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HOW MERGERS IN THE NATION'S AGRICULTURAL INDUSTRY IMPACT CONSUMERS

FIELD HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JULY 24, 1999

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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C O N T E N T S

HOW MERGERS IN THE NATION'S AGRICULTURAL INDUSTRY IMPACT CONSUMERS

SATURDAY, JULY 24, 1999

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Great Falls, MT.

The committee met, pursuant to notice, at 10 a.m., in the Commission Board Room of the Civil Center, 2 Park Avenue, Great Falls, Montana, Hon. Conrad Burns presiding.

Staff members assigned to this hearing: Robert Taylor, Republican counsel; and Moses Boyd, Democratic senior counsel.

OPENING STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS [presiding]. We will call this Committee to order here in Great Falls, Montana.

This is an official Commerce Committee hearing to be held this morning on mergers and acquisitions. As you know, there are lots of members on the Commerce Committee that are very concerned about not only mergers and acquisitions around the country, but also, very little attention has been paid to what is happening over in the agricultural sector. So we thought we would come to Montana, take a look at activities out here and visit with a lot of people who have views on acquisitions and mergers and how they are going to affect their life.

Now, let us kind of lay it out a little bit. We are probably in the midst of the most wave of mergers we have ever seen. It is estimated in 1998 alone, mergers went way over the one trillion dollar mark, and that includes everything from agricultural to telecommunications to banking, through it all. It is occurring in all sectors of our economy, and they are having a dramatic impact, I think, on agricultural as we know it.

As you know, Montana farmers and ranchers are struggling. Price declines for agricultural commodities have had a devastating effect here in Montana on every economy. You can go down any main street in any city in Montana, and they will tell you business is not all that good, and it relates directly to how we are getting along in the agricultural sector.

That is not to say that we have not dealt with low prices before, but the landscape is different now. Every commodity is at a low end, whether it is cattle, whether it is sheep or hogs or grain; it does not make any difference. All commodities are at a low end.

In fact, if you want to make the comparisons and allow for inflation and everything else, we are getting less for our products on the farm now than we did during the Great Depression. That is how devastating this has been.

We have faced these times before, but always there has been one segment of American agricultural that has always sort of been on the profitable side, and have been those who diversify, able to survive. This time, it is a lot different.

What roles do consolidations and mergers play in either the cause for these depressed prices that we are experiencing now, and how will they affect price recovery? Can we recover if the landscape is different? If consolidation increases, will prices continue to decrease and absolutely take all of our chances away of any kind of price increase?

You know, the market is just kind of like an hourglass, with all the market power funneled to the middle. Market transparency becomes very difficult. Market price discovery, which is now how we business folks make business decisions, becomes almost impossible. One important factor that has not been talked about is, what is the impact on the consumer?

Now, I have been around agricultural long enough that we have always been able to eat our way out of overproduction, because everything we produce is consumed, but at a price.

Well, right now, and I saw this over the holidays of 1998 and going into 1999, I did see pork chops at $5.50 a pound when you had $9 hogs live weight.

Now, if you move that retail price down to where it correlates with the price in the grocery store, then we can eat our way out of some overproduction. But that didn't happen last December, and that is what triggered this interest in mergers and in consolidation in vertical and horizontal integration as far as the production is concerned.

Four major packers still control 79 percent of the meat packing industry in the United States. Now, that is the meat packing industry. Four. That is a pretty huge thing.

Montana livestock producers, we cannot compete against that because big producers can hedge; they can forward contracts; they have got a lot of options that a little producer does not.

Now, some will argue that vertical integration is beneficial to the industry as a whole, but some will argue that vertical and horizontal integration is good also. I am not convinced that that is true. It appears to me benefits only flow to the large-scale operation.

Concentration eliminates the chance for the young producer to get into the business. Young farmers will find it very difficult to break into the industry with the demands of cattle, startup costs associated with the farm and ranch, and the chances are slim that new producers will have enough capital or enough toehold to really get started. If vertical integration increases, it becomes nearly impossible.

I strongly believe concentration and vertical integration in the poultry and the pork industries has shown us that neither are advantageous to the average agricultural producer or the consumer. It continues today.

I look forward to the testimony of all the folks up here. These are all Montanans. They represent the several industries of Montana, the segment of their economy in agricultural. So I am interested in hearing what they have to say. What they say will be made part of the record of the Commerce Committee, and that record will influence on what kind of policy we will formulate as far as dealing with mergers and consolidations.

I have one disappointment, however. I also note with frustration and anger that the Ation Administration's Justice Department is not represented on this panel today.

The Justice Department plays a key role in antitrust enforcement. Their failure to be here to explain their policies to rural America speaks volumes about what their real agenda is. Farmers and ranchers in States like Montana and the people there are most affected by these mergers.

The decision by the Justice Department and their absence is really unexcusable, and I am really disappointed in it, and a strong letter to follow, let us put it that way. But they just refused to come to Montana and look Montana farmers in the eye and say, OK, this is the path that we have taken.

So I look forward in listening to the witness today, and we are going to just start off here, and I will call some folks, and then we will just kind of have a discussion, because that is the way we learn things.

If there is anybody here that understands what consolidations and mergers and no market means, I think it would be Chase Hibbard who's representing the wool growers.

My gosh, we have only had one packer, Chase, for a long time, and it is very, very difficult, and it led to some situations that we see in the sheep and lamb industry today.

So I am going to start off here with Panel 1. We have got Will Kissinger here, Deputy Director of the Montana Department of Agricultural, and Will, if you have got a short statement, and what you would like to say to us today, we would recognize you at this time.

By the way, if you want to consolidate your message, that is fine because I will make sure that your full testimony is made part of the record.

Also, an announcement that the record will remain open 10 days after the hearings today, and you can make comments to the Committee. If other members of the Committee wish to ask you questions, and they will write to you, if you would respond both to the Committee and to the individual Senator, we would appreciate that too. You may get one or two, because that has happened before, so I will make that announcement now.

So thank you for coming. We don't want to sew things up any more today.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Thank you all for coming today. The title of today's hearing is "How mergers in the nation's agriculture industry impact consumers." We are in the midst of an incredible wave of mergers. It is estimated that in 1998 the total value of these mergers was more $1 trillion.

The merger wave is occurring in all sectors of the economy including agriculture. Mergers are having a dramatic impact on agriculture and on Montana.

As you know, Montana farmers and ranchers are struggling. Price declines for agricultural commodities have had a devastating impact on the economy.

With several years of low prices, many agricultural folks have been forced to sell the farms and ranches they have made their living from; some nearly all their lives.

Producers have faced several years of a depressed market, largely due to consolidation and mergers. If consolidation increases, prices will continue to decrease. Further consolidation will lead to nothing more than spiraling downward prices and more agricultural producers losing their farms and ranches.

Concentration in the livestock industry is much like an hourglass, with all the market power funneled to the middle. We need transparency in marketing prior to the commodity reaching the consumer.

Close examination of mergers for anti-competitive effects is of utmost importance in maintaining an accessible market for livestock and grain producers.

Four major packers control 79 percent of the meat packing industry in the United States. Montana livestock producers cannot compete with so few marketing options available. Montana ranks 11th in the Nation for number of cattle and calves with close to 3 million head and ranks 2nd in total acres of land in agriculture. Producers need more avenues to market their goods.

Some will argue that vertical integration is beneficial to the industry as a whole. This is simply not true. Those benefits only apply to large-scale operations. Vertical integration is based on economies of scale and therefore present an advantage to the large producer. After he has pushed enough small producers out of business to reach a profitable level of operation.

Concentration eliminates the chance for a young producer to start a new operation. Young farmers will have no opportunity to break into the industry. With a lack of sustainable loans and startup costs associated with agricultural business, the chances are slim as it is for new producers to start. As vertical integration increases, it will become nearly impossible.

I strongly believe concentration and vertical integration in the poultry and pork industries have shown us that neither are advantageous to the average agricultural producer. Concentration present in the grain and the meat industry has decreased the price the producer ultimately receives for the commodity produced.

I look forward to the testimony of the witnesses we have present today. But I also note with frustration and anger that the Administration is under represented. The Justice Department plays the key role in anti-trust enforcement. Their failure to be here to explain their policies to rural America in rural America speaks volumes about their real agenda. Farmers and ranchers in states like Montana are the people most affected by the decisions made by the Justice Department and their absence in excusable.

Senator BURNS. Will Kissinger, Deputy Director of Department of Agricultural out of Helena. Thanks for coming this morning.

STATEMENT OF WILL KISSINGER, DEPUTY DIRECTOR, MONTANA DEPARTMENT OF AGRICULTURE, HELENA, MT

Mr. KISSINGER. Thank you, Senator.

For the record, my name is Will Kissinger, Deputy Director of the Montana Department of Agriculture in Helena. I am here today to present testimony on behalf of Ralph Peck, Director of the Montana Department of Agriculture.

Thank you, Senator, for the opportunity to provide testimony on this issue of great importance to the Montana agricultural industry.

As you well know, agricultural is Montana's No. 1 industry. As such, the overall strength and viability of Montana's economy is dependent on the economic well-being of our agricultural industry.

Montana's primary agricultural commodities, which include livestock and grains, are facing a number of market challenges as we move into the 21st Century. Changes in the global market, adjustments in price structure and lack of market competition resulting from the agricultural industry mergers and consolidation all have a great effect on the way we do business in Montana.

It is vitally important that Montana's agricultural producers have open competitive markets for their commodities. Recent mergers, such as the recently approved merger of the grain merchandising division of Continental Grain Company and Cargill have the potential of greatly reducing the number of markets available for grain produced in the United States, which therefore affects Montana's grain producers. Continental is the second-largest grain company in the world, while Cargill is the largest grain company in the United States.

Approximately 80 percent of Montana's grain is shipped to the Pacific Rim through the Pacific Northwest. With the approved merger of Continental and Cargill, there are now only five grain companies physically capable of loading grain from the Pacific Northwest to the Pacific Rim. Other exporting companies must pay a put-through handling fee to these companies.

Continental Grain Company and Cargill have always been known as fierce competitors in the international grain market. While these two companies currently do not directly purchase grain from Montana producers, they do purchase grain from the companies located in Montana. The merger of the worldwide grain merchandising division of Continental Grain Company with Cargill means fewer competitive grain merchandising companies and one less buyer of Montana grain.

The livestock producers of Montana and the Nation are also concerned about noncompetitiveness within the U.S. meat packing industry, resulting in part, from several decades of merging and consolidation within the meat packing industry.

As already indicated, currently four meat packing companies control 79 percent of the nation's cattle slaughter, up 36 percent since 1980. During the last several decades, the number of meat packing plants have dramatically declined. In 1974, 1,350 federally inspected plants slaughtered cattle. By 1997, the number of federally inspected plants dropped to 812, a decline of 60 percent.

This rapid decline in the numbers of meat packing companies and slaughter plants has led to a corresponding lack of market access by Montana's livestock producers. While other factors such as captive supplies, cyclic overproduction and limited price disclosure may also contribute to the current, protracted slump in livestock prices, many producers believe that meat packer concentration is at the core of the problem.

In conclusion, if Montana's farmers and ranchers are to receive top prices for their agricultural products, there needs to be strong competition for our products between those companies purchasing commodities from our producers. The ongoing trend toward merger and consolidation of these companies is a hindrance to market access and open competition—and open competitive buying. Consequently, we strongly urge that the appropriate Federal officials vigorously, but fairly, enforce existing antitrust laws to ensure competitive markets for Montana's agricultural products.

Thank you for consideration of our testimony. We wish to thank Senator Burns and member of the Committee on Commerce, Science, and Transportation for holding this hearing in Montana. We appreciate the opportunity to provide input into your decision-making process.

[The prepared statement of Mr. Kissinger follows:]

PREPARED STATEMENT OF WILL KISSINGER, DEPUTY DIRECTOR, MONTANA DEPARTMENT OF AGRICULTURE, HELENA, MT.

Mr. Chairman, members of the Committee, for the record my name is Will Kissinger, Deputy Director of the Montana Department of Agriculture, Helena, Montana. I am here today to present testimony on behalf of Ralph Peck, Director of the Montana Department of Agriculture.

Thank you Mr. Chairman and Committee members for the opportunity to provide testimony before you on this issue of such great importance to Montana's agricultural industry.

Agriculture is Montana's No. 1 industry. As such, the overall strength and viability of Montana's economy is dependent on the economic wellbeing of our agricultural industry. Montana's primary agricultural commodities, which include livestock and grains, are facing a number of market challenges as we move into the twenty-first century. Changes in the global market, adjustments in price structure, and lack of market competition resulting from agriculture industry mergers and consolidation all have a great effect on the way we do business here in Montana.

It is vitally important that Montana's agricultural producers have open competitive markets for their commodities. Recent mergers, such as the recently approved merger of the grain merchandizing division of Continental Grain Company and Cargill have the potential of greatly reducing the number of markets available for grain produced in the United States, which therefore effects Montana's grain producers. Continental is the second largest grain company in the world, while Cargill is the largest grain company in the United States. Approximately 80 percent of Montana's grain is shipped to the Pacific Rim through the pacific northwest. With the approved merger of Continental and Cargill, there are now only five grain companies physically capable of loading grain from the pacific northwest to the pacific rim. Other exporting companies must pay a put-through handling fee to these companies.

Continental Grain Company and Cargill have always been known as fierce competitors in the international grain trade. While these two companies currently do not directly purchase grain from Montana producers, they do purchase grain from companies located in Montana. The merger of the worldwide grain merchandizing division of Continental Grain Company with Cargill means fewer competitive grain merchandizing companies, and one less buyer of Montana grain.

The livestock producers of Montana and the Nation are also concerned about noncompetitiveness within the U.S. meat packing industry, resulting in part, from several decades of merging and consolidation within the meat packing industry. Currently four meat packing companies control 87 percent of the nations cattle slaughter, up 36 percent since 1980. During the last several decades the number of meat packing plants have dramatically declined. In 1974, 1,350 federally inspected plants slaughtered cattle. By 1997, the number of federally inspected plants dropped to 812, a decline of 60 percent.

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In conclusion, if Montana's farmers and ranchers are to receive top prices for their agricultural commodities, there needs to be strong competition for our products between those companies purchasing commodities from our producers. The ongoing trend toward merger and consolidation of these companies is a hindrance to market access and open competitive buying. Consequently, we strongly urge that the appropriate Federal officials vigorously, but fairly, enforce existing anti-trust laws to ensure competitive markets for Montana's agricultural products.

Thank you for consideration of my testimony. We wish to thank Senator Burns and members of the Senate Committee on Commerce, Science, and Transportation for holding this hearing in Montana. We appreciate the opportunity to provide input into your decisionmaking process.

Senator BURNS. Thank you very much, Will.

Now a statement and some insight from Bruce Nelson, who is Director of the Agricultural Commodity, or whatever it is. They change those names so many times, Bruce, I do not know whether I am afoot or horseback.

But yours is a big job and a tough job, and you probably have some insight on this, and so we welcome you, and we thank you for coming today. We appreciate that very much.

STATEMENT OF BRUCE NELSON, STATE EXECUTIVE DIRECTOR, FARM SERVICE AGENCY, U.S. DEPARTMENT OF AGRICULTURE

Mr. NELSON. Yes, Senator, thanks very much. I appreciate the invitation here today.

The AUDIENCE. Turn your mike up.

Mr. NELSON. I guess you have to get up close and personal with the microphone.

I want to thank you and the other folks here who also participated in the Department of Agriculture and U.S. trade representatives WTO session in Bozeman yesterday. So, we have been on the road a couple days together. Again, I appreciate your testimony yesterday.

My name is Bruce Nelson. I am the State Executive Director of the Farm Service Agency of the U.S. Department of Agriculture.

As you know, Senator, while I have strong personal opinions on these issues, this is a little bit out of my area of expertise. I could answer questions about loan deficiency payments and issues like that, but I am not an expert on this.

The Secretary of Agriculture asked me to be here today because he felt it was very important for USDA to be represented and to share with you the thoughts of the Department of Agriculture on this. But frankly, again, I am here to listen. If you have questions, I am going to have to get the answers for you because I am not going to be able to answer many questions here today, and I will let everybody know that up front. So, the best I can do is make sure that you do get answers to your questions.

Permit me to begin by stating that the U.S. Department of Agriculture, USDA, is concerned about the potential for mergers and market concentration to reduce competition in agricultural markets. Again, I was specifically asked by the Secretary to join you here today for that reason.

For this reason, Secretary Glickman strongly urged the Department of Justice to review carefully the planned Cargill acquisition of Continental Grain Company's grain trading business to determine whether the acquisition will notably increase concentration in agricultural and its allied industries, causing potential adverse economic effects on farmers and on consumers.

USDA experts on production and marketing assisted the Department of Justice in its review by providing information and advice. In the end, the Department of Justice took the steps necessary to protect American farmers from the potential adverse effects of the acquisition. The consent decree called for Cargill to divest itself from those market locations where acquisition of Continental's facility would have resulted in excessive market power and would have limited farmers' choices in marketing their crops.

There are a variety of reasons for the mergers, acquisitions, joint ventures and alliances occurring in the grain industry. We see joint ventures such as United Harvest, whereby Harvest States, with an emphasize on originating grain, joined up with United Grain Corporation, a well-established exporter, to market grains in the Pacific Northwest. A similar arrangement involved the establishment of Concourse Grain Limited Liability Company, a joint venture between Farmland Industries and ConAgra, Incorporated, to market grain out of the Gulf.

An important change occurring in the international market that is influencing market structure is the privatization of importers. Private buyers rather than government agencies are the customers for a larger and larger share of the U.S. export market. Private buyers have exhibited greater influence over purchase decisions, specifications and terms of trade. This typically results in smaller purchases tailored to the specific quality needs of the particular end user. This, in turn, has an effect on the grain marketing system as companies deal with more complicated logistical issues and new operational challenges.

Finally, privatization of importers has created the need for exporters to expand their market development efforts. No longer can exporters simply bid on government tenders. They must target customers and build long-term relationships as a reliable supplier of quality grain.

As you can see, the simple shifting from a government-purchasing agency to a private buyer can have far-reaching effects on the market structure and competitiveness of the U.S. grain industry.

Another factor that has influenced the structure of the domestic market involves the railroad demand for unit trains. As a result, grain companies have expanded certain facilities to have the capability to load unit trains while closing other facilities. Here in Montana, the number of elevators has declined 40 percent since 1980. This decline has been countered by a significant increase in the average storage capacity of each elevator from just over 4,000 metric tons to over 11,000 metric tons.

All of the changes that I have discussed and the resulting impact on market structure were driven by customer demand for traditional crops. The accelerated change in crop quality due to biotechnology will further challenge the market structure. New crop varieties, whether biotech or traditional, tailor-made for a specific end user, will require additional quality testing and market segregation.

Many farmers already are entering into contracts to produce, for a premium, a variety of crops, such as hard white wheat, malting barley, waxy corn, high corn oil, Synchrony Tolerant soybeans, STS, which makes them more tolerant to soybean herbicides. These options will increase in the future as additional enhanced quality grains enter the market.

I started my remarks today with the comment that the U.S. Department of Agriculture is concerned about the potential for mergers and market concentration to reduce competition in agricultural markets.

Will the grain industry remain competitive in the future as we encounter future mergers and alliances? Will biotechnology offer greater opportunities for farmers, or fewer?

These questions remain unanswered. It is important that agriculture become more productive, efficient and competitive, but it is also important that these changes do not become at the expense of family farmers and ranchers who also deserve to share in the benefits of today's technological advances.

With rapid industrialization in the livestock industry, we have stepped up our monitoring and investigations of possible anticompetitive behavior. We need to understand better the implication of these market changes and will exercise our authority under the Packers and Stockyard Act as necessary. However, this authority does not extend to the grain industry. As I stated earlier, we will continue working with the Department of Justice to ensure the protection of American farmers. We will have a watchful eye over the market, and within the framework of our authority, monitor for anticompetitive behavior.

In conclusion, the past decade has brought considerable change in the grain industry. International trade, transportation, information technology and increased consumer demand have resulted in greater consolidation of the market. The advances in biotechnology will drive further consolidation and vertical coordination in the market.

Our challenge is to promote the development of a 21st Century market where farmers and ranchers share in the benefit of those technological advances.

Thank you.

[The prepared statement of Mr. Nelson follows:]

PREPARED STATEMENT OF BRUCE NELSON, STATE EXECUTIVE DIRECTOR, FARM SERVICE AGENCY, U.S. DEPARTMENT OF AGRICULTURE

I appreciate the opportunity to appear today and talk about the changes occurring in the grain industry and the role of the U.S. Department of Agriculture regarding those changes.

Permit me to begin by stating that the U.S. Department of Agriculture (USDA) is concerned about the potential for mergers and market concentration to reduce competition in agricultural markets. For this reason, Secretary Glickman strongly urged the Department of Justice (DOJ) to review carefully the planned Cargill acquisition of Continental Grain Company's grain trading business to determine whether the acquisition will notably increase concentration in agriculture and its allied industries, causing potential adverse economic effects on farmers and consumers.

USDA experts on production and marketing readily assisted the Department of Justice in its review by providing information and advice. In the end, the Department of Justice took the steps necessary to protect American farmers from the potential adverse effects of the acquisition. The consent decree called for Cargill to divest itself from those market locations where acquisition of Continental's facilities would have resulted in excessive market power and would have limited farmer's choices in marketing their crops.

There are a variety of reasons for the mergers, acquisitions, joint ventures, and alliances occurring in the grain industry. We see joint ventures such as United Harvest whereby Harvest States, with an emphasis on originating grain, joined up with United Grain Corporation, a well-established exporter, to market grains in the Pacific Northwest. A similar arrangement involved the establishment of Concourse Grain L.L. Company, a joint venture between Farmland Industries and ConAgra, Inc. to market grain out of the Gulf.

We also see horizontal arrangements between competing exporters, such as the October 1998 agreement between Zen Noh and Bunge to operate jointly Gulf Port facilities and market grain. This allows the companies to exploit the unique features of their respective facilities. The Zen Noh facility is designed for high volumes of generic commodities such as U.S. number 2 corn and soybeans. Conversely, the Bunge facility in Destrehan, LA is better suited to handle wheat shipments with refined quality specifications. These and future arrangements are driven by the need to achieve greater logistical coordination, better meet the quality demands of customers, improve the efficiency of facility operations, or simply balance the market power of other competitors.

An important change occurring in the international market that is influencing market structure is the privatization of importers. Private buyers rather than government agencies are the customers for a larger and larger portion of the U.S. export market. Private buyers have exhibited greater influence over purchase decisions, specifications, and terms of trade. This typically results in smaller purchases tailored to the specific quality needs of the particular end-user. This, in turn, has an effect on the grain marketing system as companies deal with more complicated logistical issues and new operational challenges.

To meet the demands of the new overseas buyer, grain firms must improve their information network concerning the quantity, quality and timing of demand. They must also expand their capability to segregate and deliver a greater diversity of qualities. Grain firms have also found it necessary to expand their grain cleaning and conditioning capabilities in order to meet the specific quality needs of the overseas buyer.

Finally, privatization of importers has created the need for exporters to expand their market development efforts. No longer can exporters simply bid on government tenders. They must target customers and build long term relationships as a reliable supplier of quality grain. As you can see, the simple shifting from a government-purchasing agency to a private buyer can have far reaching effects on the market structure and competitiveness of the U.S. grain industry.

Another factor that has influenced the structure of the domestic market involves the railroad demand for unit trains. As a result, grain companies have expanded certain facilities to have the capability to load unit trains, while closing other facilities. Here in Montana the number of elevators has declined 40 percent since 1980. This decline has been countered by a significant increase in the average storage capacity from just over 4,000 metric tons to over 11,000 metric tons.

