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08:17:05 1	IN THE UNITED STATES DISTRICT COURT
2	FOR THE DISTRICT OF DELAWARE
3	UNITED STATES OF AMERICA,)
4) VOLUME 3 Plaintiff,)
5) C.A. No. 21-1644 (MN) v.
6	UNITED STATES SUGAR)
7	CORPORATION, et al.,) Defendants.)
8	Defendants.)
9	Wednesday, April 20, 2022
10	8:30 a.m. Bench Trial
11	844 King Street
12	Wilmington, Delaware
13	
14	BEFORE: THE HONORABLE MARYELLEN NOREIKA United States District Court Judge
15	0
16	APPEARANCES:
17	
18	UNITED STATES ATTORNEY'S OFFICE BY: SHAMOOR ANIS, ESQ.
19	-and
20	U.S. DEPARTMENT OF JUSTICE
21	BY: BRIAN E. HANNA, ESQ. BY: CHINITA M. SINKLER, ESQ.
22	BY: ROBERT LEPORE, ESQ. BY: CURTIS STRONG, ESQ.
23	BY: GEORGE NIERLICH, ESQ. BY: JENIGH GARRET, ESQ.
24	BY: STEPHANIE PEARL, ESQ.
25	Counsel for the Plaintiff

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08:18:54		

08:18:54 1 THE COURT: Good morning. Please be seated. 08:31:22 2 Okay. We're going to start with some depositions? MR. HANNA: Yes, Your Honor, the government is 08:31:25 3 going to play four depositions. I think it's a little over 08:31:27 4 The first one we can do in open court and then 08:31:31 5 08:31:37 6 there will be three in closed court. And then the 08:31:40 7 government plans to rest its case in chief at that point. 08:31:43 8 THE COURT: Okay. 08:31:44 9 MR. HANNA: At this time the United States calls 08:31:4710 Pedro Figueroa, the vice-president of sales and marketing of Michigan Sugar. 08:31:5011 08:31:5612 THE COURT: Okay. Thank you. 08:31:5813 (Videotape deposition of Pedro Figuero:) 08:32:0014 Ο. So you joined Michigan Sugar in January 2018, is that 08:32:0415 right? 08:32:0416 Α. Yes. 08:32:0417 And has your job description has been the same since Q. you joined Michigan, since you started at Michigan Sugar? 08:32:0818 08:32:1119 Yes, I have been vice-president of sales and Α. 08:32:1320 marketing since day one, yes. 08:32:1521 Q. Can you give us a couple sentences on what your job 08:32:1822 responsibility are and what you do on a daily basis? 08:32:2123 So I'm responsible for the commercial direction and 08:32:2324 strategy of our co-op. Michigan Sugar is a cooperative owned by grower owners. So responsible for setting the 08:32:2825

08:32:31 1 commercial direction, sales, marketing, and supply chain 08:32:36 2 responsibilities, covering around 1.3 billion pounds of 08:32:40 3 sugar that our co-op produces every year. 08:32:43 4 Thank you. And you described Michigan Sugar as a Ο. cooperative. Is that right? 08:32:46 5 08:32:47 6 Yes. Α. 08:32:48 7 Q. Do you deliver to customers from that facility all 08:32:52 8 over the United States or customers in specific locations? 08:32:55 9 We are a regional sugar supplier. We're not coast to 08:33:0010 coast. We're not national. So within a certain geography. 08:33:0511 So the only production location is in Toledo? Q. 08:33:0812 We have four factor -- four sugar beet factories in Α. 08:33:1213 Michigan. They take the beets and turn them into sugar. We have the one location in Toledo that takes 08:33:1514 08:33:1815 our beet sugar and converts it into liquid sucrose. And 08:33:2216 then we have three -- one location that takes our sugar and 08:33:2617 converts it into powdered sugar which is in Carrolton, 08:33:3018 Michigan. 08:33:3019 And then we have two satellite bulk storage 08:33:3420 facilities in Ohio; Findley, Ohio and Fremont, Ohio. 08:33:4221 Q. And does your company have any facilities that are 08:33:4522 outside of Ohio and Michigan? 08:33:4723 Α. No. 08:33:4824 Your production facilities, are they currently Q.

operating at full capacity or something less than full

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08:33:55 1 capacity?

- 08:33:55 2 A. In terms of the factories themselves?
- 08:33:58 3 Q. That's right. The processing --
 - A. Yeah. I guess it depends on how you define "full capacity." But they are running as close to full capacity as possible.
 - Q. Does Michigan Sugar have a regional focus?
- 08:34:14 8 A. Yes.
 - Q. Can you tell us what you mean by that?
 - A. Our geographical footprint extends to the western most point, Chicago, the Chicago market. We cover all of the Indiana market. Ohio, Michigan, parts of western New York, parts of western Pennsylvania, and the fringes of northern Kentucky.
 - Q. Why does the company have that regional focus?
 - A. It's a limitation on freight transportation costs to get to our customers. So the farther we get away, the more freight cost that we are encountering. So it has an effect on our competitiveness overall.
 - Q. And what's the radius, can you give us a sense for the radius that is in place at which it no longer makes sense to try to compete?
 - A. We're probably looking at 450 miles, 500 miles.
 - Q. And beyond that radius, the freight costs add up to make your company not competitive? Would that be fair to

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- 08:35:0220
- 08:35:021
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- 08:35:124
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08:35:23 1 say? 08:35:23 2 Α. Correct. To what extent is the company selling sugar in the 08:35:24 3 0. southeast United States? 08:35:27 4 Okay. So based on today's numbers, around 3.8, 08:35:29 5 08:35:35 6 3.9 percent of our sales are actually -- will be considered 08:35:40 7 going to that particular area of the country. 08:35:43 8 And when you say "particular area of the country," to Q. 08:35:48 9 what are you referring? Can you list it by states, if you 08:35:5310 can? Yup. The only state -- well, two states: North 08:35:5311 Α. 08:35:5712 Carolina, and Kentucky. Okay. So 3.8 percent of your sales going to North 08:36:0013 Ο. Carolina and Kentucky. Is that correct? 08:36:0514 08:36:0715 Α. Yes. Today. 08:36:0816 Q. As we sit here today? 08:36:1017 Α. Yes. 08:36:1118 So states like Alabama, Florida, Georgia, Tennessee, Q. 08:36:1519 Delaware, would it be fair to say that you have no sales in 08:36:1820 those states? 08:36:2021 Α. That's correct. 08:36:2122 Why do you all sell in North Carolina? Why is this Q. 08:36:2523 situation different in North Carolina than, say, Georgia?

It's the geographical difference, compared to

Michigan to those states versus the other states that you've

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Α.

08:36:39 1 mentioned. They're much farther south or much further to 08:36:43 2 the east. 08:36:43 3 What are the outer bounds -- can you name the state Ο. 08:36:47 4 which represents the outer bounds at which your company would be competitive selling sugar? 08:36:50 5 08:36:52 6 We're selling in North Carolina. There could be an 08:36:55 7 issue of other supply chain issues around the country. We 08:36:59 8 serve as a good alternative. But historically the outer 08:37:05 9 fringe of what we will service will be the northern Kentucky 08:37:1010 market. 08:37:1111 Q. Are you aware of any plans that the company has to 08:37:1412 increase sales outside of the Midwest? 08:37:1813 We have plans to grow in terms of the amount of sugar 08:37:2714 that we produce. But that doesn't necessarily translate 08:37:3015 into an expansion of our geographical coverage. 08:37:3516 Q. Do you ever sell to distributors? 08:37:3817 Α. Yes. 08:37:3918 Q. Under what circumstances does Michigan Sugar sell to 08:37:4319 a distributor? 08:37:4420 We have historical commercial relationships with some 08:37:4721 of these distributors. And so just on the basis of

Q. Has Michigan Sugar ever lost a sale to a distributor,

assigning a particular percentage of our overall production,

we will entertain doing business with some of these

historical distributors.

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08:38:09 1 that you're aware of? 08:38:10 2 I would say we compete with distributors, too. So we sell to distributors, and there are times we actually 08:38:14 3 compete with them, against them. 08:38:17 4 08:38:19 5 You compete with them. All right. And how often Q. 08:38:22 6 does that happen? 08:38:23 7 Α. Pretty often. 08:38:24 8 It happens frequently? Q. 08:38:26 9 Α. Yes. 08:38:2710 I see. And so would it -- have you observed Q. 08:38:3011

Q. I see. And so would it -- have you observed situations in which for whatever reason it costs more money to buy sugar in one geographic place than another in the United States?

- A. Yup. That certainly happens.
- Q. I'm sorry. What was the answer?
- A. That certainly happens.
 - Q. Okay.

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- A. Part of it has to do with the freight. The other part has to do with whether that particular part of the country wants to pay a premium for cane sugar, for example, because it prefers cane to the next best alternative.
- Q. When you see those price differentials, how long do they last?
- A. It's very hard to answer because the freight -- especially in today's world, the freight market is just

08:39:15 1 changing every day. 08:39:16 2 So those spreads and those differentials 08:39:19 3 contract and expand every single day. More so today than they probably have contracted in years past when 08:39:24 4 transportation was a lot more consistent in terms of value. 08:39:27 5 08:39:31 6 And do you consider United to be a competitor in --08:39:35 7 nationally or in particular geographic locations? 08:39:38 8 In our particular geographical location because we're Α. 08:39:43 9 not a national marketer. Michigan Sugar is not a national 08:39:4710 marketer. 08:39:4811 Q. What geographic locations does Michigan Sugar compete 08:39:5312 with United in? In our key geographic area, the same one I defined 08:39:5513 08:40:0014 earlier today: Chicago market, Indiana, some Michigan 08:40:0515 accounts, Ohio, western PA, western New York. 08:40:0916 How often does Michigan Sugar compete head to head 08:40:1317 with United? 08:40:1518 All the time. Α. 08:40:1719 It's frequent? Q. 08:40:2020 Α. Yes.

Q. Does United have any competitive advantages over Michigan Sugar?

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- A. United is a -- I guess their advantages come by way of rail, rail transportation.
- Q. I see. And to what extent does Michigan Sugar

08:40:40 1 compete with United in let's say North Carolina? 08:40:44 2 Α. Very limited. Extremely limited. 08:40:48 3 We talked a little bit about -- I think your answer Ο. before was that your company doesn't sell sugar in Georgia. 08:40:52 4 08:40:56 5 Is that right? 08:40:57 6 Correct. Α. 08:40:58 7 Q. Are you aware of any situations in which Michigan 08:41:01 8 Sugar has competed with United head to head in Georgia, for 08:41:08 9 example? 08:41:0810 No. Α. 08:41:0811 And is that because it's just a freight thing? You Q. 08:41:1212 guys aren't going to compete with anybody in Georgia? It's not just a freight component. There's also 08:41:1513 08:41:2014 sugar availability. We don't have as much sugar to market 08:41:2315 as United does. 08:41:2416 Why is that? 08:41:2517 United Sugars is, as of today, 27 percent of the 08:41:3118 market, we recon. So they are in essence four times larger 08:41:3919 than Michigan Sugar is, so they have more sugar to sell. 08:41:4320 I want to show you one last document that, for our 08:41:421 benefit, was under Tab 1.

Mr. Figueroa, I'm referencing, I'm drawing your attention to Exhibit 3. You're able to access that right?

Ms. Parker, if you could put that in the chat.

And I'm going to mark this as Exhibit 3.

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08:42:09 1 Α. Yes. 08:42:09 2 And do you recognize this as a questionnaire that was Q. propounded as part of the civil investigative demand? 08:42:13 3 08:42:16 4 Under the CID, yes. Α. 08:42:18 5 And did you help to prepare this? Q. 08:42:20 6 Α. Yes. 08:42:20 7 Q. And when you prepared it, was everything in there 08:42:23 8 accurate as far as you were able to tell? 08:42:25 9 Α. Yes. 08:42:2510 If -- first of all, sugar beets are an agricultural Q. crop, right? 08:42:2911 08:42:3012 Α. Yes. So the amount of sugar beets grown each year on a 08:42:3013 08:42:3314 particular acre is in large part controlled by Mother 08:42:3715 Nature. Right? 08:42:3716 Α. Correct. 08:42:3817 Okay. So if the farmer owners of Michigan Sugar have Q. a large crop of sugar beets in a particular year, what 08:42:4318 08:42:4719 obligation does Michigan Sugar have to sell all the sugar 08:42:5120 that is produced from those sugar beets? 08:42:5421 Α. We have a 100 percent obligation to produce as much 08:42:5822 sugar as we can from those beets to bring to market, yes. 08:43:0223 Are all of your sugar beet processing facilities

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Α.

located in Michigan?

Yes.

