

Testimony of
Mr. Russ Kremer

July 23, 2003

National Farmers Union

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Missouri Farmers Union President

On Behalf of National Farmers Union

Before the
U.S. Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights

Wednesday, July 23rd, 2003
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STATEMENT OF MR. RUSS KREMER

PRESIDENT, MISSOURI FARMERS UNION - ON BEHALF OF NATIONAL FARMERS
UNION

HEARING BEFORE THE U.S. SENATE JUDICIARY SUBCOMMITTEE ON ANTITRUST,
COMPETITION POLICY AND CONSUMER RIGHTS

PROPOSED PURCHASE OF FARMLAND FOODS PORK DIVISION
BY SMITHFIELD FOODS

JULY 23, 2003

Thank you Chairman DeWine and Ranking Member Kohl for the opportunity to testify before this subcommittee on agriculture concentration and the proposed sale of Farmland Foods pork division to Smithfield Foods. I am Russ Kremer, president of the Missouri Farmers Union and am here today to testify on behalf of the National Farmers Union.

I've been involved in independent pork production since I was a child in a county that, for many years, led our state in the number of independent pork operations. However, during the past five years, we've seen our marketing opportunities, and therefore our profit opportunities, dwindle dramatically. Market choices during that time have declined from five to two. The potential

acquisition of Farmland by Smithfield Foods threatens to reduce that number to one. Without competitive bids and fair market prices, another large exodus of family farmers from the pork industry is likely to occur. Many of our local communities that once enjoyed a sustained economy due to the circulation of revenue from independent pork farms and community-based businesses will continue to experience serious decimation.

Inadequate market competition is a top concern and one of the most pressing issues for independent farmers and ranchers across America. The trend toward horizontal and vertical integration in the agriculture and food sectors does not allow independent producers to succeed without protection from unfair and anti-competitive practices. Due to these concerns, National Farmers Union has commissioned three studies in the past five years on the impacts of agricultural and retail concentration and related barriers to farmer-owned business. I ask unanimous consent that these three studies be inserted into the record.

The Farmers Union strongly supports public policy that ensures competitive and open agricultural markets. Unfortunately, current antitrust laws, written in the early 20th century, have not evolved alongside the rapidly changing infrastructure of production agriculture. The increased market power of processing and production firms has had a negative effect on the economic returns and market opportunities of independent producers. The studies we have commissioned, demonstrate vertically and horizontally aligned companies abusing their market power, with both producers and consumers paying the price. Today's agribusiness firms are showing record profits, while at the same time farmers and ranchers are struggling to survive and consumer food costs continue to rise.

We are here today to discuss the potential acquisition of Farmland Foods pork division by Smithfield Foods and the competitive market implications of the proposed sale. The loss of our nation's largest farmer-owned cooperative is not only devastating to America's independent agricultural producers, but also furthers the goal of Smithfield Foods to gain greater control of the pork production and processing sector. If this sale is approved by the U.S. Bankruptcy Court in Kansas City and the U.S. Department of Justice, Smithfield Foods will control twenty-seven percent of the pork processing industry. The top four pork processing firms-Smithfield, ConAgra, Tyson/IBP, and Cargill will now control sixty percent of the market, up from thirty-seven percent level in 1987,

Smithfield raises twelve million of the twenty million hogs slaughtered in their processing plants on a yearly basis. The addition of Farmland's 36,000 sows will increase Smithfield's sow inventory to approximately 800,000. This is three times the number of sows owned by the next largest pork producer- Premium Standard Farms. Not only is Smithfield aiming to acquire Farmland, the company is also currently engaged in negotiation with Alliance Farms Cooperative Association, which has a total of 27,500 sows. In 1994, the Smithfield sow inventory totaled approximately 65,000. In less than ten years, this single company has managed to increase its ownership of sows twelve-fold through acquisitions and mergers such as the one begin discussed today. To allow this proposal to be approved prior to Congress conducting a thorough review to ensure anti-trust laws are adequate, would be like shutting the gate after all the pigs get out.

