

Mr. William J. Baer
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

July 24, 2014

BY ELECTRONIC MAIL: antitrust.atr@usdoj.gov

Dear General Baer:

The 82 undersigned farm, consumer, rural and faith-based organizations respectfully request that the U.S. Department of Justice oppose the early termination of the antitrust examination and undertake a second review of the proposed merger between Tyson Foods, Inc. (Tyson) and The Hillshire Brands Co. (Hillshire). The proposed merger would strengthen Tyson's position as the largest meat and poultry company in the country by adding the 11th largest company, Hillshire, creating a firm with \$38.3 billion in total annual sales.

We believe that the scale and scope of this proposed merger would "substantially lessen competition, or tend to create a monopoly," which is proscribed by Section 7 of the Clayton Act, passed 100 years ago this year. The proposed horizontal and vertical merger would harm hog farmers, consumers and other food manufacturers. We believe the merger should ultimately be enjoined by the Department of Justice and that the complexity of the merging parties and the interrelationships between Tyson, Hillshire, hog farmers and other rival meat processing companies warrants a thorough review and second request for more information.

The food and agribusiness sector is already excessively consolidated from seed to supermarket. This proposed merger comes after a year of intense acquisition activity in the food and agriculture sector, amounting to a growing wave of substantial mergers that threaten to accelerate the food industry's tight control of this extremely concentrated sector of the economy. The Department of Justice should vigorously examine all proposed food and agribusiness mergers to prevent any firm from exercising unfair market power over farmers, consumers or rural communities, including the proposed Tyson-Hillshire merger.

First, the proposed merger joins the top protein manufacturer with one of the top branded and marketed processed meat companies and likely would raise consumer prices and reduce consumer choices. It would significantly reduce competition in the meat and processed meat categories where the two companies already overlap significantly. The combined firm would be the second largest frozen food manufacturer in the country with \$3.7 billion in sales. Both firms are top sellers of breakfast meat (Hillshire leads in the breakfast sausage category and Tyson is a major bacon producer.) Both firms sell lunchmeat and Tyson has entered the more lucrative frozen handheld protein market where Hillshire is already a market leader. As a result of this proposed merger, consumers shopping for these popular products would likely pay more and have one fewer manufacturer from which to choose (out of an already short list).

Second, the proposed merger would strengthen the buyer power Tyson has over hog farmers. The pork-packing sector is already excessively concentrated with the top four firms slaughtering about

two out of every three hogs in America. Tyson is the second largest pork packer in the country, with more than one-sixth (17.3 percent) of the national slaughter capacity, processing 20.3 million hogs annually. Tyson has even more market power sourcing hogs than its slaughter share suggests, because many of its rivals slaughter only or mostly their own, company-owned hogs.

Hillshire operates the second largest sow-packing plant in the country as well as ten additional meat-processing plants. Tyson's network of buying stations and hog marketing agents source not only market hogs but also sows and in some areas, Tyson may be the primary buyer for hog slaughter. The proposed merger strengthens Tyson's ability to leverage its market power over hog farmers that sell both market hogs and cull sows and will enable Tyson to extract price concessions from farmers.

Because Tyson produces proteins other than pork, gains made by the company in the pork sector can provide financial resources that allow it to influence the markets for other types of animals and potentially put producers of other types of livestock at a disadvantage. Not only would the merger strengthen Tyson's hand with hog producers, the extra profit margin and revenues would also give the company more resources to disadvantage cattle producers and contract poultry growers as well as affect the market across all proteins. Tyson's capacity to increase the supply of chicken can undermine the consumer demand for pork and beef, and, therefore, lower the prices cattle and hog producers receive.

Third, the proposed merger would be a vertical merger that would undermine competition. Tyson's slaughterhouses currently supply meat-processing firms, including Hillshire and its rivals, which rely on these inputs to manufacture their products. The proposed merger would enable Tyson to foreclose these meat inputs to Hillshire's rivals in the sausage, hot dogs and lunchmeat industry. Tyson could charge higher prices to non-Hillshire manufacturers or limit the rivals' access to these products altogether. Tyson's dominant position in the pork-packing industry gives it the incentive and capacity to disadvantage Hillshire's rivals, undermine competition and ultimately raise consumer prices.

We believe the anticompetitive impacts of the proposed merger between Tyson and Hillshire warrant close examination. The Department of Justice must issue a second request to extend the investigation into the potential effects of the proposed merger. The Department should determine key data about the complex relationships between the proposed merging parties, including but not limited to, Tyson's role in marketing and sourcing sows for slaughter nationally and at Hillshire; the market share of Tyson's private label bacon, lunchmeat and other private label processed pork products; and Tyson's role in the market supplying inputs for further processed pork products to Hillshire and its competitors.

