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What Have We Learned so far from the On-going Cattle and Beef Antitrust Litigation?

Track Session

"Market Power in the Cattle and Beef Packing Industry"

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Presentation Outline

- Class action **antitrust lawsuits** filed by fed cattle producers and beef buyers **against the four largest beef packers**
 - Allegations of **an illegal exercise of buyer and seller market power** by the four largest beef packers (i.e. **input and output price-fixing cartel**) **beginning in January 2015**
- The beef packing **industry characteristics and business methods facilitating collusion**
 - Market structure and fed cattle marketing arrangements
- The beef packing **industry conduct and performance**
 - The **plaintiffs** (fed cattle producers and beef buyers) **perspective**
 - The **defendants** (the four largest beef packers) **perspective**
- **Settlements** reached so far

On-going Cattle and Beef Antitrust Litigation: Alleged Input and Output Price-Fixing Cartel

- In 2019, **fed cattle producers and beef buyers** at the wholesale and retail levels filed class action **antitrust lawsuits against the four largest beef packers**: Tyson, JBS, Cargill, and National Beef
- The plaintiffs alleged that these **beef packers engaged in an illegal input and output price-fixing conspiracy (cartel) as early as January 2015**
 - To **decrease fed cattle prices** paid to fed cattle producers below the competitive level -> Allegations of **illegal exercise of buyer market power**
 - Lower input (fed cattle) prices for beef packers
 - To **increase wholesale and retail beef prices** paid by buyers above the competitive level -> Allegations of **illegal exercise of seller market power**
 - Higher output (beef) prices for beef packers
 - In order to **increase the meat (farm-to-wholesale) margin and their profit**

On-going Cattle and Beef Antitrust Litigation: Alleged Input and Output Price-Fixing Cartel (cont.)

- The **plaintiffs claim** that the **four largest beef packers violated Section 1 of the Sherman Antitrust Act (1890)**
- **Section 1 prohibits contracts, combinations, and conspiracies** in [unreasonable] restraint of trade in interstate commerce
 - **Price-fixing agreements** aiming to **affect product quantities and/or prices are the most damaging** in terms of market effects
- **Fed cattle producers and direct beef buyers** aim to recover **treble damages** under the **Clayton Act**, a federal law
 - **Three times the underpayment** for fed **cattle producers**
 - **Three times the overcharge** for **beef buyers**
- **Indirect beef buyers** aim to recover **damages under the state antitrust laws** in the states where these laws exist
 - **One to three times the overcharge**

Industry Characters Facilitating Collusion: Structure and Concentration

- The beef packing **industry is highly concentrated**
- The industry is **oligopsony in the input** (fed cattle) **market** and **oligopoly in the output** (beef) **market**
- CR4 in fed cattle slaughtering (input market) is 85%: **Oligopsony**
 - **Buyer market power** over the **input** (fed cattle) **price and quantity**
- CR4 in beef marketing (output market) is 80%: **Oligopoly**
 - **Seller market power** over the **output** (beef) **price and quantity**
- *CR4 is the combined market share of the four largest firms in the industry (beef packers)*
- ❖ **If CR4 > 75%, industries are assumed to be conducive to collusion and raise significant competition concerns (illegal exercise of market power)**

Business Practices Facilitating Collusion: Fed Cattle Marketing

- **Spot (cash) market** (for example, a local livestock auction)
- **Forward contracts:** The contract fed cattle price is tied to the CME live cattle futures price
- **Formula contracts:** The contract fed cattle price is tied to the spot market price (reported by USDA)

Recent trend

- **The share of fed cattle sold in the spot market decreased** from 55% in 2004 to 23% in 2019
- **The share of fed cattle sold using forward and formula contracts increased** from 31% in 2004 to 70% in 2019
- ❖ **The increasing use of forward and formula contracts may potentially allow beef packers to manipulate the spot market to decrease spot prices in order to decrease contract prices paid to fed cattle producers**

Alleged Input and Output Price-Fixing Cartel: Coordinated Supply Restraints

The plaintiffs argue that **coordinated supply restraints** were the **primary method of implementing this price-fixing conspiracy**; The beef packers:

1. Periodically **reduced fed cattle slaughter rates at their processing plants**
2. **Decreased quantities of fed cattle purchased in the spot market**
3. **Coordinated their fed cattle purchasing practices in the spot market**
4. (2) and (3) led to a **decrease in the spot cattle prices, which caused cattle prices in forward and formula contracts to decrease**
5. Simultaneously **closed and/or underutilized the beef processing plants**
6. **Imported foreign cattle at a loss to reduce domestic demand**

