

April 6, 2020

Honorable Mike Lee
Chairman
Senate Judiciary Subcommittee on Antitrust,
Competition Policy, and Consumer Rights
361A Russell Senate Office Building
Washington, DC 20510

Honorable Amy Klobuchar
Ranking Member
Senate Judiciary Subcommittee on Antitrust,
Competition Policy, and Consumer Right
425 Dirksen Senate Building
Washington, D.C. 20510

Dear Chairman Lee and Ranking Member Klobuchar:

I write to request the Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights hold a public hearing to examine claims of price manipulation, collusion, restriction of competition, price gouging, or other unfair practices within the current structure of the beef meatpacking industry.

Beef production is the largest sector of agriculture in Nebraska. We feed and market more than 4.7 million cattle each year. Nationwide, there are more than 913,000 total cattle and calf operations, a majority of which are family-owned and operated. In the past year, family cattle operations have faced volatile markets and a widening of the spread between the price received for cattle and the boxed beef price, which has caused a number of Nebraska cattle producers to question the integrity of cattle markets.

Recently, the COVID-19 pandemic has highlighted this disparity. We've seen dramatic price swings in the cattle market that have negatively impacted producers' bottom lines while prices that packers receive for boxed beef have increased.

In just seven days during March, the daily boxed beef cutout jumped 25 percent. Specifically, on Monday, March 16, USDA-LMR's Choice boxed beef index closed at \$224.36, up \$16.22 from Friday, March 13, while the Select index rose \$14.73 at \$216.71. Both were record gains. The single highest daily cutout gain previously recorded was the Select index's gain of \$12.62 on October 13, 2003.

Meanwhile, cattle prices have sharply declined during the COVID-19 pandemic. The CME Live Cattle Futures April Contract closed at \$126.775/cwt on January 24, 2020, the date of the first U.S. COVID-19 case. As of April 3, 2020, the CME live cattle futures April contract closed at \$88.325/cwt. This is a 30 percent decline in the live cattle futures contract over a period that included record increases in the boxed beef cutout price.

While boxed beef prices have since declined slightly from their peak in March, many producers have been left wondering why they have been taking losses as packer and retailer margins have increased. Their concerns are exacerbated due to the fact that this is the second time in the last 12 months that producers have had to bear the brunt of a major market disruption. In August of 2019, cattle producers faced a similar situation when a beef processing plant in Holcomb, Kansas, caught fire and sent the markets into a tailspin. Boxed beef prices jumped \$23.83 in the two weeks after the fire, while fed and feeder cattle markets moved in the opposite direction.

In response to the fire, USDA Secretary Sonny Perdue directed USDA's Packers and Stockyards Division to launch an investigation into beef pricing margins to determine "if there was any evidence of price manipulation, collusion, restrictions of competition or other unfair practices." While I support that investigation and await the results, it has become clear we as lawmakers must do our duty to investigate allegations of wrongdoing under the authorities and congressional intent set forth by the Packers and Stockyards Act (PSA) to ensure cattle producers have a fair chance in the marketplace.

The PSA is critical in guarding against anticompetitive behavior and assuring fair trade practices for farmers and ranchers, assuring they are receiving the true market value of their livestock. As has been established by decades of case law, a key purpose of the PSA is "to [prevent] or [correct] the monopolistic practices in the livestock industry"¹ to "promote the flow of commerce from the ranges and farms of the West."²

I would urge the subcommittee to first examine the allegations of price manipulation following the Holcomb fire and amid the onset of COVID-19 pandemic. Secondly, the subcommittee should evaluate the larger question of market concentration in the meatpacking industry, along with the Department of Justice's antitrust law enforcement authority and its recent actions to address livestock issues. I believe it is important that cattle producers are able to bring forth specific allegations of price manipulation and anticompetitive behavior so that Congress, the USDA, and the Department of Justice can thoroughly investigate.

Thank you for your consideration of this request. I look forward to continuing to work with the committee to ensure that our nation's cattle producers are participating in a fair and competitive marketplace.

Sincerely,



Deb Fischer
United States Senator

¹ *Glover Livestock Comm'n Co. v. Hardin*, 454 F.2d 109, 111 (1972)

² *Stafford v. White*, 258 U.S. 495, 516 (1922).