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2007 SEP 18 AM 11:28

September 17, 2007

B. Michael Verne
Premerger Notification Office
Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

This letter is to confirm the substance of our telephone conversation on September 7, 2007. As I described in the call, we represent A, which proposes to purchase assets of B that constitute a grain terminal (i.e., real estate, grain elevators and other improvements, grain and fertilizer inventories, grain and other contracts, vehicles, and other assets). Following the acquisition, A will own the terminal and operate its business.

As a part of its business, B enters into contracts with farmers to purchase, at a future date, the corn, wheat, and other grains that they produce. The purchase price that B will pay in the future is set at the time it enters into a contract with a farmer. For instance, B might agree on June 1 to acquire X bushels of corn from a farmer on October 1 at Y dollars per bushel.

B also enters into contracts to sell, at a later date, the grain it purchases from farmers. Again, the sale price is fixed at the time B enters into the contract to sell, which can be months before the sale is concluded and the grain delivered to the buyer.

Since grain prices constantly fluctuate, the price at which B agrees to purchase or sell grain most likely will not be the market price of the grain on the date or purchase or sale.

The asset purchase agreement between A and B provides that the amount that A will pay B with respect to the grain purchase and sale contracts, which A will perform after the closing, will be the difference at the close of business on the business day immediately preceding the closing of the asset purchase between the market price (FOB at B's location with certain adjustments for transportation and other costs) and the contract price. Thus if the contract price on a grain purchase contract is $8.00 per bushel and the market price, as adjusted, at the close of business on the business day immediately preceding the closing is $8.50 per bushel, A will owe B a premium of $0.50 per bushel covered by the contract. All of the grain purchase and sale contracts will be valued in this manner, and contracts with positive differences will be netted against those with negative differences to determine the aggregate premium, if any, that A must pay B.

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In our call you indicated that the fair market value of a grain purchase or sale contract would be the amount of the premium that the buyer pays the seller, and you confirmed that the difference between the market price on a specific date and the contract price was a reasonable method of measuring the premium. For the purpose of determining whether it is required to file a premerger notification, A plans to use the methodology described to determine the fair market value of the grain contracts it will acquire as of a date that is within either 60 days before it is required to file a premerger notification or 60 days before the closing of the acquisition if no such filing is required. (See §801.10(c)(3) regarding timing of fair market value determination.)

If the foregoing does not accurately reflect the substance of our conversation, please call me as soon as possible at [redacted] You can also reach me by email [redacted]

Very truly yours,

AGREE
9/18/07