DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98–CV–1875 (GK)]

United States v. Cargill, Incorporated; Public Comment and Plaintiff's Response

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Cargill, Incorporated and Continental Grain Company,* Civil No. 98–CV–1875 (GK), filed in the United States District Court for the District of Columbia, together with the Untied States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: 202/514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of: United States of America, Plaintiff, v. Cargill, Incorporated, and Continental Grain Company, Defendants, Civil Action No. 99–1875 (GK).

UNITED STATES RESPONSE TO PUBLIC COMMENTS

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February 11, 2000.

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United States Response to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) (''AAPA''), plaintiff, the UNITED STATES OF AMERICA, acting under the direction of the Attorney General, hereby files comments received from members of the public concerning the proposed Final Judgment in this civil antitrust suit and the Response of the United States to those comments.

I. Factual Background

A. The Parties to the Transaction

Cargill, Incorporated (''Cargill'') and Continental Grain Company (''Continental'') are grain traders. They employ grain distribution networks—primarily composed of country elevators, rail terminals, river elevators, and port elevators—to buy grain from farmers and other suppliers, store it, and move it to their domestic and foreign customers. In addition, both firms are engaged in related businesses such as grain processing and cattle feeding.

B. The Proposed Acquisition

On October 9, 1998, Cargill entered into an agreement with Continental to acquire its gain trading business (conducted by Continental's Commodity Marketing Group). Cargill is not acquiring Continental's processing or finance divisions, which Continental will continue to operate as independent businesses after Cargill's acquisition of its grain trading business.

C. The Complaint

On July 8, 1999, the United States Department of Justice (the Department) filed a Complaint with this Court alleging that Cargill's acquisition of Continental's Commodity Marketing Group would substantially lessen competition for grain purchasing services in nine relevant markets, in violation of Section 7 of the Clayton Act (15 U.S.C. 18). In those markets, Cargill would have gained the power to artificially depress the prices paid to U.S. farmers and other suppliers for their grain and oilseed crops—including corn, soybeans, and wheat (collectively referred to as ''grain'').

The Complaint also alleged that the transaction would have resulted in Cargill and one other grain company controlling approximately eighty percent of capacity at the Chicago and Illinois River elevators that are authorized by Chicago Board of Trade (CBOT) to accept delivery for the settlement of corn and soybeans futures contracts.[1] That concentration would have increased the risk of manipulation of futures prices.

Finally, the Complaint alleged that a non-compete provision of the Cargill/Continental agreement was a division of markets in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Because the Cargill/Continental acquisition agreement prohibited Continental from re-entering the grain distribution business for five years, the Complaint charged that it gave Cargill more time than would be reasonably necessary to gain the loyalty of former Continental suppliers and customers, and therefore, the agreement constituted an unlawful division of markets.

D. The Proposed Settlement

The Department, Cargill, and Continental filed a joint stipulation for entry of a proposed Final Judgment settling this action on July 8, 1999. In each of the nine markets where the Department has determined that the consolidation of competing Cargill and Continental grain elevators would give grain companies the power to artificially depress the price of grain that they pay farmers and other suppliers, the Final Judgment requires the divesture of either the Cargill grain elevator or the Continental grain elevator serving that

[1] For corn futures contracts, CBOT-authorized delivery points are located in Chicago and on the Illinois River as far south as Peoria; for soybean contracts, these facilities are in Chicago and along the entire length of the Illinois River.

market. The Final Judgment also requires divestitures of elevators on the Illinois River to ensure that concentration among firms controlling CBOT-authorized delivery points does not provide opportunities for manipulation of CBOT corn and soybean futures contracts.

Continental's divestitures to preserve competition for the purchase of grain from farmers and other suppliers include:

- Its river elevator at Lockport, Illinois;
- Its river elevator at Caruthersville (Cottonwood Point), Missouri;
- Its rail elevator at Salina, Kansas;
- Its rail elevator at Troy, Ohio;
- Its port elevator at Stockton, California; and
- Its port elevator at Beaumont, Texas.

Prior to entering into the proposed Final Judgment, Continental also terminated its minority interest in a river elevator at Birds Point, Missouri. Accordingly, no divestitures were required to protect competition in this market.

In order to protect against manipulation of CBOT futures markets, Continental was required to divest its Chicago port elevator.[2]

Cargill's divestitures to preserve competition for the purchase of grain from farmers and other suppliers were:

- Its river elevator at East Dubuque, Iowa;
- Its river elevator at Morris, Illinois; and
- Its port elevator at Seattle, Washington (with the option to retain its port elevator at Seattle if it does not acquire the Continental port elevator at Tacoma).

In addition, the Final Judgment requires Cargill to enter into a throughput agreement making one-third of the daily loading capacity at its Havana, Illinois River elevator available to an independent grain company to avoid undue concentration among firms controlling CBOT delivery points.[3]

The proposed Final Judgment also prohibits Cargill from acquiring any interest in the facilities to be divested by Continental pursuant to the proposed Final Judgment or the river elevator at Birds Point, Missouri in which Continental formerly held a minority interest.

Finally, the proposed Final Judgment prohibits the non-compete provision of the Cargill/Continental agreement from remaining in force for more than three years.

[2] Continental's divestiture of its Lockport river elevator is a remedy for concentration among authorized CBOT delivery stations, as well as remedy for concentration among grain buyers in that area.

[3] Cargill's divestiture of its Morris facility serves to protect against CBOT concentration problems, as well as concentration among buyers of grain in that market.

E. Compliance With Antitrust Procedures and Penalties Act

To date, the parties have compiled with the provisions of the Antitrust Procedures and Penalties Act as follows:

(1) The Complaint and proposed Final Judgment were filed on July 8, 1999;

(2) Defendants filed settlement pursuant to 15 U.S.C. 16(g) on July 19, 1999.

(3) The Competitive Impact Statement (''CIS'') was filed on July 23, 1999;

(4) The proposed Final Judgment and CIS were published in the **Federal Register** on August 12, 1999, 64 F.R. 44,046 (1999);

(5) A summary of the terms of the proposed Final Judgment and CIS was published in the *Washington Post,* a newspaper of general circulation in the District of Columbia, for seven days during the period August 10, 1999 through August 16, 1999;

(6) The sixty-day period specified in 15 U.S.C. 16(b) commenced on August 12, 1999 and terminated on October 12, 1999;

(7) The United States hereby files the comments of members of the public and the Nebraska Attorney General's amicus brief (bound separately as Appendix A) together with the Response of the United States to the comments and brief, pursuant to 15 U.S.C. 16(b); and

(8) The United States will move this Court for entry of the Final Judgment after the comments and the Response are published in the **Federal Register**. The Final Judgment cannot be entered before the publication. 15 U.S.C. § 16(d).

II. Legal, Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully compiled with the APPA. After receiving the United States' motion for entry of the proposed Final Judgment, the Court must determine whether it ''is in the public interest.'' 15 U.S.C. 16(e). In doing so, the Court must apply a deferential standard and should withhold its approval only under very limited conditions. As Judge Greene observed in the *AT&T* case:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

United States v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd mem. sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983).

The United States Court of Appeals for the District of Columbia has noted that ''constitutional questions * * * would be raised if courts were to subject the government's exercise of its prosecutorial discretion to non-deferential review.'' *Massachusetts Sch. of Law at Andover, Inc.* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997) (citing *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1457–59 (D.C. Cir. 1995). Rather, the district court should review the proposed Final Judgment ''in light of the violations charged in the complaint and * * * withhold approval only [a] if any of the terms appear ambiguous, [b] if the enforcement mechanism is inadequate, [c] if third parties will be positively injured, or [d] if the decree otherwise makes 'a mockery of judicial power.' '' *Id.* at 783 (quoting *Microsoft* at 1462).

With this standard in mind, the Court should review the comments of members of the public concerning the proposed Final Judgment and the United States' Response to those comments. As this Response makes clear, entry of the proposed Final Judgment is in the public interest.

III. Summary of Public Comments

Sixty-seven individuals, eight public officials, and nineteen organizations expressed their views on the proposed Final Judgment. These comments and questions are summarized below.

Sixty-five individual farmers filed comments. Some are disappointed because they believe the transaction does nothing to raise the prices they receive when they sell their grain. Others are concerned that the markets in which they sell their grain have become so concentrated that the grain companies will be able to depress prices paid to farmers for their grain. Still others are concerned that Cargill will be able to monopolize ''specialty or niche'' markets or lessen competition in grain futures markets. Finally, some of the commenting farmers believe there should be a complete ban on mergers and acquisitions in the agribusiness sector.

Congresswoman Jo Ann Emerson, Missouri Attorney General Jeremiah Nixon, and several farm organizations, including the Missouri Farm Bureau Federation, Missouri Soybean Association, and Permiscot County Farm Bureau, addressed their comments to Section IV(D) of the proposed Final Judgment, which directs Continental to divest its river elevator at Cottonwood Point, Missouri, near Caruthersville. After noting that Bunge Corp. is one of

the major grain purchasers in the vicinity of Cottonwood Point, these commentators urge the Department of Justice not to permit divestiture of the Cottonwood Point facility to Bunge.

New Mexico Attorney General Patricia Madrid has no opposition to the proposed Final Judgment, although she is concerned about there being one less significant competitor in the national grain trading market after the transaction. Attorney General Madrid, therefore, urges the Department to actively advocate administrative and legislative actions that will invigorate competition in the agricultural sector of our economy.

Minnesota Attorney General Mike Hatch believes the proposed Final Judgment does not go quite far enough to ameliorate antitrust concerns raised by the transaction. He is concerned that grain markets are already too highly concentrated and that agriculture industries, in general, are experiencing high rates of vertical consolidation. Under the circumstances, Attorney General Hatch recommends that the proposed Final Judgment be modified to prohibit Cargill from acquiring any other of its competitors in grain export, transport, and storage markets.

Nebraska and South Dakota Attorneys General Don Stenberg and Mike Barnett the issue with the relevant geographic markets as defined in the Complaint. They believe the Department of Justice should not have focused on overlapping draw areas for country, rail, river or port areas, but rather suggest the relevant market should be enlarged to include the entire United States or even the rest of the world. Given that Cargill and Continental are two of our nation's largest grain trading companies, these—Attorneys General are of the view that the two firms should not be permitted to merge under any circumstances. In addition, Attorney General Stenberg's comments in his amicus brief mirror many of the concerns expressed by the Organization for Competitive Markets, discussed *infra.*

North Dakota Attorney General Heidi Heitkamp filed a comment expressing her appreciation for the ways in which this law suit has preserved competition for farmers at the local level in North Dakota. She, nevertheless, remains concerned about powerful concentrations of agribusiness firms that North Dakota farmers must face. Based on that concern, she suggests that the Department should reconsider the adequacy of divestitures required by the proposed Final Judgment and instead, seek to enjoin the transaction in its entirety. In particular, Attorney General Heitkamp thinks the time has come to rethink antitrust analysis in the farm sector to give greater consideration to non-economic concerns.

John W. Helmutch, an agricultural economist, filed a comment that set forth his suggested analytical framework for the Department's use in analyzing the transaction. In his view, it is essential for the Department to assess market concentration, the extent of information available to grain traders and farmers in the market, and the potential adverse competitive effects on grain futures markets and other agribusinesses beyond grain trading, such as livestock markets. Mr. Helmuth asks if we have made these assessments.

A.V. Krebs believes the Department's analysis is deficient because it fails to consider whether the transaction will permit Cargill to force its own standards, practices, marketing arrangements, and prices on farmers, processors, and merchandisers in grain markets throughout the United States.

Professor C. Robert Taylor of Auburn University is concerned that the Department did not adequately consider the extent of vertical integraiton in the agricultural sector. Minnesota and Nebraska Attorneys General Mike Hatch and Don Stenberg and Catholic Charities of Sioux Cit, Iowa voice the same concernin their comments.

Jon Lauck, writing on behalf of the Organization for Competitive Markets (''OCM''), filed a comment that was critical of the Department's analysis in several respects. OCM states that the Department's analysis failed to consider: (1) The impact of concentration in agriculture markets other than grain buying; (2) the continuing potential for anticompetitve behavior in the post-merger market; (3) whether the divested facilities will continue to be competitive forces in the hands of new owners, particularly if the new owners do not have a ''network'' of elevators that buy grain; (4) the impact on potential entry into grain buying markets; (5) the ramifications of competition in overseas grain markets; (6) the implications of economic disorganization of farmers which can be exploited by powerful buyers; (7) information disparities in agriculture markets; (8) the lack of benefits of the merger; (9) a range of statutes that Congress intended courts to consider when making decisions about agriculture markets; and (10) that the consent decree risks leaving farmers without an effective outlet for legal redress. OCM's conclusion is that the proposal Final Judgment is not an adequate remedy and that the transaction should be prohibited in its entirety.

Several farm, rural-life, and religious groups voice concerns about general levels or market concentration in agriculture industries. These groups include the American Agriculture Movement, Animal Welfare Institute, Clean Water Action Alliance, Farmland Co-op Inc., Institute for Agriculture and Trade Policy (''IATP''), Kansas Cattlemen's Association, Minnesota Catholic Conference, National Catholic Rural Life Conference, and the Office of Hispanic Ministry. In the main, they believe the Department's analysis does not adequately consider concentration in agriculture markets beyond grain buying. In their view, these non-grain markets are already too concentrated, and so Cargill ought not be permitted to acquire Continental under any circumstances.

The Kansas chapter of the National Farmers Organization (NFO) expressed concern about declining grain ''basis levels.'' Thus, they are concerned that Kansas farmers will receive lower prices for their grain after the transaction. The Kansas NFO did not address the adequacy of the proposed Final Judgment.

National Farmers Union (''NFU'') filed comments opposing the transaction because the transaction does not increase competition in grain markets. NFU also believes the proposed Final Judgment is deficient because it does not ensure that divested facilities will remain competitive. NFU also believes the proposed Final Judgment fails to address the roles played by Cargill and Continental in export markets.

Rural Life Office of Dorchester, Iowa expressed concern that the transaction may facilitate Cargill's exercise of market power in ''organic and specialty'' markets.

Women Involved in Farm Economics (''WIFE'') is concerned that the transaction as proposed, by unifying the second and third largest grain traders in Nebraska, might depress grain prices to Nebraska farmers and permit Cargill to control their export market. WIFE did not object to the proposed Final Judgment.

IV. The Department's Analysis of the Transaction

We begin our response to public comments with an overview of the legal standards for analyzing mergers and acquisitions, our investigation of Cargill's proposed acquisition of Continental's commodity marketing business, and our analysis of the relevant competitive issues in this case. Thereafter, we respond to specific points raised by commentators.

A. The Relevant Merger Law

Section 7 of the Clayton Act, 15 U.S.C. 18, prohibits mergers and acquisitions whose effect may be substantially to lessen competition ''in any line of commerce * * * in any section of the country.'' The purpose of Section 7 is to prevent acquisitions or mergers before they create harm. '' 'The intent here * * * [is] to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding.' '' *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 318 n. 32 (1962) (quoting S. Rep. No. 81–1775 at 4–5).

The antitrust laws apply to the exercise of market power over sellers (monopsony power), just as they do to the exercise of market power over buyers (monopoly power).[4] *See Mandeville Island Farms* v. *American Crystal Sugar Co.* 334 U.S. 219, 235–44 (1948) (a case arising under Sections 1 and 2 of the Sherman Act). Section 7, in particular, applies to monopsony power gained via acquisitions or mergers. *See United States* v. *Rice Growers Ass'n of California,* 1986 WL 12562 (E.D. Cal. 1986) (acquisition by one miller of another found to lessen competition in purchase of California paddy rice); *United States* v. *Pennzoil Company,* 252 F. Supp. 962, 981–985 (W.D. Pa. 1965), (merger found to lessen competition in purchase of Penn Grade crude oil).

To predict whether an acquisition may substantially lessen competition or tend to create a monopoly, the reviewing court must determine: (a) The ''line of commerce'' or product market in which to assess the transaction, (b) the ''section of the country'' or geographic market in which to assess the transaction, and (c) the acquisition's probable effect on competition in the product and geographic markets. The probable effect often can be assessed by determining the level of concentration based on the market shares of the parties to the proposed transaction and their competitors in the product and geographic markets. *See United States* v. *Philadelphia National Bank,* 374 U.S. 321, 362–63 (1963).

[4] As noted in the U.S. Department of Justice/Federal Trade Commission's *Horizontal Merger Guidelines* § 0.1 (issued 1992, revised 1997): ''The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time * * * Market power also encompasses the ability of a single buyer (a 'monopsonist'), a coordinating group of buyers, or a single buyer, not a monopsonist, to depress the price paid for a product to a level that is below the competitive price * * *''

B. Framework for the Department's Competitive Analysis

As the case law suggests, the core issue in competition analysis is whether the proposed transaction likely would create or enhance market power or facilitate its exercise. This investigation focused on both monopoly and monopsony issues (that is, whether Cargill would likely gain market power through its acquisition of Continental's grain trading business in its roles as a seller or as a buyer of grain).

1. Monopoly Analysis

The *Horizontal Merger Guidelines,* which outlines the Department's enforcement policy for horizontal acquisitions and mergers subject to Section 7 of the Clayton Act, define market power in monopoly situations as the ability of a seller profitably to maintain prices above competitive levels (or to reduce quality or service below competitive levels) for a significant period of time. *Horizontal Merger Guidelines* at § 0.1. An acquisition can facilitate the exercise of market power by increasing the likelihood of coordinated interaction among competing firms or by creating a market structure in which firms find it profitable to unilaterally raise prices or reduce output. *See id.* at § 2.

To determine whether the proposed acquisition would create, enhance or facilitate the exercise of market power, Department staff first had to define the markets within Cargill and Continental compete. Under the *Horizontal Merger Guidelines*, a market is defined as a set of products or services within a geographic area such that a hypothetical monopolist could profitably impose a ''small but significant and nontransitory'' price increase or decrease. *Id.* at § 1.0.

If the evidence shows that a hypothetical monopolist of any given product or service profitably could impose such a price increase, that product or service is defined as the relevant product market. *Id.* at 1.11. If, on the other hand, the evidence shows that a sufficient number of customers would substitute other products or services to make such a price increase unprofitable, those products or services are also included in the product market. *Id.* This process continues until a group of products or services is identified for which a small but significant and nontransitory price increase would be profitable. *Id.*

Similarly, if the evidence shows that a hypothetical monopolist of the relevant product or service could impose such a price increase in any given region, that region is defined as the relevant geographic market. *Id.* at 1.21. If, on the other hand, the evidence shows that a sufficient number of customers would switch to products or services provided at locations outside the region to make such a price increase unprofitable, those locations are also included in the geographic market. *Id.* This process continues until a group of locations is identified for which a small but significant and nontransitory price increase would be profitable. *Id.*

Once the relevant product and geographic markets are defined, Department staff must evaluate the competitive impact of the proposed acquisition. A merger is likely to be problematic if the merged firms are two of a relatively small number of sellers in the market. Under these circumstances, the merged firm may gain unilateral power to raise prices, or the existence of only a few other firms in the market may facilitate tacit collusion.

2. Monopsony Analysis

As a general proposition, the analysis of competitive issues in monopsony cases is the mirror image of the more common analysis of competitive issues in monopoly cases.[5] For example, instead of determining whether the merging firms are two of a small number of sellers in the relevant product and geographic market, and whether the merged firm would gain sufficient market power to raise prices to consumers, monopsony analysis focuses on whether the merging firms are two of a small number of buyers in the relevant product and geographic market, and whether the merged firm would gain sufficient market power to depress prices paid to its suppliers. Likewise, instead of determining whether the buyers could defeat an attempt by a monopolist to increase prices by a small but significant and non-transitory amount by switching to alternative products or alternative suppliers, the issue in a monopsony investigation is whether the sellers could defeat an attempt by a monopsonist to depress prices by producing other products or by selling their products to more distant buyers.

[5] As noted in Section 0.1 of the *Horizontal Guidelines:* ''The exercise of market power by buyers ('power') has adverse effects comparable to those associated with the exercise of market power by sellers. In order to assess potential monopsony concerns, the Agency will apply an analytical framework analogous to the framework of these Guidelines.''

C. Overview of the Department's Analysis of Competitive Issues in This Transaction

1. Background

Cargill and Continental are international grain traders, and so the Department's investigation encompassed grain markets throughout the world. In the course of this investigation, conducted by a team of approximately twenty lawyers, paralegals, and economists, the Department's staff: reviewed over 400 boxes of documents furnished by Cargill and Continental pursuant to our second request discovery procedures; deposed Cargill and Continental executives; reviewed relevant legal and economic literature; consulted with officials of the Department of Agriculture, the Commodity Futures Trading Commission, and state attorney general offices; and interviewed over one hundred farmers, farm organization officials, agricultural economists, grain company executives, and other individuals with knowledge of the industry and competitive conditions.

The Department's staff found that grain typically moves from farms to country elevators, from which it moves to river elevators and rail terminals, and then to domestic purchasers or to port elevators for export to the rest of the world. We found that Cargill and Continental often compete with each other at various stages of their grain distribution networks as they buy, store, distribute, and sell agricultural commodities. Accordingly, the investigation encompassed all aspects of their worldwide grain businesses in order to identify any portions of their respective grain distribution networks where they compete with each other.

In our investigation, we focused on the use of these grain distribution networks to facilitate four different aspects of the grain business:

1. Selling standard grades of grain (Primarily, corn, wheat and soybeans);

2. Selling less widely-traded grain products (super commodities, special commodities, and other niche products);

3. Buying grain; and

4. Providing elevator services at delivery facilities that are designated by the CBOT for the settlement of corn and soybean futures contracts.

As to the first two categories, the investigation indicated that the transaction would not create market power in the sale of these products; and very few of the public comments dealt with these aspects of the grain business. Most of the comments concerned the Department's conclusions on the third and fourth aspects of the Cargill and Continental grain businesses.

2. Analysis of Cargill as a Seller of Standard-Grade Grain Products

Cargill and Continental compete in a national (or international) market in their roles as sellers of standard agricultural commodities. Although they are big grain companies in absolute terms, they have relatively small shares of the output markets in which they compete. One way to assess concentration among grain traders is grain storage capacity.[6] By this measure of concentration, collectively they had less than eight percent of total U.S. off-farm grain storage capacity—before the divestitures required by the Final Judgment.[7]

Food processors, cattle feeders, and other buyers of agricultural commodities rely upon competition among a fairly large number of big grain companies with nationwide grain distribution networks and nearby regional grain companies to ensure competitive prices. Commodity prices tend to be fairly consistent in grain companies' output markets throughout the country when adjusted for transportation costs. With these competitive conditions, it was not surprising that the officials from cereal companies, bakers, and other buyers of wheat, corn, and soybeans whom we interviewed consistently indicated that they thought the transaction would not give Cargill the power to raise prices for standard commodities.

In summary, our investigation determined that the relevant geographic market for grain companies' sale of grain is at least as broad as the national market. With a combined Cargill/Continental share of less than eight percent of that market, it is highly unlikely that this transaction could create or enhance market power for sellers of these commodities to any appreciable degree.

3. Analysis of Cargill as a Seller of Speciality Products

Although we concluded that this transaction would not give Cargill or other grain companies market power as a seller of standard grade grain products, we considered the possibility that Cargill and Continental might be two of a relatively small number of sellers of less widely-traded commodities and that the consolidation of these business might give Cargill market power as a seller of these products. Niche grain products include super commodities (crops with specific characteristics, such as high oil content corn), special commodities (crops that are not widely traded, such as white corn), and organic crops.

Our investigation determined, however, that there are no niche product market sin which Cargill and Continental are two of a relatively small number of competitors. Consequently, we concluded that the transaction will not create opportunities for Cargill to gain sufficient market power to raise the prices on any of the niche products that it sells.

4. Analysis of Cargill as a Buyer of Grain

Although Cargill and Continental compete for the sale of grain in national and international markets, our investigation revealed that they compete for the purchase of grain in relatively small local or regional markets. Shipping grain by truck is relatively costly and time-consuming. Farmers, therefore, tend to truck their grain within limited geographic areas surrounding their farms—usually to buyers who operate nearby country elevators or to buyers who operate river, rail or port elevators if their farms are fairly close to those facilities. Operators of river elevators and rail terminals may transport grain farther distances to buyers who operate port elevators and domestic processing plants—reflecting the relatively low cost of transporting bulk commodities long distances by rail or barge as compared with truck transportation. The draw area of one grain company's country, river, rail or port elevator overlaps the ''draw area'' of a competing elevator if their facilities are close enough to each other so that the costs of shipping grain to the two elevators are not significantly different.

During the course of our investigation, the Department reviewed every local or regional market in which Continental competed with Cargill for the purchase of grain before the transaction. Department staff began this process by identifying every geographic market in which Cargill and Continental operate facilities with overlapping draw areas.[8] We then determined how many grain companies other than Cargill and

[6] Market share data is difficult to obtain and not entirely reliable in this industry. One limitation of this measure of concentration is the ''double counting'' problem that occurs when a firm handles the same bushel of grain several times—for example, when it buys wheat at a country elevator, transfers it to its rail terminal and subsequently its flour mill, and sells it to a baker.

[7] See section V(B) of this Response.

[8] At this stage of the process, we eliminated only the Continental elevators that are located so far away from the nearest Cargill elevator that it is inconceivable that the Continental elevator and nearest Cargill elevator might be drawing an appreciable amount of grain from the same farmers.

Continental operated grain elevators in each of those markets and conducted detailed and specific analyses of all of the approximately three dozen local or regional markets that are served by less than twelve grain company elevators. The analysis for each of these geographic markets included interviews of farmers, officials of farm organizations, independent elevator operators, and other people with knowledge of these local and regional markets, determinations of local or regional grain transportation costs, and other relevant information about competitive conditions in these markets. We concluded that sufficient numbers of competitive grain buyers would remain after the consolidation of the Cargill and Continental elevators in most of those local or regional markets to make it highly unlikely that grain companies could gain the power to depress the prices they pay for grain.

In nine local or regional markets, however, farmers located within the overlapping Cargill/Continental draw areas depend on competition among Cargill, Continental, and only a few other grain companies to obtain a competitive price for their grain. Cargill's acquisition of Continental's elevators in these markets, therefore, could create sufficient market power to enable the few grain companies competing in those markets to depress grain prices.

Sections VI and VII of the Complaint refer to these overlapping Cargill/Continental draw areas as ''captive draw areas.'' This term identifies highly concentrated markets in which Cargill and Continental are two of a relatively small number of grain buyers and in which the transaction is likely to create or enhance monopsony market power for: operators of port elevators in the Pacific Northwest port range; operators of port elevators in the central California port range; operators of port elevators in the Texas Gulf port range; operators of river elevators along the Illinois and Mississippi rivers; and operators of rail terminals in the vicinities of Salina, Kansas and Troy, Ohio.

In order to prevent the loss of competition for the purchase of grain that would result from Continental's exit from these markets, the Department insisted that Cargill divest either its elevator or Continental's elevator in the markets to a new entrant who would operate the facility as a grain elevator and compete for the purchase of grain from farmers in the facility's draw area. Cargill and Continental have divested, or are in the process of divesting, the following facilities:

Continental Facilities	*Acquirer*
Lockport, IL river elevator.	Louis Dreyfus Corporation.
Caruthersville, MO river elevator.	Louis Dreyfus Corporation.
Salina, KN rail elevator.	Declined to renew its lease.
Troy, OH rail elevator.	Mennel Milling Company
Beaumont, TX port elevator.	Louis Dreyfus Corporation.
Stockton, CA port elevator.	Penny Newman Grain Co.
Birds Point, MO river elevator[9].	Terminated minority interest.
Cargill Facilities	*Acquirer*
East Dubuque, IL river elevator.	Consolidated Grain & Barge.
Morris, IL river elevator.	Louis Dreyfus Corporation.
Seattle, WA port elevator.	Louis Dreyfus Corporation.

[9] The proposed Final judgment does not require a divestiture of the Birds Points facility since Continental terminated its minority interest in that facility before the execution of that settlement agreement.

5. Analysis of Cargill as an Operator of River Elevators Designated by CBOT for Settlement of Futures Contracts

Our investigation indicated that the acquisition would give Cargill and one other firm approximately 80% of the authorized delivery capacity for settlement of CBOT corn and soybeans futures contracts. In the light of these market shares and other market information, we determined that Cargill's acquisition of Continental would make it easier for Cargill unilaterally, or in coordination with the few remaining firms in the corn and soybean futures markets, to manipulate corn and soybean futures contracts in violation of section 7 of the Clayton Act.

The divestitures of Continental's Lockport river elevator and Cargill's Morris river elevator are needed to prevent the loss of competitors that otherwise would have occurred as a result of consolidation among operators of delivery facilities authorized for the settlement of CBOT corn and soybean futures contracts. Further divestitures required by the Final Judgment to remedy these concerns include Continental's Chicago port elevator and one-third of the capacity of Cargill's river elevator at Havana, Illinois.

6. Summary of the Department's Competitive Analysis

In summary, the Department found that Cargill's acquisition of Continental's Commodity Grain Marketing Group, as originally structured, would violate the antitrust laws. Cargill's acquisition of grain elevators in nine local or regional markets in which there are relatively small numbers of elevators operated by other grain companies would have created or enhanced the ability of grain companies to exercise monopsony powers in those geographic markets. Cargill's acquisition of Continental's CBOT-authorized delivery points would have resulted in undue concentration of these facilities and increased opportunities for manipulations of CBOT futures markets. And, the non-compete provision of the Cargill/Continental agreement would have harmed competition by unduly restricting Continental's right to re-enter the grain trading business in the future.

The Department has concluded that the restructuring of the transaction as required by the proposed Final Judgment resolves these competitive concerns. The divestitures required by the Final Judgment should preserve the competitive conditions that existed before the acquisition and ensure that farmers in the affected markets will continue to have effective alternatives to Cargill when selling their crops. The entry of new operators of CBOT-authorized delivery stations should prevent manipulation of CBOT corn and soybean futures markets. And, the requirement that the non-compete provision of the Cargill/Continental agreement remain in force for no more than three years should ensure that Cargill does not preclude continental's re-entry into the grain distribution business for longer than is required to give Cargill a fair opportunity to gain the loyalty of former Continental suppliers and customers.

V. The Department's Responses to Specific Comments

We now turn to the comments that raise questions about our analysis or that suggest relief different or supplemental to that contained in the proposed Final Judgment. Copies of this Response without appendix are being mailed to all who filed comments.

A. Remedy

Several commentators questioned whether the acquirers of the divested facilities would be competitive.[10] The proposed Final Judgment sets forth procedures designed to ensure that the firms that acquire the divested facilities will vigorously compete to buy grain from farmers in their geographic markets.

Pursuant to the proposed Final Judgment, Cargill and Continental provided widespread notice of the availability of the facilities that they were required to divest in newspapers

[10] Minnesota Attorney General Mike Hatch, South Dakota Attorney General Mark Barnett, National Farmers Union, and Western Organization of Resource Councils.

of general circulation, provided appropriate information concerning these facilities to prospective acquirers, and submitted reports to the Department concerning these inquiries and subsequent negotiations. They received over one hundred written expressions of interest in the facilities to be divested,[11] and now have entered into definitive agreements to divest all of the facilities that they were required to transfer to new entrants under the terms of the Final Judgment.

To ensure that the new entrants have the capability to compete with Cargill and other incumbent grain companies in their markets, the United States reviewed the proposed divestiture agreements, obtained further information from the proposed acquirers, and conducted an independent investigation into the background and capabilities of the proposed acquirers. Under the Final Judgment, the United States has the sole right to disapprove any prospective acquirer if it concludes that the proposed acquirer might not operate the divested facility as part of a viable, ongoing business. The Department's investigation indicated that each of the proposed acquirers has the financial capability, expertise, and incentive to become a vigorous, independent competitor in the relevant market. Louis Dreyfus and Consolidated Grain & Barge are major grain companies who will use these acquisitions to expand into markets that they do not presently serve. Mennel and Penny Newman are smaller, but they are experienced grain traders who presented sound business plans for assimilating the Troy rail elevator and Stockton port elevator in their respective grain distribution businesses.

In summary, the divested facilities will be controlled by new entrants with the background, expertise, and incentive to compete effectively for the purchase of grain produced in these markets. With these divestitures, therefore, it is not likely that this transaction will create or enhance the exercise of market power by Cargill or other grain companies enabling them to depress prices paid to farmers for their crops in any market.[12]

For the divestitures required to forestall undue concentration among firms who control river elevators designated for the settlement of CBOT corn and futures contracts, the Department insisted on additional criteria. We required that the proposed acquires (Louis Dreyfus at Morris and Lockport, NIDERA at Chicago, and Prairie Central at Havana) demonstrate that they satisfy all requirements for obtaining CBOT designation as an authorized delivery point (including CBOT's financial standards) in addition to the criteria established for the other divestitures.

Turning to one specific local market, Congresswoman Jo Ann Emerson, several farm groups, and one individual farmer in southeastern Missouri cautioned against allowing Bunge Corp, to acquire the Continental river elevator at Caruthersville (Cottonwood Point), Missouri because Bunge is already one of the major grain buyers in that local market.[13] The United States agrees with their analysis. Bunge will not acquire that facility; instead it will be acquired by Louis Dreyfus.

B. Market Definition

Several commentators argue that the United States failed to recognize that Cargill and Continental operate on a national scale and to realize that this transaction would concentrate the national grain market for the purchase and sale of grain.[14] We believe that we used the correct market definitions in our competitive analysis.

Under standard antitrust analysis (as applied to monopsony cases), we determine the boundaries of relevant geographic markets by determining whether it would be profitable for the only buyer of grain in the geographic market to depress the price that farmers receive for their grain by a small, but significant, and non-transitory amount. In this case, the farmer's alternatives when he looks for buyers of his crops include the closest grain buyer and other buyers located relatively near the closest buyer.[15] In most markets, we found that the additional trucking costs would preclude farmers from shipping their crops more than about twenty to thirty miles beyond the nearest grain elevator to get a small, but significant, increase in the price paid for his grain.

In this case, therefore, it was appropriate to focus our monopsony analysis on local or regional markets consisting of areas in which: (a) Cargill and Continental had elevators that were close enough to each other to compete for the purchase of grain originating in their overlapping draw areas; and (b) there were a relatively small number of competitors near enough to the Cargill and Continental facilities to be reasonable outlets for farmers located in the overlapping Cargill/Continental draw areas. These are the markets in which the transaction could create market power if too few competitors remained after Cargill acquired nearby Continental grain elevators.

Our investigation began with an examination of all local or regional markets in which Cargill and Continental operated grain elevators that were close enough together to compete for the purchase of grain from the same farmers. After eliminating the local or regional markets served by relatively large numbers of other grain company elevators, we found that Cargill and Continental were two of a relatively small number of grain companies who competed for the purchases of grain in nine local or regional markets and concluded that the transaction would have created monopsony market power in those markets.

Not one of the comments that we received indicated that we overlooked a specific local or regional market in which the transaction was likely to create competitive problems. Instead, the commentators who said that we overlooked a relevant geographic market directed our attention to national, international or export markets.

If the relevant geographic market were nationwide, we would have been forced to conclude that the transaction is not likely to lessen competition among grain buyers. Using total U.S. off-farm grain elevator capacity as a measure of market share in the grain distribution industry, Cargill had about a 5.7% share of the market and Continental about 1.2%

[11] As a further indication of widespread interest in the divested facilities, the number of potential acquirers who obtained detailed information pursuant to confidentiality agreements ranged from thirteen (for the Seattle port elevator) to twenty-one (for the Morris and Caruthersville river elevators).

[12] Antitrust relief should '' 'cure the ill effects of the illegal conduct, * * * assure the public freedom from its continuance,' * * * and it necessarily must 'fit the exigencies of the particular case.' '' *See Ford Motor Company* v. *United States,* 405 U.S. 562, 575 (1972) (quoting *United States* v. *United States Gypsum,* 340 U.S. 76, 88 (1950)) and *International Salt Co.* v. *United States,* 332 U.S. 392, 401 (1947)). The proposed Final Judgment meets these criteria by preserving competition in domestic grain markets, as it existed prior to the transaction. In the absence of any evidence to indicate that the transaction raises antitrust concerns elsewhere, there is no basis for prohibiting Cargill ''from acquiring any other direct competitors in grain export, transport, and storage markets,'' as suggested by Minnesota Attorney General Mike Hatch. If Cargill were to attempt to acquire competitors in additional markets, the Department will have the opportunity to investigate those acquisitions and to seek remedies for any transactions that violate the antitrust laws.