Smithfield officials have indicated that if the proposal is approved, they would continue to operate and maintain production levels at all Farmland plants. What has been left unsaid is the

fate of the other plants purchased by Smithfield via previous acquisitions and mergers that may now be determined inefficient. Employees of these plants will be put out of jobs, local producers will be left with fewer market opportunities and the communities will be responsible to clean up the mess left behind.

History has shown that when a large firm acquires competition, the resulting concentration of market power reduces access to and transparency of local and regional markets for producers. Given Smithfield's propensity to own a sizeable share of its slaughter hogs, the market impact of this merger will likely diminish economic opportunity for producers, compared to a merger of similar scale where a firm purchased its hogs from independent suppliers. I believe producers in my state and across the country will be further faced with lack of buyers and a competitive price for their hogs as a result of this proposed acquisition.

Although contract production is often touted as a viable opportunity and risk management tool for farmers, without contractor competition in the region, the contractee has little bargaining power when its time to renew that five or seven year contract. The farmer often finds himself in a "take it or leave it position."

Concentration of the agriculture and retail food sectors has, in many instances, discourages the growth and development of smaller, farmer-owned, value-added cooperatives. As president of Ozark Mountain Pork Cooperative, a new generation cooperative that processes and markets pork from member-owned hogs, I have witnessed many challenges to accessing the marketplace because of market concentration and power. Large conglomerates often have tight control of brokers, retailer distributors.

The loss of family farms and other independently owned businesses is not inevitable. The National Farmers Union believes there are a number of reforms that can originate within this subcommittee to ensure fairness, transparency, protection and bargaining rights for producers, which would restore and enhance competition for agricultural markets.

*We support implementation of a temporary moratorium on large agricultural mergers. The moratorium is necessary to provide Congress with time to review current law and strengthen it as appropriate to restore market competition for producers and consumers.

*Congress should require USDA to collect and publish concentration information.

*The Justice Department (DOJ) and the Federal Trade Commission (FTC) should require firms to submit information on joint ventures and alliances among firms that account for a significant percentage of market share at a regional level. In many cases, firms that are participating in joint venture arrangements behave just like firms that have merged and should be subject to the same level of antitrust scrutiny as mergers.

*Congress should require DOJ and the FTC to detail the factors which mitigate the anti-competitive effects of a merger subject to antitrust review, if the decision is made not to oppose the merger. This would improve accountability.

*Congress should expand the role of USDA to initiate and/or participate in the review of proposed mergers in the agricultural sector and require an economic impact statement be provided detailing the impact of a proposed merger on farmers and ranchers prior to approval.

*An Office of Special Counsel on Competition should be established within USDA to streamline and increase the effectiveness of USDA investigation and enforcement of competition laws.

*A specific level of concentration should be established that triggers a presumption of a violation of antitrust law to make it easier for the DOJ and the FTC to identify and prevent high levels of anti-competitive market concentration.

*Congress should pass legislation that repeals the effect of the Illinois Brick decision and would allow farmers and ranchers to hold retailers responsible for anti-competitive market activity. Farmers and ranchers cannot sue retailers due to a legal precedent set by Illinois Brick, a case where the court held that farmers and ranchers have no legal standing for recourse against retailers since they do not deal directly with retailers. As the retailers gain more and more power within the marketplace, it is vital that they should be liable for damage they cause due to market manipulation.

*Congress should prohibit slotting fees, i.e., the fees charged to suppliers to put their product on the store shelf. Slotting fees provide windfall profits to retailers and create a barrier of entry for new firms and products, which encourage further accumulation of market power among a limited number of processors and food manufacturers.

*Congress should pass contract reform legislation to enhance fairness and provide producers protection in their agricultural production contracts. This legislation should contain:

1. Contracts to be written in plain language and disclose risks to producers
2. Provide contract producers with a first-priority lien for payments due under contracts
3. Prohibit producers from contract termination out of retaliation; and
4. Make it an unfair practice for processors to retaliate or discriminate against producers who exercise rights under the legislation.

Thank you, Mr. Chairman, for the opportunity to testify today and for holding this important hearing. We look forward to working with you in this subcommittee and the entire Congress to strengthen antitrust laws, foster a transparent and fair marketplace for all producers. I welcome the opportunity to answer any questions committee members may have.