May 14th, 2019

The Honorable Makan Delrahim
Assistant Attorney General for the Antitrust Division

U.S. Department of Justice
950 Pennsylvania Avenue, NW Washington,
DC 20530-0001

Sent via e-mail: Makan.Delrahim@usdoj.gov

Re: Request to U.S. Department of Justice to Block the Proposed Acquisition of Iowa Premium by National Beef Packing Company

Dear Assistant Attorney General Delrahim:

The Open Markets Institute, Food & Water Watch, and the Organization for Competitive Markets would like to communicate our support of a letter submitted to the Justice Department by The Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America ("R-CALF USA") on March 28, 2019, regarding the proposed acquisition of Iowa Premium, LLC, ("Iowa Premium") by National Beef Packing Company, LLC ("National Beef").[1] We support R-CALF's call that the Justice Department block this proposed acquisition.

National Beef's acquisition of Iowa Premium raises several major concerns, most notably, reducing competition for fed-cattle in the Upper Midwest and eliminating a disruptive maverick firm that resisted fed-cattle purchasing and pricing norms exhibited by the dominant "Big Four" beef packers.[2] The merger threatens already vulnerable smaller feedlots that are dependent on the cash market. It also gives the Big Four packers more ability to manipulate a critical spot market and thus fed-cattle prices nationwide. R-CALF and others have recently filed a lawsuit alleging the Big Four have conspired to depress fed-cattle prices, and by eliminating a maverick firm the merger makes this problem worse.

Merger Will Eliminate A Key Bidder for Fed-Cattle in a Nationally-Significant Price Discovery Market

Fed-cattle cash auctions function as a price discovery market for the entire U.S. cattle industry, but this market has shrunk in recent decades. Across the nation, only 25 percent of

[1] Bullard, Bill. "Request to U.S. Department of Justice to Block the Proposed Acquisition of Iowa Premium by National Beef Packing Company." Received by The Honorable William P. Barr, United States Attorney General, U.S. Department of Justice, 28 Mar. 2019. Available at https://www.r-calfusa.com/wp-content/uploads/2019/03/190328-Letter-to-DOJ-re-National-Beef-and-Iowa-Premium-Beef-Merger.pdf
[2] JBS USA Holdings Inc., Tyson Foods, Inc., Cargill Inc., and National Beef. Together, these four firms slaughter 85 percent of all fed-cattle in the U.S., according to the USDA-GIPSA "2016 Packers & Stockyards Program Annual Report." Available at www.gipsa.usda.gov/psp/publication/ar/2016_psp_annual_report.pdf. Page 11

cattle are sold in the cash market. [3] In the largest U.S. Department of Agriculture (USDA) designated cattle procurement region, Texas-Oklahoma-New Mexico, only 6 percent of cattle were sold in cash auctions in 2018, down from 47 percent in 2005.[4] As the number of transactions in this marketplace, as well as the number of buyers, becomes more thin, the Big Four meat packers have more power to control this market and manipulate the price of fed-cattle.[5] The Big Four have a strong incentive to depress cash market prices: the prices of large packers' contractual purchases are tied to the going rate of cattle in the cash market.

These depressed prices paid to farmers are not passed on to consumers, as exhibited by the recent price spread between retail beef prices and cattle values.[6] The large meatpackers keep the cost savings and have seen record per head margins since 2015.[7] The Big Four are accused of exercising illegal monopsony power, and the acquisition of Iowa Premium will enhance National Beef's individual and the Big Four's collective ability to squeeze farmers.

Iowa-Minnesota is the only USDA cattle procurement region in the nation where over 50 percent of all fed-cattle are sold in the competitive cash market, giving it an outsized role in setting the national price for cattle. Rolling Iowa Premium into National Beef would further shrink the number of cash market bidders in this critical Iowa-Minnesota region, contributing to a further thinning of the fed-cattle cash market.

