UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA U.S. Department of Justice Antitrust Division 325 Seventh Street, N.W. Washington, D.C. 20530 Plaintiff, v. CARGILL, INCORPORATED 15407 McGinty Rd. W. P.O. Box 9300 Minneapolis, MN 55440, and CONTINENTAL GRAIN COMPANY, 277 Park Ave. New York, NY 10172 Defendants.	Civil No. 99 1875 Filed: 7/8/99

COMPLAINT

The United States of America, plaintiff, acting under the direction of the Attorney General, brings this civil action to enjoin defendant Cargill, Incorporated (Cargill), the second largest grain trader in North America, from acquiring the competing worldwide commodity marketing business of defendant Continental Grain Company (Continental), until recently the third largest grain trader in North America. If the acquisition is permitted to proceed, it will substantially lessen competition for grain purchasing services to farmers in a number of areas in the United States in violation of section 7 of the Clayton Act, 15 U.S.C. § 18. Unless the acquisition is enjoined, many American farmers likely will receive lower prices for their grain and oilseed crops, including corn, soybeans, and wheat (which sometimes are collectively referred to as “grain” in this Complaint).

1. Cargill and Continental are competing grain traders, each operating nationwide distribution networks, comprised of country elevators, rail terminals, river elevators, and port elevators. Cargill and Continental each purchase millions of tons of grain annually, grown on farms in virtually every state, and through their networks distribute them to customers throughout the United States and the rest of the world.

2. The grain trading business at certain levels is highly concentrated. Cargill and Continental compete to purchase corn, soybeans, and wheat in numerous rail terminal, river elevator, and port elevator markets throughout the country where they are two of a small number of competitors. The acquisition will eliminate competition between Cargill and Continental. The loss of Continental as an independent competitor in the grain trading business is likely to decrease the price farmers and other suppliers receive for grain in various areas throughout the United States.

3. Cargill and Continental, together with one other company, account for approximately 80% of the authorized delivery capacity for settlement of Chicago Board of Trade corn and soybean futures contracts. The acquisition will consolidate Cargill’s and Continental’s delivery

capacity and increase the risk of price manipulation of Chicago Board of Trade corn and soybean futures contracts.

I.

JURISDICTION AND VENUE

4. This Complaint is filed and this action is instituted under Section 15 of the Clayton Act, 15 U.S.C. § 25, in order to prevent and restrain the violation by the defendants, Cargill and Continental, as hereinafter alleged, of Section 7 of that Act, 15 U.S.C. § 18.

5. Defendants are engaged in interstate commerce and activities substantially affecting interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

6. Defendants transact business and are found within the District of Columbia. Venue is proper in this district under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c).

II.

DEFENDANTS

7. Cargill is a Delaware corporation with its principal place of business in Minnetonka, Minnesota. Cargill's grain revenues in 1998 were about $9 billion; its total revenues were about $35 billion. It purchases grain and other crops from farmers, brokers, and elevator operators throughout the United States.

8. Continental is a Delaware corporation with its principal place of business in New York City, New York. Continental's total grain revenues in 1998 were about $5.5 billion. It purchases grain and other

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

III.

THE ACQUISITION

9. Pursuant to an agreement entitled “Purchase Agreement,” dated October 9, 1998, Cargill has agreed to purchase Continental’s Commodity Marketing Group for approximately $450 million, plus the market value of its inventory on hand.

IV.

TRADE AND COMMERCE

10. The United States produces vast amounts of grain annually. Wheat, corn, and soybeans are the largest U.S. grain and oilseed crops. Most is consumed domestically, but more than half of U.S. wheat, one-third of U.S. soybeans, and one-fifth of U.S. corn are exported to countries throughout the world. While domestic consumption is relatively stable and predictable, exports of U.S. grain can vary significantly, depending on such factors as worldwide economic and weather conditions. U.S. grain producers can and do respond to the world's need for food although, in doing so, they must depend on the major grain traders for the distribution of their products.

11. 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.

12. Country elevators are often the first stage of the grain distribution system. Producers normally haul wheat, corn, and soybeans by truck from their farms for sale to country elevators, where the grain is off-loaded, sampled, graded, and put into storage. Country elevators may provide grain drying and conditioning services, and they also may offer a variety of transportation and payment terms to their suppliers. Grain is then transported by truck, rail, or barge to larger distribution facilities affiliated with country elevators or to unaffiliated grain companies, feedlots, or processors. Cargill owns and operates approximately 139 country elevators; Continental about 16.

13. Grain is often transported to river elevators, either from country elevators or directly from the farm. River elevator operators, like country elevator operators, may offer a variety of transportation and payment terms to their suppliers, and they may also provide grain drying and conditioning services. Once grain is delivered to the river elevator, it typically moves outbound by barge to port elevators, although relatively small amounts may be delivered to domestic feedlots or processors located on navigable rivers. Cargill owns and operates about 30 river elevators; Continental about 27 river elevators.

