



July 2, 2008

The Honorable Nancy H. Rogers
Attorney General, State of Ohio
State Office Tower
30 E. Broad Street, 17th Floor
Columbus, OH 43215-3428

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

Dear General Rogers:

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 the recent meeting with members of your office regarding the proposed acquisitions of National Beef Packing Co. (National), Smithfield Beef Group (Smithfield), and Five Rivers Ranch Cattle Feeding, LLC (Five Rivers), by JBS SA. R-CALF USA has compiled, with documentation, important facts about the Ohio cattle industry that may be helpful to you as you consider challenging the proposed JBS SA merger – an action we would strongly support.

Below, please find relevant facts regarding the Ohio 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 Ohio's annual data.

Q 1: Are most of the cattle produced in Ohio also sold in Ohio, 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:

There are 26,000 cattle operations in the state of Ohio. *See* Exhibit 1.¹ These operations have 1.26 million head of cattle (both beef and dairy) and 570,000 of these cattle are mother cows that birthed calves during the year. *See* Exhibit 2.² Nearly half (274,000) of the cows that

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>.

birthed calves in Ohio were dairy cows. *See* Exhibit 2A.³ Ohio retained 175,000 of these calves as replacements to replace its aging mother cow herd. *See* Exhibit 3.⁴ Ohio's calf crop was 470,000 head, and 49,000 cattle from out-of-state were shipped into Ohio for feeding, breeding or slaughter. *See* Exhibit 4.⁵ Ohio marketed 451,000 cattle and calves during the year. *See id.* And, annual cash receipts from the 451,000 cattle and calves marketed in Ohio were \$370,880,000 (this amount does not reflect interfarm sales of cattle within Ohio. *See* Exhibit 5.⁶

Thus, the answer to Question 1 is that Ohio raised 470,000 new calves in 2007 and it marketed 451,000 cattle and calves in the state during the year, earning \$370,880,000. I do not have data regarding how many cattle owned by Ohio cattle producers are fed in out-of-state feedlots.

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

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

Ohio marketed 702,000 cattle and calves through firms that sell on commission, including all auctions, terminal markets, video auctions, and country commission firms. *See* Exhibit 6.⁷ Livestock dealers and firms that buy on commission (dealers purchase livestock for resale on their own accounts) purchased 472,000 of the cattle and calves that were marketed. *See* Exhibit 7.⁸

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

<u>Entities</u>	<u>No. of Entities in Ohio</u>
Bonded Dealers and Market Agencies:	156
Bonded Packers	27
Packer Buyers:	55

See Exhibit 8.⁹

³ Cattle, U.S. Department of Agriculture, National Agricultural Statistics Service (NASS), Feb. 1, 2008, at 3, available at <http://usda.mannlib.cornell.edu/usda/current/Catt/Catt-02-01-2008.pdf>.

⁴ *Id.*, at 4.

⁵ 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>.

⁶ *Id.*, at 8.

⁷ Packers and Stockyards Statistical Report: 2006 Reporting Year, U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration (GIPSA), May 2008, at 59, available at http://archive.gipsa.usda.gov/pubs/2006_stat_report.pdf (Note that GIPSA data regarding the number of cattle marketed in Ohio are considerably higher than NASS data. One possible reason is that NASS data do not include interfarm sales within the same state or animals imported from other states for slaughter in Ohio.).

⁸ *Id.*, at 61.

⁹ *Id.*, at 67.

GIPSA reports that 49,000 cattle were purchased for slaughter in Ohio, including 10,000 steers and heifers and 39,000 cows and bulls. *See* Exhibit 9.¹⁰

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 Ohio, Minnesota, Illinois, Indiana, Michigan, and Wisconsin, the following data are provided for 2007:

<u>Cattle Class</u>	<u>Number of Cattle Federally Inspected at Slaughter</u>
Steers	1.74 million
Heifers	468 thousand
All Cows	1.63 million
Bulls	<u>94 thousand</u>
Total Cattle	3.94 million

See Exhibit 10.¹¹

USDA does report Ohio-specific data regarding commercial cattle slaughter. The number of cattle slaughtered in federally inspected and in other slaughter plants in Ohio in 2007 was 111,300. *See* Exhibit 11.¹² This number includes 49,900 cattle slaughtered in 11 federally inspected slaughtering plants in Ohio. *See* Exhibit 12.¹³ The remaining cattle that were slaughtered in Ohio in 2007 were slaughtered in one or more of the 131 slaughtering plants that are not under federal inspection. *See* Exhibit 13.¹⁴ Based on Ohio's calf crop of 470,000 head as stated above, the number of cattle slaughtered in Ohio represents the equivalent of only 24 percent of Ohio's annual calf crop (recall also that 49,000 cattle as stated above were shipped into Ohio from surrounding states for feeding, breeding or slaughter).

Ohio has 6,400 feedlots with a one-time capacity less than 1,000 head, and 290,000 slaughter-ready cattle were marketed from these feedlots in 2007. *See* Exhibit 14.¹⁵ Ohio does not report any feedlots with one-time capacities of more than 1,000 head. Thus, it can be presumed that the equivalent of about 62 percent of the cattle birthed annually in Ohio are actually fed in Ohio; the remaining 38 percent of the cattle birthed annually in Ohio are either retained as replacement heifers and bulls or sold to out-of-state feeders.

¹⁰ *Id.*, at 21.

¹¹ Livestock Slaughter 2007 Summary, U.S. Department of Agriculture, National Agricultural Statistics Service, March 2008, at 15; 17, fn. 2, available at http://usda.mannlib.cornell.edu/usda/current/LiveSlauSu/LiveSlauSu-03-07-2008_revision.pdf.

