

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

July 2, 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 investigations and publications 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, The Hain Celestial Group, Inc., said in May, 2018 that it plans to divest its Hain Pure Protein (HPP), which sells organic and natural chicken products under the Plainville Farms and Freebird brands. Some sources state that this divestment is intended to make the rest of Hain's holdings more attractive to other buyers. According to financial reporting, HPP is now classified as a discontinued operation for reporting purposes.

In June 2018, Pilgrim's Pride Corporation put in a bid for HPP, according to a report in the *New York Post*.

Pilgrim's Pride is currently the nation's largest organic poultry producer, even though they only entered USDA certified organic chicken production in 2016 (with a purchase of the parent company of the Just Bare organic chicken brand). Organic chicken comprises just 4% of Pilgrim's total chicken production, but the company controls a huge portion of the organic poultry marketplace. In May, Pilgrim's Pride reported net sales of \$2.75 billion.

While Hain is purportedly taking bids on HPP until the middle of July, it is essential that this sale is closely scrutinized. As Pilgrim's Pride is the current industry giant, its potential purchase of HPP raises serious antitrust and anticompetitive concerns.

Other major competitors in the organic poultry sector include Perdue Farms (which entered the organic poultry market when it acquired Coleman Natural Foods in 2011) and Tyson Foods (which added the Smart Chicken brand to their portfolio after their recent purchase of Tecumseh Poultry). Tyson currently produces organic chicken products under its NatureRaised Farms and Aidell's brands.

These three companies control significant shares of the total meat market, leading to concern about undue market concentration in the organic poultry sector. This market must be considered separately from conventional poultry when investigating antitrust issues because there already exists a great degree of concentration. This particular market is also more sensitive to consumer choice, since organic food is still considered a specialty market. Organic purchases are often driven by a consumer's desire to have food that stands for something (whether it be greater nutrition, animal welfare, sustainability, or any number of other issues the organic standards speak to).

Organic chicken and other poultry is one of the fastest growing sectors of the organic industry. The demand for organic chicken and other poultry products has been growing dramatically over the past five years. Between 2015 and 2016, sales increased by 78%. The market grew in sales volume by 8.6% from 2016 to 2017, more than four times the rate of conventional poultry according to Nielsen's Perishables data. 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.¹

If Pilgrim's Pride or one of the other major players (Perdue or Tyson in particular) purchases HPP, it will have a chilling impact on existing or emerging smaller brands and companies. The purchasing company would then control a dangerous percentage of the organic poultry market, allowing them to more easily push out smaller, independent companies or farmstead producers who already have difficulty competing with their superior economy of scale. The impact of economies of scale is especially profound in organic chicken and turkey markets, as small brands are more heavily impacted by the high up-front cost of organic grain and limited consumer recognition.

Our concerns are based on the small number of individual entities that control the vast majority of the market, and the degree of control they wield through their disproportionate percentage of total organic poultry production. If a smaller entity were to purchase HPP, this concern would be alleviated, because the smaller entity would then be better able to compete with the established protein giants of Pilgrim's Pride, Perdue Farms, and Tyson.

If Pilgrim's Pride (or another big industry player) is allowed to make this acquisition, it could "substantially lessen competition" in the organic poultry market. This will raise concerns that the sale and ultimate acquisition of HPP is in violation of Section 1 of the Sherman Act.

If this bid is accepted by Hain, it is imperative that Pilgrim's Pride 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.

¹ 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 respectfully request that the Department of Justice investigate the potential for anti-competitive actions surrounding the sale of HPP to Pilgrim's Pride, or to any other bidder that already controls a significant portion of the organic poultry market. It is vital that the organic poultry sector is kept free of market monopolization and undue concentration.

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
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cc. Bureau of Competition, Federal Trade Commission