[13] Missouri Farm Bureau Federation, Missouri Soybean Association, Pemiscot County Farm Bureau, and Clyde Southern.

[14] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, National Farmers Union, WIFE, and Reena Kazmann.

[15] The cost of shipping grain from farm to grain elevator is more relevant than the distance from farm to grain elevator, but cost and distance are roughly proportionate to each other in most cases.

before the transaction (and before the combined capacity was reduced by the divestitures required under the Final Judgment).[16] The combined share of less than eight percent of the market is far below any appropriate threshold for suggesting that this transaction is likely to significantly lessen competition among grain buyers. Thus, the combined Cargill/Continental share of the national grain market masks the anticompetitive effects of this transaction, as originally structured, at the local or regional level.

Other commentators suggest that the U.S. grain export market may be a relevant market.[17] Cargill and Continental are two of the United States' largest agricultural exporters (with combined export market shares of about 40% for corn, 30% for soybeans, and 25% for wheat); but, U.S. export market shares are not meaningful indications of concentration in any relevant grain output market.The customers for Cargill and Continental U.S. grain exports (*i.e.,* grain buyers in foreign countries) rely on competition among relatively large numbers of U.S. and foreign grain sellers. These sellers include Cargill, Continental, other big international grain traders, such as Bunge, Louis Dreyfus, Peavey (a division of ConAgra), and ADM, smaller regional grain traders, and (in most cases) their own domestic producers. With such large numbers of competing sellers in these markets, it is not likely that this transaction will create or enhance monopoly market power.

Cargill and Continental port elevators were a major focus of our investigation, but not because of their impact on buyers in foreign markets. We devoted substantial efforts to the investigation of this level of the Cargill and Continental grain distribution networks because: (a) In several port ranges, they compete with each other for the purchase of grain from farmers and other suppliers in their port elevators' overlapping draw areas; and (b) there are relatively small numbers of other grain companies in some of those port ranges. In fact, we found competitive problems requiring the divestiture of four of Continental's six port elevators.

[16] The *1999 Grain & Milling Annual* estimates total U.S. off-farm grain storage capacity to be 7,938,190,000 bushels. *Id.* at 7. Cargill had total capacity of 452,399,560 bushels; Continental 169,346,000 bushels. *Id.* at 21, 22. The combined Cargill/Continental capacity is 7.83% of total U.S. off-farm grain storage capacity.

[17] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, National Farmers Union, and WIFE.

C. Cargill's Power Over Price

Many of those who file documents are concerned that Cargill may have the power to depress grain prices paid to farmers after it acquires Continental.[18] We too had that concern, and as explained in section IV of this memorandum, we concluded that the acquisition as originally proposed would have adversely affected farmers in local or regional markets who had no reasonable choice but to sell their grain to Cargill, Continental, and only a few other grain companies. As explained in section V(A) of this memorandum, the divestitures required by the proposed Final Judgment protect those farmers. Only if the Court were not to require the divestitures set forth in the proposed Final Judgment would grain companies gain the power to depress prices paid to farmers and other suppliers in these markets.[19]

D. Futures Markets

Several comments stated that the United States failed to consider the impact of the transaction on futures markets.[20] In fact, we devoted considerable attention to that issue. Our analysis of the futures issue included reviews of all agricultural futures markets and economic literature on the subject, interviews of farmers, farm organization officials, grain company executives, and other people who rely on futures markets, and extensive consultations with officials from the Commodity Futures Trading Commission (CFTC).

We concluded that the transaction, as originally structured, would have given Cargill and Archer Daniels Midland Co. (ADM) approximately eighty percent of the delivery capacity for the settlement of CBOT corn and soybean futures contracts, thereby increasing opportunities for manipulation of those futures markets. Under the transaction, as originally structured, Cargill would have acquired eight Continental elevators that were authorized to accept deliveries for the settlement of CBOT corn and soybean futures contracts. The proposed Final Judgment requires the divestiture of three CBOT-authorized delivery stations on the northern portion of the Illinois river—Continental's port elevator at Chicago, Continental's river elevator at Lockport, and Cargill's river elevator at Morris. In addition, Cargill is required to make one-third of its loading capacity at a fourth facility—its Havana river elevator—available to an independent grain company under a throughput agreement in order to gain an additional facility on the southern portion of the Illinois River for the settlement of soybean futures contracts.

During our review of the divestitures proposed by Cargill and Continental, we reviewed the prospective acquirers' backgrounds to ensure that they had the requisite financial and operational capabilities and incentives to become vigorous independent competitors. In cooperation with officials from the CFTC, we also obtained credible assurances that the acquirers could obtain CBOT authorization to accept deliveries in settlement of corn and soybean futures contracts. The Department concluded that the divestitures will leave sufficient CBOT-authorized delivery capacity in the control of firms other than Cargill and ADM to protect against manipulation of CBOT corn and soybean futures markets.

E. Specialty Markets

Several commentators indicated that the United States failed to consider whether the transaction would enable Cargill to monopolize speciality or niche commodity markets.[21] As noted in section IV(B)(3) of this Response, we did study this issue, but our investigation

[18] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, Animal Welfare Institute, National Catholic Rural Life Conference, and Office of Hispanic Ministry, Greta Anderson, Vivian Anderson, Kay Barnes, Isabelle Barth, Mary Beckrich, Amanda Bray, Loris von Brethorst, Marilyn Borchardt, Mike Callicrate, G.M. Carlson, Mary Casserand, Laurie Chancellor, Donald B. Clark, Roger and Shari Cummings, Peggy B. Daugherty, Lyman and Darline Denzer, Steve Dewell, C.K. Dresae, Llewellyn and Karen Engelhart, Dan and Judy Gotto, Bob Gregory, Mary Hargrafen, Minnesota AG Mike Hatch, Veron E. Heim, John W. Helmuth, Barbara Hook, Jeff Horejsi, Robin Kleven, Riley Lewis, Todd Lewis, Lawrence Marvin, Margot Ford McMillen, Darlene Milbradt, Winton Nelson, Jennifer Poole, Rae Powell, Lois Shank, Lyle D. Spencer, Ellen Stebbins, Elenor Steburg, Daniel J. Swartz, and Professor C. Robert Taylor.

[19] A.V. Krebs posed the question whether farmer and others who deal with Cargill will be forced to conform to Cargill's standards for marketing grain after the acquisition. The answer is no. The proposed Final Judgment ensures that the transaction will not create or enhance the ability of Cargill to exercise market power in domestic grain markets. Absent market power, Cargill cannot impose its will on the firms with whom it does business.

Several individual farmers and the National Farmers Union oppose the acquisition because it will not have the effect of increasing prices or competition in grain markets. The goal of antitrust is to prevent transactions that would reduce existing competition. The antitrust laws provide no legal basis for using the power to challenge proposed mergers to *increase* competition in any market.

[20] Minnesota Attorney General Mike Hatch, John W. Helmuth, and Keith Mudd.

[21] Minnesota Attorney General Mike Hatch, Rural Life Office, Office of Hispanic Ministry, and Roger and Shari Cummings.

produced information showing that the transaction would not create or enhance market power in any markets for the purchase or sale of niche products (including super commodities, special commodities, and organic grain products).

In summary, our investigation uncovered no niche product market in which Cargill and Continental were two of a relatively small number of buyers or sellers. Our investigation, which encompassed all niche products handled by either Cargill or continental, revealed that either: (a) They did not compete with each other before the transaction or (b) there were sufficient numbers of other grain companies in the market to deny Cargill the opportunity to gain monopoly or monopsony market power.

F. Nebraska Grain Markets

Several members of the WIFE organization in Nebraska expressed concern about the ability of Cargill to depress prices paid to Nebraska farmers. As mentioned previously, the main focus of our competitive analysis was to determine whether the transaction was likely to create sufficient market power for Cargill to depress prices paid to farmers in any local or regional market. Since our preliminary investigation identified several markets in Nebraska in which Cargill and Continental compete for the purchase of grain, we devoted considerable attention to local markets within he state. After conducting numerous interviews with farmers and farm organizations in those areas, calculating local grain transportation costs, and considering other relevant competitive data, however, we concluded that there were no local markets in Nebraska in which Cargill and Continental were two of a relatively small number of competitors for the purchase of grain. In each Nebraska market where Cargill and Continental compete with each other for the purchase of grain, we found that there were sufficient numbers of alternative nearby buyers remaining after the Cargill/Continental consolidation to defeat any attempt by grain companies to depress prices paid to farmers in those areas. Accordingly, we did not seek divestitures of any grain elevators in Nebraska.

G. Concentration in Other Agriculture Markets

Some comments express concern over concentration in markets other than grain—for example, markets pertaining to beef and pork packing, cattle feedlots, broiler and turkey production, animal feed plants, flour and corn milling, soybean crushing, and ethanol production.[22] The comments suggest that the Department's analysis of the Cargill transaction may be deficient because it fails to give due consideration to these and other agriculture markets.

The Department disagrees. No facts have arisen that lead us to believe that Cargill's acquisition of Continental will harm competition in markets other than those identified in the Complaint.

The Department filed the Complaint and entered into the proposed Final Judgment after an extensive investigation. During this investigation, we examined competition and the likely effects of the transaction in every market where both Cargill and Continental provide competing products or services. We focused on the grain and grain futures markets alleged in the Complaint because these are the markets in which Cargill and Continental compete with each other and the markets in which competition could diminish after this transaction.

We are aware of other agribusiness industries in which one or both firms operate—including beef and pork packing, broiler and turkey production, flour and corn milling, soybean crushing, cattle feedlots, animal feed plants, and ethanol—but none of these industries is affected by the transaction since Continental is not selling its processing division to Cargill. Having carefully reviewed the facts, the Department has found no reason to believe that the transaction would have an adverse impact on competition in markets other than the grain markets alleged in the Complaint.

H. Ban on All Agribusiness Mergers

Some commentators suggest that current concentration levels in agriculture markets justify an absolute ban on mergers and acquisitions in the agriculture sector.[23] The antitrust laws provide no legal basis for such a ban, and the Department has no power to prevent the consummation of any transaction except to prevent or cure specific violations of the antitrust laws. Section 7 of the Clayton Act is the principal federal statutory provision dealing with mergers and acquisitions and, as explained above, it prohibits transactions that may harm competition in specific markets. Concentration levels are an important part of the analysis, but the ultimate test under Section 7 is whether the acquisition may tend to substantially lessen competition and that is the showing we must be prepared to prove in court, based on the facts in any given case.

I. Vertical Integration

Several commentators express concern about a trend toward vertical integration in agricultural industries, and they ask if the Department gave due consideration to that trend.[24] The Department is aware that some agricultural sectors are experiencing an increase in vertical integration. While a trend toward integration can be anticompetitive in certain circumstances, we did not find that such concerns are presented by the Cargill-Continental transaction.

Vertical integration occurs when several stages of production, processing, distribution, and marketing are brought together in one firm. In broilers, for example, many of the big firms are involved in breeding, hatching, growing, processing, and packaging activities. Vertical integration also appears to be increasing in other agricultural sectors.

In many circumstances, vertical integration is actually procompetitive, allowing firms to reduce their costs. *See* Herbert Hovenkamp, *Federal Antitrust Policy, The Law of Competition and Its Practice,* 332–36 (1994). However, there may be circumstances in which vertical mergers raise antitrust concerns, usually by either increasing barriers to entry, facilitating collusion or circumventing regulation. *Id.* at 346–48.

Since the Cargill-Continental transaction is a horizontal, rather than vertical, acquisition, it does not raise significant vertical issues. The Department did not uncover evidence suggesting that the transaction, as restructured, would have anticompetitive effects at any level in the production chain or result in an increase in vertical integration that would be competitively problematic. In short, the Department was aware of, and did consider, trends toward vertical integration in various agricultural sectors, but concluded that such trends did not provide a basis for seeking broader relief with respect to this transaction.

J. Non-economic Concerns

North Dakota Attorney General Heitkamp urges the Department to go beyond antitrust analysis and give greater consideration to unspecified

[22] Nebraska Attorney General Don Stenberg, AAM Inc., Clean Water Action Alliance, IATP, Kansas Cattlemen's Association, and Minnesota Catholic Conference, Marilyn Borchardt, John W. Helmuth, and Richard and Margene Eiguren.

[23] May Beckrich, Dick Lundebreck, David Olson, and Professor C. Robert Taylor.

[24] South Dakota Attorney General Mark Barnett, AAM Inc., Animal Welfare Institute, Catholic Charities, Clean Water Action Alliance, Jan Lundebrek, David Olson, and Professor C. Robert Taylor.

''non-economic concerns.'' While she does not say so directly, Attorney General Heitkamp may be suggesting that the antitrust laws be used to preserve family farms.

Our prosecution of this matter protects the interests of all farmers, large and small. The proposed Final Judgment is designed to eliminate the risk that Cargill's acquisition of Continental will lessen competition anywhere in the United States. Department staff first identified all markets in which Cargill and Continental are competitors, and then, in every one of these markets, assessed the extent to which the acquisition raises concerns about a loss of competition that would cause competitive problems. Ultimately, we identified nine relevant markets in which farmers were likely to be adversely affected by the creation of monopsony market power that would enable Cargill and other grain companies to depress grain prices. Through divestitures, the proposed Final Judgment resolves those concerns. In addition, the Final Judgment protects against the exercise of market power to manipulate corn and soybean futures prices and limits a non-compete clause that otherwise would have prevented Continental from re-entering the grain distribution business.

As far as our investigation was able to determine, there are no other potential adverse competitive effects likely to arise from the acquisition. The proposed Final Judgment therefore protects sellers of grain throughout the United States from the price depressing effects that otherwise could have been caused by the acquisition. This outcome is beneficial to farmers of every size, including small family farmers.

K. Administrative and Legislative Actions

New Mexico Attorney General Madrid has no opposition to the proposed Final Judgment. Rather, her comment urges the Department to advocate administrative and legislative actions that will invigorate competition in agriculture markets.

The Antitrust Division of the Department of Justice testifies before Congress on antitrust matters and prepares written reports stating the views of the Department on pending or proposed legislation pertaining to antitrust. Division attorneys also participate in administrative proceedings that require consideration of the antitrust laws or competition policies. In these situations, the Division often is the government's principal advocate of competition. Therefore, Attorney General Madrid can be sure that whenever the opportunities present themselves—in legislation, administrative proceedings or elsewhere—the Department will continue to promote competition in agriculture markets.

L. The OCM Comments

OCS's comments indicate that it is dissatisfied with the action taken by the Department of Justice. Apparently, OCM thinks the complaint and proposed Final Judgment are too modest to deal with Cargill's dominance, as perceived by OCM, in numerous agriculture markets throughout the world. OCM's comments thus ''reach beyond the complaint, to evaluate claims that the government did not make and to inquire as to why they were not made.'' *See United States* v. *Microsoft Corp.*, 56 F.3d at 1459. By doing so, OCM invites the court improperly to intrude on the government's prosecutorial role. *See id.*

On the merits, many of OCM's comments in opposition to the Department's analysis are answered by the CIS itself, the rationale of which OCM has not addressed. Rather than repeat the CIS here, we briefly deal with OCM's principal objections with appropriate references to relevant explanations in the CIS or elsewhere in this Response.[25]

1. DOJ Failed To Consider the Wider Concentration in Agricultural Markets Beyond Grain Buying

In addition to its grain trading operations, Cargill has significant presence in beef packing, cattle feedlots, pork packing, broiler and turkey production, animal feed plants, flour and corn milling, soybean crushing, and ethanol production. OCM believes that Cargill transfers resources between these markets according to prevailing economic conditions.[26] In OCM's view, these transfers are bound to increase after the transaction and, in some manner, enhance Cargill's power regardless of its economic performance.

The appropriate question for antitrust purposes, however, is whether, by transferring its own assets across industry lines as it sees fit in response to changing economic conditions, Cargill's ability artificially to depress prices will increase. OCM does not explain how such transfers could actually injure competition, and the Department is not aware of any plausible theories.

2. DOJ Failed To Consider the Continuing Potential for Anticompetitive Behavior in the Post-Merger Market

OCM is concerned that the proposed Final Judgment may not preserve competition in the relevant markets. We address this concern in the CIS at pages 9–17 and in section V(A) of this memorandum.

3. DOJ Failed To Show That the Divested Remnants of Continental Will Be a Competitive Force Absent a Large Network of Elevators That Buy Grain

OCM questions whether the divested grain elevators will be operated by effective competitors if the acquirers do not operate a large-scale network of facilities. This comment also goes to the issue of relief, which we address in section V(A) of this memorandum.

In addition to the points discussed in that section, we note that operators of river elevators and rail terminals who do not have extensive distribution networks in their facilities' draw areas do not have to buy their grain from Cargill or other national grain companies—they can buy from farmers and local or regional operators of country elevators in those markets. Likewise, operators of port elevators who do not have extensive inland distribution networks can buy grain from independent operators of river elevators and grain terminals in their facilities' draw areas. On the basis of these facts and other information that we learned about the acquirers and competitive conditions in the markets where the divested facilities are located, we concluded that all of the acquirers of the divested facilities are likely to be viable and effective competitors as a result of the elevators that they are acquiring.

4. DOJ Failed To Consider the Impact on Potential Entry Into Grain Buying Markets

OCM suggests that Continental should be held together because it is one of the few firms that has the potential to challenge Cargill in markets that Cargill now dominates, citing *United States* v. *Penn-Olin Chemical Co.,* 378 U.S. 158 (1964), for that proposition. The teachings of *Penn-Olin* do not apply to the facts in this case.

In *Penn-Olin*, the Supreme Court considered the legality of a joint venture between two chemical companies to build a sodium chlorate plant. Although the joint venture would have added a

[25] In a separate filing, Nebraska Attorney General Don Stenburg shares OCM's concerns as they are set out in points 4, 5, 6, 8, and 9 of this section.

[26] OCM refers to these transfers of resources between markets as ''cross-subsidization,'' and claims that they make diversified firms ''even more capable of * * * anti-competitive behavior.'' OCM at 2–3.

sodium chlorate producer to the market, the Court remanded the case with instructions that the district court consider ''the reasonable probability that either one of the corporations would have entered the market by building a plant, while the other would have remained a significant potential competitor.'' *Id.* at 175–76. The Court's rationale was that ''[t]he existence of an aggressive, well equipped, and well financed corporation engaged in the same or related lines of commerce waiting anxiously to enter an oligopolistic market would be a substantial incentive to competition which cannot be underestimated.'' *Id.* at 174.

Penn Olin thus concerns the protection of the present competitive force of a likely potential entrant—a firm perceived as a likely entrant by those in the market. That is not our concern in this case because Continental is presently in the market. We are concerned with the protection of *actual competition* in grain markets throughout the United States. As explained at pages 9–17 of the CIS and in section V(A) of this memorandum, the proposed Final Judgment fully addresses this concern by divesting Continental's assets to new, independent competitors in the markets, who can ensure that farmers receive a competitive price for their grain after the transaction.

5. DOJ Failed To Consider the Nature of Grain Selling Markets

It is true, as OCM suggests, that a lessening of competition in world grain markets could have an adverse effect on competition within the United States. Therefore, contrary to OCM's assertion, we did assess Cargill's acquisition of Continental in the light of market conditions throughout the world.

Our investigation revealed that numerous firms sell to buyers in foreign countries—including big international grain traders (such as Cargill, Bunge, ADM, Peavey, and Louis Dreyfus), smaller regional grain traders, and domestic producers in most foreign countries. These numbers suggest that overseas markets will remain unconcentrated, even after Cargill acquires Continental. Acquisitions in unconcentrated markets rarely have adverse competitive effects, and OCM provides no evidence to the contrary.[27]

6. DOJ Failed To Consider the Economic Disorganization of Farmers Which Can Be Exploited by Powerful Buyers

Many thousands of farmers produce corn, wheat, and soybeans in the United States. As grain leaves their farms, however, the number of firms that buy grain from the farmers becomes much smaller. OCM says this disparity ''creates a rationale for scrutinizing the power of buyers relative to sellers.'' We agree with OCM on this point; its assertion that we ignored buyer power in our analysis is simply incorrect.

If there is one theme that unifies our analysis, it is that Cargill's acquisition of Continental should not be permitted to create or enhance market power or to facilitate its exercise. CIS at 4–9; *see also* section IV(B) of this memorandum. Market power in this case means the ability of Cargill, as a buyer, to depress the price it pays for grain. *See* section IV(B)(4) of this memorandum. During the course of our investigation, we located every grain market in the United States in which it appeared likely that Cargill could depress prices as a result of the acquisition—and we obtained appropriate relief to address that concern. See *id.* at section V(A).[28]

In short, the Department has not ignored the ''power of buyers'' that concerns OCM. Rather, we now recommend entry of the proposed Final Judgment, which will ensure that this transaction does not give Cargill the opportunity to exercise monopsony power over farmers anywhere in the United States.

7. DOJ Failed To Consider Informational Disparities in Agricultural Markets

OCM does not explain how Cargill's acquisition of Continental will exacerbate informational disparities that may exist in agriculture markets. To the extent that Cargill or other grain merchants have the benefit of information that may be in some sense superior, there is no evidence that such information will improve after the transaction so as to lessen competition. Assuming information disparities could be the predicate for a Section 7 violation, they are not exacerbated by the transaction.

8. DOJ Failed To Explain the Benefits of the Merger

OCM's argument that we should explain the efficiencies in order to justify our ''approval of the merger,'' OCM comment at 8, suggests that it misunderstands the role of the Department of Justice in reviewing mergers subject to the antitrust laws. The Department does not approve mergers. Rather, the Department reviews the particular facts and circumstances of each proposed merger in order to determine whether the merger is likely to substantially lessen competition. If the Department determines that a proposed merger is likely to lessen competition in violation of the antitrust laws, we seek an injunction from the court to prohibit the transaction.

As the Complaint and CIS make clear, the Department challenged this merger in its original form as being in violation of Section 7 of the Clayton Act. The Department did not rely upon any asserted ''efficiencies'' as a defense to allow Cargill to acquire Continental facilities in any relevant market in which we concluded that the transaction would otherwise tend substantially to lessen competition. The Department agreed to settle only after Cargill and Continental agreed to be bound by the terms of the proposed Final Judgment, which has the effect of substantially altering the terms of the merger to ensure that the transaction will not give grain companies market power to depress grain prices in any relevant market in the United States.

9. DOJ Failed To Consider a Range of Statutes That Congress Intended Courts To Consider When Making Decisions About Agriculture Markets

OCM refers at some length to the Packers and Stockyards Act, the Capper-Volstead Act, and the Agricultural Fair Practices Act. OCM then concludes that ''mergers or other activities that enhance the power of buyers'' require careful review under the antitrust laws, especially when farmers are involved. *See* OCM comment at 12. The United States carefully investigates *all* mergers that may create substantial competitive harm affecting any group, including farmers. As the CIS and this Response make clear, the Department's concern for Cargill's power as a buyer of grain from farmers has been central to our analysis, prosecution, and proposed remedy in this case.

10. DOJ Failed To Consider That the Consent Decree Risks Leaving Farmers Without an Effective Outlet for Legal Redress

OCM believes that the court of Appeals for the District of Columbia Circuit has ''severely restricted'' the ability of the district court to determine whether the proposed Final Judgment is in the public interest as required by the

[27] As noted in section IV(B)(4) of this Response, our investigation did indicate competitive problems at U.S. export facilities because Cargill and Continental were two of a relatively small number of grain buyers in the relevant port ranges, not because Cargill and Continental were two of a relatively small number of grain sellers in any overseas market.

[28] As noted in section V(B) of this Response, no commentator suggested that we failed to require divestitures in any specific local or regional market in which Cargill and Continental are two of a relatively small number of grain buyers.

APPA. *See* OCM comment at 13. For that reason, OCM is concerned that the interests of midwestern farmers may not be fully considered in this federal circuit.

There is no reason to believe that the District Court for the District of Columbia cannot make the public interest determination that is required by law in this case.

M. A Hearing Is Unnecessary in This Case

Nebraska Attorney General Stenberg urges the Court to appoint a special master ''to hear evidence and to make a recommendation to the court as to the efficacy'' of the proposed Final Judgment prior to its entry. *See* Brief of the Attorney General of Nebraska as Amicus Curiae at 13–14. The APPA provides that the Court must make a determination that entry of the proposed consent judgment is in the public interest before entering that judgment. The statute provides that in making such a public interest determination, the Court ''may'', *inter alia,* appoint a special master, conduct proceedings involving the taking of testimony and documentary evidence, and ''take such other action in the public interest as the court may deem appropriate.'' 15 U.S.C. 16(f)(5). The statute does not require the Court to hold hearings, but directs the court to take such action as it deems appropriate.

As noted in section II of this memorandum, Congress, in passing the APPA, intended that consent decrees remain a viable antitrust enforcement option. They could not remain viable if it were necessary for a reviewing court to conduct a trial for a *de novo* determination of factual issues relevant to the adequacy of a proposed decree. The legislative history is clear that the court need not conduct the equivalent of a trial on the merits, or even conduct a hearing or take evidence, S.Rep. No. 298–93 at 6 (1973):

> The Committee recognizes that the court must have broad discretion to accommodate a balancing of interests. On the one hand, the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest. On the other hand, it must preserve the consent decree as a viable settlement option. It is not the intent of the Committee to compel a hearing or trial on the public interest issue. It is anticipated that the trial judge will adduce the necessary information through the least complicated and least time-consuming means possible. Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, this is the approach that should be utilized. Only where it is imperative that the court should resort to calling witnesses for the purpose of eliciting additional facts should it do so.[29]

The expeditious procedures to determine the public interest that Congress envisioned are not possible without reliance upon the Department's good faith execution of its prosecutorial discretion. Evidentiary hearings, therefore, should be used only in extreme cases. *See United States* v *G. Heileman Brewing Co.,* 563 F. Supp. 642, 652 (D. Del. 1983) (''This preference for the comment procedure over more burdensome forms of third-party participation * * * is clearly shown by the legislative history of the APPA.'').

In the instant case, an evidentiary hearing would be inordinately time consuming and would not in any way further the Court's understanding of facts relevant to the determination it must make. There has been no claim of bad faith or malfeasance on the part of the United States in settling this case. *See AMPI,* 394 F. Supp. at 41, and cases cited. Nor has Attorney General Stenberg explained why he has not been able to fully apprise the Court of his concerns in the comments he has already filed with respect to the proposed Final Judgment. *See Heileman Brewing Co.,* 563 F. Supp. at 653.

The Court need only consider the proposed Final Judgment as explained by the CIS, the comments thereon, and this Response thereto. Such consideration will amply demonstrate that the proposed Final Judgment satisfies the public interest standard of the APPA as interpreted by the courts.

N. The 60-Day Comment Period Should Not Be Extended

Several commentators request that the time period for filing public comments be extended.[30] There is no need for such extension.

The 60-day public comment period specified in 15 U.S.C. 16(b) commenced on August 12, 1999 and terminated on October 12, 1999; but we have considered and responded to every comment that we received before or after the deadline. Those who request more time for the filing of comments do not suggest the existence of relevant facts that the Department has failed to consider in negotiating and consenting to the proposed Final Judgment. Nor do they explain why more time would be desirable to assist the Court in making the public interest determination that is required by the APPA. Under the circumstances, an extension of the 60-day public comment period is unnecessary and inappropriate in this action.

Conclusion

The Competitive Impact Statement and this Response to comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, after publication of this Response in the **Federal Register** pursuant to 15 U.S.C. 16(b), the United States will move this Court to enter the Final Judgment.

Dated this 11th day February, 2000.
Respectfully submitted,

Robert L. McGeorge,
D.C. Bar No. 91900.

Michael P. Harmonis,
U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Suite 500, Washington, D.C. 20530, (202) 307–6361.

Certificate of Service

I hereby certify that I am an attorney for the United States in this action, and have caused true and correct copies of the foregoing UNITED STATES RESPONSE TO PUBLIC COMMENTS to be served by first-class mail or by more expeditious means on counsel for the defendants, Marc G. Schildkraut, Esq., Howrey & Simon, 1299 Pennsylvania Ave., NW, Washington DC, Paul T. Dennis, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300 Washington, DC and Jack Quinn, Esq., Arnold & Porter, 555 12th Street, NW, Washington, DC, on this 11th day of February, 2000.

Michael P. Harmonis.

United States Response to Public Comments—Appendix

Communications with respect to this document should be addressed to:

Roger W. Fones, Chief, Donna N. Kooperstein, Assistant Chief; Robert L. McGeorge, Michael P. Harmonis, Attorneys; Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Washington, DC 20530, (202) 307–6361.

Public Comments

The comments from members of the public that follow in this Appendix were filed during the sixty-day period specified in 15 U.S.C. 16(b),

[29] This passage is quoted in *United States v. Associated Milk Producers, Inc.*, 394 F. Supp. 29, 45 (W.D. Mo. 1975), *aff'd,* 534 F.2d 113 (8th Cir. 1976), *cert. denied sub non. National Farmers Org., Inc. v. United States,* 429 U.S. 940 (1976) (hereafter ''AMPI'').

[30] Animal Welfare Institute, NFO Kansas, OCM, Insabelle Barth, Mary Casserand, Steve Dewell, Grant and Mabel Dobbs, Barbara Hook, Jay Godley, Todd Lewis, Glenn Oshiro, N. Ramsey, Ellen Stebbins, Giles Stockton, Dr. Frankie M. Summers, Dennis and Janice Urie.

commencing on August 12, 1999 and terminating on October 12, 1999.

Congresswoman Jo Ann Emerson—Tab 1
State Attorneys General (alphabetical by State)—Tab 2
Organizations (in alphabetical order)—Tab 3
Individuals (in alphabetical order)—Tab 4

Tab 1

Congress of the United States,
House of Representatives,
Washington, DC 20515–2508, August 11, 1999.

Mr. Roger Fones,
Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department Of Justice, 325 7th Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: Thank you for the attention of your Department to the plans by Cargill, Inc. to acquire the grain handling interests of Continental Grain. In all of agriculture, from transportation to processing, to inputs, there is a troubling trend toward larger and fewer companies. It is vitally important that your office work to prevent the kind of consolidation in agriculture markets that hurts producers. In the case of Cargill, I believe that your investigation and the ensuing stipulations were well warranted. However, I hope that you will consider an issue that has been raised by producers in my District regarding the consent agreement that the DOJ has entered into with Cargill (civil action number 991875).

Specifically, I have been contacted by producers in Southeast Missouri concerned that Continental's Cottonwood Point facility may be sold to an entity already possessing a significant share of the local grain market. As you know, the consent agreement requires Cargill to divest itself of the Cottonwood Point facility in order to satisfy competitive concerns. Local producers fear that Bunge would gain a near monopoly share of the local market if it were allowed to purchase the facility. I urge you to exercise strict oversight authority over the divestiture of the Cottonwood Point facility in order to prevent an unintended, anticompetitive situation.

Thank you for your attention to this matter and I look forward to hearing from you.

Sincerely,

Jo Ann Emerson, Member of Congress.

Tab 2

Richard Blumenthal, Attorney General,
State of Connecticut
Hartford June 23, 1999.

The Honorable Joel I. Klein,
Assistant Attorney General, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 3109, Washington, D.C. 20530.

Re: Mergers in the Agricultural Industry.

Dear Joel: I am sure you are aware of Minnesota Attorney General Mike Hatch's recent letter to you—which he has suggested I support in my capacity as Chair of the Antitrust Committee of the National Association of Attorneys General—expressing his concern about the proposed merger of the grain operations of Cargill, Inc. and Continental Grain Company. In addition, I understand that North Dakota Attorney General Heidi Heitkamp, Missouri Attorney General Jay Nixon, and South Dakota Attorney General Mark Barnett have each written to express their similar concerns about this proposed merger.

As the Chair of the Antitrust Committee, I join in asking you to consider carefully the possible damage to our nation's agricultural industry caused by undue concentration in numerous grain markets.

In exercising our *parens patriae* authority, Attorneys General are often called upon to evaluate and gauge the competitive harm that may result in their own states from a proposed merger. Moreover, we are all well informed of the benefits of competitive markets in lower prices and better quality for consumers. Given the importance of the food supply to our national, as well as local, interests, and the needs of consumers and farmers for fair pricing, it is crucial that we not allow monopolies or oligopolies to form—or if already formed, from abusing their market power—at any level of the agricultural industry. I urge you to be wary of and oppose any merger that may tend to lessen competition in this all-important industry in the interests of farmers and consumers alike.

Very truly yours.

Richard Blumenthal.

Mike Hatch, Attorney General
State of Minnesota
Office of the Attorney General,
St. Paul, MN, October 12, 1999.
Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Re: Comment—Proposed Consent Decree Approving the Proposed Merger of Cargill, Inc. and Continental Grain Co.

Dear Mr. Fones: I submit these comments about the proposed Cargill-Continental merger pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (1998). Our concerns were explained in detail in a letter submitted to the Department of Justice in May, attached for your information as Exhibit 1. While we appreciate the Department of Justice's (DOJ) efforts in its lengthy investigation of the proposed merger and while the proposed consent decree strives to alleviate many concerns that have been raised regarding this merger, we remain concerned about the impact of this merger upon farmers and rural communities in Minnesota. This merger is taking place in the context of a nationwide, even a global trend toward consolidation of agricultural industries which, we fear, will only harm the interests of farmers, consumers, and local communities.

As noted in our earlier letter, the grain industries, particularly grain exports, are already highly concentrated, increasing the likelihood that further concentration will lead to oligopsony and even monopsony markets for grain farmers and other sellers of grain. Further, agricultural industries are experiencing a high rate of vertical consolidation as well, with Cargill being one of the key players in this vertical consolidation given its ties to agricultural biotechnology, grain production, animal feed, meat packing, food processing, *etc.* Particularly disturbing are recent comments of the chairman of Cargill who has publicly proclaimed the company's intention to continue to expand its market reach throughout agricultural industries, both on a horizontal and vertical level. ''Cargill Chairman Micek Says Acquisitions Could Fuel Growth,'' Star Tribune, September 11, 1999 (Exhibit 2). These comments illustrate Cargill's intention to further reduce competition in agricultural markets a time when its most recent and controversial acquisition has not even been finalized.Thus, we believe it would be prudent for the consent decree to prohibit Cargill from acquiring any other direct competitors in grain export, transport, and storage markets.

Also, it should be noted that Cargill continues to come under scrutiny for its business conduct. In the most recent example, a little over one month ago, the Commodities Futures Trading Commission charged Cargill with improper selling of a commodity option for future delivery of grain, because of its use of certain contracts. Barshay, Jill, ''Cargill Charged With Illegally Selling Option Contracts,'' Star Tribune, August 27, 1999 (Exhibit 3). This type of alleged conduct is directly relevant to the proposed merger, and should be considered by the Court in its evaluation of the proposed merger and consent decree.

Finally, should the Court approve the proposed consent decree and allow the merger to take place, we urge the Department of Justice to strictly scrutinize Cargill's and Continental's compliance with the proposed final order, and to exercise its discretion in approving acquirers of the proposed divestitures in a careful and exacting way. As the Department of Justice will have sole discretion to approve or disapprove any proposed acquirers, we ask that it exercise this discretion vigilantly to minimize to the greatest degree possible any potential harm to competition and public welfare that may result from this merger.

Very truly yours,

Mike Hatch,
Attorney General, State of Minnesota.

Exhibit 1 to the comment filed by Minnesota Attorney General Mike Hatch is available for inspection in room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Jeremiah W. (Jay) Nixon, Attorney General,
Attorney General of Missouri,

Jefferson City, MO, September 16, 1999.

