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June 20, 2008

The Honorable W. A. Drew Edmondson
Attorney General of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105

Re: Facts Specific to the Oklahoma Cattle Industry and Relevant to the JBS SA Merger Investigation

Dear General Edmondson:

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 sending your May 28, 2008, letter to the U.S. Department of Justice (DOJ) expressing your concerns regarding the proposed acquisitions by JBS SA. R-CALF USA has compiled, with documentation, important facts about the Oklahoma cattle industry that may be helpful to you as you consider challenging the proposed JBS SA acquisitions – an action that we would strongly support.

Below, please find the relevant facts regarding the Oklahoma cattle industry presented in a question-and-answer format that we believe may be helpful to you.

Importantly, in order to best answer each of the following questions using U.S. Department of Agriculture (USDA) data, it must be assumed that the latest data available is representative of Oklahoma's annual data.

Q 1: Are most of the cattle produced in Oklahoma also sold in Oklahoma, or are they primarily transported to feedlots outside the state for subsequent sales to meatpackers?

A 2: The following answer is based on 2007 data:

With 55,000 cattle operations, Oklahoma has the third largest number of cattle operations in the United States, third only behind Texas and Missouri. *See* Exhibit 1.[1] These operations have 5.25 million head of cattle (both beef and dairy) and 2.07 million of these cattle are mother cows that birthed calves during the year. *See* Exhibit 2.[2] Oklahoma retained 420,000 of these

[1] Farms, Land in Farms, and Livestock Operations, 2007 Summary, U.S. Department of Agriculture Agricultural Statistics Service (NASS), Sp Sy 4 (08) a, February 2008, at 15, available at http://usda.mannlib.cornell.edu/usda/current/FarmLandIn/FarmLandIn-02-01-2008_revision.pdf.
[2] Cattle, U.S. Department of Agriculture, National Agricultural Statistics Service (NASS), Feb. 1, 2008, at 2, available at http://usda.mannlib.cornell.edu/usda/current/Catt/Catt-02-01-2008.pdf.

calves as replacements to replace its aging mother cow herd. *See* Exhibit 3.[3] Oklahoma's calf crop was 1.95 million head, and 980,000 cattle from out-of-state were shipped into Oklahoma for feeding or breeding. *See* Exhibit 4.[4] Oklahoma marketed 2.52 million cattle and calves during the year. *See id*. And, annual cash receipts from the 2.52 million cattle and calves marketed in Oklahoma were $2.47 billion. *See* Exhibit 5.[5]

Thus, the answer to Question 1 is that while Oklahoma raised 1.95 million new calves in 2007, it marketed significantly more than that number of cattle (2.52 million head) in the form of cattle and calves, earning $2.47 billion. This suggests that more than the equivalent of Oklahoma's annual calf crop is marketed each year within the state of Oklahoma in the form of cattle and calves. I do not have data regarding how many cattle owned by Oklahoman's may be fed in feedlots in other states.

Q 2 Are the cattle sold in Oklahoma sold at auction or through direct negotiations? Which entities purchase cattle directly in Oklahoma? Do the packers maintain buyers in the state?

A 2: The following is based on 2006 data (latest available data) unless otherwise stated:

Oklahoma marketed 2.95 million cattle and calves through firms that sell on commission, including all auctions, terminal markets, video auctions, and country commission firms. *See* Exhibit 6.[6] Livestock dealers and firms that buy on commission (dealers purchase livestock for resale on their own accounts) purchased 1.70 million of the cattle and calves that were marketed. *See* Exhibit 7.[7]

The following entities are registered with the USDA Grain Inspection Packers and Stockyards Administration (GIPSA) to operate in the state of Oklahoma:

Entities	No. of Entities in Oklahoma
Bonded Dealers and Market Agencies:	217
Packer Buyers:	13

See Exhibit 8.[8]

GIPSA did not report the number of steers and heifers or cows and bulls that were purchased for slaughter in Oklahoma in 2006. *See* Exhibit 9.[9]

