INTRODUCTION & FINDINGS

- Existing literature related to conspiracy in auctions focuses on bidding rings (e.g., McAfee and McMillan 1992; Porter and Zona 1993; Porter and Zona 1999; Deltas 2002; Phillips, Menkhauw and Coateyn 2003; Porter 2006 and Hendricks, Porter and Tan 2008).
- Bidding rings include competitors directly involved in the auctioning process.
- The economics literature has not considered whether or not members of a known buyer collaboration exhibit collusive behavior outside the auction.
- Buyer collaborations are formed when subsets of principal purchasers, either jointly or independently, share a common agent. In this study the common agent bids on behalf of the collaborators not present at the auction.
- Our research discusses some important elements for evaluating common agency and its collaborative behavior.
- Thus far, our preliminary findings and interpretations of available evidences indicate that an allegation of agreement among competitors is justified, thus undermining conscious parallelism and their favoritism.
- Furthermore, it is most likely the case that the principals intentionally reduce competition through collaboration.
- Regardless of conspiracy, the empirical results indicate that the collaboration resulted in an antitrust injury by lowering prices paid to sellers.

PRIMARY ANTITRUST CONCERNS

1. Unilateral price depression via decreasing the number of competitors (Antitrust Guidelines for Collaborations Among Competitors, 2000; bid rigging literature).
2. Exclusionary conduct by an advantaged competitor that reduces competition (Antitrust Guidelines for Collaborations Among Competitors, 2000; Bikhenchandani 1988; Klemperer 1998; and Rose and Kagel 2008).
3. Collusion among collaborators to obtain the benefits and or 2 above (Bernheim and Whinston 1985, 1986; Antitrust Guidelines for Collaborations Among Competitors, 2000; Dick 1996; and Eckbo 1976).

PROCOMPETITIVE JUSTIFICATION: Efficiency gain by small firms to compete against large firms (Brown Shoe Co. v. U.S., 370 U.S. 82 S.Ct. 1502)

BACKGROUND & ANALYSIS SETTING

- Common agency has a long history and remains pervasive throughout the cattle industry.
- During 2006, 3,883 common agents, such as registered commissioned cattle order-buyers and dealers operated an annual volume of $4.5 billion dollars and $2.1 billion totaling on average $26.4 billion in livestock (United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 2008 Annual Report: Packers & Stockyards Program, 2009, Washington, D.C. March 1, 2009).
- Commission order-buyers are by nature common agents paid on a flat $ per unit purchased.
- Dealers, though allegedly principals themselves, receive multiple resale offers from principal purchasers.
- Complaints by the industry that common agency reduces competition, especially in already highly concentrated markets (United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration. Assessment of the Cattle, Hog and Poultry Industries Calendar Year 2004, Washington, D.C. April 2005).
- The setting for our research is a cull cow auction market located in the Midwest from October 4, 1999 through January 26, 2000 representing 7722 separate transactions.
- The market consists of a single common agent (commission order-buyer) representing three principal (2 packers and 12 buying firm) and a competitive fringe. The common agent purchased nearly 75% of the market.

VI. COUNTER ARGUMENTS AGAINST CONSPIRACY ALLEGATION

1. Collaborators are not competitors based on different preferences (Hennessey, 57 Agric.Dec. 1432 (1998)).
2. Competing collaborators know they have hired an agent in common but make independent purchasing decisions. Suspicous behavior such as equal market shares among competitors found in this study are a result of
   - Common agent independently controls and distributes purchases based on cattle types non-cooperatively preferred by principals.
3. Smaller variance in collaboration market shares is a result of common agent independently controlling distribution based on cattle types preferred by principals.
4. Unilateral incentive to form buying collaboration is a non-cooperative result based on expected efficiency gains from hiring a common agent.
5. Seeking efficiency by hiring common agents is not intended to result in lessening competition.
6. Government sanctioning of common agency (P&R Act 1921, as Amended).

VII. EMPIRICAL EVIDENCE FOR NON-COOPERATIVE OUTCOMES

1. Empirical evidence suggest that common agent fits the cattle to individual principal preferences (See Within Collaboration Market Share Analysis).
   - Heterogeneous buy-orders examined over long periods of time may result in equal market shares when the degree of separation between preferences does not result in one principal purchasing solely in the fails of the joint distribution of input characteristics.
   - This result also supports a finding that collaborators are competitors.
2. Empirical evidence suggests there is an unilateral incentive to non-cooperatively hire a common agent (See Empirical Bidding Agent Results).
   - Collaboration increases bidder concentration, thus reducing prices paid.
   - Collaborator’s common agent pays less than rival bidders.

Market Share Results Summary

1. Common agent adjusts collaborators market shares based on deviations in cattle characteristics delivered.
2. Deviation in prices paid (SPPrinDev) by collaborators does not impact purchase distribution.

Empirical Bidding Agent Model & Results

VIII. SUMMARY OF ARGUMENTS AND CONCLUSIONS

- The act of hiring an agent whose widely known business is to represent multiple principals establishes a ‘meeting of the minds’ among those who hire them.
- Absent evidence to substantiate preferences result in equal market share, there is a strong argument that collaborators have agreed to equal market shares.
- Strongest counter argument to conspiracy is that seeking efficiencies through government approved common agents is not per se illegal. As such, courts and enforcement agencies will likely evaluate the agreement under a rule of reason analysis (Antitrust Guidelines for Collaborations Among Competitors, 2000).
- From the empirical findings, common agency facilitates a reduction in competition at auction which in turn provides the means to deter defection from either collaboration or conspiracy.
- Anticompetitive effects of common agency, such as the reduction in the number of bidders and the creation of an advantaged bidder, are independent of conspiracy.
- Foreclosing the use of the common agent in the current analysis is expected competition.