Merger Would Disproportionately Harm Smaller Feedlots

Fewer cash market bidders disproportionately harms small "farmer-feeder" ranching operations. These small- to medium-sized feedlots with under 1,000 head capacity generally do not contract with large packers, meaning these farms both rely on selling in the cash market and keep this price discovery market alive with their transactions. However, the number of smaller feedlots has declined rapidly in recent years. Over the past two decades, the U.S. has lost 70 percent of feedlots with under 1,000 head of cattle.[8,9]

---

[3] Speer, Nevil. *Beef Magazine,* "Negotiated cash trade trends -- Is the cash market for fed cattle sufficient?" January, 16th 2019. Available at https://www.beefmagazine.com/marketing/negotiated-cash-trade-trends-cash-market-fed-cattle-sufficient
[4] Bullard, Bill. (2019).
[5] Domina, David A. and Taylor, C. Robert. "The Debilitating Effects of Concentration In Markets Affecting Agriculture." 15 Drake J. Agric. L. 61 (2010) available at https://heinonline.org/HOL/LandingPage?handle=hein.journals/dragl15&div=7&id=&page=
[6] Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America et al v Tyson Foods Inc et al, U.S. District Court, Northern District of Illinois, No. 19-02726. Document #:1. Available at https://newfoodeconomy.org/wp-content/uploads/2019/04/R-Calf-v-Tyson-Foods_Inc.pdf
[7] Ibid
[8] R-CALF, "The State of the U.S. Cattle Industry: Indices of Market Failure." May, 2011. Available at https://www.r-calfusa.com/wp-content/uploads/competition/110502StateUSCattleIndustry.pdf
[9] National Cattleman's Beef Association, "Industry Statistics." 2018. Available at http://www.beefusa.org/beefindustrystatistics.aspx

Iowa and Minnesota are unique in that roughly half of all fed-cattle in these states come from these 1,000 head or fewer operations.[10,11] Iowa Premium focuses on purchasing from these smaller farms, and sources from over 1,400 producers.[12] Farmer-feeder operators are worried about losing a key bidder for their cattle. One Iowa producer said of the proposed merger, "over time there are fewer and fewer people bidding for my animals … any time you're wanting to sell something you want to have more people buying your product, not fewer."[13] A recent study by the Government Accountability Office supports these concerns, as the report found that decreased levels of regional competition for fed-cattle corresponded with lower fed-cattle prices in those regions.[14] As mentioned above, the Big Four do not pass these savings on to consumers and instead maintain their beef prices at current levels and thereby boost profit margins.

Iowa Premium is a Maverick Firm that Keeps Prices Competitive

R-CALF's letter also outlines the ways that non-Big Four beef packers "conduct their operations differently and more competitively," playing an important role in the market place. Non-Big Four beef packers place cash bids on cattle at any time of the week, offer specialty markets for particular traits or breeds like Black Angus, and purchase live cattle and pay for transporting cattle to slaughter, all practices that can benefit ranchers, especially smaller farms.[15]

By following these practices, Iowa Premium challenged industry purchasing norms, offered specialized markets, and increased competition. Iowa Premium is also a relatively new player in this market. The firm took over and reopened Iowa's largest capacity beef processing facility in fall 2014 after the plant had been closed for three years.[16,17] According to multiple producer testimonies, Iowa Premium tends to offer the highest prices for Black Angus cattle on the cash market.[18,19] In this way, it resists both the purchasing and pricing norms of the Big Four meatpackers and acts as a maverick firm in the Upper Midwest.

