

Fighting for the U.S. Cattle Producer!



R-CALF
USA

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October 6, 2009

Letter to State Attorneys General

Re: JBS S.A. Acquisition of Pilgrim's Pride Corporation: Request for Antitrust and Trade Practices Enforcement Action

Dear General:

On behalf of the thousands of U.S. cattle farmers and ranchers represented by the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America ("R-CALF USA"), thank you for joining the 2008 antitrust enforcement action that effectively blocked the proposed merger between JBS S.A. ("JBS") and National Beef Packing Company, LLC ("National Beef"). Your enforcement action helped prevent the further erosion of competition for U.S. cattle producers and U.S. consumers.

Today, we are faced with a new merger proposal by JBS that, like its proposal in 2008, would further reduce competition in U.S. meat and cattle markets and harm U.S. consumers and U.S. producers. JBS now proposes to acquire Pilgrim's Pride Corporation ("Pilgrim's Pride"), the largest poultry broiler company in the United States, and we are once again seeking your assistance to prevent the further loss of competition, as well as to protect both consumers and producers against anticompetitive trade practices.

JBS, based in Brazil, is the world's largest beef packer. In mid-2007, JBS acquired Swift & Co., then the third-largest beef packer in the United States. In late-2008, JBS acquired Smithfield Beef Group, Inc., then the fifth-largest U.S. beef packer. This 2008 acquisition enabled JBS to gain control of approximately 25 percent of all the fed cattle slaughter in the United States. In addition, it put in the hands of JBS control of the largest U.S. cattle feeding company, Five Rivers Ranch Cattle Feeding, LLC, representing an unprecedented level of vertical integration for JBS in particular, and for the U.S. cattle industry as a whole. Also in late-2008, the U.S. Department of Justice, your office and 16 other state attorneys general initiated enforcement action that successfully blocked JBS' attempt to acquire National Beef, the fourth-largest beef packer in the United States. Presently, JBS and three other beef packers control over 85 percent of all the fed cattle slaughter in the United States.

JBS recently announced plans to purchase Pilgrim's Pride, which according to the CME Group, is the largest poultry broiler processor in the United States, with 22 percent of the U.S. poultry broiler market.¹ R-CALF USA believes the merger of JBS and Pilgrim's Pride ("JBS/Pilgrim's Pride merger") would violate U.S. antitrust laws, as it would reduce competition

¹ See Daily Livestock Report, CME Group, Vol. 7, No. 169, Sept. 2, 2009, available at <http://www.dailylivestockreport.com/>.

between the competing proteins – beef and poultry – and enable JBS to greatly increase its exercise of market power to the detriment of both U.S. cattle producers and U.S. meat consumers. R-CALF USA has sent two separate submissions to the U.S. Department of Justice expressing its specific concerns regarding the proposed JBS/Pilgrim's Pride merger, which urge the Justice Department to take enforcement action against the merger.²

The foundation for our concern is that beef and poultry are competing, substitute protein products in the consumer market and that the merger would allow JBS to arbitrarily increase and decrease poultry production and/or raise and lower poultry prices within its fully integrated poultry division to manipulate both the demand for beef and the price for live cattle.

To substantiate our concern, we have provided the Department of Justice with research compiled by the U.S. Department of Agriculture ("USDA") that shows the average elasticity of beef demand with respect to poultry prices is such that a 1 percent decrease in poultry prices would be expected to reduce beef consumption by 0.24 percent.³ In addition, the farm elasticity of demand for live cattle shows that fed cattle are extremely sensitive to even small changes in supply, with studies showing that a 1 percent increase in supplies can reduce live cattle prices by as much as 2.5 percent.⁴ R-CALF USA has applied these elasticities to the U.S. cattle industry and estimated that the JBS/Pilgrim's Pride merger could result in a reduction of prices paid to U.S. cattle producers of over \$89 per head for each fed cattle sold if JBS were to use its newfound market power to reduce poultry prices by 10 percent.⁵

In addition to lower cattle prices paid to U.S. cattle producers, we are concerned that the savings to JBS resulting from lower cattle prices (which we have estimated to be as high as \$2.4 billion annually) likely would not be passed on to consumers as evidenced by the current disconnect between live cattle prices received by U.S. cattle producers and retail beef prices paid by consumers.⁶ This disconnect is itself evidenced both by the growing spread between live cattle prices and retail beef prices⁷ as well as the fact that cattle feeders have been experiencing long-run financial losses while beef prices have risen to record highs and remain at near record levels.⁸

² See R-CALF USA's Request to the U.S. Department of Justice for Enforcement Action Against the Proposed Acquisition of Pilgrim's Pride Corporation by JBS S.A. (hereafter "R-CALF USA's First Submission to Justice") Letter to the Dept. of Justice, Sept. 21, 2009, available at <http://www.r-calfusa.com/Competition/competition.htm>; see also R-CALF USA's Second Submission of Information to the U.S. Department of Justice Regarding the Proposed Acquisition of Pilgrim's Pride Corporation by JBS S.A.: Harm Arising from Merger of Competing Protein Industries (hereafter "R-CALF USA's Second Submission to Justice"), October 2, 2009, available at <http://www.r-calfusa.com/Competition/competition.htm>.

³ See R-CALF USA's Second Submission to Justice, October 2, 2009, at 6-10; Exhibit 7.

⁴ See *id.*, at 8, fn 37; Exhibit 6.

⁵ See *id.*, 9.

⁶ See R-CALF USA's Presentation to the U.S. Department of Justice, Antitrust Division, July 30, 2009, at 7 (depicting the disconnect between inflation-adjusted live cattle prices and retail beef prices), available at <http://www.r-calfusa.com/Competition/competition.htm>.

⁷ See *id.*, at 8 (depicting the growing spread between farm gate cattle prices and retail beef prices).

⁸ See R-CALF USA's Second Submission to Justice, October 2, 2009, at 9.

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To protect both the farmers and ranchers within your state whose economic viability is wholly dependent on robust competition, and to protect the consumers within your state who deserve both choice and competitively priced meat products, we urge you to encourage the Department of Justice to take enforcement action to block the proposed JBS/Pilgrim's Pride merger. We also encourage you to join with the Department of Justice to ensure that this anticompetitive merger does not take place.

Thank you for your consideration of our request and please contact R-CALF USA at 406-252-2516 or billbullard@r-calfusa.com if you would like more information regarding our concerns pertaining to the JBS/Pilgrim's Pride merger.

Respectfully,

A handwritten signature in cursive script that reads "R. M. Thornsberry D.V.M." The signature is written in black ink and is positioned above the typed name and title.

R. M. Thornsberry, D.V.M.

President, R-CALF USA Board of Directors