Beef Packing Industry Conduct and Performance: The Plaintiffs' Perspective

- The beef packing industry behaves as **an imperfectly competitive industry** exercising **buyer market power in the input (fed cattle) market** and **seller market power in the output (beef) market**
- **The theoretical framework is a Marketing Margin Framework (incorporates seller and buyer market power of beef packers)**

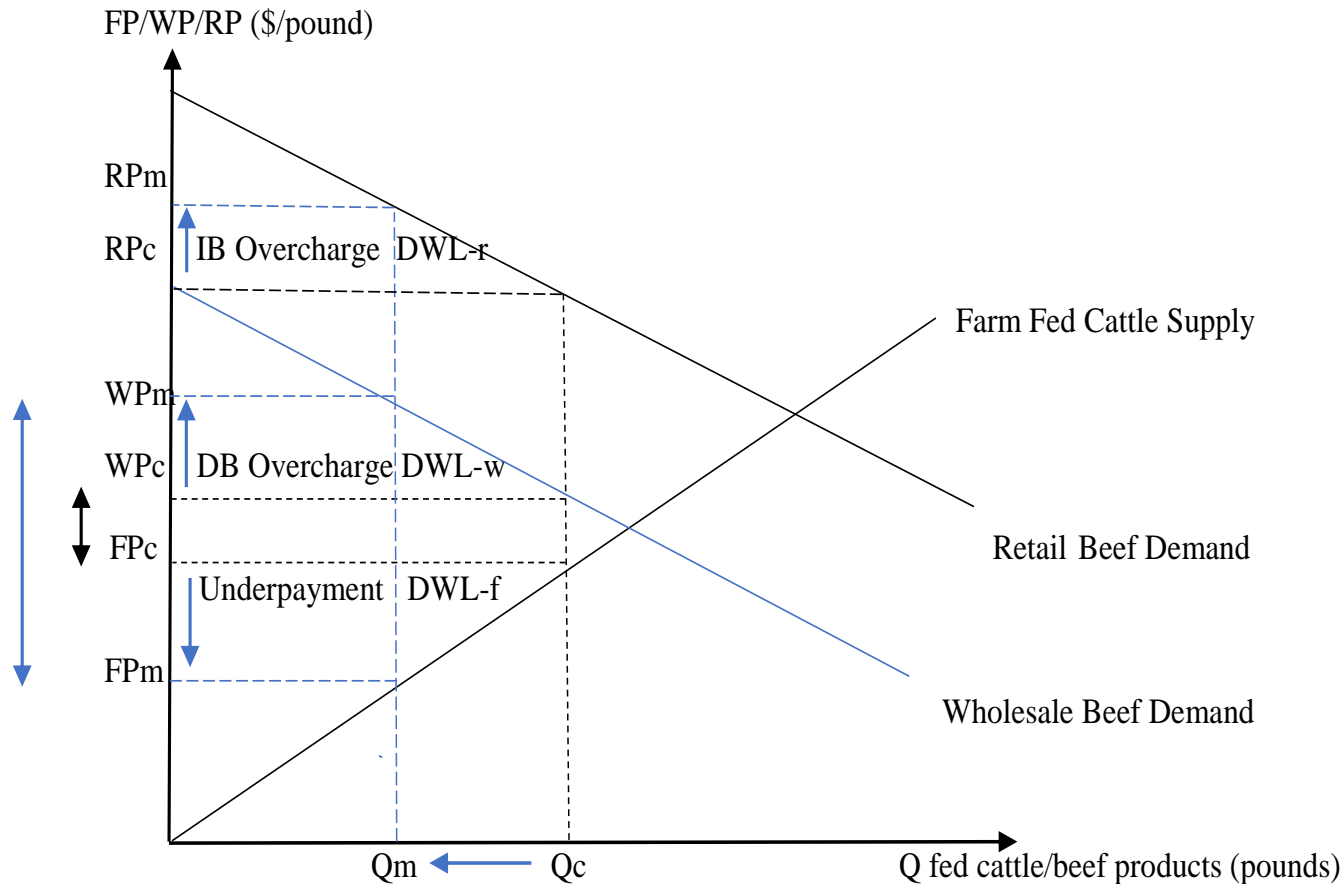
Two scenarios on the graph (next slide)

