoly is related to the more familiar word monopoly in which a single company has pricing power over a given product. Generally, that happens when a company is the largest producer and seller of a given product or set or products.

With an oligopoly instead of a single company there is a small number of companies that control a significant portion of a market and thus the price of the goods they sell. While, the US has laws prohibiting collusion—the direct discussion of prices among a set of competitors—this oligopolistic price setting can be done without any direct collusion on the part of the firms involved using game theory and engaging in price-following behavior.

In agriculture we see monopolies and oligopolies particularly among machinery and seed/chemical companies.

Monopsonies and oligopsonies are similar to and behave in similar ways as their monopolistic/oligopolistic cousins but in this case the companies are purchasing products produced by others. In agriculture we see them in markets that involve the purchase of the crops and animals that farmers produce.

Even if there is some degree or competition among oligopolistic and oligopsonistic firms at the national level that often evaporates at the local level where there is only one machinery dealer or livestock auction within 50 or 100 mile radius.

Together they leave farmers with little pricing power over both the items they purchase (machinery, seeds, chemicals) and those they sell (grains, animals, fibers).

One hundred years ago, Congress addressed this issue by adopting the Packers and Stockyards Act of 1921 (PSA). The National Agricultural Law Center writes, “the PSA, as amended…is designed to ensure effective competition and integrity in livestock, meat, and poultry markets. It was enacted in response to concerns that the ‘Big Five’ large meat packers—Swift & Company, Armor & Company, Cudahy Packing Company, Wilson & Company, and Morris & Company—had engaged in anticompetitive practices that had a deleterious effect on producers and consumers” (https://tinyurl.com/4r4k4wrb).

As we write this column, we are aware that JBS USA, the Brazilian company that bought Swift in 2007 and owns 80 percent of Pilgrim’s Pride continues to look for protein-related companies to purchase. In April 2021, JBS “agreed to acquire Vivera, a European plant-based food company, for €341 million ($410 million). Vivera is Europe’s third-largest plant-based food producer, according to the company. The deal includes three manufacturing facilities and a research and development center located in the Netherlands.

“Vivera produces a range of plant-based meat replacement products, including meatless chicken nuggets, hot dogs, steaks, bacon, and burgers. Vivera products are distributed to retailers in more than 25 countries across Europe” (https://tinyurl.com/cafrd4pa).

Early last month, Food Business News reported, “JBS SA is set to move deeper into the animal protein market with the announcement it plans to acquire 100% of Huon Aquaculture, Australia’s second-largest salmon producer.

"Under terms of the transaction JBS would pay A$3.85 per share of Huon Aquaculture, or approximately A$546 million ($400.5 million). The deal already has been approved by controlling shareholders and is expected to close by the end of 2021.

"This is a strategic acquisition, which marks the entry of JBS into the aquaculture business,' said Gilberto Tomazoni, global chief executive officer of JBS. 'We will repeat what we did previously with poultry, pork and value-added products—to make our portfolio even more complete. Aquaculture will be a new growth platform for our businesses'" (https://tinyurl.com/vu5335w8).

Senators Bob Menendez and Marco Rubio have called for "Treasury Secretary Janet Yellen to investigate if the Brazilian-owned meatpacker used proceeds from a bribery scheme to expand its US operations" (https://tinyurl.com/4skswe3r).

In addition, on June 11, 2021, the United States Department of Agriculture (USDA) announced it "will begin work on three proposed rules to support enforcement of the Packers and Stockyards (P&S) Act, the 100-year old law that was originally designed to protect poultry and hog farmers and cattle ranchers from unfair, deceptive, and anti-competitive practices in the meat markets. USDA's pending action was noted in the Unified Agenda of Regulatory and Deregulatory Actions released today by the White House Office of Management and Budget (OMB).

"USDA intends to take three actions related to rulemaking in the months ahead. First, USDA intends to propose a new rule that will provide greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices. Second, USDA will propose a new poultry grower tournament system rule, with the current inactive proposal to be withdrawn. Third, USDA will re-propose a rule to clarify that parties do not need to demonstrate harm to competition in order to bring an action under section 202 (a) and 202 (b) of the P&S Act" (https://tinyurl.com/4sbuky7u).

While these actions will not solve all of the price/income problems farmers face, we think the efforts of Menendez and Rubio and the USDA are steps in the right direction.

In addition, we think the USDA needs to consider revising one of its data-reporting practices. Presently, the USDA does not report prices paid for cattle if they would reveal proprietary information. That generally happens when one company dominates a particular area.

Our position is that if a company drives out competitors and gets so dominant in an area that mandatory public price reporting would reveal proprietary information, that's a problem the company created for itself and it should not be rewarded by restricting the price information availability to livestock sellers. In addition, this clearly should be applied to "sweetheart" contracts companies offer to some producers. We believe in full price transparency for all livestock sales in a given area.

More broadly, we think that farmers would be better served if the US had a more robust set of antitrust policies than it has had in the last half-century. Harm to a diverse set of producers like farmers is as important to the nation's economic health as is harm to consumers.

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