08:43:08 1 Q. And you talked earlier, you have the one facility in 08:43:12 2 Ohio where you create liquid sucrose from your sugar beets, 08:43:17 3 correct? 08:43:17 4 Α. Correct. 08:43:18 5 So all of Michigan Sugar's sales of sugar beet Q. products either originate in Michigan or Ohio; correct? 08:43:27 6 08:43:32 7 Α. Yes. 08:43:33 8 In your view, does Michigan Sugar have any production Q. 08:43:36 9 limitations at your processing facilities? 08:43:3910 No. Α. 08:43:3911 Q. And looking at the column entitled "events limiting 08:43:4412 production utilization," does Michigan Sugar believe there 08:43:4913 are external factors that limit your ability to produce more 08:43:5314 sugar? 08:43:5315 Α. Yes. 08:43:5416 And can you explain what those are? 08:43:5517 So it's the marketing allotment, the marketing Α. Yes. 08:44:0018 allocation that we are provided by USDA under the Farm Bill. 08:44:0419 And what is a marketing allotment? Q. 08:44:0820 Α. Marketing allotment is basically a production 08:44:1121 allocation that is assigned to Michigan Sugar under which we 08:44:1522 are to produce and to market. 08:44:1923 Anything above the allotment will be considered 08:44:2424 an excess or over allotment and that sugar cannot be brought

to market. It will be blocked.

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08:44:32 1 Q. So even if you produced that sugar and you had it available to sell, you can't sell it? Is that right. 08:44:35 2 08:44:38 3 Correct. Α. 08:44:39 4 And who sets your marketing allotment? 0. 08:44:42 5 Α. The marketing allotment is set by the USDA as determined by the Farm Bill and the sugar program. 08:44:46 6 08:44:49 7 Q. And who controls whether Michigan Sugar can increase its marketing allotment over the course of a crop year? 08:44:54 8 08:44:59 9 Α. The USDA. 08:45:0010 And is that something the USDA could do, if it wanted Q. to? Could it increase Michigan Sugar's marketing allotment 08:45:0511 08:45:1012 over a crop year? 08:45:1113 It can. And it does. 08:45:1314 Okay. If the United States Department of Agriculture 0. 08:45:1615 were able to quarantee Michigan Sugar today that it was 08:45:2116 going to have a permanently larger marketing allotment, 08:45:2517 would Michigan Sugar produce more sugar to sell? 08:45:3118 Α. Yes. 08:45:3119 And where might Michigan Sugar sell that sugar? Q. 08:45:3520 Α. Initially it would be within our geographical regions 08:45:3921 with a potential to expand on the geographical area 08:45:4422 coverage. 08:45:4423 We talked about the fact that Michigan Sugar 08:45:4824 currently today sells into West Virginia and Kentucky.

Right? You looked at that on the document?

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08:45:55 1 Α. Uh-huh. 08:45:55 2 With a bigger marketing allotment from USDA, would Q. Michigan Sugar sell perhaps further east into states like 08:46:00 3 Virginia and more into North Carolina? 08:46:03 4 08:46:07 5 Α. Potentially, yes. 08:46:08 6 With a bigger marketing allotment, would Michigan 08:46:12 7 Sugar sell more into the states like Tennessee? 08:46:15 8 Α. Potentially, yes. 08:46:16 9 Q. With a bigger marketing allotment, would Michigan 08:46:2010 Sugar sell further south into states like Alabama? 08:46:2311 Α. Again, potentially, yes. 08:46:2512 What do you consider to be the single largest reason Ο. 08:46:2813 that Michigan Sugar is not selling more sugar into these 08:46:3314 states today? 08:46:3315 Our size. Marketing allocation limitations. Α. 08:46:3816 You discussed earlier the announcement in August of 08:46:4217 last year that Michigan Sugar would be building a new desugarization facility. Do you recall that? 08:46:4618 08:46:5019 Correct. Α. Yes. 08:46:5120 And what exactly is that new facility going to enable 08:46:5521 Michigan Sugar to do? 08:46:5722 So it's basically an expansion of our current Α. 08:47:0123 desugarization facility. 08:47:0424 Today we are only able to extract sugar from

molasses on 40 percent of our total-sorry, 60 percent of our

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08:47:13 1 total production. This is going -- this investment will 08:47:16 2 allow us to desugarize 100 percent of our molasses. And we estimate that will allow us to generate an additional 80 08:47:23 3 million pounds of sugar production, by extracting the sugar 08:47:26 4 08:47:30 5 off the molasses, without having to increase our acreage one 08:47:36 6 acre. 08:47:36 7 Q. What you mean by that, increase your acreage, is you 08:47:42 8 get 80 more million pounds without needing to plant one more 08:47:45 9 acre of sugar beets by any of your farmers, right? 08:47:4910 That is correct, yes. Α. 08:47:5011 Q. Essentially you're just getting more sugar out of the 08:47:5212 beets you currently grow? Α. 08:47:5413 Correct. 08:47:5514 Has Michigan Sugar begun construction on this Ο. 08:47:5815 facility? 08:47:5816 As of yet, no. We're going through the engineering Α. 08:48:0217 stages now. But the project has been approved by our board. 08:48:0618 And when is the facility expected to be completed? 0. 08:48:0919 Summer -- I believe summer of 2024. Spring of 2024. Α. 08:48:1520 Sorry. 08:48:1521 Q. Where do you expect to sell the additional sugar 08:48:1822 you're going to get from that facility? 08:48:2123 We will try to keep as much of it as we can in our Α. 08:48:2624 geographical area. But if we have to expand the geographical area to get to more customers with the sugar, 08:48:3125

08:48:35 1 we will. 08:48:36 2 And does that include expanding into customers, for example, that are in Tennessee? 08:48:40 3 08:48:43 4 Α. Could be. 08:48:44 5 Q. Could be. How about customers in, for example, North 08:48:50 6 Carolina? 08:48:50 7 Α. Could be as well. 08:48:52 8 Q. Virginia? 08:48:54 9 Α. Could be as well. 08:48:5510 Even Georgia? Q. Could be as well. 08:48:5711 Α. 08:48:5812 What types of sugar products does CSC sell? Q. 08:49:0313 To my knowledge, they are predominantly liquid 08:49:0814 sucrose, liquid sugars. 08:49:1015 When you sell your sugar to distributors like Indiana Ο. 08:49:1416 Sugars and Batory, do you know where they're taking Michigan 08:49:1917 Sugar's sugar to resell it? 08:49:2018 Α. No. 08:49:2119 Because Michigan Sugar itself doesn't sell as much as Q. 08:49:2520 it would like directly to customers in places like 08:49:2921 Tennessee, Alabama, South Carolina, what's your view about 08:49:3322 distributors who use Michigan Sugar's sugar to compete for 08:49:3723 sales in those areas? 08:49:3924 I mean, listen, if our distributors help us to Α.

broaden the coverage area for whatever reason, we certain

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08:49:47 1 certainly don't object to it.

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- Q. Is there a benefit to Michigan Sugar from these distributors using your sugar to win customers in states where Michigan Sugar itself is not directly selling today?
- A. Yeah. Just from a brand recognition standpoint, yes, there is a value.
- Q. Let's look at page 10 of Exhibit 3, if we can. Let me ask you this, Mr. Figueroa. Does Michigan Sugar witness plenty of liquidity and competitiveness in the marketplace in terms of the number of players, distributors, sales mix capabilities per each major marketer and imported sugar as a complement to domestic production flows to prevent harm to consumers and users overall?
- A. Yes.
- Q. I think that would be Exhibit 4 we are going to mark.

 Mr. Figueroa, are you familiar at all with a request that

 was made to Michigan Sugar for certain sales data within a

 certain geography that the government has called "the

 southeast region." Are you familiar with that request?
- A. Under the subpoena?
- Q. Yes.
- A. Yes.
- Q. Okay. And are you aware that Michigan Sugar in fact produced certain data about its sales in certain states in the United States?

08:50:58 1	A. Yes.
08:50:58 2	Q. Do you have any reason to believe that that data is
08:51:02 3	not accurate that you produced?
08:51:04 4	A. No .
08:51:04 5	Q. And if that data showed, for example, that Michigan
08:51:09 6	Sugar sold sugar to companies in states and locations like
08:51:13 7	Georgia and Kentucky and North Carolina, that would be in
08:51:17 8	your view accurate?
08:51:18 9	A. Yes.
08:51:1810	Q. The data is the best source of information for very
08:51:2311	precisely where Michigan Sugar is selling its sugar.
08:51:2712	Correct?
08:51:2813	A. Yes.
08:51:2914	(End of deposition video.)
08:51:3415	MR. HANNA: May we call the next witness?
08:51:3616	THE COURT: Yes.
08:51:4017	MS. BARRON: Molly Barron on behalf of US Sugar.
08:51:4218	Defendant would like to move into evidence DTX 34 which is
08:51:4619	Figuero Exhibit 3, and DTX 244 which is Figuero Exhibit 4.
08:51:5020	MR. HANNA: No objection, Your Honor.
08:51:5121	THE COURT: Thank you. Those are admitted.
08:51:5122	(DTX Exhibit Nos. 34 and 244 were admitted into
08:51:5323	the record.)
08:51:5324	MR. HANNA: Your Honor, the United States would
08:51:5525	like to call Clayton Brown, CEO of International Food

Products. 08:51:59 1 Another video by deposition. I believe we are 08:52:02 2 going to ask the courtroom to be closed. 08:52:04 3 THE COURT: So as established in submissions we 08:52:08 4 received from third parties, good cause to close the courtroom, the depositions contain highly confidential and 08:52:11 5 08:52:15 6 competitive information for those parties, the disclosure 08:52:19 7 which would present an injury to these parties so I'm going 08:52:23 8 to close the courtroom as it's not practical to separate out 08:52:26 9 the confidential portions and the nonconfidential. 08:52:2910 parties shall as we talked about provided a line-by-line confidentiality designation so that transcript that will be 08:52:3311 08:52:3612 publicly available includes all of the nonconfidential portions. At this point we will close the courtroom and ask 08:52:3813 08:52:4114 anyone not under the protective orders to leave. 08:52:4515 MR. HANNA: Thank you, Your Honor. 08:53:0316 THE COURT: And by that way, that ruling will 08:53:0517 apply -- I know defendants asked earlier, that ruling 08:53:0818 applies to the depositions that you intend to play as well. 08:53:1119

Thank you, Your Honor. MR. BUTERMAN:

(Videotape deposition of Clayton Brown:)

- Q. Can you just state your name for the record?
- My name is Clayton Christopher Brown. Α.
- And who is your employer? Q.

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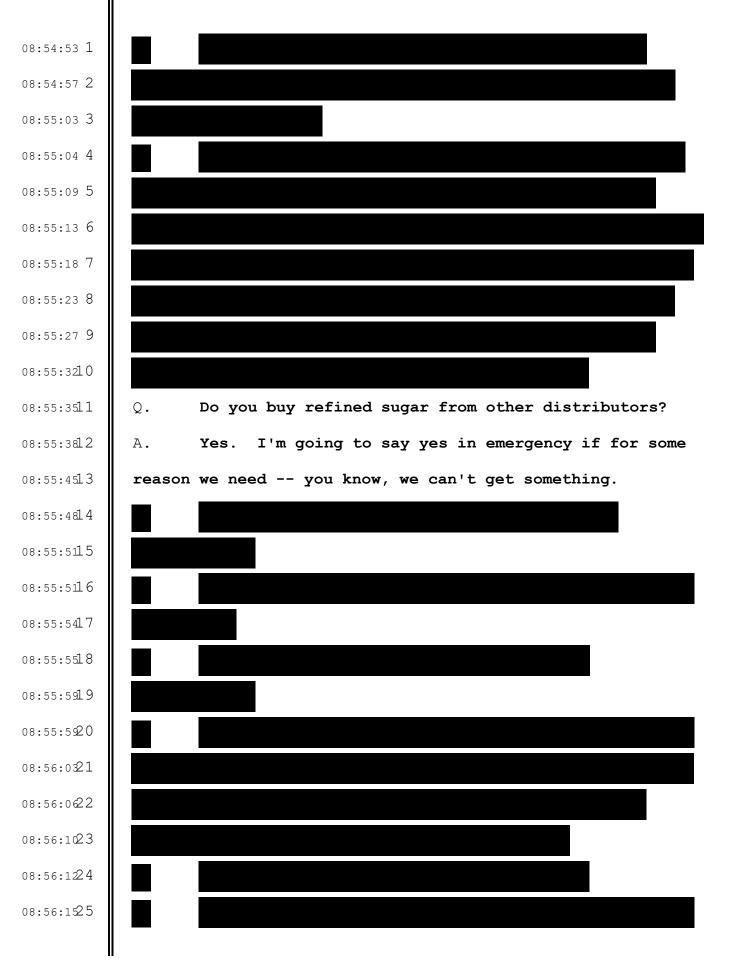
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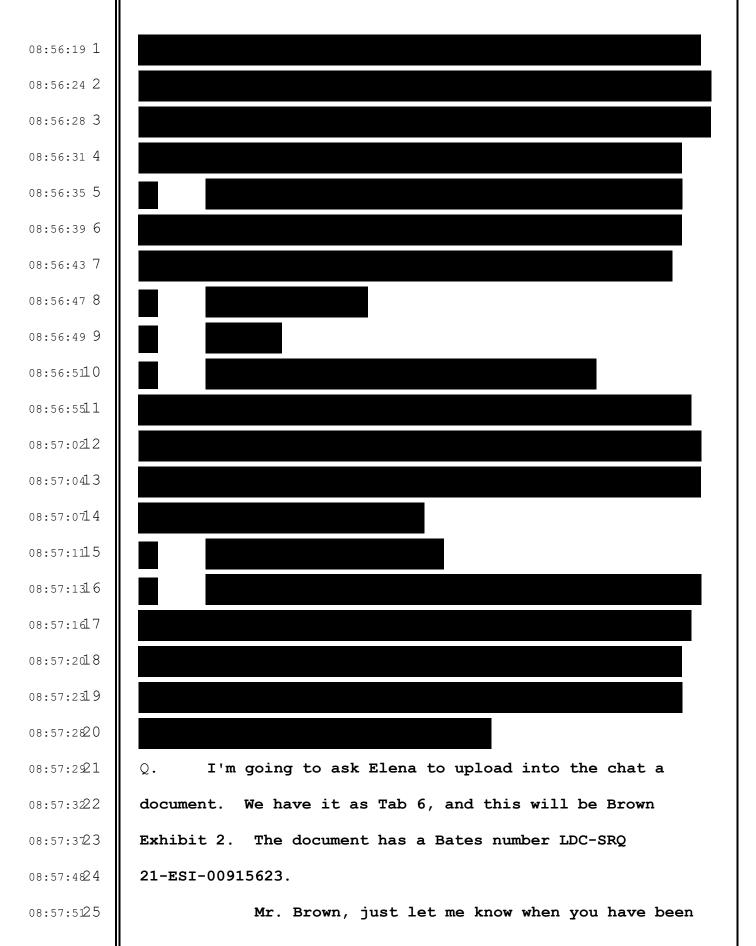
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08:53:4325

