

*Fighting for the U.S. Cattle Producer!*



**R-CALF**  
*USA*

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October 15, 2009

The Honorable Eric Holder  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Christine Varney  
Assistant Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Re: U.S. Department of Justice's Refusal to Take Enforcement Action to Block Proposed Acquisition of Pilgrim's Pride Corporation by JBS S.A.**

Dear Attorney General Holder and Assistant Attorney General Varney:

R-CALF USA is deeply disappointed that the U.S. Department of Justice has failed to devote necessary resources to properly investigate the antitrust implications associated with the proposed acquisition of Pilgrim's Pride Corporation ("Pilgrim's Pride") by JBS S.A. ("JBS"), collectively "JBS/Pilgrim's Pride merger." In a conversation with your office this morning, R-CALF USA was informed that the U.S. Department of Justice has closed its review of the JBS/Pilgrim's Pride merger.

In our opinion, the Justice Department's action in refusing to fully investigate the antitrust implications of the unprecedented merger between JBS and Pilgrim's Pride – the world's largest beef packer and North America's largest broiler processor, respectively – when these firms both control and market substitutable, competing proteins, is an irrepressible defiance of President Obama's promise to ensure competitive markets for the nation's farmers and ranchers, including its cattle farmers and ranchers.

Had the Department of Justice conducted even a cursory investigation of the antitrust implications of the JBS/Pilgrim's Pride merger it would have found, in addition to the documented reduction in beef consumption resulting from a reduction in poultry prices (as provided by R-CALF USA in its first and second submissions to your agency), that beef and poultry are fierce competitors in the U.S. protein market. So fierce, in fact, that a government-run, mandatory beef checkoff program was implemented in 1988 to improve the competitiveness of beef relative to poultry and other competing proteins.

U.S. cattle producers are obligated to pay tens of millions of dollars each year to the government-run beef checkoff program (e.g., \$82.8 million was assessed in 2007<sup>1</sup>), and a significant portion of these assessments are devoted to enhancing the competitiveness of beef over poultry. For example, in listing its top 20 accomplishments during the beef checkoff program's

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<sup>1</sup> See <http://www.beefboard.org/financial/files/State-National%20Financials.pdf>.

first 20 years, the government-run program included producer-paid research that expressly distinguished the superiority of beef over competing chicken for purposes of stimulating consumers to buy more beef:

**Beef Nutrition.** Checkoff-funded **RESEARCH** has confirmed that, calorie for calorie, lean beef packs a punch. A nutrition parity study between beef and chicken revealed that a 3-ounce cut of lean beef has, on average, only one more gram of saturated fat than the same size serving of a skinless chicken breast. After that, there's no comparison. That 3-ounce serving of lean beef delivers eight times more vitamin B12, six times more zinc and three times more iron than the chicken.<sup>2</sup> (Emphasis in the original.)

The government-run beef checkoff program maintains a plethora of documents evincing that producer assessments are necessary in order for beef to effectively compete against poultry. For example, a producer-paid beef checkoff advertisement touted by the beef checkoff program explains why the producer-funded beef checkoff program is critically important to the beef industry:

In 2006, increased placements and heavier carcass weights, combined with a significant supply of **inexpensive poultry products** and closed large export markets, make summertime beef promotion more crucial than ever.<sup>3</sup> (Emphasis added.)

Moreover, the U.S. Supreme Court case involving the government-run beef checkoff program recently litigated by the U.S. Department of Justice unequivocally determined that beef and poultry are competitors. In the *amicus curia* brief from the states, it was acknowledged that poultry is a competing product to beef:

Likewise, state beef councils cannot promote a message that disparages a competing product, such as poultry, Trial Tr. 269-70, 273, because the government—in contrast to the beef industry—has an interest in the success of competing agricultural sectors.<sup>4</sup>

The effect of the U.S. Department of Justice's refusal to even fully investigate the antitrust implications of the JBS/Pilgrim's Pride merger, let alone initiate needed antitrust enforcement action against it, is to decisively undercut the financial efforts of U.S. cattle producers whom, collectively, are assessed millions of dollars each year by a government-run program designed to enable them to effectively compete against their product's marketplace competitor – poultry. JBS is now free to control the majority of U.S. broiler production while it already controls a near-dominant share of U.S. fed cattle production and, therefore, is now free to adjust at will both the supply and price of both of these competing products. This is the antithesis of competition.

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<sup>2</sup> See [http://www.beefboard.org/news/Release\\_2006\\_09\\_25\\_c.asp](http://www.beefboard.org/news/Release_2006_09_25_c.asp).

<sup>3</sup> See <http://www.beefboard.org/uDocs/cbbannualreport2006.pdf>, at 11.

<sup>4</sup> See <http://www.beefboard.org/uDocs/Amicus%20briefs%20on%20merit%20-%20filed%20by%20state%20AGs.pdf>, at 19.

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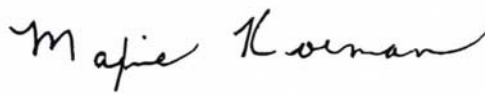
The markets for U.S. cattle producers are broke; cattle prices are falling precipitously; cattle feeders are experiencing record losses; tens of thousands of independent cattle farmers and ranchers are exiting the industry in the year this letter is written; consumers continue to pay near record prices for beef; and, the U.S. Department of Justice sits silent to allow yet another anticompetitive mega-merger to occur in the meatpacking industry that certainly will further reduce competition. We could not be more discouraged.

Please explain to us why the U.S. Department of Justice has refused to fully investigate the JBS/Pilgrim's Pride merger, let alone block it, in the wake of President Obama's promise to restore competition to agricultural markets through the enforcement of U.S. antitrust laws.

Sincerely,



R.M. Thornsberry, D.V.M.  
Missouri  
President of the Board  
Region VI Director  
Chair, Animal Health Committee



Maxine Korman  
Montana  
Region I Director



Taylor Haynes, M.D.  
Wyoming  
Region II Director



Johnny Smith  
South Dakota  
Region III Director



Jay Platt  
Arizona  
Region IV Director  
Chair, Trade Committee



Stayton Weldon  
Texas  
Region V Director



George Chambers  
Georgia  
Vice-President of the Board  
Region IX Director



James McCuen  
Washington  
Region X Director

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Kenny Fox  
South Dakota  
Chair, Animal ID Committee



Mike Schultz  
Kansas  
Chair, COOL Committee



Harlan Hentges  
Oklahoma  
Co-Chair, Private Property Rights Committee



Herman Schumacher,  
South Dakota  
Co-Chair, Membership Committee



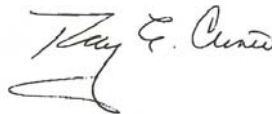
Bill Bullard  
Montana  
CEO



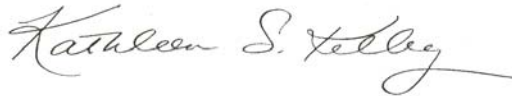
Dennis Thornsberry  
Missouri  
Chair, Marketing Committee



Joel Gill  
Mississippi  
Chair, Checkoff Committee  
Co-Chair, Membership Committee



Ray Cunio  
Missouri  
Co-Chair, Private Property Rights Committee



Kathleen Kelley  
Colorado  
Chair, By-Laws and Policy Committee

Cc: U.S. President Barack Obama  
The Honorable Herb Kohl  
Select Members of Congress  
The Honorable John D. Butler  
State Attorneys General