

The Honorable Thomas Barnett  
Assistant Attorney General  
U.S. Department of Justice, Antitrust Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Re: JBS Swift acquisition of National Beef and Smithfield Beef

Dear Mr. Barnett:

JBS Swift has announced plans to buy National Beef and Smithfield Beef. This is an unprecedented five to three merger that will harm price, choice, innovation and competition in the beef industry. The undersigned signatory organizations ask that your division scrutinize the merger, issue a second request, and strongly consider blocking the deal.

In making this request, we note that many other farm and beef groups, including the Farm Bureau and the National Cattlemen's Beef Association, seek this scrutiny. Given the frequently divergent views of these groups on competition issues, this unanimity of opinion is itself evidence that this merger may well "substantially lessen competition."

The primary focus of our concern is with the buying market for cattle. We also note that reducing the number of major beef processors from 5 to 3 is likely to have adverse effects on consumers as well.

A large percentage of cattle are now committed for sale prior to delivery at the market, such commitments are always contingent on market prices. The live cattle market price is largely set in Kansas, Nebraska and Texas. Most other U.S. markets do not have implications for non-market transactional prices and in fact largely mirror the prices from the Great Plains. Because vertical integration by ownership and contract is strong across the country, there is a diminished volume of cash market purchases that set the base prices for all transactions. Vertical integration includes all cattle committed to packers more than 14 days in advance of slaughter. Vertical integration includes packer owned cattle, contracted cattle, and "relationship" cattle.

"Contracted cattle" include formula contracts, forward contracts and relationship cattle. Formula contracts are written or oral arrangements whereby packers have a commitment from producers to deliver at a price set in a mathematical relationship to the reported price of the week. That reported price is from Kansas, Texas or Nebraska, as the case may be. Forward contracts are priced from the futures market - packers acquire rights to cattle by offering a contract with prices set in relation to the nearby futures contract, but with additional negotiated elements.

"Relationship cattle" are those in which the packer typically takes the cattle based upon a formula understanding over a long period of time. Hence, these cattle are effectively committed to a packer because no other packers bid.

Captive supplies "concentrate" the traditional problems of horizontal concentration at the present, or post-acquisition level. The remaining buyer market power can be exerted through a

company decision to increase the number of captive supply arrangements offered, with mathematically precise impacts on price. That math has been shown in the Pickett vs. Tyson litigation, in several academic publications, in the offices of packer buyers, and in the February 2007 USDA Research Triangle Institute report.

The USDA price reporting data does not adequately track these true market dynamics. Packers need not, and do not, report oral arrangements as captive supplies. But the actual market effect is that fewer cattle are traded on the open market, there is lower trading volume, price volatility increases because the open market cattle prices are buffeted by packer decision making on price, shift shut-downs, and mere market rumors.

In the Pickett v. Tyson case, which went to verdict in Montgomery, Alabama in 2004, it was revealed that Tyson bought less than 35 percent of its cattle on the open market in 2002. We believe the open market, competitive bid percentage of cattle industry wide is less than 35% today.

Nationwide, the five major packers have the “checkbooks” that are available to buy cattle. Each company has a similar daily cattle buying method. Field buyers tour the feedlots to gain information on the cattle volume available for sale that week, and to gain information on other price relevant data. All field buyers participate in a conference call with the company’s head buyer three to four times per day. The head buyer makes all decisions about slaughter cattle acquisitions on a daily basis. Multiple plants do not matter. One person makes the decisions for the whole company.

Other plants buy cattle, and some have enough size to be periodically meaningful, but they are not market makers. (Greater Omaha, Nebraska Beef, and Premium Protein in Nebraska, for example.) This combination will eliminate two of those national buyers and will increase vertical integration because Swift will now control Smithfield’s substantial feeding operations that are proximate to its slaughter houses. This will drive prices down for all feeders of cattle.

The greatest geographic competitive concern comes in the overlapping procurement areas of JBS and National in Colorado, Kansas, and Oklahoma. Today, only the biggest feedlots have three buyers. Most feedlots are lucky to have one buyer. The number of “active buyers” is the key. One active buyer will be eliminated in this region. The Kansas, Nebraska, Texas reported price will go down. It will not go up and it will not stay the same.

