

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice, Antitrust Division
325 Seventh Street, NW, Suite 500
Washington, DC 20530

Plaintiff,

v.

SMITHFIELD FOODS, INC.,
200 Commerce Street
Smithfield, Virginia 23430

Defendant.

Civil Action No. 1:03CV00434 (HHK)

Filed: 2/28/03

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain civil penalties from the defendant SMITHFIELD FOODS, INC. (“Smithfield”), alleging as follows:

I.

NATURE OF THE ACTION

1. Smithfield, the nation’s largest hog producer and pork packer, twice failed to comply with the notice and waiting requirements of the Hart-Scott-Rodino Act, before making certain acquisitions of stock issued by its competitor, IBP, Inc. (“IBP”), the nation’s second largest pork packer, and is liable for a civil penalty.

II.

JURISDICTION AND VENUE

2. The United States files this complaint and institutes these proceedings under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“Hart-Scott-Rodino Act” or “the Act”), to recover civil penalties for violations by the defendant of the Act.

3. This Court has jurisdiction over the defendant and over the subject matter of this action pursuant to 15 U.S.C. § 18a(g) and 28 U.S.C. §§ 1331, 1337, 1345 and 1355.

4. Venue is proper in this judicial district under 15 U.S.C. § 22, 28 U.S.C. §§ 1391(b) and 1395(a) because defendant transacted business, and may be found, in this district.

III.

DEFENDANT

5. Smithfield is, and was at all times relevant to this complaint, a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in Smithfield, Virginia.

6. At all times relevant to this complaint, Smithfield’s annual net sales in the United States exceeded \$3 billion.

7. At all times relevant to this complaint, Smithfield was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Act, 15 U.S.C. § 18a(a)(1).

IV.

NON-PARTY IBP, INC.

8. At all times relevant to this complaint, IBP was a corporation organized under the laws of the State of Delaware with its principal executive offices located Dakota Dunes, South Dakota. IBP was acquired by Tyson's Foods Inc. in February of 2001.

9. At all times relevant to this complaint, IBP had total assets at or above \$3.3 billion.

V.

HART- SCOTT-RODINO ACT FILING REQUIREMENTS

10. The Hart-Scott-Rodino Act, 15 U.S.C. § 18a, requires certain acquiring persons and certain acquired persons whose voting securities or assets are acquired to file notification with the United States Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") and to observe a waiting period before consummating certain acquisitions of voting securities or assets. The waiting period is intended to provide the FTC and DOJ with an opportunity to investigate proposed transactions and determine whether to seek an injunction to prevent transactions that may violate the antitrust laws.

11. At the times of Smithfield's violations, the Hart-Scott-Rodino Act required, *inter alia*, a person with total assets or annual net sales in excess of \$100 million who, as a result of an acquisition, would hold an aggregate total amount of voting securities in excess of \$15 million of an issuer with total assets in excess of \$10 million to file premerger notification and report forms with the DOJ and FTC, and to observe the required waiting period before making the acquisition, unless otherwise exempted. (On February 1, 2001, an amendment increasing the size of the transaction threshold to \$50 million and eliminating the "size-of-person" threshold for transactions valued in excess of \$200 million became effective, pursuant to Pub. L. No 106-553, 114 Stat. 2762 (Dec. 21, 2000)).

12. Acquisitions of voting securities are exempt from the filing and waiting requirements of the Hart-Scott-Rodino Act if they are “solely for the purpose of investment” and if the voting securities acquired or held do not exceed 10 percent of the outstanding securities of the issuer. 15 U.S.C. § 18a(c)(9).

13. Any person, or officer, director, or partner thereof, who fails to comply with the Act is liable to the United States for a civil penalty of not more than \$11,000 for each day during which such person is in violation of the Act. 15 U.S.C. § 18a(g)(1), *amended by* Pub. L. No. 101-410 (28 U.S.C. 2461 note), *amended by* § 31001(s), Pub. L. No. 104-134, 110 Stat. 3009 *et seq.* (1996), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54,548 (Oct. 21, 1996).

VI.

SMITHFIELD’S ACQUISITIONS OF IBP VOTING SECURITIES AND VIOLATIONS OF THE HART-SCOTT-RODINO ACT

First Violation

14. On May 19, 1998, Smithfield began acquiring IBP voting securities. This acquisition of IBP voting securities and all others described in this complaint were made through its wholly-owned subsidiary, SF Investments, Inc.

