ANTITRUST POLICY IN LIVESTOCK:
WHICH WAY IN THE 1990S?

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Introduction

Antitrust policy, its interpretation, and its enforcement will need to be critically examined during the 1990s. Professional economists and private sector leaders should play a major role in that process. The economic efficiencies of large firms appear to have been a dominating factor in the Justice Department's decisions on acquisitions, as late as 1987, that brought unprecedented levels of concentration in the beef sector. The 1990s will provide a test of whether those decisions by the Justice Department were right or wrong. The decade will tell us whether it was appropriate to put so much weight on the advantages of economies of size and to pay, it appears, little attention to the possible implications of the market power accumulating the hands of a few large firms.

The basic antitrust legislation has not changed. The Sherman Act of 1890 says nothing explicitly about competition, but it proposed to stop price fixing, group boycotts, and other attempts to monopolize the marketplace. Indirectly, the Sherman Act both fostered and protected competition. In 1914, the Clayton Act was passed to eliminate growing concerns about vagueness of wording and enforceability of the Sherman Act. Specifics as to what constitutes price discrimination were provided. But the Clayton Act still left unresolved issues, and the Robinson-Patman Act of 1936 dealt with lingering problems. Section 2 of the Clayton Act was amended by Robinson-Patman to help resolve conflicts between legal and economic definitions of price discrimination.

Interestingly, one of the widely advanced reasons for the Robinson-Patman Act was that Section 2 of the Clayton Act was being seen as negative rather than positive in fostering competition in the marketplace. Across the decades, it would appear, the philosophy underlying antitrust legislation and its enforcement has been to insure that a healthy degree of competition across a number of firms is present. Decisions by the antitrust agencies and the courts in the 1980s may have reversed that trend in important sectors of the livestock and meat industries.

A Bit of History

During the 1950s, 1960s, and into the 1970s, the guide to interpretation and enforcement of antitrust issues was clear. The structure-conduct-performance (S-C-P) paradigm provided direction. The reasoning ran as follows:

Highly concentrated markets (structure) lead to actions by firms (conduct) that result in excessive profits, lack of progressiveness, or other socially undesirable attributes (performance).

There has always been some difference of opinion as to the existence of a causal flow from structure to conduct to performance, however. The research literature has given mixed signals. The ability to isolate a statistically significant association between a measure of structure (such as a concentration ratio) and a measure of performance (such as price levels) has often been related to the level of aggregation in the data. Analysis often shows no statistically significant relationship at the national level, for example, but a relationship may be found to exist at a regional or state level where data have not been aggregated. Very little research attention has been paid to the "conduct" part of the model, and it was late in the decade of the 1980s before the industrial organization economists began thinking about conduct and the strategies that firms employ in highly concentrated industries.

There can be little doubt that a "big is bad" philosophy existed during the 1950s and 1960s. Exactly what measure of structure should be employed was debated, and there was discussion concerning
the most important measures of performance. But the central theme of the S-C-P model was
draws widely accepted: *Highly concentrated markets will predictably lead to undesirable market performance.* Vigorous enforcement of that position was pursued by the federal regulatory agencies and by the
courts.

Late in the 1970s, a change was evident. In the 1956-60 period, the Department of Justice and the Federal Trade Commission brought 210 cases under Section 2 of the Clayton Act, the section which explicitly prohibits attempts to monopolize trade. In the 1976-80 period, that number had declined to 1. Across all sections of the pertinent statutes (Clayton Act, Federal Trade Commission Act, Sherman Act) the number of actual cases brought by the two regulatory agencies dropped from 290 in 1956-60 to 64 in 1976-80 (Connor, et al, p. 356). A decline of this magnitude suggests a
major shift in perceptions of what constitutes violation of the antitrust statutes or in perceptions of how the antitrust statutes should be enforced.

