



# Department of Justice

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FRIDAY, FEBRUARY 28, 2003  
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## **JUSTICE DEPARTMENT FILES LAWSUIT AGAINST SMITHFIELD FOODS FOR VIOLATING PREMERGER NOTIFICATION REQUIREMENTS**

### *Department Seeks \$5.478 Million Civil Penalty*

WASHINGTON, D.C. – The Department of Justice today filed a civil antitrust lawsuit against Smithfield Foods Inc., the nation’s largest hog producer and pork packer, for twice failing to comply with premerger notification requirements before making certain acquisitions of stock of its competitor, IBP Inc., the nation’s second largest pork packer. The Department’s complaint seeks a civil penalty of \$5.478 million from Smithfield.

The Hart-Scott-Rodino (HSR) Act requires companies planning stock acquisitions that meet certain thresholds to file pre-acquisition notification documents with the Department of Justice and the Federal Trade Commission, and requires that the acquiring parties observe a mandatory waiting period before proceeding with the transaction. The HSR Act exempts from its premerger filing requirements certain stock acquisitions that are “solely for the purpose of investment.” However, the Department said that Smithfield’s acquisitions were not exempt because Smithfield was also considering and taking steps toward a Smithfield-IBP combination.

“Companies cannot evade Hart-Scott-Rodino Act filing obligations by ignoring the plain language of the exemption,” said Deborah P. Majoras, Principal Deputy Assistant Attorney General of the Department’s Antitrust Division. “Acquisition of stock in a firm that is also a

potential takeover target or merger candidate is not an acquisition that is ‘solely’ for investment.”

The complaint, which was filed in U.S. District Court for the District of Columbia, alleges that Smithfield was in violation of the HSR Act on two occasions--a 97-day period in 1998 and a 401-day period in 1999-2001.

The purpose of the HSR statute is to provide the federal antitrust enforcement agencies an opportunity to investigate proposed transactions, and determine whether the transactions would violate the antitrust laws. If the reviewing agency determines that a transaction violates the antitrust laws, it may seek to block that transaction before the waiting period expires. A party is subject to a maximum civil penalty of \$11,000 for each day it has been found to be in violation of the HSR Act. The Department’s complaint seeks the maximum civil penalty.

Smithfield is a Virginia corporation with its principal place of business in Smithfield, Virginia. For the years ending 1998, 1999, and 2000, Smithfield had revenue in excess of \$3 billion. IBP, now a wholly-owned subsidiary of Tyson’s Foods, is a Delaware corporation with its principal place of business in Dakota Dunes, South Dakota.

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