All of the changes that I have discussed and the resulting impact on market structure were driven by customer demand for traditional crops. The accelerated change in crop quality due to biotechnology will further challenge the market structure. New crop varieties, whether biotech or traditional, tailored-made for a specific end use will require additional quality testing and market segregation. Many farmers already are entering into contracts to produce, for a premium, a variety of crops, such as hard white wheat, malting barley, waxy corn, high oil corn, Synchrony Tolerant Soybeans STS—which makes them more tolerent of soybean herbicides. These options will increase in the future as additional enhanced quality grains enter the market.

Marketing systems or channels will evolve combining input industries, producers, handlers, processors, and even retailers. The systems will be designed to deliver the right quantity and quality of grain at the right time to the processor in an efficient and cost-effective manner. Will such systems consider farmers an equal player that shares in the added value delivered to the final consumer?

I started my remarks today with the comment that the U.S. Department of Agriculture is concerned about the potential for mergers and market concentration to reduce competition in agricultural markets.

Will the grain industry remain highly competitive in the future as we encounter further mergers and alliances? Will biotechnology offer greater opportunities to farmers or fewer?

These questions remain unanswered. It's important that agriculture become more productive, efficient, and competitive. But it is also important that these changes do not come at the expense of family farmers and ranchers who also deserve to share in the benefits of today's technological advances.

With the rapid industrialization in the livestock industry, we have stepped up our monitoring and investigations of possible anti-competitive behavior. We need to understand better the implication of these market changes and will exercise our authority under the Packers and Stockyard Act as necessary. However, this authority does not extend to the grain industry. As I stated earlier, we will continue working with the Department of Justice to ensure the protection of America's farmers. We will have a watchful eye over the market and within the framework of our authority, monitor for anti-competitive behavior.

While market trends point toward more contracting for specialty crops, farmers must work to ensure that such contracts offer fair and reasonable terms. Market concentration can force producers into lopsided contractual terms because there is no other option available. Most poultry production occurs under contracts that result in the farmer being nothing more than an extension of the processor. This is not the system USDA wants to see evolve for row crops. Again, farmers need choices and the opportunity to share in the benefits of today's technological advances.

Advances in row crops, especially those driven by biotechnology, must result in greater, not fewer options for farmers. The industry must develop products that show real results to farmers. The ability of farmers to compete on a level playing field with adequate choices available must be preserved. This technology has the capability to increase the value of cereals and oilseeds. Farmers must have the opportunity to share in the return from the added value. We must achieve a balance between fairness to farmers and corporate returns.

In conclusion, the past decade has brought considerable change to the grain industry. International trade, transportation, information technology, and increased consumer demand have resulted in greater consolidation of the market. The advances in biotechnology will drive further consolidation and vertical coordination in the market. Our challenge is to promote the development of a 21st century market where farmers share in the benefits of technological advances.

Thank you.

Senator BURNS. You bet. Thank you, Bruce.

Steve Bullock, who is Executive Attorney General of the Office of the Attorney General, State of Montana, is here with us today from Helena. Steve, thank you for coming, and we would like to hear your insights.

STATEMENT OF STEVE BULLOCK, EXECUTIVE ASSISTANT ATTORNEY GENERAL, MONTANA DEPARTMENT OF JUSTICE, HELENA, MT

Mr. BULLOCK. Thank you, Senator Burns.

Good morning, members of the Committee. For the record, my name is Steve Bullock, and I am the Executive Assistant Attorney General for the Montana Department of Justice. I am testifying today on behalf of Attorney General Joe Mazurek, who would very much like to be here, but he's out of State at this time.

Under both State and Federal law, the State Attorney General has statutory authority to enforce the antitrust laws, and we have been and are continuing to be extremely concerned about the topics being discussed here today.

It's my understanding that the hearing is convened to discuss the impact of how mergers in the agricultural industry impact consumers. While that topic alone could probably keep us holed up here in the Civic Center for a couple of days, it is critical that we more or less frame the issue in terms of consumers and producers. On the one hand, be it the U.S. Senator, the lawyer, or the farmer and rancher, we are all consumers. However, framing the issue to include producers just simply makes sense, because agriculture is a critical sector of our Montana economy, and there are counties and communities throughout the State of Montana that are entirely dependent upon agricultural. In Montana, when the farmer and rancher hurt, each and everyone of us as consumers also hurt.

I will distribute a packet to include in the record for your consideration. It starts with a news article from earlier this year that I think kind of tells it all for us. "Meat packers flourish as producers struggle." Given the history of market concentration in agricultural, this should not come as a surprise.

[The packet referred to above follows:]

2/16/99

Meatpackers flourish as producers struggle

Gannett Newspapers

Meatpackers have been the bad guys in the recent free fall in hog prices, and their latest earnings reports have done little to dispel that perception.

An abundant supply of low-priced livestock has enabled companies like IBP Inc., Excel Corp., Hormel Corp. and Farmland Industries to run their packing plants at full tilt, book orders for animals well ahead of slaughter, and reap record profits.

But do the packers deserve blame for the recent collapse in the hog market and for the longer-term and more extensive losses in the beef industry?

Should they be having a heyday while livestock producers are struggling to stay in business?

Earlier this month IBP Inc.—the nation's largest red-meat packer—reported record-high *fourth-quarter earnings that were more than four times higher than those of the same period a year ago.* The company also posted its second-highest annual earnings: $205 million in 1998, up from $117 million the previous year.

Such reports do little to engender good feelings between producers and packers—camps often at odds with one another, particularly when the spread widens between farm-level, wholesale and retail prices, as it did last year.

Proponents of independent family farms have been among the most ardent critics of the packers, particularly as the economic fallout from low hog and cattle prices has increased, building like a mid-summer thunderstorm over the Plains.

They say packers give preferential treatment and better prices to large-scale producers with livestock marketing contracts.

They also declare that because farmers selling on the cash market don't have equal access to the higher prices, they end up supplying the bulk of the lowest-cost hogs and cattle to meatpackers.

In their view, the packers' most recent run of profits has occurred at their expense.

But others argue that the meat-packers have done what any manufacturer would do—capitalize on an ample supply of low-cost raw material.

"That's capitalism," said John Lawrence, an Extension livestock economist at Iowa State University. "Was there price-gouging occurring? That requires an investigation."

Steve Kay, editor and publisher of Cattle Buyers Weekly, an industry newsletter based in Petaluma, Calif., believes farmers have only themselves to blame for raising more hogs than meatpackers could process.

For their part, *cattle producers* have been sending heavier animals to market.

In one recent week, for instance, the average beef carcass at U.S. packing plants weighed 740 pounds—24 pounds heavier than at the same point a year ago. According to Kay, that's the equivalent of sending 24,000 additional animals to slaughter weekly. He calls it "a colossal amount of extra pounds of beef" on the market.

"I'm empathetic to the squeeze on small producers," he said, noting that he grew up on a small family farm in New Zealand. "It's a terribly tough time.... (But) unless you're producing a premium product, being small and producing a commodity product just doesn't work."

Officials in the meatpacking industry do not apologize for making more money because of lower farm-level prices; in fact, they say the recent run-up in earnings is just part of a cyclical business that will enable them to recover from earlier times when it was a seller's market and farmers were reaping plump profits.

Even trade group leaders, whose constituents include farmers facing financial ruin because of low commodity prices, don't condemn the packers for making money.

"I don't like those large profits," said Joel Brinkmeyer, executive director of the Iowa Cattlemen's Association. "... At the same time, we need competition in the industry."

Historically, profit-taking in the livestock sector has shifted from producers to packers along with changes in supplies and market demand. When farmers are getting a higher price for their animals, processors' margins are tighter and their net income is reduced. Conversely, low prices for livestock boost packers' margins.

"They tend to be counter-cyclical; the packer profits tend to be highest when the producer losses are the greatest," said Chuck Lambert, economist for the National Cattlemen's Beef Association in Washington. "They tend to be a mirror image of each other."

Even so, many producers, farm group leaders and rural advocates believe the meatpackers bear at least some of the responsibility for the growing financial ag crisis.

What's more, they say consumers are being ripped off, because meat prices at the retail level have not retreated as they normally do when hog and cattle prices fall. They want the federal government to intervene and have called for investigations.

56th Legislature, MT

SENATE JOINT RESOLUTION NO. 11

A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging an investigation into the causes of ongoing Depressed Market Prices for Agricultural Products; and urging the initiation of actions that will stabilize the Nation's Food Producers, Main Street Businesses, and Rural America as a Whole.

WHEREAS, an economic emergency has been created by ongoing depressed prices in the marketplace for agricultural products; and

WHEREAS, an investigation into the causes of the depressed prices is warranted; and

WHEREAS, actions should be initiated to stabilize the nation's food producers, main street businesses, and rural America as a whole.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a full investigation be undertaken into the causes of ongoing depressed prices in the marketplace for agricultural products, including a full examination of market competitiveness in livestock and crops and a re-examination of trade agreements.

BE IT FURTHER RESOLVED, that actions be initiated that will stabilize the nation's food producers, main street businesses, and rural America as a whole, including:

(1) emergency price supports and a safety net system for all agricultural products, to be lifted only when international and domestic markets are reformed in a way that renders them open, public, and competitive and when domestic prices for agricultural products are determined to be above the cost of production as calculated by the U.S. Department of Agriculture;

(2) fair compensation for lost agricultural income, as called for under trade compensation and assistance programs of the Agricultural Trade Act of 1978 and the Federal Agricultural Improvement and Reform Act of 1996 (FAIR Act), for all existing and future sanctions;

(3) further support for risk management tools and education, such as the pilot projects for forward contracts and the use of hedges and options, and development and funding of a more effective yield and income insurance program by Congress and the administration;

(4) vigorous antitrust investigations into the concentration of ownership in meat packing, grain handling, and retail trade, including a complete investigation of the possible effects of the proposed Cargill-Continental merger;

(5) expansion and development of new international markets for agricultural products and ensuring that agricultural producers have advisory status at any agricultural trade negotiations, with a priority on price transparency of the Canadian Wheat Board;

(6) reductions of regulations and taxes to enable farmers and ranchers to be more profitable;

(7) country of origin labeling;

(8) limiting use of the U.S. Department of Agriculture stamp to products produced in the United States;

(9) mandatory price reporting of livestock and grain;

(10) moving responsibility for enforcement of the federal Packers and Stockyards Act from the U.S. Department of Agriculture to the U.S. Department of Justice;

(11) inspections of imported agricultural products to ensure that imported products meet standards equivalent to United States standards for food safety, environmental protection, and worker protection; and

(12) ensuring that farm and ranch producers are represented at the 1999 World Trade Organization.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the members of the Montana Congressional Delegation.

52nd Legislature, MT

SENATE JOINT RESOLUTION No. 14

A joint resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the concentration in the livestock feeding and packing industries; and requiring a report of the findings of the study to the 53rd legislature.

WHEREAS, the market share of the top four beef packing companies was just 25% in 1977 and rose to 74% of the market in 1987; and

WHEREAS, concentration among packing companies that slaughter sheep and lambs has increased from four firms controlling 57% in 1977 to three firms controlling at least 76% in 1987; and

WHEREAS, trends toward concentration and vertical integration of the livestock industry threaten free enterprise and the independence of Montana's livestock producers, as well as the economic vitality of our communities that are dependent on the livestock industry; and

WHEREAS, continued concentration and vertical integration of the livestock industry may also have serious adverse implications for the health and safety or both workers and consumers.

NOW, THEREFORE BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to examine:

(1) the economic impact of concentration and vertical integration by the dominant meatpackers on Montana's livestock producers;

(2) the relationship between the economic impact of the concentration on producers and other aspects of the state's present and future economy, such as the tax base, population, and viability of our rural communities; and

(3) legal remedies and other appropriate actions available to the State of Montana to counteract any adverse problems posed by increased concentration or to prevent further concentration.

BE IT FURTHER RESOLVED, that the interim committee report the findings of the study to the 53rd Legislature and present options for legislative consideration if the committee determines that options are necessary.

Also within the packet are two different legislative resolutions passed at the State level. The first, Senate Joint Resolution No. 11, which was passed this year, received wide bipartisan support, and it calls for, among other things, vigorous antitrust investigations into the concentration of ownership in the meat packing, grain handling and retail trade industries and moving responsibility for antitrust and consumer protection enforcement from the U.S. Department of Agriculture to the U.S. Department of Justice.

The second resolution hasn't received as much notice, however. It is a resolution that was passed by the Montana legislature in 1991 calling for an interim committee to study the impacts of market concentration in the packing and feeding industry. It is my understanding that the resolution was passed some 8 years ago, but the study was never funded.

It's important to point out that the legislature at the State level looked at this from 1991 to 1999. Not much has changed.

I'd like to be able to say that this problem originated in Montana in 1991, and Montana stock growers and grain growers and all of us as consumers have only been hamstrung by market concentration for the last decade. However, it was actually at the turn of the century when five firms controlled 55 percent of the market that led to the eventual passage of the Packers and Stockyard Act of 1921.

Over 75 years later, we are in a worse, not a better, position. For example, as Senator Burns pointed out, the top four beef packers account for 80 percent of the cattle slaughter. Twenty feedlots, less than 1 percent of the total, account for over 50 percent of all head sold. The largest five pork packers slaughter over 60 percent of the hogs, and the top four flour millers control over 60 percent of the market.

I guess for all the Federal efforts, I cannot say that the last 75 years have really placed Montana, and our Nation's grain and stock growers in any better position.

So, the question becomes what should Congress do? For our part at the Montana Department of Justice, I have about three feet of files just from efforts we have joined in conjunction with the National Association of Attorneys General over the last few years. I have included in the pamphlet six letters we have written in the last 2½ years to Members of Congress and members of the executive branch, including one we recently sent to the Department of Justice concerning the Cargill/Continental merger.

Although we will continue to be vigilant in expressing to you and other members of the Federal Government our concerns, admittedly, there's little more that the Montana Department of Justice can do.

As you may recall, earlier in my testimony, I stated that the Attorneys General's office has statutory authority over antitrust. In Montana, however, that is sort of like being given the artillery tank but not given the fuel to run that tank.

While it is true that we have the authority and responsibility, it is in large measure an empty promise because we do not have the resources. It is not uncommon for smaller States to have only one or two attorneys working in antitrust. In Montana, the legislature has not seen fit to provide any resources for antitrust enforcement.

Even if the day comes, however, when we have the ability to vigorously enforce State laws, it is important to realize that market concentration in agricultural is more than a Montana problem. It is an American problem that demands national attention from Congress and the executive branch.

We are beyond the point of needing to ask where to begin. It is now time to say let us begin.

I think that the blueprints for action of what Congress and other can do, they are already in front of us and have been discussed for several years.

Among other things, these efforts should include making the market more transparent by requiring public disclosure of the prices and terms of all sales and forward contracts.

We need to be carefully scrutinizing all proposed mergers in the meat packing, grain handling, and retail trade industries.

We need to be prohibiting unfair trade practices in the livestock industry, which includes price discrimination, and making it a priority to enforce Section 202 of the Packers and Stockyard Act.

We believe that coordination is key. We need to work on coordinating the effort of Federal agencies, including the U.S. Department of Agriculture, U.S. Department of Justice and the Federal Trade Commission. This should include consideration of moving enforcement of the Act from the Department of Agriculture to the Department of Justice.

Finally, we need to make certain to provide greater protection for producers against retaliation by packers on account of statements made regarding the packers' actions and practices.

That above list may only scratch the surface of what needs to be done, but I think the important message is that we, as consumers, be it the farmers, the ranchers, the lawyers or the U.S. Senators, who have been talking about the problems of agricultural market concentration for decades, it is time to stop talking and start taking action. Thank you.

[The prepared statement of Mr. Bullock follows:]

PREPARED STATEMENT OF STEVE BULLOCK, EXECUTIVE ASSISTANT ATTORNEY GENERAL, MONTANA DEPARTMENT OF JUSTICE, HELENA, MT.

Good morning. For the record, my name is Steve Bullock and I am the Executive Assistant Attorney General for the Montana Department of Justice. I am testifying today on the behalf of Attorney General Joe Mazurek. General Mazurek would have very much liked to be here today, but is traveling out of State this weekend at a work-related conference.

Under both State and Federal law, the Attorney General has statutory authority to enforce the antitrust laws, and we are extremely concerned about the issues you are discussing today.

It is my understanding that you have convened this hearing today to discuss how mergers in the agricultural industry impact *consumers*. While that topic alone could probably keep us holed up in the Civic Center for several days, it is critical that we frame the issue in terms of consumers *and* producers.

One the one hand, be it the U.S. Senator, the lawyer, the farmer or the rancher, we are all consumers. However, framing the issue to include producers simply makes sense. Agriculture is a critical sector of our Montana economy, and there are counties and communities across our State that are entirely dependent upon agriculture. In Montana, when the farmer and rancher as producers hurt, each and every one of us as consumers also hurt.

I am distributing a packet for your consideration:

It starts with a news article from earlier this year. The packers are having record years for profitability, as Montana's and our nation's stock growers continue to struggle. Given the history of market concentration in agriculture, this should not come as a surprise.

Also in this packet are two legislative resolutions.

The first, SJR 11, you may have already received this morning. It calls for, among other things, vigorous antitrust investigations into the concentration of ownership in the meat packing, grain handling, and retail trade, and moving responsibility for antitrust and consumer protection enforcement from the U.S. Department of Agriculture to the U.S. Department of Justice. This resolution was passed during the 1999 legislative session with broad bipartisan support.

The second resolution you probably have not seen, however. It is a resolution passed by the Montana legislature during the 1991 session, calling for an interim committee to study the impacts of market concentration in the packing and feeding industry. It is my understanding that although the resolution passed, the study was not funded.

I would like to say the problems of concentration in the packing and feeding industry originated in 1991, and Montana's grain and stock growers—and all of us as consumers—have only been hamstrung by market concentration for the last decade. However, it was actually at the turn of the century, when five firms controlled 55 percent of the market, that led Congress to enact to the Packers and Stockyards Act of 1921.

Over 75 years later, we are in a worse, not better position. For example:

- The top four beef packers account for 80 percent of the cattle slaughter;
- Twenty feedlots—less than 1 percent of the total—account for over 50 percent of all head sold;
- The largest five pork packers slaughter over 60 percent of the hogs; and
- The top four flour millers control over 60 percent of the market.

So I guess for all of the Federal efforts, I cannot say that the last 75 years has really placed Montana's—and our nation's—grain and stock growers in any better position.

For our part at the Montana Department of Justice, I have about three feet of files, just from efforts we have joined in conjunction with the National Association of Attorneys General.

I have included six letters in the last two and one-half years which Attorney General Mazurek has sent to the Secretary of Agriculture and Members of Congress, including one we recently sent to the United States Department of Justice concerning the Cargill-Continental merger.

Although we will continue to be vigilant in expressing to you and other members of the Federal Government our concerns, admittedly there is little more that Montana Department of Justice can do on its own.

As you may recall, earlier I stated that the Attorney General has statutory authority over antitrust. In Montana however, this is sort of like being given the artillery tank, but not having the fuel to run that tank. While it is true we have the authority and responsibility, it is in large measure an empty promise because we do not have the resources. It is not uncommon for smaller states to have only one or two attorneys working in antitrust. In Montana, the legislature has not seen fit to provide resources for any antitrust enforcement.

Even if the day comes when we have the ability to vigorously enforce State laws, however, it is important to recognize that market concentration in agriculture is more than a Montana problem. It is an American problem that demands national attention from Congress and the executive branch. We are beyond the point of needing to ask where to begin, and it is now time to say "let us begin."

The blueprints for action are already in front of you, and have been discussed for several years. Among other things, these efforts should include:

- Making the market more transparent by requiring public disclosure of the prices and terms of all sales and forward contracts;
- Carefully scrutinizing all proposed mergers in the meat packing, grain handling, and retail trade industries;
- Prohibiting unfair trade practices in the livestock industry, including price discrimination, and making it a priority to enforce Section 202 of the Packers and Stockyard Act;
- Coordinating the efforts of Federal agencies, including the United States Department of Agriculture, the United States Department of Justice and the Federal Trade Commission. This should include moving enforcement of the Stockyards and Packers Act from the Department of Agriculture to the Department of Justice; and
- Providing greater protection for producers against retaliation by packers on account of statements made regarding the packers' actions.

The above list may only scratch the surface of what needs to be done, but I think the more important message is that we as consumers—be it the farmers and ranchers, the lawyers, and even the U.S. Senators—have been talking about the problems of agriculture market concentration for decades. It is time to stop talking, and start acting.

Senator BURNS. Thank you, Steve. We appreciate your comments very much.

Now representing the Montana Farm Bureau Federation, Jake is not here today; we've got Dave McClure, who is president of the organization. Of course, we have got Ken Maki here with the Farmers Union. I think we will start with those two organizations who represent a huge cross-section of Montana agriculture.

So, thank you very much, Dave, and I am looking forward to some of the suggestions you might have.

STATEMENT OF DAVID L. McCLURE, PRESIDENT, MONTANA FARM BUREAU FEDERATION, BOZEMAN, MT

Mr. McCLURE. Thank you, Senator, for the opportunity to provide testimony for this hearing on mergers.

For the record, I am Dave McClure, president of the Montana Farm Bureau Federation with offices in Bozeman, MT.

Senator BURNS. Oh, by the way, excuse me just for a second.

With the wave of all these hearings that have been going across the State, we were in Bozeman yesterday, and there are two or three of them, and we are going on to another one this afternoon.

When are you guys going to hay?

Mr. MAKI. Last night.

Senator BURNS. Huh?

Mr. MAKI. Until dark.

Senator BURNS. Some folks are still cutting. They are wanting to cut grain, so we better get you out of here pretty quick.

Mr. HIBBARD. It's got to rain first.

Senator BURNS. OK.

Mr. MCCLURE. But I am a farmer in the Lewistown area full time; I do represent the organization. Montana Farm Bureau is the largest agriculture organization in the State with over 8,500 member families.

I am here today to speak on how mergers in the nation's agriculture industry impact consumers, but more importantly, I am here to speak about how these mergers impact our members, the farmers and ranchers in Montana.

Farm Bureau policy on monopoly is clear. Monopoly power, whether it arises in industry, labor, finance, agricultural or government, is a threat to our competitive enterprise system and the individual freedom of every American. That is out of our Farm Bureau policy book.

Another one is that we oppose mergers, acquisitions or leveraged buyouts which tend to create a monopoly of production, marketing and transportation or reduce competition in acquiring, pricing or transportation of commodities and products.

We believe Congress should continue to monitor the agriculture industry for antitrust abuse. I think we could add the Attorney General's Office to that also.

It is frustrating, because at least in transportation, we have been involved for about 20 years in the McCarty Farms case, which Montana was declared a captive—industry?

Senator BURNS. Shipper.

Mr. MCCLURE. Captive of no competition in the transportation industry, but still today, we are paying higher costs for transportation than farmers and ranchers in other States which are much further from the coast, and so it seems we haven't got any relief in that area yet.

U.S. consumers already enjoy an abundant, wholesome food supply at the lowest percentage of its disposable personal income of any country in the world. According to the USDA, U.S. consumers in 1997 spent about 10.7 percent of their income on food.

The recent mergers have the potential to provide additional efficiencies to the food processing and distribution system. The domestic market for food is a mature industry. Population grows only about 1 percent per year. Per capita consumption increases only marginally each year. In a slow growth market, it is natural for individual companies to attempt to expand by buying out other companies. This happens in all industries, not just food.

This can be clearly seen in grocery store chains. In 1967, the four largest chains had 19 percent of the market. Today, the top 4 percent—I am trying to pick this out of this—they are up to 17 percent, the top four grocery chains.

To varying degrees, this same pattern also appears to be happening in the processing industry as well.