- The International Companies. Α.
- 0. And is International Food Products Company one of

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             those companies?
08:53:49 2
             Α.
                     Yes. Yes, it is.
                    And so if I use IFPC today, you understand that to
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             Q.
            mean International Food Products Company?
08:53:58 4
08:54:00 5
             Α.
                     Yes.
08:54:00 6
                    And what is your title?
             Q.
08:54:02 7
             Α.
                    CEO and president.
08:54:04 8
                    And does IFPC refine sugar?
             Q.
08:54:07 9
             Α.
                    No.
08:54:0810
                    Do you have any plans to begin refining raw sugar?
             Q.
08:54:1211
             Α.
                    No.
08:54:1412
                    Does IFPC package sugar?
             Q.
08:54:1813
             Α.
                    No.
08:54:1814
                    Does IFPC purchase any raw sugar?
             Q.
08:54:2215
             Α.
                    No.
08:54:2316
                    Does IFPC buy imported raw sugar?
             Q.
08:54:2817
                    No.
             Α.
                    Does it buy imported refined sugar?
08:54:2918
             Q.
08:54:3219
             Α.
                    Yes.
                    About what percentage of your refined sugar are from
08:54:3220
             Q.
08:54:3721
             an importer?
08:54:3822
                     I'm going to say about five percent.
             Α.
08:54:4223
                    Do you use the same sugar suppliers for all of your
             Q.
08:54:5024
            distribution centers?
08:54:525
             Α.
                    No.
```





08:57:55 1 able to open that and have had a chance to look at it? 08:57:58 2 Α. Okay. I have it up. Let me take a look at it. 08:58:02 3 looking at it now. Now, the top line -- on the first page of this e-mail 08:58:04 4 Ο. 08:58:08 5 -- this is an e-mail from you to Jim Evans dated August 29, 08:58:18 6 2019; is that right? 08:58:19 7 Α. Yeah, the top of this page -- well, it's from Jim to 08:58:23 8 me -- or no, sorry, to -- it's from Jim Evans to me. 08:58:29 9 Q. Yeah. 08:58:2910 Α. Yes. 08:58:2911 Q. Thank you for the clarification. 08:58:312 So from Jim Evans to you, the top most e-mail is August 29th, 2019, right? 08:58:3513 08:58:3714 Α. Correct. 08:58:3715 And the subject is, RE: ISP price quote from Milkco. Q. 08:58:4616 Do you see that? 08:58:4617 Α. Correct. 08:58:4718 Is Milkco an IFP customer? Q. 08:58:5019 Yes, it is. Α. 08:58:5020 Q. So is it your understanding that Milkco needed liquid 08:58:5521 sugar delivered to Asheville, North Carolina? 08:58:5822 Α. Correct. 08:58:5823 Why here are you reaching out to Imperial about your Ο. 08:59:0224 customer's liquid volume needs in North Carolina?

Because -- well one, we've done it in the past, but

08:59:0425

Α.

08:59:08 1 their facility in Savannah, Georgia, would be convenient to 08:59:14 2 deliver to Asheville, North Carolina.

- Why didn't IFPC serve Milkco from one of its liquid Ο. sugar facilities?
- Because the -- because it's -- as I said at the beginning, the 350-mile radius, this would be outside of that 350-mile radius. So the freight would be very exorbitant, so we wouldn't be competitive.
- Ο. Did Imperial ultimately provide this liquid sugar you're asking about to Milkco?
- Α. Yes.
- Were you concerned that Imperial would take this Q. Milkco business from IFPC?
- Α. No, I was not concerned.
- Why not? Q.
- I -- I guess I'd just say kind of a gentleman's Α. agreement that, you know, we provide -- we provided the customer name and who it is, and they're getting the benefit of selling the sugar and we're the ones -- you know, and selling it as well to Milkco. So they're selling to us, and we're selling to Milkco. So they're still getting -they're getting the sale of the sugar.
- Did the prices that IFPC charges for refined sugar to 0. its customers change over time?
- Α. Yes.

- 08:59:16 3
- 08:59:22 4
- 08:59:23 5
- 08:59:26 6
- 08:59:30 7
- 08:59:35 8
- 08:59:38 9
- 08:59:4210
- 08:59:4411
- 08:59:4512
- 08:59:4913
- 08:59:5114
- 08:59:5315 08:59:5316
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- 09:00:0218
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- 09:00:2324
- 09:00:2425

09:00:25 1 09:00:29 2 09:00:31 3 09:00:34 4 09:00:39 5 09:00:40 6 09:00:44 7 09:00:47 8 09:00:51 9 09:00:5510 09:01:0011 09:01:0612 09:01:0913 09:01:1414 09:01:1815 09:01:2116 09:01:2417 09:01:3018 09:01:3119 09:01:3420 09:01:3821 09:01:4222 09:01:4623 09:01:5124

09:01:525

than Imperial.

- Q. What factors caused IFPC's prices to change for refined sugar?
- A. The pricing that I receive from the refineries can change, whether it -- I'm buying it quarterly, monthly, or, you know, daily.
- Q. Can you explain a little bit more? How does kind of that time period affect pricing?
- A. Well, I should say, you know, it all depends upon how the refineries want to price their sugar. So that can have an impact on what my price is going to be.

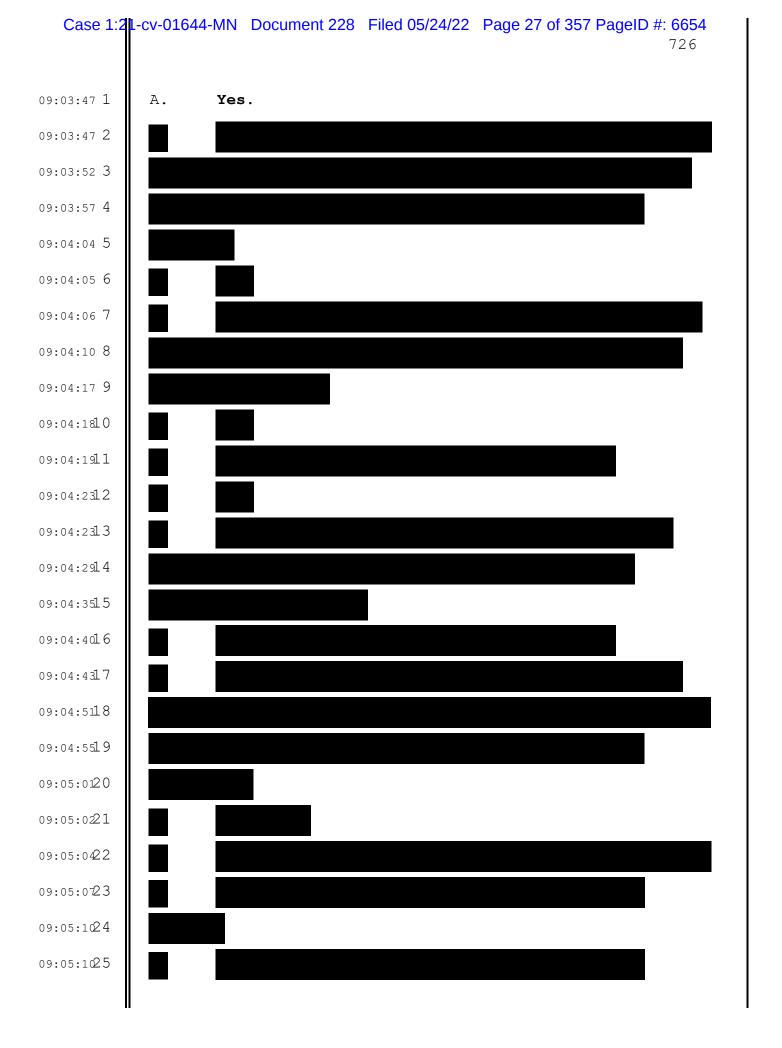
If it's based off the -- the number 16, like

Imperial's are, they can change -- you know, it can change
daily, or, you know, weekly depending upon what the market
does. And then, you know, again the refineries have the
discretion to change pricing whenever they want.

- Q. In your experience, does IFPC pay more for Imperial Sugar than you do for sugar from Imperial's competitors?

 A. It kind of -- it kind of depends upon the market. I mean, lately it's -- you know, Domino always -- has always been a -- has always been a higher priced supplier than --

09:01:57 1 But I don't know how they do their pricing --09:02:00 2 you know, I don't know how they do their -- their -- when they sell -- I don't know how they go about doing their --09:02:03 3 what am I trying to -- when they come up with a price for --09:02:06 4 to me, I'm not sure how they work up their numbers. 09:02:10 5 09:02:13 6 Where in the U.S. does IFPC sell refined sugar? 09:02:17 7 I would say throughout the -- you know -- basically 09:02:21 8 throughout the whole -- the country. I mean, everything 09:02:25 9 from the -- the south -- the southeast -- the south, midwest 09:02:3010 -- the midwest, and the Pacific northwest. 09:02:3211 Q. I'm going to go ahead and introduce as Brown 09:02:3812 Exhibit 10 a document bearing the Bates IFP-US Sugars 00048. And I'm also going to introduce as Exhibit 11 a PDF of that 09:02:4613 same Excel spreadsheet, just because I personally find the 09:02:5114 09:02:5815 PDF easier to look at. But both the -- Exhibit 10 and 09:03:0416 Exhibit 11 are a document with Bates IFP-US Sugars 00048. 09:03:1317 Have you seen Exhibit 10 before? Yes, I perform -- I put that together. 09:03:1818 Α. 09:03:2019 And did you create Exhibit 10 for the -- for the Q. 09:03:2620 purposes of this litigation? 09:03:2721 Α. I -- it was just a question that was asked, and so I created this based on the -- to figure out the customers in 09:03:3222 09:03:3623 these different states. 09:03:3824 And does Exhibit 10 reflect data that IFPC maintains Q. in the ordinary course of its business? 09:03:4425