Mr. Roger W. Fones, Esq.,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Re: Comments on Proposed Consent Decree and Divestiture Settlement, Cargill, Inc.'s Acquisition of Continental Grain Company.

Dear Mr. Fones: As Missouri Attorney General, I wrote directly to Joel Klein, Assistant Attorney General in charge of the Antitrust Division, in mid-May, 1999, regarding the above-referenced acquisition. I had also instructed my assistant, Trey Hanna, to assist your office in assessing the anticompetitive impact this merger would have on grain farmers in southeast Missouri. As expressed on earlier occasions, I am concerned about this acquisition.

I was quite glad to see that the Department of Justice secured (1) Cargill's agreement that it would not seek to acquire any ownership interest in the river elevator at Birds' Point, Missouri, which Continental had previously held, and (2) Continental's agreement to first divest its river terminal at Cottonwood Point, Missouri, (near Caruthersville) before conveying most of its other grain assets to Cargill. Allow me to again express our thanks.

But we are still concerned; it remains to be seen whether the new owner of that Cottonwood Point facility will be acceptable.

We have analyzed competitive conditions in southeast Missouri's grain business and farmers' ability to secure a fair price for their product. We have analyzed the ''Competitive Impact Statement'' (C.I.S.) filed by the Department of Justice on July 23, 1999 and subsequently published in the **Federal Register**. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), I now wish to formally comment on the proposed consent decree which, if approved by the court, will become a final judgment and will set competitive conditions in southeast Missouri for many years to come.

As the Department of Justice explained in that C.I.S., the core purpose of requiring Continental to first divest the Cottonwood Point facility is to ''preserve existing competition'' and ''maintain the level of competition [in southeast Missouri] that existed pre-acquisition.'' (C.I.S., at p. 9). As also recited therein, the Department of Justice has the sole discretion to approve or disapprove the manner in which the defendants propose to implement the divestiture of this facility (C.I.S., at p. 12), and whom they propose to divest it to (C.I.S., at p. 11).

Farmers in southeast Missouri hear rumors that Continental may propose to divest the Cottonwood Point facility to Bunge, the second largest competing purchaser of grain in the area (after Cargill). That would reduce the number of competing buyers of grain from four to three, being nearly as bad for competition in southeast Missouri as a sale to Cargill, which you sued to prevent. Likewise, a divestiture to Consolidated Grain and Barge (C.G.B.), another competitor in the market, would also be far from optimal.

Before Cargill and Continental announced this global transaction, farmers in southeast Missouri had four competing buyers to sell their product to. We urge the Department of Justice to exercise its discretion, when approving proffered buyers, to make sure they have four separate and distinct buyers after this divestiture, as well.

While my analysis has focused exclusively on the Missouri facilities, I also have concerns about the impact of this merger on the market generally. I share the concern of many Missouri farmers that the current anti-trust laws and resources may not adequately protect them from attempts to manipulate the market place. I urge the Justice Department to scrutinize this acquisition closely in light of the growing consolidation in agriculture.

Thank you for giving these comments due consideration. If we can answer any questions or provide other assistance, don't hesitate to contact us through my assistant, Trey Hanna, at (816) 889–5000.

Sincerely,

Jeremiah W. (Jay) Nixon.

Don Stenberg, Attorney General,
State of Nebraska,
Office of the Attorney General,
Lincoln, Nebraska 68509–8920, September 7, 1999.

Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Re: United States of America v. Cargill, Inc and Continental Grain Company.

Dear Mr. Fones: Pursuant to the Antitrust Procedures and Penalties Act, I am writing in my official position as the Attorney General of the State of Nebraska to object to the proposed final judgment in this case. In my opinion, the approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust statutes.

The proposed consent decree requires the divestiture of certain grain elevators in specified locations, but otherwise approves the merger of two of our nation's largest grain trading companies.

The increasing concentration in agricultural marketing and processing will mean lower prices for farmers and higher prices for consumers. Indeed, it was farmers' protests against the formation of large agricultural marketing and processing trusts in the late 1800's that led to the creation of our antitrust laws.

We are now seeing the same types of concentrations of economic power in the agricultural processing and marketing industries that existed over 100 years ago until they were broken up by the passage and enforcement of federal antitrust laws. At a minimum, a line must now be drawn to prevent further anti-competitive economic concentration in agriculture.

The fundamental flaw in the U.S. Justice Department's analysis that it fails to recognize that grain handling and grain merchandising is a nationwide and worldwide business. The proposed merger needs to be viewed not simply on a region by region basis, but upon overall national grain marketing implications.

The fundamental evils of excessive economic concentration are well known and have been well known for more than 100 years. In a highly concentrated industry, it is easy to keep track of the prices a handful of competitors are paying to acquire grain and to sell it. It is in the interest of the handful of competitors to uniformly offer low prices to buy and high prices to sell to consumers. This is true whether or not there is an explicit contract or conspiracy in restraint of trade. Moreover, it is easier and more tempting to form contracts or conspiracies to restraint of trade in a highly concentrated industry.

In a May 7, 1999 letter concerning the Cargill/Continental merger to the U.S. Department of Justice, Minnesota Attorney General Mike Hatch noted some basic market share information that is of great importance. He pointed out that Cargill and Continental are the two largest grain exporters in the United States. Cargill is the nation's largest grain exporter and Continental is the second largest. General Hatch goes on the explain that in fiscal year 1998, the market shares for the four largest national grain exporters (including Cargill and Continental) range from 46.6% for wheat to 64.9% for soybeans and 80.9% for corn. Cargill itself estimates that it and Continental together control about 35% of the U.S. grain exports.

Continental and Cargill are both already such large enterprises that it is very doubtful that this merger will produce any economies of scale that would increase profits. Rather, increased profits will come from the increased market power to pay producers less and charge consumers more by virtue of vastly increased economic power.

The purpose of the anti-trust statutes is to preserve the free markets so that our free enterprise system can produce the fairest prices for both producers and consumers. The anti-trust statutes should be brought to bear in this case for that very reason.

As General Hatch correctly noted in his May 7 letter, these issues are national in scope and adequate resolution cannot come from the state or local level. If the U.S. Department of Justice cannot be persuaded to vigorously oppose a merger of this magnitude, it is difficult to imagine any merger in the area of agri-business which would be opposed by the Department.

Those of us from agricultural states understand the negative impact of excessive economic concentrations in agriculture on our farmers and ranchers. Persons from non-agricultural states should carefully consider the substantial increases in consumer food prices that loom on the horizon if further economic concentration occurs in our agricultural sector.

Yours truly,

Don Stenber.

In the matter of The United States District Court for the District of Columbia; United States of America, Plaintiff, vs. Cargill, Incorporated, and Continental Grain Company, Defendants; Case No. 1:99CV01875 (GK) Judge; Gladys Kessler.

Filed October 22, 1999.

Motion by the Attorney General of Nebraska To File Brief as Amicus Curiae

Comes Now Don Stenberg, the Attorney General of the State of Nebraska, and moves this Court for leave to file the brief attached hereto as Exhibit A as amicus curiae in the above-referenced action. The Attorney General of Nebraska has a special interest in the subject matter of this lawsuit because of his duties and responsibilities to enforce the antitrust laws, and because the merger proposed herein will have a significant impact upon the State of Nebraska.

Don Stenberg, #14023,

Attorney General of Nebraska.

Dale A. Comer, #15365,

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Motion By The Attorney General Of Nebraska To File Brief As Amicus Curiae with attachments has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class United States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.

Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Marc G. Schildkraut, Esq.,

Howrey & Simon, 1299 Pennsylvania Avenue, NW, Washington, DC 20004.

Paul T. Denis, Esq.,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.

Jack Quinn, Esq.,

Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,

Assistant Attorney General.

Memorandum of Points and Authorities in Support of Motion by the Attorney General of Nebraska To File Brief as Amicus Curiae

Don Stenberg, #14023,

Attorney General of Nebraska.

Dale A. Comer, #15365,

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Introduction

This case involves an action under the Tunney Act, and in particular 15 U.S.C. 16(e), in which the parties seek this court's approval of a proposed final consent judgment involving a corporate merger between Cargill, Inc. and Continental Grain Company. The Attorney General of the State of Nebraska has now filed a Motion For Leave To File A Brief As Amicus Curiae in this proceeding. This Memorandum of Points and Authorities is submitted to the court in support of that Motion.

Argument

I

The decision as to whether to allow participation by amicus curiae in this case is left to the discretion of this court.

In general, the decision as to whether to allow a non-party to participate in a case as *amicus curiae* is solely within the broad discretion of the court. *Ellsworth Associates, Inc.* v. *United States,* 917 F.Supp. 841 (D.D.C. 1996). Such discretion also applies within the specific context of the Tunney Act. *United States* v. *Associated Milk Producers,* 394 F.Supp. 29 (W.D.Mo. 1975). The aid of amicus curiae is appropriate at the trial level where they can provide helpful analysis of the law. *Waste Management of Pennsylvania* v. *City of York,* 162 F.R.D. 34 (M.D.Pa. 1995). *Amicus curiae* are also appropriate when they have a special interest in the subject matter of the suit. *Strasser* v. *Doorley,* 432 F.2d 567 (1st Cir. 1970). As a result, the decision as to whether to allow participation by amicus curiae in this case is left to the discretion of this court, and such participation is warranted if the amicus participants can provide a helpful analysis of the law or if they have a special interest in the subject matter of this suit.

II

The court should exercise its discretion so as to allow the Attorney General of Nebraska to file a brief in this case as amicus curiae.

The *amicus curiae* brief which the Attorney General of Nebraska proposes to submit to this court contains a detailed discussion and analysis of the proposed Final Judgment in this case under the applicable antitrust laws, and therefore, will hopefully provide this court with a helpful analysis of the law. More importantly, the Attorney General of Nebraska has a special interest in the subject matter of this lawsuit, in two respects.

First, the Attorney General of Nebraska is the primary state official in Nebraska charged with the duty of enforcing the state's antitrust laws. See, *e.g.,* Neb. Rev. Stat. §§ 59–1601 through 59–1623 (1998) (the Nebraska Consumer Protection Act which, among other things, authorizes the Attorney General to bring an action seeking to enjoin a corporate acquisition which would ''substantially lessen competition or tend to create a monopoly in any line of commerce); Neb. Rev. Stat. §§ 59–801 through 59–831) (1998) (authorizing criminal sanctions for antitrust violations in Nebraska); and Neb. Rev. Stat. §§ 84–212 (1994) (authorizing the Attorney General to sue a *parens patriae* on behalf of citizens of the state to recover damages sustained by those citizens as a result of violations of the state or federal antitrust laws). The Nebraska Attorney General also has specific enforcement authority under the federal antitrust laws. See, *e.g.,* Section 4 of the Clayton Act, 15 U.S.C. 15 (1998) (authorizing states to sue for proprietary damages inflicted upon them); Title III of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 15c (1998) (authorizing state attorneys general to sue for damages as *parens patriae* on behalf of natural persons); Section 16 of the Clayton Act, 15 U.S.C. § 26 (1998); *California* v. *American Stores Co.,* 495 U.S. 271 (1990) (upholding state's right pursuant

to Section 16 of the Clayton Act to obtain injunctive relief, including divestiture, against illegal mergers); *Hawaii* v. *Standard Oil,* 405 U.S. 251, 257–60 (1972) (acknowledging state's authority to seek injunctive relief on behalf of general economy of the state). As a result, the Attorney General of Nebraska has a strong interest in antitrust enforcement and in promoting free and fair competition. The Attorney General of Nebraska also has a strong interest in protecting the citizens of Nebraska from unreasonable restraints of trade, both in their capacities as consumers and their capacities as competitors.

Second, agriculture is an important and major industry in the State of Nebraska. In 1997, more than 96 percent of the state's land, involving 47 million acres, was farm and ranchland. Clerk of the Nebraska Legislature, Nebraska Blue Book 1998–99 (Michael R. Lewis ed., 1998) p. 40. In that same year, gross cash receipts from farm marketing in Nebraska totaled $10.1 billion, and Nebraska had 55,000 farms that produced food for consumers in the United States and abroad. *Id.* Consequently, any anticompetitive activities which affect agricultural markets and farmers in the State of Nebraska in general are of concern to the Attorney General of Nebraska.

It is also clear that agricultural interests and farmers in Nebraska are affected specifically by the details of the proposed final consent judgment in this case. As noted in the government's Competitive Impact Statement herein, the overlapping draw area for the Pacific Northwest includes portions of Nebraska. Competitive Impact Statement at 4. In addition, the overlapping draw area for the Texas Gulf also includes portions of Nebraska. Competitive Impact Statement at 4. Therefore, the final consent judgment proposed in this case affects the agricultural industry in Nebraska, and the Attorney General of Nebraska has a direct responsibility to deal with anticompetitive practices affecting those markets. On that basis, the Attorney General also has a special interest in the subject matter of this lawsuit.

Conclusion

An amicus brief by the Attorney General of Nebraska in this case would provide this court with a helpful analysis of the law. Moreover, for the reasons stated above, the Attorney General of Nebraska has a special interest in the subject matter of this lawsuit. As a result, the Attorney General of Nebraska respectfully requests that this court exercise its discretion and grant him leave to participate in this action by filing a brief as *amicus curiae.*

Dated this 21st day of October, 1999.

(By: Don Stenberg, #14023, Attorney General)

Don Stenberg,

Attorney General of Nebraska.

Dale A. Comer, #15365,

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Memorandum Of Points And Authorities in Support Of Motion By The Attorney General Of Nebraska To File Brief As *Amicus Curiae* has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class United States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.,

Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Marc G. Schildkraut, Esq.,

Howrey & Simon, 1299 Pennsylvania, NW, Washington, DC 20004.

Paul T. Denis, Esq.,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.

Jack Quinn, Esq.,

Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,

Assistant Attorney General.

Brief of the Attorney General of Nebraska as Amicus Curiae

Don Stenberg, #14023,

Attorney General of Nebraska.

Dale A. Comer, #15365,

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Exhibit A

Interest of Amicus Curiae

The Attorney General of Nebraska is the primary state official in Nebraska charged with the duty of enforcing the state's antitrust laws. See, *e.g.,* Neb. Rev. Stat. §§ 59–1601 through 59–1623 (1998) (the Nebraska Consumer Protection Act which, among other things, authorizes the Attorney General to being an action seeking to enjoin a corporate acquisition which would ''substantially lessen competition or tend to create a monopoly in any line of commerce); Neb. Rev. Stat. §§ 59–801 through 59–831 (1998) (authorizing criminal sanctions for antitrust violations in Nebraska); and Neb. Rev. Stat. § 84–212 (1994) (authorizing the Attorney General to sue as *parens patriae* on behalf of citizens of the state to recover damages sustained by those citizens as a result of violations of the state or federal antitrust laws). The Nebraska Attorney General also has specific enforcement authority under the federal antitrust laws. See, *e.g.,* Section 4 of the Clayton Act, 15 U.S.C. 15 (1998) (authorizing states to sue for proprietary damages inflicted upon them); Title III of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 15c (1998) (authorizing state attorneys general to sue for damages as *parens patriae* on behalf of natural persons); section 16 of the Clayton Act, 15 U.S.C. 26 (1998); *California* v. *American Stores Co.,* 495 U.S. 271 (1990) (upholding state's right pursuant to Section 16 of the Clayton Act to obtain injunctive relief, including divestiture, against illegal mergers); *Hawaii* v. *Standard Oil,* 405 U.S. 251, 257–60 (1972) (acknowledging state's authority to seek injunctive relief on behalf of general economy of the state). As a result, the Attorney General of Nebraska has a strong interest in antitrust enforcement and in promoting free and fair competition. The Attorney General of Nebraska also has a strong interest in protecting the citizens of Nebraska from unreasonable restraints of trade, both in their capacities as consumers and in their capacities as competitors.

Agriculture is an important and major industry in the State of Nebraska. In 1997, more than 96 per cent of the state's land, involving 47 million acres, was farm and ranch land. Clerk of the Nebraska Legislature, Nebraska Blue Book 1998–99 (Michael R. Lewis ed., 1998) p. 40. In that same year, gross cash receipts from farm marketing in Nebraska totaled $10.1 billion, and Nebraska had 55,000 farms that produced food for consumers in the United States and abroad. *Id.* As a result, any anticompetitive activities which affect agricultural markets and farmers in the State of Nebraska in general are of concern to the Attorney General of Nebraska.

It is also clear that agricultural interests and farmers in Nebraska are affected specifically by the details of the proposed final consent judgment in this case. As noted in the government's Competitive Impact Statement herein, the overlapping draw area for the Pacific Northwest includes portions of Nebraska. Competitive Impact Statement at 4. In addition, the

overlapping draw area for the Texas Gulf also includes portions of Nebraska. Competitive Impact Statement at 4. As a result, the final consent judgment proposed in this case will affect the agricultural industry in Nebraska, and the Attorney General of Nebraska has a direct responsibility to deal with anticompetitive practices in those markets.

Argument

The Final Consent Judgment Proposed by the Parties in This Proceeding is Not in the Public Interest, and Should Not be Approved by This Court

Under the Tunney Act, and in particular 15 U.S.C. 16(e), this court may approve the final consent judgment proposed by the parties in this case only if the court determines that the entry of such judgment is ''in the public interest.'' For the reasons discussed at length below, the Attorney General of Nebraska contends that the consent judgment with Cargill and Continental Grain Company (hereafter ''Continental'') proposed by the United States is deficient and not in the public interest. Consequently, this court should refuse to approve that final consent judgment.

I

In a proceeding under the Tunney Act, this court is not a ''rubber stamp'' for the Department of Justice, but acts as an independent check on the terms of the proposed final consent judgment.

A number of federal cases have set out the applicable standards with respect to a review of a proposed final consent judgment proposed by the government under the Tunney Act. First of all, it is clear that the court is not to act simply as a ''rubber stamp'' for the proposal submitted by the Department of Justice. *United States* v. *BNS Inc.,* 858 F.2d 456 (9th Cir. 1988); *United States* v. *Western Electric Company,* 767 F.Supp. 308 (D.D.C. 1991). Instead, the court ''is required to act as an independent check on the terms of such decrees.'' *United States* v. *Western Electric Company,* 767 F.Supp. 308, 328 (D.D.C. 1991). In addition, Congress did not intend the court's review of a proposed final consent judgment under the Tunney Act to be merely pro forma or limited to what appears on the surface. *United States* v. *Gillette Company,* 406 F.Supp. 713 (D. Mass. 1975). The court must make an independent determination as to whether or not entry of a proposed consent decree is in the public interest. *United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

What constitutes the ''public interest'' in the context of this type of proceeding was discussed at length in *United States* v. *American Telephone and Telegraph Company,* 552 F.Supp. 131 (D.D.C. 1982). In that case, this court indicated that purpose of the antitrust laws was to ''preserv[e] free and unfettered competition as the rule of trade.''*Id.* at 149 (quoting from *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1 (1958)). Within that purpose, an antitrust remedy, including a consent decree, must ''leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place'' or ''effectively foreclose the possibility that antitrust violations will occur or recur.'' *Id.* at 150. In addition, ''antitrust violations should be remedied with as little injury as possible to the interest of the general public' and to relevant private interests.'' *Id.* at 150 (quoting from *United States* v. *American Tobacco Co.,* 221 U.S. 106 (1911)).

II

The final judgment proposed by the parties in this action is deficient in a number of respects, and is not in the public interest.

The Attorney General of Nebraska believes that the final consent judgment proposed by the parties in this case is deficient in the first instance because it does not take into account the wider context of vertical consolidation in the nation's agribusiness system, and instead focuses solely on the grain buying activities of Cargill and Continental. Consolidation across vertically-related markets is increasingly leading to the creation of all-inclusive food supply chains in the United States where one company or interrelated group of companies can control certain agricultural commodities from their creation at the genetic level to their ultimate purchase by the consumer. This sort of vertical consolidation will harm competition by making entry into the affected markets more difficult, by making the extent of actual competition more difficult to estimate, and by forcing independent farmers and producers out of business. Allowing the merger of Cargill and Continental will make further agribusiness consolidation more likely. For one thing, acquisition of Continental's seventy grain elevators will enhance Cargill's economic power generally, and allow deployment of that economic power across a wide range of other agricultural sectors including beef packing, cattle feedlots, pork packing, broiler production, turkey production, flour milling, soybean crushing and ethanol production. That enhanced economic power will also allow Cargill to transfer resources across markets without regard to competitive conditions. As a result, the government should have considered more than the grain buying operations of Cargill in evaluating this merger.

The proposed final consent judgment also fails to recognize that grain handling and grain merchandising is a nationwide and worldwide business. In that regard, as noted in the competitive impact statement filed herein, Cargill is the second largest grain trader in North America and the largest U.S. grain exporter. Continental is the third largest grain trader in North America and the third largest U.S. grain exporter. Merger of those market shares cannot help but increase the concentration in the national and global grain trading and grain exporting markets to questionable levels with damaging effects upon farmers and consumers in Nebraska and other agricultural states. Yet, the government's proposed final consent judgment focuses only on grain trading activities in a small number of regional markets.

The Attorney General of Nebraska is aware of the decision in *United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Consequently, the remainder of this amicus curia brief will focus on specific deficiencies with respect to the matters alleged in the government's Complaint in this case and the proposed final consent judgment presented to the court.

A. The final consent judgment fails to take into account the size and organization of the sellers in the markets affected by the proposed merger.

In a number of merger cases, courts have given credence to the notion that a merger resulting in a larger, more powerful firm may be permissible if the companies the merged firm sells to also possess market power. *United States* v. *Baker Hughes, Inc.,* 908 F.2d 981, 984 (D.C. Cir 1990); *F.T.C.* v. *Elders Grain, Inc.,* 868 F.2d 901, 905 (7th Cir. 1989). For example, in *United States* v. *Country Lake Foods, Inc.,* 754 F.Supp. 669 (D.Minn. 1990), the district court recognized the ability of large food corporations which were milk purchasers to act as a check to the market power of milk processors in a merger involving the fluid milk processing industry because the food corporations could respond aggressively to price increases and had the capital resources necessary to vertically integrate fluid milk processing. That reasoning forms the basis for the ''power buyer'' defense to merger enforcement.

If the presence of ''power buyers'' in a particular market helps to make a proposed merger more acceptable, it necessarily follows that the lack of such ''power buyers'' makes a merger less acceptable, because powerful sellers in a given market can use their market power to exploit small and disorganized buyers. For example, in *United States* v. *Tote, Inc.,* 768 F.Supp. 1064 (D. Del. 1991), the court rejected the power buyer defense because there were a large number of small buyers in the market at issue. For that reason, among others, the court held the merger in question to be anticompetitive. See also *F.T.C.* v. *Cardinal Health, Inc.,* 12 F.Supp.2d 34 (D.D.C. 1998).

The reasoning underlying the power buyer defense should also be applied equally in evaluating the competitive effects of a merger in an oligopsony situation. In other words, the anticompetitive effects of a merger involving a small number of possible buyers should be evaluated, in part, by measuring the number and power of the sellers for those buyers. If the sellers are numerous, disorganized and small, then they will be unable to respond to the anticompetitive exercise of market power by small group of powerful buyers. That is precisely the situation in the present case where a small group of buyers in the grain buying and marketing industry are able to exert anticompetitive power over numerous, disorganized and small farmers selling grain. That situation will be exacerbated by the merger proposed under the final consent judgment in this case, and for that reason, the final judgment is not in the public interest.

B. The proposed final consent judgment does not take into account the potential for continuing anticompetitive behavior in the post-merger market.

In its Complaint, the government argues that very few firms buy grain within particular draw areas. Government Complaint, p.4. The government then contends that in those ''captive draw areas, [a merged] Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.'' Government Complaint, p.4. To remedy this problem in the context of the proposed merger, the government simply proposes divestitures in a few of the captive draw areas. However, even with the divestitures proposed by the Department of Justice, grain buying in the post-merger markets in the captive draw areas at issue will still remain heavily concentrated and susceptive to collusive and cooperative activity among the remaining grain buyers. As a result, the proposed final consent judgment will not effectively foreclose the possibility that antitrust violations will occur in the future in the captive draw areas. For that reason, it is deficient.

C. The proposed final consent judgment fails to take into account the impact of global sales or grain buying in the United States.

A great deal of the grain purchased by Continental and Cargill is sold overseas where purchases are based upon factors such as geographic area, historic preference or long-term contracts. Those factors often reduce the need for competition in buying American grain. However, the proposed final consent judgment fails to take those global market factors into account in determining what is necessary to maintain competitive grain buying in the United States.

D. Under the proposed final consent judgment, there is no assurance that the portions of Continental's operations which are divested can or will remain a competitive force in the markets in question.

The government notes, in its Complaint, that ''[g]rain traders such as Cargill and Continental operate extensive grain distribution networks, which facilitate the movement of grain from farms to domestic consumers of these commodities and to foreign markets.'' Government Complaint at 3. Given this need for ''extensive grain distribution networks.'' it is unclear as to how the remnants of Continental divested as a result of the final consent judgment will compete effectively in the markets where they are located, since they may not be part of such a distribution network with its competitive flexibility and access to information about grain flows. In addition, the acknowledged need for ''extensive grain distribution networks'' in these markets will make it highly unlikely that new firms will enter these markets and provide additional competition. Indeed, the Department of Justice concedes in its Complaint that new entry into the grain buying business is unlikely. Government Complaint at 6.

E. The proposed final consent judgment fails to take into account the effects of removal of Continental as potential competitor to Cargill.

In *United States* v. *Penn-Olin Chemical Co.,* 378 U.S. 158, 173–4 (1964), the United States Supreme Court stated:

> [t]he existence of an aggressive, well equipped and well financed corporation engaged in the same or related lines of commerce waiting anxiously to enter into an oligopolistic market would be a substantial incentive to competition which cannot be underestimated.

In the present case, Continental currently possesses the grain distribution network and other resources to potentially challenge Cargill in the grain buying business. With Continental taken out of that business as a result of the merger proposed herein, Cargill will face much less pressure to pay competitive prices and compete in grain buying markets. This is particularly true given the difficulty of entry into the market by new firms.

F. The final consent judgment fails to take into account other statutes which Congress intended should be considered in making determinations regarding agricultural markets.

A primary rule of statutory construction is that when a court interprets multiple statutes dealing with a related object or subject, those statutes are *in pari materia* and should be construed together. *Common Cause* v. *Federal Election Commission,* 842 F.2d 436 (D.C. Cir. 1988); *Linquist* v. *Bowen,* 813 F.2d 884 (8th Cir. 1987). Essentially, if a number of separate statutes relate to the same thing, they are *in pari materia,* and all ought to be taken into consideration in construing any one of them. *United States* v. *Freeman,* 44 U.S. 556 (1845). In the area of agricultural markets, Congress has passed a number of statutes in addition to the provisions of the Sherman Act and the Clayton Act which are *in pari materia* with those antitrust statutes because they reflect congressional concerns about economic concentration and the disproportionate bargaining power of farmers. All of those statutes should have been considered in fashioning the proposed final consent judgment in this case. Because they were not, that final consent judgment is deficient.

First of all, the Department of Justice failed to consider the implications of the Packers and Stockyards Act of 1921, 7 U.S.C. 181 *et seq.* (the ''PSA''), in developing the final consent judgment. The PSA was passed after the Sherman, Clayton and Federal Trade Commission

Acts, and was designed to go beyond the broad language of those statutes. *Wilson & Co.* v. *Benson,* 286 F.2d 891 (7th Cir. 1961). Among other things, the PSA was directed at the lack of competition between agricultural buyers and the attendant possible depression of producers' prices. *Swift & Co.* v. *United States,* 393 F. 2d 247 (7th Cir. 1968). In the present case, one of the government's concerns with the proposed merger is that prices paid to farmers could be depressed in a post-merger market. Government Complaint at 6. The PSA supports the notion that particular attention should be directed to mergers which implicate marketing for farmers.

Another statute with implications for the merger under consideration which was not considered by the government is the Capper-Volstead Act, 7 U.S.C. 291–2. That statute specifically exempted agricultural cooperatives from the antitrust laws because Congress intended to treat farmer cooperatives differently from typical corporations and to give farmers the opportunity to build their bargaining power relative to corporate buyers. *Fairdale Farms, Inc.* v. *Yankee Milk, Inc.*, 635 F.2d 1037 (2nd Cir. 1980). This was done deliberately to enable farmers to organize and work together so as to obtain and exercise marketing power. *Kinnet Dairies, Inc.* v. *Dairymen, Inc.*, 512 F.Supp. 608 (M.D. GA. 1981). Any merger which works against those principles to increase the power of buyers at the expense of farmers should therefore be subject to special, heightened scrutiny.

Finally, the proposed final consent judgment fails to consider the implications of the Agricultural Fair Practices Act of 1967, 7 U.S.C. 2301–2306 (the ''AFPA''). That Act was intended to prevent corporations from interfering in the formation of collective marketing organizations involving farmers. The overriding purpose of the legislation was the protection of farmers' rights to organize cooperatively. *Butz* v. *Lawson Milk Co.*, 386 F.Supp. 227 (N.D. OH. 1974). Again, AFPA's recognition of the potential for abusive practices by agricultural processors shows congressional concern with the potential market power of agricultural buyers which should have been reflected to a greater degree in the final consent judgment which is now before this court.

G. The final consent judgment fails to set out any benefits or efficiencies of the proposed merger.

The Department of Justice obviously has concerns about the anticompetitive effects of the merger in this case as witnessed by the divestitures required in the proposed final consent judgment and the other allegations in the Complaint. Yet, the papers prepared by the government do not set out any reasons for approving the proposed merger after the divestitures such as post-merger efficiencies which will result from the action. Absent any economic benefits resulting from the merger in this case, it is difficult to understand how this merger can be in the public interest in light of the other potential anticompetitive problems set out above.

III

If necessary, this court should appoint a special master to assist in determining if the proposed final consent judgment in this case is in the public interest

For all the various reasons set out above, the Attorney General of Nebraska contends that the proposed final consent judgment in this case is not in the public interest as required by 15 U.S.C. 16(e). However, should this court not determine that such a finding is appropriate at the present time, the Attorney General of Nebraska urges the court to appoint a special master in this case as contemplated by 15 U.S.C. 16(f) to hear evidence and to make a recommendation to the court as to the efficacy of the proposed final consent judgment. The appointment of a special master in this case is based upon the complex nature of the agricultural markets at issue and the various statutes discussed above which interact upon the application of the antitrust laws in this context.

Conclusion

For the reasons discussed above, the Attorney General of Nebraska, as amicus curiae, urges the court to reject the proposed final consent judgment in this case as not in the public interest. Alternatively, the Attorney General of Nebraska urges the court to appoint a special master in this case who can assist the court in analyzing the particular agricultural markets at issue.

Dated this 21st day of October, 1999.

Don Stenberg, #14023

Attorney General of Nebraska.

Dale A. Comer, #15365

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Brief Of The Attorney General Of Nebraska As *Amicus Curiae* has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class United States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.,

Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Marc G. Schildkraut, Esq.,

Howrey & Simon, 1299 Pennsylvania Avenue, NW, Washington, DC 20004.

Paul T. Denis, Esq.,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.

Jack Quinn, Esq.,

Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,

Assistant Attorney General.

Attorney General of New Mexico

6301 Indian School Rd., NE., Suite 400, Albuquerque, New Mexico 87110; (505) 841–8098, FAX: (505) 841–8095

October 12, 1999.

FACSIMILE NUMBER (202) 307–2784

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: United States v. Cargill, Incorporated and Continental Grain Company, Case Number 1:99CV0187 (GK)

Dear Mr. Fones: I want to take this opportunity to express my concerns for small farmers and ranchers and the serious threats I believe they face from the ever-increasing rate of consolidation in agricultural industries, of which the pending Cargill-Continental Grain Company transaction is but one example.

Not only is consolidation occurring on a horizontal level—that is between direct competitors—but large, economically powerful companies are becoming more vertically integrated. Increasingly, these vertically integrated companies are able to exercise significant power over the food chain, all the way from production to the packaged product. This can have serious adverse effects on our economy and the important role performed by small farmers and ranchers throughout our nation. As Minnesota Attorney General Hatch pointed out in his May 7, 1999 letter concerning this matter to United States Assistant Attorney General Klein, and consistent with the comments submitted to you by Attorney General Don Stenberg of Nebraska dated September 7, 1999, reliable studies indicate that the gap between rising food retail prices and falling prices to farmers and ranchers has been growing for some time. This widening gap is the result, at least in part, of growing economic power of vertically integrated agribusinesses and increasingly concentrated markets and suggests that these markets may

already be dysfunctional in some important ways.

Given the state of the law interpreting Section 7 of the Clayton Act, I do not challenge the consent judgment proposed by the Department of Justice in this matter as being legally or factually unsupported. Certainly the divestitures and other provisions required by the proposed consent judgment ought to ameliorate the anticompetitive effects of the acquisition to some extent. However, even with the required divestitures, this transaction will likely decrease the number of significant competitors in the national grain trading market in the United States. It will also bolster Cargill's already significant market presence both in markets in which Cargill and Continental currently are direct competitors and in markets such as those in the areas of animal feed, feeding cattle and processing cattle, in which Continental is not currently a significant competitor.

Thus, I would urge that these difficult issues be dealt with as comprehensively as possible and that to the extent possible the Department of Justice actively advocate administrative and legislative responses that will enhance and invigorate competition in the agricultural sector of our economy. In addition, the antitrust laws in this sector of the economy should be effectively and timely enforced, especially to protect the valuable interests of small farmers and ranchers. I hope that any additional moves toward further concentration in agricultural markets will be carefully and thoroughly scrutinized.

Sincerely yours,

Patricia A. Madrid,

Attorney General.

cc: Attorney General Michael Hatch
Attorney General Don Stenberg

State of North Dakota, Office of Attorney General

State Capitol, 600 E Boulevard Ave, Bismarck, ND 58505–0040; (701) 328–2210; Fax (701) 328–2226.

October 11, 1999.
Mr. Roger Fones,
Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, US Department of Justice, 325 7th St. NW, Rm 500, Washington, DC 20530.

Dear Mr. Fones: The following comments are submitted concerning the proposed merger of Cargill, Incorporated, and Continental Grain Company. Because there is little competition between Cargill and Continental on the local level in North Dakota, my principal concern has been with this merger's potential impact on the grain export market. It is encouraging that the Antitrust Division responded to these concerns by requiring divestiture by Cargill of its Seattle port elevator and by placing limitations on any future throughout agreement with the subsequent acquirer of that facility.

Nevertheless, I continue to have serious concerns about the increasing consolidation among the agribusiness firms who purchase the output of North Dakota's farmers. I am disappointed with the apparent inability of present day antitrust law to prevent this consolidation and the resultant injury to our farmers, the producers of the agricultural bounty our country enjoys.

Over the past decade, we have witnessed ever-larger mergers among ever-more-concentrated competitors. And all that the antitrust enforcement agencies, my own included, seem capable of doing in response is to tinker around the edges. At a minimal cost of a few divestitures and some relatively insignificant restrictions on post-merger conduct, agribusiness companies in the livestock, meatpacking industries, and now the grain industry continue to grow larger, more concentrated and more powerful. As a result, our farmers now confront the most powerful concentrations of global economic interests the world has ever known.

The economic history of North Dakota agriculture is largely the story of the unequal balance of power between our farmers and the large agribusiness and transportation interests with which they must deal. While producer cooperatives have played a significant role in counter-balancing these economic forces and hold substantial promise for the future, economic disorganization is the natural result of having a large number of farmers, geographically dispersed and producing a wide variety of commodities. The original antitrust laws were enacted over one hundred years ago in significant measure in response to calls to protect farmers from the ravages of raw economic power and to moderate its negative effects on society.

Unfortunately, these laws and the modern trends in their enforcement are proving inadequate to the task. Modern antitrust policy has lost sight of its agrarian roots. The farm sector is hemorrhaging and that bedrock institution, the family farm, is in mortal danger as a result of low commodity prices brought on, in part, by the imbalance of economic forces the antitrust laws were supposed to prevent.