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[3] *Id*., at 4.
[4] Meat Animals Production, Disposition, and Income: 2007 Summary, U.S. Department of Agriculture, National Agricultural Statistics Service (NASS), at 6, available at http://usda.mannlib.cornell.edu/usda/current/MeatAnimPr/MeatAnimPr-04-25-2008.pdf.
[5] *Id.*, at 8.
[6] Packers and Stockyards Statistical Report: 2006 Reporting Year, U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration (GIPSA), May 2008, at 60, available at http://archive.gipsa.usda.gov/pubs/2006_stat_report.pdf (note that GIPSA data regarding the number of cattle and calves marketed in Oklahoma are somewhat higher than the number reported by NASS. I do not have an explanation for this discrepancy).
[7] *Id.*, at 62.
[8] *Id.*, at 68.

USDA does not report state-specific data regarding the number of head of federally inspected cattle at slaughter, but it does provide such data by region. In the region that includes Oklahoma, Arkansas, Louisiana, New Mexico and Texas, the following data are provided for 2007:

Cattle Class	Number of Cattle Federally Inspected at Slaughter
Steers	3.2 million
Heifers	2.0 million
All Cows	816 thousand
Bulls	122 thousand
Total Cattle	**6.47 million**

See Exhibit 10.[10]

USDA does report Oklahoma-specific data regarding commercial cattle slaughter. The number of cattle slaughtered in federally inspected and in other slaughter plants in Oklahoma in 2007 was 22,000. *See* Exhibit 11.[11] This number includes 1,000 cattle slaughtered in 5 federally inspected slaughtering plants in Oklahoma. *See* Exhibit 12.[12] The remaining cattle that were slaughtered in Oklahoma in 2007 were slaughtered in 62 slaughtering plants that are not under federal inspection. *See* Exhibit 13.[13] Based on Oklahoma's 2007 calf crop of 1.95 million head as stated above, the number of cattle slaughtered in Oklahoma represents the equivalent of only about 1 percent of Oklahoma's annual calf crop.

Oklahoma has 23 feedlots with a one-time capacity greater than 1,000 head and 714,000 slaughter-ready cattle were marketed from these feedlots in 2007. *See* Exhibit 14.[14] Oklahoma does not report any feedlots with one-time capacities of less than 1,000 head. Thus, it can be presumed that fewer than 37 percent of the cattle birthed annually in Oklahoma are actually fed in Oklahoma; the remaining 63 percent of the cattle birthed annually in Oklahoma are either retained as replacement heifers and bulls or sold to out-of-state feeders.

Based on information and belief, while there are cattle feeders in Oklahoma that could feed cattle efficiently, they have limited outlets for marketing their cattle once they are slaughter-ready. Thus, the lack of access to the market for Oklahoma cattle feeders is a barrier to the future growth of Oklahoma's cattle industry, and the additional concentration that would occur with the JBS SA merger certainly would worsen this present situation. For example, Oklahoma

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[9] *Id.*, at 22.
[10] Livestock Slaughter 2007 Summary, U.S. Department of Agriculture, National Agricultural Statistics Service, March 2008, at 17, available at http://usda.mannlib.cornell.edu/usda/current/LiveSlauSu/LiveSlauSu-03-07-2008_revision.pdf.
[11] *Id.*, at 29.
[12] *Id.*, at 52.
[13] *Id.*, at 58.
[14] Cattle on Feed, U.S. Department of Agriculture, National Agricultural Statistics Service, Mt An 2-1 (2-08), February 22, 2008, at 17. available at http://usda.mannlib.cornell.edu/usda/nass/CattOnFe//2000s/2008/CattOnFe-02-22-2008.pdf.

fed considerably more cattle a decade ago, feeding 928,000 head in 1998. *See* Exhibit 15.[15] Another significant barrier to the long-term success of Oklahoma's cattle industry is the disappearing profitability in the cattle feeding sector. Auburn University economist C. Robert Taylor has adjusted for inflation Iowa State University data that show the profitability of cattle feeding was reduced by more than half during the period 1994-2007, when compared to the earlier period 1981-1993. *See* Exhibit 16.[16]

Q 3: What information is available regarding long-term contracts between the packers and Oklahoma producers?

