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Sent: Thursday, December 31, 2009 6:42 PM
To: ATR-Agricultural Workshops <agriculturalworkshops@usdoj.gov>
Subject: comment on concentration/competition/ fair markets in agriculture

Please accept the following comment on concentration and the lack of competition in U.S. agriculture:

Legal Policy Section

Antitrust Division

U.S. Department of Justice

450 5th Street NW, Suite 11700

Washington, D.C. 20001

Dear Justice,

As a grocery retailer with 47,000 member/owners and nine stores in western Washington, PCC Natural Markets is pleased that the USDA and the Department of Justice are calling for public comment on consolidation and concentration in agriculture. We look forward to the hearings. There is no other single issue with more impact on our food supply, from the seed to the consumer.

Over the past 10 years, our customers increasingly have expressed concern about the impact of consolidation and concentration in the food industry. I have received countless letters, calls and e-mails that express anger and frustration about the lack of transparency and accountability in a food industry run by faceless corporations that at best send form letter responses to serious consumer concerns, and at worst ignore them.

Strolling the aisles of any supermarket gives the illusion of a richly diverse food supply. In truth, we rely today on about eight animal species and 150 species of plants.

Independent seed companies have disappeared at an alarming rate, swallowed up, most of all, by the U.S. agrichemical company Monsanto. More than 200 seed companies reportedly have disappeared since 1996. Monsanto and DuPont reportedly are two of the top five companies controlling almost one-quarter of the world's commercial seed supply.

The unfortunate 1980 court ruling (*Diamond v. Chakrabarty*) that gave companies the right to patent traits of pre-existing life forms apparently has ended the historic right of farmers to save seed, as they have for millennia. Farmers still maintain that seeds are a product of nature and that any patents on seed are clear violations of antitrust laws — based on the traditional legal doctrine that life forms ("products of nature") are not patentable. Monsanto, nonetheless, has sued more than 147 farmers in 25 states for patent infringement, culling more than \$15 million from the defendants.

While farmers are paying more than ever for seed (and chemical inputs from the same companies), they have less power than ever to negotiate a fair price for their products. Consolidation, vertical and horizontal, throughout food production has left many if not most farmers and ranchers with very few

(and sometimes only one) buyer or processor for their products.

Here in Washington, for instance, we had 13 pea processing plants in Western Washington a few years ago; today, they are none on the west side so farmers either have to ship their product over the mountains, or not grow peas at all in this climate so well suited to the crop. There are effectively only two USDA-certified beef slaughterhouses in Eastern Washington where most of our state's cattle are raised, and both choose primarily to process imported Canadian beef or their own stock, forcing Washington's independent ranchers to ship their beef on the hoof out-of-state for processing, which cuts their margin to the bone. (Four companies reportedly pack more than 80 percent of all U.S. beef.) One of our local dairy vendors was forced to pony up \$100K to build its own bottling facilities on-site, or go out of business.

Large corporations seeking to control the food system have besieged family farm agriculture in recent decades. To the corporate mind, food no longer is viewed first and foremost as a sustainer of life. It is instead a source of cash flow, economic leverage, a form of currency, even a tool of international politics and an instrument of power. Increasing market concentration, calls for more "free trade," lower commodity prices, and the bogus need for greater "efficiency" and "competition" have a devastating effect on rural communities and the agricultural economy that sustains us.

Big is not necessarily bad — but concentration can be. When the market is dominated or controlled by a few, the choices to farmers, retailers and consumers are diminished and concentration renders competition, and fair and open markets, impossible.

We need enforcement of our nation's anti-trust laws, originally designed at the end of the 19th century to thwart **economic concentration in agriculture**. Over the past century, the anti-trust laws have been corrupted in the courts and today, enforcement is restricted narrowly to price fixing. The "urge to merge" continues unabated.

Corporate mergers and buyouts have concentrated power in the hands of a decreasing number of firms and increased their ability to unfairly manipulate market conditions in their favor. This unprecedented level of horizontal market consolidation effectively eliminates free market competition to the detriment of independent family farmers and consumers.

The role of government should be to facilitate properly operating markets and to bring balance to the economic relationships among farmers/ranchers, consumers and food companies. Instead, inadequate federal legislation and the lack of enforcement of anti-trust policies have allowed a handful of corporations to continue to consolidate market power, manipulate prices, and create anti-competitive market structures. Government inaction has a dramatic, negative impact on not only farmers and ranchers but also on rural communities, the environment, food quality, food safety, and consumer prices.

We ask the administration to institute measures to stop the revolving door between regulatory agencies and the corporations they oversee and monitor.

We ask the Department of Justice to revisit the original antitrust laws and apply not only the letter but also the spirit of the laws where concentration diminishes competition and damages the ability of markets to be fair and open.

We specifically ask for the following measures:

- Prohibition on Packer-Owned Livestock: Packer-owned livestock is a major market power tool for meat packers such as Tyson, Cargill, and Smithfield Foods. This practice fosters industrial livestock production and freezes independent farmers out of the markets. Packer-owned livestock has

been proven to artificially lower farm gate prices while the consumer food prices continue rising. By prohibiting direct ownership of livestock by major meatpackers, a packer ban addresses a significant percentage of the problem of captive supply which packers use to manipulate markets, and would help increase market access for America's independent producers.

- **Transparency/Minimum Open Market Bill:** Meat packers should be required to purchase at least 25 percent of their daily hog and cattle needs from the open market and will limit the ability of packers to use their owned and contracted livestock to manipulate prices down artificially.
- **Captive Supply Reform:** to restore competition by making packers (and livestock producers) bid against each other to win contracts. Currently, forward contracts and marketing agreements are negotiated in secret, in a transaction where packers have all the information and power, with the result that these contracts and agreements depress prices and shut small and independent producers out of markets. The Captive Supply Reform Act would require such contracts to be traded in open, public markets to which all buyers and sellers have access.
- **Clarification of "Undue Preferences" in the Packers & Stockyards Act:** Packers commonly make unjustified, preferential deals that provide unfair economic advantages to large-scale agriculture production over smaller family owned and sustainable farms. Courts have found current undue preference legal standards virtually impossible to enforce. Additional legislative language is needed to strengthen the law and clarify that preferential pricing structures (those that provide different prices to different producers) are justified only for real differences in product value or actual and quantifiable differences in acquisition and transaction costs.
- **Close Poultry Loopholes in the Packers & Stockyards (P&S) Act:** USDA does not have the authority to bring enforcement actions against poultry dealers. The P&S Act oddly omits this authority even as USDA can enforce the law against packers and livestock dealers. We seek to clarify that USDA's authority over poultry applies not only to broiler operations, but also to growers raising pullets or breeder hens. These loopholes should be closed.
- **Bargaining Rights for Contract Farmers:** Loopholes should be closed in the Agricultural Fair Practices Act of 1967 (AFPA) and processors should be required to bargain in good faith with producer organizations. The AFPA was enacted to ensure that livestock and poultry producers could join associations and market their products collectively without fear of retribution by processors. These goals have not been attained due to loopholes. Retaliation by processors is commonplace in some sectors. This legislation should be passed to promote bargaining rights and prevent processor retaliation.

Respectfully,

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