- **A competitive industry scenario** [absent the cartel: for example, before the cartel]
- **A generic market power (cartel) scenario**

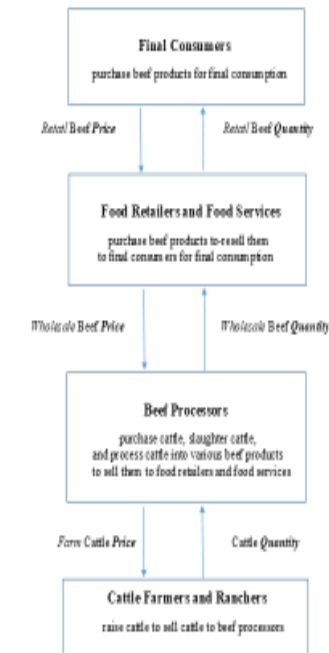
Logic

- Q cattle/beef decreases due to the cartel (less competitive market structure), Farm Cattle Price decreases, Wholesale and Retail Beef Prices increase, Farm-to-wholesale margin (and profit) of beef packers increases
- Fed cattle producers are underpaid and beef buyers are overcharged

Beef Packing Industry is an Imperfectly Competitive Industry: Plaintiffs' Perspective



Beef Supply Chain



- FP, WP, and RP are farm price, wholesale price, and retail price; Q is fed cattle and beef quantity
- Subscript "C" indicates a competitive industry scenario (absent the cartel: for example, before the cartel)
- Subscript "M" indicates a generic market power scenario -> "cartel scenario" (a less competitive industry)

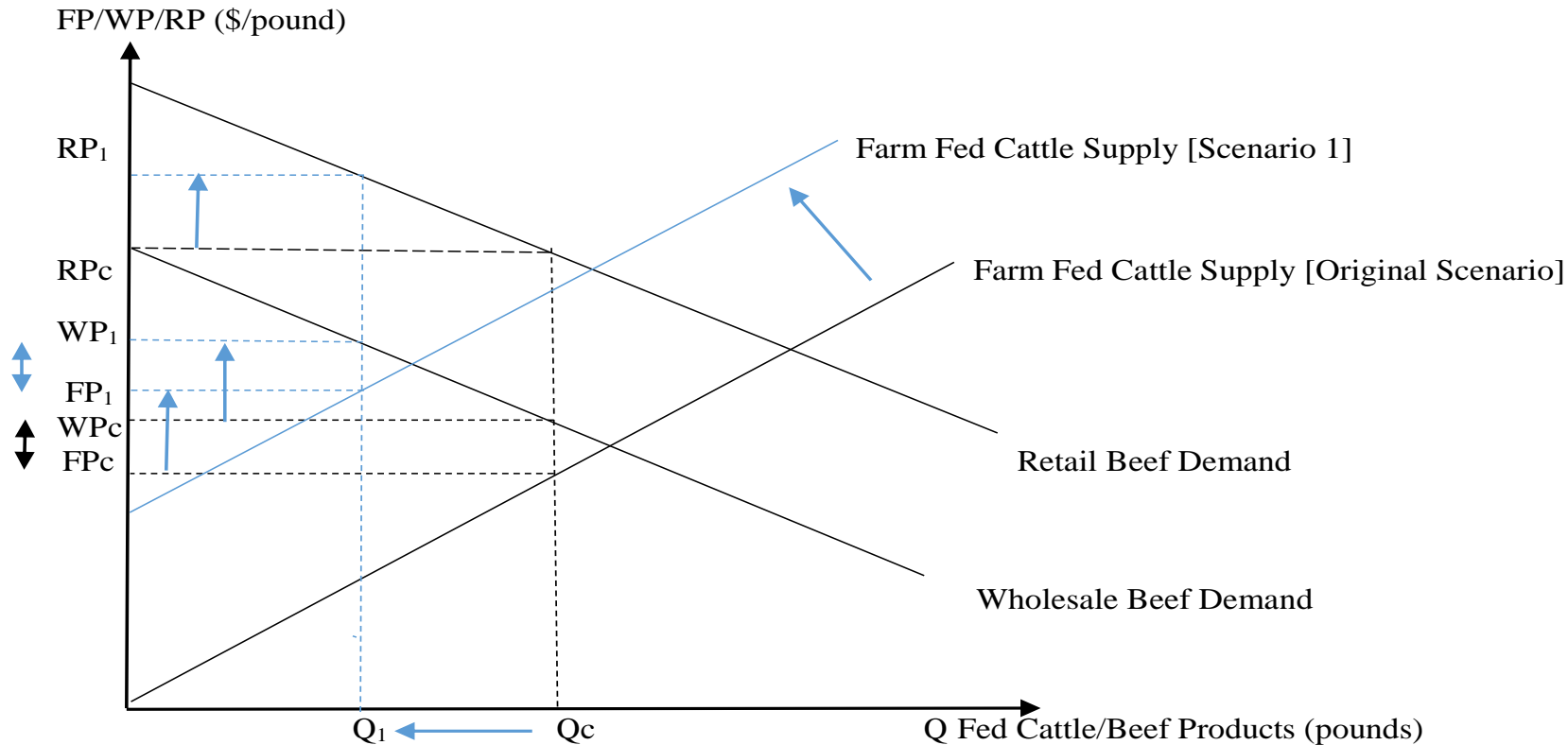
Beef Packing Industry Conduct and Performance: The Defendants' Perspective