With consumers already getting food at a bargain, further gains in efficiencies are likely to have only modest impacts on consumer prices.

Most of the changes are expected to be in the variety of foods available and the consumer perception of food quality and wholesomeness. Consumers demand a wide variety of options to meet specific choices about what to eat and in what form. Ready-to-eat and partially prepared foods continue to be more popular, and processors and grocery chains will focus on meeting those demands.

While U.S. consumers already have the safest supply of food in the world, they continue to seek further assurances that the foods they buy meet their high expectations. Modern food companies will have the financial and technical resources to focus on those concerns.

You have got copies of my written testimony. I want to depart from that right now and get into a couple of issues.

As I said, there are efficiencies inherent in these mergers. Production agricultural would like to have the ability to share in those efficiencies and to share in that increased financial flow.

But I think as we have seen in, for instance, the gas business, we continue to see less gas stations and less and less family operated, and a lot of that is because of government regulations. It appears that only those large, well-financed corporations are able to meet government regulations and stay in business.

I think it is also part of what is happening in the pork industry. I am currently serving on a task force for farm policy for the American Farm Bureau, and I sit on the regulatory subcommittee of that task force.

The pork industries had a terrible hit, down to $9, as you mentioned, Mr. Senator, and it appears that a portion of that problem was caused by anticipation of government regulations from Federal and State and counties on the pork industry, and those large producers that were able to expand their operations, did it in anticipation of increased regulations and hoped to be grandfathered in. They expanded at a time when the market didn't call for it. They did it, as I said, in anticipation of regulation, and that destroyed the hog industry.

Small family-operated operations are least able to cope with a downturn of that type and are also the least able to cope with meeting the regulations that seem to be coming more and more from government.

I think that is a big factor that we see in this merger of large corporations, because only then are they able to comply with all the regulations that are coming across.

In fact, some of these large corporations, as you know, testified in Washington, DC in favor of regulations that would tend to limit entrance into their market by new operations that aren't well financed enough to comply.

As I said, you have got my written testimony. But hopefully efficiency cannot and will be at the expense of equity in the U.S. market, or we will all lose in the end.

Thank you for this opportunity to testify.

[The prepared statement of Mr. McClure follows:]

PREPARED STATEMENT OF DAVID L. MCCLURE, PRESIDENT, MONTANA FARM BUREAU FEDERATION, BOZEMAN, MT.

Thank you, Mr. Chairman, for the opportunity to provide testimony for this hearing on mergers. For the record, I am David L. McClure, President of the Montana Farm Bureau Federation with offices in Bozeman, Montana. The Montana Farm Bureau is the largest agricultural organization in the State with over 8500 members. I am here today to speak on "How Mergers in the Nation's Agricultural Industry Impact Consumers." More importantly, I am here today to speak about how these mergers impact our members, Montana's farmers and ranchers.

Farm Bureau policy on monopoly is clear.

- "Monopoly power—whether it arises in industry, labor, finance, agriculture or government—is a threat to our competitive enterprise system and the individual freedom of every American."
- We oppose mergers, acquisitions or leveraged buyouts which tend to create a monopoly of production, marketing and transportation situations or reduce competition in acquiring, pricing or transportation of commodities and products."
- "We believe Congress should continue to monitor the agriculture industry for antitrust abuse."

U.S. consumers already enjoy an abundant, wholesome food supply at the lowest percent of disposable personal income of any country in the world. According to USDA, U.S. consumers in 1997 spent about 10.7 percent of their income on food.

The recent mergers have the potential to provide additional efficiencies to the food processing and distribution system. The domestic market for food is a mature industry. Population grows about 1 percent per year. Per capita consumption increases only marginally each year. In a slow growth market, it is natural for individual companies to attempt to expand by buying out other existing companies. This happens in all industries, not just food.

This can be clearly seen in grocery store chains. In 1967, the four largest chains had 19 percent of the market and the largest 20 chains had 34 percent of the market. By 1987, there had been little change with the top four having 17 percent of the market and the top 20 having 37 percent of the market.

By 1997, a few changes began to be seen. The top 4 had 18 percent of the market, almost unchanged from 1987. The top 20 had 44 percent of the market, up 7 percentage points from 1987. Estimates for the end of 1999 show a sharp rise in the market share of the top 4 to 27 percent. The share for the top 20 by the end of 1999 is expected to be about 48 percent.

To varying degrees, this same pattern also appears to be happening at the processing and distribution levels.

With consumers already getting food at a bargain, further gains in efficiencies are likely to have only modest impacts on consumer prices.

Most of the changes are expected to be in the variety of foods available and consumer perceptions of food quality and wholesomeness. Consumers demand a wide variety of options to meet specific choices about what to eat and in what form. Ready-to-eat and partially prepared foods continue to be more popular and processors and grocery chains will focus on meeting these demands.

While U.S. consumers already have the safest supply of food in the world, they continue to seek further assurances that the foods they buy meet their high expectations. Modern food companies will have the financial and technical resources to focus on those concerns.

One major challenge these companies will have is to meet the needs of those consumers who want a supply of locally produced fresh foods. Large food suppliers have the ability to source food across the country and around the world to meet the demands of consumers. Responding to local markets with seasonal variability is a much tougher task.

As representatives of farmers and ranchers, the Farm Bureau is concerned about how we fit into a world of larger processors and retailers. While consumers are on one end of the system, farmers and ranchers are the producers of the products that eventually are eaten by consumers.

USDA estimates show that in 1997 farmers and ranchers received about 21 cents of each dollar spent on food by consumers. This is the lowest amount ever for the yearly USDA estimates. There is no reason to believe that this will increase with the mergers that have occurred in recent years. As consumers continue to seek more services added to food between the farm gate and their dinner tables, the farm and ranch portion will continue to decline.

Price discovery for farm and ranch products will become a larger issue in the years ahead. As the larger processors and retailers seek a stable supply of food to meet the needs of consumers, business relationships between producers and processors will continue to change.

The one definite reality is that the greatest risk will go to the weakest portion of the production/processing/marketing chain. Farmers and ranchers bring value to the marketing chain and will need to work aggressively to be rewarded for the risks inherent in production. We accept the risk and do the work but the reward continues to diminish.

The key to consumers having an abundant, wholesome supply of food at affordable prices is farmers and ranchers earning a living producing the raw food products.

If mergers create unsustainable cost/risk ratios that force U.S. farmers and ranchers out of business, the supply of food goes down and consumer prices go up. The most cost efficient short term solution to a diminishing U.S. agricultural base may appear to the conglomerate, the consumer and Congress to be cheap foreign imports, but this creates dependence on foreign producers who are often subsidized by their governments with the goal of gaining U.S. market dominance. Once U.S. producers are priced out of the market, dominance is gained and the U.S. becomes dependent on foreign powers for our most basic resource, food. That will not be good for consumers or the country.

It is not my intent, Mr. Chairman, to deride trade or trade agreements. Foreign markets are essential to the health of Montana's agriculture industry. But as Farm Bureau has said repeatedly, free trade must be fair trade, and mergers are a factor in any fairness assessment. Efficiency cannot be at the expense of equity in the U.S. market, Mr. Chairman, or in the end we will all lose.

Senator BURNS. Thank you, David.

Ken Maki, who is President of Montana Farmers Union located right here in Great Falls. Thanks for coming this morning, Mr. Maki, we appreciate you coming.

STATEMENT OF KENNETH L. MAKI, PRESIDENT, MONTANA FARMERS UNION, GREAT FALLS, MT

Mr. MAKI. Good morning, Senator, and I really appreciate the opportunity to testify on something that is pretty vital to all of us in Montana Farmers Union and, in fact, in the State of Montana.

Just for the record, I am Ken Maki. I am the president of Montana Farmers Union, and I own a small ranch east of here in the Highwood Mountains.

To get back to your earlier comment about how we are getting the hay done, well, I tell you, my son and I are running the farm, and at the moment he's farming, and I'm running!

Any time there's a merger, obviously there is less competition. There have been some whoppers lately. It is alarming to watch them take place, and we are just having token and cosmetic antitrust stipulations which have been imposed by the last several ation Administrations, not just this one, but several ation Administrations, and not much being done by them. It is a big concern to me.

Just to digress a little bit back into history, those journalists that are in the crowd, they know a little bit about the muckraking era at the beginning of the 1900's, mass-produced assembly lines not only in machinery and equipment, but in the packing industry.

You know what? We knew then, and Congress knew then that there was a big problem, not only for producers, but for workers and everybody. It took 20 years before we got a Packers and Stockyard Act.

Now, 5 years ago, we were at a fly-in—Farmers Union sponsored a fly-in—and we were talking to some of the big shots at that USDA. I told them listen, "If it's going to take 20 years to get anything done here, most of the people in this room today aren't going to be here to enjoy any benefit or any result of it."

I am so afraid, Senator, that that may be what's going to happen again. I sure hope that you can light a fire, or we can light a fire, or somebody can do something to go get this ball off of dead center, because it's definitely a problem.

Now, Montana Farmers Union sent a letter recently to Attorney General Janet Reno. We asked for formation of a special unit to investigate proposed mergers in the agricultural arena. I am awaiting a reply, and even more so, I am awaiting some action, some results.

We don't believe the USDA is able to handle the matter under the Packers and Stockyard Act or other Federal legislation within their purview. Neither are we confident that the Department of Justice will do enough to ensure that farmers and ranchers are safe from marketplace monopolies. Both agencies probably need more in the way of appropriation from you to address those problems.

I'm not going to go through all of my study. There are copies back there. I have some here also.

The one thing you don't have a copy of is a study by Dr. William Heffernan from the University of Missouri. I gave a copy to the clerk, and Senator, I have given you and your office a couple of copies of that already. This study has all the statistics. It is pretty deep research, and it doesn't pull any punches.

The reason I say that, is that we have been pretty receptive to cooperatives in this business of, what would we call it, anticompetitivism, I guess, in our markets. You know what, cooperatives are caught in that chain too! The references are made right in Dr. Heffernan's Report.*

Report of Dr. William Heffernan, Department of Rural Sociology, University of Missouri

Consolidation in the Food and Agriculture System

Introduction

The organizational structure of the national/global food system is dynamic. New firm names emerge, often the result of new joint ventures, and old names disappear. But underlying these changes is a continuing concentration of ownership and control of the food system. These structural changes are so strong that they often undermine the desired and expected outcomes of much of the agricultural policy developed over the past couple of decades. These structural changes, often referred to as "the industrialization of agriculture," have progressed to the point that some agricultural economists now refer to the agricultural stage of the food system as "food manufacturing."

No longer can agricultural policy be discussed apart from the food system, because major engines of change that are impacting agriculture and muting the impact of agricultural legislation come from the larger food system. As one who has been studying the changes in the structure for over three decades, I am delighted the Congress has chosen to include a dialog on the structure of the food system as part of the agricultural policy debate. Concentration of the food system must be a part of that debate, if the policy is to address some of the problems faced by farmers and the relatively few remaining rural communities that still depend heavily on an agricultural base.

*[Dr. William Heffernan's Report, submitted by Kenneth L. Maki, was reprinted by permission of the author and the National Farmers Union.]

One often hears the statement that agriculture is changing and we must adapt to the changes. Few persons who repeat the statement really understand the magnitude of the changes and the implications of them for agriculture and for the long-term sustainability of the food system. It is almost heresy to ask if these changes are what the people of our country really want or, if they are not what is desired, how we might redirect the change. The changes are the result of notoriously short sighted market forces and not the result of public dialog, the foundation of a democracy. Neither are the changes the result of some mystical figure or an "invisible hand."

For well over a decade, several of us at the University of Missouri have been reporting the concentration ratios of the largest four processors of most of the major commodities produced in the Midwest. We liken the food system to an hour glass in which farm commodities produced by thousands of farmers must pass through the narrow part of the glass that is analogous to the few firms that control the processing of the commodities before the food is distributed to millions of people in this and other countries.

We focus on the largest four processing firms because the economic literature in the mid-1980's indicated there was general agreement that if four firms had 40 percent of the market, that market was no longer competitive. We realized that this selection was somewhat arbitrary, but it has provided a useful benchmark.

When we began collecting the data in the mid-1980's, this information was relatively easy to obtain in trade journals, government reports, annual reports from corporations and other secondary sources. Over time, this information has become more difficult to obtain. Trade journals have come under pressure to not publish some of this information and government agencies often say that to reveal the proportion of a market controlled by a single firm in such a concentrated market is revealing proprietary information.

I once appeared on a panel to discuss the concentration of the beef sector with three others. Each of us had a different percentage of the market controlled by the largest four beef slaughtering firms. We agreed on the largest four firms and their ranking, and differed only slightly on the percentage of the market the four controlled. The range of difference was only about 6 percent and probably not really significant because we all agreed the top four had at least 75 percent of the market. Yet as a social scientist, I am uneasy about such differences. Differences of this magnitude can (and should) raise questions about the legitimacy of such research. We work hard to get these numbers and I'll defend the trends we highlight from the data, but I cannot defend each percentage.

The fact that these "CR 4 Tables" (see tables attached to this report) have become popular indicates that most people have not found information on market share to be very accessible. In a democracy where we expect the citizens to be involved in setting national policy, it is absolutely necessary that they have accurate information on some of the major drivers of change. At times I have appeared publicly with persons from some of the firms listed in our tables. My initial comment is that if my data differ from the data of the representative of the large firms, the audience must accept the data from the firm because primary data always trump secondary data and I only have access to secondary data. The public must have better data. I would urge Congress to seek better data and make it available to the public as it begins to debate the relationship between concentration and agricultural policy and rural issues.

Data in the table indicate that four firms control over 40 percent of the processing of the major commodities produced in the Midwest. In addition, a few firms appear in the list of the top four processing firms for several commodities. For example, ConAgra is on the list of top four processing firms for beef, pork, turkeys and sheep, as well as seafood, a commodity not listed in the tables. This year it has slipped to fifth place in broiler production and processing. The data also begin to suggest the vertical integration in the food system. For example, Cargill ranks in the top four firms producing animal feed, feeding cattle and processing cattle.

The data do not reveal the extent of vertical integration in the food system in the United States or the complex web of interactions among the top firms. This data cannot even attempt to address the global nature of the food system. In an effort to communicate the complicated interaction between the firms and reveal the structure of the food system, we have attempted to diagram some of the formalized working relationships between the dominant firms in the global food system. This information does not begin to exhaust the list of mergers, joint ventures and side agreements. We have only scratched the surface. These data are exploratory, but suggest the type of information needed to understand the concentration of the global food system.

We have already noted the difficulty of getting information in this country. Getting global information is far more difficult. To understand the U.S. food system, one must understand the global food system; to understand the global food system, one must understand the operations of the major global firms such as Cargill, ADM, and ConAgra. Cargill has operations in 70 countries and is a privately held firm. How do we get all of the necessary information? We have exposed the tip of the iceberg, but exposure only indicates the type of information needed to understand the global food system.

The major concern about concentration in the food system focuses on the control exercised by a handful of firms over decisionmaking throughout the food system. The question is who is able to make decisions about buying and selling products in a marketplace. The focus of economic power is usually placed on the individual firm and its market share. For some of the global firms, this is still somewhat appropriate. However, decisionmaking can also be exercised through the various relationships in which a firm is involved even if it does not hold a majority share. The changing nature of the food system suggests that relationships among the firms are becoming much more complex and much more important.

In the past, most of the global grain firms were family held operations that tried to maintain low visibility and were quite secretive about their transactions. These firms operated in one or two stages of the food system and in a very few commodities. Today the system is becoming much more complex starting with involvement in biotechnology, extending through production, and ending with highly processed food. Increasingly, these firms are developing a variety of different alliances with other players in the system. Acquisition is still a common method of combining two or more firms, but mergers, joint ventures, partnerships, contacts, and less formalized relationships, such as agreements and side agreements, are also utilized. We will use the concept "cluster of firms" to represent these new economic arrangements.

We have chosen to organize the information around the emerging clusters of firms that control the food system from gene to supermarket shelf. The term "alliance" is frequently used to suggest the "seamless system" which describes the emerging, fully vertically integrated food system from gene to shelf. Within this emerging system, there will be no markets and thus no "price discovery" from the gene, fertilizer processing and chemical production to the supermarket shelf. The only time the public will ever know the "price" of animal protein is when it arrives in the meat case. As this system evolves, even the price of the livestock feed and its ingredients, such as the corn, will not be known to the public, because like today's broilers the product will not be sold. The firm owns the chick and sends it to their processing facility from which it emerges, perhaps in a TV dinner. However, the prices along the line of production are never discovered until the chicken is sold to the consumer. In a food chain cluster, the food product is passed along from stage to stage, but ownership never changes and neither does the location of the decisionmaking. Starting with the intellectual property rights that governments give to the biotechnology firms, the food product always remains the property of a firm or cluster of firms. The farmer becomes a grower, providing the labor and often some of the capital, but never owning the product as it moves through the food system and never making the major management decisions.

The system is still evolving and it is not yet possible to determine how many clusters may evolve, but experiences in other economic sectors, like the auto industry, suggest we seldom see monopolies evolve. Even at the global level, where there are no anti-trust regulations, oligopolies, not monopolies, tend to emerge. We are predicting the development of four or five food clusters, because the number of clusters will be heavily influenced by the number of firms who have access to the intellectual property rights. The underlying assumption here is that biotechnology will be accepted by most nations of the world, an assumption that may not be valid, because this acceptance is still in question in some countries. We will make this assumption here because the monopoly power that accompanies the intellectual property rights that leads to control of the gene pool will be most difficult for any new or emerging cluster to obtain. We are certainly open to a critique of our starting point. Disagreeing with our point of departure for the sake of organizing the data should not influence the relevance of the data we use to describe the evolving system.

THE FOOD CHAIN CLUSTERS

Cargill/Monsanto

Monsanto is one of the leading biotechnology firms. The joint venture between Monsanto and Cargill announced in 1998, clearly established one of the clusters. Cargill had already established its own food chain over the past several years by planned acquisitions. It was one of the largest seed firms in the world with seed operations, including research operations, in twenty-three countries of the world. However, Cargill did not have access to biotechnology and the new genetic products it would produce. As the Wall Street Journal (9/29/98) pointed out, "most seed companies have either aligned themselves with, or been acquired by, crop-biotechnology juggernauts such as Monsanto Co., DuPont Co. and Dow Chemical Co." Thus, they sold their international seed operation to Monsanto and their domestic seed operation to AgrEvo, a Berlin-based joint venture between Hoechst and Schering (Wall Street Journal 9/29/98). Cargill then formed a joint venture with Monsanto, the company that had the intellectual property rights to develop the genes and had a very comprehensive array of seed firms (Knight-Ridder/Tribune 7/28/98).

Perhaps most importantly, the Cargill/Monsanto cluster is now in the process of obtaining control of the "terminator gene" that can be inserted into plants to cause all of their seeds to be sterile. No longer will Monsanto have to depend on access to farmers' fields for collection of tissue samples to make sure farmers do not keep any seed from 1 year's crop to plant the following year. Use of the terminator gene will mean that all crop farmers must return each year to obtain their seed from seed firms, just as corn producers have done for the past half-century.

There are two points to be made from the above scenario. The first point is that the reorganization of the food system is very dynamic and new technologies and other changes coming from outside the system can greatly disrupt the plans and organizational structure that a firm or cluster has developed. The second point is that a firm the size of Cargill has access to such large sums of capital that it can usually acquire whatever assets are necessary to survive. In addition, they are recognized as such formidable firms in the system that they can easily find other partners eager to join with them because the new partner is also eager to remain an active player in a food chain cluster. The Cargill/Monsanto cluster brings together giants in their respective stages of the food system. They needed each other to be a part of a complete cluster. They have a complete food chain, but they realize that very few clusters will survive so they continue to actively pursue other firms through acquisitions, joint ventures or other arrangements to increase their economic power.

The most recent proposed acquisition is the grain merchandizing division of Continental Grain. This acquisition brings with it almost 70 inland grain elevators and seven export terminals (Wall Street Journal, 11/10/98). The acquisition of Continental's grain division would appear to be relatively inconsequential if one examines the elevator capacity in bushels or the number of facilities, two items that are often used as indicators of "point of first purchase of grain" (purchase of grain directly from farmer). In certain regions of the country, such as along the Illinois and Ohio rivers, Cargill's acquisition does limit a farmer's choice to either Cargill or ADM. The largest four firms (Cargill, ADM, Continental Grain and Bunge) only have 24 percent of the elevator capacity in bushels and 39 percent of the facilities.

The importance of the merger becomes more obvious when the data show that the four firms control almost 60 percent of the port facilities. The Cargill acquisition of Continental would mean that Cargill "would control more than 40 percent of all U.S. corn exports, a third of all soybeans exports and at least 20 percent of wheat exports." (Grainnet, 12/1998). At the global level, the merger combines what was reported at the start of the decade to be the largest two global grain traders (Knight-Ridder/Tribune Business News, 11/10/98). The emergence of ADM as a major global grain trader came through the acquisition of parts of Louis Dreyfus (originally a joint venture involving ADM leasing elevators) and Pillsbury (a part of Grand Metropolitan, a British firm that merged with Guiness). Bunge was third for a time, but a joint venture to share wheat handling facilities between ConAgra and Farmland Industries and the alliance between Cenex-Harvest States directly to ConAgra (through Peavey), and indirectly to Farmland, has reduced the number of global grain traders during the past decade.

The pressures causing a firm like Cargill to continue to seek to enlarge its cluster is perhaps best summarized in a quote from the Wall Street Journal (11/10/98 p. A3):

> As grain handlers go, Continental Grain is at a big disadvantage because it doesn't have the facilities to mill and refine crops into higher-value products, such as flour and high-fructose corn syrup. When U.S. exports slow, as they have this year [1998], Continental Grain can't shift crops to domestic uses in the same way that Cargill and Archer-Daniels-Midland Co. can. Cargill and Archer-Daniels are major grain processors . . .
>
> For Cargill, a deal with Continental Grain would increase the number of its grain-gathering facilities all along the Mississippi River and in important exporting ports such as New Orleans. In 1996, Continental Grain operated 70 in-

land grain elevators and seven export terminals. It isn't clear whether Cargill would close some overlapping operations.

Cargill's interest in Continental Grain follows several moves by Archer-Daniels of Decatur, Illinois, to increase its grain-storage capacity through joint ventures and acquisitions. Industry officials said Archer-Daniels can top about 500 million bushels of grain worldwide. A pact with Continental Grain would allow Cargill to directly access more grain than Archer-Daniels currently can.

Continental was also feeling the pressures of a changing food system. According to the Wall Street Journal (11/11/98, pA10), Continental CEO Paul Fribourg was convinced that his company could not continue as a grain handler because of competitors expanding into "the more-profitable businesses of milling and crop biotechnology." In fact, the company considered merging with a commodity processor before selling the business to Cargill. The deal raises some interesting questions. What does ContiGroup, the remainder of Continental, plan to do for access to grain for feeding its hogs, cattle and poultry and where does it plan to get its cattle slaughtered? Does ContiGroup feel it can add to its processing capacity to meet its growth projections and compete with Smithfield, IBP, ConAgra and Cargill and the clusters it is joining? Is there some side agreement that has not yet been made public which will include ContiGroup within the Cargill/Monsanto cluster? What happens to the alliances Continental had with Harvest States (Tacoma Export Marketing Co.), Optimum, a joint venture with DuPont/Pioneer, ContiPasz, a feed company in Poland, and its venture with Quincy Soybean Company, now owned by ADM?

Industry analysts suggest one of the reasons Cargill needs more facilities is to position the company as a major grain trader as identity-preserved products come on line. Those promoting value-added opportunities for farmers have suggested that small, single facility firms, like new generation cooperatives, might find a niche in the handling of identity-preserved products because the big grain traders could not or would not come into such small markets. With the additional facilities Cargill has just acquired, it is in position to utilize a facility in the center of a farming region that could produce the new product and contract with surrounding farmers for the product. Cargill could use marketing contracts or production contracts much like it does in the poultry sector.

