

Fighting for the U.S. Cattle Producer!



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September 29, 2008

The Honorable Thomas Barnett
Assistant Attorney General
U.S. Department of Justice
Office of Operations
Premerger Notification Unit, Room 3335
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Re: R-CALF USA's Seventh Submission of Information to the U.S. Department of Justice Regarding the Proposed JBS-Brazil Merger: Regional Price Disparity

Dear Mr. Barnett:

The Ranchers Cattlemen Action Legal Fund United Stockgrowers of America ("R-CALF USA") submitted written information to the U.S. Justice Department ("Justice Department") on April 9, April 24, May 8, May 20, May 28, and Aug. 1, 2008, regarding the proposal by JBS Acquisitions (hereafter "JBS-Brazil") to purchase National Beef Packing Co. ("National"), Smithfield Beef Group ("Smithfield"), and Five Rivers Ranch Cattle Feeding, LLC ("Five Rivers"), collectively "JBS-Brazil Merger."

In this letter, R-CALF USA will provide an update to its previous discussion about the significant price disparity revealed in Exhibit 2 of R-CALF USA's Aug. 1, 2008 submission to your agency ("R-CALF USA's Sixth Submission").

INTRODUCTION

In R-CALF USA's Sixth Submission to your agency, R-CALF USA stated:

The USDA Agricultural Marketing Service ("AMS") has very recently compiled new cattle market reports following the July 21, 2008, resumption of mandatory price reporting. One of the new reports provides regional fed cattle prices and shows that the cash price difference between some of the regions is nearly \$6 per hundredweight, which would be a difference of approximately \$75 per head based on a typical 1,250 pound fed animal. *See* AMS Report, attached hereto as Exhibit 2. For example, the report shows the week-ago price for

“Negotiated Grid: Live Basis” (which means a negotiated base cash price subject to certain quality based discounts and premiums) was \$93.66 per hundredweight in the TX/OK/NM region, while the price in the Western Cornbelt region was \$99.65 per hundredweight, a difference of \$5.99 per hundredweight. *See id.* This significant price difference between regions demonstrates that the U.S. fed cattle market, unlike the wholesale beef market, consists of several regional markets, and should *not* be viewed as a national market.

Based on reports from its members that the disparity of fed cattle prices between various regions has worsened in recent weeks, R-CALF USA reviewed the weekly AMS report referenced above to determine the ongoing disparity in weekly fed cattle prices among regions. During its review, R-CALF USA realized that the referenced weekly report was *not* a new report as it had represented in the excerpt above, and regional data is available for the period prior to the July 21, 2008 report that was attached as Exhibit 2 of R-CALF USA’s Sixth Submission.

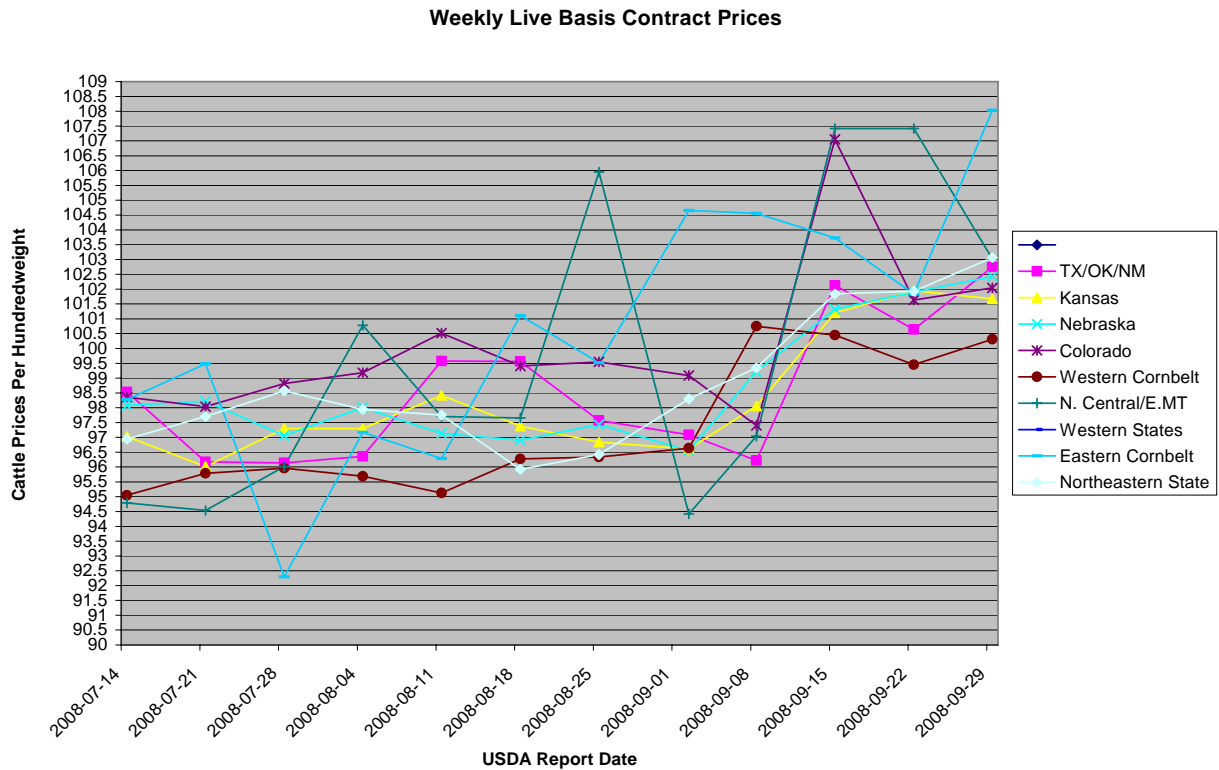
Also in R-CALF USA’s Sixth Submission, R-CALF USA used data from the category “Negotiated Grid: Live Basis” to demonstrate a significant price disparity among regions. R-CALF USA’s recent review revealed there are fewer regional data entries in that category than are found in other AMS regional pricing categories such as the category “Contract: Live Basis.”