09:05:14 1 09:05:19 2 09:05:19 3 And is it correct that last year, in 2021, IFPC's 09:05:25 4 sales to -- to customers in -- in the states reflected in 09:05:30 5 this document amounted to 5.9 percent of its sugar sales? 09:05:35 6 Α. Yes. 09:05:35 7 Q. We talked earlier about how IFPC purchases sugar from 09:05:41 8 companies like United, Domino, Western, Cargill, NSM, and 09:05:48 9 Imperial. 09:05:4910 Is IFPC a customer of those companies? 09:05:5311 Yes, we are. Α. 09:05:5412 09:06:0013 09:06:0414 09:06:0515 09:06:116 09:06:1217 09:06:1718 09:06:2119 09:06:2120 09:06:2121 09:06:262 09:06:2723 In your opinion, does Imperial's reliance on foreign 09:06:3124 imports make it a high-cost refiner? 09:06:3425 Α. Yes.

- 09:06:34 1
- 09:06:38 2
- 09:06:42 3
- 09:06:48 4
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- 09:07:1413
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- 09:07:2315
- 09:07:2416
- 09:07:2917
- 09:07:3218
- 09:07:3319
- 09:07:3920
- 09:07:4421
- 09:07:4822
- 09:07:4823
- 09:07:5224
- 09:07:5325

- Q. In your opinion, does Imperial's reliance on foreign imports make it less competitive as a supplier?
- A. I wouldn't say less competitive. But you know, their pricing is different, so it does have an impact on -- you know, maybe some business we could do with them.
- Q. If US Sugar's acquisition of Imperial goes through, do you think that it will reduce the supply of refined sugar in the U.S.?
- A. I do not -- I don't -- I do not believe so.
- Q. Why not?
- A. Because what I understand is, you know, maybe US

 Sugar may increase the amount of raw sugars that they're

 currently producing down in -- in Clewiston and be able to

 ship more up to Port Wentworth, and -- and increase that

 supply that's available.
- Q. If US Sugar's acquisition of Imperial goes through, do you think it will lead to higher prices for refined sugar?
- A. You know, I -- that's, you know -- it's a poss -it's a possibility, but I'm -- you know, the market's going
 to -- the market's going to determine what they can price it
 at.
- Q. Do you think that US Sugar's proposed acquisition of Imperial is good for the sugar industry?
- A. Yes.

09:07:54 1 Q. Why? 09:07:54 2 Again, it -- I think it will -- it will increase the 09:07:58 3 amount of -- amount of sugar available. And I would assume 09:08:02 4 that based on, you know, a little more raws going through 09:08:09 5 Imperial, it will help the efficiency of that facility to 09:08:13 6 run -- you know, maybe run smoother instead of waiting on 09:08:17 7 raw -- on world raws all the time. 09:08:20 8 MR. HANNA: Your Honor, at this time the United 09:08:21 9 States moves to admit the following exhibits into evidence. DTX 113, PTX 202. 09:08:2410 09:08:3011 THE COURT: Any objection? 09:08:312 MS. BARRON: No objection. 09:08:3213 THE COURT: Thank you. They're admitted. 09:08:3214 (DTX Exhibit No. 113 and PTX Exhibit No. 202 09:08:3515 were admitted into evidence.) 09:08:3516 MR. HANNA: Next, Your Honor, the United States 09:08:3717 calls Meera Ramachandra Hamill, the associate director of 09:08:4318 commodities. 09:08:4319 THE COURT: Thank you. 09:08:420 (Videotape deposition of Meera Ramachandra Hamill:) 09:08:4921 09:08:5122 Α. My name is Meera Ramachandra Hamill. 09:08:5523 Q. And where do you work? 09:08:5724 Α. I work at Kraft Heinz Company. 09:09:0125 0. And what's your current job at Kraft?

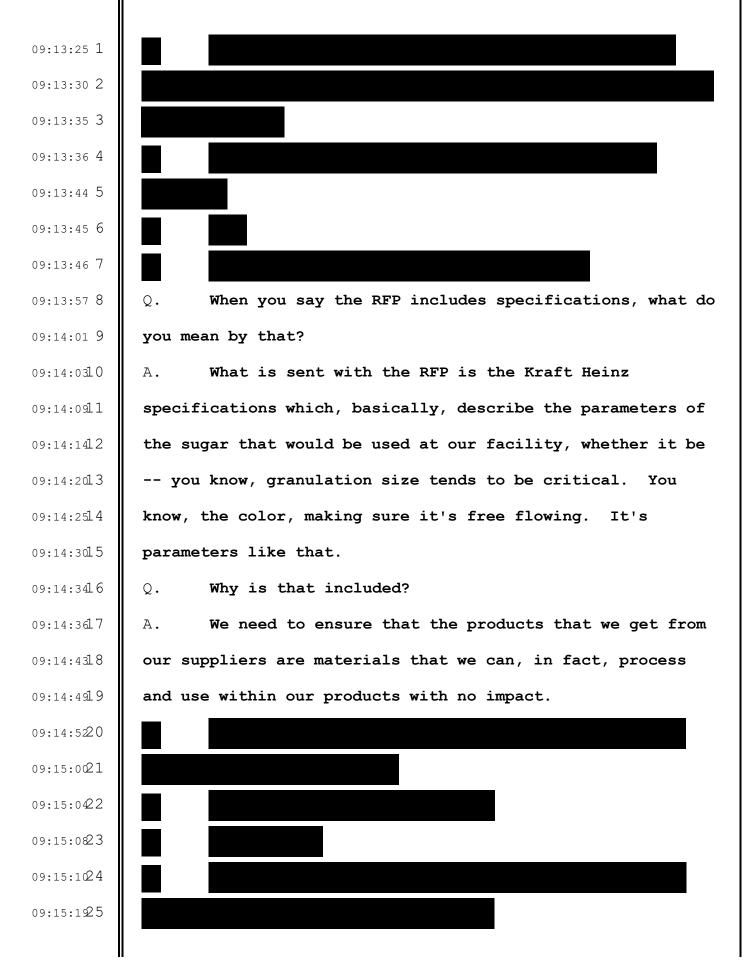
09:09:04 1 Α. I am the associate director of commodity ingredients. 09:09:09 2 Do you have responsibilities for buying sweeteners Q. for Kraft? 09:09:13 3 09:09:19 4 Α. Yes. 09:09:21 5 Ο. Of the Kraft facilities that use refined sugar, are 09:09:25 6 there some facilities that use a majority of the refined 09:09:29 7 sugar that Kraft buys? 09:09:31 8 Α. Yes. 09:09:32 9 Ο. Which facilities? 09:09:3410 Α. Our largest sugar-using facility would be Dover, Delaware. And then -- I'm thinking. So we have our 09:09:4011 09:09:4612 facilities, you know, in the Midwest that are large use locations, Kendalville, Champaign, Illinois. Then I would 09:09:5113 09:10:0214 say, moving into my liquids, which would be my Capri Sun 09:10:1515 plants. 09:10:1616 09:10:2017 09:10:2618 09:10:3419 09:10:4120 09:10:4721 09:10:5522 Q. What's a core supplier? 09:10:5923 Like a large supplier, I would say, it's one of the Α. 09:11:024 big, you know, three sugar suppliers in the -- in the U.S.; 09:11:1225 three or four.

- 09:11:14 1
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- 09:12:03 9
- 09:12:1010
- 09:12:1511
- 09:12:2312
- 09:12:2513
- 09:12:3014
- 09:12:3115
- 09:12:3516
- 09:12:4117
- 09:12:4918
- 09:12:5219
- 09:12:5720
- 09:13:0721
- 09:13:1222
- 09:13:1823
- 09:13:2224
- 09:13:2325

- Q. Could you name them?
- A. I would say Domino, United, LSR, you know, Cargill, and then Imperial Sugar. And then, of course, there's always, you know, NSM, National Sugar Marketing. And then you start going into more regional players.
- Q. And when you say "regional players," Ms. Hamill, what do you mean?
- A. There are smaller players such as Michigan Sugar.

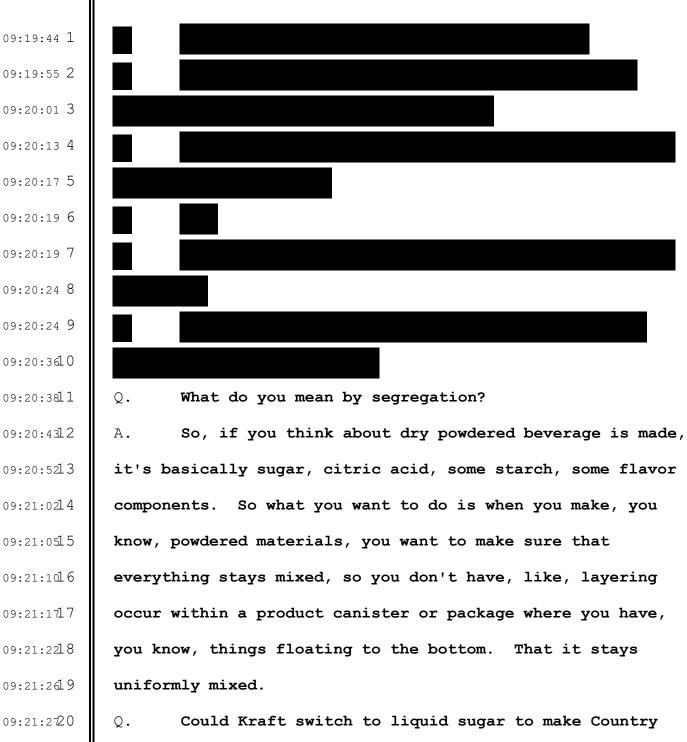
 There is also the local, you know, sugar melters that are in various areas of the country.
- Q. Let me ask you first about Michigan Sugar. Why would they be considered a regional player?
- A. Michigan Sugar tends to be only competitive in a certain region of the country.
- Q. What region would that be?
- A. It's more or less in Michigan. Ohio. Just in that general vicinity.
- Q. Are there other regional players?
- A. There's smaller, you know, players. There's the company that's based out in Denver, Colorado. I can't -- my mind is not clicking right now, because I don't use them.

 They're a beet sugar supplier. It will come later. But they are included on my bids.
- Q. Is it Western Sugar?
- A. Western, yes. Thank you.



09:15:27 1 09:15:33 2 09:15:39 3 Well, now, when we think about awarding the RFP, are 09:15:41 4 there any factors that are important to Kraft in deciding 09:15:48 5 09:15:52 6 who to award its RFP for refined sugar? 09:15:57 7 Α. Yes. 09:15:57 8 What are they? Q. Quality, service, price. I would say those are the, 09:16:01 9 Α. 09:16:0810 you know, three biggies. Why is quality important? 09:16:2011 Q. 09:16:2312 I need to ensure that the supplier is providing Α. 09:16:2713 quality product into my facility. 09:16:3214 0. Why is service important? 09:16:3415 I need to make sure that product is available on Α. 09:16:4216 time, as needed by the factory. 09:16:5117 And why is price important? Q. 09:16:5418 Α. I need to ensure that I'm able to get the lowest 09:17:0019 landed price into that facility. 09:17:0420 Q. Does the supplier's distance from Kraft's facility 09:17:1021 play a role in the price? 09:17:1422 It generally will. Α. 09:17:1723 Q. How? 09:17:2624 It's based on the freight rate that the supplier is Α. 09:17:3125 able to provide to that Kraft Heinz location.

