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**national farmers union**  
*In Union Is Strength*

February 19, 2009

Ms. Melanie L. Aitken  
Commissioner of Competition  
The Competition Bureau  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

**VIA FAX: (819) 997-0324 and (819) 953-5013**

**An open letter to the Competition Bureau regarding the proposed Tyson/XL sale:  
Information disclosure must be detailed and voluminous.**

Dear Ms. Aitken:

You have before you a momentous decision: The Competition Bureau's upcoming ruling on the proposed sale by Tyson Foods Inc. of its Alberta beef packing plant (and other assets) to XL Foods Inc. (Nilsson Brothers Inc.). At a time when family farm cattle producers are shouldering devastatingly low prices, the proposed sale involves Canada's largest packing plant. Moreover, approving the sale would extinguish any residue of competition in the Canadian beef packing market—moving us from just three dominant packers to two.

The NFU fears that the Competition Bureau may be on the brink of a grave error: approving Tyson's sale to XL. Such a move would leave two companies (XL and Cargill) with more than 80% of Canadian beef slaughter capacity—95% of capacity for fed/finished cattle. Such market-warping concentration will be aggravated by the fact that Nilsson Brothers/XL have pursued an aggressive program of vertical integration—buying up auction facilities and setting up cattle finance and insurance companies. If the Competition Bureau allows Nilsson Brothers/XL to take control of 47% of Canadian packing capacity—in addition to its control of other vital links in the supply chain—then the Bureau will be clearly signalling that it is a servant of corporate power, a facilitator of near-monopoly markets, and irrelevant to the project of maintaining adequate competition in Canadian business sectors. Such a move by the Bureau would be highly inappropriate and contravene its duty to the public good. The NFU strongly urges you to say “no” to the proposed sale. In our July 22, 2008 letter to your Bureau, the NFU outlines several alternatives to the proposed sale to XL—alternatives that would expand competition and keep the Tyson plant operating under new ownership.

We fear, however, there is a significant risk that you will ignore the preceding advice and approve Tyson's sale, although you may do so while tinkering around the edges—requesting token divestitures. If you do approve the sale, then you must provide voluminous and detailed justification for your decision. The Competition Bureau's past performance in documenting and explaining its decisions has been extremely poor. In

past cases\* the Competition Bureau has provided scant and inadequate details of how it came to its conclusions. The Bureau has often hidden behind the pretext of confidentiality and commercial sensitivity. But there are *huge* amounts of information, data, assumptions, and procedural and methodological details that the Bureau could divulge without releasing confidential corporate information and without threatening the business successes of companies seeking to merge or to sell assets.

If the Competition Bureau approves the Tyson/XL sale (with or without conditions or divestitures), the Bureau must provide *maximum* supporting information to the public, in order that the public may evaluate the wisdom of the decision, but also to allow the public to evaluate the conduct, competency, and approach of the Bureau itself. Disclosure by the Bureau should be extensive, including:

- 1) The full and complete economic and econometric models and analyses used by the Competition Bureau and their hired experts in making their assessments (with confidential, competitive data removed, if need be). Canadians need to fully understand your models and methods;
- 2) A detailed description of the empirical data used, and its sources. (For instance, the Technical Backgrounder to the Better Beef decision states "...claims that Better Beef had a disproportionately large effect on price determination...were not supported by empirical evidence" but the document gives no hint as to the nature or source of that empirical evidence.) Again, the actual data can be omitted, but a clear description of the source, quality, and completeness of the data used is essential.
- 3) Disclosure of all the *public* data and reports utilized by the Bureau in forming its decision;
- 4) Detailed background information on the structure and conduct of the Canadian beef processing sector—mirroring data on packer concentration, farmgate-to-retail price spreads, etc. that is publicly available in the United States;
- 5) Details of all the Bureau's assumptions about key aspects of the North American cattle and beef markets, including:
  - a) The assumed risks of future border closures due to events such as foot and mouth disease or US-initiated trade actions (and details of how various border-closures scenarios affect you decision);
  - b) The medium-term effects of Mandatory Country of Origin Labelling (mCOOL) as well as any potential tightening of mCOOL requirements in the future (e.g., the potential for increasingly strict mCOOL enforcement to effectively close or partially close the Canada-US border);
  - c) The probable future structure of the North American beef processing sector in light of aggressive moves by Brazilian-based JBS to rapidly consolidate the US and global packing sectors;

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\* For instance: Maple Leaf Foods Inc. and Smithfield Foods Inc./Schneider Corp.; Cargill Limited and Better Beef Group of Companies.