**Change in the 1980s**

A change in philosophy and orientation accompanied, and perhaps caused, the dramatic decline in actions brought by the regulatory agencies. The change was quite visible to participants and observers, and came to be viewed with growing alarm in some quarters. In the late 1980s, the American Bar Association (ABA) created a task force with the responsibility of recommending an enforcement and management agenda for the Antitrust Division of the Justice Department. The task force released a report in July of 1989 that documents significant changes at Justice.

A common thread permeates the report. On numerous occasions, the report calls on the Justice Department to end the non-enforcement rhetoric of the 1980s and to move toward an affirmative antitrust enforcement agenda. The task force report notes at one point:

> Vigilant enforcement of the antitrust laws is necessary to protect the competition that is important not only for achieving the most efficient allocation and use of resources, but also for protecting consumers and maintaining the viability of the marketplace (ABA, p. 2).

The task force thereby champions the long-standing concern for “maintaining competition”, and they clearly feel the stance of the Justice Department during the 1980s was not always consistent with that position. They express concern that:

> ...since antitrust relies primarily upon self-policing and voluntary compliance under appropriate counseling, the Division's non-enforcement rhetoric may well have lowered respect for the antitrust laws -- and possibly lessened emphasis upon compliance in general (ABA, p. 5).

Three factors were identified by the ABA group as being largely responsible for the perceived shift in antitrust policy. First there was the growing use of economic analyses in antitrust decisions and enforcement. Second, the globalization of the U.S. economy started to raise questions as to whether a nationally-oriented antitrust policy could harm American business in a world market. Third, the growing popularity of a deregulation philosophy led to concerns in some quarters that the government's attempts to carry out an antitrust policy would do more harm than good.

The task force did not reject the need for economic analysis in Justice deliberations. They point to a gradual shift from strict reliance on the S-C-P paradigm across the prior 20 years, and reference a 1974 decision by the Supreme Court that indicates the courts would no longer rely strictly upon concentration figures as a basis for condemning horizontal mergers. It was in the late 1970s and early 1980s, however, that the so-called "Chicago School" of economic thought started to influence the Justice Department and court decisions in a major way. The new approach argued that most markets are naturally and inherently competitive and that concentration is not the prime determinant of whether a market is competitive. The reasoning extended to the notion that very high levels of concentration are needed before the opportunities for collusion are effectively enhanced.

It was in this era of changing attitudes on whether a high level of concentration is a problem and increasing emphasis on the economic efficiencies of economies of size that the Justice Department allowed the last round of acquisitions/mergers in the beef sector in 1987. Table 1 indicates that the four-firm concentration ratio in boxed-beef activity is around the 80 percent level, and the four-firm
ratio for steer and heifer slaughter is at 70 percent. The level of concentration in steer and heifer slaughter during 1989 was double the 30-39 levels of the 1978 to 1980 period. In the latter part of the 1970s, there were congressional hearings on the potentially negative impacts of high levels of concentration and at least two pieces of legislation were introduced to limit the share of the market any one firm could hold. An obvious question emerges: If the prevailing concentration levels of the late 1970s were of sufficient concern to prompt Congressional hearings and proposed legislation, why has there been no equally visible reaction to this issue in recent years when the concentration ratios were double those of the 1978-80 period?

Table 1. Percent of U.S. Slaughter or Activity by the Top Four Meat Packing Firms, 1970-89

<table>
<thead>
<tr>
<th>Year</th>
<th>Steers and Heifers*</th>
<th>Hogs</th>
<th>Sheep and Lambs</th>
<th>Boxed Beef</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Percent)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>27</td>
<td>32</td>
<td>53</td>
<td></td>
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<tr>
<td>1971</td>
<td>28</td>
<td>32</td>
<td>53</td>
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<td>1972</td>
<td>29</td>
<td>32</td>
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<td>1973</td>
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<td>1974</td>
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<td>1976</td>
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<td>33</td>
<td>58</td>
<td></td>
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<td>1977</td>
<td>29</td>
<td>33</td>
<td>54</td>
<td></td>
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<td>1978</td>
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<td>1979</td>
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<td>1985</td>
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<td>1987</td>
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<td>1988</td>
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<tr>
<td>1989</td>
<td>70</td>
<td>34</td>
<td>77</td>
<td>79</td>
</tr>
</tbody>
</table>

*For steers and heifers, the percentage of slaughter is based on federally inspected slaughter. 1989 data are preliminary for all classes of activity.