09:17:38 1	Q. Does the supplier's distance from the Kraft facility
09:17:42 2	matter?
09:17:43 3	A. For me, as long as it's delivered on time as needed
09:17:49 4	at a competitive cost, that is the most important, and, of
09:17:56 5	course, quality and service.
09:17:59 6	Q. Okay. Let's talk now about Dover, Delaware. How
09:18:05 7	much refined sugar does the Dover, Delaware facility buy
09:18:10 8	yearly?
09:18:12 9	A. Approximately 150 million pounds.
09:18:2010	Q. What products are made in Dover, Delaware?
09:18:2711	A. Dover Delaware is a facility that produces our dry
09:18:3312	powdered beverages. They also produce our Jello puddings,
09:18:5113	and they also produce Stove Top Stuffing.
09:18:5614	Q. What kind of refined sugar does the Dover, Delaware
09:19:0115	facility use?
09:19:0216	A. They use bulk EFG sugar.
09:19:0517	
09:19:1218	
09:19:1619	
09:19:2720	
09:19:3021	
09:19:3322	
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09:19:3&4	
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- Time Lemonade and the other powdered products that are made in Dover, Delaware?
- A. No.

09:21:3421

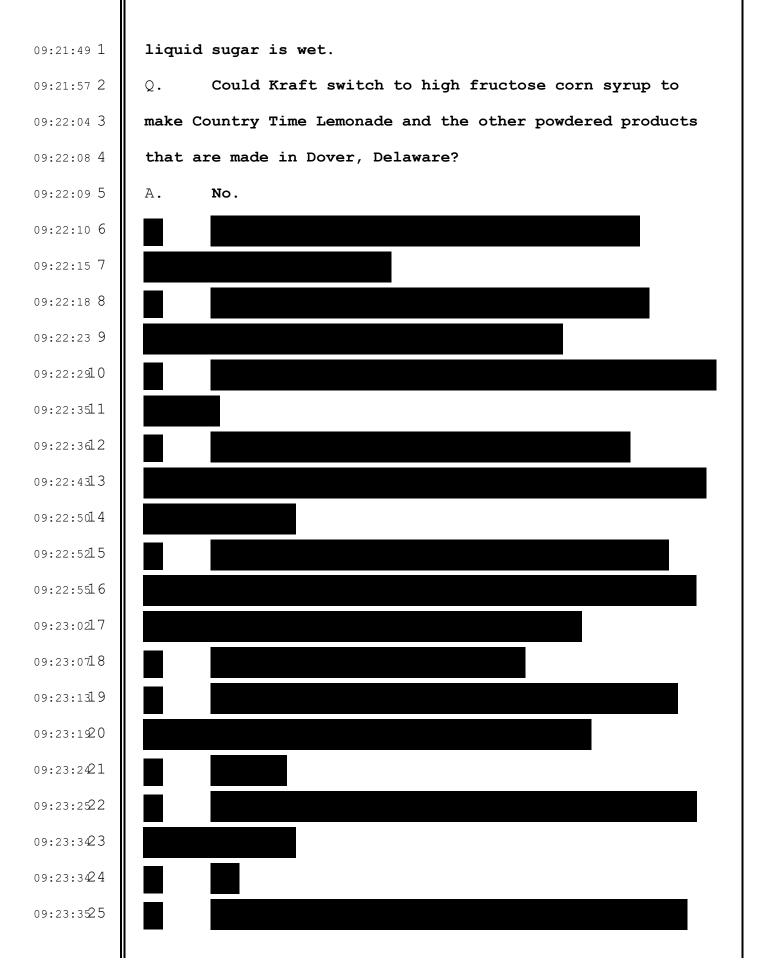
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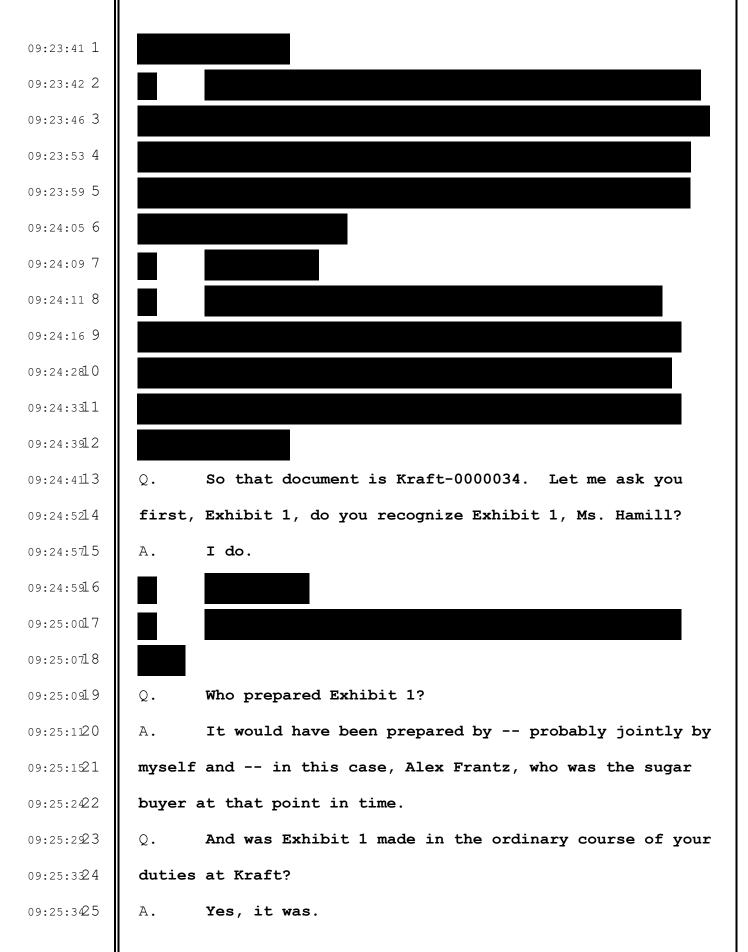
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09:21:4225

- Q. Why not?
- A. The Dover plant is a dry powdered facility, and





- 09:25:36 1 | Q. And does Kraft have a large procurement team?
- 09:25:41 2 A. It does.
- 09:25:43 3 Q. I think you testified this morning that you believe
- 09:25:48 4 | that there are about 37 manufacturing facilities that use
- 09:25:55 5 refined sugar; is that right?
- 09:25:57 6 A. Exactly.
- 09:25:57 7 Q. Okay. And those 37 Kraft facilities that use refined
- 09:26:02 8 sugar are located all across the United States, right?
- 09:26:08 9 A. That is correct.
- 09:26:0810 Q. As someone who works in procurement, is it important
- 09:26:1311 for you to try to stay up-to-date on developments in the
- 09:26:2012 **sugar industry?**
- 09:26:213 A. Yes.
- 09:26:214 Q. And how do you do so?
- 09:26:2515 A. I talk to my suppliers. I read things.
- 09:26:3216 Q. Okay. And then you say you read things. What do you
- 09:26:3617 **read?**
- 09:26:3718 A. I read market reports.
- 09:26:39 Q. Anything else?
- 09:26:400 A. I talk to industry experts.
- 09:26:421 Q. What sort of market reports do you look at to try to
- 09:26:4822 keep abreast of the sugar industry?
- 09:26:523 A. We get information from, you know, third-parties, you
- 09:27:0524 know, subscriptions that we pay for.
- 09:27:1125 Q. Which third-party subscription services does Kraft

09:27:19 1 subscribe to with respect to sugar?

- A. There are several. A couple come to mind off the top. We work with JSG. We work with McKeany-Flavell. We get reports from -- I'm going to not pronounce this correctly.
- Q. That's fine. I'd probably mess it up, too.
- A. Okay. Czarnikow. You know, the typical cast of characters in the sugar world. So...
- Q. The first one you mentioned is JSG. What is that?
- A. That is Jenkins.
- Q. And what is Jenkins Sugar Group?
- A. They, basically, you know, follow the markets, you know, give prospective on, you know, what's going on, how the crops are doing. You know, things like that.
- Q. What sort of form do those -- does that information come to you in? Is it a -- is it a newsletter, or is it a daily e-mail blast, how do you get it?
- A. It's you know, daily e-mail blasts. You know, pick up the phone, have conversations.
- 09:28:4&0

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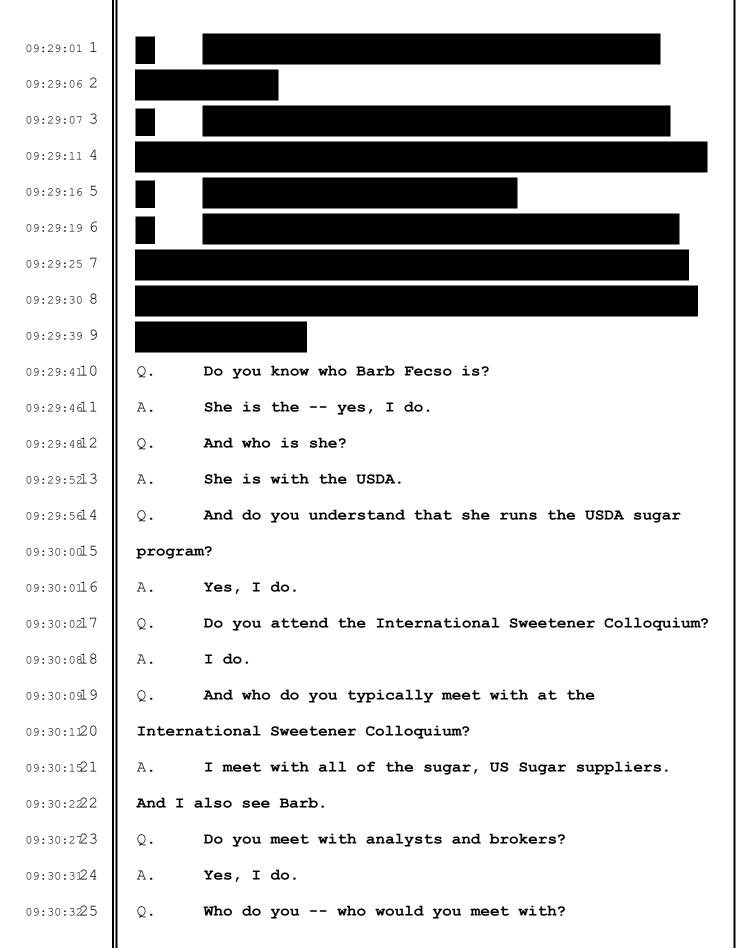
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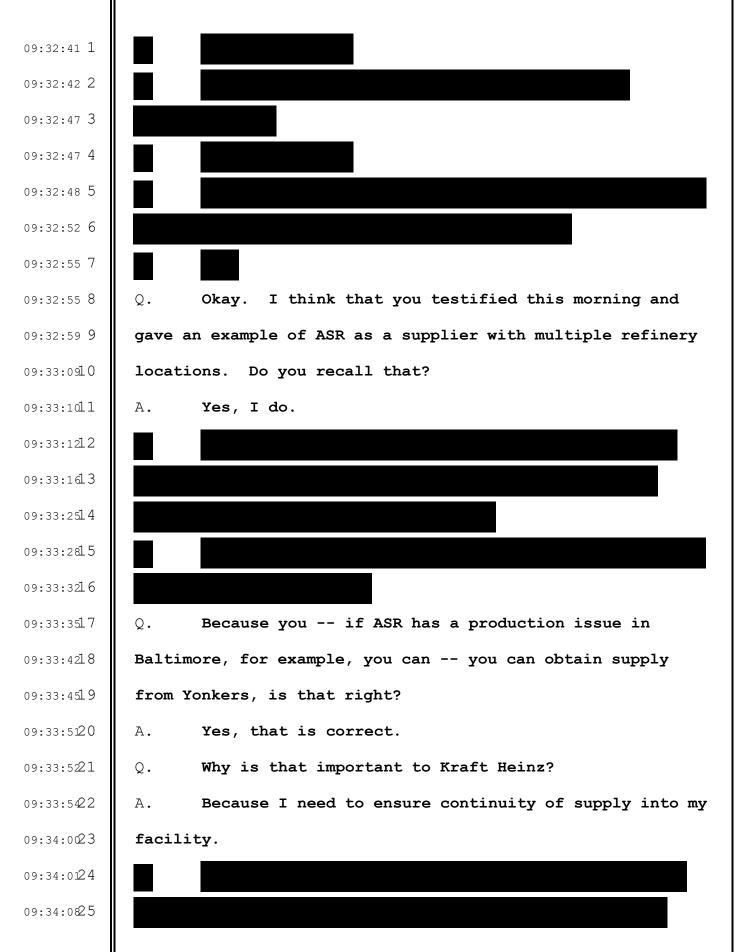
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- 09:29:0025
- Q. And the number 16 price, that's a raw sugar price index; correct?
- A. That is correct.



09:30:35 1 Α. I would meet with folks at Jenkins, folks at 09:30:40 2 McKeany-Flavell. I've met with a couple of others, I just don't recall, you know, the names off the top. 09:30:49 3 09:30:52 4 09:30:57 5 09:31:02 6 09:31:23 7 09:31:26 8 09:31:27 9 And based upon the information that you presented in 09:31:3010 the 2020 US Sugars strategy recommendation, Imperial has the highest delivered cost of any of the four suppliers that 09:31:3511 09:31:4012 Kraft was going to use in 2020 to supply the Dover, Delaware plant, correct? 09:31:4413 09:31:4514 Α. That is correct. 09:31:4615 The majority of Kraft's purchases are by contract, Q. 09:31:5116 correct? 09:32:0717 Α. That is correct. Would you say it's more than 95 percent? 09:32:0718 Q. 09:32:1519 I would say hopefully more than 90 percent. Perhaps Α. 09:32:1920 95 percent, but, you know, the majority, yes. 09:32:2121 09:32:2422 09:32:3023 09:32:3424 09:32:3625



09:34:11 1 09:34:12 2 And that means that sugar is arriving on a regular 09:34:16 3 basis to the Dover, Delaware facility, correct? 09:34:20 4 Α. That's correct. 09:34:24 5 And probably two-thirds of those railcars are coming Q. from Florida, Georgia, or Louisiana; is that right? 09:34:28 6 09:34:33 7 Α. Probably -- probably more -- probably more than that. Probably 90 percent of the rail is coming from those areas. 09:34:41 8 09:34:45 9 And is that because ASR is primarily shipping from 09:34:5110 its Chalmette, Louisiana refinery? That is correct. 09:34:5611 Α. 09:34:5912 Even though the Baltimore, Maryland refinery is Q. 09:35:1013 considerably closer to Dover, Delaware? 09:35:1214 Α. That is correct. 09:35:1315 Q. Why is that? 09:35:1416 Because it takes the same amount of time to get from Α. 09:35:1717 Baltimore to Dover, Delaware via rail as it takes from 09:35:2218 Chalmette to go to Dover, Delaware. 09:35:2719 And what's your understanding of why that's the case? Q. 09:35:320 Α. Because it's a very messy rail challenge in that 09:35:3721 area. The area between Baltimore and Dover? 09:35:3722 Q. 09:35:4223 Α. Yes. 09:35:4424

09:35:4925

Q. -- in the ordinary course of your job duties at Kraft

09:37:0123

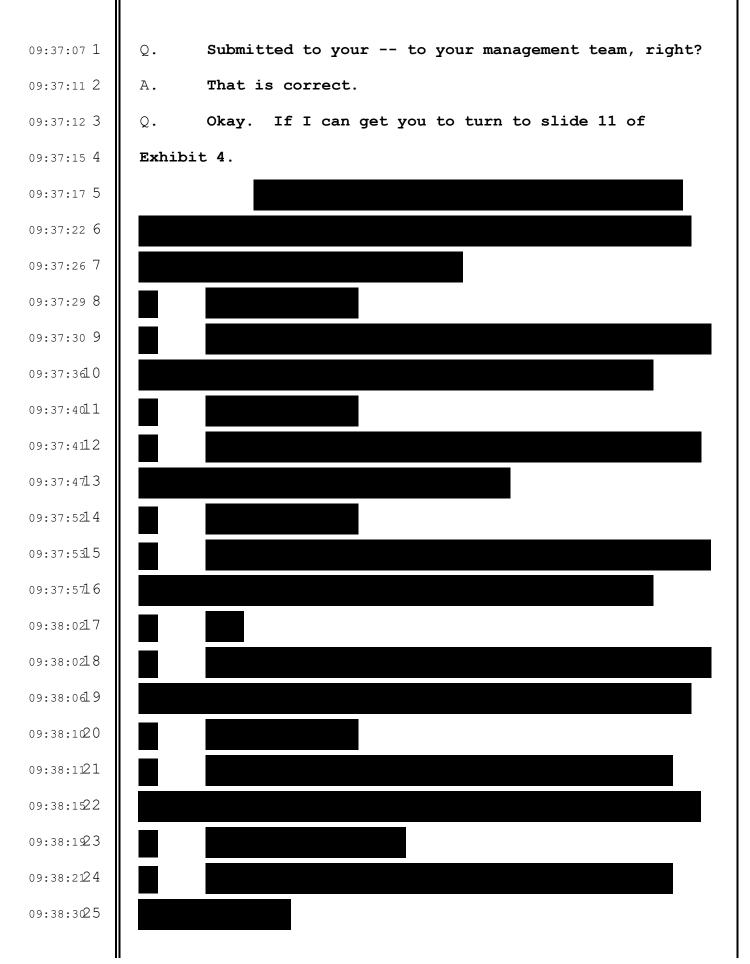
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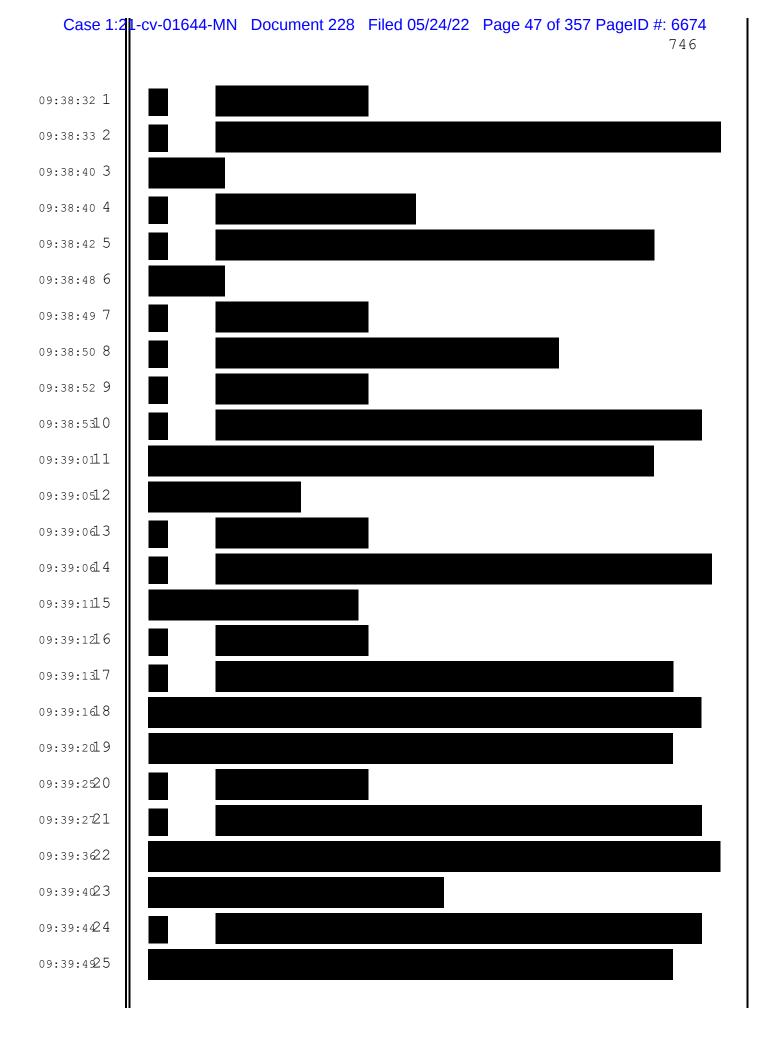
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Heinz?

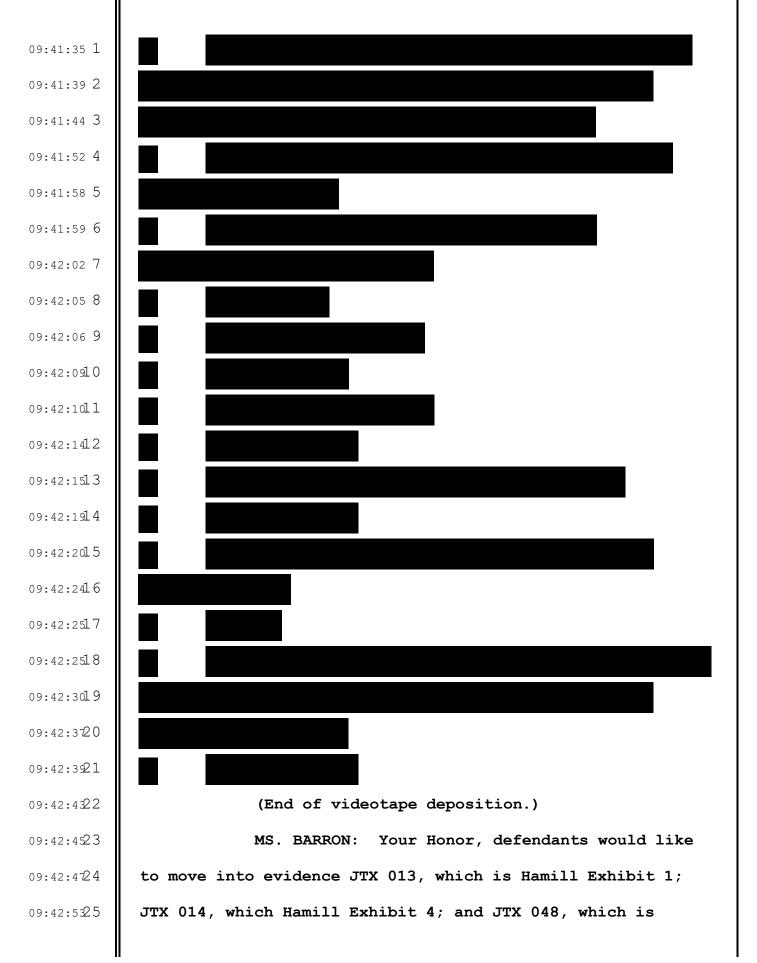
Yes.

Α.





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09:43:00 1 Hamill Exhibit 5A. 09:43:00 2 MR. HANNA: No objection, Your Honor. 09:43:01 3 THE COURT: Thank you. Those are admitted. (JTX Exhibit Nos. 013, 014 and 048 were admitted 09:43:01 4 09:43:03 5 into evidence.) 09:43:03 6 MR. HANNA: And finally, Your Honor, the United 09:43:06 7 States calls Mark Olson, vice-president of trade for 09:43:09 8 American Sugar Refinery Company. 09:43:16 9 (Videotape deposition of Mark Olson:) 09:43:4710 Mr. Olson, who do you currently work for? Q. A. 09:43:5011 I work for American Sugar Refining ASR. 09:43:5412 What line of business is ASR in? Q. 09:43:5913 We are a cane refiner business, we buy and process Α. 09:44:0814 raw sugar into refined sugar, a variety of forms. 09:44:1215 What is your current job title at ASR? Q. 09:44:1716 I believe I am vice-president of trading, simple as Α. 09:44:2217 that. 09:44:2218 And what are your jobs duties as vice-president of Q. 09:44:2819 trading? 09:44:2920 Α. I procure all of the raw sugar for four of the five 09:44:3621 refineries we have in the United States. 09:44:3922 Does your job at ASR involve selling refined sugar to Q. 09:44:4423 customers in the United States? 09:44:424 Α. It does not. 09:44:4825 0. ASR does not use sugar beets to make refined sugar,