I believe that the time has come to rethink antitrust analysis, particularly in the farmer-agribusiness context. It is time to forthrightly address the failures of economic analysis in this areas as well to give greater consideration to the importance of non-economic concerns in antitrust enforcement. I intend to work with my fellow state attorneys general to initiate this process. I hope that we will be able to count on the Antitrust Division for assistance as we proceed.

In light of the above comments, I would ask that the Antitrust Division reconsider its approval of this merger.

Thank you for your consideration of these comments.

Sincerely,

Heidi Heitkamp,

Attorney General.

State of South Dakota Office of Attorney General, 500 East Capitol Avenue, Pierre, South Dakota 57501–5070; Phone (605) 773–3215, FAX (605) 773–4106

October 5, 1999.
Roger W. Fones,
Chief, Transportation, Energy, and Agricultural Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW, Room 500, Washington, DC 20530.

Re: *United States of America* v. *Cargill Incorporated and Continental Grain Company.*

Dear Mr. Fones: In my capacity as Attorney General of the State of South Dakota I am filing these written comments in opposition to the proposed consent decree in the above referenced action pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

As you are aware, prior to the Department of Justice's proposed consent decree, I joined the Minnesota Attorney General's letter expressing opposition to Cargill Inc.'s proposal to acquire the worldwide commodity marketing business of Continental Grain Company and urged the Department of Justice to oppose the proposed merger. It was, and still is my opinion, that the proposed merger may well reduce competition. The resulting consequences on South Dakota's agricultural industry could be serious. While the proposed consent decree would require Continental to divest itself of a couple of port, river and rail elevators and would prohibit Cargill from acquiring certain interests and require entry into a throughput agreement, these measures are simply inadequate to fully address the long term consequences of this merger of two global grain industry giants.

The Department of Justice, in its Complaint and Competitive Impact Statement, distinctly explained that if the acquisition of Continental's worldwide commodity marketing business is permitted to proceed, there will be a substantial lessening of competition for grain purchasing services to farms and other suppliers. As the Department of Justice further explained, this will likely result in many American farmers and other suppliers receiving lower prices for their grain and oil seed crops. The proposed consent decree simply does not go far enough to prevent the occurrence of the events contained in these legal documents.

The Cargill/Continental merger is not adequately addressed by simply dealing with market implications of the merger on a region by region basis. The geographic market for grain is nationwide with worldwide implications.

Further, it does not appear that Department of Justice has adequately considered whether the divested remnants of Continental will be a competitive force given the nature of the grain market. It also appears that the Department of Justice did not adequately consider the economic disparities that currently exist in the grain market power over this nation's farmers who are many in number and wield very limited power. The merger only increases this disparity.

The federal antitrust laws were enacted over a hundred years ago in part to address the large agricultural trusts that existed in the late 1800's. As a result these large trusts were broken up. Now, despite the antitrust laws, we are experiencing increasing concentration in all areas and aspects of the agricultural industry. The concentration is both vertical and horizontal in nature. Such concentration and resulting market power is the problem

that the antitrust laws were intended to rectify. If a merger of the magnitude of that proposed between Cargill and Continental is allowed to go forward as currently proposed in the consent decree, the purpose behind antitrust laws will be defeated. This would be a very big step backwards.

South Dakota has the smallest attorney general's office in the nation. I simply do not have the resources to take on this merger and neither do the offices for the surrounding states. No matter how much myself and the Attorneys General of the surrounding states are opposed to the merger we are not in a position to go to war with Cargill and Continental. Only the Department of Justice is sufficiently staffed and financed to contest a merger of this size.

As the Attorney General from an agricultural state, I have witnessed first hand the devastating impact upon ranchers and farmers that can result from market concentration by commodity purchasers. The proposed merger will only make the situation worse. The grain and livestock products produced by this nation's farmers and ranchers are the lifeblood to this great country. The Department of Justice should do whatever is necessary to preserve the ability of our farmers and ranchers to conduct business in a competitive, free and open market place. Only the prevention of the proposed merger is an adequate remedy. The proposed consent decree is simply inadequate and as such I object to its entry.

Yours truly,

Mark Barnett,

Attorney General, State of South Dakota.

Tab 3

American Agriculture Movement

AAM Inc., 2898 Audrain Road, #114, Sturgeon, MO 65284

October 10, 1999.

Chief, Transportation, Energy, & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20530.

Dear Roger W. Fones: Please place these comments in the **Federal Register**.

AAM wants to state its opposition to:

Cargill's announced purchase of Continental Grain's merchandising business;

Smithfield Foods purchase of Murphy Family Farms and Tyson Food's Pork Group.

Oligopoly is just a fancy word for monopoly. The Clayton & Sherman Antitrust Laws were enacted after the release of *THE JUNGLE* by Sinclair Lewis concerning excesses in the slaughter industry. Today's excesses are more extreme but hurt farmers and ranchers more directly and pose a threat to the consumer. The U.S. cheap food policy will fail with the continued disregard of these laws.

With the present trend to consolidation in the livestock industry, 3 or 4 vertically integrated companies not only disproportionately control several livestock sectors but food production, distribution and sales. This removes all pretense of fair and open competitive markets.

The Packers And Stockyard Act must also be rigidly enforced to protect small and medium livestock producers.

Sincerely,

Edward M. Fashing,

Missouri Vice President Communications.

Animal Welfare Institute

P.O. Box 3650, Washington, D.C. 20007–0150; Telephone: (202) 337–2332, Fax (202) 338–9478

October 11, 1999.

Hon. Gladys Kessler,

Fax: 202–354–3442.

Dear Judge Kessler: I am writing to respectfully request that the deadline for comment on the Cargill/Continental acquisition be extended by the Department of Justice for another sixty days to December 12, 1999.

It is my understanding that the Department of Justice states, ''The court's role in protecting the public interest is one of ensuring that the government has not breached its duty to the public in consenting to the decree.''

I address this letter to you because of the Department's failure to act in the blatant current case affecting millions of animals suffering in hog factories: the acquisition by Smithfield Foods, first of Murphy Farms and not of Tysons hog component. All of these huge corporations employ the same cruel methods of hog production and, by their ''vertical integration,'' are destroying family farms at a terrifying pace.

Because of the studies of the Animal Welfare Institute and its long-term efforts to protect family farmers who raise pigs humanely, I am responsible, as President of the Animal Welfare Institute, for a detailed grasp of this huge problem, of which animal feed is a major component. The Cargill/Continental acquisition impinges heavily upon this feed and is harmful to the family farmers whose ability to compete in a system increasingly monopolized by agribusiness is being zeroed out.

The general public, likewise, is being cheated because the anti-trust laws are not protecting the public, as they are intended to do, by proper enforcement.

Respectfully yours,

Christine Stevens,

President.

P.S. You may be amused by the quotation from Art Buchwald which was recently brought to my attention through ''The Agribusiness Examiner,'' issued by A.V. Krebs, Editor and Publisher. I attach a copy of page 14.

ANIMAL WELFARE INSTITUTE

''THANK GOD FOR THE FREE ENTERPRISE SYSTEM''

In his book of essays Down the Seine and Up the Potomac (G. P. Putnam's Sons: 1977) political humorist Art Buchwald imagines a scenario where two corporations—Samson Securities and Delilah Company—asked the head of the Justice Department's Anti-Trust Division if the two companies could merge. At the time Samson Securities owned everything east of the Mississippi River, while Delilah Company owned everything west of the river. Initially, the head of the Anti-Trust Division indicated that he might have reservations about the merger of the only two companies left in the United States.

''Our department,'' he said, ''will take a close look at this proposed merger. It is our job to further competition in private business and industry, and if we allow Samson and Delilah to merge we may be doing the consumer a disservice.''

The chairman of Samson protested vigorously that merging with Delilah would not stifle competition, but would help it. ''The public will be the true beneficiary of this merger,'' he said. ''The larger we are, the most services we can perform, and the lower prices we can charge.''

The president of Delilah backed him up. ''In the Communist system the people don't have a choice. They must buy from the state. In our capitalist society the people can buy from either the Samson or the Delilah Company.''

''But if you merge,'' someone pointed out, ''there will be only one company left in the United States.''

''Exactly,'' said the president of Delilah. ''Thank God for the free enterprise system.''

The Anti-Trust Division of the Justice Department studied the merger for months. Finally the Attorney General made this ruling. ''While we find drawbacks to only one company being left in the United States, we feel the advantages to the public far outweigh the disadvantages.''

''Therefore, we're making an exception in this case and allowing Samson and Delilah to merge.''

''I would like to announce that the Samson and Delilah Company is now negotiating at the White House with the President to buy the United States. The Justice Department will naturally study this merger to see if it violates any of our strong anti-trust laws.''

Catholic Charities, Diocese of Sioux City

October 6, 1999.

Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, D.C. 20530.

Dear Sir: We are writing in regard to the Department of Justice's ''Final Judgement'' relative to Cargill's purchase of Continental Grain's grain merchandising division.

It is our understanding that the Department filed a formal ''Complaint'' with the U.S. District Court charging that Cargill's purchase would ''substantially lessen competition for the purchase of corn, soybeans and wheat in each of the relevant geographic markets, enabling it unilaterally to depress prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

We also understand that on the same day this ''Complaint'' was filed, the Department filed a consented ''Final Judgement'' agreed to by all parties.

This makes no sense to those of us who agree with the Department's own finding in its ''Complaint''.

This purchase, if approved in its present form, will further accelerate the vertical integration of the agricultural sector with dire consequences for family farm agriculture, rural America and the consumers of our food supply.

We urge the Department of Justice to withdraw its ''Final Judgement''; reaffirm the adverse impact of the Cargill purchase upon the economic and social structure of rural America and to stand by its original ''Complaint''.

Very truly yours,

Marilyn Murphy,

Social Concerns Facilitator/Rural Life Contact.

Clean Water Action Alliance

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America* v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing on behalf of our organization to object to the proposed final judgment in this case. The approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust laws. Our organization has over 40,000 members statewide. We are concerned with the growing concentration in agriculture and the resulting economic impact on family farmers and environmental degradation of our rural communities. Antitrust laws have long recognized that concentration in agricultural industries is harmful to farmers. These protections have not been enforced to prevent extensive concentration in the meatpacking and other agricultural industries which are now being controlled by a small number of agribusiness giants.

Both the DOJ/FTC and NAAG Guidelines raise serious questions and grave concerns regarding the economic effect of the proposed Cargill-Continental merger. The grain industry is already heavily concentrated, leaving farmers who sell their grain to exporters vulnerable and with very limited options. Both Cargill and Continental are among the top four corn and soybean exporters nationwide. Cargill estimates that together they will control 35% of U.S. grain exports. This type of extensive control in the market share by Cargill and Continental extends beyond grain processing to animal feed and meat-packing. If the economic power of these mega-firms is not controlled, a few large corporations will control the marketplace and our food supply which is harmful to both farmers and consumers.

The federal antitrust laws are important to allow every business entity—no matter how small—the freedom to compete. The rapid rate of concentration in the agricultural sector is threatening the ability of the small farmer to compete effectively in the marketplace. Not only are farmers suffering because of the lack of access to markets and unfair prices paid to them, but rural communities are experiencing negative economic impacts as corporate agribusiness giants continue to consolidate and control more and more of our food system. Many small towns in the state depend on farming income to support their local infrastructures—schools, banks, churches and small businesses. The trend toward vertical and horizontal integration is threatening the economic viability of these communities.

Cargill has utterly failed to addressed the above-mentioned concerns generated by excessive vertical and horizontal integration in the industry. We urge you to reject the proposed consent decree.

Sincerely,

Suzanne R. McIntosh, Esq.,

Program Director.

Farmland Co-Op Inc., A Pro Farmers Choice

P.O. Box 276, Brush, Colorado 80723; Telephone 1–970–842–5059, Fax 1–970–842–5667

October 8, 1999.

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: It is my belief that the merger of Cargill and Continental Grain has to be stopped. Our farmers have realized for a long time that without market competition, they suffer from pricing that is below what can be achieved through active competition. This lack of competition threatens the future of our agricultural system. It may be all right for the large corporations and regional entities, but I have to look out for my individual farmers. I do not think you take consolidation seriously. When you look a consolidation I believe you have to look at all their activities including strategic alliances, and joint ventures. A full-blown combination of assets is not telling the whole story. Concentration of large companies is one of the reasons for lower prices even though it may be only one of many. I do not see how you can say that some of these merging companies preserve competition. If you truly believe this I would like to be able to explain that to my farmers. You as a representative our political system need to step up to the plate and address this growing concern of rapid consolidation. We need to be more pro active in our communities and in our state by even court actions to curtail market concentration.

I represent a local cooperative association of approximately 1000 producers. In conversations with the top 165 growers, I can say that they know the results and have been impacted from no competition to placed competition in the grain market in our community. In 1997 we had only one local entity purchasing grain. In 1998 after a partnership with us that opened a competitive elevator, the price offered to our growners increased $0.5 a bushel and the competitor was forced to pay for protein. Without this action, how many dollars do you think would have gone on in the hands of a large corporation? What benefit does increased concentration have on our American agriculture?

I don't know just exactly how long these mergers will take to impact our local farmers. I do not that when Farmland Industries and Cenex Harvest States consolidated their petroleum operations into Country Energy L.L.C. that we took an enormous hit on product pricing and had to go to the outside. I hated to do that, but our farmers need competition in the market place. What impact did this joint venture for most cooperatives that had not sought out other supplies? They were forced to pay a higher price for this consolidation. I'm am against these mergers if they do not benefit our producers. I just believe that we need to protect our farmers by making sure that competition continues to be strong. Just thought I would share my opinion with you.

Thank you,

Glenn A. Babcock,

General Manager.

Institute for Agriculture and Trade Policy

2105 First Avenue South, Minneapolis, MN 55404–2505

October 7, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America* v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing to express IATP's opposition to Cargill's proposed acquisition of Continental Grain Company, an acquisition which would unify the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities.

Competition in agricultural markets is rapidly declining in the face of mergers and acquisitions and a plethora of new corporate relationships including joint ventures, strategic alliances or partnerships, interlocking directorates and partial ownership. In its analysis, the Department of Justice failed to recognize the wider concentration in agriculture markets beyond grain buying to include handling, processing and merchandising both domestically and globally.

The principle result of this concentration would be a significant increase in the imbalance of power favoring agribusiness at the expense of the farmer. This growing imbalance would exacerbate the trend toward lower prices for farmers and likely result in higher prices for consumers.

While the proposed consent decree requires divestiture of some grain elevators in certain locations, it does not, in our opinion, meet the spirit and the letter of federal anti-trust law. We must use our anti-trust laws to preserve our free market system and ensure competition that produces fair prices for both producers and consumers.

Thank you for your attention in this matter.

Sincerely,

Niel Ritchie,

Policy Analyst.

Dated: November 10, 1999.
Judge Gladys Kessler,
U.S. District Court, for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.—The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest.''

In its July 8, 1999 ''Final Judgment'' I believe in fact that the Department of Justice has ''breached its duty to the public in consenting to the decree'' and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

Clearly, as the Department of Justice's own ''Complaint'' states the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess, Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets. Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

As the Kansas Cattlemen's Association Chairman I, Michael L. Schultz am acting on behalf of our members to state that we are opposed in the continual mergers and acquisitions that are becoming common place in our society. These mergers do have detrimental effects on our communities by taking the wealth out of the community and destroying competition and family life, which is what built this country.

We have seen the effects of the consolidation in the cattle industry and its negative effects on our industry and communities. It is mentally conditioning that has taken over, along with great amounts of money from the corporations to pressure the political and legal systems to allow these mergers to continue. We are not sure where it will end, possibly when we have 1 company in the U.S.A., Russia and China then will we have enough consolidation in our society.

We ask that you enforce the anti-trust laws to ensure competition in the market, once competition is reduced the corporations will not pass the savings or profits back to the producers or consumers of which they claim. A great example for doing the reverse is the breakup of Ma-Bell. It produced more competition in the telecommunication industry and now we have competition, great phone rates, cellular service, etc. This is what drives creativity and healthy communities. In Kansas a population of less than 3300 serves over 80% of the communities. We do need your support to end the death of our communities, competition will ensure that small communities survive.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Michael L. Schultz,

Chairman, Kansas Cattlemen's Association.

Minnesota Catholic Conference

475 University Avenue W., St. Paul, Minnesota 55103–1996) Phone (651) 227–8777, Fax (651) 227–2675

September 23, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: Pursuant to the Antitrust Procedures and Penalties Act, I am writing to object to the proposed final judgment in this case. The approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust statutes.

The proposed consent decree requires divestiture of certain grain elevators in specified locations, but otherwise approves the merger of the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities. This continued concentration of commodity exporters violates the spirit and the letter of the federal antitrust laws.

The increasing concentration in agricultural marketing and processing will mean continued low prices for farmers and higher prices for consumers. It was this very type of concentration, which lead to the creation and passage of the first federal antitrust laws.

The primary flaw in the U.S. Justice Department's analysis is that it failed to recognize the wider concentration in agriculture markets beyond grain buying to include grain handling and merchandizing both a nationwide and worldwide business.

The proposed merger between Cargill and Continental fails to explain what benefits will be produced. The economies of scale of these two corporations merging will not lead to increased profits. Rather, the increased profits will come on the backs of the farmers receiving a lower price for their grain and consumers paying higher prices for their products, the very consequence antitrust statutes seek to prevent.

Catholic Social Teaching states a firm belief in the principle that the economy exists for the people, not the people for the economy; In this merger there is a threat to that principle and therefore I urge you to reject the proposed consent decree.

Sincerely,

Thomas (Toby) Pearson,

Director of Social Concerns, Minnesota Catholic Conference.

Missouri Farm Bureau Federation

P.O. Box 658, 701 South Country Club Drive, Jefferson City, MO 65102 / (573) 893–1400

July 13, 1999.
Mr. Roger Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, US Department of Justice, 327 7th Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: We appreciate the Justice Department's scrutiny of the proposed sale of Continental Grain Company's Commodity Marketing Group to Cargill, Incorporated and believe the stipulations included in the consent decree are warranted. The preservation of competition at the local level is of the utmost importance; agricultural producers can ill afford consolidation that further depresses commodity prices. While the Justice Department complaint states the proposed Cargill/Continental sale would have adversely affected competition in some

areas, we urge the Justice Department to conduct a similar review of purchase offers made for the facilities is which divestiture is required.

Specifically, we have been contacted by producers in southeast Missouri who are concerned that Continental's Cottonwood Point facility may be sold to an entity that would also have an excessive influence on the local grain market. Specifically, there are rumors circulating that Bunge may be interested in this facility. We cannot stress enough the importance of preserving competition for agricultural products, regardless of who the principal parties are.

We urge the Justice Department to scrutinize every offer to purchase facilities that are offered for sale as a result of the Cargill divestiture and prevent any further erosion of marketing options available to agricultural producers.

Sincerely,

Charles E. Kruse,

President.

Missouri Soybean Association

P.O. Box 104778, 520 Ellis Blvd., Suite N, Jefferson City, MO 65101; Phone: (573) 635–3819, Fax: (573) 635–5122

August 24, 1999

Mr. Roger Fones,

U.S. Department of Justice, Washington, DC 20530.

RE: Civil Action #991875 Filed 7–8–99

Dear Mr. Fones: The Missouri Soybean Association represents nearly 2,000 soybean farmers across the state of Missouri. We have been very vocal expressing our concern about the consolidation within our agricultural industry. We want to thank you for keeping a protective eye out for too much consolidation resulting in lack of competition and unfair prices to our farmers.

We understand Bunge Grain Company is interested in purchasing the Continental Grain Cottonwood Point elevator located in Southeast Missouri. We fear that purchase would eliminate competition in that area since this acquisition would give them a total of seven elevators within a fifty-mile radius.

We would encourage you to carefully look at all the options available for purchasing the Cottonwood Point elevator to determine which of the large grain-trading firms, including Cargill, would offer the best long-term fair prices for Southeast Missouri grain producers.

Please let me know if you have any questions on this matter. Thank you for your attention to this important agriculture issue.

Sincerely,

Dale R. Lugwig,

Executive Director/CEO.

National Catholic Rural Life Conference

4625 Beaver Avenue, Des Moines, Iowa 50310–2199; (515) 270–2634

October 8, 1999.

Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001.

Re: United States of America v. Cargill and Continental Grain

Dear Judge Kessler: Presently before you and awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice regarding the purchase by Cargill Corp. of the grain merchandising division of Continental Grain Co.

According to the Department of Justice, legal precedent requires that the ''balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest.''

In its July 8th ''Final Judgment'', the Department of Justice appears to have breached its duty to the public in consenting to the decree, and we believe that its ''Final Judgment'' is not ''within the reaches of the public interest.''

The Department of Justice's own ''Complaint'' states the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans and wheat in these markets will engage in anticompetitive coordination to depress farm pieces.''

The Department of Justice needs to take into full consideration the existing dominant position of Cargill in our nation's grain trade. The acquisition of Continental Grain's elevators (numbering 70) will enhance the economic power of Cargill. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a nearly complete range of agricultural sectors: Cargill has a dominant position in beef packing, cattle feedlots, pork packing, poultry production, animal feed plants, grain elevator capacity, flour milling, corn milling, soybean crushing and ethanol production. Such a dominant position across many agricultural markets allows Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets also allows Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. With the additional assets of Continental Grain, Cargill will become an even more powerful firm and ever more capable of strategic anti-competitive behavior.

The National Catholic Rural Life Conference has stood with small farmers and rural communities since our inception in 1923. Besides the farm crisis of the 1980s, we have used our voice to defend the family farm system throughout the 20th century as corporate and industrial interests have eroded our nation's rural communities. Once again we raise our voice in solidarity with the vulnerable individuals and families who are often overlooked when large mergers or acquisitions take place in our food and agriculture system.

In the name of economic and social justice and the preservation of an independent and locally-controlled family farm system of agriculture in the United States, we urge you to recommend that the Department of Justice withdraw its ''Final Judgment''. We ask that this ill-advised acquisition by Cargill undergo far greater study in respect to antitrust issues and the dire consequences to both producers and consumers of our food supply.

Respectfully,

Brother David Andrews, CSC,

Executive Director.

NFO Kansas

1783 Barn Road, Solomon, KS 67480, 785–479–2183

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Mr. Fones: I am writing on behalf of our many grain farmer members in Kansas to ask that the proposed merger between Continental and Cargill grain be revisited. We strongly, passionately feel that this violates the intentions of pro-competitive marketplace acts such as the Clayton Act provides.

Our organization is a bargaining group. Anytime two major buyers like these companies join together, it lessons the strength of farm bargaining.

Please extend the comment period for another 60 days and revisit this issue.

Thanks.

Sincerely,

Ray Kohman,

Kansas NFO President.

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Mr. Fones: On behalf of our members in Kansas National Farmers, we would like at request that the merger between Cargill and Continental be NOT allowed. Our organization passed a resolution at our state annual meeting in August which opposed this ''Giant of Mergers.''

We are very concerned about the lack of enforcement on anti-trust issues today. Our very livelihoods are at stake due to increasing market channel monopolization. We feel that our ability to get competitive bids will be reduced and we feel that grain ''basis levels'' will decline due to ''Price Leadership'' strategies.

Please conduct a more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Also, please extend the public comment period for another sixty days.

Thank You!

Greg Stephens,

Kansas NFO National Director, 842 S. 10th, Salina, KS 67401.

National Farmers Union

400 Virginia Avenue, S.W., Suite 710, Washington, D.C. 20024, Phone (202) 554–1600

October 7, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America v. Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: On behalf of the 300,000 farm and ranch families of the National Farmers Union, I write to express our strong opposition to the acquisition of Continental Grain company by Cargill, Inc.

We agree with the allegation in the complaint that alleges the merger would substantially lessen competition for grain purchasing service to farmers and other suppliers in many areas in the United States. We also agree that the merger would increase concentration in the delivery point for settlement of Chicago Board of Trade contracts. And, we agree that the covenant not to compete is an unreasonable violation of trade.

The proposed stipulation attempts to address these concerns by requiring a number of divestitures. Yet, even these divestitures are insufficient to avoid the harm that will inevitably occur to market competition if there is a merger between Cargill—the second largest grain trader in North America and the largest grain exporter, and Continental—until recently the third largest grain trader and the third largest grain exporter.

If the two firms were less dominant, the proposed divestitures may have been sufficient to insure post-merger competition within the grain market. However, when the tops firms are allowed to merge, there is no way to recoup the loss to market competitiveness.

In the countryside, Continental is known for being an aggressive grain buyer. Elevator operators report Continental will usually beat any other offer by $.02 per bushel, if given the chance. And while $.02 is inconsequential, it turns into millions of dollars when multiplied by the volume of grain that farmers and ranchers sold to Continental last year.

Cargill's extensive submission of information in public documents reveals that Cargill is already operating in the areas where Continental operates. The clear reason for this merger is the elimination of competition. There is nothing about this merger that will increase competition to either farmers or ranchers or other members of the general public. Therefore, both the Department of Justice and the Court should find that the proposed stipulation that allows the merger is not and cannot be in the public interest.

In addition to failing the public interest test, we believe the proposed enforcement mechanisms are not enforceable and are therefore, insufficient. The stipulation requires a number of divestitures in order to maintain competition. Yet, what happens if another buyer cannot be found. And, if a buyer is found, what buyer will be able to effectively compete with the newly enlarged Cargill? Once Continental Grain has been swallowed by Cargill, the damage is done. We cannot come back at a later date and have any assurance of being able to replace the loss of this competitor.

The proposed stipulation also completely fails to address the roles Cargill and Continental play as the largest and third largest grain exporters. Lack of competition in the export market has a direct impact on U.S. grain producers for two reasons: 1) exports make up an important part of our market and, 2) the domestic market is influenced by the world price. While the complaint alleges the merger will lessen competition, and estimates that collectively Cargill and Continental control approximately 40 percent of all U.S. grain exports, the stipulation does nothing to address that problem.

In addition, the only alternative to the proposed final judgment, discussed in the consent decree, is that of going to trial and obtaining a court decision similar to the proposed stipulation. The consent decree fails to consider the alternative of disallowing the acquisition.

While we appreciate that the Justice Department required a number of concessions from the merging parties, the bottom line is that there is just no way to allow this merger without causing irreversible damage to market competition. Therefore, we respectfully request that the proposed consent decree be rejected.

Sincerely,

Leland Swenson,

President.

Office of Hispanic Ministry, St. Joseph Catholic Church

320 Mulberry, Waterloo, IA 50703, 319–234–6744

September 30, 1999.

Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Dear Judge Kessler: The Department of Justice's investigation and subsequent formal ''Complaint'' revealed that the nation's largest private corporation, Cargill, is attempting to overwhelmingly control the U.S. grain trade. Legal documents show that Cargill's purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn. soybeans and wheat in these markets will engage in anti-competitive coordination to depress farm prices.''

According to the Department of Justice, the court is required to determine, not whether this judgment to allow the Cargill/Continental sale best serves society, but whether it falls within the range of acceptability or is ''within the reaches of public interest.''

The Cargill purchase of Continental Grain facilities will increase Cargill's buying power and price control; it will decrease the markets available to farmers and cause farmers to have to transport grain farther, especially if some terminals are closed to increase corporate profits; it will position Cargill to dominate specialty or ''niche'' markets because of the acquisition of continental's storage facilities (markets that farmers are currently using to try to find profitability in already heavily Cargill-dominated markets).

I believe that every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is compromised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

Therefore I urge that you not allow the sale of Continental to Cargill. Thank you very much.

Sincerely,

Sister Kathleen Grace,

Pastoral Minister.

O.C.M.—Organization for Competitive Markets

301 South 13th Street, Suite 401, Lincoln, Nebraska 68508, (402) 434–2938

October 1, 1999.

Bob McGeorge,

U.S. Department of Justice, Antitrust Division, 3257th St. NW, Room 506, Washington, D.C. 20530.

Dear Bob: This letter seeks confirmation that your office has received our objections to the Cargill-Continental consent decree. Please advise.

Given the great interest in this merger, OCM has also requested that the Department of Justice seek an extension of the comment period, as allowed in the Tunney Act. Since many groups and individuals will need to be advised of a potential extension, OCM is interested in knowing whether DOJ will seek such an extension.

Thank you for your help in this matter.

Sincerely,

Jon K. Lauck

O.C.M.—Organization for Competitive Markets

301 South 13th Street, Suite 401, Lincoln, Nebraska 68508, (402) 434–2938

September 20, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States

Department of Justice, 325 Seventh Street NW, Suite 500, Washington, DC 20530.

Re: *United States of America* v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing to you to explain OCM's opposition to Cargill's acquisition of Continental Grain Company, an acquisition which would unify the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities. Specifically, OCM objects to the analysis used by the Department of Justice (''DOJ'') when reviewing the acquisition. DOB's analysis: (1) failed to consider the wider concentration in agricultural markets beyond grain buying; (2) failed to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) failed to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) DOJ failed to consider the impact on potential entry into grain buying markets; (5) failed to consider the nature of the grain selling market; (6) failed to consider the economic disorganization of farmers which can be exploited by powerful buyers; (7) failed to consider information disparities in agricultural markets; (8) failed to explain the benefits of the merger; (9) failed to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets; (10) and failed to consider that the consent decree risks leaving farmers without an effective outlet for legal redress. By failing to consider the aforementioned factors, the DOJ failed to recognize how the Cargill-Continental merger posed ''a significant threat of injury from an impending violation of the antitrust laws.'' [1]

(1) DOJ failed to consider the wider concentration in agricultural markets beyond grain buying.

In recent years, agricultural processing markets have become highly concentrated. From a top-five concentration ratio of 24 percent in the early 1980s, for example, the beef-packing sector's five-firm concentration ratio has grown to 85 percent. Similar statistics apply to several other sectors of the agricultural processing economy. I have enclosed a copy of a report authorized by Professor William Heffernan of the University of Missouri that explains the extent of the concentration problem.

The DOJ's analysis did not consider the wider context of consolidation in the agricultural system and instead focused on the grain buying activities of Cargill and Continental. Growing concentration in agricultural markets should have been considered by the DOJ given the continuing consolidation of agribusiness firms. In United States v. Philadelphia National Bank, for example, in which enforcement officials stopped the merger of the second- and third-largest banks in Philadelphia, the court noted the particular importance of stopping the merger given the growing concentration in the banking market.[2] It was the growing power of agribusiness firms that triggered concerns among farmers and inspired the passage of the Sherman Act. And it was continuing concentration in agricultural markets, particularly through merger, that prompted passage of additional antitrust statutes such as the Clayton Act. The importance of the antitrust laws to farmers is explained by the difficulties inherent in farmers bargaining with large and powerful agribusiness buyers. Legislators and courts have fully recognized these concerns in statutes and in cases, respectively, but the DOJ's merger analysis failed to weigh these considerations. I have explained this background in a law reviews article entitled ''Toward an Agrarian Antitrust,'' 75 *North Dakota Law Review* (August/September 1999) which I have included for your review.

The DOJ must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors. For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest and where it plans to invest the one-half billion dollars paid by Cargill for its elevator chain), port packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time. This cross-subsidization will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.[3]

Allowing the merger of Cargill and Continental makes further agribusiness consolidation likely. Allowing such a large-scale merger abets the recently-announced merger of Smithfield Foods, the nation's largest pork packers, with Murphy Farms, the nation's largest pork producer. The Smithfield-Murphy Farms merger sets the stage for another Cargill-Continental merger, this time involving Cargill's large-scale pork packing operation and Continental's pork producing operation, further continuing the cycle of agribusiness consolidation.

(2) DOJ failed to consider the continuing potential for anticompetitive behavior in the post-merger market:

The DOJ argues in its complaint that within particular draw areas very few firms buy grain. It argues that if Continental's operations were absorbed ''Cargill would be in a position unilaterally, or in *coordinated interaction with the few remaining competitors, to depress prices paid to producers* and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.'' [4] Divestitures in a few of these markets as proposed by the DOJ does not address this problem. Even with the divestitures, grain buying would remain heavily concentrated and susceptible to collusive and cooperative activity.

(3) DOJ failed to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain:

Furthermore, it is unclear how the divested components of Continental will remain an effective competitor with Cargill absent the former entity's large-scale elevator capacity. The few facilities that will not be acquired by Cargill hardly constitute a legitimate competitive threat. As the DOJ emphasized in its complaint, grain buying involves a large-scale network of facilities.[5] The few remaining Continental facilities, stripped of their internal networks which provide them with competitive flexibility and information about grain flows, will be powerless in comparison with Cargill, with its $51 billion in annual revenues and 81,000 employees in 60 different countries. Continental's decision to sell off its grain buying operation may also indicate that it no longer considers grain buying a priority. In short, there is no assurance that the remaining facilities will even compete in the markets that concerned the DOJ. Given the need for a network of elevators to compete in the grain buying business, it is also highly unlikely that any new firms will enter the market to challenge Cargill. The DOJ openly concedes in its complaint that it is ''unlikely that Cargill's exercise of market power will be prevented by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing competitive force.'' [6]

(4) DOJ failed to consider the impact on potential entry into grain buying markets:

Stripping Continental Grain of its internal network of elevators poses additional threats to competition. Given the difficulty of entry into the grain buying business, as conceded by DOJ, it is additionally important to hold together a firm that could potentially challenge Cargill in the many markets in which it holds a dominant position. As the Supreme Court has noted, ''[t]he existence of an aggressive, well equipped and well financed corporation engaged in the same or

[1] Zenith Radio Corp. v. Hazeltime Research Inc., 395 U.S. 100, 130 (1969). Section 16 of the Clayton Act allows individuals to sue for injunctive relief ''against threatened loss or damage by a violation of the antitrust laws.'' 15 U.S.C. § 26 (1988).

[2] United States v. Philadelphia National Bank, 374 U.S. 321, 367 (1963).

[3] For judicial recognition of the power of sophisticated firms see Michael S. Jacobs, The New Sophistication in Antitrust, 79, Minn. L. Rev. 1 (1994).

[4] Complaint, U.S. v. Cargill, Inc. and Continental Grain Company, July 8, 1999, at 4 (*italic* added).

[5] *Id.* at 3 (noting that ''Grain traders such as Cargill and Continental operate extensive grain distribution networks, which facilitate the movement of grain from farms to domestic consumers of these commodities and to foreign markets'').

[6] *Id.* at 6.

related lines of commerce waiting anxiously to enter an oligopolistic market would be a substantial incentive to competition which cannot be underestimated.''[7] Important factors in determining whether a firm may enter the concentrated grain buying market include its ''resourcefulness'' and the ''nearness of the absorbed company'' to the market, characteristics that could be attributed to a large-scale firm such as Continental Grain.[8] Without the existence of Continental's grain buying operations, Cargill will face considerably less pressure to pay farmers a competitive price for their product.

(5) DOJ failed to consider the nature of grain selling markets:

The DOJ also fails to assess the nature of grain selling markets. Much of the grain bought by Cargill and Continental is sold on world markets. But this selling is sometimes based on geographic area, historic preference, or long-term contracting. Without a guaranty of vigorous competition among grain traders for overseas customers, it is not necessary to compete vigorously for the purchase of the grain of American farmers and therefore there is no incentive to bid up the prices paid to farmers. If Cargill has a long-term arrangement with an overseas grain buyer, for example, Cargill will buy grain from American farmers when it needs to fulfill its obligation. In this process, no competitive bidding with another grain buying firm will be necessary. Without an assessment of the workings of world grain selling practices, DOJ's assumption that competitive bidding will maintain a competitive price for American farm products is unfounded.[9] And even if evidence of competition for export markets can be found, that does not necessarily mean that there is competition for the grain sold by American farmers. Firms can choose to collude in upstream markets and compete in downstream markets.