The Beef Sector

The consolidation in the beef sector during the 1980s was unparalleled in the history of the industry. Once structural change has occurred, it is likely to be irreversible -- at least in the short run.

1 Reference is to H.R. 5733, Meat Industry Act to Preserve Competition and to H.R. 7197, Small Business Preservation and Protection Act of 1980.
Nonetheless, it is instructive to understand what happened in beef, why it occurred, and to examine the merits of the change. The pork sector has not consolidated to date, but there are signs that this sector will experience in the 1990s something akin to what happened in beef in the 1980s. It is not, therefore, too late to encourage discussion of what the antitrust policy has been and what it ought to be in the 1990s.

The argument has been made that the massive consolidation in beefpacking and processing was a logical, perhaps predictable, response to the decreases in demand for beef which began in the late 1970s and continued throughout the 1980s (Purcell). During a period in which annual rates of overall price inflation reached 10 percent or more, consumers refused to pay higher prices for beef. The yearly average price of Choice beef at retail remained in a narrow range from $2.26 to $2.54 per pound between 1979 and 1988. When adjusted for inflation using the Consumer Price Index (1982-84 = 100), the prices paid by consumers dropped 30 percent across the 1979-88 period. With per capita offerings essentially constant, those massive price declines suggest significant declines in demand. Table 2 provides per capita consumption data and both nominal and deflated prices of Choice beef at retail. It was not until 1989 that the observed or nominal price for Choice beef at retail moved up. Even then, with the CPI advancing from 1.183 to 1.240, the deflated price declined in the presence of a 4.6 percent decline in per capita supply or per capita consumption.

Table 2. Per Capita Consumption and Price of Choice Beef at Retail, Actual and Deflated (CPI, 1982-84 = 100), 1970-1989

<table>
<thead>
<tr>
<th>Year</th>
<th>Per Capita Consumption (lbs. retail weight)</th>
<th>Retail Price (cents/lb.)</th>
<th>Deflated Retail Price (cents/lb.)</th>
<th>CPI</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>84.4</td>
<td>98.6</td>
<td>262.0</td>
<td>.388</td>
</tr>
<tr>
<td>75</td>
<td>88.0</td>
<td>154.8</td>
<td>287.7</td>
<td>.538</td>
</tr>
<tr>
<td>80</td>
<td>76.4</td>
<td>237.6</td>
<td>288.4</td>
<td>.824</td>
</tr>
<tr>
<td>81</td>
<td>77.1</td>
<td>238.7</td>
<td>262.5</td>
<td>.909</td>
</tr>
<tr>
<td>82</td>
<td>76.8</td>
<td>242.5</td>
<td>251.3</td>
<td>.965</td>
</tr>
<tr>
<td>83</td>
<td>78.2</td>
<td>238.1</td>
<td>239.0</td>
<td>.996</td>
</tr>
<tr>
<td>84</td>
<td>78.1</td>
<td>239.6</td>
<td>231.1</td>
<td>1.036</td>
</tr>
<tr>
<td>85</td>
<td>78.8</td>
<td>232.6</td>
<td>216.3</td>
<td>1.075</td>
</tr>
<tr>
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<td>78.4</td>
<td>230.7</td>
<td>210.4</td>
<td>1.096</td>
</tr>
<tr>
<td>87</td>
<td>73.4</td>
<td>242.5</td>
<td>213.4</td>
<td>1.136</td>
</tr>
<tr>
<td>88</td>
<td>72.3</td>
<td>254.7</td>
<td>215.3</td>
<td>1.183</td>
</tr>
<tr>
<td>89</td>
<td>68.9</td>
<td>265.7</td>
<td>214.3</td>
<td>1.240</td>
</tr>
</tbody>
</table>

Packers were caught in a vicious cost-price squeeze during the 1980s, especially early in the decade when demand problems at the consumer level were so acute. Part of the pressure was relieved by paying lower prices for slaughter cattle, but there was a limit to that potential source of relief. Lower prices will eventually push producers out of business, and the U.S. beef cow herd that had reached 45.7 million in 1975 was down to 33-34 million in the mid and late 1980s. In an effort to survive and protect their investment, packers moved aggressively to capture the economies of size in large-scale operations. This was the need that prompted moves to merge with or acquire competitors and to complete horizontal mergers.