09:44:54 1 09:44:55 2 Α. 09:44:58 3 0. 09:45:01 4 Α. 09:45:03 5 09:45:07 6 09:45:11 7 09:45:14 8 09:45:19 9 09:45:2210 09:45:2411 09:45:2712 09:45:3113 09:45:3414 09:45:3915 09:45:4016 09:45:4917 09:45:5618 0. 09:46:0119 09:46:0720 09:46:1221 Α. 09:46:2022 09:46:2523 09:46:2824

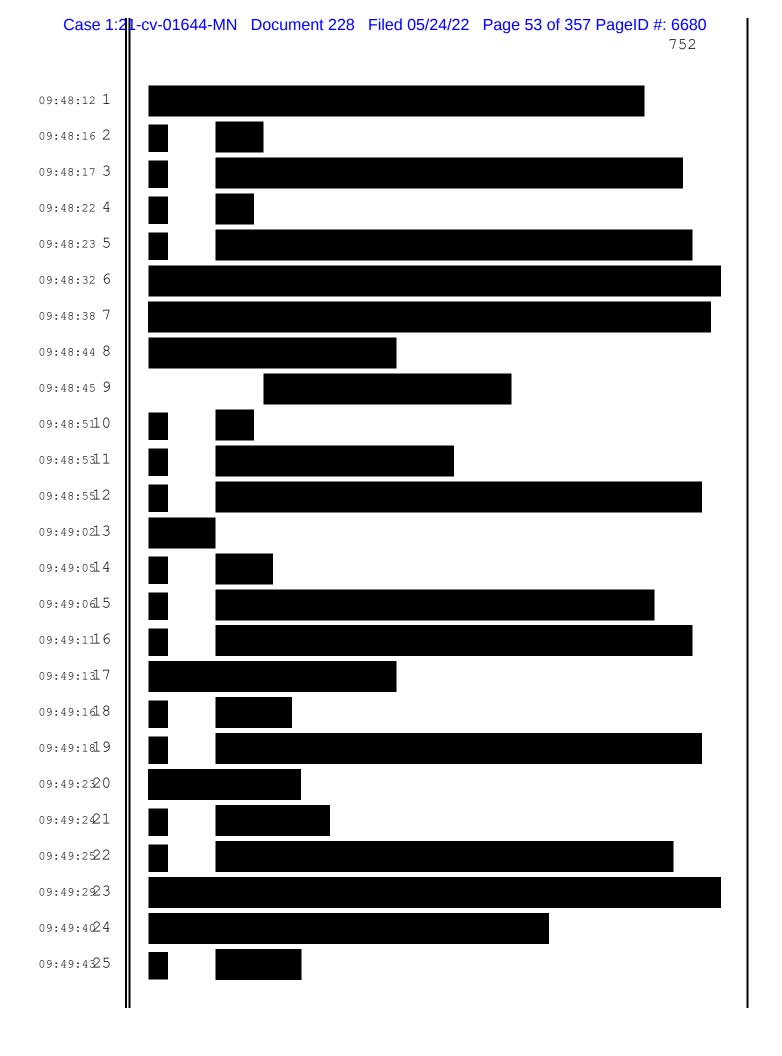
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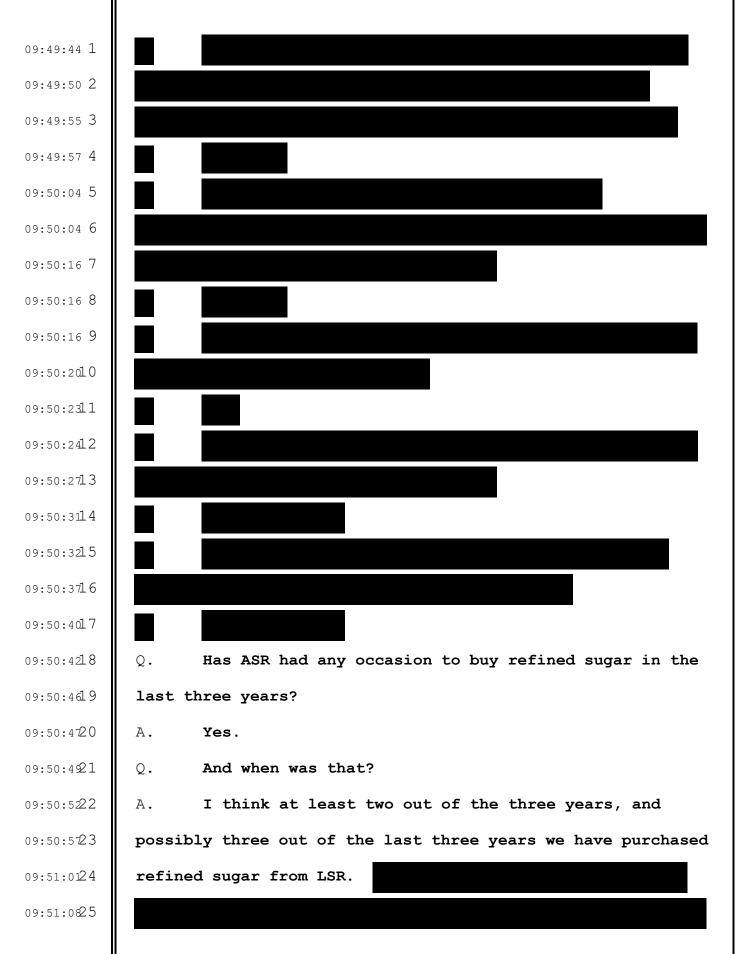
does it?

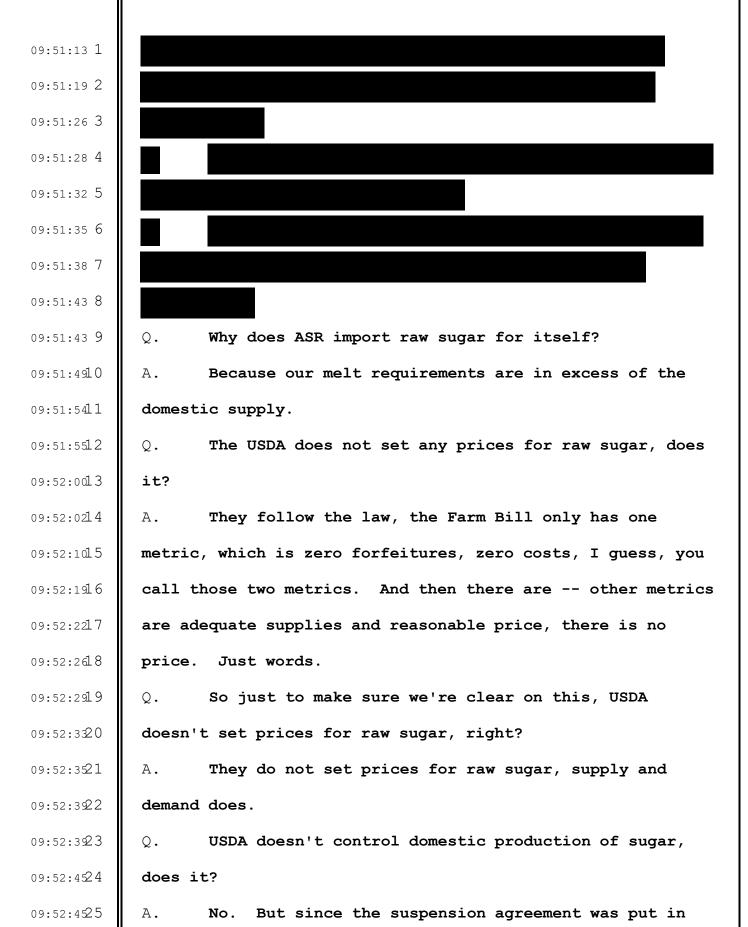
- A. That is correct, we do not.
- Q. ASR is a cane only company?
- A. We're a cane only company.
- Q. At a high level, what effect, if any, does the United States government have on the quantity of raw sugar that is available to ASR for purchase for its refineries in the
- United States?
- A. The USDA has a large impact on our raw sugar supply and the available raws that we as importers can access.
- Q. What is your understanding of the basis for your prior answer that the USDA has a significant impact on the amount of raws that are available for ASR's purchase?
- A. It's as simple as that. That the USDA manages the system and determines access for raw sugar and potentially refined sugar into the United States.
- Q. When you say the USDA manages the system, what do you mean, sir?

09:46:33 1 Α. I mean that they make the call. They determine who 09:46:40 2 gets quotas, they determine if they're going to be additional quotas to the trade negotiated quotas. They 09:46:44 3 manage basically supply and demand in the whole system. 09:46:53 4 And it sound like you're familiar with the actions of 09:46:59 5 0. 09:47:03 6 the USDA, is that true? 09:47:06 7 Α. I lobby USDA for more raw sugar every day. 09:47:11 8 And why are you lobbying the USDA for more sugar Q. 09:47:15 9 every day on behalf of ASR? 09:47:1910 I would like to buy raw sugar at the cheapest price. Α. 09:47:2411 Q. And the USDA can impact the ability of ASR to 09:47:3012 purchase raw sugar at the cheapest price, is that true? 09:47:3413 Α. Yes. 09:47:3414 So you mentioned the quotas being a million point --Ο. 09:47:4015 1.2 million tons, correct? 09:47:4116 Α. Yes, sir. 09:47:4217 And those are the quotas set by the United States Q. Department of Agriculture? 09:47:4518 09:47:4619 Α. Yes, sir. 09:47:4720 Q. And if you set the quotas aside, how much raw sugar 09:47:5221 can be purchased for import into the United States? 09:47:5422 Infinity, if I pay a high-tier duty. Α. 09:47:5923 09:48:0324

09:48:0925







- 09:52:49 1 place, domestic production will impact the amount of supply in the market as it relates to Mexico. 09:52:53 2 09:52:57 3 USDA doesn't direct domestic production of sugar, is 0. that right? 09:53:02 4 09:53:02 5 Α. That is correct. 09:53:03 6 Does USDA direct the demand for sugar in some way? Q. 09:53:10 7 Α. No, you do. You either eat it or you don't. And we 09:53:20 8 report that every month, you know, what we've sold to the 09:53:24 9 U.S. government so that helps inform their guesses on 09:53:3010 They have a -- you know, they are adjusting, demand. 09:53:3511 tweaking U.S. consumption every month based on reporting by 09:53:3912 sugar beets and cane sugar guys and imports of refined. 09:53:4313 Does the USDA control the port of entry for imported 0. 09:53:4814 raw sugar? 09:53:4915 No, but I wish they did. They do not. Α. 09:53:5316 Does ASR generally wish that the USDA would allow for Q. 09:53:5817 additional imports every year? 09:54:0018 Α. I think generally yes. 09:54:0419 Why is that? Q. 09:54:0720 Α. Because it gives us an opportunity to potentially buy 09:54:1121 raw sugar at a lower price if the supply were adequate. 09:54:1522 Do you consider Imperial to be a competitor of ASR? Q.
 - A. Not since he was a baby but since he first entered

Yes, I consider them to be a competitor of ASR.

Mr. Olson, how long have you known Mike Gorrell?

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Α.

Q.

- 09:54:37 1 the sugar business as an employ of Cargill.
- 09:54:42 2 Q. About when --

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- 09:54:44 3 A. I don't know, over twenty years.
- 09:54:47 4 Q. Would you describe Mr. Gorrell as a friend of yours?
- 09:54:52 5 A. I would describe him as a trusted friend of mine.
- 09:54:56 6 Q. How often do you talk with Mr. Gorrell?
- O9:55:02 7 A. Depending on weather, once or twice a year. If there
 O9:55:07 8 is bad weather, I might speak to him more frequently.
 - Q. Did you and Mr. Gorrell have any discussion about what impact, if any, such a transaction between US Sugar and Imperial might have on refined sugar prices?
 - A. No. We have never talked about price.
 - Q. Did you have any discussions with others at ASR about what impact, if any, a potential combination of US Sugar and Imperial might have on refined sugar prices?
 - A. No.
 - Q. Mr. Olson, is the second e-mail down in the chain on Exhibit 11 an e-mail you sent on March 25th, 2021 in the ordinary course of your work at ASR?
 - A. Yes.
 - Q. Is the Mike referenced there, Mike Gorrell or someone else?
- 09:56:0123 A. Yes, it's Mike Gorrell.
- 09:56:0324 Q. The next sentence says, "We can help us to stay 09:56:025 close." Do you see that?

- 09:56:08 1 A. Yes, sir.
- 09:56:09 2 Q. How is it that you want to be close to United?
- 09:56:14 3 A. Adam Whitaker, "It's going to be more important than
- 09:56:19 4 ever to stay close to United. We might want to start
- 09:56:24 5 thinking of ways to work with them, i.e., asking them for
- 09:56:28 6 quotes " I meant, buying refined
- 09:56:34 7 sugar from them similar to what we do with LSR.
- 09:56:37 8 Q. The next sentence you wrote Mike and IMP have no
- 09:56:42 9 | choice but to maintain the cane price approach, do you see
- 09:56:4510 **that?**
- 09:56:4511 A. Yes, sir.
- 09:56:4d2 Q. And IMP there refers to Imperial, right?
- 09:56:4913 A. That's right.
- 09:56:5114 Q. What is the cane price approach you're referring to
- 09:56:5415 in this e-mail?
- 09:56:5516 A. Mr. Yates called it input cost, but the cane refiners
- 09:57:0717 buy raw sugar and then they put costs on top and Imperial
- 09:57:148 | likely will never not be able to not use that model because
- 09:57:219 raw cost is the raw cost. It all starts with what you pay
- 09:57:3120 **for raw sugar.**
- 09:57:321 Q. What do you mean by indeed it's likely that this
- 09:57:3@2 | approach will leak back into United/US Sugar's business?
- 09:57:423 A. Yeah. That was simply a reference to sugar beets and
- 09:57:5224 one cane guy, US Sugar don't buy raw sugar, and therefore
- 09:58:025 don't give it any consideration when they price their

