UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. CARGILL MEAT SOLUTIONS CORPORATION, *et al.*, *Defendants*.	Civil Action No.: 22-cv-1821

RESPONSE OF PLAINTIFF UNITED STATES
TO PUBLIC COMMENTS ON THE PROPOSED FINAL JUDGMENTS

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the "Tunney Act"), the United States of America responds to the public comments received by the United States about (a) the proposed Final Judgment in this case as to Defendants Cargill Meat Solutions Corp. and Cargill, Inc. ("Cargill"), Wayne Farms, LLC ("Wayne"), and Sanderson Farms, Inc. ("Sanderson") (collectively, "Processor Settling Defendants"); and (b) the proposed Final Judgment in this case as to Webber, Meng, Sahl and Company, Inc., d/b/a WMS & Company, Inc. ("WMS") and G. Jonathan Meng ("Meng") (collectively, "Consultant Settling Defendants"). The Processor Settling Defendants and the Consultant Settling Defendants are collectively the "Settling Defendants."

After this Response has been published in the Federal Register, pursuant to 15 U.S.C. § 16(d), the United States will move that the Court enter the proposed Final Judgments.[1]

[1] On January 27, 2023, the United States moved the Court to permit the United States to publish the public comments on the Antitrust Division's website, due to the expense of publishing the

After careful consideration of the comments submitted, the United States continues to believe that the proposed remedies will address the harm alleged in the Complaint and are therefore in the public interest. The proposed Final Judgments will prevent the Settling Defendants from conspiring to (1) assist their competitors in making compensation decisions, (2) exchange current and future, disaggregated, and identifiable compensation information, and (3) facilitate this anticompetitive agreement. The United States appreciates that some commenters believe that other significant issues remain in the poultry industry. And the United States does not contend that the proposed Final Judgments address all potential issues in the poultry industry. The question before the court, however, is limited to whether the proposed Final Judgments appropriately address the antitrust claims alleged in the Complaint against the Settling Defendants. Upon a thorough review of the comments, the United States believes that the proposed Final Judgments do resolve those claims in the public interest.

I. Procedural History

On July 25, 2022, the United States filed a civil Complaint against the Settling Defendants to enjoin them from collaborating on decisions about poultry plant worker compensation, including through the exchange of compensation information, which suppressed competition in the nationwide and local labor markets for poultry processing. The Complaint alleges that this conduct is anticompetitive and violates Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint also alleges that Defendants Sanderson and Wayne acted deceptively in the manner in which they compensated poultry growers in violation of Section 202(a) of the Packers and Stockyards Act,

comments in the *Federal Register* and the accessibility to the public of the Division's website. Those comments can be accessed at www.justice.gov/atr.

1921, as amended and supplemented, 7 U.S. C. §192(a) (the "PSA"). As explained below, the proposed settlement as to the PSA claim is not subject to review under the Tunney Act.

Contemporaneously, the United States filed the proposed Final Judgments as to the Processor Settling Defendants[2] and the Consultant Settling Defendants, as well as Stipulations signed by these parties that consent to entry of the proposed Final Judgments after compliance with the requirements of the Tunney Act. (ECF 2 & 3.) On September 12, 2022, the United States filed a Competitive Impact Statement describing the proposed Final Judgments. (ECF 37.)

The United States arranged for the publication of the Complaint, the proposed Final Judgments, and the Competitive Impact Statement in the *Federal Register* on September 16, 2022, and caused notice regarding the same, together with directions for the submission of written comments relating to the proposed Final Judgments, to be published in *The Washington Post* every day from September 15-21, 2022. The 60-day period for public comment has now ended. The United States received five public comments in response, which are described below and attached as Exhibit A hereto.[3]

II. Standard of Judicial Review

The Clayton Act, as amended by the Tunney Act, requires that proposed consent judgments in cases brought by the United States under the antitrust laws be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgments "is in

[2] On July 22, 2022, the Processor Settling Defendants announced that a joint venture of Cargill and Wayne acquired Sanderson. The terms of the proposed Final Judgment apply to all successors of the Processor Settling Defendants.