Figure 1 demonstrates the powerful attraction. Based on Clement Ward's research, the cost curve suggests a modern plant killing 300-325 head of cattle per hour can complete that function for around $8.00 per head less than the plant killing 100 head per hour (Ward, 1988). For still smaller plants, the cost differential is even more impressive. The message was and is clear. When pressure on margins intensified, it was either "get big and get cheap or get out."
Ward’s work indicates there are comparable percentage reductions in costs in large fabricating facilities, and there is widespread belief there are significant, but to date essentially unmeasured, cost savings via multi-plant operations. Add the possibility of economics in merchandising and distribution and the “economics” of moving to a more highly-concentrated industry start to make a powerful argument. It is a tautology to suggest there had to be a reason for all the merger/acquisition proposals, and that reason appears to revolve around the pressures emanating from declines in demand and the opportunities associated with larger size operations.

Figure 2 offers indirect evidence that the consolidation did in fact make the packing/processing sector more efficient. From 1979 through 1988, the farm-retail price spread declined significantly when adjusted for overall price inflation (CPI, 1982-84 = 100). Early in the period, some of the cost reductions were undoubtedly due to adjusted wage scales as union contracts were widely renegotiated, but the declines in the spreads continued through the 1980s. The packers were either accepting a margin that consistently decreased, which is unlikely, or their costs were being reduced. Figure 3 suggests costs were in fact being reduced. Margins in the beefpacking business are highly variable, but the estimates prepared by the Helming Group suggest packer margins were improving, on average, in the 1985-1990 period. If margins were improving, then the reduced farm-retail price spreads had to come from reduced operating costs.

The accomplishments were important. If the farm-retail price spreads had increased with overall price inflation, the refusal of consumers to pay higher retail prices would have meant prices of cattle at the producer level would have been pushed still lower. It is relatively easy to infer that the consolidation, by capturing the economies of size, literally saved part of the beef industry. Without those increased efficiencies, the beef industry would be smaller at all levels and hold a smaller market share at the consumer level than is the case as we move into 1991.

The critically important question is still there, however. Should the consolidation have been allowed to reach the levels that have been achieved? It appears that economic benefits to the consolidation can be documented, but what about the costs? It could be that the costs are more abstract and harder to quantify, but they might significantly outweight the benefits. At a minimum, the issue needs to be raised and there is little evidence in the public record that Justice looked ahead to the long-run implication of that final round of decisions in 1987.
Figure 2. Deflated Farm-Retail Price Spreads for Beef, 1970-1989

Figure 3. Estimated Packer Margins (Slaughter plus Fabricating) by Months, 1982-1990

Source: The Helming Group, Research Department, Overland Park, Kansas
Many of the more obvious potential "negatives" associated with consolidation in beefpacking are identified in the book prepared for a national conference on this issue in Dallas in February of 1990 (Purcell). There is reason to be concerned about the viability of the small producer in an industry driven by needs for volume. There is reason to be concerned about the erosion of the base of negotiated prices, and there is -- at the least -- a great deal of uncertainty about the impact of captive supplies of slaughter cattle as the giant packers move to vertically-integrated operations and/or to contractual procurement of cattle. It is unfortunate that these questions and the related recommendations for a research agenda are being raised after the consolidation has occurred. But the potential costs may reach much deeper than have been discussed to date, especially when broad public or social costs are considered.

