to implement its Michigan-approved industrial pretreatment program.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States et al.*, v. *County of Muskegon, Michigan, et al.* D.J. Ref. 90–5–1–1–4382.

The proposed consent decree may be examined at : (1) the Office of the United States Attorney for the Western District of Michigan, The Law Building, 330 Ionia Avenue, NW, 5th Floor, Grand Rapids, Michigan 49503, (616–456–2404); (2) The United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Robert Thompson (312–353–6700)); and, (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. When requesting a copy, please refer to *United States et al.*, v. *County of Muskegon, Michigan, et al.* D.J. Ref. 90–5–1–1–4382, and enclose a check in the amount of $8.25 for the consent decree only (33 pages at 25 cents per page reproduction costs), or $24.50 for the consent decree and all appendices (98 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20807 Filed 8–11–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Stipulation Pursuant to The Clean Air Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Stipulation, Settlement Agreement, and Order in *United States* v. *Strategic Materials, Inc.*, Civ. No. 99–C–0853, was lodged with the United States District Court for the Eastern District of Wisconsin, on July 28th, 1999. That action was brought against defendant pursuant to Sections 110 and 113 of the Clean Air Act (''the Act''), 42 U.S.C. 7410, 7413, for violations at its glass recycling facility, located in Milwaukee, Wisconsin. Specifically, the complaint alleges that SMI has violated the Act and the requirements or prohibitions of the State Implementation Plan for the State of Wisconsin, promulgated pursuant to Section 110 of the Act, 42 U.S.C. 7410. The violations relate to particulate emissions, volatile organic compounds, operating without a permit, and violation of the opacity and record keeping requirements of the permit. The settlement stipulation provides for payment of $276,176, and also requires defendant to erect and maintain fencing to provide a barrier for windblown material associated with defendant's glass recycling operations.

The Department of justice will receive comments relating to the proposed settlement stipulation for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Strategic Materials, Inc.*, D.J. Ref. 90–5–2–1–2205.

The proposed settlement stipulation may be examined at the office of the United States Attorney for the Eastern District of Wisconsin, 517 East Wisconsin Ave., Milwaukee, Wisconsin 53202; at the Region V office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW, 3rd floor, Washington, DC 20005, 202–624–0892. A copy of the proposed settlement stipulation may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $3.0 for the stipulation (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Strategic Materials, Inc.*, D.J. Ref. 90–5–2–1–2205.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20808 Filed 8–11–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cargill, Incorporated and Continental Grain Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Cargill, Inc. and Continental Grain Company,* Civil Action No. 99–1875. The Complaint in this case alleged that the proposed acquisition of Continental Grain Company's (Continental) worldwide commodity marketing business by Cargill, Inc. (Cargill) would substantially lessen competition for grain purchasing services to farmers and other suppliers in many areas in the United States, and would increase the concentration of authorized delivery capacity for settlement of Chicago Board of Trade corn and soybean futures contracts, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint further alleged that the Covenant Not To Compete in the Purchase Agreement between the two companies is an unreasonable agreement in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The proposed Final Judgment requires Cargill to divest all of its property rights in its port elevator in Seattle, Washington and its river elevators in East Dubuque and Morris, Illinois. The proposed Final Judgment further requires Continental to divest all of its property rights in its river elevators at Lockport, Illinois and Caruthersville, Missouri, its rail elevators at Salina, Kansas and Troy, Ohio; and its port elevators at Beaumont, Texas, Stockton, California, and Chicago, Illinois. Cargill is also required to enter into a ''throughput agreement'' to make one-third of the loading capacity at its Havana, Illinois river elevator available to an independent grain company. Cargill is prohibited from acquiring any interest in the facilities being divested by Continental, or in the river elevator at Birds Point, Missouri in which Continental previously held a minority interest. The proposed Final Judgment also makes Cargill subject to various restrictions if it seeks to enter into an throughput agreement with the acquirer of the Seattle port facility.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, which will be published in the Federal Register and filed with the Court. Comments, should be directed to: Roger Fones; Chief, Transportation, Energy, and Agriculture Section, Antitrust Division; U.S. Department of Justice, 325 Seventh Street, NW; Room 500; Washington, DC 20530 (telephone: (202) 307–6351).

Constance K. Robinson,

Director of Operations.

Stipulation and Order

It is hereby *stipulated* by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. Defendants shall prepare and deliver reports in the form required by the provisions of Section VI.B of the proposed Final Judgment commencing no later than twenty (20) calendar days after the filing of this Stipulation, and every thirty (30) calendar days thereafter pending entry of the Final Judgment.

6. In the event that the plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, or the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continuing compliance with the terms and provisions of the proposed Final Judgment, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

7. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Respectfully submitted,

For Plaintiff United States of America

Robert L. McGeorge,

Attorney, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, Telephone: (202) 307–6361, Facsimile (202) 307–2784.

For Defendant Cargill, Incorporated

Marc G. Schildkraut

Howrey & Simon, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004, Telephone: (202) 383–7448, Facsimile: (202) 383–6610.

For Defendant Continental Grain Company

Paul T. Denis,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, N.W.; Suite 300, Washington, DC 20007–5116, Telephone: (202) 424–7810, Facsimile: (202) 424–7645.

Jack Quinn,

Arnold & Porter, 555 Twelfth Street, N.W., Washington, DC 20004, Telephone: (202) 942–5000, Facsimile: (202) 942–5999.

Dated: July 8, 1999.

Order

It is *so ordered*, this _____ day of _____, 1999.