It is not economical for feeders to ship live cattle more than 250 miles. Feedlot producers report that this distance is not exceeded because one market weight animal is required to pay for the trucking 250 miles to a plant. A larger cost is unrealistic. Hence the elimination of a major competing buyer in the region will directly affect the prices paid on all sales in the region and will have a ripple effect as those lower prices get factored into formulas and market prices in other regions.

No efficiencies or benefits will arise from this acquisition. Each of the enterprises is substantially larger than necessary for efficient operation and National is already a leading exporter of beef even though it ranks fourth in volume. New entry requires extraordinary

amounts of cash and liquidity to compete beyond a niche level. Indeed, the current configuration of the Smithfield beef operation makes it a uniquely positioned potential entrant into direct competition in the Texas, Kansas, Nebraska region (especially in light of its substantial feeding operations in the region) and as a result it may well exercise a “wings” effect on competition in that region as well as being a future actual competitor whether under its current ownership or some other owner. Beef packing is a mature industry in which competition must be preserved.

Please give credence to these buyer power concerns, scrutinize the acquisition and issue a second request. Thank you.

Signatory Organizations:

1. Agricultural Missions, Inc.
2. Alabama Contract Poultry Growers Association
3. American Agriculture Movement
4. American Corn Growers Association
5. Campaign for Contract Ag Reform
6. Campaign for Family Farms and the Environment
7. Catholic Daughters of the Americas
8. Center for Rural Affairs
9. Colorado Independent CattleGrowers Association
10. Dakota Rural Action—South Dakota
11. Food and Water Watch
12. Institute for Agriculture & Trade Policy
13. National Campaign for Sustainable Agriculture
14. National Contract Poultry Growers
15. National Family Farm Coalition
16. Organic Consumers Association
17. Organization for Competitive Markets
18. Presbyterian Church U.S.A. Washington, D.C.
19. R-CALF USA
20. Rural Advancement Foundation International—USA
21. Sustainable Agriculture Coalition
22. Western Organization of Resource Councils
  
23. Appalachian Crafts
24. Buckeye Quality Beef Association, Inc. (Iowa)
25. Church Women United of Chemung County NY
26. Church Women United of New York State
27. Chemung County Council of Churches, NY Court St Joseph #139
28. Corning/Elmira NY Past Regents' Club of the Diocese of Rochester NY
29. Cornucopia Institute
30. Dakota Resource Council (ND)
31. Delta Land and Community
32. Family Farm Defenders (WI)
33. Farm Fresh Rhode Island

34. Horseheads Grange #1118, Horseheads NY
35. Illinois Stewardship Alliance
36. Independent Beef Association of North Dakota (I-BAND)
37. Independent Cattlemen of Iowa
38. Independent Cattlemen of Nebraska
39. Independent Cattlemen of Wyoming (ICOW)
40. Iowa Citizens for Community Improvement
41. Indiana Farmers Union
42. Iowa Farmers Union
43. Kansas Cattlemen's Association
44. Ladies of Charity of Chemung County NY
45. Land Stewardship Project
46. McKenzie County Energy & Taxation Association (MCETA) (ND)
47. Mesa County Cattlemen's Association (Colorado)
48. Michigan Farmers Union
49. Mississippi Livestock Markets Association, Inc.
50. Missouri Farmers Union
51. Missouri Rural Crisis Center
52. Montana Farmers Union
53. Nevada Livestock Association
54. New Mexico Cattle Growers' Association
55. North Carolina Contract Poultry Growers Association
56. Northern Plains Resource Council (MT)
57. Ohio Farmers Union
58. Oregon Livestock Producers Association
59. Oregon Rural Action
60. Pennsylvania Farmers Union
61. Perkins County Livestock Improvement Assn. (SD)
62. Pomona Grange #1, Chemung County NY
63. Powder River Basin Resource Council
64. St John the Baptist Fraternity
65. Secular Franciscan Order, Elmira NY
66. South Dakota Stockgrowers Association
67. Tilth Producers of Washington
68. Verley Family, LLC (VA)