A 3: Before answering this question, it is important to note, again, that 714,000, or fewer than 37 percent of Oklahoma's annual calf crop remains in Oklahoma to be fed for slaughter. The majority of Oklahoma's cattle are sold to out-of-state feeders when they are lighter-weight feeder cattle. Importantly, the price paid in Oklahoma for Oklahoma feeder cattle is based on the expected future price of slaughter-ready steers and heifers in the Plains Region where most of the feedlots are concentrated. If the expected future price for slaughter-ready steers and heifers is reduced due to a lessening of competition or increased exercise of market power, then prices paid for feeder cattle in Oklahoma will likewise be reduced, along with an additional reduction for transportation costs, which have increased significantly.

USDA recently developed the chart copied below that depicts the number of slaughter-ready cattle sold in Texas, Oklahoma, and New Mexico under cash arrangements (cash and negotiated grid) versus the number sold under contract (formula and forward contracts). This chart shows a precipitous drop in the volume of cash cattle procurements (15.2 percent) since 2005, and a corresponding and significant increase in the volume of non-cash procurements, otherwise known as captive supplies, as they enable meatpackers to avoid the cash market where the base cattle price for all procurement transactions is established. The chart shows that beginning in 2006, the meatpackers controlled more cattle through captive supply arrangements than they purchased in the cash market, and that the volume they control has increased each year since that time.

TX-OK-NM NUMBERS (Cattle that were fed in these three states)

****Head Counts below reflect slaughter totals for each purchase type from January 1 through June 1 of each year******

	2005	**2006**	**2007**	**2008**	**Net Change**
Cash	1,097,605 (51.7%)	986,744 (45.9%)	823,810 (38.5%)	804,736 (34.0%)	-17.7%
Formula	811,620 (38.2%)	854,802 (39.8%)	983,029 (45.9%)	1,198,462 (50.7%)	+12.5%
Forward Contract	71,665 (3.4%)	108,816 (5.1%)	53,279 (2.5%)	143,886 (6.1%)	+2.7%
Negotiated Grid	142,091 (6.7%)	197,518 (9.2%)	280,070 (13.1%)	216,875 (9.2%)	+2.5%
TOTAL	**2,122,981**	**2,147,880**	**2,140,188**	**2,363,959**	

Source: USDA Livestock and Grain Market News/Mandatory Price Reporting/St. Joseph, MO

[15] Cattle Final Estimates 1999-2003, U.S. Department of Agriculture, National Agricultural Statistics Service, April 2004, at 71, available at http://usda.mannlib.cornell.edu/usda/nass/SB989/sb989.pdf.
[16] C. Robert Taylor, College of Agriculture, Auburn University, 208 Comer Hall, Auburn, Alabama, 36849.

Q 4: What information is available to determine the percentage of Oklahoma cattle that are sold to the various out-of-state feedlots and packers? And what impact would the proposed merger have on competition within the state of Oklahoma?

A 4: USDA does not appear to maintain data regarding where cattle birthed and sold in Oklahoma eventually end up when they reach 15 to 18 months of age and are slaughtered (steers and heifers) or where breeding animals that are culled are eventually slaughtered (cows and bulls), nor does USDA appear to have data regarding where Oklahoma producers who retain ownership of their livestock eventually slaughter their cattle. However, the impact from the already limited competition for Oklahoma cattle, which impact will become worse as a result of the JBS SA merger, is evidenced by the answer to Question 5 below.

Q 5: Have increased shipping costs caused the Oklahoma cattle market to deviate substantially from the Midwest?