---

[10] Schulz, Lee, Swenson, David, Loy, Dan, and Lundy, Erika. Iowa State University Extension and Outreach, Iowa Beef Center. "Economic Importance of Iowa's Beef Industry." December, 2017. Available at https://www.iabeef.org/Media/IABeef/Docs/ibc0127economicimportancebeefindustry121817pressqualityreducedfilesize.pdf

[11] Diersen, Matthew. *Drovers*. "In The Cattle Markets: Cattle on Feed Jumps Slightly From Last Year." March, 2019. Available at https://www.drovers.com/article/cattle-markets-cattle-feed-jumps-slightly-last-year

[12] Jordan, Erin. *The Gazette.* "Tama beef plant has 'raised price of black cattle.'" May, 2, 2018. Available at https://www.thegazette.com/subject/news/business/tama-beef-plant-has-raised-price-of-black-cattle-20180502

[13] Kelloway, Claire. *Food & Power,* "Beef Packing Merger Threatens America's Last Competitive Cash Cattle Market." April, 11, 2019. Available at http://www.foodandpower.net/2019/04/11/beef-packing-merger-threatens-americas-last-competitive-cash-cattle-market/

[14] Government Accountability Office, "Additional Data Analysis Could Enhance Monitoring of U.S. Cattle Market," GAO-18-296. April, 2018. Available at https://www.gao.gov/products/GAO-18-296

[15] The Big Four beef packers purchase their cash market cattle during a narrow trading window at the end of the week. They also increasingly require small feedlots to sell cattle "on the carcass," meaning they pay for cattle based on the hanging carcass weight and require farmers to pay for shipping cattle to their plant.

[16] Schulz, Lee, Swenson, David, Loy, Dan, and Lundy, Erika. (2017).

[17] "Iowa Premium Beef Opens its Doors," Meat & Poultry. Nov. 11, 2014, available at https://www.meatpoultry.com/articles/10355-iowa-premium-beef-opens-its-doors

[18] Jordan, Erin. (2018).

[19] Kelloway, Claire. (2019).

Because formula and contract pricing are based on the cash market, National Beef has an incentive to remove this maverick and highest bidder in order to lower the prices they pay for the rest of their cattle, the bulk of which are purchased on formula-pricing or forward contracts.

Lawsuit Alleges Big Four are Already Manipulating Prices in the Cash Market

A recent lawsuit alleges that, since 2015, the Big Four packers conspired to depress the price of fed-cattle. The case, brought by R-CALF and four Midwestern feedlot operators, argues that JBS, Tyson, Cargill, and National Beef strategically cut back on open market cattle bids, closed plants, and imported foreign cattle when it was uneconomical to do so, in order to depress their demand for domestic fed-cattle and force cash market sellers to accept lower prices.[20]

Coordinated action in the cash market among the Big Four is one of the central mechanisms of this alleged price manipulation. The complaint alleges that the Big Four packers collectively abstained from purchasing cash cattle in certain regions to create an oversupply and depress prices in those areas. It also alleges that the Big Four coordinated their cash cattle purchases to prevent competitive bids that could drive up cattle prices.

The Big Four packers conduct all their cash market purchases in a narrow 30- to 60-minute window on Fridays, and they "typically adhere to the price level established" by the first bidder, the complaint says. The case illustrates how the number of days per month without any cash cattle transactions dramatically increased in all cattle procurement regions after 2015, with the exception of Minnesota-Iowa. This is likely due to the higher number of non-Big Four players in this region, including Iowa Premium, that make bids outside the Friday window, breaking from the alleged conspiracy to compete to secure sufficient supplies of cattle.

In light of these allegations, the merger would remove a disruptive cattle purchaser and likely bolster alleged price manipulation tactics. Regional packers like Iowa Premium frustrate coordinated bidding efforts and protect fair pricing in the cash market. That this deal would eliminate a maverick firm is yet another reason it should be blocked (see Merger Guidelines section 2.1.5).

Due to these concerns, and those expressed in R-CALF's letter, Open Markets, Food & Water Watch, and the Organization for Competitive Markets strongly urge the Justice Department to block National Beef's acquisition of Iowa Premium.

Sincerely,
Open Markets Institute
Food & Water Watch
Organization for Competitive Markets

[20] Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America et al v Tyson Foods Inc et al, U.S. District Court, Northern District of Illinois, No. 19-02726. Document #:1. Available at https://newfoodeconomy.org/wp-content/uploads/2019/04/R-Calf-v-Tyson-Foods_Inc.pdf