

Citizen Complaint Center  
Antitrust Division  
950 Pennsylvania Ave., NW  
Room 3322  
Washington, DC 20530

June 8, 2018

Dear Department of Justice, Citizen Complaint Center:

The Cornucopia Institute is a national non-profit farm policy group that acts as an organic industry watchdog. We are engaged in research and educational activities supporting the ecological principles and economic wisdom underlying sustainable and organic agriculture. Through research and investigations on agricultural and food issues, The Cornucopia Institute provides needed information to family farmers, consumers, stakeholders involved in the good food movement, and the media. As a tax-exempt public interest group, we represent both farmers and consumers who have a direct interest in the organic meats market. This interest extends to keeping the market for organic poultry products free from anti-competitive practices that confine overall market growth and consumer choice.

The U.S. company Tyson Foods, Inc. announced on June 4, 2018, that it plans on acquiring Tecumseh Poultry, LCC, the parent company of the "Smart Chicken" brand. This purchase, the terms of which are undisclosed, will substantially increase Tyson's presence in the organic poultry market. Tecumseh Poultry is one of only three companies that already dominate organic chicken production.

Tyson Foods is one of the world's largest food companies. The corporation has approximately \$38.3 billion in annual sales, producing over 68 million pounds of meat per week. Tyson representatives state that this acquisition will make them one of the nation's leading producers of organic branded chicken. Tyson already produces organic chicken products under its NatureRaised Farms and Aidells brands. Smart Chicken will add significant market share to the organic poultry brands Tyson currently holds.

Tyson's major competitors in this market include Pilgrim's Pride Corporation (with a 2016 purchase of the parent company of the "Just Bare" organic chicken brand) and Perdue Farms (which entered the organic poultry market when it acquired Coleman Natural Foods in 2011). Tecumseh Poultry would remain a competitor if this acquisition is not approved.

While these companies control significant shares of the total meat market, our primary concern is the potential for undue market concentration in the organic poultry sector. This market must be considered separately from conventional poultry when investigating anti-trust issues because there already exists a great degree of concentration in organic poultry. This particular market is also more sensitive to consumer choice.

As noted above, there are only a few large players in the organic poultry market, and this acquisition consolidates the market even further. This consolidation would eliminate a growing brand, Smart Chicken, which has potential as a competitor itself. The Smart Chicken brand could also get acquired by another business that does not already have a large presence in the organic poultry market. This acquisition raises serious questions about the future of the organic poultry market, and it will have a chilling impact on competition from existing or emerging smaller brands and companies.

Free markets are the foundation of a vibrant economy, and competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation. However, when an economic player controls a large percentage of the market, they can easily push out smaller competitors and stifle both new investment and innovation. The Tyson acquisition of Tecumseh Poultry would likely severely lessen competition in the organic poultry market and would therefore be illegal under the Clayton Act.

Organic chicken and other poultry is one of the fastest growing sectors of the organic market. The market grew in sales volume by 8.6 percent from 2016 to 2017, more than four times the rate of conventional poultry according to Nielsen's Perishables data cited by Tyson. According to USDA's Economic Research Service (ERS), the number of certified organic broilers produced in 2016 totaled more than 19 million and the number of certified organic turkeys produced was 410 thousand.<sup>1</sup>

With this acquisition Tyson would control a significant percentage of the organic poultry market, allowing them to easily push out smaller, independent companies or farmstead producers who would have difficulty competing with Tyson's superior economy of scale. This is especially true with organic chicken and turkey, as small brands are more heavily impacted by the high up-front cost of organic grain and limited consumer recognition, in comparison to a large corporation and well-known brands including Smart Chicken.

Our concerns are not only based on the few number of individual entities that control the vast majority of the market, but rather what appears to be the disproportionate percentage of total organic poultry production they control.

As a result of these effects, this acquisition would "substantially lessen competition" in the organic poultry market, raising concerns that the acquisition is in violation of Section 1 of the Sherman Act. It is vital that the organic poultry sector is kept free of market monopolization and concentration. It is imperative that Tyson be required to provide certain additional information about the likelihood that the proposed transaction would substantially lessen competition in violation of Section 7 of the Clayton Act and whether this raises any antitrust concerns in the organic market that warrant closer examination.

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<sup>1</sup> Agricultural Resource Marketing Center Website. 2018. "Organic Poultry Profile." Accessed June 5, 2018. <https://www.agmrc.org/commodities-products/livestock/poultry/organic-poultry-profile-625/>

We request that the Federal Trade Commission investigate the potential for anti-competitive actions surrounding the acquisition of Tecumseh Poultry by Tyson Foods, Inc.

Thank you for investigating this matter.

A handwritten signature in black ink that reads "Marie Burcham". The signature is written in a cursive, flowing style.

**Marie Burcham, J.D.**  
**The Cornucopia Institute**  
**[Burcham@cornucopia.org](mailto:Burcham@cornucopia.org)**

cc. Bureau of Competition, Federal Trade Commission