The proposed merger would significantly impair competition throughout the hog and processed pork marketplace, harming farmers, consumers, rival processors and rural communities. The Department of Justice must not grant an early termination of the merger review. The Department should extend the investigation and issue a second request to solicit more information from the parties necessary to fully examine the complexities of the proposed merger. The undersigned groups would appreciate the opportunity to study these issues more closely and share our findings with the Department of Justice.

Sincerely,

Alabama Contract Poultry Growers Association
Alabama State Association of Cooperatives
American Agriculture Movement

American Indian Mothers, Inc. (NC)
American Raw Milk Producers Pricing
Association

Ashtabula, Geauga, Lake County (OH) Farmers' Union
 Campaign for Contract Agriculture Reform
 Caney Fork Headwaters Association (TN)
 Social Services Office-Catholic Charities of Central and Northern Missouri/Diocese of Jefferson City
 National Catholic Rural Life Conference
 Center for Earth Spirituality and Rural Ministry (MN)
 Center for Food Safety
 Center for Rural Affairs
 Central Co-op (WA)
 Church Women United in New York State
 Citizen Action Coalition of Indiana
 Colorado Independent CattleGrowers Association
 Contract Poultry Growers Association of the Virginias
 Cornucopia Network NJ/TN Chapter
 Cumberland Countians for Ecojustice (TN)
 Dakota Resource Council
 Dakota Rural Action of SD
 East New York Farms!/United Community Centers
 Ecological Farming Association (CA)
 Endangered Habitats League (CA)
 Fair World Project (OR)
 Family Farm Defenders (WI)
 Farm Aid
 Farm and Ranch Freedom Alliance
 Federation of Southern Cooperatives/Rural Training and Research Center (AL)
 Food & Water Watch
 Food Chain Workers Alliance
 Food Democracy Now!
 Hmong National Development, Inc.
 Illinois Farmers Union
 Independent Beef Association of North Dakota (I-BAND)
 Independent Cattlemen of Wyoming
 Indian Nations Conservation Alliance
 Institute for Agriculture and Trade Policy
 International Texas Longhorn Association
 Iowa Citizens for Community Improvement
 Johns Hopkins Center for a Livable Future (MD)
 Kansas Cattlemen's Association
 Kansas Farmers Union
 Label GMOs San Francisco
 Land Stewardship Project (MN)
 Missouri Farmers Union
 Missouri Rural Crisis Center
 Missouri's Best Beef Cooperative
 Murray County (OK) Independent Cattlemen's Association
 National Family Farm Coalition
 National Farmers Organization
 National Farmers Union
 National Hmong American Farmers, Inc.
 National Latino Farmers & Ranchers Trade Association
 National Sustainable Agriculture Coalition
 Nebraska Farmers Union
 Nebraska Sustainable Agriculture Society
 Network for Environmental & Economic Responsibility of United Church of Christ
 N. Carolina Assoc. of Black Lawyers, Land Loss Prevention Project
 Northeast Organic Dairy Producers Alliance
 Northeast Organic Farming Association, Interstate Council (NOFA-IC)
 Northeast Sustainable Agriculture Working Group
 Northern Plains Resource Council (MT)
 Northern Wisconsin Beef Producers Assoc.
 Northwest Atlantic Marine Alliance (MA)
 Ohio Farmers Union
 Oregon Rural Action
 Organic Farmers' Agency for Relationship Marketing (OFARM)
 Organization for Competitive Markets
 Peach Bottom Concerned Citizens Group (PBCCG) (PA)
 Pesticide Action Network North America
 Powder River Basin Resource Council (WY)
 R-CALF United Stockgrowers of America
 Roots of Change (CA)
 Rural Advancement Foundation International - USA (RAFI-USA)
 Rural Coalition/Coalición Rural
 Rural Vermont
 Slow Food Nebraska
 Western Organization of Resource Councils (WORC)
 WhyHunger
 Women, Food and Agriculture Network

cc. Mr. William H. Stallings, Chief, Transportation, Energy, and Agriculture Section,
 U.S. Department of Justice, Antitrust Division
 Ms. Katherine A. Celeste, Trial Attorney, U.S. Department of Justice, Antitrust Division
 Mr. Mark Tobey, Special Counsel for State Relations and Agriculture, U.S. Department of Justice