Reports suggest Cargill paid about one billion dollars for Continental (Wall Street Journal, 11/11/98 p. A10). That is only about half of their 1998 income. Cargill could buy two operations the size of Continental's global grain division with 1 year's earnings. That is economic power. There is freedom of entry into the global food system for those firms that can match that level of purchasing power. Cargill's corporate goal is to double in size every 5 to 7 years that it says it has achieved for the past 40 years. Since the major firms in these clusters expect to make at a 20 percent return on their equity, the Cargill goal is very similar with other such firms.

ConAgra

With diversified interests ranging from "farm gate to dinner plate," a ConAgra subsidiary can be found along most links of the food chain. ConAgra is one of the three largest flour millers in North America and ranks fourth in dry corn milling in the U.S. The company produces its own livestock feed and ranks third in cattle feeding and second in cattle slaughtering. It ranks third in pork processing and fifth in broiler production and processing. In its 1997 Annual Report, ConAgra explained that its United Agri Products (UAP) business is a leading distributor of crop protection chemicals, fertilizers and seeds in the U.S., Canada, Mexico, Chile and U.K. UAP is moving into new markets around the world, such as through a joint venture with Zeneca Agrochemicals (now AstraZeneca) in the Cape region of South Africa which will establish a base for UAP growth on the African continent. ConAgra's annual report also noted that UAP is a leader in the distribution of new biotechnology products, principally seeds. As part of ConAgra, UAP identifies new applications for biotechnology in the food industry and provides links to other ConAgra companies, which can capitalize on the application potential for consumers.

In the handling and transportation of grain, ConAgra owns about 100 elevators and 1,000 barges and 2,000 railroad cars. ConAgra's grain trading company, Peavey, is ranked third in ownership of U.S. covered barge fleet. American Commercial Barge Lines, Inc., is No. 1, followed by Artco, a company owned by Archer Daniels Midland. According to the trade journal Feedstuffs (9/95), these top three controlled 53 percent of the nation's covered barge fleet.

Despite ConAgra's long history of being a company from "seed to shelf", we are unsure of the direction of their food chain cluster, although hints are to be found in their annual report. One indication is ConAgra's Agri Products division teaming with DuPont in a group of joint ventures, about a dozen developmental businesses.

According to a New York Times article (10/30/97), ConAgra's range of expertise may make it especially attractive to potential business allies like DuPont. For example, DuPont has relied heavily on ConAgra for the initial commercialization of its new high-oil corn. Once United Agri Products found farmers to grow the corn under contract, ConAgra's chicken operations bought the grain.

Relationships that exist between the food chain clusters also complicate any kind of explanation of the food system. For example, ConAgra and ADM formed a joint venture in mid 1998 to operate the Kalama grain export facility in Washington State. The new company, owned 50–50 by the two giants, is known as Kalama Export and operates one of the most efficient export facilities on the West Coast. The facility was built by ConAgra and operated under its auspices from 1983 until the joint venture formed. In another grain-based alliance, ConAgra and Farmland Industries have linked together to improve both companies' services to farmers and grain marketing and export activities. The new alliance will consist of two entities, Concourse Grain and Farmland-Atwood. Concourse Grain will operate two ConAgra export elevators and two Farmland elevators (one export, one interior) and will market wheat originated by the two companies. This alliance will enable domestic and wheat customers to access multiple classes of wheat, and international customers to be served from multiple U.S. export points. Prior to these grain ventures, ConAgra created a joint venture with Harvest States Cooperatives in 1994 to operate three elevators in Iowa and two export grain terminals in Louisiana. The 50–50 partnership, called HSPV, was expected to improve efficiency and flexibility in grain origination, shipment and handling of grain exports for both Harvest States and ConAgra's grain export company, Peavey (Feedstuffs 9/12/94).

ConAgra follows the processing of food farther down the food chain than Cargill and ADM, ultimately selling labeled food items that most consumers would recognize such as Armour, Monfort, Swift, Butterball, Healthy Choice, Peter Pan Peanut Butter, Hunt's, and many others. It currently ranks second behind Philip Morris as the leading food processor in the U.S. In its 1998 Annual Report, ConAgra noted 18 consecutive years of earnings per share growth at a compound rate of 15 percent. Fiscal 1998 sales totaled $23.8 billion and fiscal 1998 operating profit, $1.6 billion. Chief executive Bruce Rohde, who succeeded Philip Fletcher in September 1997, has set a goal of making ConAgra the world's largest and most profitable food company by the year 2005. This means passing not only Philip Morris, but also world-leader Nestle of Switzerland.

ConAgra's growth during the 1990's has been accomplished through a strategy of acquisitions, divestitures and adding value to their products. Under the leadership of Philip Fletcher, the company's practice was to have 80–100 acquisition candidates in screening at all times. ConAgra was able to report in 1998 that it had acquired or created joint ventures with approximately 150 companies during the past 10 years.

Novartis/ADM

Novartis is a Swiss firm formed by the merger of CIBA-Geigy and Sandoz in late 1996. According to their 1997 Annual Report, the company has agribusiness operations in 50 countries worldwide. Their "agriservices" are primarily in crop protection chemicals, seeds and animal health. The merger of the two large chemical firms—plus the acquisition of Merck in 1997—puts Novartis in the leading position in the global agrochemical field with sales of $4 billion in 1997 (Chemical Week 5/21/97). This left Monsanto (not including its recent buying spree), Zeneca (a British firm that recently merged with a Swedish firm to create AstraZeneca) and DuPont all vying for second place in the global agrochemical field. In 1997, Europe Chemical News (4/28/97) estimated that Novartis had 15 percent of the global agrochemical market. Moreover, the company "has the largest R&D budget in the life sciences industry" according to their own press release in May 1997. Their emphasis on R&D is also reflected in their collaboration with the University of California-Berkeley, where they recently signed a 5-year $25 million research agreement to work "in all areas of functional genomics related to agriculture, including gene-library construction, sequencing, mapping and bioin-formatics." (Chemical Market Reporter 11/30/98)

The Novartis/ADM connection is established through Novartis joint venture with Land O' Lakes to develop specialty corn hybrids for the food and feed markets. Novartis purchased a 50 percent interest in Wilson Seeds Inc., a subsidiary of Land O' Lakes. The joint venture will also acquire genetics from Sturdy Grow Hybrids, already in a venture with Novartis to introduce a white corn hybrid with the Bt trait (PR Newswire, 10/14/98). Land O' Lakes maintains an alliance with Growmark (energy products) and recently took over Countrymark, a major eastern Corn Belt cooperative, both of which are in joint ventures with ADM. The link between

Novartis/ADM is somewhat tenuous because Countrymark did not include their grain marketing division in the joint venture, a division that is already in a grain joint venture with ADM. However, the point is that the Novartis/ADM cluster, unlike Monsanto/Cargill, is really predicated on relationships with farmer cooperatives.

Though some might dismiss this Novartis/ADM connection as insignificant, one must raise the question of what these relationships could indicate in the future as firms jockey for position in these food chain clusters. First, ADM, with its vast network of processing facilities, lacked access to farmers, a problem the firm remedied through a long-standing joint venture with Growmark and the more recent ones with Countrymark, Riceland, and United Grain Growers. The Growmark and Countrymark joint ventures, for instance, give ADM access to 50 percent of the corn and soybean market region, and 75 percent of Canada's corn and soybean market region (Feedstuffs 8/12/96). The 42 percent share ADM gained in United Grain Growers—a former cooperative that is now publicly owned with major stakeholders also being the Alberta and Manitoba wheat pools—gives ADM widespread access to farmers in western Canada.

For the cooperatives who lacked the muscle of large firms in downstream processing—as in the case of Minnesota Corn Processors, a new generation wet corn milling cooperative that sold a 30 percent non-voting share to ADM—ADM offered a far-flung global network in which to sell their grain. No one put it more succinctly than the president of Harvest States, who said when the Cenex-Harvest States merger was announced, that "agriculture cooperatives must operate today 'in a land of giants' where capital and scale 'are absolutely necessary' . . . in a market where corporate multinationals rule." (Feedstuffs 11/24/97) ADM's own partner, Growmark's CEO Norm Jones, commented that the joint ventures with ADM positioned Growmark and Countrymark in the global agricultural industry, which represents the only expansion possibility for most cooperatives. (Feedstuffs 8/12/96) ADM has also used joint ventures with cooperatives such as Goldkist and Ag Processing Inc. (AGP) in the feed business. A spokesperson for Consolidated Nutrition (ADM's joint venture with AGP) said that cooperatives "recognize the importance of partnerships as instruments to be competitive in an industry consolidating as substantially as the feed industry." (Feedstuffs 12/22/97)

The Novartis/ADM connection is also important because Novartis—while a truly global and powerful company with substantial sales in chemical, seed, animal health and human nutrition products—lacked access to further processing in either grain commodities or food products. Novartis will need ADM's grain handling and processing web to be able to guarantee producers using their seed stock a downstream market. ADM, on the other hand, lacked access to biotech and needs Novartis' genetics, seed stocks and chemicals. As spokesman Martin Andreas of ADM said in a Feedstuffs interview (1/12/98) "'If you're not plugged into the global market today,' a company will have limited opportunity to prosper. . . . An international network 'is critical [and] if you are not tied into an international system, then you are not a traveler.'"

Novartis' genes, seeds and chemicals compliment ADM's far-flung grain collection and processing network, created through the aggressive pursuit of joint ventures and alliances in Europe and Latin America. ADM's stake in A.C. Toepfer, one of the world's largest grain trading firms, and Dwayne Andreas' claim that "my partners in the EU are 12 of the biggest farmers' cooperatives in the world . . ." [1] allowed ADM to process 45 percent of the commodities entering Eastern Europe from the West in 1993. ADM has also pursued joint ventures and acquisitions in Latin America in the last few years. Just their purchase of parts of Glencore's holdings in Brazil and Paraguay generated a 4 percent increase in their share of the world's soybean trade (Feedstuffs 6/9/97). Moreover, they maintain joint ventures in a variety of different commodity processing and feed operations in Brazil, Paraguay, Bolivia and Mexico—and these are the alliances that are most easily documented. ADM has also advanced into the Chinese market through its oilseed refining, feed and broiler processing operations, where ADM is the junior partner with the Chinese government and a local processor. In discussing China's dilemma of balancing the need for food security or economic security, Martin Andreas, ADM's spokesman, commented "It means that China is resigned to importing food and paying for it with products made from their overabundant supply of cheap labor." (Journal of Commerce 2/17/98)

While ADM appears to be firmly networked at the commodity processing level, what is not so apparent is how they are going to substantially enter branded food

[1] Bovard, James. 1995. "Archer Daniels Midland: A Case Study in Corporate Welfare." Cato Institute Policy Analysis #241.

products—as ConAgra has done—or production and processing in the livestock sector. ADM's venture into production and processing of livestock has been undertaken through their joint venture with AGP, Consolidated Nutrition, which has sow production on line, as well as ADM's steady increase of its stake in IBP, the largest U.S. beef packer and second largest U.S. pork packer. Although data are not readily available, IBP appears to have contracts with large feeding operations to guarantee captive supplies of beef—and some pork although not as widespread as beef contracts. In a more surprising move, ADM has chosen to decrease its holdings in Pilgrim's Pride to 6.4 percent, a firm in which they had an almost 20 percent stake in 1992 according to Feedstuffs (7/13/92), at the same time they maintain a broiler processing plant in China. IBP has also moved into the Chinese market, bringing a fully integrated pork production and processing facility on line in 1997 (IBP Annual Report). We are not sure what this means in terms of the food chain cluster for beef, pork, turkey or broiler production and processing. Are Smithfield and Tyson poised to join this chain? Or will they move somewhere else while ADM pursues its relationship with IBP?

It is clear that we have only scratched the surface of the Novartis/ADM/IBP cluster. Data are very difficult to obtain, particularly reliable data about global operations. For instance, who are ADM's EU cooperative partners, besides the ones we have listed? How do ADM's operations in China impact farmers in the United States? What role does ADM's own brokerage firm, among the top 40 largest in the US, play in currency and grain futures trading, particularly when ADM is a major grain handler and processor in Europe, North and South America and Asia?

Finally, the development of feed additives and other derivatives from wet corn milling remains a fascinating and potentially lucrative market as shown by Cargill's interest in entering the additives market through joint ventures with firms like Degussa. ADM is quite powerful in the production of lysine and citric acid—as evidenced by their recent legal troubles in the U.S. and EU in regards to both products—and is gaining ground in such new products as Vitamin E and soy isoflavones. The key question, which none of the major cluster firms has yet addressed, is what happens with further processed branded food products and supermarket sales? Novartis has their Gerber baby food, ADM has Haldane foods in Britain and their continuing production of Harvest Burger vegetarian alternative for Worthington Foods in the U.S., and IBP acquired institutional processor and supplier FoodBrands Inc. However, none yet have the presence of ConAgra—or Philip Morris for that matter—on the shelf or in the cooler in supermarkets. These questions still remain and are particularly relevant to public policy debates.

MOVING BEYOND THE DATA

There are a host of major players in the food system which are not included in our three food chain clusters. Some have already begun to form alliances and others are still acting in a rather individualistic manner. Most likely, some of these will join together to form new food chain clusters, while others may join the clusters we have identified. Pioneer and Mycogen can form the anchor for other chains. Firms like American Home Products, DuPont, Dow, AstraZeneca, and Aventis, a recent joint venture of Rhone-Poulenc and Hoechst-Schering, are likely to join a cluster, as are some of the fertilizer firms. Bunge, a major grain trader, and some major animal production and processing firms like Tyson, Perdue, Smithfield and its alliance members Carroll's Foods and Murphy Family Farms, might well develop a working relationship. There are already relationships between many of these firms for which we have not indicated a cluster and some of them have or have had relationships with firms in the three clusters we have identified.

Watching the clusters develop by forming new relationships and breaking some of the old and speculating on what other relationships might develop is like watching a chess match and trying to anticipate the players' next moves. In this game, there can be four or more winners. The system is very dynamic. However, a look at the list of acquisitions and mergers during the past decade, or as we have shown within the last 5 years, suggests far more names were lost as firms joined another management unit than new names emerged. Many of these new names are simply the realignment of existing firms.

The diagrams help to communicate three points. The first is that a very small number of dominant food chain clusters appear to be emerging. Some are organized around one or two dominant players as exemplified in the cases of Cargill/Monsanto and ConAgra, which is only loosely connected to a biotechnology firm. The Norvartis/ADM/IBP case suggests another method of building a food chain cluster that is probably the path many of the major key players not yet involved in a cluster will follow. At least during the formative period, a dominant firm from the biotechnology area, one from the grain trading and processing area, and one from the meat production and processing develop a working relationship that is a bit more tentative than a merger. We are not suggesting these relationships are set in stone, even acquisitions can be sold. But the freedom of entry is restricted.

The second point is that the food system is becoming very complicated and difficult to describe. The complication in describing the system results from the fact that there is not a group of individualistic firms out there competing with one another. We are especially interested in all the relationships that exist within the clusters and those crossing from one food chain cluster to another. Some of these are the result of firm A having a relationship with firm B, and then developing a new relationship with firm C. But some of the relationships crossing cluster boundaries are new. The whole system is woven together by a host of working relationships between firms and, at least for the short run, the system looks pretty fluid. One is left asking the question: just how much competition is there in the system? We know there are examples of rivalry between firms and in some cases the firms are spending millions of dollars in court to settle their differences. Maybe the society would benefit most if the differences were to be settled in a competitive market! Knowing that Nippon Meats of Japan has a 12 to 15 year joint venture with Cargill producing broilers in Thailand makes it hard to believe there are not some constraints in the competition they exercise in this country as Nippon becomes a hog producer and processor in United States.

The third point is that as the food chain clusters form, with major management decisions made by a small core of firm executives, there is little room left in the global food system for independent farmers. The experts, even the leaders of cooperatives, are telling farmers they must give up their independence and join an alliance. This is another way of saying "give up your decisionmaking prerogatives to the food chain cluster if you want to maintain an economically viable farming operation."

In most of the livestock commodities, the production stage is integrated into the larger food system. Ninety-five percent of the boilers are produced under production contracts with fewer than 40 firms. Essentially, there is no price discovery for chicken feed, day old chicks or live broilers. The food product does not sell at these stages. Basically there is no national market for live broilers. (There are niche markets emerging for range poultry and other specialty poultry, but processing is emerging as a major problem.) The production system is about the same for turkeys and eggs. At the end of low hog prices, which may last for at least another year, there will be few independent hog producers remaining. The issue is not who can produce the hogs the most efficiently. The issue is who has the deepest pockets and market share. Even now, the issue of market access for producers who do not have special relationships with feed or slaughtering firms has become obvious. Twenty feedlots feed about half of the cattle in the U.S. and these are either owned by the slaughtering firms or have contracts with the processing firms. Operators of "independent lots" tell us that they seldom see buyers from more than one firm. Dairy farms are being consolidated, leaving only the cow/calf sector out of the integrated system. The cow/calf sector is the most highly subsidized sector of agriculture, subsidized by non-farm income. The cow/calf producers without access to non-farm income are facing economic hard times.

The movement toward increasingly differentiated products is bringing more contracts into field crop production. Two recent technologies will hasten the process of vertical integration in the crop sector. The first is biotechnology and the terminator gene that places the farmer at the mercy of the food cluster for seed to plant the crop. If the firms in the processing stage of the cluster require specific genetic material and the farmer cannot get that seed, he/she has no market access. The second technology is precision farming's global positioning system. It is no longer necessary for the farmer to have personal contact with their land and crop to make appropriate management decisions. Most of the decisions can now be made in the farmer's office. Any decisions that can be made without contact with the land and the crop can be made in an office in a distant city. In the not too distant future the person operating the corn planter will not know much about the genetic material of the corn being planted—just like the broiler grower does not know about the genetic stock of the birds he/she feeds. As the "farmer" watches the big truck with the computer on board reading from a satellite, he/she will not know much about the fertilize or chemical being applied to the field—just like the grower does not know much about the feed fed to the birds he/she cares for but does not own. The crop farmer will be paid on a piece rate basis just like the grower.

Increasingly we hear about the need for only 20,000 to 30,000 farms in the United States to produce for the global food system. The next question becomes what is a farm? In business ation Administration literature, firm usually applies to a management unit. Traditionally the term farm has also referred to a management unit. If the integrating firm becomes the management unit as is implied in the case of broiler production, how many farms will there be in the United States in the future?

CONCERNS ABOUT THE FOOD SYSTEM

Many different groups and individuals in this and other countries are raising serious concerns about the globalizing food system. One concern focuses on the consequences for rural communities of this restructuring.

Today, most rural economic development specialists discount agriculture as a contributor to rural development. The major reason why agriculture contributes so little to the community is because of the emerging structure of the food system. In a family business, such as family farm, a family grain elevator, or a family grocery store, the family subtracts its annual expenses from its income to determine profits that are then allocated among labor, management and capital. For the economic well-being of the family and the rural community, it makes little difference how the profits are allocated among the three costs of labor, management and capital. The local family spends much of the "profit" in the local community. In addition, when the rural community retained all of income related to the three factor of production, the funds circulated more in the community. Not just the family farms, but all of the family businesses providing the agricultural infrastructure contributed to the economic well-being of the community. In the past when family businesses were the predominant system in rural communities, researchers talked of multiplier effects of three or four. Newly generated dollars in the agricultural sector would circulate in the community, changing hands from one entrepreneurial family to another three or four times before leaving the rural community. This greatly enhanced the economic viability of the community.

Large non-local corporations, whether hiring labor as wage earners or piece rate workers as in the case of growers, see labor as just another input cost to be purchased as cheaply as possible. The "profits" then are allocated to return on management and capital and are usually taken from the rural community. They go to the company's headquarters and are then sent to all corners of the globe to be reinvested in the food system. One can ask the question, why were agriculturally based rural communities, with an ample natural resource base, more economically viable than mining based rural communities which also had an ample natural resource base? The answer lies primarily with the economic structure of the major economic base. Increasingly, our agriculturally based communities, like regions with major poultry operations, are looking like mining communities.

Increasingly, the major decisions in the food system are being made by an ever-declining number of firms, a growing number of which are involved in the food system clusters. They are primarily concerned with maximizing their profits. That is the purpose of such corporations. ConAgra says its major mission is to increase the wealth of its stockholders. But, these firms are in position to decide which people in the world will eat. Their decisions are based on whether one has the money to buy food. We hear a lot about the growing population of the world and how feeding the increasing millions will provide great opportunities for farmers in the United States. The problem is that much of the population increase is in the "have-not" nations of the world, in countries where the people earn only a few hundred dollars a year. These families cannot afford to buy imported food! The global firms travel the world "sourcing" their products from those countries where they can get the product the cheapest and selling them into the countries that will pay the most. This raises the question of whether the countries with rapidly growing populations will be our farmers' customers or their competitors.

One hears a lot about agri/food exports from the United States and the potential benefits for our farmers. Much less attention is given to United States food imports. On a dollar basis, the exports and imports have been growing at about the same level for the past two decades. This means that on a percentage basis, imports have been increasing more rapidly, because imports started at a lower dollar value. For example, about one-third of the vegetables consumed in this country are imported. The United States is also a net importer of beef.

Issues of food quality and especially food safety are also receiving increased attention. Perhaps the bigger issue is whether the global food system is sustainable. The production, processing and distribution stages have all been built on cheap petroleum. Considerable debate exists on when the world's petroleum resources will be depleted, but most agree the price will begin moving up in the not-too-distant future. Will the resulting price shocks cause the whole food system to restructure again?

Another question being asked, given the financial problems faced by some nations, is: What would happen if the United States were to experience a depression like that of the 1920's and 1930's? A depression is a major disorganization of the economic system. Think for a moment what that would mean in a system of "just-in-time delivery." Will food products get to the stores on a regular schedule? Will my neighbor be able to get a replacement engine from England for his new New Holland combine if it breaks down during harvest? Will the seed, chemicals and fertilizer, coming from all parts of the world, get to the farmer in time? A shutdown of the agricultural production system for a few weeks can have quite different consequences than shutting down an automobile assembly plant for the same amount of time. A lengthy delay in agricultural production could mean the loss of the year's crop.

The control of the animal genetics pool is also concentrating and the genetic base for domestic animals is narrowing. For example, over 90 percent of all the commercially produced turkeys in the world come from three breeding flocks. The system is ripe for a new strain of avian flu to evolve for which these birds have no resistance. Similar concerns exist in hog, chicken and dairy cattle genetics.

These are food issues and not just agricultural and rural issues. The global food system is becoming more like many of the other economic sectors. But food is different from all other goods and services exchanged in the international market. Food is a human necessity and it is needed on a regular basis. Those who control the global food system have the ultimate in economic power. As Dwayne Andreas, former chairman of ADM, said:

> The food business is far and away the most important business in the world. Everything else is a luxury. Food is what you need to sustain life every day. Food is fuel. You can't run a tractor without fuel, and you can't run a human being without it either. Food is the absolute beginning. (Reuters, 1/25/99)

One hears much about "niche markets" as new opportunities for farmers. Such opportunities do exist. There is a major rebirth of farmers' markets, local food routes, subscription sales and other forms of direct marketing between farmers and consumer, with small processors involved when needed. As the food firms get larger and cover wider geographic and cultural areas, they leave behind a growing number of small markets they do not serve. The more consumers learn about the ways their food is grown in far away places, the more many of them are concerned with where their food is produced, who produces it, and how it is produced. The structural vulnerability of the emerging food system is called into further question when one remembers the situation in the former Soviet Union. The Western world began to realize there were major problems in the centralized food system of the former Soviet Union when it was learned that small farm plots were producing a significant proportion of the country's food. Large centralized organizations have problems adapting to change. They commonly have problems with management, with coordination, and with worker satisfaction.