_____

United States District Court Judge

Final Judgment

Whereas plaintiff, the United States of America (hereinafter ''United States''), having filed its Complaint herein, and defendants Cargill, Incorporated (''Cargill'') and Continental Grain Company (''Continental''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law of fact herein;

And whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture of certain assets to third parties is the essence of this agreement;

And whereas, the United States requires defendants to maker certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the person or persons to whom defendants shall transfer the Assets (as defined in subsection B).

B. ''Assets'' means all property rights held by Cargill or Continental in the river, rail and port elevators defined in subsections C, F, H, J, L, M, Q, R, T and V.

C. ''Beaumont port elevator'' means the port elevator operated by Continental at or near Beaumont, Texas, and all Related Assets.

D. ''Capacity'' when used in connection with a grain elevator may be based on the maximum number of bushels that can be stored in the facility at any one time (storage capacity), or the maximum number of bushels that can be moved through the facility over the course of a designated unit of time (throughput capacity). When one grain company obtains the right to a certain percentage of the capacity of the storage or loading capacity at another grain company's elevator pursuant to a throughput agreement or other

commercial arrangement, it obtains the right to the stipulated portion of total storage or throughput capacity at the facility, and not necessarily the exclusive right to use a specific area in that facility.

E. ''Cargill'' means defendant Cargill, Incorporated, and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

F. ''Caruthersville river elevator'' means the river elevator operated by Continental at or near Caruthersville, Missouri, and all Related Assets.

G. ''Continental'' means defendant Continental Grain Company and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

H. ''Chicago port elevator'' means the river elevator operated by Continental (also known as ''Chicago B'') at or near Chicago, Illinois, and all Related Assets.

I. ''Divest'' means to sell or transfer a defendant's rights in property that it owns, or to assign or sublease a defendant's rights in property that it leases or rents.

J. ''East Dubuque river elevator'' means the river elevator operated by Cargill at or near East Dubuque, Illinois, and all Related Assets.

K. ''Grain'' means corn, wheat and other grains, and soybeans and other oilseeds, in their unprocessed, commodity form.

L. ''Lockport river elevator'' means the river elevator operated by Continental at or near Lockport, Illinois, and all Related Assets.

M. ''Morris river elevator'' means the river elevator operated by Cargill at or near Morris, Illinois, and all Related Assets.

N. ''Person'' means any natural person, corporation, association, firm or other business or legal entity.

O. ''Property rights'' means all legal rights possessed by defendants relating primarily to the use, control or operation of a specific river, rail or port elevator, including but not limited to: fee simple ownership rights, easements and all other real property rights for land, improvements and fixtures owned by that defendant; leasehold and rental rights for facilities that are leased or rented to that defendant, including all renewal or option rights; personal property ownership rights for equipment and other personal property owned by that defendant and used in the operation of those facilities; stockholder interests; and contract rights.

P. ''Related Assets'' means all real, personal and contract rights associated primarily with the operation of a particular river, rail or port elevator, including but not limited to: all bins, silos and other grain storage facilities; all improvements and equipment used for handling, receiving, unloading, weighing, sampling, grading, elevating, storing, drying, conditioning and loading grain; all of the real property on which the facility is located; all inventory, accounts receivable, pertinent correspondence, files, customer lists and information and advertising materials relating to the facility; and all assignable contract rights specific to a facility with suppliers, customers and transportation firms for that specific facility.

Q. ''Salina rail elevator'' means the elevator with outbound rail capability (also known as ''Salina East'') operated by Continental at or near Salina, Kansas, and all Related Assets.

R. ''Seattle port elevator'' means the port elevator operated by Cargill at or near Seattle, Washington (commonly referred to as ''Pier 86''), and all Related Assets.

S. ''Standard Throughput Agreement'' means an agreement that allows one grain company to move its grain through an elevator operated by another person, with unloading, storage, loading and ancillary services provided by the operator pursuant to terms, conditions and rates that are common in the grain industry.

T. ''Stockton port elevator'' means the port elevator operated by Continental at or near Stockton, California, and all Related Assets.

U. ''Tacoma port elevator'' means the port elevator operated by Continental at or near Tacoma, Washington.

V. ''Troy rail elevator'' means the elevator with outbound rail capability operated by Continental at or near Troy, Ohio, and all Related Assets.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. The pertinent defendant shall require, as a condition of the divestiture of the Assets, that the Acquirer agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Cargill is hereby ordered and directed, within five (5) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest all of its property rights in the East Dubuque river elevator and Morris river elevator to an Acquirer acceptable to the United States in its sole discretion. It is hereby ordered and directed, within six (6) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest all of its property rights in the Seattle port elevator to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of the time period, and shall notify the Court in such circumstances.

B. Notwithstanding Section IV.A, the Acquirer of the Seattle port elevator may enter into a Standard Throughput Agreement with Cargill, or any joint venture involving the Tacoma elevator to which Cargill is a party (the ''Cargill Joint Venture''), provided that: (1) the Acquirer has no interest in Cargill or the Cargill Joint Venture; (2) the throughput agreement gives Cargill or the Cargill Joint Venture no more rights concerning the operations of the facility than are commonly granted to sublessees in Standard Throughput Agreements; (3) and Cargill or the Cargill Joint Venture obtains continuing rights to move no more than 8.5 million bushels of grain and oilseeds combined in any given month through the Seattle port elevator.

C. Notwithstanding Section IV.A and IV.B, Cargill need not divest the Seattle port elevator if it does not buy, lease or otherwise acquire an interest in Continental's port elevator at or near Tacoma, Washington.