- The beef packing industry behaves as a **competitive industry decreasing fed cattle quantities purchased and beef quantities produced in response to increasing fed cattle prices**
 - **Due to decreasing fed cattle inventory affected by the weather (drought)**
- *The fed cattle price is a variable cost component for beef packers*
- *Shift of the fed cattle supply curve on the graph (next slide)*
- *Fed cattle supply curve = Marginal Cost curve for beef packers*

Logic

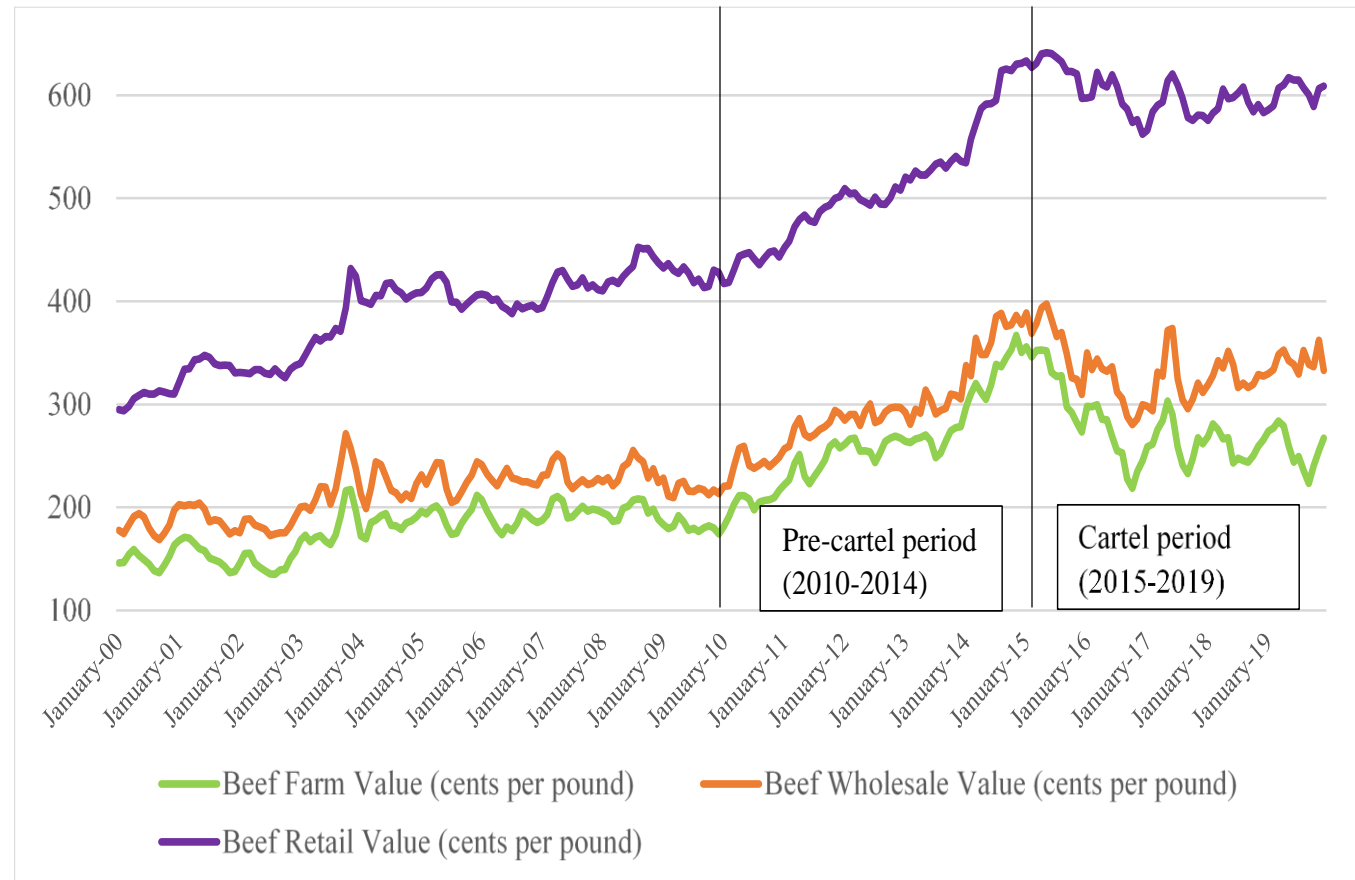
- Increasing fed cattle prices cause fed cattle quantity purchased and beef quantity produced to decrease and beef prices to increase
- Beef packers have to pass the fed cattle price increase on the beef buyers in the form of higher wholesale and retail prices (must decrease cattle/beef quantity to maintain the original profitability level)

