The Honorable Thomas Barnett
Assistant Attorney General
U.S. Department of Justice
Office of Operations
Premerger Notification Unit
950 Pennsylvania Avenue, NW
Room 3335
Washington, DC 20530

Re: JBS Swift acquisition of National Beef and Smithfield Beef

March 25, 2008

Dear Mr. Barnett:

JBS Swift has announced plans to buy National Beef and Smithfield Beef. This is an unprecedented five to three merger that will harm price, choice, innovation and competition in the beef industry. The undersigned signatory organizations ask that your division scrutinize the merger, issue a second request, and strongly consider blocking the deal.

In making this request, we note that many other farm and beef groups, including the Farm Bureau and the National Cattlemen's Beef Association, seek this scrutiny. Given the frequently divergent views of these groups on competition issues, this unanimity of opinion is itself evidence that this merger may well "substantially lessen competition."

The primary focus of our concern is with the buying market for cattle. We also note that reducing the number of major beef processors from 5 to 3 is likely to have adverse effects on consumers as well.

A large percentage of cattle are now committed for sale prior to delivery at the market, such commitments are always contingent on market prices. The live cattle market price is largely set in Kansas, Nebraska and Texas. Most other U.S. markets do not have implications for non-market transactional prices and in fact largely mirror the prices from the Great Plains. Because vertical integration by ownership and contract is strong across the country, there is a diminished volume of cash market purchases that set the base prices for all transactions. Vertical integration includes all cattle committed to packers more than 14 days in advance of slaughter. Vertical integration includes packer owned cattle, contracted cattle, and "relationship" cattle.

"Contracted cattle" include formula contracts, forward contracts and relationship cattle. Formula contracts are written or oral arrangements whereby packers have a commitment from producers to deliver at a price set in a mathematical relationship to the reported price of the week. That reported price is from Kansas, Texas or Nebraska, as the case may be. Forward contracts are priced from the futures market - packers acquire rights to cattle by offering a contract with prices set in relation to the nearby futures contract, but with additional negotiated elements.

“Relationship cattle” are those in which the packer typically takes the cattle based upon a formula understanding over a long period of time. Hence, these cattle are effectively committed to a packer because no other packers bid.

Captive supplies “concentrate” the traditional problems of horizontal concentration at the present, or post-acquisition level. The remaining buyer market power can be exerted through a company decision to increase the number of captive supply arrangements offered, with mathematically precise impacts on price. That math has been shown in the Picket vs. Tyson litigation, in several academic publications, in the offices of packer buyers, and in the February 2007 USDA Research Triangle Institute report.

The USDA price reporting data does not adequately track these true market dynamics. Packers need not, and do not, report oral arrangements as captive supplies. But the actual market effect is that fewer cattle are traded on the open market, there is lower trading volume, price volatility increases because the open market cattle prices are buffeted by packer decision making on price, shift shut-downs, and mere market rumors.

In the Pickett v. Tyson case, which went to verdict in Montgomery, Alabama in 2004, it was revealed that Tyson bought less than 35 percent of its cattle on the open market in 2002. We believe the open market, competitive bid percentage of cattle industry wide is less than 35% today.

Nationwide, the five major packers have the “checkbooks” that are available to buy cattle. Each company has a similar daily cattle buying method. Field buyers tour the feedlots to gain information on the cattle volume available for sale that week, and to gain information on other price relevant data. All field buyers participate in a conference call with the company’s head buyer three to four times per day. The head buyer makes all decisions about slaughter cattle acquisitions on a daily basis. Multiple plants do not matter. One person makes the decisions for the whole company.

Plants other than the top five packers buy cattle, and some have enough size to be periodically meaningful, but they are not market makers. (Greater Omaha, Nebraska Beef, and Premium Protein in Nebraska, for example.) This combination will eliminate two of those national buyers and will increase vertical integration because Swift will now control Smithfield’s substantial feeding operations that are proximate to its slaughter houses. This will drive prices down for all feeders of cattle.

The greatest geographic competitive concern comes in the overlapping procurement areas of JBS and National in Colorado, Kansas, and Oklahoma. Today, only the biggest feedlots have three buyers. Most feedlots are lucky to have one buyer. The number of “active buyers” is the key. One active buyer will be eliminated in this region. The Kansas, Nebraska, Texas reported price will go down. It will not go up and it will not stay the same.