¹² *Id.*, at 29.

¹³ *Id.*, at 52 (Note that GIPSA data for the number of cattle purchased for slaughter are lower than data reported by NASS for commercial slaughter. One reason may be that firms that purchase less than \$500,000 of livestock on an annual basis are not required to file an annual report with GIPSA.).

¹⁴ *Id.*, at 58.

¹⁵ Cattle on Feed, U.S. Department of Agriculture, National Agricultural Statistics Service, Mt An 2-1 (2-08), February 22, 2008, at 20, available at <http://usda.mannlib.cornell.edu/usda/nass/CattOnFe//2000s/2008/CattOnFe-02-22-2008.pdf>.

Based on information and belief, while there are more cattle feeders in Ohio 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 Ohio cattle feeders is a barrier to the future growth of Ohio's cattle industry, and the additional concentration that would occur with the JBS SA merger certainly would worsen this present situation. For example, Ohio had 800 more feedlots in 2001 than it had in 2007. *See Exhibit 15.*¹⁶ Another significant barrier to the long-term success of Ohio'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.*¹⁷

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

A 3: USDA does not appear to maintain Ohio-specific information regarding the number of cattle sold on the cash market versus the number sold under forward contracts, formula contracts, or marketing agreements. However, it is important to note, again, that approximately 290,000, or the equivalent of 62 percent, of Ohio's annual calf crop remains in Ohio to be fed for slaughter. The remaining 38 percent of Ohio's cattle are sold to out-of-state feeders when they are lighter-weight feeder cattle. Importantly, the price paid in Ohio for Ohio feeder cattle is based on the expected future price for 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 Ohio will likewise be reduced, along with an additional reduction for transportation costs, which have increased significantly.

USDA 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 the volume they control has increased each year since that time.

¹⁶ Cattle Final Estimates 1999-2003, U.S. Department of Agriculture, National Agricultural Statistics Service, April 2004, at 64, available at <http://usda.mannlib.cornell.edu/usda/nass/SB989/sb989.pdf>.

¹⁷ C. Robert Taylor, College of Agriculture, Auburn University, 208 Comer Hall, Auburn, Alabama, 36849.

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

Similarly, the increasing volume of captive supplies is also evident in the Kansas market:

KANSAS NUMBERS (Cattle that were fed in the state of Kansas)

****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	993,477 (52.0%)	940,039 (47.0%)	900,028 (46.0%)	816,444 (42.4%)	-9.6%
Formula	825,892 (43.3%)	889,722 (44.5%)	929,730 (47.5%)	930,016 (48.3%)	+5.0%
Forward Contract	53,539 (2.8%)	140,248 (7.0%)	101,623 (5.2%)	159,626 (8.3%)	+5.5%
Negotiated Grid	35,672 (1.9%)	28,949 (1.5%)	24,217 (1.3%)	19,817 (1.0%)	-0.9%
TOTAL	1,908,579	1,998,958	1,955,598	1,925,903	

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

Head counts based on beef type steers and heifers only. No dairy type cattle or cows/bulls are included.

Q 4: What information is available to determine the percentage of Ohio 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 Ohio?

A 4: USDA does not appear to maintain data regarding where cattle birthed and sold in Ohio 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 Ohio producers who retain ownership of their livestock eventually slaughter their cattle. However, the impact from the already limited competition for Ohio 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 Ohio cattle market to deviate substantially from the Plains Region?

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 Ohio cattle to slaughter, due to Ohio'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, the average price paid for Ohio cattle (steers and heifers and cows and bulls) is considerably less than in states with significant slaughtering

plants, the average price of Ohio calves (feeder cattle) is also less than in states that are closer to the concentrated feedlots and concentrated slaughtering plants:

State	Average Price for Cattle (per 100 pounds)	Average Price for Calves (per 100 pounds)
OH	\$85.40	\$105.00
IA	90.60	117.00
NE	93.90	125.00
KS	93.90	126.00

See Exhibit 17.¹⁸ The price differences shown by these data cannot be 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 dominant meatpackers. As this concentration level increases, as would occur under the JBS SA merger, Ohio cattle prices likely will become even less competitive, thus further harming Ohio’s overall economy. The attached Exhibit 18 illustrates the effect of declining competition on cattle prices from 1987 to 2007.¹⁹ 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 increased from 759 in 1987, to 1,170 in 1997, and then to 1,269 in 2006 (latest available data). See Exhibit 19.²⁰ 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 Ohio 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 Ohio 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 Ohio, but it could be significant. I believe the auction yards, video auctions and other commission firms in Ohio would need to be surveyed to accurately determine the reduction in competition that will occur in the Ohio feeder cattle market if the JBS SA merger is approved.

¹⁸ 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>.

¹⁹ 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>.

²⁰ 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.

Alternatively, if you were to join in the DOJ's investigation of the JBS SA merger, you could require the merging entities to provide information regarding where buyers for Five Rivers and buyers with 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 Ohio 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 Ohio feeder cattle. Because there are so few significant packers located close to Ohio producers, lower cattle prices will be compounded for Ohio cattle producers due to the transportation cost of shipping Ohio cattle to the feedlots in closer proximity to the dominant packers.

Please let me know if there is any additional information I can 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 Ohio's cattle industry against the JBS SA merger.

Sincerely,

David Hutchins
R-CALF USA Board Member
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W. Mansfield, OH 43358

Attachments: Exhibits 1-19.