Beef Packing Industry is a Competitive Industry: Defendants' Perspective



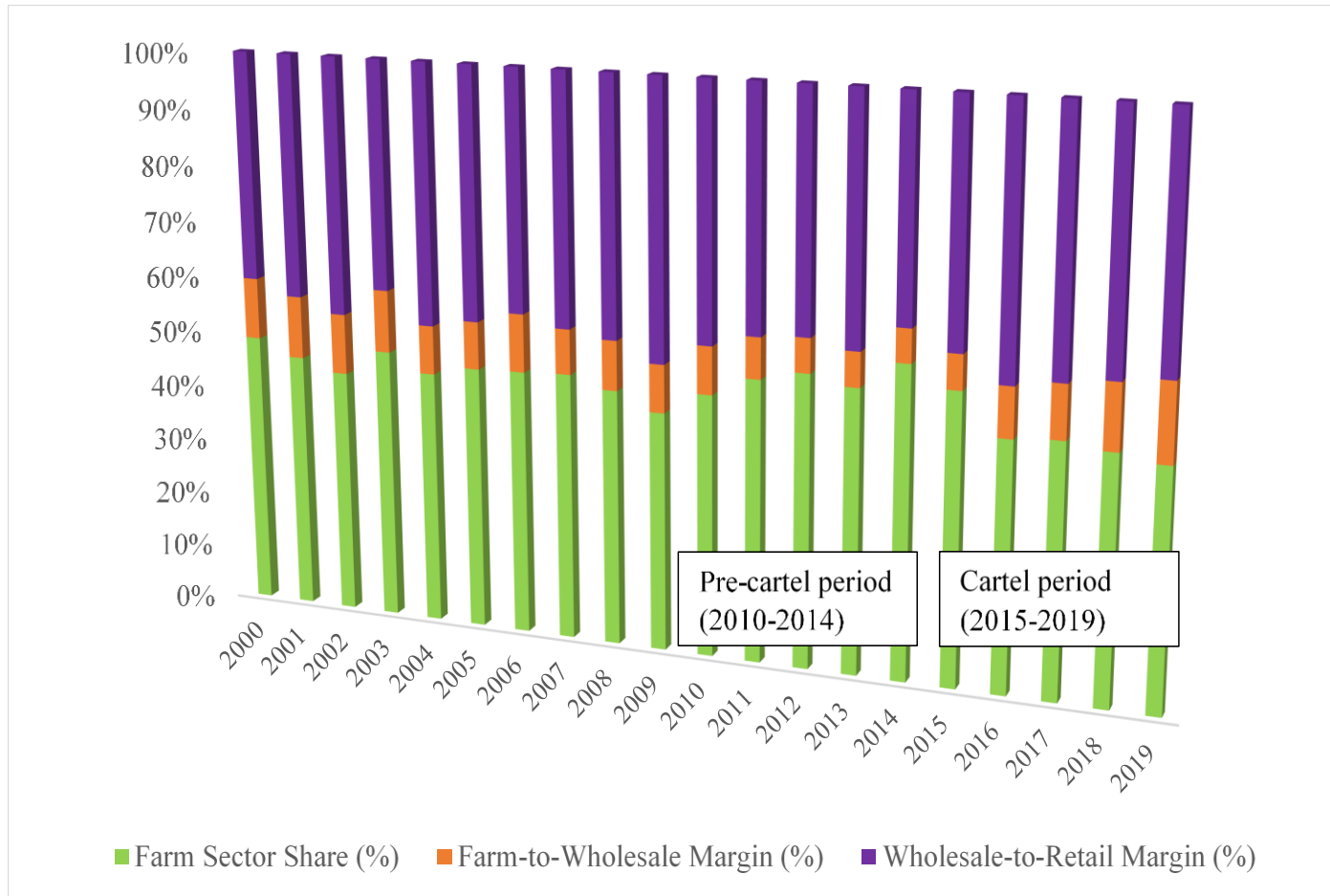
- FP, WP, and RP are farm price, wholesale price, and retail price; Q is fed cattle/beef quantity
- Subscript "C" indicates the original scenario [prior to increasing fed cattle prices]
- Subscript "1" indicates a new scenario [Scenario 1] with increasing fed cattle prices