[3] The United States received these public comments on October 11, 2022, November 15, 2022 (two comments), November 16, 2022, and November 17, 2022. In Exhibit 1 attached herein, the United States has redacted any personally identifying information relating to the authors of the comments.

the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
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> (B) the impact of entry of such judgment upon competition in the relevant market or markets, 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 trial.

15 U.S.C. § 16(e)(1)(A) & (B).

In considering these statutory factors, the court's inquiry is necessarily a limited one, because the government is entitled to "rather broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States v. Charleston Area Med. Ctr.*, No. 2:16-cv-3664, 2016 WL 6156172, at *2 (S.D. W. Va. Oct. 21, 2016) (noting that in evaluating whether the proposed final judgment is in the public interest, the inquiry is "a narrow one" and only requires the court to determine if the remedy effectively addresses the harm identified in the complaint); *United States v. InBev N.V./S.A.*, No. 08-cv-1965, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited, as the court only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations

alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

As the United States Court of Appeals for the District of Columbia Circuit has held, under the Tunney Act, a court considers the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties, among other factors. *See Microsoft*, 56 F.3d at 1458-62. 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. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead,

> [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 effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4]

In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d

[4] *See also BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [Tunney Act] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass").

at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 74-75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant "due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case"). The ultimate question is whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co*., 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

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 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; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "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 did not pursue. *Microsoft*, 56 F.3d at 1459-60.

In its 2004 amendments to the Tunney Act,[5] Congress made clear its intent to preserve the practical benefits of employing consent decrees in antitrust enforcement, stating that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language made explicit what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he 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." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11. A court can make its public-interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76; *see also United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone");

[5] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

S. Rep. No. 93-298 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

III. The Investigation, the Harm Alleged in the Complaint, and the Proposed Final Judgments

The proposed Final Judgments are the culmination of a thorough, comprehensive investigation conducted by the Antitrust Division of the U.S. Department of Justice regarding the Settling Defendants' conspiracy to collaborate on decisions about poultry plant worker compensation, exchange compensation information, and facilitate such conduct through data consultants. Based on the evidence gathered, the United States concluded that this collaboration and information-sharing was anticompetitive and violated Section 1 of the Sherman Act, 15 U.S.C. § 1, because it suppressed competition in the nationwide and local labor markets for poultry processing plant workers. This conspiracy distorted the competitive process, disrupted the competitive mechanism for setting wages and benefits, and harmed a generation of poultry processing plant workers by unfairly suppressing their compensation.

Specifically, the United States concluded that, from 2000 or before, the Processor Settling Defendants, Consulting Settling Defendants, and their poultry processing and consultant co-conspirators exchanged compensation information through the dissemination of survey reports in which they shared current and future, detailed, and identifiable plant-level and job-level compensation information for poultry processing plant workers. The shared information allowed poultry processors to determine the wages and benefits their competitors were paying—and planning to pay—for specific job categories at specific plants.

The United States further concluded that the Processor Settling Defendants and their co-conspirators exchanged confidential, competitively sensitive information about poultry plant

workers at annual meetings, which they attended in person. From at least 2000 to 2002 and 2004 to 2019, the Consultant Settling Defendants facilitated, supervised, and participated in these annual in-person meetings among the Processor Settling Defendants and their co-conspirators and facilitated their exchange of information about poultry processing worker compensation information.

The Processor Settling Defendants' and their co-conspirators' collaboration on compensation decisions and exchange of competitively sensitive compensation information extended beyond the shared survey reports and in-person annual meetings. The Processor Settling Defendants and their co-conspirators repeatedly contacted each other to seek and provide advice and assistance on poultry processing worker compensation decisions, including by sharing further non-public information regarding each other's wages and benefits. This demonstrates a clear agreement between competitors to ask for help with compensation decisions and to provide such help to others upon request.