14. Grain may also be transported to rail terminals, either from country elevators or directly from the farm. Rail terminal operators, like country and river elevator operators, may offer a variety of transportation and payment terms to their suppliers, and they may also provide grain drying and conditioning services. Once grain is delivered to the rail terminal, it typically moves outbound by rail to

port elevators or to domestic feedlots or processors. Cargill operates about 63 rail terminals; Continental operates about 14 rail terminals.

15. The final U.S. stop for grain intended for export is at 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 of the port elevator. Port elevator operators typically combine grains of different grades, protein levels, and other characteristics to meet specifications established by their buyers, and they may dry, condition, or clean the grain to meet those specifications. Cargill operates 16 port elevators; Continental operates 6 port elevators.

16. Cargill has the second largest grain distribution network in the United States, as measured by total storage capacity. As recently as 1997, Continental had the third largest such network. They are also the first and third largest U.S. grain exporters, collectively exporting approximately 40 percent of all U.S. agricultural commodities.

V.

RELEVANT PRODUCT MARKETS

17. Wheat, corn, and soybeans are each distinct products without practical substitutes, differing from all other agricultural commodities and one another in their physical characteristics, means of production, uses, and pricing.

18. The livelihood of farmers depends on their ability to sell the corn, soybeans, and wheat they produce to purchasers who offer them the best price, net of transportation and other selling costs that farmers incur. Because of the length of growing seasons, and the suitability of corn, soybeans, and wheat to certain climates and regions, farmers of any one of these crops would not switch to production of other agricultural commodities in sufficient numbers to prevent a small but significant decrease in price.

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

VI.

RELEVANT GEOGRAPHIC MARKETS

20. Grain typically flows from producers on their farms to country elevators, from which it moves to river elevators and rail terminals and then to domestic purchasers or to port elevators for export to the rest of the world.

21. Producers typically haul grain by truck to nearby elevators. Transportation of grain can be costly and time consuming. As a result, producers generally sell their grain within a limited geographic area surrounding their farms. Often this means that producers will sell their grain at country elevators, although producers located near river elevators, railroad terminals, or port elevators may sell their grain there.

22. Grain trading companies purchase grain at country elevators, river elevators, rail terminals, and port elevators from farmers and from other suppliers, such as brokers and independent elevator operators who have purchased grain from farmers. In each instance, the geographic area from which a country elevator, river elevator, rail terminal, or port elevator receives grain is limited by transportation costs and is known as the "draw area" for that facility. Draw areas expand and contract only slightly in response to normal economic fluctuations in crop supply, crop demand, and transportation costs.

23. For many country elevators, river elevators, railroad terminals, and port elevators, draw areas overlap. Cargill and Continental often operate facilities that have overlapping draw areas, and they therefore compete with one another for the purchase of wheat, corn, and soybeans from the same producers or other suppliers.

24. In some areas within these overlapping draw areas, Cargill and Continental are two of a small number of competing grain trading companies. Sometimes they are the best -- and occasionally the only -- realistic alternative purchasers of grain from producers and other suppliers. By acquiring Continental's facilities that purchase grain from these "captive draw areas," Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.

25. Each such captive draw area is a relevant geographic market and a separate section of the country within the meaning of the Clayton Act.

26. Cargill and Continental compete to purchase corn and soybeans from grain sellers seeking to deliver grain to river elevators on the Illinois River that, beginning in 2000, will be authorized as delivery points for the settlement of Chicago Board of Trade corn and soybean futures contracts. These delivery points are regulated by the Commodity 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.

VII.

CONCENTRATION

27. Grain is purchased from farmers and other suppliers by grain trading companies and by processors and feedlots that use grain to manufacture food products and fatten livestock. Processors and feedlots make grain purchase decisions based on factors other than small but significant changes in crop prices and are therefore unlikely to constrain pricing decisions by grain trading companies. Significant changes in concentration among grain trading companies can have an anticompetitive impact upon prices received by farmers and other suppliers.

28. Cargill and Continental are two of a very small number of grain trading companies competing to purchase grain in the following geographic markets:

a. the captive draw areas for elevators in the Pacific Northwest port range, which include western Minnesota, eastern North Dakota, and northeastern South Dakota;

b. the captive draw areas for elevators in the Central California port range, which include the areas around Stockton, California, to West Sacramento, California;

c. the captive draw areas for elevators in the Texas Gulf port range, which include portions of Texas and Louisiana;

d. the captive draw areas for elevators along the Illinois river, stretching from Morris, Illinois, to Chicago, Illinois, and on the Mississippi river in the vicinities of Dubuque, Iowa, and New Madrid/Caruthersville, Missouri; and

e. the captive draw areas for rail terminals in the vicinities of Salina, Kansas, and Troy, Ohio.