Among the costs that could accompany the consolidation are the social costs emanating from (1) the forced adjustments by private (often small) firms, (2) forced adjustments by public agencies, (3) the transfer or redistribution of exposure to price and market risk, and (4) a lack of progressiveness in research and development. All of these potential costs emerge with the market power that comes with large firm size and high levels of concentration.

In a changed industry, producers and small packers will have to adjust. A survey by the USDA, in cooperation with the American Farm Bureau, documented a startling decline in the number of market outlets available to livestock producers during the 1980s (Hogeland). Even relatively large cattle feeders report they may go a week or more without being contacted by a buyer. In a detailed intra-day data set accumulated by Ward during June of 1989, the feedlots in the major Southern Plains feeding area sold over 50 percent of their lots of cattle to the only buyer who had bid on them (Ward, 1990).

Private-sector firms are thus forced to adjust in an effort to locate or develop more market outlets. Small producers form coalitions to commingle livestock and generate truck-load lots of uniform quality. In the Southwest there was, during 1989 and 1990, an attempt to develop a producer-level cooperative to offer a cash contract to feedlots in competition with the contracts offered by the large packers. In effect, this was an attempt to generate a type of "countervailing power" to match or counter the power in the hands of the large buyers. The effort has now been abandoned, at least partly because cattle feeders were reluctant to get involved and to be identified with the effort.

Public agencies, such as the USDA's Federal-State Market News Service, are also forced to adjust to a changed industry structure. As cash contracting between cattle feeders and packers increased, the USDA put in place procedures to report the volume of contracting. The carcass-beef market became so thin that the USDA dropped carcass quotes in June of 1990, but the agency felt compelled to offer some sort of price series or value index to allow producers to judge what their cattle will be worth in a final-value context. A price index was developed and is being reported. These adjustments and changes are necessary to protect the sanctity of the information base but are made at public expense.

With the consolidation has come sufficient market power to allow the large packers to transfer exposure to price risk to someone else. IBP, Inc. (IBP), one of the three giant firms (Excel and ConAgra are the others) that dominate the packing/fabricating activities, announced in early 1990 what was essentially a "cost-plus" approach to pricing one of their most important boxed-beef offerings. In simple terms, the boxes delivered to customers on any particular day are priced based on earlier live cattle prices. IBP converts the live cattle prices they are paying to a boxed-beef equivalent, and then prices the boxes with a constant mark-up on a per head basis. There is no negotiation involved in the pricing process as buyers pay a formula price for the boxed beef.

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A project at Kansas State University, partly financed by the Research Institute on Livestock Pricing, will complete analysis in early 1991. Daily data at the feedlot level were collected across several months to help isolate the impact of captive supplies of cattle on price levels, bids, and the day-to-day elasticity of demand for slaughter cattle. A project at Oklahoma State University, partly funded by the National Cattlemen's Association, is developing and testing a "controlled experimentation" approach to the issue. We will eventually get measures on the impact of the captive supply issue that came with the industry consolidation, but it will all be after the consolidation was approved.
To the extent this approach is widely adopted, IBP and the other large firms will be essentially sheltered from price risk and price-related risks in the market system. If live cattle prices are being bid up, IBP passes on those increases to the buyers of their boxed beef. There is no negotiation of the price of the boxes, and the buyer absorbs the increases. If, on the other hand, beef is struggling at retail and prices have to be decreased to move available quantities, IBP will attempt to pass the full impact of the reduced bids from the retailer down to the cattle producer. IBP, and investors in IBP, absorb none of the risk associated with price and market variability. The only constraint is that IBP has to be competitive in buying cattle and, within limits set by their ability to differentiate their product and service, on the boxed beef going to their buyers.

Only a large and powerful firm can “announce” what amounts to a cost-plus pricing program and make it happen. If this pricing program had been in place during the 1980s as demand for beef declined, the short-run implications would have been still lower prices to producers. Over time, more producers would have been forced out of business and the longer run costs would have been transferred to the consumer in the form of reduced product supplies and higher prices. The fixed margin protects the investment in packing facilities and avoids the exposure to reduced returns, even periodic losses, that might otherwise occur. Clearly, there should be widespread interest in the changed behavior that comes with consolidation. Consumers have a stake that, in the long run, may be just as compelling as the obvious interests and concerns at the producer level.