(6) DOJ failed to consider the economic disorganization of farmers which can be exploited by powerful buyers:

The DOJ also fails to consider the economic organization of farmers who sell to the large grain buyers. Courts have often noted that a key consideration when determining the potential for horizontal collusion is the relative organization of firms in the adjacent sectors. Judicial recognition has come in the form of a defense to challenged mergers.[10] Courts have entertained the argument that a larger, more powerful firm resulting from a merger may be acceptable if the firms it sells to also possess market power.[11] In U.S. v. Country Lake Foods, Inc., a case involving the merger of two firms in the fluid milk processing industry, a court recognized the ability of large food corporations who bought milk to check the power of milk processors.[12] The court noted the ''extremely concentrated'' nature of the food processing industry in the relevant market, where the top-three concentration ratio was over 90 percent.[13] The size of the food firms and the volume of their purchases allowed them to monitor milk prices, making them ''very sophisticated buyers.''[14] The court noted their ability to switch to other milk processors and to enter the processing market themselves.[15] The market entry of the large food processors would be aided by their capital resources, which would allow them to purchase an existing plant, and by their existing customer base.[16] The court found the power-buyer defense the ''most persuasive argument'' advanced by the defendants.[17]

Commentators have elaborated on the potential power of certain buyers. For example, buyers are particularly adept at checking the power of concentrated sellers when the price of the item in question is widely known.[18] In Country Lake Foods, the milk buyers could estimate the cost of processed milk based on the price paid for raw milk (since prices are publicly reported) and switch to a different seller if prices were deemed to be oligopolistically-priced.[19] In addition to switching to a new seller, buyers could induce the market entry of additional sellers by extending long-term contracts or providing the financing for the start-up of new sellers.[20] Large buyers could support the merger of two smaller sellers who, when their assets are combined, could more effectively compete against larger sellers in the market.[21] Large buyers could also enter or threaten to enter the upstream market themselves.[22]

Implicit in the recognition of the power-buyer defense is the assumption that powerful firms in a market can exploit small and disorganized firms in a vertically adjacent market. In other words, the power-buyer argument provides a rationale for halting the growth of powerful agribusiness processors at the expense of the thousands of farmers who sell to them. In U.S. v. United Tote, Inc., the court rejected the power-buyer defense because it recognized the relative disorganization of the buyers of the totalisator.[23] Because so many buyers were present in the market and the buyers possessed different levels of sophistication, they could not constitute a legitimate check on the power of the sellers.[24] In the recent case FTC v. Cardinal Health, Inc., the DC Court of Appeals considered the potential power of firms who bought drugs from the four largest wholesale distributors of drugs in the nation.[25] While the court noted the power of certain buyers in the market, it also considered the numerous independent pharmacies that lacked the power to effectively bargain with the large wholesalers.[26] The existence of a large number of buyers and the presence of many small independents created a ''fragmented'' buying sector unable to counter the power of the wholesalers.[27] The buyer-power defense creates a rational for scrutinizing the power of buyers relative to sellers. Thousands of farmers, for example, are hard-pressed to muster the market power necessary to check the powerful food companies who buy their products. Farmer marketing is characteristically disorganized and ''fragmented,'' similar to the descriptions of the totalisator and wholesale drug buyers described in United Tote and Cardinal Health.

An example of buyer power in agricultural markets was recently exposed in South Dakota. During the summer of 1999, a federal court in South Dakota ruled on the constitutionality of a South Dakota livestock

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[7] *U.S.* v. *Penn-Olin Chemical Co.,* 378 U.S. 158, 173–4 (1964).

[8] *U.S.* v. *El Paso Natural Gas Co.,* 376 U.S. 651, 660 (1964). See generally U.S. v. Falstaff Brewing Corp., 410 U.S. 526 (1973) (preventing Falstaff's acquisition of a New England brewery because it would eliminate Falstaff's de novo entry into the New England market); Mark D. Whitener, Potential Competition Theory—Forgotten But Not Gone, 5 Antitrust 17 (1991).

[9] For examples of grain company manipulations of world markets, see DAN MORGAN, THE MERCHANTS OF GRAIN (1979).

[10] Mary Lou Steptoe, The New Merger Guidelines: Have They Changed the Rules of the Game? 61 Antitrust L.J. 493, 493–4 (1993) (explaining that ''[a]lthough the power-buyer defense may appear to be a judicial creation that has only emerged within the last two years, it actually reflects an underlying trend in merger law, present since General Dynamics [1974], toward a more searching examination of the economic conditions that affect a seller's ability to exercise market power'').

[11] U.S. v. Baker Hughes, Inc., 908 F.2d 981, 984 (D.C. Cir. 1990) (now-Justice Thomas endorsing the consideration of a ''variety of factors'' in merger cases, including buyer power, and rejecting the ''fixation'' on singular factors such as market entry); F.T.C. v. Elders Grain, Inc., 868 F.2d 901, 905 (7th Cir. 1989) (Judge Posner recognizing that the industrial dry corn industry was unlikely to be cartelized given the nature of their buyers, ''a handful of large and sophisticated manufacturers of food products'').

[12] 754 F. Supp. 669 (D. Minn. 1990).

[13] Id., at 674.

[14] Id.

[15] Id.

[16] Id., at 680.

[17] Id., at 679.

[18] Steptoe, at 496.

[19] Steptoe, at 496.

[20] Steptoe, at 501.

[21] Safeway and Kroger, major buyers of ready-to-eat cereals, supported the merger of Kraft, which owns Post, and the cereal division of Nabisco because ''it makes Post a stronger competitor to Kellogg and General Mills,'' which sell 60 percent of ready-to-eat cereals. State v. Kraft General Foods, 926 F. Supp. 321, 325, 351 (S.D.N.Y. 1995).

[22] Steptoe, at 499–500.

[23] 768 F. Supp. 1064 (D. Del. 1991). The totalisator system manages betting at horse tracks. Id., at 1065.

[24] Tote, at 1085 (explaining that ''the totalisator market does not consist of a few, very large consumers. In stark contrast, the totalisator market consists of over two hundred fifty-five pari-mutuel [the most common form of wagering on horses] facilities, only thirty-nine of which have average daily handles in excess of 1 million dollars. Even if the Court were to accept United Tote's argument that the owners of these large, sophisticated facilities would be able to protect themselves from any anti-competitive price increase, this would still leave at least one hundred nine facilities unprotected in the small market segment along'').

[25] 12 F. Supp. 2d 34 (D.C. Cir. 1998).

[26] Cardinal Health, at 60 (noting that ''[i]ncreasingly, the 27,000 independent pharmacies in the United States today are joining buying cooperatives which, in turn, are consolidating to try to develop greater buyer power,'' but concluding that ''independent pharmacies have little leverage, as evidenced by the considerably higher upcharges they have to pay in comparison to the retail chains and institutional GPOs'').

[27] Cardinal Health, at 61 (holding that the ''existence of the independent pharmacies and the smaller hospitals makes the wholesale market considerably fragmented and remarkably similar to the market described in United Tote'').

price reporting law, passed during the 1999 legislative session in response to concerns about price manipulations by large packers.[28] While not an antitrust ruling, the court did note the large amount of buying power possessed by packers. The court explained the absence of bargaining power on the part of farmers, who ''are unable to set their prices but must rely on what buyers will pay,'' and concluded that ''[p]ackers have the market power in each livestock market to influence or determine prices paid to producers of livestock.'' [29] In the context of South Dakota farmers, the court noted the existence of an ''oligopsony'' among the state's three packers.[30]

(7) DOJ failed to consider information disparities in agricultural markets:

The DOJ also failed to consider informational disparities between farmers and large grain buyers. In Eastman Kodak Co. v. Image Technical Services the Supreme Court expanded the notion of market power, an element critical to most antitrust violations, to include information.[31] The Kodak decision recognizes a fundamental economic point raised in the economics literature in the 1960s, when information studies became prominent.[32] As George Stigler pointed out, market sellers do not simply accept the offer of the highest bidder.[33] Finding, or ''searching'' for, the highest bidder is a costly process, involving significant transaction costs.[34] Time is perhaps the largest expense,[35] especially for sellers of perishable agricultural products. When the prices paid for a commodity vary widely, indicating that some sellers did not find the highest bidders in the market, information problems are in evidence.[36] That some sellers did not search for higher prices may mean that they concluded the cost of the search would outstrip any potential returns from higher prices.[37] One method of reducing the problem of poor information and the resulting ''price dispersion'' is the centralization of knowledge in one identifiable location,[38] a solution similar to the recent calls for the mandatory reporting of prices paid by meatpackers.[39]

Agricultural markets are defined by stark information disparities. One study of Iowa hog farmers, for example, indicates that price searching is very limited [40] and that 85 percent of a farmer's hogs are sold to the same packer, indicating a very limited amount of price searching.[41] Such a result is similar to DOJ findings about the grain selling pattern of farmers, who ''generally sell their grain within a limited geographic area surrounding their farms.'' [42] Commentators have noted how ''firms can exploit in numerous ways the bargaining power that the lack of comparison shoppers confers on them.'' [43] The case for heightened scrutiny for bargaining arrangements involving farmers is provided for the Kodak analysis. as one commentator explained, ''Kodak suggests that market power may be found wherever ignorant buyers can be exploited through individualized bargaining,'' a conclusion which could also apply to disorganized sellers.[44] The power of possessing information in grain trading was recently conceded by Cargill's head of public affairs, ironically enough, when launching a new public relations campaign: '' If you look at our oldest business, which is grain trading, whoever has been in that business has been reticent to talk about the details' because a close hold on trading information could be critical to profits.'' [45] The importance of information was also noted in the recent price reporting decision in South Dakota, in which a federal court acknowledged that ''only packers have complete knowledge of livestock purchases and prices'' and that ''[o]nly a relatively small portion of livestock purchasing and pricing information is available to the public, including producers.'' [46]

(8) DOJ failed to explain the benefits of the merger:

Given the DOJ's concerns about the anticompetitive consequences of the merger, it is odd that no effort is made to justify its approval of the merger. The fears of anticompetitive behavior set forth in the complaint are not counter-balanced with a recognition of post-merger efficiencies, for example. With no apparent benefit to the merger and significant concerns expressed by many parties about its approval, the natural reaction would be to halt he merger. This response is further justified by the obvious difficulties that accompany the reversal of market concentration once it has become an economic fact.

(9) DOJ failed to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets:

Perhaps the most glaring defect in the DOJ's analysis is its failure to consider all of the relevant statutes. Robert Pitofsky, Chairman of the Federal Trade Commission, has explained the importance of construing the antitrust laws comprehensively.[47] Pitofsky invokes the Supreme Court case *United States* v. *Hutcheson,*[48] which specifically interpreted the Sherman, Clayton, and Norris-LaGuardia Acts as ''interlacing statutes.'' [49] The existence of agricultural statutes in pari materia, which ''relate to the same thing'' as the antitrust statutes, requires that both be considered as ''one law'' in judicial decision-making.[50] Failing to consider agricultural statutes eliminates critical factors to be considered in antitrust decisions and undermines the designs of legislator. [51] As a broad principle, weighing an array of factors, including closely related statutes, is recognized as an important component of balanced legislative interpretation.[52] If courts consider the wider statutory regime and the particular problem it addressed, judicial decisions can more properly reflect past Congressional concerns about economic concentration and its negative impact on the bargaining power of farmers.[53]

The DOJ, for example, failed to consider the Packers and Stockyards Act (''P&SA'') of

[28] American Meat Institute and John Morrell & Company v. Mark W. Barnett, Findings of Fact and Conclusions of Law, Civ 99–3017, U.S. Dis. Court, South Dakota, Filed July 26, 1999 (upholding the statute's price reporting provision; holding the statute's prohibition on discriminatory pricing to be a violation of the commerce clause).

[29] Id. at 5.

[30] Id.

[31] 504 U.S. 451 (1992); Mark R. Patterson, Product Definition, Product Information, and Market Power: Kodak in Perspective, 73 N.C.L. Rev. 185, 187 (1994) (arguing that Kodak ''incorporated into antitrust law a body of economic teachings on product information that the Court had previously neglected'').

[32] GEORGE STIGLER, THE ORGANIZATION OF INDUSTRY 171 (1968).

[33] Id. at 171.

[34] Id.

[35] Id. at 175.

[36] Id. at 172.

[37] Id. at 175.

[38] Id. at 172, 176.

[39] S. 19, 106th Cong., 1st Sess., § 6 (requiring meatpackers to report prices paid for livestock); Steve Marbery, Debate Over Price Discovery Enters Critical Round, Feedstuffs, June 1, 1998.

[40] Market Access, 1995 Survey Results (Iowa Pork Producers Association, In Cooperation with Iowa State University), at 3 (''Eighty-seven percent of the producers reported pricing their hogs the day of, or the day before, delivery'').

[41] Id., at 4; Merle D. Faminow, Monica de Matos, R.J. Richmond, Errors in Slaughter Steer and Heifer Prices, 12 Agribusiness, 79, 79 (1996) (noting that the ''exploitation of informational asymmetries can be one form of market power whereby agricultural processing industries can exploit farmers who sell to them'').

[42] Complaint, at 4.

[43] Alan Schwartz and Louis L. Wilde, Intervening in Markets on the Basis of Imperfect Information: A Legal and Economic Analysis, 127 Cornell L. Rev. 630, 667 (1979).

[44] Thomas C. Arthur, The Costly Quest for Perfect Competition: Kodak and Nonstructural Market Power, 69 N.Y.U.L. Rev. 1, 15 (1994).

[45] Jill J. Barshay, Cargill Steps Into the Light With Image Campaign, Star Tribune (Minneapolis, Minn.), March 5, 1999.

[46] AMI v. Barnett, at 5–6.

[47] Robert Pitofsky, The Political Content of Antitrust, 127 U. Pa. L. Rev. 1051, n.31 (1979).

[48] 312 U.S. 219 (1941).

[49] Id., at 232; See also, Fairdale Farms, Inc. v. Yankee Milk, Inc., 635 F.2d 1037, 1042–32 (2nd Cir. 1980) (construing the Capper-Volstead Act in light of subsequent agricultural statutes).

[50] U.S. v. Freeman, 44 U.S. 556, 564 (1845) (''The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts in pari materia are to be taken together, as if they were one law''); 73 Am. Jur. 2d Statutes § 187 (1974) (Current Through April 1998 Cumulative Supplement) (explaining that ''acts in pari materia, and all parts thereof, should be construed together and compared with each other. Because the object of the rule is to ascertain and carry into effect the legislative intent, it proceeds upon the supposition that the several statutes were governed by one spirit and policy, and were intended to be consistent and harmonious in their several parts and provisions. Under this rule, each statute or section is construed in the light of, with reference to, or in connection with, other statutes or sections'').

[51] U.S. v. Ferman, at 564 (explaining that ''[t]he error'' in the interpretation of a statute ''arose from that act having been considered by itself, without any reference to other statutes relating to [similar concerns]'').

[52] William N. Eskridge, Jr. and Philip P. Frickey, Statutory Interpretation as Practical Reasoning, 42 Stanford L. Rev. 321, 356 (1990).

[53] Id., at 358 (also noting the importance of the purposive inquiry; ''What problem was trying to solve, and what general goals did it set forth in trying to solve it?'').

1921.[54] The purposes and provisions of the statute require consideration when enforcing the Sherman, Clayton, and Federal Trade Commission Acts. P&SA passed after these broader statutes became law and was specifically directed toward a problem that seemed to persist despite the existence of previous legislation. The Congressional intent to promote the combined consideration and construction of the antitrust statutes is evidenced by the shared enforcement provisions of the P&SA.[55]

Some courts have specifically held that the statute is designed to go beyond the broad language of the Sherman, Clayton, and Federal Trade Commission Acts, thereby recognizing the importance of construing the statutes together.[56] While refusing to purchase a farmer's livestock might be acceptable under the Sherman or Federal Trade Commission Acts, for example, it would not be acceptable under the broad protective purposes of the P&SA.[57] In making such decisions, courts have recognized the problem of buyer power that farmers face [58] and which Congress attempted to address in the P&SA.[59] Furthermore, given the remedial nature of the statute, it should be interpreted liberally to carry out its broad mandate and purposes.[60] When combined with the already broad language of the statute, enforcement agencies are given wide regulatory powers over the meatpacking industry,[61] especially as it relates to injuries inflicted upon farmers.[62] One contemporary commentator described the legislation as ''extending farther than any previous law in the regulation of private business.'' [63] Borrowing heavily from the language of other antitrust laws, again confirming the interconnectedness of the antitrust legal regime, the legislation prohibits ''any unfair'' [64] practices or ''any undue or unreasonable preference or advantage'' to certain sellers. [65] The language of the PP&SA makes clear that particularly close scrutiny should be given to the marketing problems of farmers.

The DOJ also failed to consider the Capper-Volstead Act.[66] Among farmers in the late 19th century, a favored method of responding to the economic concentration of buyers was the marketing cooperative. Formal government efforts to aid farmer cooperatives came with the passage of the Clayton Act in 1914.[67] In order to eliminate legal obstacles that might slow the growth of market power among farmers through cooperatives, the legislation specifically exempted non-stock agricultural cooperatives from the antitrust laws.[68] The inclusion of the farmer cooperative provision within an antitrust statute offers further evidence of the importance Congress placed on considering the economic disorganization of farmers when applying the antitrust laws. Doubts about the effectiveness of the Clayton Act exemption triggered legislative efforts to draft a stronger statute.[69] The result was the Capper-Volstead Act of 1922, which broadened the exemption from the antitrust laws beyond non-stock cooperatives.[70]

With the passage of Capper-Volstead, Congress demonstrated its intention to treat farmer cooperatives differently from the typical corporate form and to give farmers the opportunity to build their bargaining power relative to corporate buyers.[71] By exempting farmer cooperatives from the antitrust laws Congress sought to help ''farmers to compete with large corporations.'' [72] According to some commentators, the legislation was specifically designed to ''counterveil the monopsony power then held by the corporate purchasers.'' [73] The Supreme Court agreed that ''individual farmers should be given, through agricultural cooperatives acting as entities, the same unified competitive advantage—and responsibility—available to businessmen acting through corporations as entities.'' [74] Without fear of antitrust prosecution, farmers were to unify into farmer cooperatives that could employ their bargaining power to negotiate with large food manufacturers for better prices for their products.[75]

The jurisprudence interpreting the Capper-Volstead Act recognizes farmer disorganization and the power of large-scale buyers. The court in Kinnet Dairies, Inc. v. Dairymen, Inc., for example, noted that ''farmers needed congressional help'' since they ''had always been pricetakers, standing relatively helpless before those who would purchase their products.'' [76] In order to overcome the monopoly problem common to agricultural markets, Congress ''deliberately set about to enable farmers to organize and band together in order to acquire and exercise marketing power.'' [77] If farmers can muster enough bargaining power a ''bilateral monopoly'' between seller and buyer will result, conferring on farmers a fair price for their products.[78] The mirror image of

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[54] 7 U.S.C. § 181 et seq.

[55] The PS&A even allowed for divided enforcement between the Secretary of Agriculture and the FTC. The FTC was to enforce the ''retail sales'' provision of the statute but the Secretary could assume responsibility if the FTC was not already proceeding with a similar investigation. § 406(d). Per se illegality standards in the Clayton and FTC Acts carry over to P&SA. Re ITT Continental Baking Co. (1985) 44 Ag Dec 748.

[56] Wilson & Co. v. Benson, 286 F.2d 891 (7th Cir. 1961).

[57] Swift & Co. v. U.S., 393 F.2d 247, 255 (7th Cir. 1968).

[58] Id., at 250–52 (finding that buyers of lambs agreed not to pay over a certain price and that buyers agreed not to bid against one another for lambs; the firm which bought the lambs then sold them to another buyer which had agreed not to bid on the lambs).

[59] Id., at 254 (''The lack competition between buyers, with the attendant possible depression of producers' prices, was one of the evils at which the Packers and Stockyards Act was directed'') (citing Meat Packer Legislation hearings before the House Committee on Agriculture, 66th Cong., 2d Sess., pp. 22, 229, 250, 303, 1047, 2284 (1920)).

[60] Bruhn's Freezer Meats of Chicago, Inc. v. U.S. Department of Agriculture, 438 F.2d 1332, 1336 (8th Cir. 1971) (citations omitted); Glover Livestock Commission Company, Inc. v. Hardin, 454 F.2d 109, 111 (8th Cir. 1972) (describing the legislation as remedial and requiring liberal construction to carry out its purpose of (''prevent[ing] economic harm to producers and consumers at the expense of middlemen'') (citing Bruhn's).

[61] Id., at 1339 (''The Act was framed in language designed to permit the fullest controls of packers and stockyards which the Constitution permits, and its coverage was to encompass the complete chain of commerce and give the Secretary of Agriculture complete regulatory power over packers and all activities connected therewith'').

[62] Stafford v. Wallace, 258 U.S. 495, 514–15 (1922) (holding that the ''chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells'').

[63] Current Legislation, The Packing Industry and the Packing Act, 22 Colum L. Rev. 68, 70 (1922) (quoting Senate Agricultural Comm., Rep. No. 77, 67th Cong., 1st Sess. 2 (1921)).

[64] 7 U.S.C. § 202(a) (italics added).

[65] Id. at § 202(b) (italics added).

[66] 7 U.S.C. §§ 291–2.

[67] 15 U.S.C. §§ 12–27 (1983).

[68] Id., at § 17.

[69] Wendy Moser, Selective Issues Facing Cooperatives: Can the Customer continue to be the Company? 31 S.D.L.Rev. 394, 395 (explaining that Capper-Volstead was passed to ''clarify the Clayton Act exemption provided to farmers'').

[70] 7 U.S.C. §§ 291–92.

[71] Fairdale Farms, 635 F.2d at 1043 (noting that ''agricultural cooperatives were 'a favorite child of Congressional policy' '') (quoting treatise); David Million, The Sherman Act and the Balance of Power, 61 S. Cal. L. Rev. 1219, 1281 (1988) (''The exemption of labor and agricultural combinations from the Sherman Act's proscriptions further demonstrates that a deep concern about social balance lay beneath statements of solicitude for those harmed by the trusts. Several senators advocated exemption on the ground that such combinations were necessary to counterbalance the economic power of massed capital.''); Michael D. Love, Antitrust Law—Fairdale Farms, Inc. v. Yankee Milk, Inc.:—The Right of Agricultural Cooperatives to Possess Monopoly Power, 7 J.Corp.L. 339, 341 (1982) (explaining Congressional hopes of helping ''cooperatives to finance business operations of sufficient magnitude to compete with corporations''); Kathryn J. Sedo, The Application of the Securities Law to Cooperatives: A Call for Equal Treatment for Non-agricultural Cooperatives, 46 Drake L. Rev. 259, 272 (1997) (noting the farmer cooperative exemption from the securities laws, indicating the Congressional view that cooperatives were favored organizations).

[72] Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 284 F.2d 1, 8 (9th Cir. 1960).

[73] David L. Baumer, Robert T. Masson, and Robin Abrahamson Masson, Curdling the Competition: An Economic and Legal Analysis of the Antitrust Exemptions for Agriculture, 31 Vill. L. Rev., 183, 185 (1986) (''Congressional passage of the agricultural antitrust exemption encouraged the formation of agricultural cooperatives intended to counterveil the monopsony power then held by the corporate purchasers'').

[74] Maryland & Va. Milk Producers Ass'n v. United States, 362 U.S. 458, 466 (1960).

[75] Note, Trust Busting Down on the Farm: Narrowing the Scope of Antitrust Exemptions for Agricultural Cooperatives, 61 VA L. Rev. 341, 364 (1975) (''Capper-Volstead's authorization of collective processing and marketing was an attempt to counter the bargaining power of oligopsonist buyers, but the bargaining power gap is as wide today as it was fifty years ago'').

[76] 512 F.Supp. 608, 630 (M.D. GA. 1981); Northern Cal. Supermarkets, Inc. v. Central Cal. Lettuce Producers Cooperative., 413 F.Supp. 984, 988 (N.D. Cal. 1976) (noting that ''Congress perceived farmers as being at the mercy of sharp dealers in the sale of their produce and, therefore, made it possible for them to form cooperatives to help themselves'').

[77] Kinnet Dairies, 512 F.Supp. at 630. The court specifically mentions the promotion of ''countervailing power'' as a function of farmer cooperatives. Id., at 614.

[78] National Broiler Marketing Assn. v. U.S., 436 U.S. 816, 842 (1978) (J. White dissenting) (''The

promoting farmer bargaining power is close attention to economic activities that might increase the concentration among buyers and contribute to their collusive potential. Accordingly, the wider policy rationale of Capper-Volstead requires that DOJ and other enforcement officials apply strict scrutiny to mergers or other activities that enhances the power of buyers and worsens the bargaining position of farmers.

Finally, the DOJ failed to consider Congressional concerns about maintaining a balanced bargaining arrangement between farmers and processors as manifest in the Agricultural Fair Practices Act (AFPA) of 1967.[79] The statute was designed to prevent corporations from interfering in the formation of collective marketing organizations among farmers.[80] Congressional action stemmed from episodes in which food processing corporations discriminated against cooperative bargaining associations by refusing to buy their products.[81] Courts have interpreted the ''overriding purpose'' of the resulting legislation to be the protection of farmers' rights to cooperatively organize.[82] Throughout the 1970s, Congress considered additional legislation to improve the bargaining power of farmers relative to that of the corporate food processing sector.[83] The AFPA's recognition of the disorganized nature of farmer marketing[84] and the potential for abusive practices on the part of agricultural processors adds further evidence of heightened Congressional concern with market power among buyers.

(10) DOJ failed to consider that the consent decree risks leaving farmers without an effective outlet for legal redress:

The resulting consent decree will be reviewed by a district court in the District of Columbia (''D.C.''), where it is less likely that a federal judge will be familiar with agricultural concerns. When seeking leverage in the negotiations over the consent decree, the DOJ had a plane waiting to take a lawyer to Fargo to file suit, indicating their understanding that a farm-state venue would be more advantageous in litigation than Washington, D.C. The D.C. Court of Appeals has also severely restricted the ability of district courts to determine whether a consent decree is ''in the public interest,'' making it more likely that the concerns of interested parties will not be fully considered in a court of law.[85] One commentator has noted that the DC Court of Appeals ruling ''threatens to eliminate any effective role for the courts in reviewing antitrust consent decrees.'' [86] The DC Court of Appeals conclusion that a consent decree can be rejected only if it makes a ''mockery'' of judicial power is ''almost no standard at all and places in jeopardy the Tunney Act [Antitrust Procedures and Penalties Act] requirement that the district court independently review the decree to ensure that it is in the public interest.'' [87]

If a federal court does not reject the consent decree, the next logical step is for the attorneys general of farm states to challenge the merger in federal court. Unfortunately, such a move is extremely difficult given the limited enforcement budgets and antitrust expertise of attorney general offices in Midwestern farm states, leaving many of the states most affected by the merger hard-pressed to marshal the resources necessary to challenge the merger, especially given the wealth of Cargill, the largest private company in the country.[88] Larger states such as New York and California, which have larger antitrust divisions, are not likely to challenge the merger given their distance from the concerns of the Midwestern farmer. Such conditions make it possible that those who have advanced legitimate objections to the merger will not have their day in court. As a result, one of the main reasons for the passage of the Tunney Act—the fear of excluding interested third parties from the merger review process—will be ignored.

Given the importance of this merger and the constraints on state action if the consent decree is approved, I respectfully request that the comment period for this merger be extended another sixty days to December 12th. Several parties have expressed interest in commenting on the merger and will not be able to do so by October 12th. In the interest of a fair hearing on this critical matter, I urge DOJ to support a lengthening of the comment period, as allowed under the Tunney Act.[89]

If the DOJ and the court do not see fit to extend the comment period, OCM urges the court to reject the proposed consent decree for failing to consider the factors set forth herein.

Sincerely,

Jon Lauck, Ph.D.,

Special Project Director, Organization for Competitive Markets.

Attachments to the comment filed by the Organization for Competitive Markets are available for inspection in room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, DC 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Pemiscot County Farm Bureau

P.O. Box 80, Caruthersville, MO 63830, (573) 333–4196, Fax: (573) 333–4537

August 2, 1999.

Judge Gladys Kessler,

US District Court, District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

Dear Judge Gladys Kessler: We are writing to request that you protect competition in this part of Missouri.

We are concerned there may have been some misrepresentation in the civil action

specific goal of permitting agricultural organizations was to combat, and even to supplant, purchasers' organizations facing the farmer. Economics teach that the result in such circumstances is 'bilateral monopoly' with a potentially beneficial impact on the eventual consumer and a sharing of cartel profits between the organized suppliers and the organized buyers''). The court also specifically mentions that chicken farmers exist in an ''oligopsonistic'' market. Id., at 844 (quoting Brown, U.S. v. Broiler Marketing Association: Will the Chicken Lickin' Stand?, 56 N.C.L.Rev. 29, 44 (1978)).

[79] 7 U.S.C. §§ 2301–2306; Donald A. Frederick, Agricultural Bargaining Law: Policy in Flux, 43 Ark. L. Rev. 679, 689 (noting that the legislation was ''viewed as an important sanction of agricultural bargaining'' and was a ''congressional reaffirmation of the value of cooperative bargaining and marketing by agricultural producers'').

[80] 7 U.S.C. § 2303 (forbidding corporations from coercing, discriminating, or intimidating members of farmer bargaining groups).

[81] Randall Torgerson, PRODUCER POWER AT THE BARGAINING TABLE: A CASE STUDY OF THE LEGISLATIVE LIFE OF S. 109 3–17 (1970).

[82] Butz v. Lawson Milk Co., Division of Consolidated Foods Corp., 386 F.Supp. 227, 235 (N.D. OH. 1974) (''the overriding purpose of Congress in enacting the Agricultural and Fair Practices Act of 1967 was to protect the individual producer of milk in his right to band together with other producers or, in effect, to unionize'').

[83] National Broiler Marketing Assn., 436 U.S. at 837 (1978) (Brennan, J., concurring) (noting the ''persuasive evidence that Congress' concern for protecting contract growers vis-a-vis processors and handlers has not abated''); Oliver and Snyder, Antitrust, Bargaining, and Cooperative: ABC's of the National Agricultural Marketing and Bargaining Act of 1971, 9 Harvard J. Legislation 498 (1972); Frederick supra, Agricultural Bargaining Law, at 691–693.

[84] 7 U.S.C. § 2301.

[85] *United States* v. *Microsoft Corp.,* 56 F.3d 1448 (D.C. Cir. 1995).

[86] Lloyd C. Anderson, *United States* v. *Microsoft, Antitrust Consent Decrees,* and the Need for a Proper Scope of Judicial Review, Antitrust L.J. 1, 3 (1996).

[87] *Id. at 4.* See also Deborah A. Garza, The Microsoft Consent Decree: The Court of Appeals Sets Strict Limits on Tunney Act Review, 10 Antitrust 21 (Fall 1995) (arguing that the Tunney Act ''might reasonably be read to authorize a more substantial role for the district court'').

[88] The office of Attorney General in Minnesota currently has 2 and one-half attorneys who handle antitrust matters. The offices in North and South Dakota do not have attorneys who work full-time on antitrust matters. See generally Joseph F. Brodley, Antitrust Standing in Private Merger Cases: Reconciling Private Incentives and Public Enforcement Goals, Mich. L. Rev. 2, 38–41 (1995) (explaining the limits on state action).

State merger enforcement is confined to a relatively few merger-enforcing states and is dependent on the views of changing state attorneys general and state budgetary support in a time of increasing financial stringency . . . Resources and personnel limit state merger enforcement. Merger cases are the most resource-intensive antitrust litigation. Within a matter of weeks, sometimes even days, the plaintiff must marshall a sophisticated antitrust case involving proof of complex economic facts, including market definition, market power, and oligopolistic conduct—an awesome task, even for a large team of lawyers and economists representing a billion-dollar corporation. Yet most states have only three to five antitrust lawyers, others no more than one or two, and some states none at all. In addition, almost none of the states has a staff economist, and the tight time limits of merger litigation tend to hamper the effective multi-state coordination that occurs in other types of state antitrust litigation. Financial pressures also inhibit state merger capability and growing budgetary limitations on state finances may intensify these pressures.

[89] 15 U.S.C. & 16(d).

case #991875 that may lead you to a different conclusion.

Cargill was initially asked to divest itself of the Continental Grain Cottonwood Point elevator. We believe this was done through an error or misunderstanding about the location of this elevator. This elevator sits on the Mississippi River at a place called Cottonwood Point. Although it is 10 miles south of Caruthersville, MO it carries that address. This is unfortunate because we believe it made the anti-trust people feel it was too close to an elevator Cargill owns at New Madrid, MO. These elevators are about 47 miles apart and do not, to my knowledge, compete for business.

So we are asking that you permit the sale of this elevator to Cargill to go ahead. We feel strongly that this will give local farmers the most competitive prices for our grain.

Judge, we are asking that whatever happens, please don't let Bunge, Inc., acquire this elevator because they own the next 3 elevators above it and the next 3 elevators below it (a distance of 84 miles).

I personally have farmed 13 miles inland from Cottonwood Point for just over 30 years. All my grain has been sold almost equally to Bunge and Continental during these years. If the grain producers in this area do not have 2 or more strong competitors within 25 or less miles, then our little world is going to get a lot more difficult real quick.

Thank for your consideration in this matter.

Sincerely,

David Haggard,

Pemiscot County Farm Bureau Board President.

October 11, 1999.

Rural Life Office

511 Bear Creek Drive, Dorchester, Iowa 52140–7505; 1–800–772–2758

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 321 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: We are very concerned about the Department of Justice's ''Final Ruling'' on the case of US of America v. Cargill, Inc and Continental Grain Co. We ask that you please forward our comments and the enclosed letter to Judge Kessler.

We work with farmers and rural communities all over the 30 counties of north east Iowa for the Rural Life Office of the Archdiocese of Dubuque.

We do not find the Department of Justice's findings for the merger of Cargill-Continental to be in the best interests of the people we work with in the 30 counties of Northeast Iowa. Producers will be even more limited in their markets than they currently are, and they face the probability that Cargill/Continental will exert strength in the organic and specialty markets with the take-over of Continental's facilities. This has to be recognized as not being in the public interest.

The laws of this country are meant to protect the advancement and good of common people, not corporations. The action we request would help government to move further in this direction.

Respectfully,

Mary and Don Klauke.

Western Organization of Resource Councils

2401 Montana Avenue, #301, Billings, Montana 59101; (406) 252–9672, FAX (406) 252–1092

October 12, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

By FAX: 202/307–2784

Dear Mr. Fones: On behalf of the Western Organization of Resource Councils, I am writing to urge you to reopen your investigation into the proposed acquisition of Continental Grain by Cargill and extend the public comment period on the proposal. Mergers and acquisitions in the agribusiness industry are closing out the markets for family farmers and ranchers. The Department's approval of this merger with a few required divestitures is wholly inadequate to protect competition in the grain trade, which these two firms dominate along with ADM.

As Jon Lauck has explained in his letter for the Organization for Competitive Markets to you, the Department's analysis of this proposal (1) fails to consider the wider concentration in agricultural markets beyond grain buying; (2) fails to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) fails to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) fails to consider the nature of the grain selling market; (5) fails to consider the economic disorganization of farmers which can be exploited by powerful buyers; (6) fails to consider information disparities in agricultural markets; (7) fails to explain the benefits of the merger; (8) and fails to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets.

We strongly urge your reconsideration of this action in an analysis which weighs these issues. The Department's strong action is needed here to preserve competition and free, competitive markets against encroachment by monopolistic corporations.

Sincerely,

Shane Kolb,

Chair, Agriculture Issue Team.

Exeten, NE 68351,

Oct. 6, 1999.

Mr. Roger W. Fones,

Antitrust Division—U.S. Dept. of Justice, Washington, D.C. 20530.

Dear Mr. Fones: The merger concerning Cargill & Continental Grain is a major concern to me as a farmer. This merger would unify the second and third largest grain traders in North America, which export 40% of the American agricultural commodities.

To demonstrate how confident these companies are of the merger, a lady sold her grain to her elevator this year which is owned by Continental (for years) and four days later she received her check in a Cargill envelope. This merger has not been approved.

In my area Cargill has an elevator on the Burlington-Northern rail line. They control the amount of rail cars available and the time. This influences the prices paid for our grain in the surrounding elevators and the York ethanol plant. All exist within less than 25 miles of our farm. We need market transparency and tougher anti-trust enforcement.

Keep competition open. Do not allow the merger.

