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From: Louis Kuster [mailto:lmkus@restel.net]

Sent: Thursday, December 31, 2009 8:35 PM

To: ATR-Agricultural Workshops

Subject: "Comment"

Attached are written comments to be considered in the workshop scheduled for March 12, 2010 workshop in Ankey, Iowa.

The attachment is written in Microsoft Word.

Comments Regarding Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy

December 31, 2009

I am taking this opportunity to electronically submit comments to be considered at your upcoming workshop concerning “seed technology, vertical integration, market transparency and buyer power” to be held on March 12, 2010 in Ankeny, Iowa. I am also sending two (2) printed copies of this document to the Dept. of Justice in Washington, DC as per your website instructions.

My name is Louis Kuster and I reside in Mountrail County in western North Dakota. I own and operate a small grains farm on which I produce wheat, more specifically Durum Wheat that is used in pasta production. I am a 4th generation farmer on this farm and have been operating my farm for about 40 years. I currently serve on the North Dakota Wheat Commission as the elected representative from the Northwest District of ND (District 2). I am currently serving my 3rd consecutive 4-year term.

One of the issues I am concerned with is the consolidation in the Seed Industry, as a Durum wheat producer I have always saved my own seed to replant the following year. Typically I will purchase some Registered or Certified Seed of the new varieties when they are released and then I will save seed from that years production to clean and seed again the next year. I will continue to save seed from each year’s production until I decide that I do not wish to grow that particular variety again. I would have to say that at least 90 percent of the seed that I use or have used in the past has been the result of public breeding programs that are in place at North Dakota State University (NDSU) in Fargo, ND. I have purchased some varieties from private companies and also saved seed to seed in future crop years when I chose to continue with that particular variety. Normally on my farm I will plant at least 3 different varieties and at times have planted up to 7 varieties in a crop year. The problems as I see them are that as the genetic engineering of plant life has developed, the patenting of genetic characteristics or “Traits” makes it impossible for the farmer to save seed for his own use again because he is in violation of the law therefore he is forced to repurchase seed the following year at a substantially higher cost than he would have had if he could have used the seed from the production he grew. This in turn restricts the development and release of any public variety with a “Trait” that is under patent.

The consolidation that has taken place in recent years in the Seed Industry appears to be driven by the desire to own and control genetic “Traits”, which in turn means the larger companies swallow up the small companies and gain the exclusive rights to the “Traits” that the smaller companies control. The large companies can accomplish this because they have a lot more financial resources at their disposal and it becomes an attractive business deal to sell or merge etc. with the larger company. This appears to be heading in the direction of a couple of companies owning and controlling virtually all of the plant life that has any economic value, which in turn has potentially negative consequences for

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the American consumer and in fact the consumers in the entire world. Some of the negative consequences that I refer to are a more limited selection of varieties available to end users due to elimination of varieties that have a low rate of return to the company and are therefore discontinued. They won't be released to the public due to the fact that the seed company will not be willing to forfeit their rights to the patents that they hold in connection to that variety.

The move toward genetically modified wheat holds the potential to accelerate this further as demonstrated by Monsanto's recent acquisition of Westbred for example, Westbred was one of the few private companies that did variety development in Durum and Hard Red Spring Wheat, now their research material and genetics are owned and controlled by Monsanto which already has huge holdings in the seed industry.

Public Research programs have developed by far the lion's share of the varieties available to the Durum and Hard Red Spring Wheat grower in the upper Midwest, where the majority of the production is. The reason being that the focus of the public research program is always on a better quality product for the end user **and** a more profitable product for the producer whether it be in the form of disease resistance, better yields, better milling and baking characteristics, insect tolerance and/or a combination of improved characteristics. These varieties developed in the public arena provide a continuously improving diet for the US and world consumer at the least cost primarily because the seed can be saved from the production and used by that grower again without having to pay additional "Tech fees" thus increasing cost of production. The ability to save the seed and replant is a major reason why the new varieties rapidly gain widespread acceptance and are used by the producer. If he had to pay an extra cost every year the use of newer and better varieties would be greatly reduced.

The introduction of genetically modified wheat poses a large potential threat to the public research programs in my opinion. Public research depends on public money, taxpayer money whether state or federal or a combination of both in order to operate. In the current economic climate of huge deficits the availability of funds is more likely to be reduced yet as expenses rise due to inflation the impact is multiplied. This creates a potential situation where a handful of large biotech companies can effectively take over the public research programs because they will have the research funds to offer but the results will no longer be made public. In addition the existing genetics that are a result of public research are available to the biotech industry to use and modify. Once they are modified and patented the public version will possibly not be available anymore due to pressure from the companies supplying research dollars. The incentive will be to provide research to the biotech industry and reduce the focus on public research, a self-fulfilling prophecy of sorts. The ultimate loser is the consumer and eventually the producer due to higher seed costs, and limited variety development.

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Crop year 2009 saw over 90% of the total US Hard Red Spring Wheat production raised in the states of North Dakota, Montana, Minnesota and South Dakota totaling about 12 million seeded acres. Public varieties accounted for 70% or about 8.4 million acres. The State of North Dakota alone seeded about 6.7 million acres with about 4.7 million of those acres (70%) seeded to public varieties, 3.9 million were varieties developed at NDSU in Fargo, ND.

The case of Durum Wheat is similar with North Dakota and Montana producing over 70% of the US Durum crop. North Dakota seeded 1.65 million acres of Durum; 1.45 million (88%) of those acres were NDSU public releases. Montana seeded about 530,000 acres with about 58% from NDSU public releases and over 10% Canadian releases that are publicly available. *Sources for this data are USDA Economic Research Service, USDA September 2009 Small Grains Summary and the 2009 Regional Quality Reports for Hard Red Spring Wheat and US Durum Wheat (available on the ND Wheat Commission website at www.ndwheat.com)*

The role that public breeding programs play in development of varieties for Hard Red Spring Wheat producers and Durum Wheat producers is extremely valuable, as demonstrated by the acreage and production that is a result of these programs. When profits for the company are the sole driving force in variety development for wheat I fear that the end user quality and the development of varieties for smaller specialized markets will suffer greatly.

I believe that the accelerated consolidation in the seed industry is not beneficial to the US taxpayer and needs to be examined very closely. I also think the patent laws and how they are applied to living organisms requires close scrutiny and possibly changes to insure that a small group of companies don't have the ability to literally own and control life on Earth. I believe that the ability of the farmer to save and use seed has brought about tremendous benefits in agriculture and nutrition for the people living on Earth.

I sincerely hope that the public research and breeding programs that we have in place in this country will continue to serve agriculture and the public as they have done so well in the past, if not the ultimate loser will be **We The People**.

Thank you for this opportunity to express some of my opinions concerning these issues.

Louis M. Kuster