In sum, this conspiracy enabled the Processor Settling Defendants and their co-conspirators to collaborate with and assist their competitors in making decisions about worker compensation, including wages and benefits, and to exchange information about current and future compensation plans. Through this conspiracy, the Processor Settling Defendants artificially suppressed compensation for poultry processing workers.

The proposed Final Judgments provide effective and appropriate remedies for this competitive harm. They have several components, which the Settling Defendants agreed to abide by during the pendency of the Tunney Act proceedings and which the Court ordered in the Stipulations and Orders of July 26, 2022 (ECF 11 & 12).

Among other terms, the proposed Final Judgment for the Processor Settling Defendants requires the Processor Settling Defendants to:

a. end their agreement to collaborate with and assist in making compensation decisions for poultry processing workers and their anticompetitive exchange of compensation information with other poultry processors;

b. submit to a monitor (determined by the United States in its sole discretion) for a term of 10 years, who will examine the Processor Settling Defendants' compliance with both the terms of the proposed Final Judgment and U.S. federal antitrust law generally, across their entire poultry businesses; and

c. provide significant and meaningful restitution to the poultry processing workers harmed by their anticompetitive conduct, who should have received competitive compensation for their valuable, difficult, and dangerous labor.

The proposed Final Judgment for the Processor Settling Defendants also prohibits the Processor Settling Defendants from retaliating against any employee or third party for disclosing information to the monitor, an antitrust enforcement agency, or a legislature, among other terms.

Under the proposed Final Judgment for the Consultant Settling Defendants, the Consultant Settling Defendants are restrained and enjoined from:

a. providing survey services involving confidential competitively sensitive information;

b. participating in non-public trade association meetings that involve either the exchange of confidential competitively sensitive information or involve the business of poultry processing; and

c. engaging in non-public communications with any person engaged in the business of poultry processing other than as a party or fact witness in litigation, among other terms.

Each proposed Final Judgment provides that it will expire 10 years from the date of its entry, except that after five years from the date of its entry, each Final Judgment may be terminated upon notice by the United States to the Court and the relevant Settling Defendants that continuation of the relevant Final Judgment is no longer necessary or in the public interest.

IV. Summary of Public Comments and the United States' Response

The United States did not receive any public comments concerning the proposed Final Judgment relating to the Consultant Settling Defendants and received five comments concerning the proposed Final Judgment relating to the Processor Settling Defendants. These comments were submitted by Professor Peter C. Carstensen ("Carstensen Comment"); Ms. Trina B. McClendon ("McClendon Comment"); Farm Action ("Farm Action Comment"); the Campaign for Family Farms and the Environment ("CFFE Comment"); and the Campaign for Contract Agriculture Reform ("CCAR Comment").

Professor Carstensen is the Fred W. & Vi Miller Chair in Law Emeritus at University of Wisconsin Law School. While now retired, during his professional career Professor Carstensen specialized in antitrust law with a particular interest in competition issues in agricultural markets.[6] He credits the United States for challenging the information-sharing conduct as anticompetitive and asks the Antitrust Division and the FTC to revisit its shared guidance "to emphasize that such conduct among rivals is likely to be unlawful."[7] He also approves of the provisions relating to the tournament system for poultry growers and the PSA.[8] However, Professor Carstensen expresses concern that the United States has not yet brought suit against the other conspirators in the

[6] Carstensen Comment at 1.

[7] *Id.* at 1-2.