These are good reasons to predict that the evolving system is vulnerable. It will probably be restructured again in the future. A vulnerable food system will most likely be "restructured" numerous times in the future—but at what social and economic cost to whom? When "restructuring" occurs, some people pay a very high price for the changes. It is highly questionable whether society as a whole really benefits.

If the number of farms is reduced to about 25,000 in the next decade, there will be many farm families who will be involuntarily removed from their land. In the mid 1980's, Congress allocated funds for helping the families who followed the advice of the experts and by doing so lost all of their assets. These funds were used wisely and they helped many families during their transition from the farm. The motto then was "We may not be able to save every family farm, but we can save every farm family."

Perhaps the policy emerging from this dialog on concentration in the food system can lead to a new system that will save both. Just a quarter of a century ago, our decentralized system of agricultural production was held up as a model for the world.

The centralized food system that continues to emerge was never voted on by the people of this country, or for that matter, the people of the world. It is the product of deliberate decisions made by a very few powerful human actors. This is not the only system that could emerge. Is it not time to ask some critical questions about our food system and about what is in the best interest of this and future generations?

CONCENTRATION OF AGRICULTURAL MARKETS
January 1999

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"CR4" is the concentration ratio (relative to 100%) of the top four firms in a specific food industry. Fifth and sixth top companies are occasionally shown as supplemental information.

BEEF PACKERS [CR4 = 79%]*	Capacity/Day*	Plants*	1990	1995	1998
1. I B P Inc.	38,800	13	72%	76%	79%
2. ConAgra Beef Companies	23,600	8			
3. Excel Corporation (Cargill)	21,800	5			
4. Farmland National Beef Pkg. Co.	8,700	2			
5. Packerland Packing Co.	4,750	3			CR5 = 83%

Source: *Beef Today (Nov-Dec 1998)

CATTLE FEEDLOTS*	Head Office	Capacity / Feedlots
1. Continental Grain Cattle Feeding	Boulder, CO	405,000 / 6 lots
2. Cactus Feeders Inc.	Amarillo, TX	350,000 / 6 lots
3. ConAgra Cattle Feeding	Greeley, CO	320,000 / 4 lots
4. National Farms Inc.	Kansas City, MO	274,000 / 7 lots
5. Caprock Industries (Cargill)	Amarillo, TX	263,000 / 4 lots

Source: *Beef Today (Nov-Dec 1998)

NOTE: At end of 1998, the top 30 operations had pen space to feed 4.89 million head of cattle.

PORK PACKERS [CR4 = 57%]*	1987	1989	1990	1992**
1. Smithfield (Gwaltney, Cudahy, Morrell, Lykes)	37%	34%	40%	44%
2. IBP Inc.				
3. ConAgra (Swift)				
4. Cargill (Excel)				
5. Farmland Industries				
6. Hormel Foods				

**Packers & Stockyards Programs GIPSA, USDA; February, 1996

CR6 = 75% (NYTimes, 1/7/99)

Source: *National Hog Farmer (March 1998)

PORK PRODUCTION	# of Sows In 1998*	Production Base

1. Murphy Family Farms	337,000	NC, MO, OK, IL
2. Carroll's Foods	183,600	NC, VA, IA, UT
3. Continental Grain (inc. PSF)	162,000	MO, NC, TX
4. Smithfield Foods	152,000	NC, VA, UT
5. Seaboard Corporation	125,500	KS, CO, OK

NOTE: The 50 largest producers (assuming their sows each produce 20 pigs a year) market half of the pigs in the U.S.

Source: *Successful Farming (October 1998)

BROILERS [CR4 = 49%]*	*Weekly Production (mil.lb)			CR4			
	1990	1995	1998	*1986	1990	1994	1998
1. Tyson Foods	74	90	155	35%	44%	46%	49%
2. Gold Kist	24	45	55				
3. Perdue Farms	24	42	47				
4. Pilgrim's Pride	16	25	35				
5. ConAgra Poultry	32	35	30				
6. Wayne (Continental Grain)	11	20	25			CR6 = 58%	

Sources: *Feedstuffs (Annual Reference Issues)

TURKEYS [CR4 = 42%]*	Million lbs live		*1988	1990	1992	1994	1996
1. Jennie-O Turkeys	891		31%	33%	35%	38%	40%
2. Butterball (ConAgra)		846					
3. Wampler Turkeys	650						
4. Cargill Turkeys	514						
5. Shady Brook (Rocco)		489					

Sources: *Turkey World (Jan-Feb issues)

ANIMAL FEED PLANTS
1. Cargill (Nutrena)
2. Purina Mills (Koch Industries)
3. Central Soya
4. Consolidated Nutrition (ADM + AGP)

Sources: Feedstuffs, 10/28/91 and 2/21/94

MULTIPLE ELEVATOR COMPANIES [CR4 = 24%]*
1. Cargill
2. ADM (ADM Milling Co.)
3. Continental Grain
4. Bunge

Control by Top Four:
Capacity in Bushels = 24%
Number of Facilities = 39%
Port Facilities = 59%

Source: *1997 Grain & Milling Annual (Milling & Baking News)

FLOUR MILLING [CR4 = 62%]*	Mills	Daily Capacity	**1982	1987	1990
1. ADM Milling Co	30	311,300 cwts	40%	44%	61%
2. ConAgra, Inc.	29	264,900 cwts			

3. Cargill Food Flour Milling	18	223,000 cwts
4. Cereal Food Processors, Inc.	9	82,900 cwts

Sources: *1997 Grain & Milling Annual; **Milling & Baking News, 12/1/92

DRY CORN MILLING [CR4 = 57%]	Plants	24hr. Grind
1. Bunge (Lauhoff Grain)	2	120,000
2. Cargill (Illinois Cereal Mills)	2	95,000
3. ADM (Krause Milling)	2	70,000
4. ConAgra (Lincoln Grain)	3	52,000
5. Quaker Oats	3	45,000

Sources: Corn: Chemistry & Technology (1989)

WET CORN MILLING [CR4 = 74%]*	Plants
1. ADM	4
2. Cargill	4
3. A.E. Staley (Tate and Lyle)	4
4. CPC	3

1977	1982	1987
63%	74%	74%

(Census of Manufacturing)

Source: *Milling & Baking News, 1990 Milling Directory

SOYBEAN CRUSHING [CR4 = 80%]*

	Plants	States
1. ADM	19	12
2. Cargill	16	12
3. Bunge	8	5
4. AGP	6	3

1977	1982	1987
54%	61%	71%

(Census of Manufacturing)

Source: *Feedstuffs (9/22/97)

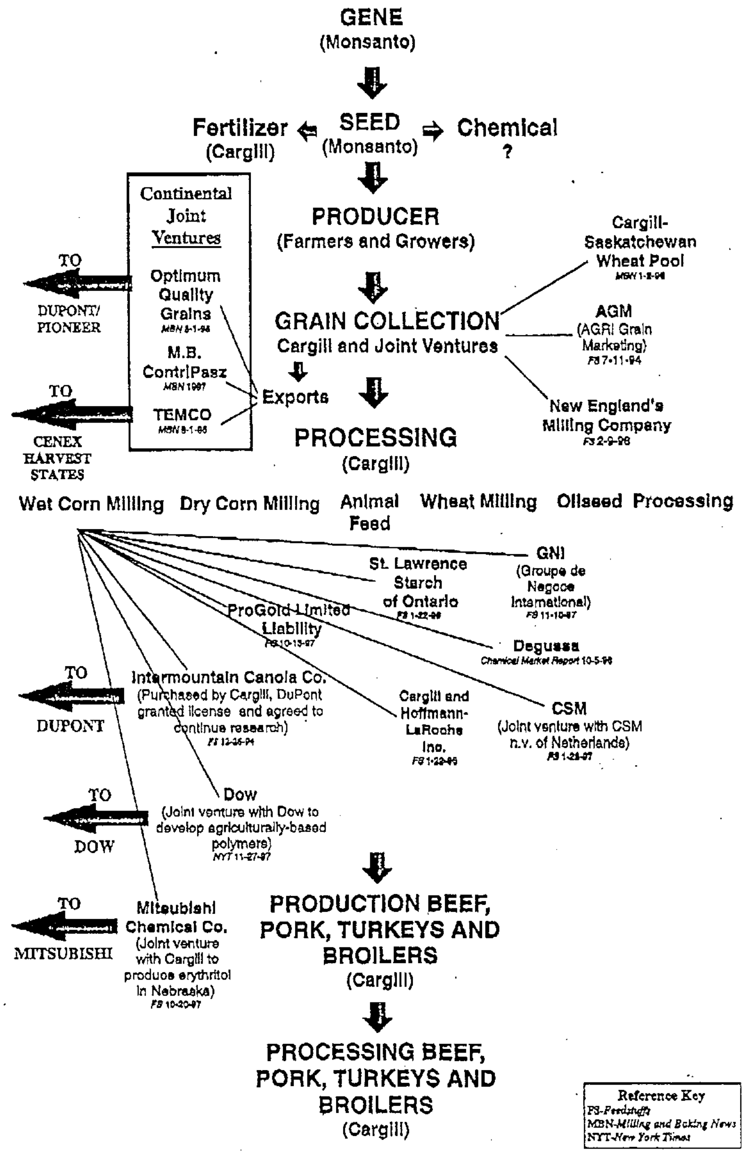
ETHANOL PRODUCTION [CR4 = 67%]*

	*mil.gal/year	locations
1. ADM	750	IA, IL, ND
2. Williams Energy Services	130	IL, NE
3. Minnesota Corn Processors	110	MN, NE
4. Midwest Grain Products	108	IL, KS
5. Cargill	100	IA, NE

Source: *www.ethanolrfa.org/prodcap.html

Cargill/Monsanto

Joint Ventures and Strategic Alliances



Cargill Mergers

1994

"AGRI, Cargill renew partnership for 10-year period"

"AGRI Industries and Cargill, Inc., have renewed their grain marketing partnership, AGRI Grain Marketing (AGM), for 10 years to March 2006...." —*Feedstuffs* July 11, 1994 p. 8

"Cargill forms new unit for grain biotechnology"

"Cargill, Inc., has created a new business unit, the Specialty Plants Products Department, to coordinate increasing demand for specialty grains and other products."—*Feedstuffs* July 11, 1994 p. 7

"Cargill completes InterMountain purchase"

"Cargill, Inc., said it had completed purchase of substantially all the assets of InterMountain Canola Co., L. P., Idaho Falls, Ida."—*Feedstuffs* December 26, 1994 p. 16

"Cargill building 100,000-ton feed phosphate plant"

"Cargill, Inc., Minneapolis, Minn., is building a 100,000-ton feed phosphate plant adjacent to its phosphate fertilizer plant in Tampa, Fla., the company said in an Oct 20 statement."—*Feedstuffs* August 31, 1994 p. 1

"Cargill signs deal to purchase ICM"

"Illinois Cereal Mills, Inc, (ICM), and Cargill, Inc., said Aug. 25 that they had signed a definitive agreement for ICM to sell 100% of its outstanding stock to Cargill."—*Feedstuffs* August 29, 1994 p. 5

1995

"Companies"

"Cargill in turn will gain Tyson's Marshall, Mo., pork processing plant and a cash payment." —*Meat & Poultry* August 1995 p. 6

"Cargill to acquire Bunge's U.K refinery"

Milling & Baking News, October 3, 1995 p. 8

"Cargill, Hoffmann-La Roche start project"

"Cargill, Inc., and Hoffmann-La Roche, Inc. broke ground Sept. 15 for a natural-source vitamin E plant at Cargill's corn processing complex in Eddyville."—*Milling and Baking News* September 19, 1995 p. 8

1996

"Cargill, Saskatchewan Wheat Pool to develop export grain elevator"

"(Canada's largest grain handler)" "The facility could be operational as early as April 1999, the project partner said." —*Milling & Baking News*, January 2, 1996 p. 29

"Cargill, St. Lawrence Starch in Canadian marketing alliance"

"...St. Lawrence Starch would provide Cargill exclusive sales services in the Canadian market for corn sweeteners and corn starches." —*Milling & Baking News*, January 2, 1996 p. 14

"Cargill plans to expand in South Africa"

"Cargill, which abandoned operations in the country in 1988, wants to become 'a significant regional trading company,' said Goff." —*Feedstuffs*, January 22, 1996 p. 51

1997

"Cargill signs agreement to run ProGold plant"

"Under terms of the agreement, ProGold partners will retain ownership of the facility, while Cargill operates the plant and sells its products through its own sales force." —*Feedstuffs* October 13, 1997 pp. 35, 39

"Cargill buys nine elevators, from AGP Grain"

"Cargill, Inc...said last week that it has purchased the eastern division assets of AGP Grain Ltd.—nine grain elevators in Ohio and Indiana."—*Feedstuffs* October 20, 1997 p. 5

"Cargill, WPL Holdings to form new energy trading, marketing company"

"Cargill, Inc. and WPL Holdings, Inc. Madison, Wis., have agreed in principle to form a new energy trading and marketing company that will enter the rapidly growing U.S. electricity marketplace. This joint venture..."—*Milling & Baking News*, June 24, 1997 p. 24

"Cargill signs agreement to buy Schreier Malting"

"Cargill, Inc., has signed a letter of intent to acquire Schreir Malting Co., based in Sheboygan, Wis."—*Feedstuffs* December 1, 1997 p. 23

Continued on back page

"Cargill acquires Garver Feed & Supply"

"Cargill Animal Nutrition Division has purchased the business and name of Garver Feed & Supply Co., Madison Wis. Terms were not disclosed."—*Feedstuffs* December 22, 1997 p. 9

"CSM, Cargill sign definitive pact to build lactic acid facility"

"Cargill, Inc., and CSM n.v. of Amsterdam, Netherlands, have reached a definitive agreement to build and operate jointly a lactic acid plant in the US, CSM announced last week."—*Feedstuffs* January 28, 1997 p. 14

"Cargill to build fertilizer complex"

"Cargill, Inc., has announced plans to build a $14.4 million import terminal, warehouse and blending operation for dry fertilizers adjacent to its major oilseed-processing complex at Puerto General San Martin, Argentina.."—*Feedstuffs* December 1, 1997 p. 23

"Cargill completes Akzo Nobel Salt buy"

"Cargill, Inc., and Akzo Nobel n.v., Hmhem, Netherlands, last week announced that Cargill had completed the purchase of the North American production, processing and marketing assets of Akzo Nobel Salt, Inc."—*Milling and Baking News,* May 6, 1997 p. 9

1998

"Cargill to lease New England Co. four mill"

"Cargill, Inc., said last week that it has reached an agreement to lease Italgrani's New England Milling Co. (NEMCO) flour mill at Ayer, Mass."—*Feedstuffs* February 9, 1998 p. 27

"Cargill buys Stake In Bunge's Venezuela grain business"

"Cargill, Inc., the world's largest crop trader, bought more than 60% of Bunge International Inc.'s Venezuelan operations for about $140 million."—*The New York Times* December 2, 1998 Section C; p. 8; Column 1; Business/Financial Desk

"Minneapolis-Based Firm to Buy Grain Company's Commodity Business"

"Cargill has agreed to buy the commodity business of rival Continental Grain Co."—*Knight-Ridder/Tribune Business News,* November 11, 1998

"Cargill Acquires Gramoven, Venezuelan Food Company, From Bunge International"

PR Newswire, Dec 1, 1998 p. 2159

"Cargill, Degussa joint venture for New Lysine Plant"

"Cargill's joint venture with Degussa Corporation, a U.S. subsidiary of Germany based Degussa AG, is expanding its production of lysine by building a new facility at Cargill's corn wet milling complex in Blair, Neb."
Chemical Market Reporter, Oct 5, 1998 p. 9(1)

"Dow and Cargill in Venture"

"The Dow Chemical Company and Cargill Inc. have formed a company to develop and market polylactic acid polymers." —*New York Times* November 27, 1997 p. D15

Monsanto Mergers

1995

Kelco specialty chemicals division of Merch & Co.
Calgene Inc. (1995, 1997)

1996

Asgrow Agronomics
Agracetus
Monsoy
Biolab Industrias Farmaceuticas S.A.
Syntex

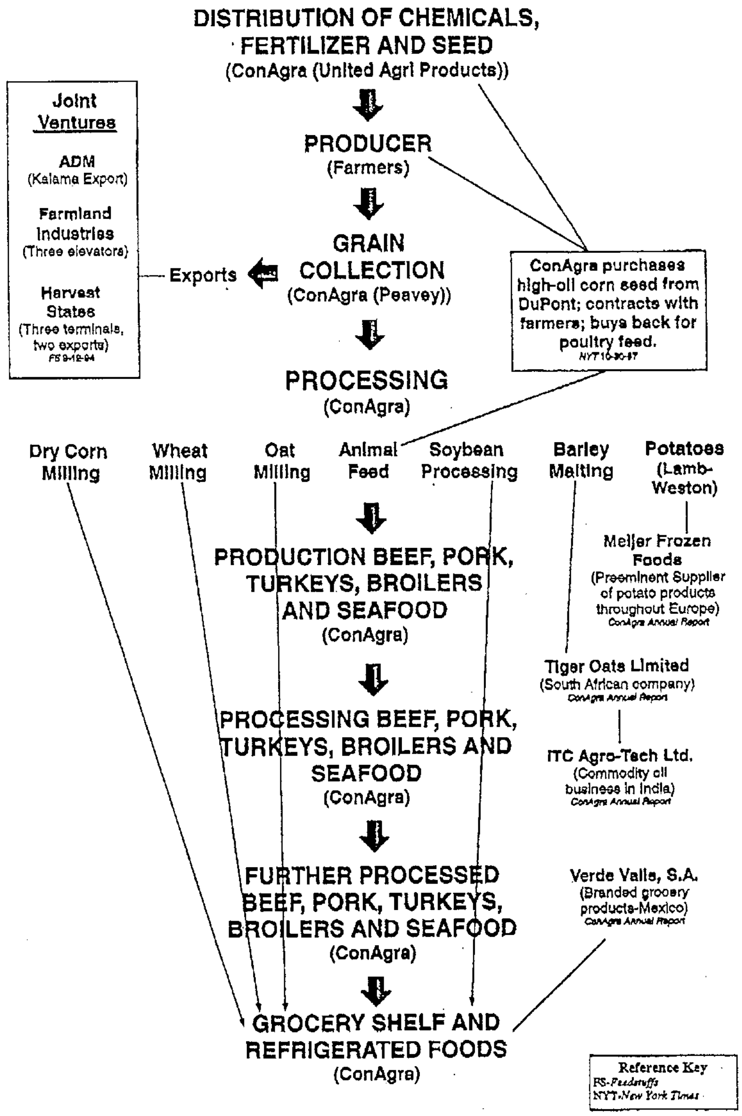
1997

Holden's Foundation Seeds Inc.

1998

Plant Breeding International Cambridge Limited (PBIC)
Monsanto purchases Cargill International Seed Operations in Central and Latin American, Europe, Asia, Africa
DeKalb
Delta & Pine Land Co

ConAgra
Joint Ventures and Strategic Alliances



ConAgra, headquartered in Omaha, Nebraska, is a diversified international food company that operates across the food chain in 35 countries around the world. In its annual report, ConAgra stated that its fiscal 1998 sales reached $23.8 billion and an operating profit of $1.6 billion. For 18 consecutive years, the company has shown an earnings per share growth at a compound rate of 15 percent.

Chief executive Bruce Rohde, who succeeded Philip Fletcher in September 1997, has set a goal of making ConAgra the world's largest and most profitable food company by the year 2005. With diversified interests ranging from "farm gate to dinner plate", a ConAgra subsidiary can be found along most links of the food chain.

Subsidiaries

Agrichem Co.
Armour Food Ingredients Division
Armour Swift-Eckrich Inc.
Armour-Freeborn Foods
Arrow Industries Inc.
Beatrice Cheese Inc.
Beatrice Co.
Bestovall Foods
Camerican International
Chun King Inc.
ConAgra Broiler Co.
ConAgra Diversified Products Cos.
ConAgra Feed Co.
ConAgra Fertilizer Co.
ConAgra Flour Milling Co.
ConAgra Foodservice Co.
ConAgra Fresh Meats Co.
ConAgra Frozen Food Co.
ConAgra Grain Co.
ConAgra Specialty Grain Products Co.
ConAgra Trading Cos.
Country Skillet Catfish Co.
Decker Food Co.
E.A. Miller
Food Producers International
General Spica Inc.
Gilroy Foods
Golden Valley Microwave Foods
Graham Grain Co.
Great Western Malting Co.
Grower Service Corp.
Hunt-Wesson Inc.
J.F. Braun and Sons
Jack's Bean Co.
Klein-Berger Co.
Lamb-Weston Inc.
Mesa Food Products Inc.
National Foods Inc.
Northern States Beef
O'Donnell-Usen Fisheries Corp.
SIPCO Inc.
Sergeant's Pet Products Inc.
Singleton Seafood Co.
Specialty Grain Products Co.
Superior Barge Lines Inc.
United Agri Products Inc.
Universal Frozen Foods Co.
Webber Farms

ConAgra acquired or created joint ventures with approximately 150 companies during the past ten years according to its 1998 annual report. The company's practice is to have 80-100 acquisition candidates in screening at all times. Adding value to products is another way the company maintains its strategic focus.

According to a New York Times article (10/30/97), ConAgra's range of expertise may make it especially attractive to potential business allies. **Du Pont** has already relied heavily on ConAgra for the initial commercialization of its new high-oil corn. United Agri Products found farmers to grow the corn under contract, and ConAgra's chicken operations bought the grain. . .

ConAgra and ADM formed a joint venture in mid-1998 to operate the Kalama grain export facility in Washington State. The new company, owned 50-50 by the two giants, is known as Kalama Export and operates one of the most efficient export facilities on the West Coast. The facility was built by ConAgra and began operations in 1983.

ConAgra and Farmland Industries have agreed to form a grain-based alliance to improve both companies' services to farmers and grain marketing and export activities. The new alliance will consist of two entities, Concourse Grain and Farmland-Atwood. Concourse Grain will operate two ConAgra export elevators and two Farmland elevators (one export, one interior) and will market wheat originated by the two companies.

ConAgra and Harvest States formed a joint venture in 1994 to operate three elevators in Iowa and two export terminals in Louisiana. ConAgra's grain company, Peavey, represents their share. The 50-50 partnership, called HSPV, was expected to improve efficiency and flexibility in grain origination, shipment and handling of grain exports.

Acquisitions

Including its major acquisition of **Beatrice Foods** for $1.34 billion in 1991, ConAgra has acquired or created joint ventures with approximately 150 companies during the past 10 years (1998 annual report). Selected acquisitions and joint ventures are shown below:

1994 ConAgra acquires **MC Retail Foods**, distributor **Marie Callender's** frozen foods.
ConAgra's Lamb-Weston company forms a joint venture with Dutch company **Meijer Frozen Foods** to supply potato products throughout Europe.

1995 ConAgra acquires **Knott's Berry Farm Foods** (Nation's Restaurant News, 6/5/95).
ConAgra seals agreement to acquire **Quaker's Van Kamp's** canned bean and **Wolf Brand** chili businesses (Nation's Restaurant News, 5/15/95).
Nabisco Brands teams up with ConAgra to produce a new line of cookies and crackers (Prepared Foods, 10/95).