15. On June 26, 1998, Smithfield acquired additional IBP voting securities. As a result of that acquisition, Smithfield held an aggregate total amount of IBP voting securities in excess of \$15 million, thereby triggering the Hart-Scott-Rodino Act’s filing requirements.

16. Smithfield continued to acquire IBP voting securities through June 29, 1998.

17. Smithfield’s acquisitions described in paragraphs 15 and 16 required the filing of a premerger notification and report form pursuant to the Hart-Scott-Rodino Act, unless otherwise exempted.

18. Smithfield was not exempt from the filing and waiting requirements of the Hart-Scott Rodino Act. At the time it made the acquisitions described in paragraphs 15 and 16, Smithfield was also considering and taking steps toward a Smithfield-IBP combination.

19. Smithfield failed to file a premerger notification and report form with the DOJ and the FTC and failed to observe the statutory waiting period before its acquisitions of IBP voting securities described in paragraphs 15 and 16.

20. On October 1, 1998, Smithfield began to liquidate its IBP holdings and on the same date, its IBP holdings fell below \$15 million.

21. Defendant Smithfield was continuously in violation of the Act during the period of June 26, 1998 through October 1, 1998, for a total of 97 days.

Second Violation

22. On June 30, 1999, Smithfield again began acquiring IBP voting securities.

23. On December 8, 1999, Smithfield acquired additional IBP voting securities. As a result of that acquisition, Smithfield held an aggregate total amount of IBP voting securities in excess of \$15 million, thereby triggering the Hart-Scott-Rodino Act's filing requirements.

24. Smithfield continued to acquire IBP voting securities through September 11, 2000.

25. Smithfield's acquisitions described in paragraphs 23 and 24 required the filing of a premerger notification and report form pursuant to the Hart-Scott-Rodino Act, unless otherwise exempted.

26. Smithfield was not exempt from the filing and waiting requirements of the Hart-Scott-Rodino Act. At the time it made the acquisitions described in paragraphs 23 and 24, Smithfield was also considering and taking steps toward a Smithfield-IBP combination.

27. Smithfield failed to file a premerger notification and report form with the DOJ and the FTC and failed to observe the statutory waiting period before its acquisitions of IBP voting securities described in paragraphs 23 and 24.

28. On January 5, 2001, Smithfield began to liquidate its IBP holdings (which were worth in excess of \$100 million), and by January 12, 2001, the value of its IBP holdings fell below \$15 million.

29. Defendant Smithfield was continuously in violation of the Act during the period of December 8, 1999 through January 12, 2001, for a total of 401 days.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

30. That the Court adjudge and decree that defendant's acquisitions of IBP voting securities during the period June 26 through June 29, 1998 were made in violation of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, and that the defendant was in violation of the Act each day of the period from June 26, 1998 through October 1, 1998;

31. That the Court order defendant to pay to the United States the maximum statutory civil penalty of \$11,000 per day as provided by Section 7A (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), as amended, for each of the 97 days of that period, in the total amount of \$1,067,000;

32. That the Court adjudge and decree that defendant's purchases of IBP voting securities during the period December 8, 1999 through September 11, 2000 were made in violation of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, and that the defendant was in violation of the Act each day of the period from December 8, 1999 through January 12, 2001;

33. That the Court order defendant to pay to the United States the maximum statutory civil penalty of \$11,000 per day as provided by Section 7A (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), as amended, for each of the 401 days of that period, in the total amount of \$4,411,000;

34. That plaintiff be granted such other and further relief as the Court may deem just and proper; and

35. That the Court award plaintiff its costs of this suit.

Dated: February 28, 2003

_____/s/_____
Deborah P. Majoras
Deputy Assistant Attorney General

_____/s/_____
Constance K. Robinson
D.C. Bar No. 244806
Director of Operations

_____/s/_____
Roger W. Fones
D.C. Bar No. 303255
Chief, Transportation, Energy &
Agriculture Section

_____/s/_____
Donna N. Kooperstein
Assistant Chief, Transportation, Energy &
Agriculture Section

_____/s/_____
Nina B. Hale
Jessica K. Delbaum
C. Alexander Hewes, Jr.
D.C. Bar No. 150284
Attorneys, Antitrust Division
United States Department of Justice
325 Seventh Street, NW, Suite 500
Washington, D.C. 20530
Telephone: 202/307-0892
Facsimile: 202/307-2784