Related, one of the measures of performance in the S-C-P approach has been the “progressiveness” of the sector. Is there a significant reinvestment in the long-run viability of the industry? Are expenditures on research and development sufficient to keep the beef industry competitive? These and other indicators of progressiveness are seen as important measures of market performance.

During discussion surrounding the acquisition of Swift Independent by ConAgra in 1987, the argument was made that large size financial prowess was needed to allow needed research and development to be done. What is now being done by the large firms is proprietary in nature, but virtually every informed observer of the beef sector laments the continued lack of effort in product and market development. The three large firms are largely specializing in commodity production, and are supplying boxed beef to a second tier of smaller firms that is doing much of the value-added, further processing. Hormel, Oscar Meyer, Swift-Eckrich, and Sara Lee are among this group of firms. It is this latter group of firms that is doing the product development work, but they are not the firms with the “financial prowess” that was used as a reason for the mergers and acquisitions in 1987.

Representatives of this group of smaller firms have conceded in public forums that not nearly enough is being done in the product development area. With the notable exception of the industry-wide move to close fat trim in the 1988-89 period, fresh beef products in the supermarket are offered much as they were offered 20 years ago. Consumers and what they need and want have changed markedly, but the product has not. There are no nutritive levels on most cuts, no close control of portion size, and no widespread use of brand names that might accentuate the concerns over quality control. The industry, in early 1991, some four years after the last round of mergers, does not get high marks for progressiveness. The lack of progressiveness constitutes a cost to the industry, to consumers, and to society in general, and this cost could be large and have long-term ramifications.

An Overall Assessment

What has happened in the beef sector may happen next in pork or other food products. Massive consolidation like that seen in beef in the 1980s occurs for a complex set of reasons, but the primary catalyst was apparently the sharp decreases in demand. What occurred, it can be argued, is one logical response to an economic shock that was assuredly going to elicit some type of response.

In moving to a highly-concentrated structure in search of the benefits of economies of size, the response in the beef sector pushed antitrust policy and its enforcement into the limelight. As the industry moved toward four-firm concentration ratios as high as 80 in boxed beef activity, the Justice Department allowed the consolidation to happen. The Supreme Court sanctioned those decisions at Justice, overturning a lower court decision that had blocked the acquisition of Spencer
Beef by Excel on the grounds that the acquisition would reduce competition. Very quickly, it was the economic efficiencies that were of primary importance. The marketplace, it was argued, could take care of itself and would naturally insure that adequate competition would exist. The Chicago School of economic thought argued that new firms could and would enter to grab any excessive profits, restore competition to the marketplace, and then exit without suffering significant losses. Questions and concerns over what has happened have arisen primarily on an after-the-fact basis.

The long-used S-C-P paradigm has essentially been discarded, and that may be a serious mistake. With the concentration in the beef sector has come some of the performance problems that the S-C-P model would predict. Any measure of progressiveness would suggest that important function is lagging badly in beef, and the future economic viability of the sector is accordingly at risk. With the emergence of giant firms and the corollary market power has come integrated and vertically coordinated ways of doing business that are new and different. Adjustments are being forced on both private firms and public agencies that serve the sector, and there are costs—both private and public—that may not have been considered by Justice and the courts as the rulings of the 1980s were being considered. As recently as early 1990, there is a move by one of the three giant packers toward cost-plus pricing that has the potential to transfer exposure to price and market-related risk to the producer in the short run and to the consumer in the long run. There is no evidence in the public record that the Justice Department either anticipated or considered the implications of captive supplies of cattle, of cost-plus pricing, and the implications to the observable base of negotiated prices as transactions are internalized and treated as proprietary.