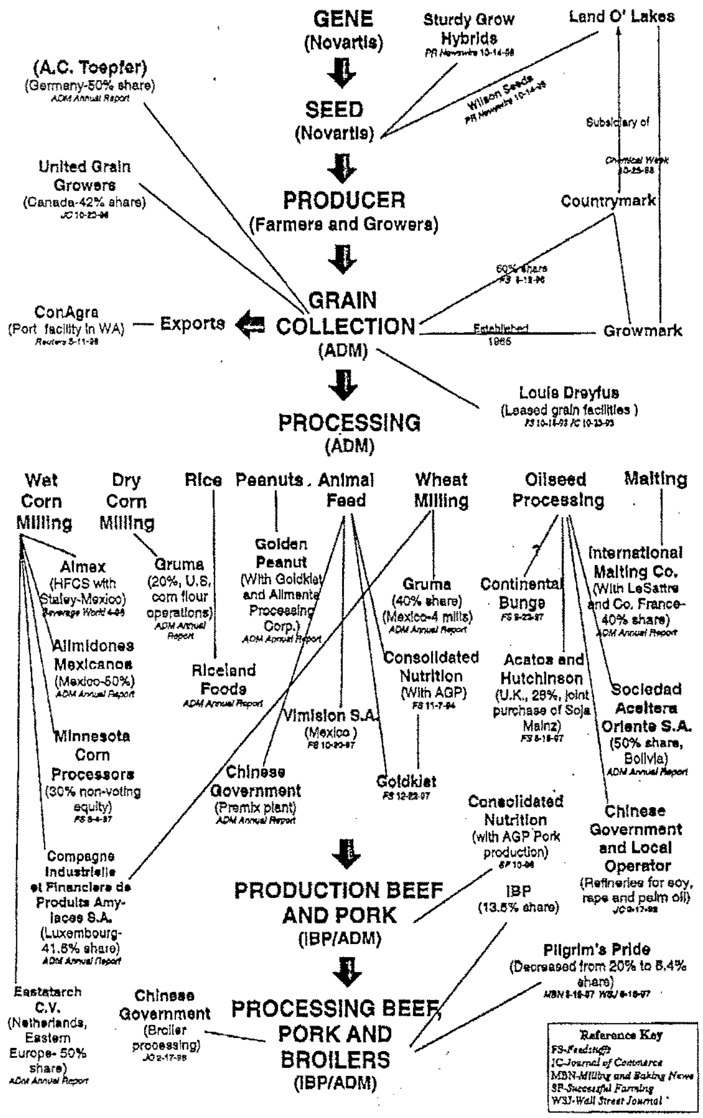
1996 ConAgra acquires **Gilroy Foods** (Nation's Restaurant News, 9/23/96).

1997 ConAgra acquires **Hester Industries** (poultry products) (ConAgra 1998 report).
ConAgra acquires a 50-percent interest in **Verde Valle**, a leading packager and distributor of grocery products in Mexico (ConAgra 1997 annual report).
ConAgra and **Tiger Oats** (South Africa) buy a majority stake in **ITC Agro-Tech**, a commodity edible oil business in India (Nation's Restaurant News, 11/10/97).

1998 ConAgra acquires **Zoll Food** pork processor (Feedstuffs, 1/26/98).
ConAgra acquires Ohio-based **Gilardi Foods** (Nation's Restaurant News, 3/9/98).
ConAgra and **GoodMark Foods** have agreed to merge (Feedstuffs, 6/29/98).
ConAgra completes acquisition of the **Egg Beaters** and margarine businesses of **Nabisco** (Knight-Ridder, 8/18/98).
ConAgra acquires **Signature Foods** (groundbeef products) and **Fernando's Food** (mexican food products) (Food Engineering, 11/98).

Novartis/Archer Daniels Midland (ADM)

Joint Ventures and Strategic Alliances



Facts about Novartis

• Crop protection chemicals	15% of global market (*Europe Chemical News* 4/28/97) and largest in sales worldwide (*Chemical Week* 5/21/97)
• Research & Development	Largest R&D budget in the life sciences industry according to company press releases. Recent $25 million collaboration with UC-Berkeley.
• Worldwide	Operates 116 affiliates in 50 countries.

Facts about Archer Daniels Midland

• Soybean Crushing	#1 U.S.	33% of all soybeans in U.S. (FS, 9/22/97).
• Vegetable Oil	#1 U.S.	30% of all vegetable oil in U.S. (FS, 9/22/97)
• Flour Milling	#1 U.S.	75% of all Canadian flour milling (JC, 7/21/97) ADM also owns a 22% stake in **Gruma**, a Mexican concern that is the world's largest producer and marketer of corn flour and tortillas. (1998 Annual Report)
• Cocoa	#1 World	World's largest supplier of cocoa. (MBN 6/24/97)
• Lysine	#1 World	50% of world market, with **Cargill** at 33% (FS, 10/20/97)
• Other additives		ADM is the largest supplier in U.S. of Vitamin E and has joint ventures in China to produce it. (*Chemical Market Reporter*, 11/10/97) It is also involved in citric acid.
• HFCS	#1 U.S.	ADM leads in the production of High Fructose Corn Syrup and generates about 1/3 of its profit from this (WSJ, 1/19/98).
• Edible Beans	#1 U.S.	ADM's **AgriSales**, at 25%, is tied with **ConAgra** as the top edible bean processor (FS, 9/22/97).
• Pork Production	#42 U.S.	**Consolidated Nutrition's** 14,000 sows in Colorado, Minnesota and Wyoming put this **AGP/ADM** feed joint venture into a tie for 42nd in number of sows with 3 other firms. (*Successful Farming*, 10/98)
• South American Soybeans		ADM's purchase of elevators and terminals from **Glencore Grain Holding Company** (its own major supplier of soybeans from Brazil) gave ADM 15% of all soybeans originating from Brazil and Paraguay. Brazil and Paraguay exported 26.7% of the world's soybeans in 1996 so ADM effectively got another 4% of the world's trade in soybeans from this one purchase. ADM pursued the acquisition because "it owns soybean crushing plants in **Europe** that use large amounts of Brazilian soybeans." (FS 6/9/97)
• Eastern European Commodities		In 1993, ADM said it processed 45% of all the commodities coming into Eastern Europe from Western Europe, primarily through Germany (and it's German partner **Alfred C. Toepfer**). ADM operates joint ventures in Hungary and the Czech Republic.

Key: FS = *Feedstuffs*, WSJ = *Wall Street Journal*, MBN = *Milling and Baking News*, NYT = *New York Times*

Novartis Information and Recent Acqulstions

1996 Novartis AG formed out of merger of CIBA-Geigy and Sandoz chemical and pharmaceutical firms. Headquarted in Basel. Known in the U.S. by names such as *NK, Hilleshög, Rogers* for seeds; and prominent pesticide brands such as *Bicep, Dual, Broadstrike, Diazinon, Clinch* and *Ridomil.*

1997 Acquired Merck (*Chemical Week* 5/21/97).

ADM Recent Acquisitions

"The food business is far and away the most important business in the world. Everything else is a luxury. Food is what you need to sustain life every day. Food is fuel. You can't run a tractor without fuel, and you can't run a human being without it either. Food is the absolute beginning." (Dwayne Andreas, ADM, *Reuters*, 1/25/99)

1993 ADM and **Pillsbury** (Green Giant) established partnership to produce Green Giant Harvest Burgers, a vegiburger. (FS 9/20/93) Sold this line to Worthington Foods (*PR Newswire*, 9/30/98), but will continue to produce the burgers for Worthington.

1994 Established **Premiere**, a feed company, to handle the acquisition of the **Master Mix, Lipscomb** and **Tindle** feed manufacturing operations of **Central Soya Companies Inc.** ADM acquired **Brooks Feeds.** (FS, 7/18/94) These feed businesses are run separately from Consolidated Nutrition, ADM's joint feed venture with AGP.

1996 *Mexico:* **Countrymark** and **GROWMARK** jointly purchased **Malta Clayton** and acquired a 12.5% share of the Mexican commercial feed market. (FS, 8/12/96)

1996 ADM bought **Benson-Quinn Co.** a grain merchandising company. (MBN, 1/16/96)

1997 *United Kingdom:* ADM acquired the cocoa processing businesses of **ED&F Man** as well as **W.R. Grace Co.** (MBN 6/24/97)

1997 Acquired **Moorman Manufacturing**, now operating as **ADM/MoorMans**, for the subsidiary, **Quincy Soybean Co.** (FS 9/22/97) (Quincy's partnership with **Continental** accounted for 33% of all soymeal exports from the U.S. -- FS, 6/21/93) ADM also acquired **AgriSales Inc.**, an originator and processor of edible beans.

1997 ADM bought **Demeter Grain.** (FS 10/20/97)

1997 ADM purchased elevators and terminals in Brazil and Paraguay from **Glencore Grain Holding Co.** (FS 6/9/97)

1997 *Brazil:* Acquired 4 soybean crushing facilities, 2 refining and packaging facilities and 16 grain storage facilities from major meatpacker **Sadia Concordia SA.** (WSJ 12/17/97)

1998 *United Kingdom:* **ADM Investor Services**, named by *Fortune* 25th among the top 40 U.S. brokers, bought **MeesPierson Derivatives**, a futures business based in London. (*Futures*, 3/98)

1998 ADM's joint venture partner, **C.F.Sauer**, sold the other 50% stake of their joint venture, C & T Quincy, to ADM. The firm operates a vegetable refining and packaging plant.

Key: FS = *Feedstuffs*, WSJ = *Wall Street Journal*, MBN = *Milling and Baking News*, NYT = *New York Times*

They (co-operatives) were formed to provide independent alternatives, but now they are having to compete with this mega-merger mania that is going through the countryside and must compete with the highly-vertically integrated corporations. Some of them have joined alliances in order to survive, and you know that some of those are currently in the mill. (eg: CHS-Farmland)

Now, I want to turn, besides the fact that we are farmers and ranchers, we are consumers. I want to bring up another point. Concentration threatens our food security within not only the United States but in the global arena. Chains—and these are mentioned in that Heffernan study—these chains or clusters, jeopardize our food security because just a few dominant firms control the major decisionmaking throughout the food chain, and their decisions are based on what is most profitable to the company.

The genetic pool is becoming limited. For example, and he (Heffernan) cites one, over 90 percent of the commercially produced turkeys in the world come from three breeding flocks. Now, if the avion flu all of a sudden infects a flock, that would kind of wipe out our turkey population. It'd probably be pretty good for some of the small turkey producers, but there likely won't be any of them left.

So, I guess, Senator, we are here at your mercy. We will help you all we can. I appreciate you calling this hearing. We can spend a lot of time, and I've got a lot of other statistics, which I am not going to bother to go through. This happens to be a pet subject of mine from when I was back in college. I would certainly hope that maybe this is just the beginning of getting some stones uncovered. Thank you, Senator.

[The prepared statement of Mr. Maki follows:]

PREPARED STATEMENT OF KENNETH L. MAKI, PRESIDENT, MONTANA FARMERS UNION, GREAT FALLS, MT.

Good Morning, Senator Burns, and thank you for the opportunity to testify on a subject vital to the membership of Montana Farmers Union.

I am Ken Maki, president of Montana Farmers Union, a non-profit statewide membership organization of family farmers and ranchers with members in all 56 counties. They produce cattle and other livestock, wheat and other grains, honey, ostrich, mint and other commodities.

Our members who produce grains must deal with Burlington Northern & Santa Fe Railway, which effectively is a monopoly within Montana and makes them captive shippers. They pay some of the highest freight rates in the Nation for lack of rail competition.

Similarly, these producers are witnessing loss of control of their livelihoods into fewer and fewer corporate hands by mergers in the agricultural sphere like those which formed BNSF.

Anytime there is a merger, obviously there is less competition. And there have been some whoppers lately. It is alarming to watch them take place, with but token and cosmetic anti-trust stipulations imposed by the last several ation Administrations in Washington.

Cargill of Minnesota, the largest privately-owned business in the United States, also is the second largest North American grain trader ($9.9 billion U.S. 1998), following only Archer Daniels Midland. Cargill recently bought the grain operations of Continental, the fifth largest grain trader in the U.S. ($5.5 billion U.S. 1998). Both operate foreign elevators and port facilities. Although neither has significant operations within Montana, the new entity certainly will influence farmgate prices here.

Cargill now will handle about one-third of all U.S. grain exports and it probably is not finished acquiring competitors. You are aware of the dependence of Montana growers on the export market. Cargill is actively buying and partnering in Canada too.

Monsanto acquires DeKalb Genetics and Delta Pine & Land Co. of Mississippi. DuPont buys Hi-Bred International, the world's largest seed corn company. St. Paul Bank and CoBank merge into a $22 billion operation. Wells Fargo buys Norwest. CENEX buys Land O' Lakes, then acquires Harvest States and now is combining with Farmland Industries, which already has made its debut in Montana television advertising.

Farmers Union in a recent letter to Attorney General Janet Reno asked formation of a special unit to investigate proposed mergers in the agricultural arena, as well as anti-trust investigation of the existing concentrations of ownership in meatpacking and grain handling.

We do not believe the U.S. Department of Agriculture is able to handle the matter under the Packers & Stockyards Act or other Federal legislation within its purview. Neither are we confident the U.S. Department of Justice will do enough to insure that farmers and ranchers are safe from marketplace monopolies. Both agencies probably need more in the way of appropriations from you to address these problems.

The following figures are from a study commissioned by National Farmers Union with the University of Missouri:

	Beef	Port	Flour Millers
IBP Inc.	1st	2nd	....
ConAgra	2nd	3rd	2nd
Cargill	3rd	4th	3rd
Farmland	4th	5th	....
Smithfield	....	1st	....
Archer Daniels Midland	....	....	1st
Cereal Food Processors	....	....	4th
Hormel	....	6th	....
Total	79%	75%	62%

You see the same names popping up in all categories. I have heard higher figures.

ConAgra owns the Peavey elevators in Montana. A corporate realignment recently resulted in closing the elevators in Carter, Rudyard, Chester and Shelby, resulting in less competition in those markets.

In South Dakota, where the State legislature enacted price transparency for cattle buyers, packers now are refusing to buy animals on the spot market. Why? What's to hide? Market and price manipulation, that's what. The corporations finally have turned the corner on controlling the markets and they are afraid of disclosure.

IBP in the last quarter of last year quadrupled its profits over the preceding year ($92 million to $22 million), mainly because of the lowest prices to hog producers in decades. Cattle and grain prices in Montana also have been terrible.

Philosophically, we are disturbed there may be an overtaking of democratic principles by purely capitalistic powers, because small family farmers and ranchers keep getting squeezed out year after year. They feel ignored and unprotected by their government, so they have been demonstrating in growing numbers in Montana and other states. They need good public policy, not annual stopgap emergency measures.

Victories such as R-CALF's action on Canadian cattle imports are precious few—and we have yet to see if that preliminary finding for the Ranchers Cattlemen Action Legal Foundation will be upheld by both the Commerce Department and the International Trade Commission.

Large volumes of subsidized imports from Canada and elsewhere have shown the shortcomings of so-called free trade treaties for several years now and Farmers Union still believes a wholesale renegotiation of those treaties is in order.

Farmers Union believes that near-monopoly conditions in the food buying and processing sector now may have more of an influence on farmgate prices than lower demand for U.S. commodities along the Pacific Rim and cyclical domestic overproduction. Probably, there are enough laws and regulations already on the books to remedy this situation, so we ask Capitol Hill to light a fire under the appropriate agencies to force divestitures and restore true competition for family farmers and ranchers. At the very least, there should be a moratorium on mergers and acquisitions until their effects on small farm income are evaluated.

Meanwhile, unfortunately, it is necessary for Congress to enact another stopgap bailout to keep the farm economy going. It must be done immediately. Farmers Union and Elizabeth Dole want it done now. But Senate Majority Leader Trent Lott and Senate Agriculture Committee Chairman Richard Lugar say later this year, after harvest. That's too late. Please tell your colleagues in leadership those Montana farmers and ranchers need a hand now, not Christmas presents after they've already sold their places.

Thank you.

Senator BURNS. Thank you, Ken. Thank you for coming this morning and taking the time. We appreciate that very much.

On the third panel this morning, we are going to start in, because these are grower groups, we have got some folks here that are right over here, Jim Johnson and John Marsh, from Montana State University, they are agriculture economists. You guys might want to get prepared if you want to offer a few words after we have our panel, but you might catch some questions or something, you know, even from the folks up here.

It is good to see the grain growers here, and we will hear from these other folks in a little bit, but we want to thank Montana State University for sending two of their best up here this morning. We use them as resources, so we really appreciate you coming.

Jim Peterson, who is Executive Vice-President of the Stockgrowers Association from Helena is here this morning. Jim, we would be interested in getting your insight and your testimony.

STATEMENT OF JIM PETERSON, EXECUTIVE VICE PRESIDENT, MONTANA STOCKGROWERS ASSOCIATION, HELENA, MT

Mr. PETERSON. Thank you, Senator Burns.

I decided to take a rather nontraditional, unconventional approach to this hearing today, and I hope it is appropriate.

I am here today speaking on behalf of Montana Stockgrowers Association, but also on behalf of some personal experience I've had over the years that I'd like to share with you.

Since 1884, Montana Stockgrowers has been representing its members to try to ensure a fair, competitive and favorable economic environment for the beef industry, and on behalf of it's 3,400 members, I appreciate this opportunity to comment.

For the record, my name is Jim Peterson. I am a cow/calf operator, cattle feeder and a farmer from central Montana. But I also spent 10 years on the staff of the Texas Cattle Feeders Association. I managed an agricultural lending unit or a commercial bank in Amarillo, and we had $200 million of cattle loans. I was the chief financial officer for a major public company in California, the largest privately-owned ranch in the State of California, the Tejon Ranch.

I share this with you only to say that I have had experience on both sides of the fence, the pasture fence and the feed yard fence, and both sides of the desk, the borrowing side and the lending side.

I want to share some background as well as a specific example that took place the first quarter of this year and some suggested conclusions of what we might try to do with it.

Back in the seventies, when I was working in a feed yard in Texas, we sold cattle one pen at a time. The buyer used to come to the feed yard, and we had one person on our staff who's full-time job was taking buyers around. They looked at the cattle one pen at a time and negotiated on the price of that pen based on the feeding conditions, the quality of the cattle and the price that day. Each pen was negotiated one at a time.

Today, feed yards sell their cattle, the entire show list, is sold at one price over a period of about 15 minutes to 1 hour during the week.

No one on the feed yard staff specializes in marketing cattle. The manager carries a cell phone with him 24 hours a day and they sell those cattle, the entire show list.

That's today's cash market in the high plains regions where about ½ to ⅔ of the cattle are sold. The remainder of the fed cattle are sold on what we call a "value-based marketing system" using a formula or a grid. This represents about ⅓ of the federally-inspected fed beef slaughtered today. It varies a little bit, but it is up in that 20 percent to 35 percent category.

These cattle are sold on a grid or a formula based on their carcass merits. There's usually a carcass quality grid that is used but the base price is not negotiated. The base price is subject to the average high of the week, the average cash price of the week, or the slaughter plant average for the week.

Typically what happens is these cattle get committed to the packer 30 days in advance, sometimes 6 months in advance, if it happens to be a Nebraska corn-fed feed program. The grid's agreed upon; the delivery date might be agreed upon. The base price however is determined after the fact.

So what happens is the better cattle right now tend to move toward the grid; the higher quality cattle move toward the grid so people can try to get paid a little more. The average, the national average on the grid is about $12 per head premium over the other cattle.

But what happens is, the base price is determined by the cattle that are left. I contend this activity results in a downward bias on the market because you have the base price established by the poorer cattle. The good cattle are going into the grid based on the base price of the cattle are left, and the $12 you gained on the grid, you give up in the base price.

In my testimony, I have attached what is Attachment A, and I would like for those of you that have a copy of that to take a good look at it.

During the first quarter of 1999, most wholesale beef prices were higher than they had been since 1996. We hit as high as $1.18 lb. in the beef. As an industry, we marketed record amounts of beef. We marketed more beef this spring than any time since 1996, and I think it might even go back to 1993. We did it at a higher price than any time since 1996. As a result, if you look at the chart for the first quarter, the farm to wholesale spread for the first quarter was 69 percent higher than last year and 46 percent higher than the last 4-year average.

The realities of this graph I think show that concentration and resulting market power has led to extraordinary processing profits for major packers by, No. 1, a disciplined live cattle cost containment program, which is a result of marketing techniques that I described to you, and No. 2, a successful defense of the highest wholesale beef prices seen since 1996.

So our problem is not demand, and it is pretty hard to say that the packers are doing anything illegal, because we sold beef higher than we have ever sold it. I mean, you can't beat them over the head for selling our product for a higher price than it's been sold since 1996, and more volume than we have seen in the last 5 years.

But the cattle feeding sector of our industry doesn't really market fed cattle anymore. They schedule them for slaughter and sell the whole show list in 15 minutes. My friends in Texas and I go round and round about this, Senator, on how we can fix that problem.

I think producers easily gave up $50 a head this past spring. The $50 per head went to the packers. It didn't go anywhere else. It is easy to see on the chart where it went. As you know, as has been stated earlier, there are four major packers that control about 70 percent of the fed cattle slaughtered and about 60 percent of the total cattle slaughtered.

Montana Stockgrowers has been very involved in negotiations of mandatory price reporting, and this has been done because we have been asking ourselves, "What can we do?" The only segment of the industry today that is a nonmargin operator is the cattle producer. Everybody else works on the margin. As long as your cost of sales is lower than your sales, and you can meet your expenses or have a margin, you're going to be profitable. It doesn't make any difference where you are on the scale. You can go up and down the scale, but the producer always takes what's left.

We contend that mandatory price reporting will put transparency in the system, and we have been very supportive of that effort. We have been involved in negotiations with the major packers, with the National Cattlemen Beef Association in an effort to draft some mandatory price reporting legislation that I know is being debated in Congress, probably as we speak. It's been heard before the House and the Senate.

I would encourage you strongly to support that legislation. I know you do; I am not suggesting you don't. You have been one of our best assets. But I think it's got to happen in Congress, and that is the first step.

We contend that with price transparency, then you can measure what's going on. It's pretty hard to fix something you can't measure. Right now, we don't have any mandatory price reporting. We don't know what's happening with these grid cattle. Many times cattle get sold, and we don't know what the price is.

There is a lawsuit going on right now with the Justice Department relating to selling cattle and not reporting the price (that's been part of the condition of sale). So this price transparency has to come first. Once we get the price transparency, then we can see what we can do as far as determining price.

We contend we have to have price transparency through mandatory price reporting before we can have price discovery. Once you can see transparency in the system—and I think this is particularly true between the family farmer and the corporate entity. Most large corporate entities are not in favor of price transparency because they can negotiate an alliance and negotiate a deal, and they like to keep it to themselves. But the small producer doesn't have that opportunity, and the only way you can overcome that is with price transparency. Then you can go to price discovery.

There is no question that market power exists today. On the other hand, I can't say that I have seen anything actually illegal taking place. There's been Justice Department and P/S study after study that has not been able to identify anything illegal.

But the market power is there, and I contend that we have got to do something about it when producers can't move the market price in a situation like we had this spring. We had higher wholesale beef prices anytime in the last 5 years. We moved more beef than any period of time in the last 5 years. We have something wrong. In the old days, we could move the market. Today, we can't.

Thank you, Senator, for this opportunity to comment. Be happy to answer any questions.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF JIM PETERSON, EXECUTIVE VICE PRESIDENT, MONTANA STOCKGROWERS ASSOCIATION, HELENA, MT.

Mr. Chairman, since 1884, the Montana Stockgrowers Association has been representing its members to insure a fair, competitive and favorable economic climate for the beef industry in Montana and in the U.S. On behalf of its 3,400 member producers across the U.S., I appreciate this opportunity to comment on the impact of concentration and mergers on the nation's agricultural industry.