D. Continental is hereby ordered and directed, within five (5) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest all of its property rights in the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator and Chicago port elevator to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of the time period, and shall notify the Court in such circumstances.

E. Unless the United States consents in writing, the divestiture pursuant to

Section IV or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Assets defined above (as qualified by Section IV.B and IV.C). Divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Assets can and will be operated by the Acquirer as a viable, ongoing business. Divestiture of the Assets, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to an Acquirer for whom it is demonstrated to the sole satisfaction of the United States that: (1) the purchase is for the purpose of using the Asset to compete effectively in the grain business, (2) the Acquirer has the managerial, operational, and financial capability to use the Asset to compete effectively in the grain business; and (3) none of the terms of any agreement between the Acquirer and defendant(s) give defendant(s) the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability or incentive of the Acquirer to compete effectively. Moreover, the United States must be satisfied, in its sole discretion, that any Standard Throughput Agreement that may be negotiated between Cargill or the Cargill Joint Venture and the Acquirer of the Seattle port elevator: (1) would leave the Acquirer with sufficient capacity for it to be a viable and effective competitor for the purchase of corn and soybeans in the Pacific Northwest draw area; and (2) would not adversely affect the Acquirer's ability or incentives to compete vigorously for the origination of corn and soybeans in the Pacific Northwest draw area, by raising the Acquirer's costs, lowering its efficiency, or otherwise interfering in the ability or incentive of the Acquirer to compete effectively.

F. In accomplishing the divestiture ordered by this Final Judgment, defendants shall make known, by usual and customary means, the availability of the Assets. Defendants shall provide any person making inquiry regarding a possible purchase a copy of the Final Judgment. The pertinent defendant shall also offer to furnish to any prospective purchaser, subject to customary confidentiality assurances, all information regarding the Assets customarily provided in a due diligence process, except such information subject to attorney client privilege or attorney work product privilege. The pertinent defendant shall make available such information to the United States at the same time that such information is made available to any other person. The pertinent defendant shall permit prospective purchasers of the Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Defendants shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility involves the use of the Assets.

H. Defendants shall take all reasonable steps to accomplish the prompt divestitures contemplated by this Final Judgment. Defendants shall not take any action other than in the ordinary course of business that will impede in any way the operation of the Assets.

I. Cargill shall not purchase, lease or acquire any interest in the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator or Chicago port elevator, or any interest in the river elevator at or near Birds Point, Missouri (in which Continental formerly owned a minority interest, and had a right of first refusal to purchase grain). If another firm acquires the Tacoma port elevator pursuant to a right of first refusal (and Cargill therefore retains the Seattle port elevator), Cargill shall not subsequently purchase or lease the Tacoma port elevator. If another firm acquires the Tacoma port elevator pursuant to a right of first refusal, Cargill shall not subsequently acquire any other interest in that facility (including a joint venture interest) without the written consent of the United States.

J. Cargill shall enter into a throughput agreement that makes one-third (⅓) of the daily loading capacity at its river elevator located at or near Havana, Illinois, or one barge-load per day, whichever is greater, to an independent grain company acceptable to the United States in its sole discretion (the ''Havana Throughput Agreement''). Daily loading capacity shall be the capacity registered with the CBOT. The independent grain company that obtains the throughput right from Cargill (the ''third party'') must be qualified under CBOT rules and regulations to make delivery of at least one barge-load of corn and soybeans per day for the settlement of CBOT corn and soybean futures contracts, and must agree to register that capacity at the Havana facility with the CBOT.

The Havana Throughput Agreement shall allow the third party to use its share of the loading capacity at the Havana facility to transload grain from trucks onto barges for commercial purposes unrelated to futures contract deliveries, as well as to make deliveries under CBOT futures contracts. Cargill shall not be obligated by this Final Judgment to provide storage services to the third party in excess of the storage services required to accommodate the transloading of grain shipments from trucks to barges. Cargill's load-out fees, and its fees for any storage services that Cargill elects to provide for storage in excess of twenty-four hours from the time of truck unload to barge loading, may not exceed the load-out fees and daily storage rates published in applicable CBOT tariffs.

As part of the Havana Throughput Agreement, any dispute or disagreement between Cargill and the third party arising from or relating to the throughput agreement or the third party's use of Cargill's loading capacity at Havana shall be submitted, governed, and resolved in accordance with the arbitration rules of the CBOT to the extent such dispute or disagreement falls within the jurisdiction of the CBOT Arbitration Committees. To the extent such dispute or disagreement does not fall within CBOT jurisdiction, such dispute or disagreement shall be submitted, governed and resolved in accordance with the arbitration rules of the National Grain and Feed Association, or other arbitration body that is mutually agreed upon by Cargill and the third party. Cargill shall abide by the decisions of such arbitrators.

Cargill shall enter into the Havana Throughput Agreement within five (5) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to an extension of the time period, and shall notify the Court in such circumstances. If Cargill has not entered into a Havana Throughput Agreement within this time period, a trustee shall be appointed to satisfy this requirement pursuant to the same conditions as are set forth in Section V.

