

Testimony of  
**The Honorable John Thune**

August 23, 2002

Congressman John Thune  
Senate Judiciary Committee

Hearing on Ensuring Competitive and Open Agricultural Markets: Are Meat Packers Abusing Market Power  
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Thank you, Mr. Chairman, for allowing me to testify today on the lack of competitive and open agricultural markets. As South Dakota's lone Member of the House of Representatives, I want to welcome you. The farmers and ranchers of this state appreciate your willingness to come to South Dakota to hear from them.

South Dakota producers tell me they want closer scrutiny of large agribusiness mergers. I understand why. Farming, food processing and food retailing industries are moving toward fewer and larger operations. Vertical integration, such as ownership or tight control of more than one phase of production and marketing by a single firm, is more common. Agri-businesses, such as seed, chemical, transportation and biotechnology companies are also consolidating.

The agricultural marketplace has changed rapidly in recent years. As Members of Congress, it is our job to protect those who provide food for our country and the world. As I travel South Dakota talking to producers, I hear the concerns about the choke-hold big business has on family farmers. In conversations with lawmakers, I have proposed that Congress thoroughly examine existing antitrust statutes, and consider how those statutes are being applied and whether agencies and courts are following the laws according to congressional intent.

There are laws on the books that prohibit monopolistic or anti-competitive practices. The very purpose of our antitrust statutes, namely the Sherman Act and the Clayton Act, is to protect our suppliers from anti-competitive practices that result from market dominance. Unfortunately, these laws are failing our family farmers and are not preventing such activities from occurring. Congress needs to do more to stop anti-competitive practices.

South Dakota farmers and ranchers have been a catalyst for legislative proposals to defend agricultural producers in this changing marketplace. I have worked with them to develop a four-point plan to foster more competition for South Dakota farmers and ranchers through country of origin labeling, banning packer ownership of livestock, modifying our antitrust laws, and increasing spot market purchases.

H.R. 1121 The Country of Origin Meat Labeling Act

As you know, the 2002 Farm Bill included country of origin meat labeling legislation. This provision starts a two-year voluntary program to label beef, pork, lamb and other agricultural commodities. At the end of two years, this program will become mandatory. Throughout my tenure in Congress, I have worked for country of origin labeling because I believe that our producers will be better able to compete in both the United States and across the world with an USA label. I am happy that I was able to convince the House farm bill conferees to agree to this provision in the final version of the farm bill. Our farmers and ranchers raise the highest quality products in the world and need to be recognized with the "Made in the USA" label.

#### H.R. 3810 The Livestock Ownership Fairness Act

The second legislative solution to fostering competition for producers is banning packer ownership. When comparing Tables 1 and 2 at the end of my testimony, you will see that the largest producers of pork in this country are also the largest packers. In my opinion, the independent farmers and ranchers should be the producers of pork, beef and lamb. If we ban packer ownership of livestock, while continuing to allow forward contracting and other risk management tools, we empower our farmers and ranchers in the marketplace. That's why I introduced this legislation with Congressman Nussle of Iowa. Regrettably, this legislation was not included in the 2002 Farm Bill, but I will not stop fighting to protect small producers by enacting this legislation.

#### H.R. 1526 The Agriculture Competition Enhancement Act

My third proposal has the most relevance to your committee, Mr. Chairman, and has been referred to your counter-parts in the House. The Agriculture Competition Enhancement Act, or the ACE Act, would prevent large agri-business entities from merging with each other if it would reduce competition in the agriculture marketplace. Additionally, the ACE Act would require the Department of Agriculture (USDA), the department that knows agriculture, to review proposed mergers to determine the merger's effects on prices and whether the merger would result in significantly increased market power. The USDA would also be assigned the task of determining whether the merger would increase the potential for anti-competitive actions or predatory pricing. Producers would be allowed to comment on the merger, and USDA would incorporate those comments in a report detailing its findings. The Department of Justice, the agency ultimately responsible for enforcing antitrust laws, then would consider the report in its review of the merger.

This legislation would also require that the Department of Justice have an Office of Special Counsel for Agriculture, which would be responsible for handling agriculture antitrust issues. Our farmers and ranchers need someone at the Department of Justice looking out for them.

When you look at Table 3, you see that the top five pork processors have almost 65 percent of the market share. This surely cannot be a competitive atmosphere for our independent producers. It is clear that we need to make changes to our antitrust laws to protect our farmers, ranchers and rural economies and preserve the rural way of life we all hold so dear.

## H.R. 5247 The Livestock Packer and Producer Fairness Act

Finally, right before the August recess, I introduced with Congressmen Latham and Ganske of Iowa a new and innovative approach to fostering competition for independent farmers and ranchers. This idea originated with South Dakota producers, as well as your colleague, Senator Grassley of Iowa.

The Livestock Packer and Producer Fairness Act would guarantee that independent producers have a share in the marketplace while assisting the Mandatory Price Reporting system. The proposal would require that 25 percent of a packer's daily kill come from the spot market. As a result, the market would have consistent, reliable information, improving the accuracy and transparency of daily prices. In addition, independent livestock producers would be guaranteed a competitive position due to the packers need to fill the daily 25 percent spot market requirement.

This legislation is designed to complement banning packer ownership of livestock and price reporting. The intent of this proposal is to improve price transparency and hopefully the accuracy of the daily Mandatory Price Reporting data.

Together these four proposals provide a comprehensive approach to protecting agricultural competition for South Dakota farmers and ranchers. The purpose of our current antitrust laws is to guard competition for the benefit only of consumers. Our antitrust laws are not intended to keep our agricultural producers in the market. We need to take these steps to ensure a marketplace for our independent producers.

In closing, Mr. Chairman, I want to thank you for bringing this hearing to South Dakota. My constituents and I share a concern for the future of the agricultural marketplace and our rural economy. I appreciate this opportunity to discuss my plan to fight to the growing epidemic of market concentration.