

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 24, 2008

The Honorable Thomas Barnett  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Assistant Attorney General Barnett:

I am writing to you concerning the proposed acquisitions by JBS Swift of National Beef Packing Co. (“National”) and Smithfield’s beef division (“Smithfield”), now under review at the Justice Department. The Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights recently held a hearing to examine the competitive issues surrounding these acquisitions, and we have now completed our examination of this transaction. I have concluded that these acquisitions, if permitted to proceed, would likely cause substantial harm to competition and consumers, would be contrary to section 7 of the Clayton Act, and that therefore the Justice Department should take enforcement action to block these acquisitions.

JBS Swift is currently the nation’s third largest beef processor. It now intends to acquire the fourth and fifth largest beef processors, National and Smithfield, which will result in JBS Swift becoming the nation’s largest beef processor and leaving only two other major companies in the industry. These three remaining firms will have over 80% market share of steer/heifer slaughter, and JBS Swift alone will control nearly a third of the market.

The likely anti-competitive effects of permitting such a high level of concentration in an already concentrated market are plain to see. By reducing the number of major buyers for ranchers’ cattle from five to three – and in some regions even one or two – this deal will give the remaining beef processors enormous buying power. With little choice to whom to sell their cattle, ranchers will increasingly be left in a “take or leave it” position. On the national level, the JBS Swift acquisitions would combine 11 meat packing plants now owned by three meatpackers under the single ownership of JBS Swift. On the regional level, many ranchers and feed lot operators will be left with only one, and at best two, meat packing plants to sell their cattle.

Given this sharp increase in market concentration and reduced options for ranchers to sell their cattle, these acquisitions are likely to substantially injure competition for cattle sold by independent ranchers for slaughter. These acquisitions are

likely to substantially increase the market power of three remaining national meatpacking firms, and significantly reduce the prices ranchers are able to obtain for their cattle.

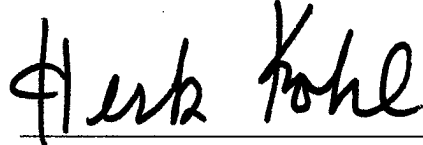
These acquisitions also raise serious concerns that the three major meatpacking firms will substantially increase their market power in the downstream market – finished beef sold to supermarkets, small grocery stores, butcher shops and restaurants. This raises the serious danger of significant increases in the price of beef paid by consumers. According to the Bureau of Labor Statistics, U.S. beef prices have increased at a rate 68% faster than overall inflation over the last decade. Reducing the number of major suppliers of beef from five to three obviously leaves retailers and restaurants, and ultimately consumers, with significantly fewer competitive choices. With food prices already rising recently, this enormous consolidation in the beef processing industry is likely just to add to higher food prices at a time that consumers can least afford it.

It is therefore my conclusion that the Justice Department should seek to block these acquisitions on the grounds that they are likely to substantially injure competition in the beef processing market. Should the Department not seek to block these acquisitions, however, at a minimum it should seek the divestiture of Five Rivers Ranch Cattle Feeding LLC (“Five Rivers”). JBS Swift seeks to acquire Five Rivers, the nation's largest cattle feedlot, marketing approximately two million cattle annually. The acquisition of Five Rivers would give JBS Swift an enormous captive supply of cattle. JBS Swift could strategically slaughter this captive supply at certain times without needing to purchase cattle on the spot market. Such conduct could substantially depress prices paid to independent ranchers. Many academic studies have shown that captive supplies depress cattle prices, and allowing JBS Swift to gain such a large captive supply by virtue of its Five Rivers acquisition could have dangerous consequences for independent producers. I therefore urge that you obtain the divestiture of Five Rivers should the Justice Department decline to block the acquisitions as a whole.

In sum, because these acquisitions will greatly diminish competition in already highly concentrated the cattle processing market by reducing the number of national beef processors from five to three, and to two or even one in many geographic regions, it is my view that the JBS Swift acquisitions of National and Smithfield will violate section 7 of the Clayton Act which forbids any merger or acquisition when “the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly.” These acquisitions are likely to result in substantially increased market power for JBS Swift and the other two remaining national beef processors, significantly lower prices to ranchers and higher prices for beef consumers. The antitrust laws should not countenance such a dangerous outcome. I therefore urge the Justice Department to bring an antitrust enforcement action to block these acquisitions.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Herb Kohl". The signature is written in a cursive style with a large, prominent "H" and "K".

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HERB KOHL

Chairman, Subcommittee on  
Antitrust, Competition Policy and  
Consumer Rights