V. Appointment of Trustee

A. In the event that Cargill has not divested the East Dubuque river elevator, Morris river elevator or Seattle port elevator, or entered in the Havana Throughput Agreement, to the extent required by Section IV of the Final Judgment within the time period specified therein, or that Continental has not divested the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator or Chicago port elevator, to the

extend required by Section IV of the Final Judgment, within the time period specified, it shall notify the United States of that fact in writing. In that event, and upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the divestiture of the Assets. Until such time as a trustee is appointed, defendants shall continue their efforts to effect the divestiture as specified in Section IV.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest the Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of the pertinent defendant, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the Assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to the pertinent defendant and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The pertinent defendant shall use its best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all regulatory approvals and its best efforts to obtain any necessary consent of any persons from whom they lease the Assets. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of, and relating to, the Assets, and the pertinent defendant shall develop financial or other information relevant to such Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture. The pertinent defendant shall permit any prospective Acquirer of the Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Assets. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

A. Within two (2) business days following execution of a definitive agreement with respect to any of the Assets, the pertinent defendant or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify the pertinent defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Assets, together with full details of the same. Within fifteen (15) calendar days after receipt of the notice, the United States may request from the pertinent defendant, the proposed purchaser, or any third party additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. The pertinent defendant or the trustee shall furnish the additional information within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after receipt of the additional information by the United States, whichever is later, the United States shall notify in writing the pertinent defendant and the trustee, if there is one, whether or not it objects to the proposed divestiture. If the United States notifies in writing the pertinent defendant and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to the pertinent defendant's limited right to object to the sale under Section V.B. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or V may not be consummated. Upon objection by a defendant under Section V.B., the proposed divestiture under Section V

shall not be accomplished unless approved by the Court.

B. Twenty (20) calendar days from the date of the filing of this Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, each defendant shall deliver to the United States a written affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, for each person who during the preceding thirty (30) calendar days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Assets, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Each such affidavit shall also include a description of the efforts that the pertinent defendant has taken to solicit an Acquirer for the relevant Assets and to provide required information to prospective Acquirers including the limitations, if any, on such information. Assuming that the information set forth in the affidavit is true and complete, any objection by the United States to the information provided by the defendants, including limitations of information, shall be made within fourteen (14) calendar days of receipt of such affidavit. Until one year after each defendant has completed such divestitures, that defendant shall maintain full records of all efforts made to divest all or any portion of the Assets.

VII. Financing

Defendants shall not finance all or any part of any purchase of the Assets made pursuant to Section IV or V of this Final Judgment. With respect to Assets leased by a defendant, however, the pertinent will not violate this condition if: (1) The lessor holds the pertinent defendant responsible for lease payments under an assignment or sublease of the defendant's leasehold interests; or (2) the pertinent defendant makes up any shortfall between its lease payment obligations and the lease payments negotiated by the person to whom it assigns or subleases its leasehold interests.

VIII. Hold Separate and Preservation of Assets Requirements

Unless otherwise indicated, from the date of filing of this proposed Final Judgment with the Court and until the divestitures required by Sections IV.A, IV.D and/or V of the Final Judgment, and the execution of the Havana Throughput Agreement required by Section IV.J, have been accomplished:

A. Subject to *force majeure*, defendants shall: (1) Take all steps necessary to assure that the Assets and Cargill's Havana river elevator are maintained as separate, distinct and salable assets; and extend all reasonable efforts to maintain these facilities in a condition that makes them usable as grain elevators; (2) not sell, assign, transfer, or otherwise dispose of theses facilities, or pledge them as collateral for loans, except in accordance with the Final Judgment; (3) take all steps necessary to preserve these facilities in a state of repair equal to their current state of repair, ordinary wear and tear excepted; (4) take all steps necessary to preserve the documents, books, customers lists and records relating to these facilities; (5) refrain from taking any actions that would jeopardize the sales of these facilities; and (6) continue to operate these facilities as grain elevators. Notwithstanding the foregoing: (a) if Continental's lease of the Salina rail elevator expired on or before April 30, 1999 and was not renewed, that facility shall not be subject to this section of the Final Judgment, and (b) if Cargill's lease of the East Dubuque river elevator expires prior to divestiture, Cargill shall not thereafter be subject to the provisions of this section if it has offered to extend the lease at rates and conditions substantially similar to the rates and conditions in its current lease, and the lessor has rejected that offer.

B. Except in the ordinary course of business or as is otherwise consistent with this Final Judgment, defendants shall not hire and shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employees who on June 24, 1999 worked at any of the Assets, unless such individual has a written offer of employment from a third party for a like or better position.

C. Until such time as the Assets are divested: William F. Winnie shall manage the Beaumont port elevator, Caruthersville river elevator, Chicago port elevator, Lockport river elevator, Stockton port elevator and Troy rail elevator; Peter Reed shall manage the East Dubuque river elevator; Sharon Spies shall manage the Morris river elevator; and Donald Vogt shall manage the Seattle port elevator. These individuals shall have complete managerial responsibility for the Assets, subject to the provisions of the Final Judgment. In the event that these individuals are unwilling or unable to perform these duties, defendants shall appoint, subject to the United States' approval, a replacement acceptable to the United States within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States may appoint a replacement.

D. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable Acquirer.

E. Continental shall operate the Lockport river elevator, Caruthersville river elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator and Chicago port elevator independently from and in competition with Cargill. Defendants shall not implement any non-compete agreements until all of the Assets have been divested. The term of any such non-compete agreement shall not be more than three (3) years.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matter contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview either informally or on the record, directors, officers, employees, and agents of defendants, which may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in Sections VIII or IX shall be divulged by any representative of the United States to any person other than a duly

authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to the United States, such defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give ten (10) calendar days' notice to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI. Termination of Provisions

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: July ____, 1999.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 8, 1999, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Cargill, Incorporated (''Cargill'') of the Commodity Marketing Group of Continental Grain Company (''Continental'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Cargill is the second largest grain trader in North America, and that, until recently, Continental was the third largest grain trader in North America. The Complaint alleges that if the acquisition is permitted to proceed, it will substantially lessen competition for grain purchasing services to farmers and other suppliers in a number of areas in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint further alleges that unless the acquisition is enjoined, many American farmers and other suppliers likely will receive lower prices for their grain and oilseed crops, including corn, soybeans, and wheat (collectively referred to as ''grain''). The request for relief in the Complaint seeks: (1) Preliminary and permanent injunctive relief preventing the consummation of the transaction; and (2) such other relief as is proper.