09:58:09 1 **product.**

- Q. But with the addition of Imperial to US Sugar, that means there would be more cane sugar being sold by United, is that right?
- A. That is right.
- Q. What you're expressing in this e-mail is that that means that United is more likely to use a price based on the cane sugar price; is that correct?
- A. I am speculating that they would have to consider that as it relates net tons.
- Q. And you're expressing in this e-mail that that would be a likely a good thing for ASR; is that right?
- A. Yeah, that is simply stating that they're going to have to consider their input costs when competing with us.
- Q. So that sentence in whole, is it fair to say, saying that the transaction between US Sugar and Imperial would increase the portion of United's sales of cane sugar as compared to beet sugar potentially affecting United's pricing which would be a good thing for ASR, is that fair?
- A. I'm saying that they'll likely have to at least treat that supply similar to how we treat our supply and that doesn't mean that prices are going to go up or down, it's just a consideration of where raw sugar prices are, so if raw sugar prices are going to go down, the prices will go down, if the raw sugar prices go up, the price will go up.

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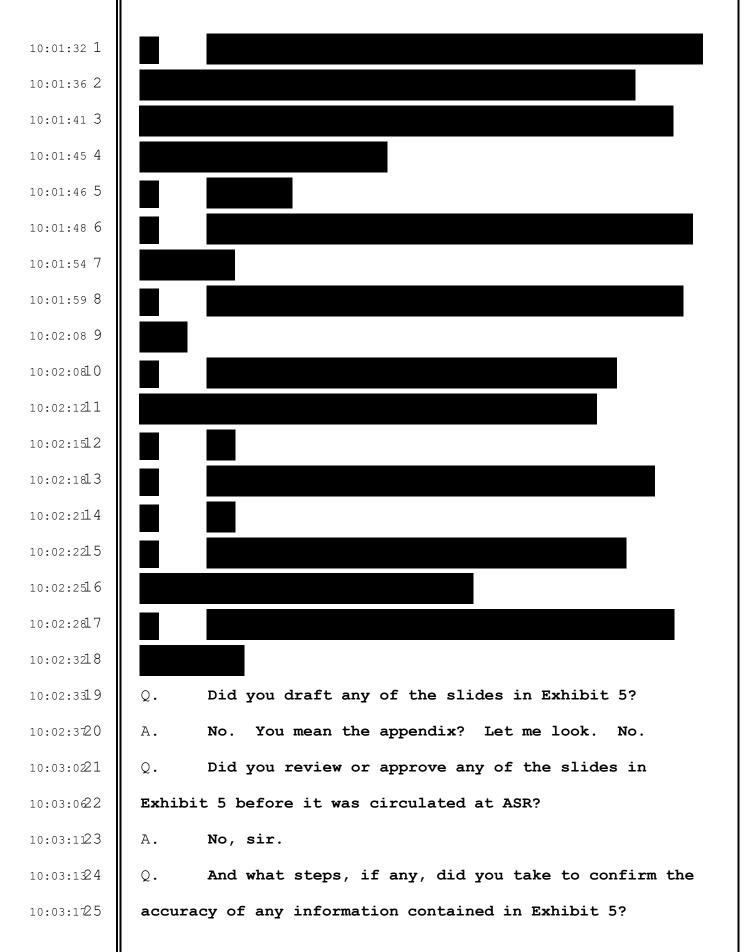
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- Q. You're saying it's good for ASR that United's approach will be more aligned with the cane price approach that ASR uses; isn't that right?
- A. I can't speculate how it would change, how they treat it, that beet sugar that they would market or even frankly the US Sugar that they market, just raw sugar that they make into refined.
- Q. How will ASR obtain raw sugar for its facilities in Baltimore, Yonkers if raw sugar from US Sugar cane that's milled at ASR Florida mills starts to be redirected to Savannah?
- A. I'll be more dependent on offshore quotas and he'll be less dependent on offshore quotas, so it's a one-for-one.
- Q. Did ASR ever consider buying Imperial?
- A. I don't believe that we'd be allowed to based on our geography, but if we could, we would.
- Q. Mr. Olson, I'm just trying to understand what you meant by geography being a factor?
- A. I mean, they're right next to Baltimore -- I'm right between Baltimore and Florida.
- Q. So it's an antitrust concern?
- A. Yes.
- Q. Mr. Olson, do you have Exhibit 5 in front of you again?
- A. Not yet. Yes.



10:03:20 1 10:03:24 2 10:03:26 3 10:03:29 4 10:03:31 5 10:03:35 6 10:03:37 7 10:03:40 8 10:03:42 9 10:03:4610 10:03:4711 10:03:4812 10:03:4913 10:03:5114 10:03:5415 10:03:5816 10:04:0317 10:04:0518 10:04:0819 10:04:0920 10:04:2121 10:04:2822 10:04:4223 10:04:4324

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A. I took no steps to confirm the accuracy of the data in five.



(End of videotape deposition.)

MR. HANNA: Your Honor, at this time the United States moves to admit PTX 046 into evidence.

MS. BARRON: No objection. And the defendants would like to move into evidence DTX 041, which is Olson Exhibit 5.

THE COURT: All right. No objection?

MR. HANNA: No objection, sorry.

THE COURT: Those are both admitted.

I will say that when I was reading through this testimony that you gave me and listening, you didn't put in page 201, lines 14 through 24-four.

MR. HANNA: Your Honor, we will correct that. I apologize, Your Honor.

THE COURT: Do you want to just -- did you mean to put it in, you can just read it into the record. On page 7. It's 201:14 to 201:24, does ASR typically transfer raw sugar among its facilities by both rail and other means?

MR. HANNA: Yes, Your Honor, I'll read it into the record.

"QUESTION: Does ASR typically transfer raw

10:04:49 1 sugar among its facilities by boat, rail or other means? 10:04:54 2 "ANSWER: The Florida sugar travels on the Jones 10:04:59 3 Act Barges that we have been talking about, Texas Sugar and Louisiana comes in a combination of the 1,500 ton barges and 10:05:02 4 10:05:07 5 the 30-ton trucks United was the supplier trucks. Bulk markets primarily oceangoing, big oceangoing vessel and 10:05:11 6 10:05:16 7 Crockett, et cetera, a big oceangoing vessels." 10:05:20 8 Thank you. 10:05:20 9 THE COURT: At this point can we unseal the 10:05:2310 courtroom? 10:05:2311 MR. HANNA: Yes, Your Honor. 10:05:2512 THE COURT: All right. Let's do that. 10:05:243 (Courtroom unsealed.) 10:05:2914 THE COURT: And now the government closes its 10:05:315 case? 10:05:3216 MR. HANNA: The government closes its case in 10:05:3417 chief. As I mention earlier, we may reserve some time for 10:05:3718 rebuttal. 10:05:3819 THE COURT: Okay. Defendant. 10:05:4020 MR. BUTERMAN: Your Honor, the defendant will 10:05:4121 call our first witness, Mr. Robert Buker. He's the CEO of US Sugar. 10:06:0722 10:06:2523 COURT CLERK: Can you please raise your right 10:06:2924 hand. Please state and spell your full name for the record. 10:06:3525 THE WITNESS: Robert H. Buker, Jr., R-O-B-E-R-T.

10:06:40 1	H. B-U-K-E-R, J-R.
10:06:44 2	ROBERT H. BUKER, JR., having been duly sworn was
10:06:50 3	examined and testified as follows:
10:07:13 4	MR. BUTERMAN: May I proceed, Your Honor?
10:07:14 5	THE COURT: Please.
10:07:14 6	MR. BUTERMAN: Thank you.
10:07:15 7	DIRECT EXAMINATION
10:07:15 8	BY MR. BUTERMAN:
10:07:16 9	Q. Good morning, Mr. Buker.
10:07:1710	A. Good morning.
10:07:1811	Q. You just make sure that you're speaking up to into
10:07:212	the microphone.
10:07:243	A. Good morning.
10:07:2414	Q. Mr. Buker, what's your position at US Sugar?
10:07:2715	A. I am president and chief executive officer.
10:07:3016	Q. And how long have you been the president and chief
10:07:347	executive officer at US Sugar?
10:07:3പ8	A. Since 2005.
10:07:3819	Q. When did you first join US Sugar?
10:07:4120	A. 1986.
10:07:4321	Q. And what are your responsibilities as the president
10:07:422	and CEO of US Sugar?
10:07:423	A. I am responsible for reporting to the board of
10:07:5224	directors, for hiring the management team, for leading the
10:07:5825	strategic planning activities. And because we're an

10:08:06 1	operating company, for insuring that we have operational
10:08:09 2	excellence and shareholder relations, and I also safeguard
10:08:13 3	the valleys.
10:08:14 4	Q. Mr. Buker, where did you go to college?
10:08:17 5	A. Wheaton College in Wheaton, Illinois.
10:08:21 6	Q. I know you're modest about this, but what did you do
10:08:24 7	after college?
10:08:25 8	A. I was I served in the Army for seven years.
10:08:29 9	Q. What did you do in the Army?
10:08:3110	A. I was a helicopter pilot.
10:08:3311	Q. This was during Vietnam?
10:08:3512	A. That era, yes.
10:08:3713	Q. Do you have any post-college education?
10:08:4014	A. Yes. I went to law school at the University of
10:08:4315	Florida.
10:08:4416	Q. That was on the GI Bill?
10:08:4പ7	A. Yes.
10:08:4പ്8	Q. And what did you do after law school?
10:08:4819	A. I went to work for a commercial law firm in Miami
10:08:5420	whose clients included US Sugar.
10:08:5721	Q. And how did you end up becoming the CEO of US Sugar?