It is not economical for feeders to ship live cattle more than 250 miles. Feedlot producers report that this distance is not exceeded because one market weight animal is required to pay for the trucking 250 miles to a plant. A larger cost is unrealistic. Hence the elimination of a major competing buyer in the region will directly affect the prices paid on all sales in the region and will have a ripple effect as those lower prices get factored into formulas and market prices in other regions.

No efficiencies or benefits will arise from this acquisition. Each of the enterprises is substantially larger than necessary for efficient operation and National is already a leading exporter of beef even though it ranks fourth in volume. New entry requires extraordinary amounts of cash and liquidity to compete beyond a niche level. Indeed, the current configuration of the Smithfield beef operation makes it a uniquely positioned potential entrant into direct competition in the Texas, Kansas, Nebraska region (especially in light of its substantial feeding operations in the region) and as a result it may well exercise a "wings" effect on competition in that region as well as being a future actual competitor whether under its current ownership or some other owner. Beef packing is a mature industry in which competition must be preserved.

Please give credence to these buyer power concerns, scrutinize the acquisition and issue a second request. Thank you.

Signatory Organizations:

National Organizations

- Agricultural Missions, Inc.
- American Agriculture Movement
- American Corn Growers Association
- Campaign for Contract Agriculture Reform
- Campaign for Family Farms and the Environment
- Center for Rural Affairs
- Colorado Independent Cattle Growers Association
- Cornucopia Institute
- Food & Water Watch
- Institute for Agriculture & Trade Policy
- Maryknoll Office for Global Concerns
- National Campaign for Sustainable Agriculture
- National Catholic Rural Life Conference
- National Contract Poultry Growers Association
- National Family Farm Coalition
- National Farmers Organization
- Organic Consumers Association
- Organization for Competitive Markets
- Presbyterian Church U.S.A. Washington Office
- R-CALF USA
- Rural Advancement Foundation International—USA
- Sustainable Agriculture Coalition
- Western Organization of Resource Councils

State and Local Organizations

- Alabama Contract Poultry Growers Association
- Appalachian Crafts
- Buckeye Quality Beef Association, Inc. (Iowa)
- Church Women United of Chemung County, NY
- Church Women United of New York State
- Chemung County Council of Churches, NY Court St Joseph #139
- Corning/Elmira, NY Past Regents' Club of the Diocese of Rochester, NY

- Court St. Joseph's #139, Catholic Daughters of the Americas, Corning/Elmira, NY
- Dakota Resource Council (ND)
- Dakota Rural Action (SD)
- Delta Land and Community
- Family Farm Defenders (WI)
- Farm Fresh Rhode Island
- Horseheads Grange #1118, Horseheads, NY
- Idaho Resource Council
- Illinois Stewardship Alliance
- Independent Beef Association of North Dakota (I-BAND)
- Independent Cattlemen of Iowa
- Independent Cattlemen of Nebraska
- Independent Cattlemen of Wyoming (I-COW)
- Iowa Citizens for Community Improvement
- Indiana Farmers Union
- Iowa Farmers Union
- Kansas Cattlemen's Association
- Ladies of Charity of Chemung County, NY
- Land Stewardship Project
- McKenzie County Energy & Taxation Association (MCETA) (ND)
- Mesa County Cattlemen's Association (CO)
- Michigan Farmers Union
- Mississippi Livestock Markets Association, Inc.
- Missouri Farmers Union
- Missouri Rural Crisis Center
- Montana Farmers Union
- Nevada Livestock Association
- New Mexico Cattle Growers' Association
- North Carolina Contract Poultry Growers Association
- Northern Plains Resource Council (MT)
- Ohio Farmers Union
- Oregon Livestock Producers Association
- Oregon Rural Action
- Pennsylvania Farmers Union
- Perkins County Livestock Improvement Assn. (SD)
- Pomona Grange #1, Chemung County, NY
- Powder River Basin Resource Council
- St John the Baptist Fraternity
- Secular Franciscan Order, Elmira NY
- South Dakota Stockgrowers Association
- Southern Sustainable Agriculture Working Group
- Tilth Producers of Washington
- Verley Family, LLC (VA)