When the Complaint was filed, the United States also filed a proposed consent decree (''Final Judgment'') that would permit Cargill to complete its acquisition of Continental's commodity marketing business, but requires divestitures and other relief that would preserve competition for grain purchasing services to farmers and other suppliers in a number of areas in the United States.[1] The proposed Final Judgment orders defendant Cargill to divest all of its property rights in the river elevators located in East Dubuque, Illinois and Morris, Illinois within five (5) months after the filing of the proposed Final Judgment or within five (5) calendar days after notice of entry of the Final Judgment, whichever is later. The proposed Final Judgment also orders defendant Cargill to divest all of its property rights in the Seattle port elevator within six (6) months after the filing of the proposed Final Judgment or within five (5) calendar days after notice of entry of the Final Judgment, whichever is later. The proposed Final Judgment orders defendant Continental to divest all of its property rights in the river elevators located at Lockport, Illinois and Caruthersville, Missouri, the rail elevators located at Salina, Kansas and Troy, Ohio, and the port elevators located at Beaumont, Texas, Stockton, California, and Chicago, Illinois within five (5) months after the filing of the proposed Final Judgment or within five (5) calendar days after notice of entry of the Final Judgment, whichever is later. The proposed Final Judgment also requires defendant Cargill to enter into a ''throughput agreement''—an agreement providing for one grain trader to lease elevator capacity from another—to make one-third of the loading capacity at its Havana, Illinois river elevator available to an independent grain company, within five (5) months after the filing of the proposed Final Judgment or within five (5) calendar days after notice of entry of the Final Judgment, whichever is later.

In addition, the proposed Final Judgment prohibits defendant Cargill from acquiring any interest in the facilities to be divested by Continental, or the river elevator at Birds Point, Missouri, in which Continental until recently had held a minority interest. The proposed Final Judgment also makes defendant Cargill subject to various restrictions in the event it seeks to enter into a throughput agreement with the acquirer of the Seattle port facility.

If the defendants should fail to accomplish the divestitures or to enter into a Havana throughput agreement within the prescribed time periods, a trustee appointed by the Court would be empowered to divest these assets or otherwise satisfy the Havana throughput requirement.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violations

A. The Defendants and the Proposed Transaction

Cargill is a Delaware corporation with its principal place of business in Minnetonka, Minnesota. It is the second largest grain trader in North America. Continental is a Delaware corporation with its principal place of business in New York City, New York. It was, as recently as 1997, North America's third largest grain trader. The defendants are also the first and third largest U.S. grain exporters, collectively exporting approximately 40 percent of all U.S. agricultural commodities. Both Cargill and Continental purchase grain and

[1] Cargill and Continental entered into a Stipulation (filed contemporaneously with the Final Judgment) in which they agreed to be bound by the proposed final Judgment pending final determination by the Court.

other crops from farmers, brokers, and elevator operators throughout the United States.

On October 9, 1998, Cargill and Continental entered into an agreement entitled ''Purchase Agreement'' under which Cargill agreed to purchase Continental's Commodity Marketing Group.

B. The Grain Purchasing Market

Grain traders such as Cargill and Continental operate extensive grain distribution networks, which facilitate the movement of grain from farms to domestic consumers of these commodities and to foreign markets. Country elevators are often the first stage of the grain distribution system, with producers hauling wheat, corn, and soybeans by truck from their farms for sale to the country elevators. Here, the grain is off-loaded, sampled, graded, and put into storage. Sometimes other services are offered by the country elevators, such as grain drying and conditioning services. The grain is then transported by truck, rail, or barge to larger distribution facilities, such as river, rail, or port elevators, which may or may not be affiliated with the country elevators, or to feedlots or processors.

River elevators or rail terminals may receive grain directly from the farm or from country elevators. From the river elevator, grain typically moves outbound by barge to port elevators. From the rail terminal, grain typically moves outbound by rail to port elevators or to domestic feedlots or processors.

The final stage in the grain distribution system for grain intended for export is a port elevator, where it is transferred to ocean vessels for shipment to foreign buyers. Grain normally comes to port elevators from river elevators (via barge) and rail terminals, although some port elevators receive grain directly from farmers and country elevators located within a relatively short distance from the port elevator.

Because the transportation of grain is relatively costly and time-consuming, farmers generally sell their grain within a limited geographic area surrounding their farms, usually to a country elevator—although farmers located near river, rail, or port elevators sometimes bypass the country elevator and ship their grain directly to those facilities. Grain traders purchase grain at these country, rail, river, and port elevators from farmers and from other suppliers, such as brokers and independent elevator operators who have purchased grain from the farmers.

the Complaint alleges that the purchasing of wheat, corn, and soybeans each constitutes a relevant product market and a line of commerce within the meaning of the Clayton Act.

The draw area for a country, river, rail, or port elevator is the geographic area from which the facility receives grain. The draw area of one grain company's country, river, rail or port elevator will overlap the draw area of a competitor's elevator if their facilities are relatively close to each other—and the cost of shipping grain from the producer to both elevators is comparable. Cargill and Continental operate a number of facilities with overlapping draw areas, and therefore compete with one another in a number of markets for the purchase of wheat, corn, and soybeans from the same producers or other suppliers.

