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February 26, 2020

U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: U.S. Department of Justice and the Federal Trade Commission; Draft Vertical Merger Guidelines; Released for Public Comment on January 10, 2020

Dear Assistant Attorney General Delrahim, Chairman Simons and Members of the Commission:

North Dakota Farmers Union (“NDFU”) appreciates the opportunity to comment on the draft Vertical Merger Guidelines, released for public comment on January 10, 2020. NDFU, the largest general farm organization in North Dakota, represents more than 48,000 farm and ranch families, members, and their energy and agriculture supply cooperatives. NDFU’s member-developed policy has long supported strengthening antitrust laws and enforcement.

Corporate mergers and acquisitions have direct, and often negative, impacts on farmers, ranchers, and rural communities. NDFU appreciates the Department of Justice (DOJ) and the Federal Trade Commission (FTC) issuing draft vertical merger guidelines which clarify how the Agencies will review vertical mergers and evaluate whether such mergers violate antitrust law. However, NDFU has concerns regarding the effectiveness of the proposed guidelines.

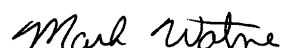
Vertical integration is a major concern in American agriculture and in the food industry for farmers, ranchers, and consumers. Vertical integration has increased at alarming rates in the livestock, dairy, seed, chemical and grocery retail sectors. Vertical mergers and acquisitions are generally motivated by a desire to exclude marginal competitors and exploit upstream suppliers or downstream customers, rather than a need to create efficiencies, improve production, or improve distribution of goods and services.

The draft guidelines acknowledge the potentially harmful effects of vertical mergers. However, the guidelines do not adequately address the competitive problems facing the agriculture and food industries as referenced above. The criteria set out in the draft guidelines are too subjective to determine competitive harms from merging firms, particularly by using an objective 20 percent threshold as an arbitrary benchmark for challenging a merger. The guidelines should provide a more direct, and easily enforceable, presumption of illegality for any merger which involves significant transformation and concentration of the upstream or downstream market. The merging parties should bear the burden of providing strongly persuasive proof to justify a proposed merger.

As mergers have increased, farmers and ranchers are paid less, charged more, and directly impacted by a less competitive market. The draft guidelines do recognize the potentially damaging effects of vertical mergers. However, DOJ and FTC must consider the impacts of all vertical mergers on farmers, ranchers, and consumers. We urge you to restore a competitive marketplace through clear and effective guidelines, particularly when addressing the policy regarding vertical integration.

Sincerely,

NORTH DAKOTA FARMERS UNION

A handwritten signature in black ink that reads "Mark Watne". The signature is written in a cursive style with a prominent initial "M".

Mark Watne  
President

