Fighting for the U.S. Cattle Producer!

R-CALF USA

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November 9, 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: Request for Reconsideration of Decision to Grant Termination in Proposed Acquisition of Pilgrim's Pride Corporation by JBS S.A.

Dear Attorney General Holder and Assistant Attorney General Varney:

Within just days of the Department of Justice's decision to allow JBS S.A. ("JBS") to proceed with its proposed acquisition of Pilgrim's Pride Corporation ("Pilgrim's Pride"), the chief economist for the National Cattlemen's Beef Association ("NCBA") provided a compelling reinforcement for the critical concern R-CALF USA raised with your agency regarding the JBS/Pilgrim's Pride acquisition.

In a document dated Oct. 15, 2009, NCBA Chief Economist Gregg Doud explains how domestic and global demand for all meats recently has weakened. In discussing the relationship between cattle prices and chicken supplies, Doud states:

> Had it not been for the fact that chicken folks slammed on their collective brakes last year, *I shudder to think where the price of feeder cattle would be right now*.[1] (Emphasis added.)

This statement reinforces R-CALF USA's critical concern expressed in its letters to your agency of Sept. 21 and Oct. 2, 2009, that poultry and beef are competing, substitute proteins and increases in poultry supplies have a negative impact on cattle prices paid to U.S. cattle farmers and ranchers. Mr. Doud represents the organization that is a contractor of the mandatory beef checkoff dollars paid by U.S. cattle farmers and ranchers to, *inter alia*, promote beef.[2] His organization purports to be the largest association of cattle producers.[3] It is presumed that such a representative of the U.S. beef and cattle industries has a basis for his alarming implication that feeder cattle prices are at the mercy of changes in poultry supplies.

R-CALF USA agrees that increases in poultry supplies can reduce cattle prices and has provided your agency with documentation that substantiates this inverse relationship. Based on

[1] Some Perspective, Gregg Doud, Chief Economist, Oct. 15, 2009, attached hereto as Exhibit A.
[2] *See* http://www.beefitswhatsfordinner.com/aboutus.aspx.
[3] *See* http://www.beefusa.org/NEWSNCBAStatementonCanadianWTOComplaintagainstUSCOOLLaw39616.aspx.

this new, corroborating evidence from NCBA, R-CALF USA urges your agency to reconsider its decision to terminate its review of the proposed merger between JBS and Pilgrim's Pride for the following reasons:

1. While poultry may act as a constraint to increases in consumer beef prices because consumers can switch to poultry if the price of beef is perceived as too high, the hundreds of thousands of disaggregated farmers and ranchers who raise and sell feeder cattle cannot similarly respond to lower cattle prices by switching to poultry production if a merger facilitates the exercise of buying power and results in lower feeder cattle prices.

2. JBS likely is the largest purchaser of feeder cattle (i.e., lighter weight cattle suitable for feeding for slaughter) following its 2008 purchase of Five Rivers Ranch Cattle Feeding, LLC ("Five Rivers"), the largest cattle feeding company in the United States. JBS purchases an estimated 2 million head of feeder cattle annually to feed at Five Rivers,[4] representing approximately 7 percent of the 27 million head of feeder cattle purchased annually and fed to slaughter weight in the United States.[5] In its position as perhaps the largest single direct purchaser of feeder cattle, JBS also would be the largest financial benefactor if the price for feeder cattle were reduced. Thus, JBS would have a significant financial incentive to exercise any buying power emanating from the JBS/Pilgrim's Pride merger that would reduce the price of feeder cattle.

3. The acquisition of Pilgrim's Pride would give JBS complete control over the output, hence the supply volume, of over 20 percent of U.S. broiler production, representing the largest share held by any firm in the United States.[6] Thus, the JBS/Pilgrim's Pride merger grants JBS the ability to influence the dominant share of the volume of poultry supplies, which also grants JBS the ability to influence (i.e., to reduce) the price of feeder cattle. Reduced feeder cattle prices would be detrimental to the hundreds of thousands of disaggregated cattle producers who sell feeder cattle.

4. The Department of Justice's Horizontal Merger Guidelines suggest that "mergers should not be permitted to create or enhance market power or to facilitate its exercise,"[7] and that the term "market power" includes the ability "to depress the price paid for a product to a level that is below the competitive price and thereby depress output."[8]

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[4] This estimate is based on representations by Smithfield Beef Group, the previous owner of Five Rivers. *See* Exhibit 18, History of Smithfield Foods, sent to the U.S. Department of Justice on April 9, 2008, and titled "R-CALF USA's Request to DOJ for Consideration of Important Factors Related to the U.S. Cattle Industry and Relevant to the Proposed JBS Acquisition of National Beef Packing Co., Smithfield Beef Group, and Five Rivers Ranch Cattle Feeding, LLC."

[5] Calculation based on the volume fed cattle slaughter in 2008. *See* Livestock Slaughter 2008 Annual Summary, U.S. Department of Agriculture, National Agricultural Statistics Service, March 2009, at 13, available at http://usda.mannlib.cornell.edu/usda/current/LiveSlauSu/LiveSlauSu-03-06-2009.pdf.

[6] *See* Daily Livestock Report, CME Group, Vol. 7, No. 169, Sept. 2, 2009, available at http://www.dailylivestockreport.com/.

[7] Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, Rev. April 8, 1997, at 3.

[8] *Ibid*.

5. It is inconceivable that a merger that grants what is perhaps the largest domestic purchaser of feeder cattle sole control over the largest domestic supply share of the competing product known to negatively affect feeder cattle prices (i.e., broilers) would not significantly enhance market power and facilitate its exercise. The JBS/Pilgrim's Pride merger likely will result in the reduction of the price paid for feeder cattle that is below the competitive price. This enhancement of market power and facilitation thereof is a violation of U.S. antitrust laws.

JBS is uniquely incentivized to exercise market power derived from the inverse relationship between poultry supplies and feeder cattle prices because it is a substantial and direct purchaser of feeder cattle sold by hundreds of thousands of disaggregated U.S. cattle farmers and ranchers. R-CALF USA respectfully urges the U.S. Department of Justice to reconsider its decision to terminate its review of the JBS/Pilgrim's Pride merger and to explore every available option, including working with the state attorneys general, to prevent the consummation of this anticompetitive merger.

Sincerely,

Bill Bullard
CEO, R-CALF USA

Attachment: Exhibit A

Cc: State Attorneys General
Select Members of Congress