Many farmers and other suppliers located within overlapping Cargill/Continental draw areas depend solely on competition among Cargill, Continental, and perhaps a small number of other nearby grain companies to obtain a competitive price for their products. The areas in which these suppliers are located are referred to as ''captive draw areas'' in the Complaint. The Complaint alleges that these captive draw areas are relevant geographic markets and separate sections of the country within the meaning of the Clayton Act.

The following are the overlapping and captive draw areas for competing Cargill and Continental facilities:

- *The Pacific Northwest.* Cargill's port elevator in Seattle competes with Continental's port elevator in Tacoma for the purchase of corn and soybeans. The overlapping draw area for these facilities includes portions of North Dakota, South Dakota, Minnesota, Nebraska, and Iowa. Captive suppliers are located primarily in eastern North Dakota, eastern South Dakota, and western Minnesota.
- *Central California.* Cargill's port elevator in Sacramento competes with Continental's port elevator in Stockton for the purchase of wheat and corn. The overlapping draw area for these facilities is located in the Sacramento/Stockton area, where all suppliers are captive
- *Texas Gulf.* Cargill's port elevator in Houston competes with Continental's port elevator in Beaumont for the purchase of soybeans and wheat. The overlapping draw area for these facilities includes portions of Texas, Louisiana, Oklahoma, Kansas, New Mexico, Colorado, Nebraska, Missouri, Iowa, and Illinois. Captive suppliers are located primarily in eastern Texas and western Louisiana.
- *Rail and River Elevators.* Cargill and Continental compete for the purchase of grain from captive suppliers located near their rail elevators in Salina, Kansas and Troy, Ohio, and their river elevators in the vicinity of Morris, Illinois, Lockport, Illinois, Dubuque, Iowa/East Dubuque, Illinois, and New Madrid/Caruthersville, Missouri.

According to the Complaint, if Cargill were allowed to acquire the Continental facilities that purchase grain in these captive draw areas, it would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to farmers and other suppliers, because transportation costs would preclude them from selling to other grain traders or purchasers in sufficient quantities to prevent an anticompetitive price decrease.

The Complaint also alleges that producers of corn, soybeans, and wheat would not switch to an alternative crop in sufficient numbers to prevent a small but significant decrease in price because of the length of growing seasons and of the suitability of those crops to certain climates and regions. Nor are processors or fedlots that purchase grain to manufacture food products or fatten livestock likely to constrain pricing decisions by grain trading companies because their purchasing decisions are based on factors other than small but significant changes in crop prices. Therefore, significant changes in concentration among grain trading companies can have an anticompetitive impact upon prices received by farmers and other suppliers.

C. The Chicago Board of Trade Futures Markets

In addition, Cargill and Continental compete to purchase corn and soybeans from grain sellers seeking to deliver these crops to river elevators on the Illinois River that, beginning in year 2000, will be authorized as delivery points for the settlement of Chicago Board of Trade (CBOT) corn and soybean futures contracts. The provision of authorized delivery points for corn and soybean futures contracts is a relevant product market within the meaning of the Clayton Act. These delivery points are regulated by the Commodities Futures Trading Commission. The authorized delivery points, running the entire length of the Illinois River for soybeans, and from Chicago to Peoria, Illinois for corn, each constitutes a relevant geographic market within the meaning of the Clayton Act; and undue concentration in these markets would increase the possibilities

of anticompetitive manipulations of the futures markets.

D. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that Cargill's acquisition of Continental's Commodity Marketing Group will substantially lessen competition for the purchase of corn, soybeans, and wheat in each of the relevant geographic markets by enabling Cargill unilaterally to depress the prices paid to farmers and other suppliers. The Complaint further alleges that the proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress grain prices. Moreover, it is not likely that Cargill's exercise of market power in any of these relevant geographic markets would be thwarted by significantly increased purchases of corn, soybeans, or wheat by processors, feedlots, or other buyers, by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing force.

In addition, the Complaint alleges that by consolidating the Cargill and Continental river elevators on the Illinois River, this transaction would give two firms approximately 80% of the authorized delivery capacity for settlement of CBOT corn and soybeans futures contracts. This concentration would increase the likelihood of price manipulation of futures contracts by those firms, resulting in higher risks for buyers and sellers of futures contracts.

Finally, the Complaint alleges that the defendants' Purchase Agreement includes a Covenant Not to Compete that is longer than is reasonably necessary for Cargill to have a fair opportunity to gain the loyalty of Continental's suppliers and customers, and has the effect of unlawfully dividing markets between the two companies in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to preserve existing competition for grain purchasing services to farmers and other suppliers in numerous areas in the United States, and to prevent anticompetitive manipulation of CBOT corn and soybean futures markets. To preserve existing competition for grain purchasing services, it requires divestitures of Cargill or Continental river elevators at Morris, Illinois, Lockport, Illinois, East Dubuque, Illinois, and Caruthersville, Missouri; rail terminals at Troy, Ohio and Salina, Kansas; and port elevators at Beaumont, Texas, Stockton, California, and Seattle, Washington. This relief is intended to maintain the level of competition that existed preacquisition, and ensures that farmers and other suppliers in the affected markets will continue to have effective alternatives to Cargill when selling their crops. to prevent manipulations of CBOT corn and soybean futures markets, the proposed Final Judgment requires divestitures of Cargill or Continental elevators along the Illinois River at Morris, Lockport and Chicago, Illinois, as well as providing one-third of Cargill's capacity at Havana, Illinois to a new entrant pursuant to a throughput agreement.[2]

A. East Dubuque and Morris River Elevators, and Seattle Port Elevator Provisions

Section IV.A of the proposed Final Judgment provides that, within five (5) months from the filing of the proposed Final Judgment with the Court, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, defendant Cargill must divest all of its property rights in the East Dubuque, Illinois river elevator and the Morris, Illinois river elevator to an acquirer acceptable to the United States. Section IV.A of the proposed Final Judgment also provides that, within six (6) months from the filing of the proposed Final Judgment with the Court, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, defendant Cargill must divest all of its property rights in the Seattle port elevator to an acquirer acceptable to the United States.