29. Each of the foregoing markets is highly concentrated. Using a measure of market concentration called the Herfindahl-Hirschman Index (HHI), defined and explained in Appendix A, a combination of Cargill and Continental would substantially increase concentration in already highly concentrated grain purchasing markets.

30. The Pacific Northwest port range markets for corn and soybean purchases are highly concentrated, with the top four port elevator operators accounting for 100% of all corn and soybean purchases in

these markets. Cargill accounts for about 44% of all soybean purchases and 23% of all corn purchases in the Pacific Northwest port range. Continental, in a joint venture with Cenex Harvest States, accounts for about 50% of all soybean purchases and 30% of all corn purchases in the same port range. After the proposed acquisition, Cargill would account for about 94% of Pacific Northwest soybean purchases and about 53% of Pacific Northwest corn purchases. The approximate post-merger HHIs for purchases of soybeans and corn in the Pacific Northwest port range would be about 8868 and 5004, with increases in the HHIs of 4400 and 1364 points, respectively, resulting from this transaction.

31. The Central California port range market for wheat is highly concentrated, with Cargill and Continental accounting for virtually all wheat purchases in this market. The approximate post-merger HHI for purchases of wheat in the Central California port range would be about 10,000, with an increase in the HHI of 7,888 points resulting from this transaction.

32. The Texas Gulf port range markets for soybeans and wheat are highly concentrated, with the top three purchasers accounting for 100% of all purchases of soybeans and the top four purchasers accounting for 79% of all purchases of wheat in these markets. Cargill accounts for about 16% of all soybean purchases and 25% of all wheat purchases in the Texas Gulf port range. Continental accounts for about 33% of all soybean purchases and 9% of all wheat purchases in the same port range. After the proposed acquisition, Cargill would account for about 49% of Texas Gulf soybean purchases and about 34% of Texas Gulf

wheat purchases. The approximate post-merger HHIs for purchases of soybeans and wheat in the Texas Gulf port range would be 5105 and 2611, with increases in the HHIs of 1056 and 451 points, respectively, resulting from this transaction.

33. Other geographic markets in which Cargill and Continental compete for purchases of corn, soybeans, and wheat are also highly concentrated. These markets include river elevator markets on the Illinois River and the Mississippi River, authorized delivery points on the Illinois River for corn and soybean futures contracts, and rail terminal markets in Kansas and Ohio. The transaction will increase the HHIs in each of these markets to over 3,000.

VIII.

ANTICOMPETITIVE EFFECTS

34. Cargill’s acquisition of Continental’s Commodity Marketing Group will substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.

35. 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 or other buyers. The purchase decisions of these buyers are based on factors other than small but significant changes in crop prices. It is also unlikely that Cargill's exercise of market power will be prevented by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing competitive force.

36. By consolidating the Cargill and Continental river elevators on the Illinois River, this transaction would concentrate approximately 80% of the authorized delivery capacity for settlement of Chicago Board of Trade corn and soybean futures contracts in two firms. This concentration would increase the likelihood of price manipulation of futures contracts by those firms, resulting in higher risks for buyers and sellers of futures contracts.

37. The Purchase Agreement includes a Covenant Not To Compete that prohibits Continental from becoming involved directly or indirectly in any business presently conducted by the Continental Commodity Marketing Group for five years. Because this agreement is broader than necessary to protect the good will of the business that Cargill proposes to purchase from Continental, it has the effect of unlawfully dividing markets between the two companies.

IX.

VIOLATIONS ALLEGED

38. The effect of Cargill's proposed acquisition of Continental's Commodity Marketing Group may be substantially to lessen competition in

interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways, among others:

a. competition among buyers of corn, soybeans, and wheat in multiple geographic markets will be reduced, causing farmers and other suppliers of grain to receive lower prices for their crops; and

b. concentration of authorized delivery capacity for settlement of Chicago Board of Trade corn and soybean futures contracts will increase, resulting in higher risks for buyers and sellers of those contracts.

39. The Covenant Not To Compete contained in the Purchase Agreement is an unreasonable agreement in restraint of trade, in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

X.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays:

1. That a temporary restraining order, preliminary injunction, and permanent injunction be issued preventing and restraining defendant Cargill from acquiring defendant Continental's Commodity Marketing Group;

2. That plaintiff be granted such other and further relief as may be determined to be just and proper; and

3. That Plaintiff recover the costs of this action.

DATED this 8th day of July, 1999.

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"/s/"
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APPENDIX A
DEFINITION OF "HHI"

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.