My name is Jim Peterson. I am a cow/calf producer, cattle feeder and farmer from central Montana. For the last 9 years, I have also served as executive vice president for the Montana Stockgrowers Association. Prior to that, I served 10 years on the staff of the Texas Cattle Feeders Association, managed the agricultural lending department for the First National Bank of Amarillo, served as chief financial officer of the Tejon Ranch Company in California which is traded on the American Stock Exchange, and hold advanced college degrees in both agricultural management, finance, and banking. I share this with you only to represent that I have spent the last twenty-five years in agriculture active in business that is greatly affected by the impact of concentration on our business.

Back in the 1970's, when I was working in the feedlot industry of Texas, feed yards sold fed cattle one pen at a time to buyers who looked at the cattle. Sales took place on a "pen by pen basis," and cattle were sold based on a negotiated cash price subject to the visual appraisal of the buyer and the seller. Today, feed yards sell their entire show list (which includes many pens of cattle with differing quality) at one average price over what might be 15 minutes to a 1-hour period for the week. Or, they may sell cattle on a value-based "formula" or "grid" with the fed cattle to be delivered at a future date without a negotiated base price. The base price is then determined by an average cash price for the week in that marketing area or a "plant average" for the week. The result is upwards to one-third of the USDA federally-inspected fed cattle processed today are being marketed on a value-based marketing system without any kind of a negotiated base price. Therefore, the better cattle are sold without a negotiated base price with the base price based on an average price in an area or a plant made up by the poorer quality cattle that are left. I contend this contributes to a downward bias in the market and allows market power through concentration to impact the market even more than it normally might.

An example to make my point, is the first quarter of 1999 and the graph I have attached to this testimony as Attachment "A". During the first quarter of 1999, wholesale beef prices were higher than they have been since 1996. As an industry, we marketed record amounts of beef. The beef tonnage marketed was higher than it had been since anytime in 1996. As you can see from the graph, reported on the DTN Market Reporting Services on July 16, the packer farm-to-wholesale spread for the first quarter of 1999 was 69 percent greater than last year and 46 percent larger than the 4 year average.

The realities of this graph support how concentration and market power led extraordinary processing profits of major packers by (1) disciplined live cattle cost containment which is a result of the marketing techniques that I described earlier, and larger feedlot offerings, and (2) the successful defense of the highest wholesale beef prices seen since 1993.

So our problem is not beef demand. It's better than it has been since 1993. But cattle producers weren't able to improve the prices paid to feedlots and producers for the raw commodity . . . fed beef. As a result, I estimate beef producers failed to receive an extra $50 per head we deserved. It went to the packing industry.

As you know, four major packers now control 70 percent of all cattle slaughtered in the U.S. and they control 80 percent of all fed cattle slaughtered. The resulting market power allowed for packers' successful cost containment of the raw commodity (fed beef) in the first quarter of this year in a period of time when more beef was moving at a higher wholesale price than any time since 1993.

The question now becomes what we do. As you know, there is mandatory price reporting legislation before Congress as we speak. The Montana Stockgrowers Association is very supportive of mandatory price reporting because we feel it will put transparency into the marketing system, something we absolutely must have. Once we get market transparency through price reporting we can than begin to deal with the real issue which is price discovery.

People ask me all the time what good will price reporting do. I contend that you can't fix something you can't measure. Price reporting will allow us to measure the impact of selling cattle, the whole show list at one time, on an average price. It will help us evaluate selling on a formula or grid without a negotiated base price. It will help evaluate how price based on an average high of the week or plant average affects value-based marketing.

This legislation is controversial, but I urge you to support passage of this legislation as presented currently by NCBA (National Cattlemen's Beef Association). We have participated in the negotiations and strongly urge you to support the legislation.

Second, once price reporting and price transparency can be obtained, we can than look at a better system of price discovery through some incentive program that will encourage or possibly even require that cattle be sold on some kind of negotiated price basis.

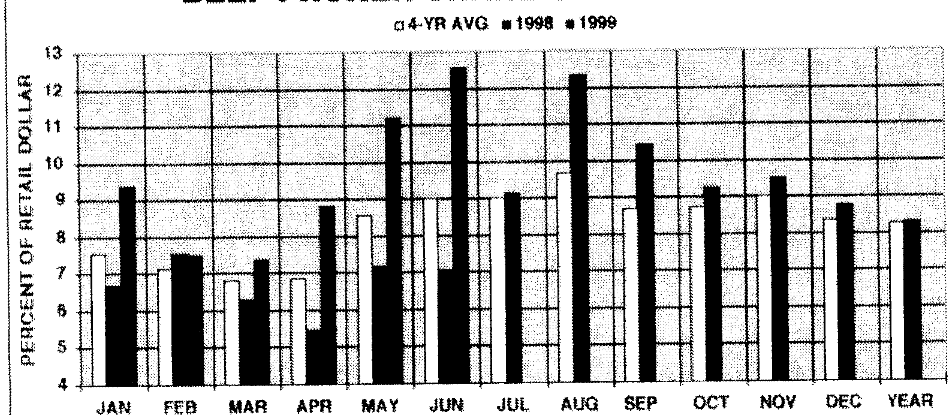
We are opposed to telling people how to sell cattle, but we feel it is important and in these tough economic times with the mergers and concentrations that exist in our industry today, that a mechanism of transparency be present to measure the impact of marketing activities and allow us to develop a better system of price discovery for our product.

There is no question that market power exists, on the other hand I have not seen any evidence indicating anything illegal is taking place. I must say, however, that this market power has led to the producers being unable to move the market in their favor at a time when beef demand and wholesale price is as high as it has been in the last 5 years.

Thank you for this opportunity to comment.

Attachment A

BEEF PACKER SHARE OF RETAIL DOLLAR



PACKERS REWROTE THE BOOK on the farm-to-wholesale spread last quarter, driving it to levels never seen before (i.e., the spread averaged 30.9¢ in the April-June period, 69% greater than last year and 46% larger than the 4-year average. Two realities supported the size of the spread and extraordinary processing profits: 1) disciplined live cattle cost containment (aided in part by larger feedlot offerings than expected) and 2) the successful defense of the highest wholesale beef values seen since 1993.

Senator BURNS. OK. Thank you. Thank you, Jim.

Well, we are working on price reporting. I will tell you a conversation, I will inject this into the hearing right now, we had a conversation with one of the packing entities, and they are very much opposed to what we have proposed. I said, would you do business on the New York Stock Exchange if they didn't post prices? When we have a competitive free market system, if everybody kept their prices under the lid, would we do any of those things?

He looked at me, and he said, I just thought you was a damn farmer, and I said that's all I am. But it just appears to me that price discovery is very, very important, and so is transparency.

When I was in Canada, and we sat down and we met with the people from China, we found out one thing, they have no transparency at all up there, and their problems are bigger than ours. So we are going to have to solve some of theirs before we solve—so we can solve some of ours, to be right honest with you.

Chase Hibbard, Montana Sheep Wool Growers Association. You know what it is to have a narrow market more than anybody here probably.

STATEMENT OF CHASE T. HIBBARD, PRESIDENT, MONTANA WOOL GROWERS ASSOCIATION

Mr. HIBBARD. Thank you, Senator Burns, members of the Committee, panelists, attendees. I appreciate very much the opportunity to participate in this discussion this morning. So far, it is been very enlightening and interesting. I look forward to a little discussion afterwards as we all conclude our prepared statements.

I am a sheep and cattle rancher. My ranch is located about 40 miles southeast of here as the crows flies. I am also a State legislator, having just completed my fourth term.

I am also a past board member of the Montana Power Company where I watched that company emerge from a regulated monopoly to a mostly unregulated business that is subject to market forces like all other businesses, so I got a little different perspective of things from that standpoint as well.

I am president of the Montana Wool Growers Association, representing about 1,800 to 2,000 growers in Montana, and I am also on the board of the American Sheep Industry Association.

Survival in agriculture is a topic that is hot right now, yesterday, today, this afternoon. I think that there's a lot of problems that all kind of come together. This is one of them. Yesterday we were talking about trade issues. Those are big as well.

These are crucial. You know, our obligation, the people that we employ and thousands of Montanans are vitally interested in the outcome of several of these issues. It's a tough, tough business.

I have been involved now very closely for the last 23 years. During that time, I have seen wool at 50 cents a pound; I've seen wool at $2 a pound. I have seen 50 cent lambs; I have seen $1 lambs, and calves from about 45 cents to $1.01.

Market fluctuations are a fact of life in this business; they always have been and always will be. Combined with the other risks that we face—weather, disease, predators, alfalfa weevil right now as we speak, a labor situation that is increasingly difficult—makes this a very difficult business.

With many forces contributing to that situation, it's really difficult to focus on any single area as the most significant factor, and I find it even difficult to assign relative importance to the numerous forces at work.

However, in my opinion, probably one of the most significant ones right now facing us is this is free trade world economy, which is not being kind to the commodities. If we were in high tech, I think we would love it. Commodities poses some real challenges and makes things very difficult to us.

Of equal importance right now facing us is the relative strength of our dollar. That makes imports cheap and exports expensive. Under this free trade world economy, production will flow to whomever can produce the most economically in the world and distribute their product, no matter where they are located.

In Montana, and for that matter, in the United States, production costs are high on a worldwide comparative basis. We heard a lot of testimony to that extent yesterday at the WTO hearing in Bozeman.

With the strength of the U.S. dollar, it puts it even—makes it even more difficult and even a more noncompetitive situation. We painfully experienced this in the sheep business over the past couple of years as Australian and New Zealand lambs undercut our market price by over 40 percent. Fortunately, we just got a 201 trade action which is going into place which places tariffs and quotas on imports from New Zealand and Australia over a 3-year period, which will help us immensely.

In Montana, our sheep numbers are down to about 300,000 head compared to nearly 550,000 5 years ago. Nationwide numbers are down about 35 percent.

In today's subject matter, we are focusing on mergers in the agricultural industry and how they ultimately impact the consumer. That's a very good question. I view this topic with mixed feelings, and some of these feelings I think have already been expressed by previous presenters.

Mergers and acquisitions are a reality in today's economy. Getting bigger and more efficient, unfortunately, may be what it may take to survive.

I can remember 25 years ago, I think that one could make a good living with 200 cows, 250 cows. I think that number moved up to somewhere around 500 head. Today, I don't have any idea what it takes to make a decent living. We run almost 2,000, and I can tell you, it's a struggle with that many. Getting bigger is a strong economic force, and unfortunately, it could be a reality in today's world.

Concentration has been an issue that has received a lot of focus over the last several years. There's little doubt that it has occurred. As Senator Burns said, in our industry, we are down to just a handful of processors. One, basically one processor for this part of the country. Our lambs used to go to Erneston, OR. Now they go all the way down to Dixon, CA to be processed. It's the only game in town.

There's little doubt that concentration has occurred big time. Unfortunately, the problem is that we know that concentration has occurred, and it seems as though any effort to prove wrongdoing pretty much focuses on collusion, and that has never been proven, to my knowledge. I am not sure that it will be. It's a very difficult situation.

We have these huge market forces that are forcing these consolidations, and I don't know if it is getting larger and larger, but politically, we have a great difficulty proving they are doing anything wrong. But we all know that our choices are limited. There's got to be a certain critical mass out there to have efficient market competition, and when numbers drop below that critical mass, competition just does not occur. That is a fact of life. But we cannot prove wrongdoing. This is a difficult problem.

Also, in the sheep business, we look at this—we're not sure how to view it. As I say, our numbers are down so significantly that it would be very nice to have a number of markets to go to, but with a rapidly shrinking industry, I guess at times, we are fortunate that we have anybody that will take them. That's too bad, again an economic reality.

How these mergers ultimately affect the consumer, from my view, is also a difficult call. The free market world economy that is making our business more difficult should, in theory, be delivering products to the consumer at reduced prices. If it is not, then there are some extraordinary profits being made somewhere in the middle.

The possibility arises that fewer competing firms processing, producing, marketing and delivering products could lead to less efficient competition, we know that's the fact, and higher ultimate price to the consumer. We don't know that.

I don't really know if these so-called efficiencies achieved through merger pass on to the consumer. I doubt that the primary wholesale producer, those of us in this room, see better prices; I doubt that seriously.

In the sheep industry, it didn't appear that when foreign product was coming in and cutting our prices by 40 percent, that the retail price ever really came down at the same time.

I really do view this subject today with mixed feelings. Mergers are a fact of life and a necessity to survive in today's economic environment. That is not necessarily a good thing for those of us in primary production, particularly with family farms.

On the other hand, we must do everything we can to survive, and the world economy will dictate that production flows to the most efficient. In that case, merging or getting bigger may be a smart choice or perhaps even the only choice. I do not know if the ultimate benefit does, in fact, flow to the consumer, as I've said.

These economic forces that we are facing are very, very strong. They will continue upon their present course.

The role of government is the thing that I think we need to determine. There are certain things the government can do. There are other things that government can't do. I think monitoring; I think understanding the situation; I think documenting; I think some of the ideas that have come out here earlier in testimony. Jim Peterson gave, I thought, very good testimony about transparency, about price reporting, about problems with the grid. I think that these are areas that government could get involved in.

Getting bigger is a fact with economic forces behind it that I am not sure politics can be real effective dealing with. They're very strong worldwide economic forces. We have to determine where politics can be effective and what our farm policy must be in this country. So I think focusing on some of the things that we can do, and realizing that there are some things that we can't do is an important consideration.

[The prepared statement of Mr. Hibbard follows:]

PREPARED STATEMENT OF CHASE T. HIBBARD, PRESIDENT, MONTANA WOOL GROWERS ASSOCIATION

Mr. Chairman, members of the Committee, for the record I am Chase Hibbard. I am a 4th generation cattle and sheep rancher from Helena, Montana. Our ranch is located 40 miles, as the crow flies, Southwest of Great Falls.

I am a State legislator having served four terms, I currently serve as the President of the Montana Wool Growers Association which represents about 2,000 Montana sheep producers. I also serve on the Board of Directors of the American Sheep Industry Association.

Survival in animal agriculture is vital to the economic well being of my family, the dozen or so people we employ, and thousands of other Montanans. I have been the President of Sieben Live Stock Co., our family corporation for the past 23 years. During that time span we have seen $2.00 wool and $.50 wool, $.50 lambs and $1.00 lambs, $.45 calves and $1.01 calves. Market fluctuations are a fact of life in this business, always have been and probably always will be. Combined with the other risks of weather, disease, predators, insects, and a labor situation which is becoming increasingly difficult, this is a tough business!

There are so many forces contributing to the precarious economic situation we are in that it is difficult to focus upon any single area or topic as the most significant factor. It is even difficult to assign relative importance to the numerous forces at work.

In my opinion, probably one of the more significant problems currently facing us stems from the "free-trade-world-economy." Of equal importance is the strength of the U.S. dollar which makes imports cheap and exports expensive.

Under a "free-trade-world-economy" production flows to whomever can produce the most economically and distribute their product, no matter where they are located in the world. In Montana, and for that matter most of the United States, production costs are high on a worldwide comparative basis. Currently the strength of the U.S. dollar is making imports cheap and exports expensive. This puts us in a very noncompetitive situation. We have painfully experienced this in the sheep business over the past couple of years as Australian and New Zealand lambs have undercut our market price by over 40 percent.

I would like to focus on the sheep business which is a shadow of its former self. Here in Montana our sheep numbers are down to under 300,000 head of breeding ewes. Approximately 5 years ago there were nearly 550,000. Sheep numbers are down 25–35 percent nationwide in the same time period. As previously discussed there are a number of reasons why and it is difficult to point one's finger at any single specific cause.

Today's subject matter is Mergers in the Agricultural Industry and How They Ultimately Impact the Consumer. I view this topic with mixed feelings. Mergers and acquisitions are a reality in today's economy. Getting bigger and more efficient may be what it takes to survive.

From an agricultural perspective "concentration" in the meatpacking industry has been a subject that has received much attention. There is little doubt that concentration has occurred and theory holds that you need a certain critical mass of competitive concerns in order to have an efficient marketplace. The number of processors has most likely dropped below that critical mass requirement. The political problem that is presented is proving that collusion exists. It seems as though there have been many attempts to address collusion, but to my knowledge, it has yet to be proven. It may never be proven, but the lack of competition definitely leads to a less efficient marketplace, meaning less choices for us who market our products, probably lower prices, and less competition may well result in fewer choices and higher prices to consumers as well.

How mergers in the agricultural industry ultimately impact consumers is a difficult call. On one hand, this same "free-market-world-economy" that is making our business more difficult should, in theory, be delivering products to the consumer at reduced prices. If it is not, then there are some extra-ordinary profits being made somewhere in the middle. The possibility arises that fewer competing firms producing, processing, marketing, and delivering products could lead to less-efficient competition and higher ultimate prices to the consumer.

I really do not know if these so-called efficiencies achieved through merger pass on to the consumer. I doubt the primary wholesale producer sees better prices, probably in fact receives poorer prices. In the sheep industry, it did not appear that with foreign product undercutting our market that prices ever came down much at the retail, consumer level.

I really do view the subject of today's hearing with mixed feelings. Mergers are a fact of life and a necessity to survive in today's economic environment. That is not necessarily a good thing for those of us in primary production particularly with family farms. On the other hand we must do everything we can to survive and the world economy will dictate that production flows to the most efficient. In that case, merging or getting bigger may be a smart choice, or perhaps even the only choice. I do not know if the ultimate benefit does in fact flow to the consumer.

The economic forces at hand are strong ones. They will continue upon their present course. Monitoring and vigilance by government may be necessary in order to determine the ultimate impact upon consumers.

Thank you for your time and consideration.

Senator BURNS. Thank you very much, Chase. We appreciate your testimony.

We understand we have a representative here from Representative Hill's office and also from Senator Baucus' office sitting around here—there you go, way back there. You can be noticed if you don't mind. There you go.

If you have anything you want, any testimony or anything you want to offer at this hearing, why, we would sure make it part of the record if you would want to do that.

I have a couple of questions, and I have a couple of questions with regard to Mr. Peterson's testimony and also to Mr. Hibbard, and all of you.

If we could tweak a law that would probably do more to help you, what would it be? I will ask all of you to respond to that. That is a producer group. I realize that Mr. Nelson is in a different kind of a situation, but if you could change one law or pass any one piece of legislation, and you had the power to do so and get it on the President's desk, what would it be? Then we will work from that.

I will just start—well, we will just start with you, Ken, Ken Maki, what, as far as concentration and this kind of thing, if you had the power to pass one law, basically what would it say?

Mr. MAKI. Well, I think there would be different things for different commodities. But I can tell you one thing, I understand cattle a little better than most anything else.

Formula pricing seems to me to be a real, real bubble. I mean, I do not want to take my calves someplace and sell them and not get my money for it until 6 months or 3 months or 9 months in the future, depending on what the price is going to be. That trickles back to us producers and feeders and everybody else.

Formula pricing, looks to me like it is the most contrary thing to a freely competitive market that I have ever seen. How we have gotten that instituted is kind of beyond me.

We heard yesterday about prying open foreign markets and all that sort of thing. I think we have to pry open our own market. You know, it looks to me like if those packers had to bid on supply, it would be a lot better situation than if they had a piece of paper that said this, so and so is going to sell this through us, and the price is going to be determined 1 week or 2 weeks prior to the sale, or some combination. I don't even understand all that formula, but it just sounds to me like it is really contrary to a competitive process, which is what we have built this country on.

Senator BURNS. Jim Peterson. Nothing like putting you right in the stirrups, is there? You can thank me later.

Mr. PETERSON. You know, with all due respect, Ken, I think formula pricing is, the grid and the formula, I mean if you're a rancher out there, and you think you got the best feeder cattle in the country, are you going to get paid for them by selling them on the average or feeding them in a feed yard where they sell the whole show list at one price, and they mix the Mexican corrientes in with the wonderful black cattle up north, and you all get the same price? I mean, it is easy for the manager to tell you, ah, you know, you got the top of the market.

But, I don't see how you get paid for value if you don't have some kind of value-based marketing system. I mean, why are you going to go pay $4,000 for a bull and work on your seed stock production to make a more quality and consistent product and then sell it on the average? Particularly, when you don't even negotiate on a pen-by-pen basis.

Now, I don't disagree that—I mean I said that the formula right now, in my opinion, has a downward bias on the market, but that doesn't mean the formula is bad. What I am saying is there's no negotiated base price associated with that formula, and the base price might be negotiated on the wrong things.

I mean, why don't we tie our base price to the retail price or the 118 wholesale price, and then we'll corner the market, and instead of us taking $61 for our cattle this spring, we get 70, based on the formula, and if you have quality cattle, you get the 118 wholesale beef prices that the packer helped establish. Then you can tie it to the formula, and if you have higher quality cattle, you can also get that $12 a head average better than the national average.

So, my concern is that we have lost the negotiated pricing system. We have lost the transparency in the system. As Chase Hibbard said, unless you can operate on a large enough volume to negotiate, you can't compete.

A guy like—I'll use an example that most of you may have heard of, Paul Engler, Cactus Feeders in Texas. I know Paul personally. He sells every one of his cattle on formula, sells them no other way.

He's not particularly happy with the formula, but it does two things for him. One, he's big enough he can negotiate a decent base price; two, he doesn't have to worry about selling cattle every day. He knows he can get the cattle slaughtered. The guy feeds, 400,000 or 500,000 cattle a year. So, getting those cattle moved at the right time is important to him, so he has got this agreement with IBP, they'll take the cattle whenever they are ready on the formula.

Now, he's not—he will tell you personally he's not real happy with the way it works, because the base pricing system sometimes works against you.

So, Ken, I don't know that the formula is necessarily bad. I personally think that in the industry, a little like Chase Hibbard, I think the merger thing is going to happen because of economics of scale. I think the grid and formula is going to happen because the industry is moving that way so fast right now, it's scary. A third of the kill is in it right now. I see more and more of that happening. The problem is we don't—we can't—we don't have transparency, No. 1, to find out what's really happening, and because we can't find out what's happening, we're all running around speculating and pointing fingers as to who is the blame. As I said earlier, it's really hard to fix something you can't measure.

Senator BURNS. I always use the old, the old story about volume and this type thing about two brothers from Montana going to Mississippi buying watermelons. They haul them back to Montana, buy them for 74 cents, and then haul them up here and sell them for 73 cents. One looked at it and said we're not making any money. He says, I know it, we got to get a bigger truck. Sometimes that doesn't work.

Dave McClure, you're next.

Mr. MCCLURE. Senator, you posed a difficult question.

I think we are all experiencing the pain of change, and we are going to continue to have change in agricultural and a lot of other industries too.

I guess if I had one bill that I thought was more important than others, it would be that Congress and the agencies are forced to a cost benefit analysis on everything they do.

There's good regulations that are needed, but as I mentioned earlier, these regulations are forcing, in my opinion, some of these consolidations, and they're forcing costs on all the producers that I think in the past have somewhat been ignored.

We continually try to get a higher return, a higher price on our products to cover all these costs, and we should continue to fight for that, but that is probably a pretty narrow band where we can gain.

But the costs inherent because of regulations forced on us are growing; they're ominous, and they also make us less competitive in this global economy, and we are forced to endure those costs when a lot of our competitors are not, and I think that is a very real threat. If that continues, our consumers in this country may be more reliant on imports than they are now, and that's another scary thought.

But we have got to be competitive in this world market, and as long as these costs are thrust on us, sometimes there isn't a benefit there to match the cost, and that is of great concern.

I think we see, for instance, EPA right now may be going beyond the intent of Congress in enforcement of the Food Quality Protection Act. It appears we're going to be losing some products that maybe our competitors are going to continue to have in the world market.

Like I say, in that area, and hopefully that way look forward to what's going to happen in the future and not try to solve problems that have already happened and are gone.

Senator BURNS. Chase.