A. Weekly Price Disparity Varies According to the Amount and the Specific Region

R-CALF USA selected the category “Contract: Live Basis” from the AMS report, *National Weekly Direct Slaughter Cattle Report – Formulated And Forward Contracts, Domestic Cattle Only*, to illustrate the weekly disparity in regional fed cattle prices from July 14, 2008 (the week prior to the report provided in the aforementioned Exhibit 2) through today, Sept. 29, 2008.¹ Chart 1 depicts the 12-week data from these weekly reports.

¹ *National Weekly Direct Slaughter Cattle Report – Formulated and Forward Contract, Domestic Cattle Only*, USDA Market News Service, LM_CT151, September 29, 2008, available at <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateP&navID=MarketNewsAndTransportationData&leftNav=MarketNewsAndTransportationData&page=LSMarketNewsPageNationalDirectSlaughterCattleReports> (The reports dated July 14 through September 22 were accessed from the same website under the link “Search National Direct Cattle Archive.” R-CALF USA has excerpted the category “Contract: Live Basis” from each report and these excerpts are attached hereto as Exhibit 1.).

CHART 1²



The 12-week data show that the amount of the disparity between regional prices ranged from a low of \$3.74 per cwt. in the July 14 report (approximately \$46.75 per head on a 1,250-pound animal) to a high of \$10.23 per cwt in the Sept. 2, 2008, report (approximately \$127.88 per head on a 1,250-pound animal).

In addition, the 12-week data show that the regions with high prices and the regions with low prices are not the same regions week-to-week. For example, the prices in the Eastern Cornbelt were weekly highs in the July 21, Sept. 2, and Sept. 8 report, but the Eastern Cornbelt was a weekly low in the July 28 report. And, the N. Central/E. MT region reported the weekly low in three of the 12-week reports, but reported weekly highs in five of the 12 weekly reports.

B. The Variability in Pricing Disparity Cannot be Explained by Transportation Costs

Because of the volatility in the week-to-week price disparity as measured among regions and the inconsistency regarding which regions report lower prices versus those that report higher prices, transportation costs alone cannot explain this pricing anomaly. If transportation costs were the principal contributor to this pricing anomaly, it would be expected that the regions furthest from the packing plants would consistently report lower cattle prices, and vice-versa. The data show this is not the case.

² Attached hereto as Exhibit 2 is the Microsoft Office Excel worksheet R-CALF USA developed to generate Chart 1.

C. The Variability in Pricing Disparity Between Regions Contradicts the Notion that the Fed Cattle Market is a National Market

If the U.S. fed cattle market were a national market, then the variability in prices between regions would be influenced by such factors as animal type quality, transportation, and supply, and would remain somewhat consistent. This is because factors such as animal quality and transportation, for example, likewise would be expected to remain somewhat constant in each region due to the type and quality of cattle found predominantly in certain regions and the fixed location of packing plants in relation to each region. The data provided in Chart 1, however, do not demonstrate such consistency: For example, cattle in the N.Central/E. MT region are noted for their favorable type and quality but must be transported farther to reach a slaughtering plant. In a national market, these cattle would be expected to command among the highest prices, but for the increased transportation costs. Chart 1, however, shows that cattle from this region were subject to the most volatile price variations, leading the weekly highs for five weeks and the weekly lows for three weeks. Moreover, the significant price spread between regions that occurred in the Sept. 2 report (a spread of approximately \$127.88 per head), itself contradicts the notion that the fed cattle market is a national market.

D. The Price Disparity Between Regions is Symptomatic of Ongoing Buying Power Emanating from the Concentrated Packing Industry

The price disparity between and among the regions illustrated in Chart 1 reinforce R-CALF USA's assertion that the concentrated packing industry already is causing price anomalies inconsistent with a competitive market. R-CALF USA has provided evidence in its previous submissions that demonstrate, *inter alia*:

1. Packers use strategic entries and exits from the cash market and engage in other cattle procurement practices for the purpose of and with the effect of lowering cattle prices.
2. Packers have exhibited a propensity for express collusion and anecdotal evidence suggests they can be, or are, involved in tacit collusion.
3. Packers engage in other anti-competitive practices that constitute market power abuse.

R-CALF USA believes the ongoing price disparity among and between the various regions as depicted in Chart 1 is a symptom of the already reduced competitiveness of the U.S. cattle market, which has facilitated the ongoing exercise of market power by the highly concentrated packing industry.

CONCLUSION

R-CALF USA appreciates the Department of Justice' effort to thoroughly investigate the impact the JBS-Brazil Merger would have on the U.S. cattle industry and on U.S. cattle producers. It is R-CALF USA's position that the JBS-Brazil Merger would substantially reduce competition in the U.S. live cattle industry, resulting in harm to both cattle producers and

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consumers. The specific pricing category reported by AMS and chosen by R-CALF USA for use in this letter was selected only for purposes of expediency. In other words, your agency may wish to look at one or more additional categories reported by AMS in the course of your investigation. If this would be the case, R-CALF USA would be willing to provide additional analyses on the categories of interest. Please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Bullard", with a stylized, cursive script.

Bill Bullard
CEO, R-CALF USA

Attachments: Exhibits 1 and 2.