Sincerely,

Cynthia Thomson,

State WIFE President.

Lincoln's Letter on Corporations

''We may congratulate ourselves that this cruel war is nearing its end. It has cost a vast amount of treasure and blood * * * It has indeed been a trying hour for the Republic; but I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country.

''As a result of the war, corporations have been enthroned and an era of corruption in high places follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth's aggregated in a few hands and the Republic is destroyed.

''I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of war.''

This letter was written by Abraham Lincoln to William F. Elkins, Nov. 21, 1864.

Alvo, Nebraska

Sept. 28, 1999.

Mr. Roger W. Fones *Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St. N.W. Suite 500, Washington, D.C. 20530.*

Dear Sir: As a member of a family who has resided and made its living on the same farm for five generations, I feel compelled to write to you concerning the merger of Cargill and Continental Grain.

That merger is a major concern to all American farmers because of the impact Cargill's monopoly of the grain trade will have on the farms and communities in our areas.

The main thrust in our operation is wheat, corn and soybean production and a cow/calf and cattle feeding program. That is our source of income.

I believe family farmers who are producing food for the world, below the cost of production, are at a disadvantage competing with conglomerates such as the top four firms.

I urge you to use your authority to pressure the U.S. Department of Justice to revisit its investigation of the Cargill/Continental sale.

Respectfully yours,

Pauline Johnson.

Alvo, NE 68304

Sept. 29, 1999.
Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division in U.S. Dept. of Justice, 325 Seventh Street, NW, Ste 500, Washington, D.C. 20530.

Dear Sir: Regarding merger of Continental and Cargill Grain Co.

Deep concerns of the shrinking but necessary family farmers.

Excessive mergers are forming monopolies. In the agriculture sector it is putting more stress on your food producers (grain & livestock).

Cargill may have already thought they have the merger sewed up the merger as grain sold to the Continental Grain Co. was paid for with a Cargill check?

I *urge* you to stop this mad rush of mergers with everything. Seven corporations will rule the world. It is fast becoming international.

Is this what our pioneer fore-fathers wanted?

Thank you for your time and *thought.*

Dyed in the wool American farm wife.

Senior Citizen,

Dorothy McKay.

Elmwood, NE 68349
Mr. Roger Fones,
U.S. Dept. of Justice, Antitrust Division, 325 Seventh St. N.W. Suite 500, Washington, D.C.

Dear Mr. Fones: I am a family farmer in eastern Nebraska. I am extremely concerned about the merger of Cargill and Continental grain companies. The merger of these two giant grain companies would lessen the competition in grains, locally, nationally and globally. I urge you to consider the impact this would have on us and act to stop the merger. This merger (proposed) needs immediate action by the antitrust division and the U.S. Justice Department. The antitrust laws are in place and need to be enforced!

Thank You.

Norma Hall.

Plentywood, MT
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones, Having served as Transportation officer for WIFE for many years, and seen just what 'mergers'/ 'takeovers'/ acquisitions, etc. do to rural America in the field of rail transportation, I write to ask that the U.S. Department of Justice re-open its investigation of the Cargill's acquisition of Continental Grain operations.

As farmers, we are already experiencing the loss of competition in rural America. Producers who own one company's machinery find that they may have to drive 100–150 miles to acquire some repairs for its. Or wait until it can be mailed to them from some central point thousands of miles away.

Those of us who have no alternative to shipping by rail have found not only that we now are 'served' by one carrier, but we have to drive greater distances with our own farm trucks to reach a terminal.

Formerly, Montana was the only state that was dominated by one rail carrier. Now we see that, because of mergers, other states, other industries, have lost the edge that competition in transportation gives them. Those who have watched the developments are not surprised that, no matter what reassurances are given by the company that is benefitting by the takeover, the dire predictions by those opposing the transaction have proven accurate.

So now we are again among those who are predicting that the Cargill acquisition of Continental's grain operations will be beneficial only to Cargill.

Competition is vital to not only our grain producers, but to the farmers of the world. The takeover of Continental's operations is going to dramatically affect not only those producers who are directly served by the Cargill/Continental terminals, but by all producers of grains in the U.S.

The Antitrust Division is our only hope, so we ask that you exercise your authority before the amount of power exerted by one company becomes too great, and producers lose one more battle to keep competition working for them.

Sincerely,

Mary W. Nielsen,
Montana Transportation, WIFE.

September 27, 1999.
Mr. Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, US Department of Justice, 325 Seventh St. SW Suite 500, Washington, DC 20530.

Re: Cargill & Continental Grain Company Merger

Dear Mr. Fones: It is my understanding that the final judgment concerning the above matter will be determined in the middle of October.

I want to urge you to consider this matter very carefully and urge your affiliates to rule against this merger. Cargill's purchase of Continental Grain would unify the second and third largest grain traders in Nebraska, making it possible for Cargill to control the export market much more than it does at the present time.

We do not need bigger companies with more control over our markets. We have a Cargill elevator within 15 miles of our farming operating. They have so many different plans for each agriculture producer that it is unbelievable. They have determined that our grain should be .5% dryer when brought into the elevator making more money for the elevator and less for the producer. It may not seem like a large amount but when you are paying the drying bill, it definitely adds up. They also have a plan if you buy everything from them—fertilizer, seed corn, chemicals, insecticide and deliver all your grain to them—they will do this for you and that for you. They definitely want control—both of the farmer and the market.

The farming industry is in very serious trouble with today's markets so low and our cost of production going up.

We hope that in reading this letter that you will investigate the merger more thoroughly and understand why this merger is being challenged in the agriculture sector. Since this is harvest in the Midwest, it would also be of some assistance if the deadline for comment would be extended another sixty days to December 12, 1999.

Yours in Ag,

Frances Heinrichs,
Women Involved in Farm Economics (WIFE).

Tab 4

Greta Anderson, Iowa City, IA
September 19, 1999.
Judge Gladys Kessler,
U.S. District Court, for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler:

Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society. but whether the settlement is within the reaches of the public interest.''

In its July 8, 1999 ''Final Judgment'' I believe in fact that the Department of Justice has ''breached its duty to the public in consenting to the decree'' and that its Final Judgment is not ''within the reaches of the public interest.''

As the Department of Justice's own ''Complaint'' states, the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots, pork

packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

To me, it is tragic that the government does not put the rights of family farmers first, but rather participates in the idea that there are ''too many farmers.'' Drive through rural America: you will see that there are not too many farmers, but rather, too many suburbanites and strip malls. The accumulation of capital such as Cargills is not ''inevitable'', nor is this merger.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Greta Anderson.

Iowa City, IA
September 22, 1999.

Dear Sir: I am writing my concern over the merger of Cargill and Continental. Bigger is not better, the market for cash grain is already highly concentrated and yet another merger would spell doom for the independent farmer.

Sincerely,

Vivian Anderson.

Cresco, IN

Dear Chief Fones: I was born and raised on a farm, coming from a family of 13 children. Those were days of fair treatment, where farmers could make a living (however big the family). I believe the small average farmer meant something. These days we're used, to put it bluntly (as doormats). Is it just the big shots (the powers that be) that force us to do things their way, no matter who they step on? Don't us little guys count? I was taught that God made us all equal. Do you think the way the smaller people are being treated is equal and fair? I don't, and I'm sure God didn't have plans for the big corporations (such as Cargill) to be (in control); as they seem to be doing. Haven't we been pushed down, stepped on, and ground in the dirt enough? I think we count too. I beg you, Please don't let Cargill have any more control. Seems we've been damaged about as much as possible. We don't have a leg to stand on now; let alone if you let Cargill and other big corporations have any more control. We work very hard and can't squeeze a meager pauper's wage and living now. Why can't we have a little cream of the crop? Are the (people in control) entitled to all the cream and us little people can have the skim milk or whey that is left over?

I think you should keep in mind that God made us all equal; and you and I know the way things are now is way off balance.

Please don't let Cargill or any other of these big corporations have any more control and completely wipe *us* out

Thank you Kindly,

Kay M. Barnes.

September 23, 1999.

Dear Sir: This is in response to the invitation for comments regarding Final Judgment; the case of Cargill merging. This was written up in the Minnesota Farmers Union August publication and got me to thinking about how we little people are being squeezed and eventually choked by big business

As a midwest dairy farmer, reading articles only depresses one as there is a feeling of hopelessness implied by the ''powers that be''. They talk and talk, attend meeting after meeting and declare the poor farm situation must be addressed and so far in 1999 that's as far as it goes.

The CEO's of the major grain mergers can only see $$ for their own pockets and I suppose one can't judge harshly on that, but is it fair to the hard working farmer to not have a decent cut for his efforts. Every day in the business section someone's throat is cut by the money people. I am thoroughly opposed to more merging. Let's put a moratorium on mergers until someone figures out the agriculture and dairy dilemma and really moves in the right direction for all.

Sincerely,

Mary Beckrich.

Cologne, Minnesota
October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a large monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Deari Borth.

October 11, 1999.
Meade, KS
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anit-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

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Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S. farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Greg Borth.

Honorable Judge Gladys Kessler
U.S. District Court, District of Columbia, 333 Constitution Ave. N.W., Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: You have before you awaiting your approval a Final Judgment filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp, which is a privately held corporation.

Legal precedent, according to the Department of Justice, requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest.

In its July 8, 1999 Final Judgment I believe in fact that the Department of Justice has

breached its duty to the public in consenting to the decree and that its Final Judgment is not within the reaches of the public interest.

Clearly, as the Department of justice's own complaint states the Cargill purchase would substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.

Using the Department of Justice's own figures and criteria we see in its Complaint that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's Final Judgment addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets allows Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

This vertical and horizontal domination by Cargill allows then to maintain dominant status in all of these markets. While small family farmers are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time because it can afford to subsidize poor economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and sophisticated firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its Final Judgment, study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Marilyn Borchardt,

Daughter of a former farmer.

Meade, KS.

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70% Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Isabelle Borth,

Tri-Von Enterprises,

107 S. Celina Street, Roanoke, IL 61561–1097,

September 25, 1999.

Energy & Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St. NW, Ste 550, Washington, D.C. 20530.

Attention: Roger W. Fones, Chief of Transportation

Dear Mr. Fones, We are concerned about the Cargill-Continental merger. We do not believe it is required to compete in the global economy and will be extremely detrimental to the agricultural community. It is our opinion that this market is already highly concentrated and we feel this will work to the destruction of the few remaining independent farmers left here in our precious prairie.

Although we are not farmers, we sell computers to many of our local farmers and know the sad situation this would put them in. Independent farmers are the backbone of this nation and we must not let corporate farming take over. Enough is enough!

Sincerely,

Loris von Brethorst.

Callicrate Feedyard

P.O. Box 748, St. Francis, KS 67756s

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones, Mergers and concentration have gone too far. Justice not only needs to deny the Cargill-Continental Merger but also needs to reverse prior mergers and restore competition in agricultural markets.

Companies like Cargill, ConAgra, ADM, Farmland and IBP are destroying our food system and killing us. We are losing our towns and communities with their low fixed commodity prices.

The big money of companies like Cargill is dominating government policy and influencing the non-enforcement of antitrust laws for their benefit; what about the people? Stop using the lame excuse of ''economies of scale and efficiencies,'' they have no more basis today than when used as an excuse in Thomas Jefferson's day.

Sincerely,

Mike Callicrate.

New York Times,

October 11, 1999.

Essay By William Safire

Where is antitrust? I say No to the Cargill-Continental Merger!—G.M. Calnon, St. Francis, KS 67756.

Clinton's Consumer Rip-Off

Jacksonville, Fla.—''You want to buy this new cable service that's much faster than your old modem,'' my son the information architect told me. Not wanting to become the slowpoke pundit, I called my local cable company and ordered ExpressNet. A new black box cost $150 and the monthly fee was $25.

Two weeks later, a disembodied voice called to say that the superspeed Internet connecting service had merged with a Texas conglomerate and if I didn't agree to the doubling of the monthly rate, my service would end and I would be stuck with a useless $150 receiver.

I again called my local cable monopoly. Although I never reached a human being, its complaint software signaled that I could continue for six months at the original rate, after which it was double or nothing.

This minor outrage came to mind in watching the gee-whiz, ain't-these-big-numbers-fun accounts on television news of the latest combinations of corporate colossi.

Worldcom, which last year bought MCI, was now swallowing up Sprint for $115 billion.

This, analysts assure us, will allow the new supergiant to compete with AT&T, which already is plunking down $58 billion for Mediaone with the smiling approval of roundheeled Clintonites at the Federal Communications Commission.

Why are we going from four giants in telecommunications down to two? Because, the voice with the corporate-government smile tells us, that will help competition. Now each giant will be able to hedge its bets in cable, phone line and wireless, not knowing which form will win out. The merger-manic mantra: In conglomeration there is strength.

That's what they said a long generation ago when business empire-builders boosted their egos by boosting their stock to buy the earnings of unrelated companies. A good manager could manage anything, they said, achieving vast economies of scale. As stockholders discovered to their loss, that turned out to be baloney.

Ah, but now, say the biggest-is-best philosophers, we're merging within the field we know best. And if we don't combine quickly, the Europeans and Asians will,

stealing world business domination from us. The urgency of ''globalization,'' say today's mergermaniacs, destroys all notions of diverse competition, and only the huge, heavily capitalized multinational can survive.

That's why we see the Old Seven Sisters of oil working their way down toward two big sisters having fun with fungibility, and why our former Big Seven accounting firms are headed to a Big Two. Unchecked international combines can crush unions, water down professional ethics, circumvent national regulation and stick it to consumers.

Here are two startling, counterintuitive thoughts: The fewer companies there are to compete, the less competition there is. And as competition shrinks, prices go up and service declines for the consumer. (Say these reactionary words at the annual World Economic Forum in Davos, and listen to the global wheeler-dealers guffaw.)

Who is supposed to protect business and the consumer from the power of trusts? Republican Teddy Roosevelt believed it to be the Federal Government, but the antitrust division of Janet Reno's Justice Department is so transfixed by its cases against Microsoft and overseas vitamin companies that it has little time to enforce antitrust law in dozens of other combinations that restrain free trade.

Our other great protector of the public interest in diverse sources is supposed to be the F.C.C. When MCI merged with Worldcom last year, the chairman appointed by President Clinton, William Kennard, took no action but direly warned that the industry was ''just a merger away from undue concentration.'' Now that is happening.

Why will the F.C.C., after asking for some minor divestiture, ultimately welcome a two-giant waltz? For the same reason that the broadcasters' lobby was able to steal tens of billions in the public's bandwidth assets over the past few years: Mr. Clinton wants no part of a communication consumer's ''bill of rights.''

Candidates Bradley, Bush and Gore look shyly away lest trust-luster contributions dry up. Only John McCain dares to say: ''Anybody who glances at increases in cable rates, phone rates, mergers and lack of competition clearly knows that the special interests are protected in Washington and the public interest is submerged.''

Today's populist message comes to you by my old, slow modem.

October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: The purpose of this letter is to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

The creation of a larger monopoly will not only depress grain prices further in this country, but also be detrimental to all consumers.

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give this your serious consideration.

Sincerely,

Don Nauereud.
Mary Gosserand.

Brooksville, MS
October 11, 1999.
Mr. Roger Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: As a daughter and wife of farm producers, I have a stake in the future of the American farm family. I am actively involved in the operation and management of our operation. I am also a homemaker—I have three teenage children. My family worked diligently the last eighteen months—long hours, day after day—and we would have lost less money if we had done nothing. This is disheartening to say the least. Cattle and grain prices have remained low and feed and other related costs have been high. I tell you this not to whine but to explain our plight.

The rapid corporate concentration of the world's largest grain and meat handlers is killing the farm family. When we are gone and the people of this country who are accustomed to a relatively inexpensive quality food supply realize what has happened, it will be too late. Please stop the Cargill-Continental Grain sale for the reason that it will further impact grain prices and farm income in my community and in the U.S. in general. Please extend the comment deadline for another sixty days. We must have a competitive market in this country.

Thank you for your consideration of this matter. If you eat, you have a stake in this ruling. When farm families are driven out of business, the cost of foods will skyrocket. Make no mistake about that. If you are a consumer, you are very vulnerable. Mr. Fones, this includes you.

Sincerely,

Lori Chancellor.

September 20, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you, awaiting your approval, is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. ''The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.'''

In its July 8, 1999 ''Final Judgment'' I believe in fact that the Department of Justice has ''breached its duty to the public in consenting to the decree and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

Clearly, as the Department of Justice's own ''Complaint'' states, the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale

and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Thank you.

Donald B. Clark,

Convener, United Church of Christ, Network for Environmental & Economic Responsibility.

October 1, 1999.
Judge Gladys Kessler
U.S. District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

RE: Cargill/Continental Grain Sale

Your Honor: It is my understanding you are taking public comment regarding the sale of Continental Grain to Cargill. It is with this understanding I write.

I believe every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is compromised when too much control is concentrated to increase the power of wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

The Cargill purchase of Continental Grain facilities will increase Cargill's buying power and price control; it will decrease the markets available to farmers and cause farmers to have to transport grain farther, especially if some terminals are closed to increase corporate profits; it will position Cargill to dominate specialty or ''niche'' markets because of the acquisition of Continental's storage facilities (markets that farmers are currently using to try to find profitability in already heavily Cargill-dominated markets).

Family farms are already struggling in the mid-west due to mega hog, mega dairy and mega beef operations. This would put another nail into the already partly closed coffin of family farms. Some of the family farms in my part of Iowa have been in the same family for 100 to 150 years. These families keep my small town alive and thriving.

The already rampant farm crisis is putting a squeeze on farm families which in turn puts a squeeze on the small businesses in my town, which in turn makes me have to drive further to purchase food, clothing and essential items at a greater cost.

I realize that the farming community is only 2% of the political vote but it is 100% of food production. One family farm feed approximately 212 persons. If the current farm crisis continues statistics show 6000 Iowa family farms will go belly up in the next couple years. Should this happen 112,000 non farming people will be affected. There are 49 other states in the union that I haven't even included in these figures.

I've been told that mega corporations are going to be the future of the US. It it my belief that mega corporations will only happen if we give up the fight. America has always been known as the land of opportunity and I see no reason for that to change. As Abraham Lincoln once said, ''Let us have faith that right makes might; and in that faith let us to the end dare to do our duty as we understand it.'' or in the words of Margaret Mead, ''Never doubt that a small group of thoughtful committed citizens can change the world; indeed, it's the only thing that ever has.''

Thank you for listening to me.

Sincerely,

Shari Cummings.

October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division of Justice, 325 Seventh Street, N.W., Ste 500, Washington, DC 20530.

Via FAX: 202–307–2784

Dear Mr. Fones: As the Executive Vice President and Director of a small rural community bank outside of Memphis, Tennessee, and as the daughter of a farmer. I have personally witnessed the demise of the ''family farmer.'' I have seen ''up close and personal'' the struggles of these hard working people for all of my life. While they seem to easily take into stride their battle with the environmental elements, their struggles with rising production costs and stagnant to declining harvest prices has driven countless operations out of business. Ten years ago, our bank financed about two dozen local operations, and today, we have only two operations remaining viable. Given the very small size of our community, these numbers are quite staggering to our local economy.

Without exception, their demise is due to the ever increasing production costs and stagnant or declining harvest prices. One does not habe to look very hard at the reason for this problem. The biggest issue that has driven hundreds of thousands of US family farmers is the rapid corporate concentration of the world's largest grain and meat handlers. While the family farmers harvest prices remain stagnant, or even declined, the prices in the grocery store has SOARED!! Most of the general population is oblivious to this issue, but, when they are finally aware of it, it will be too late!

I can no longer sit idly by and not speak on behalf of this vital segment of our nations economy, but also on behalf of all consumers. With the absence of the family farmer, the cost of food will skyrocket.

It is for this reason, that I implore you to prevent the Cargill-Continental Grain sale and stop the negative impact on grain prices and farm income in my community and across this nation. Please extend the comment deadline for another sixty days. You have the power to ''do the right thing,'' or else we will be ''paying the price'' for generations to come.

Sincerely.

Peggy B. Daugherty,

Executive Vice President, The Bank of Moscow, Moscow, Tennessee.

Mr. Roger Fones,
Chief of Energy & Ag. Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St., N.W., Suite 500, Washington, D.C. 20530.

Sir: Please do not approve of the purchasing of the grain division of Continental by Cargill.

We raise cattle, wheat and barley in this area of Montana.

There is little competition in the world markets placing the farm and ranches at the mercy of a few international companies. There will be no chance to improve the depressed prices with so little competition. Our rural life style will continue to deteriorate as low prices are driving farmers and ranchers out of business.

Sincerely,

Lymen and Darlene Denzer.

Dewell Motor Co.

P.O. Box 109, Fowler, Kansas 67844

10 October 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing this to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Steve Dewell.

Dobbs Ranch

957 Manns Creek Road ~ Weiser, Idaho 83672–5523

October 11, 1999.
Mr. Roger W. Fones
Chief of Transportation, Energy and Agriculture Section

Dear Mr. Fones: Please extend the public comment period for a minimum of 60 days on the Continental/Cargill Grain merger. Please conduct a more thorough investigation of this sale before submitting a Final Judgment in this matter.

Please do this for your children, grandchildren and all future generations of food consumers in this great country. The monopolization of America's food supply is one of the most frightening things that is happening in this country. As a family

farmer/rancher I beg you to continue your investigation.

Sincerely yours,

Grant and Mabel Dobbs.

Blvd Island, MN

September 25, 1999.

Mr. Roger W. Fones,
US Dept of Justice, 325 7th Street NW Suite 500, Washington, DC 20530.

Dear Mr. Fones: Considering the months of hearings regarding Bill Gates's Micro Soft monopoly, and (over a decade ago) the breakup of AT&T because they were too large, it seems unfathomable that you would *Consider* giving Cargill total control of the world with the Cargill-Continental merger. Cargill is already a monster that everyone is afraid of. Have you seen *any* news on *any* media that would dare till about Cargill's present control . . . let alone the total control they would have after this merger? *No* . . . Furthermore you wont because Cargill has the power to crush any media that would tell the story. Cargill has cleverly contributed to charities that don't want their funds cut off so NO ONE is objecting.

Cargill already owns the docks in major foreign countries so ships of grain other than Cargill's are not allowed to dock.

We live in rural Minnesota where the independent farmer has few options. Please allow us the few we have left.

This affects much more than farm prices—this merger spells doom for our entire free enterprise system.

Please have the courage and backbone to stop this Cargill-Continental merger!

Sincerely,

C.K. Dresser.

Jordan Valley, OR 92910
September 11, 1999.

Dear Mr. Fones: We are cattle producers in the state of Oregon and we are requesting that you conduct a more thorough investigation of the Cargill/Continental Grain companies. This will exaserbate the detremental effects of concentration in the grain and livestock industries. Agriculture in America is in trouble, involving the safety of our food supply the survival of rural communities and the survival of agriculture producers. To have this much concentrated purchasing power in the hands of one company, is unthinkable. It shouldn't be difficult for our government to recognize the inherant with such a merger.

Also, we would ask that you extend the comment period on the merger.

Thank you.

Richard & Margene Eiguren.

Englehart Ranch

Meadow, SD 57644–7502

Judge Gladys Kessler

U.S. District Court for the District of Columbia, 333 Constitution Ave. NW, Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you, awaiting your approval, is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. ''The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' ''

In its July 8, 1999 ''Final Judgment'' I believe the Department of Justice has ''breached its duty to the public in consenting to the decree and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

Clearly, as the Department of Justice's own ''Complaint'' states, the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat, in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more than the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

I've seen our market opportunities slowly shrinking. We currently have wheat in storage going into its third year in the bin. Why, because the price is so low on today's market that it is worth more to leave it in the bin as an asset on our bank's financial statement. As the market for wheat becomes more concentrated in the hands of fewer traders, the farmer will receive less, the huge agricorporations will depress the market at will and eventually force the farmers into bankruptcy. In South Dakota we have little access to wheat buyers, we are dependent upon those in our local area now currently dealing with farmer owned cooperatives who ship it to the big terminals by truck. This merger will remove what little competitiveness now remains in the wheat trade. Making Cargill even bigger will give them even greater power in all segments of agriculture. The competition is being narrowed to the point that the family farm, which has been the very foundation of this great nation, will go down in bankruptcy, despair, and desolation. This corporatization of agriculture will destroy us, the family rancher and farmer. We are human beings (generations of families) that have worked, nurtured, conserved, and loved the land while feeding this nation's population at the ''lowest cost per capita income'' of any country in the world.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States, I urge you to recommend that the Department of Justice withdraw its ''Final Judgment''. Please study in far greater detail this ill-advised sale; carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Llewellyn Englehart.

Karen Englehart.

Buffalo Livestock Auction

Buffalo, Wyoming

To: Mr. Roger W. Fones
Chief of Transportation, Energy & Agriculture.

I am urging you to please conduct a much more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Contrary to what the large multi national corporations tell you, putting the power into the hands of a few does not increase competition in the marketplace, but is having, and will only get worse, a devastating effect to the independent Ag producers in this country.

I would also encourage you to please extend the public comment period for another sixty days to allow this matter to be more fully investigated and commented on.

Thank you,

Jay Godley.

Epworth, IA 52045

We believe: Every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is

comprised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

We live on a centery farm. And our oldest boy, 20 years old, would love to go farming with us and someday take over the centery farm. But because of the hag prices we had to liquidate our farrow to finish hog operation. All we have left now is our grain. Letting Cargill and Continental gain together would take away another buyer and would not give the family farms a promising future. Help save the Family Farms.

Dan & Judy Gotto.

Epworth, IA 52045

Dear Roger: I urge you to revisit the investigation of Cargill/Continental sale and to extend the comment period for at least 60 days.

It is my feeling that the family farm will not survive if we have all these large companies going together and not having any competition.

We believe: Every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is comprised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

Yours truly;

Grace Gotto.

Bowling Green, NC 63334

To Roger W. Fones: For the Justice Department's stand in siding with the multinational grain Cartel System, today's AG markets have totally stolen from independent family farmers. I believe this to be the most daring issue to ever be suffered by the Family Farmers and Rural Economics, Consumer and Taxpayer Mergers are the stealing of open markets, and this action now has the Seal of Approval from many Federal Agencies to hold accountable.

These agencies have failed in their selected duties to perform on behalf of the Public to the Common Welfare and Protection of all United States Citizens.

George Grover.

Okolona, MS 38860
October 13, 1999.
Roger W. Fones,
Chief, Transportation Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: Please stop the Cargill-Continental Grain sale. It would further impact grain prices and farm income in my community and in the U.S. in general. Please extend the comment deadline for another sixty days.

This sales would be extremely detrimental to the U.S. family farmers. Our farm has operated for over 50 years, and is really feeling the effects lately. It was very obvious that somebody, the middleman, made money during the hog crisis. The farmer was paid very little for the hogs, but the prices in the supermarkets never went down.

Thank you for your time in considering this.

Sincerely,

Bob Gregory.

Okolona,, MS 38860

Cresco, IA 52136
October 6, 1999.
Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 321 Seventh Street, Suite 500, Washington, DC 20530.

Roger W. Fones: I am an Iowa resident concerned about the impending takeover of the Continental Grain facilities by the Cargill Company. With this merger, the ability of the Cargill Company to price control and decrease the markets available to farmers will not only effect the farmers but every person in the United States who buys food. With Cargill Compnay having such a large monopoly they will be able to overwhelmingly control the U.S. grain trade. I urge you to rethink your investigation of the Cargill/Continental sale.

The antitrust laws do not seem to include farming and farm products; I think it is time for that to be reevaluated in the light of this impending merger.

Thank you for your time and consideration.

Mary Hargrafen.

Cresco, IA 52136
October 6, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave., NW, Washington, DC 20010.

Judge Gladys Kessler: I am an Iowa resident concerned about the impending takeover of the Continental Grain facilities by the Cargill Company. With this merger, the ability of the Cargill Company to price control and decrease the markets available to farmers will not only effect the farmers but every person in the United States who buys food. With Cargill Compnay having such a large monopoly they will be able to overwhelmingly control the U.S. grain trade. I urge you to rethink your investigation of the Cargill/Continental sale and extend the comment period for a longer period so that more people can comment.

Thank you for your time and consideration.

Mary Hargrafen.

Callicrate Feedyard

P.O. Box 748, St. Francis, KS 67756

October 11, 1999.
Mr. Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20503.

Dear Mr. Fones: Mergers and concentration are out of control. Please stop the Cargill-Continental Merger as it will further deteriorate grain prices and farm income in my community and in all of the rural communities in the U.S.

Companies like Cargill, ConAgra, ADM, Farmland and IBP are eliminating our safe food system and bankrupting us. Our small towns and communities are being devastated by their low fixed commodity prices.

Please enforce antitrust laws and help the people of this nation.

Sincerely,

Vernon E. Heim,

Manager.

The Organization for Competitive Markets (OCM)

P.O. Box 540061, Omaha, NE 68154–0061

September 16, 1999.
Mr. Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20503.
Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: This letter concerns important considerations that may have been over looked by the Department of Justice during its review of the proposed merger of Cargill and Continental Grain.

On November 30, 1998, former Congressman Neal Smith of Iowa sent a detailed letter (copy enclosed) to Attorney General Janet Reno emphasizing the importance of looking at the futures trading positions of the two companies in order to understand the impact of the proposed merger on the price of grains and soybeans which are determined in the futures markets (see John W. Helmuth, *Grain Pricing*, Commodity Futures Trading Commission (CFTC), Economic Bulletin Number 1, September 1977.)

While I understand individual company information cannot be made public, the Department of Justice has given no public indication that you have performed any of the essential analysis called for in Mr. Smith's letter. The DOJ cannot claim to have adequately investigated the impacts of the merger without analyzing the fundamental elements called for by Mr. Smith.

The judge reviewing this matter cannot make an informed decision without this fundamental information.

Sincerely,

John W. Helmuth, Ph.D,

Agricultural Economist, Member of the Board, OCM.

November 30, 1998.
Attorney General Janet Reno
Main Justice Building, Room 5111, 10th and Constitution Avenue, Washington, DC 20530.

Re: Cargill Buyout of Continental Grain

Dear Attorney General Reno: Please be advised that, while I am an agricultural producer like millions of others, I do not represent any of the parties on either side

directly involved in the subject matter of this letter, but am sending this letter because of my long-time interest in international grain marketing during the more than 30 years in Congress during which I authored the CFTC Act and other legislation dealing with grain exports.

The recent announcement of Cargill's plan to buy the grain operations of Continental is subject to federal government approval pending antitrust review. I believe the outcome of that review will have far reaching effects on US and international grain markets for decades to come. The size of the two companies (measured by market share) is of obvious importance to these considerations, especially since there are so few international grain trading companies. But there are other equally important considerations that should be taken into account by any comprehensive, objective review. These are discussed below.

The Importance of Information in World Grain Markets

Detailed, accurate, daily information on literally hundreds of variables impacting the worldwide supply and demand of grain is essential for any company engaged in grain marketing. There are two sources of such information: public and private.

Public information is generally gathered and disseminated by governments around the world. The accuracy of such information varies across countries. US, Canadian, and European information generally set the standard for timely accuracy. By definition, public information is available to anyone and has as one of its goals to provide ''a level playing field'' for anyone buying and selling grain.

Private information is gathered by companies and/or individuals and is usually not disseminated to others, or is disseminated selectively to the advantage of the ''owner'' of the information. Arguably some of the most valuable private information involves details of major transactions engaged in by grain trading companies. The larger the company and the larger the transaction, the more valuable is the ''inside'' information.

For example, if the largest firm in the industry makes a large sale of US wheat for export, public knowledge of such a sale is likely to result in higher US (and World) wheat prices. It is very much in the exporting firm's best interest to buy the US wheat (and possibly large numbers of US wheat futures contracts) before knowledge of the export sale becomes public, and before wheat prices increase. Such transactions, based upon inside knowledge are not prohibited in cash or futures markets for agricultural commodities, as they are in the Securities markets.

Placed in perspective, large grain trading companies have access to the same public information everyone else has, plus they have knowledge of their own transactions, and information gathered by their worldwide offices and subsidiaries, and information gathered by their privately owned reconnaissance satellites. Thus, while the playing field may be level with regard to public information, and US farmers may voluntarily give away valuable supply information about their crops for USDA crop surveys out of a sense of national duty, private companies are making daily trading decisions based on jealously guarded private (mostly demand) information.

Given this fact, combining the number one and number two companies in the grain marketing industry not only aggregates their physical facilities, it also aggregates their inside information gathering capabilities and increases at least proportionately their information advantage in the US and World grain markets.

Number of Buyers, Price Competition

Price competition exists, if and only if, a market is characterized by a large number of buyers and sellers. ''Large number'' is not defined by economists. However, most economists would agree it is probably greater than two.

With respect to the market for farmers' grain at the local level, the number of buyers appears to be as low as one or two. To my knowledge, the federal government has not documented the number of grain buyers since the mid-1970's. In any event, when a local market currently has two buyers which happen to be Cargill and Continental, there will be only one buyer if the companies merge.

However, it should be understood that the local impact on grain prices will be mostly confined to what is called ''the basis'' which is the nearby futures price adjusted to reflect local conditions. The major price impact, in dollars and cents per bushel, is likely to occur in the grain futures markets.

The Number of Entities Making Economic Decisions

Fundamental to consideration of the Cargill acquisition of Continental Grain is to weigh the impact on economic decision making. Over fifty years ago Noble Laureate Frederick von Hayek elucidated the core strength and flexibility of market capitalism as being the making of economic decisions by many relatively small resource owners, who are close to the economic circumstances of time and place. Such market structure results in the most efficient use of resources and competitive markets. Hayek clearly pointed out that the concentration of economic decisionmaking in a relatively small number of individuals, regardless of whether those individuals are government bureaucrats as in the former Soviet Union or corporate executive in large companies, the result is the inefficient use of resources and non-competitive markets.

If Cargill acquires Continental, economic decision making clearly will become more concentrated and the efficiency of capitalistic grain markets is very likely to decline.

A Level Playing Field: Grain Markets Compared to Securities Markets

Federal regulations affect grain markets based upon the authority, inter alia, of the Commodity Exchange Act and the Commodity Futures Trading Commission Act. Federal regulations affect securities markets based upon the authority of the Securities Exchange Act. While these laws contain equally clear and strong language with respect to fraudulent activities, regulations promulgated by enforcement agencies are markedly different in the grain (futures) markets and the securities markets.

The table below highlights the difference in federal enforcement of anti-fraudulent regulations between the grain futures markets and the securities markets.

COMPARISON OF ANTI-FRAUDULENT REGULATIONS

	Securities markets	Grain futures markets
Insider trading prohibited	yes	no.
Short selling prohibited unless last price change was an up-tick.	yes	no.
Short selling limited to actual stock certificates borrowed from owner.	yes	no.

International grain companies with overseas offices also have a way to avoid the speculative limits applying to local grain elevators and producers. Despite efforts, which have been strongly opposed by those who benefit, this loop hole has not been closed. In one instance, twice as much grain was covered in the futures market as the customer took delivery of, and before the public was aware of the sale, and the balance was then sold at a big profit after the public overreacted to the exaggereated report.

In considering any merger in an area so involved with international trade affecting the most local of U.S. businesses, and such a history, great caution should be observed.

The American public and American farmers in particular, are entitled to an answer to the question: ''Why are the playing fields different?''

If the two largest U.S. securities firms were proposing a merger, federal authorities would undoubtedly consider the impact on securities markets. No less is necessary regarding the Cargill-Continental merger and its potential impact on grain futures markets.

Consider the Impact on Other Agricultural Markets

Finally, an astute observe reported that Continental is the largest cattle feeder in the U.S. (an industry that has been rapidly concentrating over the last two decades) and that public statements by Continental officials indicate a company objective of expanding its cattle operations. Such an objective could be realized with the proceeds of the sale of Continental's grain operations.

While considering the grain market implications, federal officials should also consider the possible impacts on other agricultural markets such as livestock. Such impacts could be substantial and far reaching.

Sincerely,

Neal Smith,

Former Member of Congress from Iowa.

