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The Honorable Thomas O. Barnett
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Barnett:

Recent media reports indicate that JBS Acquisitions plans to purchase National Beef Packing Co., Smithfield Beef Group and Five Rivers Ranch Cattle Feeding LLC from Continental Grain Company and Smithfield Foods. We are concerned that these proposed purchases would cause injury to competition in both the U.S. cattle industry and the U.S. beef industry, resulting in harm to both independent U.S. cattle producers and U.S. consumers. We urge the U.S. Department of Justice (DOJ) to rigorously investigate the potential impacts of this proposed purchase; to prevent its consummation pending a thorough investigation; and to ultimately block this proposed purchase should evidence be found indicating *any* reduction in competition to either the U.S. cattle industry or the U.S. beef industry.

National Beef Packing Co. is currently the fourth largest beef packer in the United States. Together with Tyson, Cargill, and Swift (now JBS), these beef packers control approximately 83.5 percent of the domestic cattle slaughter.¹ Should this purchase materialize, the market power concentrated in the hands of the remaining three packers, i.e., JBS, Tyson, and Cargill, would intensify, as would their propensity to exercise this market power to the detriment of competition, resulting in economic injury to independent U.S. cattle producers and U.S. consumers.

Evidence indicates that Tyson controls approximately 35 percent of the domestic beef market (as of the mid-1990s)². Reports announcing the proposed purchase of National Beef Packing Co. by JBS Acquisitions indicate that JBS Acquisitions would become the largest beef packer in the U.S. following consummation of the sale, which would necessarily result in JBS Acquisitions' capture of over 35 percent of the domestic cattle slaughter.

¹ See Hendrickson, Mary and William Heffernan, *Concentration of Agricultural Markets*, April 2007 Report for the National Farmers Union, <http://www.nfu.org/wp-content/2007-heffernanreport.pdf>.

² See C. Robert Taylor, *Proving Anti-Competitive Conduct in the U.S. Courtroom: Economic Issues with the Courts' Opinions in Pickett v. Tyson Fresh Meats, Inc.* Journal of Agriculture & Food Industrial Organization, Volume 4, 2006, Article 9, at p. 5.

Evidence already exists that demonstrates the exercise of market power by the current four firms that dominate the beef packing industry. Juries in *Pickett v. Tyson Fresh Meats, Inc.* and in *Herman Schumacher et al. v. Tyson Fresh Meats, Inc. et al.* have found, as matters of fact, that the actions of dominant beef packers, even at the current level of concentration, effectively manipulated prices paid to domestic cattle producers. Studies also show that market power can be, and is being, exerted by the dominant beef packers, at *current* concentration levels.³

Equally disturbing are media reports indicating that JBS SA's Friboi Group (JBSS3.BR) has been cited by the Brazilian Justice Department's antitrust division for engaging in anti-competitive practices to keep cattle prices low when purchasing for slaughter.⁴ The DOJ should independently investigate the circumstances surrounding any such anti-competitive practices alleged against and/or committed by JBS before allowing this proposed purchase to proceed. Specifically, the DOJ should determine, as a precondition for this sale, whether U.S. laws are adequate, and adequately enforced, to *prospectively* prevent a recurrence of the kind and type of anti-competitive behavior as was alleged to have been perpetrated by JBS in Brazil.

Thank you for your careful consideration of this matter and please inform us of your department's plans with respect to this proposed acquisition.

Sincerely,



R.M. Thornsberry, D.V.M.
President, R-CALF USA Board of Directors

cc: Attorney General Michael Mukasey

³ See general discussion on packer concentration, John Conner et al., *The Ban on Packer Ownership and Feeding of Livestock: Legal and Economic Implications*, available at R-CALF USA.

⁴ See Kenneth Rapoza, *Brazil Justice Dept Fines Major Beef Cos In Cartel Case*, Dow Jones Newswires, Agriculture Online, November 28, 2007.