

Campaign for Contract Agriculture Reform, Farm and Ranch Freedom Alliance, Food & Water Watch, Land Stewardship Project, Institute for Agriculture and Trade Policy, Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, National Family Farm Coalition, Organization of Competitive Markets, Ranchers Cattlemen Action Legal Fund – United Stockgrowers of America, Rural Advancement Foundation International-USA, Western Organization of Resource Councils

Our organizations are promoting interrelated reforms to restore competitive livestock markets and fair contracts based on a platform supported by over 200 organizations that represent independent farmers and ranchers, contract growers, and consumers (available at <http://tinyurl.com/3gcty2>).

Agricultural Competition Issue Brief 16 of 18: Reform Merger Guidelines to Account for Concentrated Buyer Power on Prices

Obama-Biden Position: " Prevent Anticompetitive Behavior Against Family Farms... strengthen anti-monopoly laws; change federal agriculture policy to strengthen producer protection from fraud, abuse and market manipulation...."

Relevant Program: Horizontal Merger Guidelines

Relevant Agency: U.S. Department of Justice

Policy Recommendation – Administration Action: The guidelines should be altered to clarify that, in buyer power cases, the SSNIP test would consider a small but significant *decrease* in price.

Background: The U.S. Department of Justice (“DOJ”) and U.S. Federal Trade Commission (“FTC”) horizontal merger guidelines typically apply what is known as the SSNIP test (Small but Significant Non-transitory Increase in Price). The SSNIP test seeks to identify the smallest relevant market within which a hypothetical monopolist or cartel could impose a profitable significant increase in price, typically defined to be 5 percent. Applied to buyer power the SSNIP test would consider a small but significant *decrease* in price. We maintain that the 5 percent threshold is far too high in agriculture monopsony cases. For example, Iowa State University data show that the net returns (in current dollars) from feeding steers averaged only \$16 per head over the 1994-2007 period. For \$1,000 per head fed steer, the 5 percent SSNIP test would allow a merger that would decrease price by \$50 per head, which would mean that cattle feeders would be losing \$34/head compared to the historical average. A price decrease of only 1.6 percent would completely eliminate the modest profits realized by cattle feeders over 1994-2007. Therefore, criteria used by the DOJ and FTC to define markets and to define an acceptable level of market power in their merger approval process are inappropriate to agricultural markets such as the U.S. cattle market.