A 5: Yes, but the deviation revealed below also is likely a function of the reduced competition and increased exercise of buying power that already has occurred in the entire U.S. cattle industry due to the exceedingly concentrated U.S. meatpacking industry. The cost of transportation to bring Oklahoma cattle to slaughter, due to Oklahoma's distance from the remaining U.S. meatpackers, merely causes a magnification of the systemic problem caused by reduced competition. For example, based on 2007 data and while the average price paid for older cattle sold in Oklahoma is more than the average price paid for older cattle sold in states with significant slaughtering plants, the average price of Oklahoma calves (feeder cattle) is less than in states with significant slaughtering plants:

State	Average Price for Cattle (per 100 pounds)	Average Price for Calves (per 100 pounds)
OK	$99.40	$121.00
TX	91.60	122.00
NE	93.90	125.00
KS	93.90	126.00

See Exhibit 17.[17] The price differences shown by these data cannot be fully explained by transportation costs alone. Instead these data suggest that, like what happened in the hog industry, the profitability of the production sector of the cattle industry is becoming concentrated around the concentrated meatpackers. As this concentration level increases, as would occur under the JBS SA merger, Oklahoma cattle prices likely will become even less competitive, thus further harming Oklahoma's overall economy. The attached Exhibit 18 illustrates the effect of declining competition on cattle prices from 1987 to 2007.[18] The maps depicted therein correspond to the level of concentration in livestock purchases by meatpackers, as measured by the Herfindahl-Hirschman Index (HHI) and the four-firm concentration ratio (CR4). The HHI

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[17] Meat Animals Production, Disposition, and Income: 2007 Summary, U.S. Department of Agriculture, National Agricultural Statistics Service, at 9, available at http://usda.mannlib.cornell.edu/usda/current/MeatAnimPr/MeatAnimPr-04-25-2008.pdf.

[18] Data source for the maps include Exhibit 17, and corresponding data from USDA NASS summaries for 1987 and 1997, available at http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1101.

increased from 759 in 1987, to 1,170 in 1997, and then to 1,269 in 2006 (latest available data).[19] The CR4 increased during the same period from 47 percent to 61 percent to 66 percent. These maps show that the national cattle market is disappearing and suggest that the blue states are increasing in number because there are fewer significant buyers and thus, below average prices.

Q 6: Are there cattle auction yards in Oklahoma where two or three of the merging parties are bidding against each other for feeder cattle, thus acting as price-makers?

A 6: Five Rivers Ranch Cattle Feeding, LLC (Five Rivers), an entity involved in the JBS SA merger, likely purchases and custom feeds cattle from Oklahoma and many other states, but I do not have data that support this contention. Likewise, I do not have personal knowledge regarding the number of U.S. Premium Beef feedlot unitholders, which have contractual access to another entity involved in the JBS merger – National Beef Packing Co. (National) – that may regularly compete with Five Rivers for feeder cattle in Oklahoma, but it could be significant. I believe the auction yards, video auctions and other commission firms in Oklahoma would need to be surveyed to accurately determine the reduction in competition that will occur in the Oklahoma feeder cattle market if the JBS SA merger is approved.

Alternatively, if you were to join in the U.S. Department of Justice's investigation of the JBS SA merger, you could require the merging entities to provide information regarding where buyers for Five Rivers and buyers that manage the U.S. Premium Beef slots with National actually procure their feeder cattle.

Based on the structure of the U.S. cattle market, it is a certainty that the JBS SA merger will impact the Oklahoma cattle industry, and I believe this impact will be both negative and significant. This is because the merger will reduce competition for slaughter-ready cattle. When prices for slaughter-ready cattle are reduced, feedlots will necessarily reduce the price they pay for feeder cattle, which are the primary class of cattle sold by Oklahoma producers. Because there are so few packers located close to Oklahoma's producers, lower cattle prices will be compounded for Oklahoma cattle producers due to the transportation cost of shipping Oklahoma cattle to the feedlots in closer proximity to the major packers.

Please let me know if there is any additional information I may be able to provide. R-CALF USA greatly appreciates your interest in this matter and we hope that your office will take the lead by stepping forward to protect Oklahoma's cattle industry against the JBS SA merger.

Sincerely,

Wayne Foley
Oklahoma Membership Chair, R-CALF USA

Attachments: Exhibits 1-19.

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[19] Packers and Stockyards Statistical Report: 2006 Reporting Year, U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration (GIPSA), May 2008, at 51, available at http://archive.gipsa.usda.gov/pubs/2006_stat_report.pdf.