[8] *Id.* at 2.

information-sharing conduct and asks the Court to seek assurance from the United States that it will.[9] Finally, he argues that the proposed Final Judgment's prohibitions on exchanging information should forbid the exchange of confidential business information of any kind.[10]

Ms. McClendon is the owner/operator of Trinity Poultry Farm, LLC, an eight-house poultry farm in Amite County, Mississippi, where she has grown chickens for Sanderson for two decades.[11] Her comments argue "against the buyout of Sanderson Farms by Cargill and Continental Grain,"[12] and she encourages the United States to "[s]top the consolidation of America's food and put the farmer first."[13] Ms. McClendon also details problems with the tournament system for poultry growers—which she argues "should be overhauled and reconstructed"— including "grower pay extortion by integrators" and a "lack of transparency."[14] She asks that the United States "reverse this proposed Final Judgment"; "stop this buyout" of Sanderson by Cargill and Wayne; "strip these companies of their right to continue doing business unchecked"; and "in addition to the $84 million fine that you assessed to these companies for wage suppression, an additional fine be assessed to directly aid all growers who have suffered for the last thirty years under the weight of undue and unfair pressure brought to bear by these corporate Goliath's."[15] Ms. McClendon also warns that the Settling Defendants will "manipulate this proposed Final Judgment to their

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[9] *Id.*

[10] *Id.*

[11] McClendon Comment at 1.

[12] *Id*. at 1

[13] *Id*. at 2.

[14] *Id.* at 2-3; *see generally id*. at 3-7. While Ms. McClendon describes issues relating to the tournament system, she does not discuss the provisions of the proposed Final Judgments related to the tournament system and the PSA.

[15] *Id*. at 7.

benefit."[16]

Farm Action is "a farmer-led advocacy organization dedicated to building a food and agriculture system that works for everyday people instead of a handful of powerful corporations."[17] Farm Action's comment asks the Court to enter the proposed Final Judgment "in its entirety," calling it fair, adequate, and reasonable.[18] Farm Action does not critique or suggest any changes to the proposed Final Judgments.

CFFE is a coalition of state and national organizations that works "to support family farmers, rural communities and a vibrant, sustainable food system."[19] CFFE approves of the Division's enforcement of the PSA and "long overdue enforcement action with respect to how poultry companies treat both processing plant workers and contract poultry growers."[20] CFFE calls for the court-appointed monitor to ensure that the parties do not attempt to evade the proposed Final Judgment's grower requirements.[21] CFFE also asks the United States to expand its action under the PSA and its investigation into information-sharing related to plant worker compensation to include other growers and information-sharing related to growers.[22] CFFE expresses

[16] *Id.* at 1.

[17] Farm Action Comment at 1.

[18] *Id.* at 25, 4.

[19] CFFE Comment at 1.

[20] *Id.* at 2.

[21] *Id.* at 3.

[22] *Id.*

disappointment that the United States did not challenge the Sanderson acquisition.[23]

CCAR "represents farmers, ranchers, and poultry growers across the United States."[24] CCAR "greatly appreciate[s]" and is "very supportive" of the provisions of the proposed Final Judgment "that prohibit conduct that directly affects poultry growers," although it urges the court-appointed monitor to take care that the parties to which these provisions apply do not find a way to circumvent them.[25] CCAR recommends the United States challenge future consolidation in agricultural markets and re-examine past mergers and states it was disappointed that the acquisition of Sanderson by Cargill and Wayne "was allowed to proceed."[26] It also urges the Division to broaden its inquiry into information-sharing in the poultry industry to include sharing related to growers and production details.[27]

* * *

While the United States takes seriously all of the issues raised in the public comments, much of the CCAR and CFFE Comments and all of the McClendon Comment focus on either the portion of the Processor Settling Defendants' proposed Final Judgment relating to the PSA or on the acquisition of Sanderson by Cargill and Wayne, rather than on whether the proposed Final Judgments adequately resolve the antitrust claims against the Settling Defendants for collaborating on decisions about poultry plant worker compensation, including through the exchange of compensation information, and facilitating this anticompetitive agreement.

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[23] *Id.* at 1.

[24] CCAR Comment at 1.

[25] *Id.* at 5-6.

[26] *Id.* at 4-5.