Minnetonka, MN
October 8, 1999.
Roger W. Fones
Chief, Transportation, Energy & Agriculture

Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: I have been following with great interest the Cargill-Continental merger. I work in an office with many policy analysts and they understand in a more technical way what is going on. I do the administrative work and have never really been interested in technical jargon except to file it. But I am very interested in the lives of people. No longer should people's lives be caught up in the technical jargon but it is time to seriously take a look at the holocaust happening within the rural communities of our nation. It is a slow demise of the family farmer and if you ask the farmer they are slowly losing hope for a culture that made this country great.

I also worked at Cargill many years ago, I am aware of the hug offices, the money that they have accrued on a personal level is incredible and that money was made off the very product that our family farms produced for you and I to eat. It is a product that we use everyday of our lives in some way or other and the farmers worked hard everyday of their lives to bring it to us. They were not looking for ways to make more money to satisfy their stockholders, they did not have an insatiable need for more things. What they did was take their land, put the seed into the ground tend to the crops, harvest it and then turned around and sold it to people like Cargill and Continental. I was always amazed when I worked at Cargill the amounts of product that were shipped from ordinary farmers and the amounts of money they made on trading and selling it. I didn't understand at that time nor was I very interested but today as I watch and listen to farmers story my heart is breaking for those people you are not listening to.

I don't want to be a part of our country's holocaust when it comes to our farmers. I do know that by letter in the Cargill Continental merger happen you are saying to the farmers you are not very important but money is and the bottom line is money not people. How can I say that? Because it is the message I'm hearing loud and clear from you. Whitney McMillan, Cargill McMillan, and the other McMillan's have more money that I or most of our farmers will ever dream of. Who do you think they made that money from? How much is enough? And do we have to lose a whole culture so they will make enough to satisfy their insatiable need for more money? Look at who they say they are competing with how many companies is it really? Some of the competition comes from within. My husband is in the wallcoverings business competition is there all the time for him but he doesn't go out and buy all the business out so he can make more money. We are satisfied with the money we make, we work hard for it but it allow us to live with integrity.

You can listen to all the technical jargon, you can look at all the numbers but in the end we are talking about people's lives here. Our farmers need us to stand with them. They need the very government that they have helped support through hard work and toil to stop and listen very closely to do the right thing that will make the most money. Hitler was working on economic health when he came into power and look what happened. Please stop this merger, let the farmers be heard throughout the land, help them to find solutions don't put the nails in the coffin of rural America. These people are your neighbors, your friends, your community, remember it is people you are dealing with here not just numbers.

Thank you.

Sincerely,

Kathy Hiltsley.

Tulsa, OK 74133
10 October 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 7th Street, NW, Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing this to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Barbara Hook.

Madison, MN 56256
October 7, 1999.
Mr. Roger W. Fones
U.S. Dept. of Justice, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: I am writing to you because of my concern abut the proposed merger between two grain handling giants. I am a pastor of a Catholic parish of about 600 people in western Minnesota. Our economy in Madison is very much tied to agriculture. When farm commodities are depressed, it does not simply mean hard times. Businesses fold and do not reopen. More and more of our population flees to other towns and areas. Of course there are other contributing factors, but there is no denying that an unhealthy agricultural sector spells rapid decline for our town and region.

Ten years ago, it was well known that 90% of the world's grain exports were done through just five corporations. Cargill and Contentntal are two of the five. There is already too much concentration in this area of agriculture. This merger would mean even less competition in the marketplace. It would be great for the few corporations left, but it would certainly be detrimental to small and medium sized farms that are less able to hang on to their grain until markets improve. Even if one believes that bigger farms are always better, there is considerable danger in allowing such large corporations to merge when there is already very limited competition. Add to this the fact that we are dealing with food, and the danger of monopolizing the market becomes even more grave.

For all of these reasons, I strongly urge you and your department to disallow this merger between Cargill and Continental. Thank you for your consideration.

Sincerely,

Rev. Jeff Horejsi.

Roger W. Fones
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th Street NW, #500, Washington, DC 20530.

Please stop the Cargill-Continental Grain Sale because it will hurt the small farmers in my area and the U.S. It will also eventually raise food prices. Please extend the comment period for 60 days.

Reena Kazmann.

October 07, 1999.
Roger W. Fones,
Chief, of Transportation, Energy & Agriculture Section, Antitrust, Division, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Sir: I am writing to concerning the Cargill-Continental merger. I wanted to let you know that the market for our grain on the farm is already highly concentrated. The Cargill-Continental Merger would spell doom for the independent farms we have left on the prairie. Small farmers are struggling the way it is. Please consider this before you vote.

Sincerely,

Robin Kleven.

Corporate Agribusiness Research Project

P.O. Box 2201, Everett, Washington 98203–0201

October 8, 1999.
Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: In accordance with the ''Antitrust Procedures and Penalties Act'' (APPA) of the U.S. Code I am enclosing a recent issue of *The Agribusiness Examiner,''* a weekly e-mail newsletter which I edit and publish devoted to monitoring corporate agribusiness from a public interest perspective.

I am sending this copy to you as my way of making a ''public comment'' regarding the Justice Department's ''Final Judgment'' regarding the sale of Continental Grain's grain merchandising division to Cargill. I will look forward to the Department's comments in the Federal Register regarding the various issues raised in this issue of my newsletter.

I should also note that this newsletter is distributed on a weekly basis to nearly 850 people through the U.S. and the rest of the world, including many family farmers, farm organizations and public interest food advocates.

Thank you for your time and consideration of the enclosed.

Sincerely,

A.V. Krebs,

Director.

Subject: The Agribusiness Examiner #50
Date: Fri. 08 Oct 1999 01:15:46–0700
From: ''Albert V. Krebs''
(avkrebs@earthlink.net)
To: one@earthlink.net

SPECIAL EDITION

The Agribusiness Examiner

Monitoring Corporate Agribusiness From a Public Interest Perspective

Issue #50 October 8, 1999

A.V. Krebs, *Editor/Publisher.*

Urgent Appeal: Effort to Block Cargill/Continental Sale—Public Comment Deadline at Hand

October 12, 1999 remains the deadline for public comment on the U.S. Department of Justice's Anti-Trust Division's ''Final Judgment'' relative to the sale by Continental Grain of its grain merchandising division to Cargill, the world's largest grain trader.

After characterizing what it publicly called an almost year long ''investigation'' of the sale the Department of Justice (DofJ) in fact filed a formal ''Complaint'' with the U.S. District Court for the District of Columbia. However, the DofJ totally neutralized its ''Complaint'' by filing it on the same day (July 8, 1999) and at the same time that it furtively filed a consented ''Final Judgment,'' agreed to by all parties. While the DofJ's ''Final Judgment'' now awaits the approval of presiding U.S. District Court Judge Gladys Kessler, the public comment period regarding the Department's decision remains open until October 12.

In their ''Complaint'' the DofJ formally charged that Cargill's purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Commentary

Liberals and progressives and those individuals and organizations that seemingly care so deeply about the plight of the nation's family farmers may pride themselves on being on the cutting edge of today's economic and social issues such as genetic engineering and the upcoming World Trade Organization meeting in Seattle, Washington.

At the moment, however, agrarian populists and thousands of family farmers throughout the U.S. see such issues, as important as they may be for the future of agriculture, merely as additional logs on that fire that is intended to smoke them out of the business of farming.

Meanwhile, the crucial issue that is today deeply distressing family farmers to the point of near hopelessness is the rapid corporate concentration within agriculture as exemplified by the recent announced purchases by Cargill of Continental Grain's merchandising business and Smithfield Foods buying up of Murphy Family Farms and Tyson Food's Pork Group.

While Dan ''Of the Grain Trade, By the Grain Trade and For the Grain Trade'' Glickman may be ''very pleased that the Department of Justice has taken * * * steps to protect American farmers from the potential adverse effects'' of the Cargill/Continental sale by its recent ''Final Judgment'' and divestiture order, farmers from Stockton, California to Hampton Roads, Virginia see the consolidation of two of the world's largest grain traders as nothing but more economic and social adversity for them and their families.

Thus, in an attempt to force the Department of Justice anti-trust division to conduct a more thorough investigation of the Cargill/Continental sale, efforts are currently underway to forestall the Department from submitting its ''Final Judgment'' for the approval to presiding U.S. District Court Judge Gladys Kessler. This ''Special Issue'' of The Agribusiness Examiner is part of that effort.

For once, not simply acting as a mere mouthpiece for corporate agribusiness, but actually serving as ''a voice for American Agriculture,'' American Farm Bureau President Dean Kleckner, has rightfully observed that ''the time has come for the Justice Department to have someone with agricultural expertise to oversee such concentration issues. Agriculture is a unique industry. It requires someone with the experience and background to ensure anti-trust laws are not being violated and that opportunities for all farmers are protected''

The hour is late, the deadline for public comment on the Cargill/Continental ''Final Judgment'' is Tuesday, October 12.

No matter what one's degree of involvement in various and related public interest issues might be or what political or ideological persuasion one might be if they care about who grows their food, who produces and manufacturers it, its availability, its safety, its cost and the future of family farming agriculture the effort to block this sale is one that deserves their immediate and highest priority.

The ''Antitrust Procedures and Penalties Act'' (APPA) of the U.S. Code provides that any person may submit to the United States written comments regarding the proposed ''Final Judgment.'' Any person who wishes to comment should do so by October 12. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Legal precedent, according to the DofJ, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree.

''The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' [A] proposed decree must be approved even if it falls short of the remedy the court the would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of the public interest.'.''

Letters specifically demonstrating and/or documenting the impact of Cargill's monopoly of the grain trade and how the Continental purchase will affect that situation on one's own family farm operation or upon the rural community in which one lives will be most valuable. Copies of such letters should also be sent to the letter writer's state attorney general's office urging that office at the same time to utilize their good offices in not only calling upon the U.S. Department of Justice to revisit its ''investigation'' of the Cargill/Continental sale, but requesting that the deadline for comment be extended another sixty days to December 12.

Whether or not Judge Kessler concludes that the consent decree is ''within the reaches of public interest'' the corporate audaciousness of Cargill in attempting to summarily own this nation's grain trade with its purchase of Continental's grain assets is breathtaking. One need only look at the facts brought to light in the DofJ's own ''Complaint'' to see such covertness.

OCM'S Fred Stokes: ''A Dark Day for Agriculture''

''If the Cargill merger goes through, it is a dark day for agriculture,'' is the way Fred Stokes, a Mississippi cattlemen and recently elected President of the Organization for Competitive Markets (OCM) describes the Cargill/Continental sale. ''The loss of Continental Grain as a competitor while creating a more powerful Cargill will drive farmers' share of the retail dollar even lower. Continental Grain will then plow the new money into further consolidating the livestock industry.''

Alone among farm organizations who have denounced the Department of Justice's ''Final Judgment'' decree the Organization for Competitive Markets is a non-profit, non-partisan organization of farmers, ranchers, academics and attorneys which provides information to the public about the importance of true competition in the agricultural marketplace.

Keith Mudd, a Missouri farmer and OCM board member, adds, ''Farmers used to have several choices of elevators to market their grain. Mergers have reduced the number of buyers to two in many geographic areas. If the Cargill merger goes through, many farmers will have only one buyer. I fail to

understand how the Department of Justice can view this merger as promoting competition.''

''The immediate effects of the merger will be less market choices for farmers, more control over exports and a heightened ability by Cargill to unilaterally affect the futures markets,'' stated Dr. John Helmuth, agricultural economist and OCM board member. ''The subsequent effects will be pressure for other grain merchandisers and their customers to merge in order to equal the market power of Cargill.''

OCM's Jon Lauck and other Midwest farm activists have been meeting in recent weeks with both Republican and Democrat state attorney generals, in efforts to line up support for a lawsuit to block the sale.

''Not too long ago,'' Lauck recently told *The Corporate Crime Reporter,*'' antitrust officials would have looked at something like this and decided—this is obviously too large, these are two dominant players. We are never going to allow something like this to go through.

''Given the DOJ's concerns about the anticompetitive consequences of the merger,'' Lauck stresses, ''it is odd that no effort is made to justify its approval of the merger. The fears of antitcompetitive behavior set forth in the 'Complaint' are not counter-balanced with a recognition of post-merger efficiencies, for example. With no apparent benefit to the merger and significant concerns expressed by many parties about its approval, the natural reaction would be to halt the merger. This response is further justified by the obvious difficulties that accompany the reversal of market concentration once it has become an economic fact.''

One argument that defenders of the recent wave of corporate mergers within agribusiness have sought to make is that such mergers, specifically within the grain trade, are necessary so as enable U.S. companies to compete with foreign ''parastatal monopolies.''

Recently, the corporate agribusiness dominated International Policy Council on Agriculture, Food and Trade (IPC) issued a call for the elimination of parastatal monopolies in the next round of world trade talks. Although the Australian and Canadian Wheat Boards were not mentioned by name the IPC report bemoaned the fact that the monopoly power of such agricultural state-trading enterprises (STE's) ''have the ability to distort domestic markets and international trade flows,'' even if they are not directly supported by government payments.

''As long as they enjoy exclusive powers or advantages not shared by their competitors, monopolies will not behave like ''at risk'' enterprises,'' the IPC said. ''To end the resulting market distortions, the monopolies themselves should be eliminated, preferably by the end of the implementation period of the next round.''

But, as Dr. Helmuth has noted, ''when fewer and fewer individuals make more and more of the economic decisions, whether those individuals are in government or big business, the results is anti-competitive, inefficient and harmful to society as a whole; when more and more individuals make more and more of the economic decisions, the result is more competitive and more efficient and beneficial to society as a whole.

''There is even greater irony in that the principal advocates of centralized economic planning—the former Soviet Union and Eastern European countries—are abandoning it as an economic failure, at the very time American industries are becoming more and more centrally planned by those few firms with greater and greater economic power resulting from ever increasing industry concentration,'' he adds.

Cargill: To Become More Powerful and Sophisticated Firm ''Capable of Strategic, Cooperative and Anti-Competitive Behavior''

In a recent letter to Roger W. Fones, Chief of the Transportation, Energy & Agriculture Section of the Antitrust Division, United States Department of Justice, Organization for Competitive Markets Jon Lauck wrote that Cargill's acquisition of Continental Grain Company ''would unify the second and third largest grain traders in North America, which export 40% of American agricultural commodities.''

Specifically, Lauck, the author of a law review article entitled ''Toward an Agrarian Antitrust,'' 75 *North Dakota Law Review* (August/September 1999, objected ''to the analysis used by the Department of Justice when reviewing the acquisition. DofJ's analysis: (1) fails to consider the wider concentration in agricultural markets beyond grain buying; (2) fails to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) fails to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) fails to consider the nature of the grain selling market; (5) fails to consider the economic disorganization of farmers which can be exploited by powerful buyers; (6) fails to consider information disparities in agricultural markets; (7) fails to explain the benefits of the merger; (8) and fails to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets.

''In recent years,'' he continues, ''agricultural processing markets have become highly concentrated. From a top-five concentration ratio of 24% in the early 1980s, for example, the beef-packing sector's five-firm concentration ratio has grown to 85 percent. Similar statistics apply to several other sectors of the agricultural processing economy.

''The DofJ's analysis did not consider the wider context of consolidation in the agricultural system and instead focused on the grain buying activities of Cargill and Continental. Growing concentration in agricultural markets should have been considered by the DofJ given the continuing consolidation of agribusiness firms,'' he adds.

''It was the growing power of agribusiness firms that triggered concerns among farmers and inspired the passage of the Sherman Act. And it was continuing concentration in agricultural markets, particularly through merger, that prompted passage of additional antitrust statutes such as the Clayton Act. The importance of the antitrust laws to farmers is explained by the difficulties inherent in farmers bargaining with large and powerful agribusiness buyers. Legislators and courts have fully recognized these concerns in statutes and in cases, respectively, but the DOJ's merger analysis failed to weigh these considerations.''

Lauck's letter goes on to warn the Department of Justice that it ''must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors. For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production.

''Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time. The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and 'sophisticated' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

''The DofJ argues in its complaint that within particular draw areas very few firms buy grain. It argues that if Continental's operations where absorbed 'Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.' Divestitures in a few of these markets as proposed by the DofJ does not address this problem. Even with the divestitures, grain buying would remain heavily concentrated and susceptive to collusive and cooperative activity,'' Lauck's letter warns.

''Furthermore, it is unclear how Continental will remain an effective competitor with Cargill after selling almost all of its elevator capacity. The few facilities that will not be acquired by Cargill hardly constitute a legitimate competitive threat. As the DofJ emphasized in its complaint, grain buying involves a large-scale network of facilities. The few remaining Continental facilities, stripped of their internal networks which provide them with competitive flexibility and information about grain flows, will be powerless in comparison with Cargill, with its $51 billion in annual revenues and 81,000 employees in 60 different countries.

''Continental's decision to sell off its grain buying operation may also indicate that it no longer considers grain buying a priority. In

short, there is no assurance that the remaining facilities will even compete in the markets that concerned the DofJ. Given the need for a network of elevators to compete in the grain buying business, it is also highly unlikely that any new firms will enter the market to challenge Cargill. The DofJ openly concedes in its complaint that it is 'unlikely that Cargill's exercise of market power will be prevented by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing competitive force'.''

Lauck concludes his carefully documented 13-page letter to Fones by emphasizing that ''given the importance of this merger and the constraints on state action if the consent decree is approved, I respectfully request that the comment period for this merger be extended another sixty days to December 12th. Several parties have expressed interest in commenting on the merger and will not be able to do so by October 12th. In the interest of a fair hearing on this critical matter, I urge DofJ to support a lengthening of the comment period, as allowed under the Tunney Act. If the DofJ and the court do not see fit to extend the comment period, I urge the court to reject the proposed consent decree for failing to consider the factors set forth herein.''

Iowa State Study: Why Did Continental Sell? Why Did Cargill Become a Buyer?

Prior to the Department of Justice's ''Final Judgment'' Iowa State Department of Economics professors Marvin Hayenga and Robert Wisner addressed the questions of why Continental sought to sell its grain merchandising division and why Cargill became such a willing buyer.

The complete text of the Hayenga-Wisner paper can be viewed at: *http://www.econ.iastate.edu/outreach/agriculture/marketing/hayenga.*

Professors Hayenga and Wisner note in their January, 1999 paper, ''Cargill's Acquisition of Continental Grain's Grain Merchandising Business,'' that industry speculation was that Continental excelled in very large volume bulk export trading, and had not diversified enough into the value added processing to compete effectively in a market environment where export volumes have been sharply reduced in recent years.

''To compete effectively by restructuring their operations at this late date,'' they add, ''would require too much capital and too much risk. Continental's storage capacity declined significantly over the last ten years, while Cargill, ADM and Peavey [ConAgra] expanded. Their capital could be more productively employed in their other agricultural and financial businesses.''

In seeking answers as to why Cargill expected the Continental purchase acquisition to contribute to its ability to compete effectively in a rapidly changing market environment the Iowa State study summarized that the acquisition will contribute to ''more effective knowledge acquisition and transfer from an expanded global presence and a broader base of grain origination facilities in the countries where grain is produced.

''The grain merchandising system is a high fixed cost system. Cargill hopes to compete more effectively and keep a large share of the Continental volume, capturing economies of scale by running more volume through without equivalent changes in the costs of managing their system. Further, Cargill expects that it will be more able to take costs out of the system, not just through fewer people, but by dedicating some facilities to specialized products and getting more efficiencies in operations (shorter barge turnaround times, longer runs in elevator handling, etc.).

Hayenga and Wisner point out that Cargill's new joint venture with Monsanto to arrange production and to market value-added specialty grains and oilseeds for the feed and processing industries ''will require greater capacity to handle segregated grain flows throughout the domestic and export marketing system. Continental has had a significant presence in the identity preserved grain market, with half its international feed customers converted to high oil corn.

''Cargill expects to better serve the producer by enhancing productivity and passing some of those cost savings on in the form of better prices to their suppliers and customers. They also plan offer many more price risk management alternatives and advice, financing, etc., to farmers,'' they add.

The study goes no to add that ''the basic concern expressed by some farmers, politicians, and industry participants is that Cargill bought Continental to remove a significant competitor, particularly in the export market, and expand merchandising margins. The ability to 'control' more facilities and larger volumes of grain and soybeans might adversely influence competition and the transparency and effectiveness of the price discovery process in the grain marketing system.''

The two professors then ask a series of key questions: Will the merger result other merchandisers and processors having to conform to Cargill standards in grain merchandising? Will the merger result in exclusivity in marketing arrangements with Cargill such that firms that do business with Cargill are excluded from or penalized for doing business with other merchandisers? Will Cargill bundle products or terms into their merchandising arrangements, like requiring its buyers and suppliers to use Cargill transportation or Cargill risk management tools? Will Cargill control so much grain at various stages of the system that fewer negotiated prices and price reports are available to keep the price discovery system transparent?

It is these questions that many farm critics feel that the Department of Justice's ''Final Judgment'' fails to answer.

''Captive Draw Areas'' and the HHI

Although Cargill and Continental have from the outset sought to minimize the monopoly situation the purchase would have created within the grain trade the facts are that farmers typically sell their crops to rural grain elevator operators, many of which are owned by cooperatives and small companies. These elevators then either export the grain or resell it to flour mills and other food processors with much of it being sold to grain trading corporations such as Cargill, Continental and Archer Daniels Midland (ADM) and it is these companies that own and operate the larger grain elevators, rail links, terminals, barges and ships needed to move grain around the country and the world.

The role of the grain trade in a nation that is constantly touted as being ''the world's breadbastket'' cannot be over emphasized as the respected University of Missouri rural sociologist William Heffernan points out, 75% of the world's food (based on dry weight) is grain based.

In discussing the nation's grain network the DofJ in its ''Complaint'' notes that in each instance, the geographic area from which a country elevator, river elevator, rail terminal, or port elevator receives grain is limited by transportation costs and is known as the ''draw area'' for that facility. Draw areas they conclude, expand and contract only slightly in response to normal economic fluctuations in crop supply, crop demand, and transportation costs.

For many country elevators, river elevators, railroad terminals, and port elevators, draw are Cargill and Continental often operate facilities that have overlapping draw areas, and they therefore compete with one another for the purchase of wheat, corn, and soybeans from the same producers or other suppliers. In some areas within these overlapping draw areas, Cargill and Continental have been two of a small number of competing grain trading companies.

''Sometimes they are the best,'' DofJ observes, ''and occasionally the only realistic alternative purchasers of grain from producers and other suppliers. By acquiring Continental's facilities that purchase grain from these 'captive draw areas,' Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.''

By way of evaluating concentration is these ''captive draw areas'' the Department of Justice uses a criteria based on the Herfindahl-Hirschman Index (HHI), a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers.

For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 (302 + 302 + 202 + 202 = 2,600). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity is size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 are considered to be highly concentrated. Transactions that

increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

In their ''Complaint'' the DofJ vividly shows that even prior to the purchase agreement Cargill and Continental were two of a very small number of grain trading companies competing to purchase grain in four key ''captive draw area'' including: the Pacific Northwest port range, which include western Minnesota, eastern North Dakota, and northeastern South Dakota; the Central California port range, which include the areas around Stockton, California, to West Sacramento, California; elevators in the Texas Gulf port range, which include portions of Texas and Louisiana; elevators along the Illinois river stretching from Morris, Illinois, to Chicago, Illinois, and on the Mississippi river in the vicinities of Dubuque, Iowa, and New Madrid/Caruthersville, Missouri, and the captive draw areas for rail terminals in the vicinities of Salina, Kansas, and Troy, Ohio.

Each of those ''captive draw areas'' is already highly concentrated based on HHI figures. The potential combination of Cargill and Continental would have dramatically and substantially increased concentration in already highly concentrated grain purchasing markets.

For example, in the Pacific Northwest port range markets for corn and soybean purchases are highly concentrated, with the top four port elevator operators accounting for 100% of all corn and soybean purchases in these markets as Cargill alone accounts for about 44% of all soybean purchases and 23% of all corn purchases. Continental, in a joint venture with Cenex Harvest States, accounts for about 50% of all soybean purchases and 30% of all corn purchases in the same port range.

After the proposed acquisition, Cargill would have accounted for 94% of Pacific Northwest soybean purchases and about 53% of Pacific Northwest corn purchases. The approximate post-merger HHIs for purchases of soybeans and corn in the Pacific Northwest port range would be about 8868 and 5004, with increases in the HHIs of 4400 and 1364 points, respectively, resulting from this transaction.

Likewise, the Central California port range market for wheat is highly concentrated, with Cargill and Continental accounting for virtually all wheat purchases in this market. The approximate post-merger HHI for purchases of wheat in the Central California port range would be about 10,000, with an increase in the HHI of 7,888 points resulting from this transaction.

In the Texas Gulf port range markets for soybeans and wheat are also highly concentrated, with the top three purchasers accounting for 100% of all purchases of soybeans and the top four purchasers accounting for 79% of all purchases of wheat in these markets. Cargill accounts for about 16% of all soybean purchases and 25% of all wheat purchases in the Texas Gulf port range. Continental accounts for about 33% of all soybean purchases and 9% of all wheat purchases in the same port range.

After the proposed acquisition, Cargill would have accounted for about 49% of Texas Gulf soybean purchases and about 34% of Texas Gulf wheat purchases. The approximate post-merger HHIs for purchases of soybeans and wheat in the Texas Gulf port range would be 5105 and 2611, with increases in the HHIs of 1056 and 451 points, respectively, resulting from this transaction.

Other geographic markets in which Cargill and Continental compete for purchase of corn, soybeans, and wheat are also highly concentrated. These markets include river elevator markets on the Illinois River and the Mississippi River, authorized delivery points on the Illinois River for corn and soybean futures contracts, and rail terminal markets in Kansas and Ohio. The proposed transaction would have increased the HHIs in each of these markets to over 3,000.

Divestiture: Trade Collusion by Any Other Name?

In its ''Final Judgment'' the Department of Justice not only directs Cargill to divest all of its property rights in the port of Seattle elevator, East Dubuque and Morris river elevator, but also mandates that Continental is ordered and directed to divest all of its property rights in the Lockport and Caruthersville river elevators, the Salina rail and Troy rail elevators, the Beaumont, Stockton and Chicago port elevator to an Acquirer acceptable to the United States in its sole discretion.

When one totals the elevator capacities of those facilities that Cargill must relinquish and those Continental elevators which it is prohibited from operating some rather curious figures emerge.

The total domestic storage capacity for Cargill and Continental in January of 1999 was 463 million bushels for Cargill and 169 million bushels for Continental. This compares to 1981 figures of 148 million bushels for Cargill and 110 million bushels for Continental. The total capacity of the Seattle port and Morris River elevators and one third of the Havana river elevator (see below) is some five million bushels while the storage capacity of the Lockport, Caruthersville, Salina and Troy rail elevators and the Beaumont and Stockton port elevators totals some 15 million bushels. If hypothetically one independent corporation should buy all these elevators its combined storage capacity would be but between three and four percent of Cargill's storage capacity and a similar percentage of ADM's total storage capacity.

The DofJ directs that Cargill and Continental's assets shall be made to an Acquirer for whom it is demonstrated to the sole satisfaction of the United States that: (1) the purchase is for the purpose of using the Asset to compete effectively in the grain business, (2) the Acquirer has the managerial, operational, and financial capability to use the Asset to compete effectively in the grain business; and (3) none of the terms of any agreement between the Acquirer and defendant(s) give defendant(s) the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability or incentive of the Acquirer to compete effectively.

Among the other terms of the ''Final Judgment'' Cargill shall not purchase, lease or acquire any interest in the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator or Chicago port elevator, or any interest in the river elevator at or near Birds Point, Missouri (in which Continental formerly owned a minority interest, and had a right of first refusal to purchase grain).

Cargill was also directed to enter into a throughput agreement that makes one-third ⅓ of the daily loading capacity at its river elevator located at or near Havana, Illinois, or one barge-load per day, whichever is greater, to an independent grain company acceptable to the United States in its sole discretion (the ''Havana Throughput Agreement''). Daily loading capacity shall be the capacity registered with the CBOT.

A ''Standard Throughput Agreement'' means an agreement that allows one grain company to move its grain through an elevator operated by another person, with unloading, storage, loading and ancillary services provided by the operator pursuant to terms, conditions and rates that are common in the grain industry.

The independent grain company that obtains the throughput right from Cargill (the ''third party'') must be qualified under CBOT rules and regulations to make delivery of at least one barge-load of corn and soybeans per day for the settlement of CBOT corn and soybean futures contracts, and must agree to register that capacity at the Havana facility with the CBOT.

The ''Havana Throughput Agreement'' shall allow the third party to use its share of the loading capacity at the Havana facility to transload grain from trucks onto barges for commercial purposes unrelated to futures contract deliveries, as well as to make deliveries under CBOT futures contracts. Cargill, however, is not obligated by the ''Final Judgment'' to provide storage services to the third party in excess of the storage services required to accommodate the transloading of grain shipments from trucks to barges. Load to barge loading, may not exceed the load-out fees.

Cargill: Getting the ''86'' in Seattle?

In the Department of Justice's original ''Complaint,'' the anti-trust division asserted that competition for the purchase of grain and soybeans from farmers and other suppliers would have been harmed by combining Cargill's and Continental's competing port elevators in the Pacific Northwest, which purchase corn and soybeans from farmers in portions of Minnesota, North Dakota, and South Dakota. Currently, nearly 40% of Cargill's corn shipments abroad go through their Pier 86 elevator in Seattle.

Yet, in ordering the divestiture of Cargill's 4.2 million bushel terminal in Seattle, presently leased from the Port of Seattle, the nation's largest private corporation will now operate in part the TEMCO three million bushel grain elevator at the nearby Port of Tacoma. TEMCO or Tacoma Export Marketing Corp. has operated the terminal as a joint venture for Continental and Cenex

Harvest States Co-op, now in the process of merging with Farmland Industries, to form United Country Brands, the nation's largest agricultural cooperative. (See Issue #25)

Slightly over 100 miles to the south of Tacoma, Mitsubishi Corp. a leading Japanese trading company, recently announced it has acquired about a 10% stake in the Kalama Export Company LLC equally owned by ConAgra Inc. and Archer Daniels Midland Co. (''Supermarkup to the World''). Kalama Export Company LLC operates a grain elevator along the Columbia River in Washington State, with hourly shipping capacity of around 3,000 tons and storage capacity of about 50,000 tons. It also plans to increase storage capacity to 90,000 tons by the end of 2000.

Yet Cargill spokeswoman Lori Johnson said the Justice Department was concerned that her company would have too much business concentrated in the Pacific Northwest because of Continental's leasing of the Tacoma grain-storage facility. ''We fought the Justice Department; not to include Seattle,'' said Johnson. ''We still need to sit down with Port officials and talk about the options and make it work for everyone,'' she said. ''But we do have an obligation under the lease.''

According to the DofJ's divestiture order the Seattle port elevator may enter into a Standard Throughput Agreement with Cargill, or any joint venture involving the Tacoma elevator to which Cargill is a party (the ''Cargill Joint Venture''), provided that: (1) The Acquirer has no interest in Cargill or the ''Cargill Joint Venture''; (2) the throughput agreement gives Cargill or the ''Joint Venture'' no more rights concerning the operations of the facility than are commonly granted to sublessees in Standard Throughput Agreements; and (3) Cargill or the ''Cargill Joint Venture'' obtains continuing rights to move no more than 8.5 million bushels of grain and oilseeds combined in any given month through the Seattle port elevator.

''Moreover,'' the Justice Department states, ''the United States must be satisfied, in its sole discretion, that any Standard Throughput Agreement that may be negotiated between Cargill or the 'Cargill Joint Venture' and the Acquirer of the Seattle port elevator: (1) Would leave the Acquirer with sufficient capacity for it to be a viable and effective competitor for the purchase of corn and soybeans in the Pacific Northwest draw area; and (2) would not adversely affect the Acquirer's ability or incentives to compete vigorously for the origination of corn and soybeans in the Pacific Northwest draw area, by raising the Acquirer's costs, lowering its efficiency, or otherwise interfering in the ability or incentive of the Acquirer to compete effectively.''

The DofJ notes, however, that Cargill need not divest the Seattle port elevator if it does not buy, lease or otherwise acquire an interest in Continental's port elevator at or near Tacoma, Washington.

If another firm, however, acquires the Tacoma port elevator pursuant to a right of first refusal (and Cargill retains the Seattle port elevator), Cargill shall not subsequently purchase or lease the Tacoma port elevator. If another firm acquires the Tacoma port elevator pursuant to a right of first refusal, Cargill shall not subsequently acquire any other interest in that facility (including a joint venture interest) without the written consent of the United States.

As for the Seattle elevator, the *Seattle Times* business correspondent Patrick Harrington recently reported, ''with Cargill now planning to shift operations to Tacoma after all, it remains to be seen whether there is a player big enough to fill its shoes.''

''Cargill, even before it acquired Continental last month, was the nation's largest exporter of grain; Continental was the second largest. Illinois-based Archer Daniels Midland, another large grain company, had earlier expressed interest in the facility, according to Port of Seattle officials, but spokesmen for the company refused to comment.''

Banking on the Futures

The issues of concentration in the grain trade, even prior to the Continental purchase by Cargill was promising to become a major issue in the year 2000, when new delivery terms take effect for the Chicago Board of Trade's (CBOT) corn and soybean futures contracts as Toledo, Ohio, will cease being a delivery point for the CBOT contracts, and delivery points will instead be clustered up and down the Illinois River where a large portion of grain facilities, on the northern portion of that river, are owned by Cargill or Continental, and likely will be combined.

In its ''Complaint'' the DofJ stresses that by consolidating the Cargill and Continental river elevators on the Illinois River, their proposed transaction would concentrate approximately 80% of the authorized delivery capacity for settlement of Chicago Board of Trade corn and soybean futures contracts in two firms. ''This concentration,'' they emphasize, ''would increase the likelihood of price manipulation of futures contracts by those firms, resulting in higher risks for buyers and sellers of futures contracts.''

For farmers like Floyd Schultz who currently transports his grain by truck just four miles to Lockport, Illinois where he can choose between Cargill and Continental grain terminals, sitting side by along a canal leading to the Illinois River, the proposed merger of the two grain companies will leave the nearest competitor an Archer Daniels Midland terminal 30 miles and another 10 cents a bushel in shipping costs away. While Cargill could lower its prices and improve its margins, he notes, ''we as farmers would be the ones who pay.''

In Marvin Hayenga and Robert Wisner's 1998 study, ''Cargill's Acquisition of Continental Grain's Grain Merchandising Business,'' (see above), the authors obvious area of concern at that time was the northern section of the Illinois River. They noted at the time that even if the Continental sale to Cargill was approved, ADM will remain the largest firm on the river, controlling 36% of storage space.

Faced with such a situation Sid Love, analyst with Joe Kropf & Sid Love Consulting Services in Overland Park, Kansas, told the *Wall Street Journal* that he regrets the possible departure of Continental from the grain market. ''My concern is deliveries on the Illinois River,'' Love said. ''Now, you'll basically have two big companies, and if they're both bullish, you won't have any deliveries,'' since they could export the grain rather than meet contract obligations.

Reacting to the initial announcement of the purchase one Illinois farmer also speculated that if Continental was unable to successfully compete financially with other grain trading companies to the extent that it was willing to sell its assets to a competitor why would anyone believe that an independent elevator operator could achieve success in such a concentrated market?

''Throughput Arrangements'' High Costs Discourage Competition

The Department of Justice's willingness to use ''throughput agreements'' as part of its Cargill/Continental divestiture order has received sharp criticism from Dan McGuire, a member of the American Corn Growers Association and the Nebraska Farmers Union.

''Our department,'' he said, ''will take a close look at this proposed merger. It is our job to further competition in private business and industry, and if we allow Samson and Delilah to merge we may be doing the consumer a disservice.''

The chairman of Samson protested vigorously that merging with Delilah would not stifle competition, but would help it. ''The public will be the true beneficiary of this merger,'' he said. ''The larger we are, the more services we can perform, and the lower prices we can charge.''