Section IV.B of the proposed Final Judgment imposes conditions on Cargill and the acquirer of the Seattle port elevator, should the acquirer decide to enter into a throughput agreement with Cargill or any joint venture involving the Tacoma elevator to which Cargill is a party (''Cargill Joint Venture''). Throughput agreements, which are common in the grain industry, allow one firm to move its grain through another firm's elevator for a fee. Under the terms of the Final Judgment: (a) Cargill may not obtain continuing rights to move more than 8.5 million bushels of grain per month through the Seattle port elevator (which ensures that the acquirer of that facility will have continuing rights to a substantial majority of the facility's throughput capacity); (b) the throughput agreement gives Cargill no more rights concerning the operations of the Seattle facility than are commonly granted to sublessees in standard throughput agreements (which insures that the acquirer will retain overall operational control of the facility); and (c) that, in any event, the throughput agreement will not interfere with the ability or incentive of the acquirer to compete for the purchase of corn and soybeans.

Section IV.C of the proposed Final Judgment provides that Cargill need not divest the Seattle port elevator if it does not buy, lease, or otherwise acquire an interest in Continental's port elevator at or near Tacoma, Washington.

B. Lockport River Elevator, Caruthersville River Elevator, Salina Rail Elevator, Troy Rail Elevator, Beaumont Port Elevator, Stockton Port Elevator, and Chicago Port Elevator Provisions

Section IV.D of the proposed Final Judgment provides that, within five (5) months from the filing of the proposed Final Judgment with the Court, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, defendant Continental must divest all of its property rights in the river elevators located at Lockport, Illinois and Caruthersville, Missouri; the rail terminals located at Salina, Kansas and Troy, Ohio; and the port elevators located at Beaumont, Texas, Chicago, Illinois, and Stockton, California, to an acquirer acceptable to the United States. These facilities were originally part of the defendants' Purchase Agreement. This divestiture requirement will ensure that these facilities are sold to purchasers who will operate these assets as grain elevators; and it is intended to preserve the market structure that existed in those geographic areas prior to the acquisition.

C. General Divestiture Provisions

Sections IV.E through IV.H of the proposed Final Judgment apply to all the divestitures ordered in Sections IV.A and IV.D (as qualified by Sections IV.B and IV.C). Section IV.E provides that unless the United States consents in writing, the divestitures shall include the entire assets defined in Sections IV.A and IV.D. The divestitures must be accomplished in such a way to satisfy the United States, in its sole discretion, that the assets can and will be operated by the acquirer as a viable, ongoing entity capable of competing in the grain business. In addition, any Standard Throughput Agreement that may be

[2] The divestitures of the Morris and Lockport river elevators provide relief for both the grain purchasing markets and the CBOT futures markets.

negotiated between Cargill or the Cargill Joint Venture and the purchaser of the Seattle port elevator must be acceptable to the United States, in its sole discretion.

Under Section IV.F of the proposed Final Judgment, defendants shall make known, by usual and customary means, the availability of the assets and provide any prospective purchasers with a copy of the Final Judgment. The pertinent defendant is required to offer to furnish any prospective purchaser, subject to customary confidentiality assurances, all information regarding the assets customarily provided in a due diligence process, except such information subject to attorney-client privilege or attorney work-product privilege. The pertinent defendant must also permit prospective purchasers to have reasonable access to personnel and to make inspection of physical facilities and financial, operational, or other documents and information customarily provided as part of a due diligence process.

Section IV.G prohibits defendants from interfering with any negotiations by the purchaser to hire any employee whose primary responsibility involves the use of the assets. Under Section IV.H, defendants must take all reasonable steps necessary to accomplish the prompt divestitures contemplated by the proposed Final Judgment, and may not impede the operation of the assets.

Section IV.I of the proposed Final Judgment prohibits Cargill from purchasing, leasing, or acquiring any interest in any of the assests required to be divested by defendant Continental pursuant to Section IV.D, or any interest in the river elevator at or near Bird's Point, Missouri (in which Continental formerly owned a minority interest and had a right of first refusal to purchase grain). Section IV.I also prohibits Cargill from subsequently purchasing or leasing the Tacoma port elevator should another firm acquire that facility, or from acquiring any other interest in that facility (including a joint venture interest) without the written consent of the United States. Section IV.I does not explicitly prohibit Cargill from reacquiring the assets that it will divest, because that prohibition is inherent in the requirement that Cargill divest these assets for the ten-year term of the Final Judgment.

Pursuant to Section IV.J of the proposed Final Judgment, defendant Cargill must enter into a throughput agreement that makes one-third (⅓) of the daily loading capacity at its river elevator located at or near Havana, Illinois, or one barge-load per day, whichever is greater, to an independent grain company acceptable to the United States in its sole discretion (the ''Havana Throughput Agreement'').[3] Unless the United States agrees to an extension, Cargill must enter into the Havana Throughput Agreement within five (5) months from the date the Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later.

