February 18, 2014

William J. Baer
Assistant Attorney General
U.S. Department of Justice Antitrust Division
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Via Electronic Delivery Re: ConAgra-Horizon Milling Joint Venture

Dear General Baer:

On February 11, 2014, ConAgra reported in a securities filing that the ongoing regulatory review process, among other reasons, would delay the closing of its proposed Ardent Mills joint venture (JV) with Cargill/CHS's Horizon Milling until the second quarter of 2014.[1] ConAgra reported that the company, Cargill, and CHS are prepared to divest four wheat flour milling facilities in the United States, subject to reaching agreement with the U.S. Department of Justice (DOJ). The American Antitrust Institute (AAI) and Food & Water Watch (F&WW) respectfully encourage the DOJ to reject this proposal — or any other proposals for divestitures of milling facilities — and to move instead to challenge the ConAgra-Horizon Milling JV as illegal under Section 7 of the Clayton Act.

In April 2013 letters to the DOJ and the Federal Trade Commission, the AAI and F&WW provided separate analyses of the anticompetitive and anti-consumer effects of the proposed ConAgra-Horizon Milling JV.[2] The proposed transaction will create an entity with about 35 percent of wheat flour milling capacity in the United States. Far higher levels of market concentration are apparent in regionally-defined markets that comprise draw areas for the milling facilities of the JV partners. Together with the second largest miller, Archer Daniels Midland, the two entities will control more than 50 percent of wheat flour milling capacity in the United States if the JV is finalized.

As noted in the AAI and F&WW analyses, the proposed Ardent Mills JV raises potentially significant competitive concerns in the midstream food processing and manufacturing segment of the wheat supply chain. These include enhancing the ability and incentive of the JV participants to exercise monopsony power, to exercise seller market power, and to engage in exclusionary conduct with respect to rivals upstream and downstream of the midstream segment. The enhanced market power wielded by ConAgra-Horizon Milling would likely work to the significant detriment of wheat growers, food manufacturers, and consumers.

In its February 11th filing, ConAgra delineated the proposed divestiture of four milling facilities, presumably to preemptively address competitive concerns raised by the proposed transaction. These

[1] ConAgra Foods, Inc. Form 8-K, Report of unscheduled material events or corporate event (February 10, 2014), item 8.01.
[2] *See* www.foodandwaterwatch.org/doc/Food_&_Water_Watch_comment_on_Proposed_Ardent_flour_mill_merger.pdf and www.antitrustinstitute.org/sites/default/files/AAI%20Letter_Horizon-ConAgra_FL.pdf.

include Horizon Milling's Los Angeles, Calif., mill; and ConAgra Mills' Oakland, Calif., Saginaw, Texas, and New Prague, Minn., mills. Based on both F&WW's and the AAI's earlier assessments of the proposed JV, four mill divestitures would not come remotely close to remedying the depth and breadth of competitive harm in markets across the U.S. that would likely be articulated in the government's complaint.

For example, the proposed shedding of two mills in the Great Plains does little to ensure a competitive marketplace for milled wheat. A significant portion of the wheat grown in the Dakotas is milled in the Minneapolis-St. Paul region, but the divestiture of a single mill in New Prague, Minnesota still leaves the proposed Ardent Mills JV in control of half of the flour mills in the region. ConAgra-Horizon Milling would still operate six of 11 mills between Omaha, Denver and Wichita, where many wheat farmers in western Kansas, Nebraska and eastern Colorado sell their crops. In the Northeast, the JV would still control five out of eight mills between eastern Pennsylvania and New England, giving its participants significant market power over commercial bread manufacturers, bakeries, pizza parlors, and other wheat-dependent food processors from Philadelphia to Boston.

If allowed to move forward at all — and particularly with an inadequate remedy — the processing segment of the U.S. wheat supply chain will be dominated by an entity that is both a powerful buyer and a powerful seller. Wheat growers and consumers of wheat flour products are likely to be affected through adverse price and output effects. Moreover, consolidation of the processing segment of the wheat supply chain would have significant adverse implications for food safety, reliability, and quality that would otherwise be promoted by vigorous competition and less concentrated supply chain.

The AAI and F&WW respectfully urge the DOJ to block the proposed ConAgra-Horizon Milling JV. Wheat flour is a basic and essential staple for which there is no substitute. Only vigorous competition in the milling sector will constrain the exercise of market power that would otherwise harm wheat growers, food manufacturers, and consumers and jeopardize the stability of one of the most important food supply chains in the United States. Please contact Patrick Woodall from Food & Water Watch, at (202) 683-2487, or Diana Moss at the American Antitrust Institute, at (720) 233-5971, if you have any questions or need more information about our concerns.

Sincerely,

Wenonah Hauter	Diana L. Moss
Wenonah Hauter	Diana Moss
Executive Director	Vice-President
Food & Water Watch	American Antitrust Institute

cc:
William H. Stallings, Chief, Transportation, Energy, and Agriculture Section, U.S. Department of Justice
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