- d) The interaction between corporate concentration and other market power mechanisms used by packers, especially vertical integration (owning auction facilitates, finance companies, etc.) and captive supply (packer ownership of cattle and procurement of fed cattle using contracts without fixed prices); and
  - e) The effects of the sale on markets in the case of a food-safety-related plant shutdown (e.g., a Tyson/XL sale would mean that, if the Cargill plant is shut down for a significant length of time [a la Maple Leaf and Listeria], there would only be one remaining significant buyer of finished cattle, instead of two);
- 6) Details of its conclusions, including:
- a) Quantified values of current levels of competition and post-sale values—key aspects of the Bureau’s test of “substantial prevention or lessening of competition”;
  - b) Detailed, quantified data on market power and probable changes in that power that will result from the Tyson/XL sale (with special care to account for the effects that captive supply and vertical integration have on the market power created through corporate concentration);
  - c) Probable price effects (quantified) from the proposed merger;
  - d) Projected shifts in the allocation of revenues and profits among the various links in the cattle/beef chain—cow-calf producers, packers, wholesalers, and retailers; and
  - e) Information on how the Bureau’s decision relates to “abuse of dominance provisions.” The Bureau says that “The abuse of dominance provision of the *Competition Act* seeks to prevent firms that dominate a market from engaging in anti-competitive acts that harm competitors, and thereby significantly lessen competition.” In light of widespread vertical integration, captive supply, and other market distorting practices by the dominant North American packers, the Bureau must disclose how any decision to allow the Tyson/XL sale affects (and complies with a commitment to enforce) abuse of dominance provisions.

The Competition Bureau must release sufficient data and methodological information to allow outside experts to easily evaluate the appropriateness and completeness of the Bureau’s analytic process. If it does not, farmers and other citizens can have no confidence in the Bureau’s “black box” processes—processes that continue to approve competition-destroying mergers and takeovers.

Past decisions of the Competition Bureau have been extremely damaging for family farmers. The decision to allow the takeover of Better Beef by Cargill has led to a situation where, in the words of George Morris Centre analyst Kevin Grier, “Ontario is now the lowest price region in North America.” (Address to the Saskatoon “Beef and Forage Symposium,” February 6, 2008.) Similarly, the Smithfield/Maple Leaf sale has been a contributing factor to the devastation of independent hog farmers across Canada.

Some at the Competition Bureau may disagree with the assessment in the preceding paragraph. But such disagreements merely serve to highlight the fact that the Competition Bureau provides so little detail and data that no one can be in a position to determine whether post-merger prices and conduct match the pre-merger projections made by the

Bureau—no one can test the Bureau's assumptions and conclusions against subsequent reality.

Thus, the Competition Bureau has two challenges: stopping a sale by Tyson that would leave Canada's beef sector a virtual duopoly; and reforming its decision disclosure and reporting practices so that Canadians can understand the Bureau's decision methods and, most importantly, compare the outcomes foreseen by the Bureau to actual events. We need sufficient information upon which to judge the appropriateness of your methods and the skills of your experts.

I thank you for your attention to these critical issues. We look forward to a decision by the Bureau regarding the Tyson/XL sale that increases competition. And we look forward to dramatically expanded disclosure of non-confidential data upon which Canadians can evaluate their competition-protection agencies.

Sincerely,

Dave Lewington  
NFU Ontario Board Member  
(705) 594-1823

cc: Rt. Hon. Stephen Harper, Prime Minister of Canada  
Mr. Michael Ignatieff, Leader of the Liberal Party  
Mr. Jack Layton, Leader of the New Democratic Party  
Ms. Elizabeth May, Leader of the Green Party  
Denis Corriveau, Senior Competition Law Officer, Competition Bureau of Canada  
Various media