During the 1990s, as similar issues arise in pork and other food sectors, all the costs associated with mergers and acquisitions need to be considered. Johnson, et al suggested that both plant and multiplant economies of scale can account for, at most, half of the increase in beefpacker concentration since the mid-1970s (Johnson, et al, p. 86). Even if that assessment is low, it raises a pertinent question, one that will demand more attention than it has been given: Why was the consolidation allowed to run so far with so little apparent consideration of the negatives and costs that could come with that consolidation?

The Justice Department issued a revised set of "merger guidelines" in 1984. In essence, the guidelines dictate that any proposed merger or acquisition will be more closely scrutinized as the level of concentration moves above preset thresholds. The guidelines use the Herfindahl index rather than the 4-firm concentration ratio, and the Herfindahl index puts even more importance on very high levels of concentration. The ABA Task Force applauded this position, and called for strict enforcement of the guidelines when mergers are being proposed.

In the deliberations of the 1980s, however, there were two apparently large loopholes that allowed mergers and/or acquisitions to slip through. One revolves around the issue of how to define a market, and the second revolves around the notion of freedom of entry.

Economic analysis is more nearly an art than an exact science. If one searches far enough, it is possible to find some piece of analysis by someone that will show very large and positive cross elasticity parameters for the various meats. Such results argue that the meats are nearly perfect substitutes. That conclusion reduces any concerns over higher levels of concentration in beef. It is, instead, the levels of concentration in a post-merger context in all meats that is presented as being important. When the concentration in beef is spread across all meats, the concentration may not be at worrisome levels, the thresholds in the '84 Merger Guidelines are not being violated, and Justice sees no "enforcement" issue. A merger that pushes concentration in the beef sector to unprecedented levels is not blocked because of the way the market is defined.3

3 In personal conversations with Justice Department attorneys during 1987, I heard the argument that the market was not even "all meat" but was "all sources of protein." If you define the market to include cheese, dry beans, and other sources of protein, the consolidation in the boxed beef sector is virtually eliminated in 4-firm concentration ratios or in the Herfindahl index measures. How important such arguments were in the final decisions at Justice is not clear, but the arguments about defining the market in much broader terms than beef were being made during those deliberations.
There is increasingly a set of research literature that runs in the opposite direction. An example is the work by Eales and Unnevehr. They found that individual cuts of beef or chicken may be separate products insofar as consumer preference patterns are concerned. Thus, different cuts of beef are less than perfect substitutes for each other. Such findings suggest the relevant market is not "all meat," and certainly is not all sources of protein.

Broad application of the "freedom of entry" rule will also allow many mergers to slide through. It is true that there are no totally formidable barriers to entry in beefpacking in the form of patents, control of a critical raw material, brand names in fresh beef, etc. But it is also the case that a gigantic capital investment would be required to compete at the IBP, Excel, and ConAgra levels in boxed-beef production and distribution. In an industry that has been described as "mature" and which has clearly faced demand problems, is an investment of that magnitude likely? If not, then where is the protection against the exercise of monopoly power in the freedom of entry argument advanced by the Chicago School of thought? It would appear that profit margins or other measures of monopoly power would have to reach crisis levels before the outside investment, at the magnitude needed, would be attracted. But the literature leaves no doubt that the freedom of entry issue was a significant criterion in deliberations on mergers and acquisitions during the 1980s. There was present the thought that new firms would and could appear, take advantage of any excess profits, and thus provide the needed safeguards against monopolistic exploitation.4

All these and related issues will emerge time and again in the 1990s. It is critically important that researchers and livestock industry leaders appreciate the importance of this issue and get involved in the analysis and related dialogue that will help to guide a changing antitrust policy. The very existence and survival of that somewhat abstract entity called a competitive marketplace may be at stake in some sectors of the livestock industry.

4 As the final decisions were being made at Justice in 1987, there was a tendency for Justice to see the entry of Rocco in the slaughter lamb sector as evidence in support of their free entry arguments. Lamb slaughter is also highly concentrated. Rocco, a very successful poultry integrator, started a lamb slaughtering business in northern Virginia. Before the end of the decade, however, Rocco had abandoned the effort after experiencing significant losses across 2-3 years of operation.
Selected References


