



December 26, 2008

The Honorable Deborah A. Garza
Acting Assistant Attorney General United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: United States of America, et al. v. JBS S.A., et al.

Dear Acting Assistant Attorney General Garza:

We understand that the United States of America and 17 State Attorneys General (“DOJ/States”) has entered into settlement negotiations with JBS S.A. (“JBS”) and National Beef Packing Company (“National”), collectively “JBS/National,” in the matter of the *United States of America, et al. v. JBS S.A., et al.* We write to offer our views about the necessary remedy to preserve competition in the market for the purchase of fed cattle and protect the thousands of cattle producers represented by our two organizations.

The Ranchers Cattlemen Action Legal Fund United Stockgrowers of America and the Organization for Competitive Markets (“R-CALF/OCM”) filed a separate lawsuit to prevent the acquisition of National by JBS. We understand that the goal of the government in remedying this merger will be to create an entity that will have the incentive and ability to fully restore competition. We assume that the government is seeking divestiture of processing plants in the High Plains and Southwest markets. We believe that is a necessary, but not sufficient, remedy to the competitive concerns in the cattle procurement markets. Thus, we suggest a divestiture of more than just processing facilities, similar to the Justice Department’s approach to enhance the divested assets in the remedy in the Monsanto/Delta Pine merger.¹

As we have articulated in our white papers during this investigation, there is significant evidence that the cattle procurement market currently is not behaving competitively. In particular, the use of captive supplies permits the current processors to manipulate prices and drive down compensation to cattle producers, ultimately adversely impacting output. These problems have become more significant with JBS’ acquisition of Smithfield’s Five Rivers feedlot operations. A narrow remedy of simply divesting two processing plants will not cure this problem market. Captive supplies can be used not only to diminish competition in cattle

¹ In the Monsanto/Delta Pine merger, the DOJ required the divestiture of not only the Stoneville Pedigreed Seed Company owned by Monsanto, but also required the divestiture of other assets and imposed additional behavioral relief to ensure that the acquirer of the divested assets had the incentive and ability to fully restore competition. This combination of assets was called the “Enhanced Stoneville Assets” by the DOJ.

The Honorable Deborah A. Garza

December 26, 2008

Page 2

procurement; they also can be used to diminish the competitive viability of any divested assets. Unless the DOJ/States impose restrictions on JBS to restrict its use of cattle procurement practices that facilitate the exercise of market power (e.g., captive supplies), any partial merger between JBS and National would ultimately result in significant harm to competition. Attached is a document prepared by R-CALF/OCM that identifies both structural and other restrictions that would at least minimize the anticompetitive effects of a partial merger between JBS and National.

In the attached document, R-CALF/OCM raises the following concerns:

1. It is absolutely necessary to restore competition to require the divestiture of plants in both the High Plains and Southwest markets. JBS should not be permitted to increase its market share in either market, for example, by acquiring one of the National plants in the High Plains market.
2. For this divestiture to succeed there must be limits placed on JBS' control of captive supplies. In order to prevent any further manipulation of captive supplies and to put the acquirer of the divested plants in a position to fully compete with its existing rivals there must be limits placed on JBS' access to the cattle procurement arrangement currently between U.S. Premium Beef, LLC, and National. JBS should not be permitted to increase its captive supply arrangements and there should be limits imposed to prevent JBS from using captive supply arrangements to weaken the acquirer of the divested assets. Simply, the settlement must additionally incorporate either or both structural restrictions (i.e., divestiture of vertically integrated feedlot operations) and operational restrictions (i.e., requirements on buying practices to preserve the integrity of the cash market and to ensure market fairness and transparency).
3. Any merger that would create a stand-alone packing firm must include restrictions on JBS' wholesale beef selling practices to ensure that JBS does not competitively disadvantage the smaller, stand-alone firm in a market dominated by three highly concentrated packers.

We respectfully request that the DOJ/States consider our concerns in the context of the ongoing settlement negotiations and contact us with any questions.

Sincerely,



Bill Bullard
CEO, R-CALF USA



Fred Stokes
CEO, OCM

Attachment