The president of Delilah backed him up. ''In the Communist system the people don't have a choice. They must buy from the state. In our capitalistic society the people can buy from either the Samson or the Delilah Company.''

''But if you merge, '' someone pointed out, ''there will be only one company left in the United States.''

''Exactly,'' said the president of Delilah. ''Thank God for the free enterprise system.''

The Anti-Trust Division of the Justice Department studied the merger for months. Finally the Attorney General made this ruling. ''While we find drawbacks to only one company being left in the United States, we feel the advantages to the public far outweigh the disadvantages.''

''Therefore, we're making an exception in this case and allowing Samson and Delilah to merge.''

''I would like to announce that the Samson and Delilah Company is now negotiating at the White House with the President to buy the United States. The Justice Department will naturally study this merger to see if it violates any of our strong anti-trust laws.''
August 30, 1999.

Department of Justice, Antitrust Division, San Francisco Office.

From: Riley Lewis (Forest City, Iowa)
Sent: Wednesday, June 23, 1999 6:52 AM
To: WEB JPR
Subject: Cargill-Continental Merger

As your dept. dwells on the merger-acquisition of Continental Grain by Cargill I would like to comment as a 5th Generation Iowa farmer on the merits. I am against it—

farming for thirty years I've seen this many times in smaller amounts of suppliers to agriculture. When you have dealerships-coops etc that are of the larger scope I find the less competition tends to maker service less and more expensive with a take it or leave it attitude. Grain bids are our income and competition just as we sell hogs to three packers makes better bids. In a small town nearby there where two aggressive shoe stores five years ago—people come from big cities to buy brand name shoes at competitive bids—then one year the owner of one store died with no heirs and the store closed. The other raised his bids for shoes and within two years he went out of business as business went to a larger town. Great example of what competition does and here as your good producer we need competition—not mergers!

Thank you.

Riley Lewis.

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sales and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this county, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate, Across the U.S. farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting to final judgment on this.

Please give my request your serious consideration.

Sincerely,

Todd Lewis.

September 21, 1999.
Roger W. Fones,

Chief of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones: Please stop the Cargill Continental Merger. Cargill is so big already. They are in the seed, banking, fertilizer, chemical business. They manipulate the markets for cheap grain. They are in the feeding business. They own packing plants. What happened to our Anti-trust to stop all this. It is ruining the township and county rural life. They do not do business locally.

They are giving mega bucks to the University of Minnesota to have the do research that they will own. They have the biggest lobbying effort in Washington DC.

They only way rural life can fight this big giant is through political action. We have let it go to far. Look what happened in Russia when the food supply wasn't done individually. Look at Roosevelts monument and DC and read the words. It will help you understand why the Cargill-Continental merger can go on.

I request you stop all mergers including the co-ops. They are big business and have forgotten about the patrons who built them.

Rick Lundebrek,

Township Officer, Benson, Minnesota 56215.

First Security Bank

September 21, 1999.
Roger W. Fones,

Chief of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: How can you let Cargill and Continental Merger. The marketing is so concentrated already. Cargill is dominating the full chain: Seed, fertilizer, chemical, banking, end process, meat industry, meat packing. This is ANTI-TRUST. Please stop it now.

Sincerely,

Vice President,

First Security Bank, 215 13th St. So. Benson, Minnesota 56215.

The family farmer is who I work with. They can't believe this has happened in America. They look at Cargill like a sleeping giant.

September 24, 1999.
Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' ''

In its July 8, 1999 ''Final Judgment'' we believe the Department of Justice has ''breached its duty to the public in consenting to the decree'' and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

As the Department of Justice's own ''Complaint'' states, the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies purchasing corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria, we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill. Nothing in the Department of Justice's ''Final Judgment'' addresses itself to that issue.

The Department of Justice must consider more than the grain-buying operations of Cargill. Acquisition of Continental's seventy elevators will enhance the economic power of Cargill. This concerns farmers, because Cargill stands out as a top-four firm in beef and pork packing, cattle feedlots (where Continental is the largest), broiler and turkey production, animal-feed plants, grain-elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. This dominant position across wide-ranging agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Farmers are forced into bankruptcy after a few bad seasons, but Cargill will maintain its dominant status over time, regardless of economic performance over the short term. With Continental's assets, Cargill will become an even more powerful firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family-farm system of agriculture in the United States, we urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale, and carefully consider the grave anti-trust issues it presents with dire consequences to both producers and consumers of our food supply.

Sincerely,

Muriel Marvin,

Lawrence Marvin,

Placerville, CA 95667.

Dear Attorney General Reno: I am writing to you to express my deep concern with the giant agriculturer marketer Cargill and its' agriculture anti-trust actions when it concerns small farmers in this nation. There should be an immediate investigation to see if Cargill is violating anti-trust laws.

Thanks for your time.

Sincerely,

Jerome McCollom,

Department of Justice, August 30, 1999, Antitrust Division, San Francisco Office.

Alta Vista, KS 66834
October 8, 1999.
Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, FAX: 202–307–2784.

Dear Mr. Fones: Please do not approve corporate mergers and buyouts such as Cargill with Continental Grain or Smithfield Foods with Murphy Farms and Tyson Food's Pork Group. I believe such mergers and buyouts serve to weaken American national security by forcing reliance upon foreign markets rather than promoting a sound domestic agriculture production and delivery system.

While capitalism favors competition, such mergers and buyouts represent the same command and control favored by communism. Totalitarian food production and delivery systems have failed in all nations where they were the dominant system. Why would Americans believe such a system could work here? We use food and medicine as a political tool with nations reliant on imports. Do we truly wish to open our own country to similar political leveraging?

The merging of Cargill and Continental Grain will not favorably improve grain prices for farm producers. As farm stability weakens, so does it's surrounding community. As communities lose their economic base, they lose their ability to adapt to fluctuations of market, economy and social unrest.

Through the past decades, we have seen a reduction in the number of industry competitors of steel, auto and textile manufacturing as well as food and fiber production. The reduction to a few industry giants has given the impression of reduced consumer prices and strong economy. However, such mega-corporations are not flexible. Labor problems, interest rates, consumer choice, environmental impact, and many other factors can result in massive employee lay-offs, plant closings, unmanageable pollutants, labor strikes, unstable housing, overburdening of community services and other negative impacts that are too great for the community to effectively handle.

I believe in world trade, competitive trade with choice and options rather than singular avenues. I support the government use of anti-trust laws when corporate mergers and takeovers threaten the competitive edge of all America for the sake of exorbitant short-term gain for relatively few beneficiaries. Thank you for your consideration.

Sincerely,

Carissa McKenzie

Westminster College

501 Westminster Avenue, Fulton, Missouri 65251–1299, 314 642–3361

October 1, 1999.
Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division—U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington DC 20530.

Dear Mr. Fones: Antitrust legislation is in place to protect consumers and competitors against a company dominating the market and taking unfair advantage. For that reason, I object to the Cargill purchase of Continental's grain operations. This purchase would move Cargill from the category of dominator to the category of terminator of everyone else.

When I hear that the Cargill/Continental sale is in your hands, I hope that you will consider the impact on rural communities of this merger. I have had the chance to see these big players operate firsthand. I live across the road from a Cargill hog operation. The arrogance of these corporate fellows is astonishing. Making these guys more powerful would be another nail in the coffin for diverse rural communities like mine.

When independent operators are put out of business by big operators, as has happened in my community, everybody suffers. The markets have already gotten so concentrated that an out-of-favor producer can be cut off from being able to make a living. The big operators create environmental disasters that are impossible to regulate. When regulators get involved, they are ignored or tied up in court.

Consumers are hurt by this concentration, too. Consumers suffer from price-fixing and from lack of choice in the marketplace.

National policy has made corporations more powerful, and this needs to stop. These big operations do not treat producers like independent businessman. Instead, they are paid as little as possible while keeping as much as possible in the corporation. This hurts us all.

Please do all you can to stop this merger.

Sincerely,

Margot Ford McMillen

Sept. 27, 1999.

I am very much opposed to the Cargill-continental merger. Can't anyone see what is happening? Going big is not better—look what is happening to our schools, our little towns etc.—look at our grain prices now—the farms are all getting *too* big—soon there will be only a few farms left in each county—please use some *common* sense in this situation!

Darlene Milbreadt,

Echo, MN 56237.

September 28, 1999.

Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: I am writing to express my opposition to Cargill Inc. purchasing the grain division of Continental Grain Co. I will leave the technical analysis to those qualified to do so and mainly focus on the human element involved. I want you to know how this will affect me and my community and hundreds of thousands like myself and their communities across this country.

I am a farmer from Northeast Missouri. I wish I could tell you that the proposed acquisition would leave me with one fewer choice when it came time to market the grain I raise. I can not make that claim as there is no Continental elevator in my area. I wish there were because then my choices of elevators would almost be double what they now are. I say almost because I have one soybean processor (ADM) who normally pays 7–10 cents more that their competitor (?), Bunge, who does not process soybeans at their location. It is reversed for corn and wheat as Bunge outbids ADM by substantial margins on these two crops 90% of the time. Thus you can see why I would welcome another elevator, regardless of who owns it.

Following are some of my reasons for opposing the merger:

1. This area of northeast Missouri, west central Illinois, and southeast Iowa are all part of a captive draw area for ADM in regards to soybean purchases. As recently as 10 years ago this tri-state area had no less than 4 competitive bidders for soybeans. Two processors, ADM and Quincy Soybean Co., and two river terminals, MFA Incorporated and Bunge. All of the soybeans purchased at the small country elevators eventually ended up being sold to one of these 4 purchasers. Within the last 10 years ADM has purchased Quincy Soybean Co. and Bunge has bought out MFA Inc.'s river terminal. That leaves the area where we are today with ADM and a non-competitive Bunge. I know first hand what a lack of competition means when it is time to sell my crops.

2. I use the Chicago Board of Trade to hedge my grain. I do not pretend to be an expert on the operation of the board but it concerns me when one firm will control 80% of the delivery points for futures settlement. I have read that this could lead to manipulation of futures contracts.

3. The United States agricultural community has been caught up in a frenzy of mergers and buyouts. This may be the weakest argument to make legally, but it is the strongest from the human element standpoint. This merger, like most of those before, is really a double edged sword. One side of the blade cuts out the inefficiencies of smaller entities when they increase economic size. The other edge cuts the fabric of Rural America. Each business we lose, be it a elevator, seed company or machinery manufacturer lessens competition among those who we do business with. This lessening of competition drives up cost which in turn drives producers from business.

It is extremely difficult for anyone not in the rural areas of the Midwest to fully understand rural infrastructure. I live near a town with a population of 2700. This size community, like thousands across this country, depends upon farmers and ranchers to provide a large portion of the fuel for their economic engines. Consolidation is killing rural America. Will stopping this merger or any other single acquisition reverse this

trend? No—but it will be a start to the revitalization of the rural areas of this country. Without a healthy rural area our country can not be whole. It is time for someone in a position of authority to step up and draw a line on this insanity. I hope this message reaches someone who has the courage and insight to do just that.

Sincerely,

Keith G. Mudd

Roger W. Fones,
Antitrust Division, U.S. Department of Justice, 325 7th St. NW, Suite 550 Washington, D.C. 20530.

October 9, 1999.

Dear Sir: Please consider this letter regarding the Cargill Continental merger very carefully.

Cargill, a company from my state of Minnesota, has been ruthless in dealing with farmers and small businesses. They practice buying the narrow point in the pipeline and using that position to control and dominate the industry.

I have personally experienced this when I sold three ship loads of corn to the Egyptian feed millers in 1995. The corn was to be loaded to Egyptian ships at the port of Duluth. Cargill would not load it and the deal fell through. The same scenario happened at the Port of New Orleans to the N.F.O.

This summer Cargill was bidding 20 cents above Chicago for corn delivered by rail to Duluth, however Cargill had booked all the rail cars so independent elevators could not take advantage at that price. Truck bid for the same commodity was 20 cents under Chicago. Thus *Market Domination.*

This merger would give Cargill control of most of the major ports and loading facilities on the U.S. and thus control of the movement of grain and other commodities in the U.S.

It is not wise or in the best national interest to allow one company to control this much of the food supply of the United States of America.

Sincerely,

Winton Nelson,
Darwin, MS 55243, 320–693–7966.

September 21, 1999.

Roger W. Fones,
Chief, of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones: Please stop all these big corporate mergers. This is to stop the Cargill-Continental Merger as well as all large Ag corporate Mergers. Last winter in Texas in one county alone Cargill was feeding 83,000 head of beef feeders. Two miles away Continental was feeding 83,000 head. This has got to stop. They purchased alot of these cattle cheap from the drought in Texas and so forth. They purchased all the cheap feed manipulated by their marketing. Look into it yourself as they made mega bucks on the meat division. All this is ruining the family farmers. This is also ruining rural areas. Farmers spend their money locally. Cargill is in the seed, fertilizer, banking, chemical business. They do not support local areas at all. Farmers that are desperate to keep farming farm land all over for them. This does not help local areas. We need a stop on all mergers now.

They do not support local schools, or rural infrastructure. Do you want Cargill to get even bigger. They are farming land down in South America and paying the locals $250.00 per month. They are glad to farm down there because there is no infrastructure there. Do we want this to continue.

The grain marketing now is so concentrated. They are in the livestock business as well. They own the packing plants. Please look into these problems. They concentrate animals in large numbers. Look at the livestock in the large hog operations in North Carolina. We are going to pay for all this concentration.

Rural Areas need help from people like you. We need to have the anti-trust laws enforced. When Cargill Owns the Food Policy we will PAY.

Sincerely,

David Olson

Lei 'Ohu Farm

46–3615 Kahana Drive, Ahualoa, Honokaa, Hawaii, Phone: (808) 775–9473

FAX TO: Mr. Roger W. Fones, (202) 307–2784
FAX FROM: Glenn Oshiro
FAX #: (808) 775–9473
DATE: October 11, 1999
Re: Cargill, etc.

Please extend the period for public input on the Cargill Continental Grain matter. This is the first day I've heard of your deliberations, and I consider myself to be well informed. My business calls for me to be in touch with small farmers and ranchers. As you can imagine, this is ongoing and intensive being that there are few consistent means to reach the small producer, e.g. there are few, if any, umbrellas that cover small farmers and ranchers. Much of what I do to attract the attention of my clients is word of mouth, one on one.

While I'm not suggesting that you solicit responses from small producers individually, more time is necessary for word of the public comment period to reach small producers.

I am a farmer, business person, and stockholder.

Glenn S. Oshiro,
Buy from the Farmer.

September 18, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: After reading that the Department of Justice itself has admitted that the Cargill purchase of the Continental grain division would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers,'' I can only urge you to put a stop to it. This purchase is not in the public interest.

More and more lately I read in the business news about mergers between already massive corporations.

More and more I hear about how desperate farmers across America are again being squeezed between high costs they pay to raise animals and grow crops and low prices they're being offered for their livestock and produce.

Here in rural Mendocino and Sonoma counties, in Northern California, beautiful old apple and pear orchards are being bought from family farmers and then razed at a frantic price by investment corporations anxious to plant vineyards, the money-making crop of the moment. Other local ag producers and ranchers are finding the costs of farming and raising livestock too high to resist the pressure to sell off their land for vineyard conversions or rural residential subdivisions.

It is our government's duty to prevent any more mergers that further increase the costs to American family farmers. America needs to grow its own food. Putting agriculture in the hands of international corporations instead of the family farmers—as seems to be happening more and more rapidly—is a social and environmental disaster.

Thank you.

Jennifer Poole,
Willits, CA 95490, Mendocino County.

Mon., Oct. 11, 1999.
From: ''Mike Callicrate'' <mike@nobull.net>
To: <Undisclosed-Recipient:@secure06.levon.net;>
Date: Mon., Oct. 11, 1999, 12:22 PM
Subject: [HeartbeatUSA] last day for comment on Continental-Cargill merger

Consumers, family farmers, small-town business owners: Today, October 11, is your last chance for public comment on the creation of the world's largest food monopoly. It is the merger of Cargill and Continental Grain. Its effect will be to raise consumer prices and reduce the earnings of already-hurting family farmers and small businessmen. Monopolies always hurt the consumer by destroying competition.

You may register your objections to the above deal simply by faxing the Chief of Transportation, Energy and Agriculture Section (Mr. Roger W. Fones) at the following Fax number: 202/307–2784.

Use a simple, brief message like the following:

''Please conduct a more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Please extend the public comment period for another sixty days.''

Public comment period officially closes tomorrow. Fax your message today.

verell@rahab.net

As states above.

Rae Powell

Amanda Bray

October 9, 1999.
Roger W. Fones,
Chief of Transportation, Energy and Agriculture, Anti Trust Division, U.S.

Department of Justice.

Dr. Fones: I urge you to Conduct a more Complete investigation into the sale of Cargill-Continental Grain, before submitting a final judgment.

Farm income in the United States is down by 70%.

Depressed prices are running farmers and small town business people.

Please delay the Comments deadline for another 60 days.

I appreciate your consideration.

Sincerely,

N. Ramsey,

Mesquite, TN 75150.

September 22, 1999.

Dear Mr. Roger Fones: The merger of Cargill & Continental Grain Co. Is a major concern of ours. This merger will take away our market freedom. Already we are hurting because to few people control our markets and tell us what they will give us and we have to take it.

I always believed the anti-trust laws were to protect the little man but it seems like no one abides by them any more and they just find ways to go around them. We know that it is not fair! Cargill is already one of the top 4 firms in beef, pork, turkey, chicken, corn, soybean and production in merger would just make these more powerful.

Thank you for reading this,

Mrs. Jan Richardson

A copy has also been sent to Attorney General Ken Salazor.

September 18, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment'', study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Howard H. Sargent,

Consumer, Boulder, CO 80303.

Central City, NE 68826
Sept. 26, 1999.
Department of Justice,
United States Government, Washington, D.C. 20510.

ATTN: Dept. for Comments on proposed Cargill-Continental merger

Dear Sirs: I am writing to voice my concern on the proposed Cargill buyout of Continental Grain Co. I would ask you to please disapprove this merger on the grounds that with the merger-mania of the past 20 years, the agricultural industry has become so concentrated that there is no free market.

Both the meat-packing plants and grain companies have gained a dangerous stranglehold on U.S. food production and prices. Shouldn't our anti-trust laws protect the people from such monopolies?

Eventually, even our farmer co-ops will have little influence in agriculture when they are up against such giants.

It is probable that thousands of family farmers will be going out of business this year—a tragedy for their families and for the nation. For the most part their only customers are the corporation giants which can name their own price—way below the cost of production, and the result of the over-concentration in the agricultural industry.

What safeguards are in place to make certain that food will continue to be affordable if family farms become a thing of the past?

Please use our anti-trust laws to protect all Americans.

Sincerely,

Lois Schank

Clyde Southern

Steele, MO 63877.

July 23, 1999.
The Honorable Judge Gladys Kessler,
U.S. District Court, District of Columbia, 333 Constitution Ave., NW, Washington, D.C. 20001.

Civil Action #991875 Filed 7–8–99.

Dear Judge Kessler: I write to you as a second-generation farmer located in the Missouri Bootheel area, along the Mississippi River at the juncture of Missouri, Arkansas and Tennessee. My family is primarily engaged in the production of soybeans, wheat, corn, and rice and we have experienced the great advantage of river barge transportation of our farm produce for many years. We like to think that we contribute to the prosperity of our nation by our involvement in international trade, not to mention our bountiful production that has alleviated hunger and starvation throughout the world.

The above civil action involves the Continental Grain Elevator which is located at Cottonwood Point (a historic ferry crossing), some ten miles south of our county seat at Caruthersville, and within a couple of miles of Arkansas. We have been privileged to sell grain to all of the grain elevators within this area, and conditions have always been amicable. In this flat alluvial valley, we can see many of the elevators along the river, and the Continental Storage Tanks are within sight of our farm.

I certainly agree with Joel Klein's statement in the Attorney General press release, which states ''This enforcement action demonstrates the Department's commitment to preserve competition in agriculture.'' Over the years I have seen significant improvement in competition along the river, and producers in other parts of the nation are envious of the prices we receive on the spot market and the ability to book a favorable basis at local elevators or at the Chicago Board of Trade. Now comes a point of jeopardy which we perceive exists in one small portion of the divestitures listed in the final judgment of the civil action claim filed under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

I respectfully refer to Page 2, of the Final Judgment (Definitions) Paragraph F, ''Caruthersville river elevator''. Although this elevator has a mailing address of Route 1, Caruthersville, MO 63830, it is known locally as the Cottonwood Point facility, which is located 10 miles south of Caruthersville, near the Arkansas border. The nearest town and postoffice is Cooter, Missouri, three miles west. A modern bridge crossing to Tennessee along Interstate 155, leads to other elevators (within sight of the Continental elevator at Cottonwood Point). We have no trepidation or fear of monopoly practices from Cargill, which has an elevator at New Madrid, Missouri 45 miles to the north. The present fear is that one of the largest members of the International Grain Cartels is interested in purchasing the Continental facility at Cottonwood Point. We learn that Bunge Grain Company may have entered into negotiations to purchase the Continental elevator, which would pose a definite lack of competition for local grain farmers in their choice of port outlets in the area. The proximity of current Bunge elevators in our area of operation could artificially depress the prices offered for our grain.

- Nearby—Bunge has an elevator at Caruthersville (10 miles), one at Huffman, Arkansas (8 miles), one at Booths Point (across the river in Tennessee at the Interstate Bridge—15 miles), and one at Heloise directly across the river in Tennessee within eyesight of Continental.
- If Bunge purchases Continental at Cottonwood Point, this would given them a total of seven elevators along the river within a fifty-mile distance.

It is common knowledge locally that other large grain trading facilities are interested in purchasing the Continental facility at Cottonwood Point. Cargill would probably provide trade opportunities without restraint of trade in the area, and of course we would be happy to see Continental remain at its current location and with the same ownership.

However, we would like to offer one caveat in regard to the selection or location of any grain-trading firm at the current Continental Cottonwood Point site. The owners and operator must be large enough to trade and offer strong competition in the International trading arena. It would likely be impossible for a small independent grain elevator to offer competitive prices to local producers if it did not have the ability to compete and trade in a worldwide arena of International trade.

During this critical time of agriculture stress, it is imperative that we continue to have strong competition and fair prices for producers in our area. Therefore, we strongly insist that Bunge Grain should not be allowed to purchase the Continental Grain facility at Cottonwood Point, thus creating a near monopoly situation which would invalidate the current anti-trust action.

Sincerely,

Clyde Southern

October 12, 1999.
Mr. Tom Miller,
Iowa State Attorney General, Hoover State Office Building, Des Moines, Iowa.

Re: Cargil-Continental Grain Merger

Dear Mr. Miller: As a graduate of one of the finest Universities in the middlewest, Iowa State at Ames, with a major in soils and a minor in Agricultural Economics, I strongly urge you to vote NO for this merger. This merger will dictate less market choices for farmers, large and small alike. Today, a bushels of corn, (56 pounds of beautiful raw protein) will not buy a cheap hamburger in many restaurants. This merger, IF APPROVED, will lower the farmer's share of the retail market even still more.

Following my senior year at Iowa State, I took advantage of the long established ISU Ag. travel trip. It was a 10,000 mile accredited trip visiting areas in Detroit, Washington, D.C., Gainsville, Austin, and Denver. With four major stops per day, we studied crops, soils, and we also visited with farmers and ranchers along the way. One very interesting stop was along the lake area in Michigan where a overseas grain buyer/shipper was located by the name of Spencer. (No relation to me). I would like to see our government encourage the escalation of these small shippers. This would increase competition and help the family farmer win a fairer share of the consumer's food dollar. Please vote no for the merger of giant self serving corporations like Cargil and Continental.

Sincerely,

Lyle D. Spencer,
Goldfield, Iowa.

Blooming Prairie, MN 55917
September 28, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St. NW Suite 500, Washington, DC 20530.

Dear Sir: The merger of Cargill and Continental Grain Co. is a major concern to the American farmer. This would increase Cargill's monopoly of the grain trade. Why should Cargill be any different than other big monopolies? Isn't this what anti-trust laws are for?

I am proud to be an American farmer. We feed the people! This is the *most* important occupation in the world! Why can't we be given the respect we deserve? We need fair prices at today's standard of living, not yesterday's!

If this merger goes through, Cargill will have even more power to control the farmer's prices and life. Look at the example of the hog farmer. What a shame the small hog farmer has been driven to give up. Why do all that hard work to lose money constantly?

Prices are already so horribly poor in all the markets we are hanging on only by the hope things will improve. When? Farmers can't wait much longer. Farmers work as hard as anybody in the world, yet can't get a fair price for all their hard work. Most everybody else's wages increase with the years. Not ours!

Look at rural America's communities. Their livelihood depends on what the farmer buys in town. There are many vacant stores in rural America. When the farmer doesn't have money, he stops buying everything but the bare necessities. It will trickle to the big cities eventually. Think depression! It's already here in rural America.

The U.S. Department of Justice needs to further investigate this merger and stop it! Also extend the deadline for comment and really get out in the rural communities and on the farms. *See* and *listen* to what its *really* like. Feel the hopelessness and pain!

What can the government do? Show us you care and stop this merger. Investigate who or what is *really* controlling the market. It's not the farmers who work so hard to feed the people!

Sincerely,

Ellen Stebbins

Pennack, MN 56279
October 6, 1999.
Roger W. Fones
Chief of Transportation, Energy And Agriculture Section, Antitrust Division, US Dept of Justice, 325 7th St., NW, Suite 550, Washington, DC 20530.

Dear Mr. Fones: As a retired owner of a 160 acre farm, my first interest is in farming and I am writing to protest the Cargill-Continental merger. Why are these big companies allowed to merge? Many years ago when I was in school there were antitrust laws to prevent monopolies. It seems that monopolies are now allowed so that among others, farmers have no say in setting prices on their products.

Monopolies are not only bad for farmers, they are bad for telephone users, cable to users, medical services and huge grocery store patrons. I think it is time to bring all of this to a stop.

Please do what you can to help farmers.

Sincerely,

Eleanor Stehieg

Stockton Ranch

Box 182,

Grass Range, MT 59032

October 11, 1999.
Roger W. Fones,
Chief of Transportation, Energy, and Agriculture Section, Fax: (202) 307–2784.

Dear Mr. Fones: the merger between Cargill and Continental will destroy any vestige of a competitive market for grains. I urge you to do a more thorough investigation before submitting a final judgment. Also the comment period has been too short for farmers to adequately respond to, please extend it by at least 60 days.

Sincerely yours,

Gilles Stockton

Lakin, Kansas 67860
October 12, 1999.
Mr. Roger Fones,
Chief Transportation, Energy & Agriculture Section, Antitrust Division, US Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: I WISH TO REQUEST THAT YOU GRANT FURTHER CONSIDERATION TO THE PROPOSED CARGILL AND CONTINENTAL GRAIN SALE. PLEASE GRANT A SIXTY DAY COMMENT PERIOD EXTENSION AS I KNOW THAT MANY PEOPLE DID NOT COMMENT AS THEY WERE MADE TO BELIEVE BY MEDIA PRESENTATIONS THAT IT WAS A ''DONE DEAL.''

Please conduct a more thorough investigation and abide by your requirements to give all facets of the matter due consideration. Thank you for your attention to the issue and your service to all the American public. We would not wish to believe the allegations that such a takeover with extremely grave consequences for farmer and the consuming public would not have your serious evaluation.

With sincere respects,

Dr. Frankie M. Summers

Greenwich, NY 12834
October 4, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.' ''

In its July 8, 1999 ''Final Judgment'' I believe in fact that the Department of Justice has ''breached its duty to the public in consenting to the decree'' and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

Clearly, as the Department of Justice's own ''Complaint'' states the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the

U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Daniel J. Swartz,

A SEED Europe.

Auburn University, Alabama 36849–5406

College of Agriculture, Department of Agricultural Economics, and Rural Sociology, 202 Comer Hall, Telephone: (334) 844–4800, FAX: (334) 844–5639

September 15, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: I am writing to state my opposition to Cargill's acquisition of Continental Grain Company. My opposition is based not on disapproval of either Cargill or Continental as individual firms, but on the merger as it relates to the reorganization of global agriculture that is unprecedented in terms of size and speed.

My objections to this merger are that it would: (1) Continue the erosion of competition in agriculture markets, (2) increase the imbalance of economic power favoring agribusiness giants at the expense of the farmer, and (3) decrease land and resource stewardship incentives in the emerging system.

Competition is fading in agricultural markets in part because of unprecedented mergers and acquisitions, and in part because of insidious joint ventures, strategic alliances, interlocking directorates and partial ownership of related agribusiness firms. These alliances, which are very difficult to trace, result in a fuzzy web of corporations and cooperatives that soften, if not threaten, competition. In some circles, the alliances are appropriately referred to as ''corporate incest.''

As just one example out of thousands of alliances that threaten competition, I would point to a Cargill corn processing plant in Eddyville, IA, which is connected by pipeline to a Heartland Lysine plant nearby. Nearing completion is a Midwest Lysine plant located in Blair, NE, which will also be connected to the Cargill corn processing plant. Midwest Lysine is a joint venture between Cargill Degussa Corp, while Heartland Lysine is owned by the Japanese firm, Ajinomoto, of lysine price-fixing fame. Are Midwest Lysine and Heartland Lysine going to engage in rigorous competition? Hardly. Arrangements such as this do not appear to be properly considered in DOJ evaluations of mergers.

Perhaps of more concern than softening competition is the increasing economic power of giant corporations over farmers. The emerging food system has a few vertically integrated supply chains like Cargill, in which production is increasingly contracted out to farmers. With contract production, farmers have little economic power and continue in farming at the discretion of the supply chain corporations. Supply chain corporations can thus extract essentially all of the economic profits, leaving the contract farmer with a subsistence level of income composed of very low returns to management and labor.

Agricultural cooperatives were established under the Capper-Volstad Act as a way for farmers to horizontally organize to countervail market (economic) power held by corporations. Unfortunately, the giant cooperatives have drifted from this mission. Giant cooperatives are evolving to a vertical structure, run more for the benefit of managers that for benefit of the farmer members. At best, the farmer member is relegated to the position held by a minority stockholder in a corporation. At worst, the farmer member is a minority stockholder that cannot get his equity out of the corporation until death.

Cooperatives have formed hundreds of alliances and joint ventures with the giant corporations like Cargill. For example, Cargill has a 50–50 joint venture with Delta Growers Association, a Cooperative. Deals like this have the potential for a subtle ''co-opting of co-ops'' by corporations. Thus, in my opinion, many of the existing cooperatives should not be viewed as countervailing corporate power.

In this emerging vertically integrated supply system, the giant corporations do not own the land and other resources used in production agriculture, yet input and production decisions are dictated by CEO's. Incentives for conservation of land and other resource are thus lost, and could lead to degradation of natural resources. Furthermore, having land management decisions made by people (CEO's) who are not intimate with the land is asking for trouble.

Those of us in major poultry production areas have witnessed contracting for over 30 years. The bottom line is that contract producers invest one-half of the capital in the industry, yet capture a proportionally much smaller percentage of the returns. Moreover, contract poultry producers know that if they speak out against ''The Man'' (the integrator) they will be instantly bankrupt. Is this the kind of Society we want?

Individually, many of the recent mergers, acquisitions and joint ventures involving large agribusiness corporations may appear innocuous. Collectively, however, they are quickly moving us down the road to agricultural feudalism with only a few firms controlling much of the world's food supply. The DOJ appears to assess mergers in terms of horizontal competition, without giving adequate consideration to vertical power imbalances.

I respectfully request that you stop the merger of Cargill and Continental. All mergers of corporations and cooperatives alike should be blocked pending a thorough, objective evaluation of whether the frenzy of mergers, acquisitions and alliances is in Society's best interest.

Thank you.

Sincerely,

C. Robert Taylor,

ALFA Eminent Scholar and Professor of Agricultural Economics.

To: Mr. Roger W. Fones
Sent: 10/10/1999 at 2:44:56 PM
Subject: Cargill/Continental Grain Merger

Dear Sir: I respectfully request that you conduct a more thorough investigation of the Cargill/Continental grain sale before submitting a final judgment on the matter. Please extend the public comment period for another sixty days.

Sincerely,

Janice Urie,

Rt. 1, Box 28B, Lakin, KS 67860.

October 11, 1999.

Dear Sirs: I want to strongly oppose the proposed merger of Cargill and Continental Grain.

As a farmer from South Dakota we need all the competing entities we can get it called capitalism!

No No No

Sincerely,

James H. Peht,

Keldion, SD 57634.

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh

Street, NW, Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: The purpose of this letter is to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

The creation of a larger monopoly will not only depress grain prices further in this country, but also be detrimental to all consumers.

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give this your serious consideration.

Sincerely,

Gerald Luin.

Litchfield, MN

Roger W. Fones: Please do not let Cargill merge with Continental. Cargill is the most disliked name in Agriculture. Cargill don't respect other businesses. It thinks of Cargill's bottom line only. They are making massive amounts of money on farmers. In the mean time farmers are making record low profits. USDA census reports 50% of farmers in the U.S. are making a profit and 50% are not. They flood the market with livestock. I would rather see farmers produce the livestock. Wouldn't you? When I drive around my county I see empty livestock facilities everywhere. Rural America is getting very ugly. It is very depressing.

Cargill also imports grain into the U.S. which floods our markets and this lower our prices. Cargill is giving up in South America to buy grain down there to flood the world with more grain.

I know a very reputable grain elevator owner. He is furious with Cargill. He sells his grain to loading facilities on the river. He is faced to sell most of his grain to Cargill because of lack of competition. Cargill treats this elevator owner very poorly. Cargill close at 3:00, which doesn't allow much time to haul grain there 70 miles away. There was also a problem with the size of the trucks he uses. They don't want him hauling there anymore. They are simply disrespectful people.

Farmers could buy chicken manure from a large complex here. Cargill moved in and bought up all the manure and are not doubling the price for the manure. I am an organic farmer. I need to stockpile manure for six months. I called Cargill to see if I could pick it up myself and they said no.

Cargill also got into the scrap metal industry recently. The scrap prices dropped to record low levels. Both of our scrap metal buyers are going out of business in one year. Is there a connection?

I tried to buy a bag of salt and without the Cargill name on it. Six out of eight businesses sold Cargill band salt in my town.

We heard that other countries get very poor quality grain from Cargill. These countries would like to try farmer direct to get better quality. We've tried to do that, but the facilities would not allow that. We need public facilities. Could the government buy Continental Grain? Cargill also has a negative impact on government for farmers.

This company is getting too big. It doesn't respect other people in business. There is a lot of people trying to make a living in this country. It is unfair to let the big get bigger and the small independents get swept under the rug.

I will not do business with Cargill, and I know many other people who also will not.

It's time to realize bigness is hurting independent business in this country. This is making rural US.

Please think PEOPLE BEFORE MONEY. It's time to regulate how big a company can get. It's our responsibility to secure our future for he young people who want to be independent.

Thank you for reading my letter. Please do the right thing.

Sincerely,

Scott D. Anderson.

Mr. Roger Fones, Chief, Transportation, Energy & Agriculture, Antitrust Division, US Dept. of Justice, 325 Seventh Street, NW, #500, Washington, DC 20530.

Re: Final Judgment on Cargill's proposed purchase of Continental Grain

Dear Mr. Fones: We are very opposed to this purchase! It will less competition and decrease prices for farmers. This is bad for all farmers who are not large agri businesses. We ask you to deny this purchase.

Rosie Seymour,

Superior WI 54880

Bob,

Superior WI 54880

Michael C. Cramey,

Foxboro, WI 54836

Connie M. Cramey,

Chaffey Rd, Foxboro WI 54836

Laura Cenley,

Superior, WI 54880

Janice Watten,

Duluth, MN 55805

Carol Stevens,

Superior, WI 54880

Dear Mr. Roger Fones: As an independent agricultural producer, I strongly urge you to conduct a more thorough investigation of the Cargill/Continental Grain sale. Please extend the public comment period for another sixty days.

Sincerely,

[no signature]

[FR Doc. 00–4591 Filed 3–23–00; 8:45 am]

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