[27] *Id.* at 8.

The Tunney Act applies only to final judgments or decrees in proceedings brought by the United States under the antitrust laws. *See* 15 U.S.C. § 16. The PSA is not an antitrust law. Thus, the provisions of the proposed Final Judgments related to the PSA are not subject to Tunney Act review.[28]

Comments regarding the acquisition of Sanderson are also not subject to Tunney Act review in this matter because the Complaint does not challenge the Sanderson acquisition. Rather, the Complaint alleges that the Settling Defendants' multi-decade collaboration on compensation decisions, sharing of compensation information, and facilitation of such conduct was anticompetitive and that Wayne and Sanderson violated the Packers and Stockyards Act. Under the Tunney Act, the court reviews only whether the proposed remedies address the violations the United States has alleged in its complaint.[29] Potential harms arising from that acquisition that were identified by some public comments are therefore outside the permissible scope of review under the Tunney Act.[30]

The United States understands that some of the commenters are advocating for additional

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[28] Competitive Impact Statement at 3; *see also* 15 U.S.C. § 12(a). The PSA-related provisions include changes to compensation and disclosure requirements for Sanderson and Wayne growers.

[29] *See Microsoft*, 56 F.3d at 1459. Because the "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 did not pursue. *Id.* at 1459-60.

[30] The United States has statutory authority to review certain proposed transactions under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, but contrary to some of the public comments the United States does not "approve" transactions. *See, e.g.*, *Steves and Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 713-14 (4th Cir. 2021) ("The Department's decision not to pursue the matter isn't probative as to the merger's legality because many factors may motivate such a decision, including the Department's limited resources."); *see also In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 664 (7th Cir. 2002).

enforcement in the poultry industry. Parts of the CCAR and CFFE Comments urge the United States to continue working to address "the antitrust implications of industry data sharing activities."[31] The Carstensen Comment focuses almost wholly on information-sharing; it asks the United States to continue pursuing other conspirators, to "forbid any exchange of confidential business information of any kind" between the Settling Defendants, and to "revisit [its] outdated guidance on information exchange to emphasize that such conduct among rivals is likely to be unlawful absent specific, limited justifications."[32]

The United States does not contend that the proposed Final Judgments resolve all issues in the poultry industry, but these comments are outside the scope of Tunney Act review. They concern conduct not challenged in the Complaint and thus do not provide a basis for measuring the relief included in the proposed Final Judgments.[33] The proposed Final Judgments do address the claims raised against the Settling Defendants.

Additionally, the United States believes the proposed Final Judgments demonstrate to companies both inside and outside the poultry industry that anticompetitive information-sharing risks significant legal consequences, and the broad scope of the monitor contained in the proposed Final Judgments provides protection against anticompetitive information-sharing in contexts other than poultry processing compensation. The United States takes the conduct alleged in the Complaint seriously; the investigation into such conduct is ongoing and the United States will pursue additional claims where the evidence and the law justifies action. Members of the public are

[31] CFFE Comment at 3 (highlighting the impact of such information-sharing on poultry growers); CCAR Comment at 8 (recommending the United States "consider the anti-trust implications of such data sharing arrangements regarding poultry growers and production details as well").

[32] Carstensen Comment at 2.

encouraged to submit information about potentially unlawful exchanges of information between competitors to the Department of Justice Antitrust Division's Citizen Complaint Center (https://www.justice.gov/atr/citizen-complaint-center).

V. Conclusion

After careful consideration of the public comments, the United States continues to believe the proposed Final Judgments provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint and are therefore in the public interest. The United States will move this Court to enter the proposed Final Judgments after the public comments and this response are published as required by 15 U.S.C. § 16(d).

Dated: May 23, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathleen Simpson Kiernan, hereby certify that on May 23, 2023, I caused true and correct copies of the foregoing Response to Public Comments on the Proposed Final Judgments to be served via the Court's CM/ECF system.

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