

Fighting for the U.S. Cattle Producer!



R-CALF
USA

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July 2, 2010

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: R-CALF USA's Request to the U.S. Department of Justice for Enforcement Action Against the Announced Acquisition of McElhaney Cattle Company by JBS S.A.

Dear Attorney General Holder and Assistant Attorney General Varney:

R-CALF USA¹ is a national non-profit association that represents U.S. farmers and ranchers who raise and sell cattle. R-CALF USA received an Agra Europe news article dated July 1, 2010, which reported that Brazilian meatpacker JBS has agreed to purchase Arizona-based cattle business McElhaney.² Though the report is sketchy, it states the McElhaney feedlot has a one-time capacity of 130,000 head of cattle.³

Presuming the referenced "McElhaney feedlot" is "McElhaney Cattle Company" located in Welton, Arizona, and "JBS" is "JBS Swift," then JBS Swift is reportedly proposing to acquire another of the United States' 25 largest cattle feeding operations.⁴ This after JBS Swift already acquired the United States' largest feeding operation – Five Rivers Ranch Cattle Feeding, LLC ("Five Rivers").

On May 7, 2008, the U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Competitive Policy and Consumer Rights ("Senate Subcommittee") held a hearing to examine the competitive issues surrounding the proposal by JBS Swift to acquire National Beef Packing Co. and Smithfield Beef Group, which incorporated the purchase of Fiver Rivers. Upon completion of the Senate Subcommittee examination and based on findings that the acquisitions would increase JBS Swift's market power and "greatly diminish competition," Senate

¹ R-CALF USA is the acronym for the Ranchers Cattlemen Action Legal Fund United Stockgrowers of America.

² See Brazil – Brazil's JBS makes new acquisition in US, Agra Europe, Meat Trade News Daily, Thursday, July 1, 2010, available at

http://www.meatradenewsdaily.co.uk/news/020710/brazil___brazils_jbs_makes_new_acquisition_in_us.aspx.

³ *Ibid.*

⁴ See 2001 25 Largest Cattle Feeding Operations, available at

http://www.pfizerah.com/PAHimages/pdfdocs/cattle_feeding.pdf (Note that McElhaney Cattle Company increased its feedlot capacity since 2001 and presently may be among the top 20 U.S. feedlots.).

Subcommittee Chairman Herb Kohl, on June 24, 2008, sent a formal letter to then U.S. Assistant Attorney General Thomas Barnett urging the U.S. Department of Justice (“Justice Department”) to bring an antitrust enforcement action to block all of JBS Swift’s proposed acquisitions. Importantly, Chairman Kohl specifically recognized the particularly egregious harm to competition that would occur if JBS Swift were allowed to acquire Five Rivers. Chairman Kohl stated:

Should the [Justice] 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 nations 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.

Unfortunately, the Justice Department, then under the leadership of former President George Bush, did not heed Chairman Kohl’s advice and JBS Swift was allowed to acquire Five Rivers. As a result, JBS Swift is not only one of the three largest beef packers that collectively control approximately 67 percent of the U.S. fed cattle market,⁵ but also, JBS Swift is the single largest cattle feeder that, together with only 29 other large cattle feeding operations – including McElhaney Cattle Company – may, if the 2004 prediction by beef industry analyst Harlan Ritchie, PhD, is accurate, now control over 50 percent of all fed cattle feeding in the United States.⁶

It is R-CALF USA’s firm position that the increased market power and harm to competition arising from JBS Swift’s acquisition of Fiver Rivers, which, as revealed by the Senate Subcommittee’s examination is particularly detrimental to independent cattle producers, will be greatly intensified should the Justice Department allow JBS Swift to acquire McElhaney Cattle Company. Such an outcome should not be tolerated and we respectfully urge the Justice Department to bring an immediate enforcement action to prevent JBS Swift from acquiring McElhaney Cattle Company.

⁵ See Table 1. Top Beef Packers and Cattle Feeders, 2006-2007, Recent Acquisitions of U.S. Meat Companies, Congressional Research Service, Report No. RS22980, Mar. 10, 2009, at 2 (Percentage estimated by adding the post merger market shares of JBS Swift and Smithfield Beef Group.).

⁶ See What’s Ahead for the Beef Industry? Harlan Ritchie, PhD, Beef Magazine, Sept. 1, 2004 (“Meanwhile, the top 30 cattle feeding companies account for about 40% of the fed cattle [in 2004]. That could be more than 50% by 2010.”), available at http://beefmagazine.com/mag/beef_whats_ahead_beef/.

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R-CALF USA also would appreciate the opportunity to provide the Justice Department with additional information regarding this dangerous proposal. We anticipate JBS Swift will attempt to argue that current cattle prices belie evidence of market power abuse. However, we contend our U.S. cattle herd – which now is estimated to be the smallest in 50 years (since 1958)⁷ – has been so decimated by the abusive market power wielded over time that JBS Swift, despite possessing substantial market power, is currently unable to fully exploit that power because cattle supplies are so exceptionally tight. A recent study substantiates our claim and has, for the first time, analyzed the relationship between the dynamic cattle cycle and the potential for market power in cattle purchases.⁸ The study reveals that markdowns of cattle prices rise and fall with the cattle cycle and increase at a higher rate as the quantity of cattle increases.⁹ In other words, the study explains that when cattle stocks are low, as they are today, markdowns of cattle prices (due to the exercise of market power) would not be expected to be as severe as when cattle stocks are high.

Thank you for your consideration of this important request and we look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard", written in a cursive style.

Bill Bullard
CEO

Cc: The Honorable Herb Kohl
The Honorable Tom Vilsack
The Honorable J. Dudley Butler
Select Members of Congress
State Attorneys General

⁷ See U.S. Cattle Herd Falls to 1958 Low as Losses Climb, Survey Says, Whitney McFerron, Business Week, Jan. 27, 2010, available at <http://www.businessweek.com/news/2010-01-27/u-s-cattle-herd-falls-to-1958-low-as-losses-climb-survey-says.html>.

⁸ See Market Power and the Cattle Cycle, John M. Crespi et al., American Journal of Agricultural Economics, (2010) 92 (3): 685-697.

⁹ *Ibid.*