Mr. HIBBARD. Thank you, Senator. I think I can make this brief.

I think, first of all, I doubt the ability to stop or slow down much the trend in mergers and consolidations. I think that the worldwide economic forces are such that that's going to happen.

Having said that, I think better price reporting and market transparency is No. 1.

No. 2, country of origin labeling.

No. 3, I think that maybe it is time to revisit our farm policy and take a look at the protectionism issue that is pretty much out the door.

We are on the free world trade bandwagon, and we are seeing the fallout of that here in Montana and elsewhere around the country. Those of us who raise commodities are simply not competitive. Perhaps that political barriers need to be looked at again, particularly where our trading partners aren't playing by the same rules that we are.

For instance, European unions restricting imports, which makes our country a dumping ground. The European union subsidizing their sheep producers to the extent of 20-some dollars a ewe. We have a different situation here totally. So, I guess those would be my priorities.

The last one is a difficult one. You know, the family farm was big in this country. Preserving the family farm was big in this country for years and years and years, and we have evolved away from that now. We're out there competing, but we are not competing on a level playing field.

Senator BURNS. OK.

Mr. Kissinger.

Mr. KISSINGER. Thanks, Senator. I just want to take a little different tack.

As far as changing any laws, I am going to leave that up to recommendations from the experts here.

But one thing that is obvious to me is enforcement of the existing laws. We see that time and time again. It came out yesterday at the World Trade Organization hearings that cattle coming down from Canada, only 1 percent are in inspected. One percent. They get the USDA grade on them, and, no, they look good, good American beef, but they are from Canada.

You know, Ron and Alfred and Hank, they were up there, remember these—how many hog trucks have we had come through, and we were actually at the rally. We had a number of reefers come through, back in an area and out of there in 5 minutes, and yet they were supposedly inspected.

You know, again they mentioned yesterday, well, that was due to a lack of resources; we just didn't have manpower and resources. That may be true; I am not questioning that but, you know, possibly as you in your position in the Appropriations Committee, maybe some of these things can be targeted to try to improve, try to get stronger enforcement.

On the antitrust, that is another issue. Again, they don't have resources and so on. I think agricultural may be not a high priority with people who deal with the antitrust issues. But maybe through, again, appropriations or some of the influence you have, that can begin to be targeted so we have a fair playing field.

So with that, that is all I have.

Senator BURNS. Steve, do you have a thought?

Mr. BULLOCK. Maybe one thought.

Senator BURNS. Lawyers always do.

Mr. BULLOCK. That's a bad thing being at the end at the end and hearing the thoughts of everyone else.

Senator BURNS. That is right.

Mr. BULLOCK. A large chunk of ensuring a competitive market is giving people information to act, by which market transparency is critical.

Along with that, whereas I focus a lot on antitrust, a chunk of it should be taking a look at what laws we already have.

Section 202 of the Packers and Stockyard Act is a proactive law. It's supposed to address trade and competition of these market power entities at the very start. You're not supposed to wait until the merger happens; you're supposed to say, what can I do proactively to ensure healthy competition.

Maybe revisiting the Packers and Stockyard Act and also seeing how it is implemented might be the first step.

Senator BURNS. Of all the sections I will tell you that we looked at, and with some suggested changes, and we are still looking at that trying to find language, you know how difficult that becomes, is Section 202, and that is where it boils down to.

Anybody else have any other comments? I don't have any other questions, but we want to hear from some of our people.

Yes?

Mr. PETERSON. Can I make one more comment?

Senator BURNS. Yeah, you can make more statements. You can talk all day if you want to.

Mr. PETERSON. I think the Committee vetoed that.

Three things I didn't get to, to answer your question, three things. I think price reporting ought to be No. 1 on your list. We have got to have the transparency.

I think the one thing you can do that might lead us to more labeling of product is limiting the USDA grade and U.S. product. I think that would be No. 2.

I know there's tremendous opposition to country of origin labeling in Congress, and I've had this debate with myself, you know, do we spend our money labeling their product, or do we spend our money labeling our product?

We can produce the highest quality, safest, most abundant supply of food of any country in the world. Why don't we take advantage of that and label our product, develop some kind of U.S. label and reserve it for U.S. producers so we can get paid for what we do?

Third, this thing that Chase is talking about, trading, I think we got to back up and take a fresh look at how we trade. The only thing common in our trade right now with other countries is the commodity itself. Everything else is different. Currencies, environment, our societies, economies, regulations, everything is different. The only thing that is common in what we trade is the commodity, and it is lowering the standard of living of our producers.

Senator BURNS. OK.

Ken.

Mr. MAKI. You know, I am sorry, Senator, I thought you wanted something new and different.

We have been wrangling about price reporting and the country of origin labeling for a long time. I'd have to agree with these gentlemen here.

The only thing that I would say about price reporting is, you can have price reporting, and you can have price reporting, and whatever it is, it's got to be workable and timely. The important thing is that we get that information to our producers and to the public in a quick and timely manner.

I think as you look at it from the consumer's standpoint, perhaps the consumer would say labeling is the most important. I think that our consumers, just as everybody said here, Jim, Chase, we have a relatively safe product probably 99½ percent of the time produced in this country. Our processors and our standards are good.

I think that our consumers out there, for the most part, would say, hey, if it's American made, and it was American produced, they'll buy it. It might be a little bit higher, but I think that they would go for it. So I believe the labeling issue is pretty darned important as far as the consumer is concerned.

As far as we producers, the price reporting is absolutely essential.

I'm sorry, I thought you wanted me to come up with something new and different.

Senator BURNS. You did. You always do.

Before we can hear from our folks down here, and we sure want to, all of us do, we will close this hearing as of right now.

Just a reminder, that any questions that come to the witnesses, answer those to the individual Senator, and the Committee.

We will also leave the record open for 10 days. So the formal part of these hearings are now closed.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF JOEL I. KLEIN, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

INTRODUCTION

The Department of Justice is pleased to be invited to submit for the Committee's record this statement regarding the role of the federal antitrust laws and the Department's Antitrust Division with regard to protecting competition in the agricultural sector of our economy.

There have been a number of occasions recently in which agricultural producers and others have expressed concern about how the agricultural marketplace is functioning, about the levels of concentration in agriculture generally, and about possible antitcompetitive conduct in certain sectors. The Department takes these concerns very seriously.

By any measure, the Department has spent a significant amount of time, energy, and resources on agriculture issues in the recent past, and has brought a number of significant enforcement actions.

This statement will briefly describe the situations that the antitrust laws address, and then discuss a number of the enforcement actions the Department has taken. The antitrust laws prohibit conspiracies to deny market access or otherwise suppress competition. They also prohibit the use of predatory and/or exclusionary conduct to acquire or hold on to a monopoly in a market. And they prohibit mergers that are likely to substantially lessen competition in a market.

The agriculture marketplace is undergoing significant change. There are advances in technology, productivity, and in many sectors, a trend toward consolidation. In the midst of these changes, the Department's Antitrust Division has a narrow but important role. The antitrust laws are based on the notion that competitive market forces should play the primary role in determining the structure of our economy. The Department's job is to stop the specific kinds of private-sector conduct mentioned a minute ago from interfering with those market forces.

The primary beneficiary of antitrust enforcement is the consumer, who receives better quality, increased innovation, and lower prices when competition is not interfered with. But antitrust enforcement also benefits the producers and marketers who want to compete in supplying products and services to consumers by enabling them to do so free from anticompetitive interference. And the overall U.S. economy also benefits, as the products and services desired by consumers are made available in greater quantities through a better allocation of resources, and at competitive market prices.

We are law enforcers, not regulators. We do not have the power to restructure any industry, any market, or any company, or stop any practice, except to prevent or cure specific violations of the antitrust laws that we can prove in court. Our authority rests ultimately on our ability to bring enforcement actions. And when we bring an action, the court decides whether the antitrust laws are being violated in the particular instance, and whether the remedy we are seeking fits the violation.

The antitrust laws apply in the same way in every industry, with a very few exceptions where their application is limited by specific statute. A number of industries are also regulated by government agencies under statutes that go beyond the antitrust laws to establish additional, industry-specific regulatory requirements and standards. For example, the meat-packing industry is regulated by USDA's Grain Inspection, Packers and Stockyards Ation Administration.

While the antitrust laws play an important role in helping keep markets competitive, they will never address all of the complex issues facing American agriculture in this time of change. That is why the government continues to focus on a broad range of agriculture policy issues.

WHAT THE ANTITRUST LAWS PROHIBIT

As mentioned above, there are three different types of antitrust violations. First, it is a violation of section 1 of the Sherman Act for separate firms to agree among themselves not to compete with each other, but instead to join forces against their consumers or their suppliers. Second, it is a violation of section 2 of the Sherman Act for a firm to monopolize or attempt to monopolize a market. Third, it is a violation of section 7 of the Clayton Act for a firm to merge with another firm or acquire its assets if to do so would be likely to substantially lessen competition in any market. Following is a description of each of these types of violations and of how we approach each of them.

1. Collusion

The first type of antitrust violation, when firms that are holding themselves out to the public as competing against each other instead agree with each other to unreasonably restrain competition among themselves, is often referred to as collusion. Collusion is a willful subversion of the normal operation of free markets, and can result in serious harm to consumers, suppliers, and the economy. It virtually always results directly in inflated prices to consumers, or depressed prices to suppliers, and in denial of choices in the marketplace; indeed, that is its purpose. The most common types of collusion are agreements to fix prices, agreements to allocate markets, and agreements to boycott particular customers, suppliers, or competitors.

Price fixing can include agreeing on the specific price, or rigging a specific bid, but it can also include agreeing to increase or depress price levels, or agreeing to follow a formula that has the intended effect of raising or depressing prices or price levels. Allocation of markets can include agreeing to divide up geographic areas to avoid competition, or agreeing to divide up customers or suppliers within an area, or agreeing to divide up a sequence of bids. Group boycotts can include any agreement among competitors that they will deal with their customers or their suppliers only on particular terms, in order to suppress competition.

This summary of course oversimplifies the full range of Section 1 violations. There are other kinds of such violations where the anticompetitive intent and effect may be less clear-cut. But all Section 1 violations share the same basic characteristic, that firms who are supposed to be independent actors in the marketplace are instead agreeing to join forces to restrain competition.

It is important to remember that with any of these forms of collusion, proving a case requires evidence of an agreement between the firms in question. It is not enough to show merely that two agribusiness firms, for example, bid the same price for a commodity, or that one tends to buy in one area and another tends to buy in another area. What would concern us is if there are additional facts, such as patterns of bids over time, or patterns of attendance at various sales or auctions, that don't make competitive sense—that can't be explained as part of normal competitive behavior. Needless to say, if we obtained reliable evidence about two firms discussing with each other what price they intend to bid or accept, or where they plan to focus their buying or selling, we would definitely be concerned and look into it.

Among our collusion cases in the agriculture area are three that we have brought in the recent past. The first one I'll mention is our criminal prosecution against Archer Daniels Midland and others, beginning in 1996, for participating in an international cartel organized to suppress competition for lysine, an important livestock and poultry feed additive. The cartel had inflated the price of this important agricultural input by tens of millions of dollars during the course of the conspiracy. ADM pled guilty, and was fined $100 million—at the time the largest criminal antitrust fine in history, now the third largest. Other participating corporations have also been prosecuted and assessed multi-million-dollar fines. In addition, three ADM executives were convicted for their personal roles in the cartel; earlier this month, two of them were sentenced to serve 2 years in prison and fined $350,000 a piece for their involvement, and the other executive had 20 months added to a prison sentence he was already serving for another offense.

The second collusion case is our prosecution of the Swiss pharmaceutical giant, F. Hoffmann-La Roche Ltd., and a German firm, BASF Aktiengesellschaft, for their roles in a worldwide conspiracy, over the course of 9 years, to raise and fix prices and allocate market shares for certain vitamins sold in the United States and elsewhere. The conspiracy affected $5 billion in U.S. commerce, involving vitamins used not only as nutritional supplements and food additives, but also as additives in animal feed. On May 20 of this year, the two firms agreed to plead guilty, with Hoffman-La Roche to pay a fine of $500 million and BASF to pay a fine of $225 million. These are the largest and second largest antitrust fines in history—in fact, the $500 million fine is the largest criminal fine of any kind in history. A former Hoffmann-

La Roche executive also agreed to submit to U.S. jurisdiction, to plead guilty to participating in the conspiracy and lying to Justice Department investigators about it, and to serve a 4-month prison term and pay a $100,000 fine. These prosecutions are part of an ongoing investigation of the worldwide vitamin industry in which there have been nine prosecutions to date.

The third collusion case is a much smaller case in monetary terms than the first two; but it is an important one for agricultural producers nonetheless. In December 1997, as the result of an investigation conducted with valuable assistance from USDA, who was also conducting its own investigation under the Packers and Stockyards Act into some of the same conduct, the Department criminally prosecuted two cattle buyers in Nebraska for bid-rigging in connection with the procurement of cattle for a meat packer. Both individuals pled guilty and were fined and ordered to make restitution to the victims.

There is an important exception to the prohibition against agreements to restrain competition, found in the Capper-Volstead Act. This law allows producers of agricultural commodities to form processing and marketing cooperatives—in effect to engage in joint selling at a price agreed to by the producer members of the co-op—subject to certain limitations enforced in the first instance by USDA.

2. Monopolization or Attempt to Monopolize

The second type of antitrust violation, monopolization or attempt to monopolize, is a violation of Section 2 of the Sherman Act. For various reasons, this type of antitrust violation occurs less commonly than collusion, but it is also a serious willful subversion of the free marketplace. An example of monopolization or attempt to monopolize would be a dominant company in the market attempting to drive its competitors out of business by interfering with their ability to engage in the business. This might be attempted by the clearly dominant firm refusing to buy from producers who sell to any of its competitors, or refusing to ship with transportation companies who ship for any of its competitors, or refusing to sell to distributors or retailers who handle the products of any of its competitors—if the dominant company in question had enough market power that these refusals would have anticompetitive effects. Monopolization does not require proof of an agreement among two or more firms; one firm can illegally monopolize by itself.

But it is important to understand that monopolization cannot be proved just by showing that a firm has engaged in restrictive conduct. The law also requires proof that the firm has a monopoly—and that requires an extremely high market share all to itself—and that it engaged in the restrictive conduct in order to acquire or maintain the monopoly. Or, in the case of attempted monopolization, it must be proved that the firm has a "dangerous probability" of acquiring a monopoly as a result of the restrictive conduct. And to prove "dangerous probability," the courts generally require, for starters, that the firm involved in the restrictive conduct already have a quite large market share—a 50-percent share for a single firm might not be enough. And even a 60-to-70 percent market share might not be enough, if other facts indicate that the restrictive conduct involved is unlikely to succeed in creating a monopoly.

Just as important, Section 2 monopolization cannot be proved just by showing that the market is highly concentrated. Under our antitrust laws, a firm may lawfully have a monopoly—even 100 percent of the market—as long as the firm has not acquired or maintained that monopoly through the kind of restrictive conduct I described a minute ago, but rather, in the words of Judge Learned Hand, "by virtue of superior skill, foresight and industry."

So both elements—very high single-firm market share, plus conduct to exclude or harm competition—must be proved. One or the other by itself is not enough.

3. Mergers

The third type of antitrust violation, a merger or acquisition that is likely to substantially lessen competition in a particular product market and geographic market, has a different legal standard from the other two in that it does not require proof that anticompetitive conduct has already occurred. Here, the principal focus is not on the conduct of the merging parties, but on whether the merger would change the market structure to such a degree that competition would likely be substantially lessened. The remedy we seek for a merger that violates the Clayton Act is to sue to stop the merger, or to insist that it be modified to remove the cause for antitrust concern.

Merger reviews require a careful analysis of the markets involved. The Antitrust Division analyzes mergers pursuant to Horizontal Merger Guidelines developed jointly by the Department of Justice and the Federal Trade Commission. The analysis is aimed at determining whether the merger is likely to create or increase market power, or to facilitate the exercise of market power, in any market. Market power is the ability of a firm to raise the price charged to customers—or to lower the price paid to suppliers—a small but significant amount without that move being defeated by counteractive competitive responses by other competing firms moving in to take away those customers or suppliers.

Before we get to that analytical step, however, we must first go through the exercise of determining the scope of the product markets and geographic markets that would be affected by the merger. This is an essential first step in our analysis—until we know the size and shape of the market, we cannot know how big any firm's market share is, for example. The scope of a market is generally defined by the smallest geographic area in which a hypothetical firm, assuming it faced no competition for its product in that area, could make a small but significant change in price stick. Usually, we are looking at that firm as a seller, and determining the smallest area within which the firm's customers would be unable to thwart the firm's inflated pricing by going outside that area for their buying needs. But, as our Merger Guidelines expressly note, we also look at the firm as a buyer, and determine the smallest area in which sellers to the firm would be unable to thwart the firm's depressed prices by selling to others outside that area—that is, because it would be economically impractical to travel or ship outside that area.

A decision as to the dimensions of this area can sometimes be reached by examining recent buying and selling patterns in the marketplace. But the decision can also depend on a variety of other, more subtle factors, because the ultimate question is not how far the buyers and sellers have traveled or shipped in the past, but how far they could or would travel or ship in response to anticompetitive price changes.

Once we have defined the market, we turn to the question of market concentration and how it would be affected by the merger. There is no automatic threshold of market concentration that will always result in a determination that a merger would violate section 7 of the Clayton Act. Other factors also play an important role in analyzing the impact of the merger—such as other structural features of the market that make anticompetitive effects more likely or less likely; and the ease or difficulty of entry into the marketplace by new competitors who could neutralize any anticompetitive potential. We would also consider the impact of any demonstrable efficiency gains from the merger that would demonstrably result in competitive benefits.

In the recent past, the Department has reviewed a number of proposed mergers and acquisitions in the agricultural marketplace.

For example, in the biogenetics area, last year we investigated Monsanto's acquisition of DeKalb Genetics Corporation. Both companies were leaders in corn seed biotechnology, and owned patents that gave them control over important technology. We expressed strong concerns about how the merger would affect competition for seed, and to satisfy our concerns, Monsanto spun off its claims to agrobacterium-mediated transformation technology, a recently developed technology used to introduce new traits into corn seed, such as insect resistance, to the University of California at Berkeley. Monsanto also entered into binding commitments to license its Holden's corn germplasm to over 150 seed companies that currently buy it from Monsarlto, so that they can use it to create their own corn hybrids.

After investigating the proposed Cargill/Continental Grain merger for several months, and earlier this month we challenged the merger as originally proposed and filed a complaint and proposed consent decree in court. To resolve our competitive concerns, Cargill and Continental will divest a number of grain facilities throughout the Midwest and in the West, as well as in the Texas Gulf. While this consent decree, if approved by the court, will resolve the competitive problems, it is still pending before the court under a Tunney Act proceeding in which the court makes the final determination that the decree is in the public interest. Because the case is still pending, there are limits to what I can say now, but a fair bit about the case is already in the public record in our filings thus far.

Cargill and Continental operate nationwide distribution networks that annually move millions of tons of grain and soybeans to customers throughout the U.S. and around the world. We looked at all the markets that would be affected by the merger, and concluded that in a number of them, competition would be . adversely affected if the assets of the two firms were merged. In this case our concerns were focused on competition among the two firms in the so-called "upstream" markets—competition for the purchase of grain and soybeans from farmers and other suppliers. The lessening of competition resulting from the merger would have resulted in farmers being anticompetitively forced to accept less money for their major crops than before the merger.

Among the required divestitures, we insisted on divestitures in three different markets where both Cargill and Continental currently operate competing port elevators, to preserve the competition that currently exists there: (1) Seattle, where the elevators now compete to purchase corn and soybeans from farmers in portions of Minnesota, North Dakota, and South Dakota; (2) Stockton, California, where the elevators now compete to purchase wheat and corn from farmers in central California; and (3) Beaumont, Texas, where the elevators now compete to purchase soybeans and wheat from farmers in east Texas and western Louisiana. In addition to benefiting farmers and other suppliers in the above-mentioned states—who can be said to be captive to the elevators involved—the required divestitures may also benefit farmers and other suppliers in Illinois, Iowa, Nebraska, Missouri, Kansas, Oklahoma, Colorado, and New Mexico, who, while not necessarily captive to the elevators involved, nevertheless rely on them as competitive alternatives.

We are also requiring divestitures of river elevators on the Mississippi River in East Dubuque, Illinois, and Caruthersville, Missouri, and along the Illinois River between Morris and Chicago, where the merger would have otherwise harmed competition for the purchase of grain and soybeans from farmers in those areas.

In the case of the Illinois River divestitures, and an additional required divestiture of a port elevator in Chicago, the merger would also have anticompetitively concentrated ownership of delivery points that have been authorized by the Chicago Board of Trade for settlement of corn and soybean futures contracts. The delivery points would then have been under the control of Cargill and one other firm, which would have increased the risk that prices for CBOT corn and soybean futures contracts could be manipulated. These required divestitures will address this concern regarding adverse effects on competition in the futures markets.

In addition, we are requiring divestiture of a rail terminal in Troy, Ohio, and we are prohibiting Cargill from acquiring the rail terminal facility in Salina, Kansas, that had formerly been operated by Continental, and from acquiring the river elevator in Birds Point, Missouri, in which Continental until recently had held a minority interest, in order to protect competition for the purchase of grain and soybeans in those areas.

And we are also requiring Cargill to enter into what is called a “throughput agreement” to make one-third of the loading capacity at its Havana, Illinois, river elevator available for leasing to an independent grain company, and are imposing restrictions on Cargill in the event it seeks to enter into a throughput agreement with the operator of the Seattle facility.

It should be noted that the Department received valuable assistance in our review of the Cargill/Continental merger from the U.S. Department of Agriculture, as well as the Commodity Futures Trading Commission, and several State attorneys general.

We have also reviewed a number of mergers in the meatpacking area. In 1993 and 1994, for example, we received reports that Cargill’s large meat-packing subsidiary Excel, the second largest steer/heifer packer next to IBP, was looking into acquiring Beef America, at the time the fifth largest steer/heifer packer. As a result of our concerns that competition might be adversely affected by the increased concentration in steer/heifer that would result from this merger, we opened an investigation and began asking questions of Excel and others in the marketplace. Excel never put forth a formal proposal, and we were ultimately able to close our investigation.

Before concluding the discussion of merger enforcement, it is important to mention railroad mergers, such as the merger approved in 1996 between Union Pacific and Southern Pacific. Because rail transportation is one of the primary means of getting agricultural produce to market, the competitive effects of these mergers are also of great importance to the farming community. Unfortunately, we do not have authority to review rail mergers in the ordinary fashion under the antitrust laws.

Initially, Congress gave the authority to review rail mergers to the Interstate Commerce Commission. When Congress abolished the ICC in 1995 and created the Surface Transportation Board to take over some of the ICC’s authority, we and others in the Ation Administration urged Congress to turn over review of rail mergers—at least their competitive implications—to the antitrust enforcement agencies. The decision was made instead to leave that responsibility with the Surface Transportation Board, and to give the Justice Department a more limited advisory role. That is, we can make recommendations to the Board. The Board is required to give our recommendations “substantial weight,” but is not required to follow them.

We recommended that the Board deny the Union Pacific/Southern Pacific merger, because we were concerned that it would significantly harm competition in numerous markets west and south of Chicago all the way to the Pacific Ocean and the Gulf of Mexico. The Board approved the merger. Many parties have continued to express competitive concerns about the merger since then.

CONCLUSION

The Antitrust Division takes seriously its responsibility to protect the marketplace—including the agricultural marketplace—against anticompetitive conduct and mergers that substantially lessen competition. As this statement makes clear, the Division has a strong record of acting in this important sector when the antitrust laws are violated.

Thank you for the opportunity to present this statement for the Committee's record.