D. Trustee Provisions

If the defendants fail to complete any of the divestitures or to enter into the Havana Throughput Agreement within the required time periods, the Court will appoint a trustee, pursuant to Section V of the proposed Final Judgment, to accomplish the divestitures. Once appointed, only the trustee will have the right to sell the divestiture assets or enter into the Havana Throughput Agreement, and the pertinent defendant will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any such professionals or agents shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. The proposed Final Judgment also requires the pertinent defendant to use its best efforts to assist the trustee in accomplishing the required divestitures.

Pursuant to Section V.E, the trustee must file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee does not accomplish the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the United States and defendants, who will each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the term of the trustee's appointment.

E. Notification Provisions

Section VI of the proposed Final Judgment assures the United States an opportunity to review any proposed sale, whether by the pertinent defendant or the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation. Upon objection by the United States to a sale of any of the divestiture assets by the pertinent defendant or the trustee, any proposed divestiture may not be completed. Should a defendant object to a divestiture by the trustee pursuant to Section V.B., that sale shall not be consummated unless approved by the Court.

Section VII of the proposed Final Judgment prohibits defendants from financing all or any part of any purchase of the assets made pursuant to Sections IV or V of the Final Judgment. However, the pertinent defendant will not violate this condition with respect to assets leased by a defendant if: (1) The lessor holds the pertinent defendant responsible for lease payments under an assignment or sublease of the defendant's leasehold interests; or (2) the pertinent defendant makes up any shortfall between its lease payment obligations and the lease payments negotiated by the person to whom it assigns or subleases its leasehold interests.

F. Hold Separate Provisions

Under Section VIII of the proposed Final Judgment, defendants must take certain steps to ensure that, until the required divestitures and the execution of the Havana Throughput Agreement have been accomplished, all the previously defined assets and Cargill's Havana river elevator will be maintained as separate, distinct and saleable assets, and maintained as usable grain elevators. Until such divestitures, the defendants shall continue to operate these facilities as grain elevators. The defendants must maintain all these facilities so that they continue to be saleable, including maintaining all records, loans, and personnel necessary for their operation. Defendant Continental must operate the Lockport river elevator, Caruthersville river elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator, and Chicago port elevator independently from and in competition with Cargill.

[3] The divestitures of the facilities at Morris, Lockport, and Chicago were sufficient to resolve concerns about consolidation of authorized delivery points for CBOT corn futures markets, which extend from Chicago to Pekin. To resolve concerns about concentration of authorized delivery points for CBOT soybean futures markets, which extend the entire length of the Illinois River, it was necessary to provide delivery capacity for a new entrant on the southern portion of the Illinois River.

G. Non-Compete Provisions

The Cargill/Continental Purchase Agreement contains a five-year non-compete provision. Under the proposed Final Judgment, defendants are prohibited from implementing any non-compete agreements until all of the assets have been divested. Furthermore, the term of any such non-compete agreement may not be more than three (3) years.

H. Compliance Inspection, Retention of Jurisdiction and Termination Provisions

Section IX requires defendants to make available, upon request, the business records and the personnel of its businesses. This provision allows the United States to inspect defendants' facilities and ensure that they are complying with the requirements of the proposed Final Judgment. Section X provides for jurisdiction to be maintained by the Court. Section XI of the proposed Final Judgment provides that it will expire on the tenth anniversary of its entry by the Court.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides for a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

the United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Cargill and Continental. The United States is satisfied, however, that the divestitures and other relief contained in the proposed Final Judgment should preserve competition in grain purchasing services as it was prior to the proposed acquisition, and that the proposed Final Judgment would achieve all of the relief that the government would have obtained through litigation, but merely avoids the time and expense of a trial.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other consideration bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process. [4] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). Precedent requires that

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

[4] 119 Cong. Rec. 24598 (1973); *see also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted* in (1974) U.S.C.C.A.N. 6535, 6538.

effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' ''.[6]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and the Act does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America

Dated: July 23, 1999.

Respectfully submitted,

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

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[5] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F. 2d 558, 565 (2d Cir. 1983).

[6] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc.; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by GPU Nuclear, Inc., (licensee) for an amendment to Facility Operating License No. DPR–50 issued to the licensee for operation of the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, PA.

The purpose of the portion of the licensee's amendment request that is denied was to seek approval from the Commission to allow the licensee to ignore the low temperature overpressure protection provisions related to high pressure injection pumps start and running restrictions during an emergency cooldown without having to invoke 10 CFR 50.54(x).

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated August 6, 1999.

By September 13, 1999, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 31, 1997, as supplemented June 3, 1998, and July 13, 1998, and (2) the Commission's letter to the licensee dated August 6, 1999.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/ Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 6th day of August 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8584]

Kennecott Uranium Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1350 to authorize the licensee, Kennecott Uranium Company (KUC), to resume commercial milling operations at the Sweetwater facility, and to approve the plan for future reclamation of the mill facility, existing and proposed new tailings impoundment, and the proposed evaporation ponds, according to the 1997 Reclamation Plan, as amended. The Sweetwater uranium mill site is located in Sweetwater County, approximately 40 miles (64 kilometers) northwest of the town of Rawlins, Wyoming. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of KUC's license renewal for operation and the amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, D.C. 20555. Telephone 301/415–6606.

SUPPLEMENTARY INFORMATION:

Background

The Sweetwater uranium mill site presently is licensed by the NRC under Materials License SUA–1350 to possess