U.S. Monthly Farm, Wholesale, and Retail Values of Beef (Proxies for Beef Prices), 2000-2019 [*Source: USDA Economic Research Service*]



U.S. Yearly Farm Sector Share, Farm-to-Wholesale Margin, and Wholesale-to-Retail Margin Expressed as a Percentage of the Retail Value of Beef, 2000-2019

[Source: USDA Economic Research Service; measures are calculated by the author]



Market Power and Legal [Antitrust] Issues

- Seller and buyer **market power is not illegal**
- The industry (firms) **conduct and performance that are consistent with the theoretical model of seller and/or buyer market power are not illegal**
- **The exercise of market power is illegal when illegal business methods are used** to exercise market power
- Example: firms (who are supposed to be competitors) form a price-fixing cartel that violates Section 1 of the Sherman Act
 - **Oligopolists (oligopsonists) aim to act as a single monopolist (monopsonist) to increase their *joint* profit**
- **Price-fixing agreements can be written, verbal, or inferred** from the firms' conduct

Market Power and Legal [Antitrust] Issues (cont.)

- To prove **violations of Section 1 of the Sherman Act**, plaintiffs must show the **presence of a price-fixing agreement among defendants**
- The **existence of price-fixing agreements is very challenging to prove in court** because a **direct evidence** of these agreements is **usually not available**, and **circumstantial evidence must be used**
 - **Plus factors:** the **industry structure and characteristics**, as well as **business methods** used by defendants that **facilitate and/or indicate collusion**
 - **Parallel conduct:** defendants' **parallel pricing** and/or **parallel output reductions** that might point out to the existence of the agreement
- **Direct evidence:** witnesses (challenge: to show the credibility of evidence provided by them)
- ❖ Typically, the **lawsuits involving price-fixing are settled** and do not go to trials
- ❖ In their settlement agreements, **defendants do not admit to any wrongdoing**

Settlements Reached: JBS

- **2022: \$52.5 million settlement with direct buyers of beef**
 - Buyers who purchased beef directly from JBS
 - <https://beefdirectpurchasersettlement.com/>
- **2023: \$25 million settlement with indirect buyers of beef (commercial and institutional buyers)**
 - Buyers who purchased beef indirectly from JBS, for example from a beef wholesaler who is not a defendant, but who had purchased beef for re-sale from JBS
 - <https://www.beefcommercialcase.com/>
- **In its settlement agreements, JBS does not admit to any wrongdoing**

For More Information

- Bolotova, Y. 2024. **“Market Power in the U.S. Beef Packing Industry (Case Study)”** *Applied Economics Teaching Resources* 6(1)
<https://www.aetrjournal.org/volumes/volume-6-2024/volume-6-issue-1-january-2024/case-studies/market-power-in-the-us-beef-packing-industry>
- Bolotova, Y. 2023. **“Is there Price Fixing in the U.S. Beef Packing Industry?”** *Choices*, 4th Quarter
<https://www.choicesmagazine.org/choices-magazine/submitted-articles/is-there-price-fixing-in-the-us-beef-packing-industry>
- Bolotova, Y. 2022. **“Competition Issues in the U.S. Beef Industry”** *Applied Economic Perspectives and Policy* 44(3)
<https://onlinelibrary.wiley.com/doi/abs/10.1002/aep.13179>

Questions ???

Comments ...

Thank You

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