



Department of Justice

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SMITHFIELD FOODS TO PAY \$2 MILLION CIVIL PENALTY FOR VIOLATING ANTITRUST PREMERGER NOTIFICATION REQUIREMENTS

WASHINGTON, D.C. – Smithfield Foods Inc., the nation’s largest hog producer and pork packer, has agreed to pay a \$2 million civil penalty to settle charges that the company twice failed to comply with premerger notification requirements before making certain acquisitions of stock of its competitor, IBP Inc., which was at the time the nation’s second largest pork packer.

The Department of Justice’s Antitrust Division filed a civil lawsuit in U.S. District Court for the District of Columbia in February 2003 against Smithfield for violating the premerger notification and waiting requirements of the Hart-Scott-Rodino (HSR) Act of 1976. In August 2004, the case was transferred to the U.S. District Court for the Eastern District of Virginia. Today, the Department filed a proposed settlement in U.S. District Court for the Eastern District of Virginia that, if approved by the court, will settle the charges.

According to the complaint, Smithfield twice violated the HSR Act—once beginning in 1998 and again beginning in 1999—when it acquired more than the statutory threshold amount of the voting securities of IBP Inc. without complying with the premerger notification requirements. Smithfield claimed that all of its IBP stock acquisitions were exempt from the HSR filing requirements because they were “solely for the purpose of investment.” The Department said that the exemption did not apply because Smithfield was actively considering merging with IBP at the time.

“Acquisition of stock in a firm that is also being considered as a takeover target or merger partner is not ‘solely for the purpose of investment’ under the HSR Act and is not exempt from the filing requirements,” said J. Bruce McDonald, Deputy Assistant Attorney General of the Department’s Antitrust Division. “Ensuring strict compliance with the Act is crucial for effective antitrust enforcement. The Department will continue to closely monitor antitrust compliance in agriculture sectors.”

The HSR Act imposes notification and waiting period requirements on individuals and companies over a certain size before they can consummate mergers or acquisitions of stock or assets over a certain value or ownership percentage. The Act is an important law enforcement tool because it gives the government time to investigate whether a proposed transaction violates the antitrust laws, and if so to challenge the transaction before it is consummated. Individuals and companies face a maximum penalty of \$11,000 for each day they violate the Act by failing to report transactions covered by the Act’s requirements.

Smithfield is a Virginia corporation with its principal place of business in Smithfield, Virginia. In the last fiscal year, Smithfield had revenue in excess of \$9 billion. Now a wholly-owned subsidiary of Tyson’s Foods, IBP is a Delaware corporation with its principal place of business in Dakota Dunes, South Dakota.

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