10:09:0122	A. Well, they hired me as their first in-house counsel
10:09:0523	and then I started doing when I was inside all the crummy
10:09:1024	management jobs that nobody else wanted and then they found
10:09:1325	out I sort of had some kind of talent for building and

10:09:17 1 improving factories. 10:09:20 2 Q. Who owns US Sugar? 10:09:23 3 The largest shareholder is the employees through an Α. employee stock ownership plan. The second largest is 10:09:28 4 10:09:31 5 Children's Health Center in Michigan. And then the third 10:09:35 6 largest is a charity like the Ford Foundation but based on 10:09:41 7 old General Motors money. Then there is a series of smaller 10:09:45 8 charities and a series of smaller shareholders by decedents 10:09:51 9 of the founder. 10:09:5210 You said a moment ago that US Sugar's employees own a Q. large share of US Sugar. How many people work for the 10:09:5511 10:09:5812 company? It varies during the year, but 2,000 is a good 10:09:5813 Α. 10:09:5814 average. 10:10:0415 What's US Sugar's business? Q. 10:10:0616 We farm and then we process agricultural products. Α. 10:10:1217 Which agricultural products? Q. 10:10:1418 Α. Sugarcane, oranges, sweet corn. 10:10:2119 How long has US Sugar been in the farming business? Q. 10:10:2520 Α. Since 1931. 10:10:221 Q. And has US Sugar been growing sugarcane that entire 10:10:3122 time? 10:10:3123 Α. Yes. Where is the company based? 10:10:3224 Q. In Clewiston, Florida, which is on lake Okeechobee, 10:10:3425 Α.

10:10:40 1 halfway between West Palm on the east coast and Fort Myers 10:10:43 2 on the west coast. 10:10:44 3 And why is it based in Clewiston, Florida? Ο. 10:10:48 4 That's somewhat central to our landholdings. Α. 10:10:52 5 Q. Now, can you explain to me how the sugarcane -- how 10:10:59 6 sugar -- explain to me how sugarcane goes from a plant in 10:11:03 7 the ground to those white granules that I poured into my 10:11:07 8 coffee this morning? 10:11:08 9 Certainly. I thank you for that. But we grow 10:11:1410 sugarcane which is a grass botanical and it forms a stalk about ten feet high after growing about fourteen to 10:11:1811 10:11:2212 fifteen months. We cut that with a combine and it's chopped 10:11:243 into about eighteen inches sections, transport that to the raw sugar mill by rail where it's unloaded and crushed in 10:11:3114 10:11:3815 giant rollers and then we wash that crushed stalk six times 10:11:4216 which extraction the juice that has the sugar in it. 10:11:4617 that juice is boiled and concentrated and boiled and concentrated, when it's really gelatinous and think, we 10:11:5218 10:11:5619 crystalize it. We take those crystals and put them a 10:11:5920 centrifugal which will spin two tons, it's like a giant 10:12:0421 clothes dryer, it will spin out the molasses. And then that 10:12:0822 product is shipped over to the refinery where the crystal is 10:12:1223 remelted and filtered, more molasses is spun out then it's 10:12:2024 recrystalized. Then we put the crystals into a giant tower and sift them out to different grain sizes because some 10:12:2425

10:12:28 1	customers have grain size specifications, and then from
10:12:32 2	there it either goes out in bulk or it's package in various
10:12:36 3	package sizes.
10:12:38 4	Q. Who sells the refined sugar that you just described
10:12:42 5	being made?
10:12:43 6	A. United Sugars agricultural cooperative.
10:12:47 7	Q. Why doesn't US Sugar sell its own sugar?
10:12:51 8	A. We're an operating company. Sales is not in our
10:12:55 9	corporate DNA at all. But secondly, it is far more
10:13:0110	efficient to sell through a cooperative.
10:13:0311	Q. Does US Sugar decide to whom United sells the refined
10:13:0812	sugar that US Sugar produces?
10:13:1013	A. Not at all.
10:13:1014	Q. Does US Sugar set the price that United must sell its
10:13:1515	sugar for?
10:13:1പ് 6	A. Not at all.
10:13:1 d 7	Q. Who decides how much sugarcane US Sugar grows each
10:13:2118	year?
10:13:2219	A. The management team led by me.
10:13:2520	Q. Is there how does the allocation fit into that
10:13:3021	step?
10:13:3022	A. The USDA sets a domestic allocation for each domestic
10:13:3723	producer and we cannot sell into the U.S. food market any
10:13:4224	more sugar than is in our allocation.
10:13:4525	Q. How is US Sugar compensated for the refined sugar

Buker - direct 10:13:49 1 that United sells on its behalf? 10:13:51 2 All the sugar from the various members of United is 10:13:56 3 pooled, so there is a -- and the revenue is pooled. there is a revenue number. And from that is subtracted the 10:14:01 4 pooled costs which includes overhead, sales, bad debts, 10:14:06 5 10:14:11 6 break, everything, and then that comes to a net number which 10:14:14 7 we call the net selling price. And then my -- at US Sugar our portion of that is the amount of sugar that we produced 10:14:19 8 10:14:22 9 that year over the denominator which is all the sugar that 10:14:2910 United had that year, we get that percentage. So if I understand what you're saying, each of the 10:14:3211 Q. 10:14:3512 members gets the same net selling price, but if US Sugar produces more sugar, it's going to get more of that net 10:14:4013 selling price, is that fair? 10:14:4414 That is correct. 10:14:4615 Α. 10:14:4816 THE COURT: Can I ask one question? When you 10:14:5017 say the allocation is producers, is that growers? THE WITNESS: No, a producer of raw sugar mill, 10:14:5618 10:15:0419 so it may be a grower, it may not. And for the beets, it's 10:15:020 their beet refineries, so it goes to the factories that 10:15:1221 process the agricultural product. Let me see if I can clarify. Could you give us 10:15:1622 Q. 10:15:1923 examples of the companies that you understand receive

In our case we have one, and it supports our cane and

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Α.

allocation from the USDA?

10:15:30 1	our independent grower's cane and then in Florida there is a
10:15:34 2	company called two if Sugarcane Growers Cooperative of
10:15:39 3	Florida it has an allocation but it's owned by the farmers.
10:15:43 4	Another one you heard, I understand testimony
10:15:44 5	from Michigan Sugar it's the same thing, it's a beet
10:15:48 6	cooperative owned by their farmers and it has an allocation.
10:15:52 7	THE COURT: Okay. That helps, thank you.
10:15:54 8	Q. Now in this case the government has stated that
10:15:57 9	United operates a refinery in Clewiston, Florida. Is that
10:16:0210	correct?
10:16:0211	A. No.
10:16:0312	Q. Who operates the refinery in Clewiston, Florida?
10:16:0പ്3	A. US Sugar, we do.
10:16:0814	Q. And in this case, the government has repeatedly
10:16:1115	contended that United is the entity that for all intensive
10:16:1716	purposes is acquiring Imperial. What's your response to
10:16:2017	that?
10:16:2018	A. I would like justice to call my bankers and tell them
10:16:249	that. But the answer is no, it is US Sugar.
10:16:2&0	Q. Now, does US Sugar currently grow more sugarcane than
10:16:3421	it's able to process?
10:16:3522	A. Yes.
10:16:3523	Q. And what happens to the sugarcane that US Sugar can't
10:16:4024	process?
10:16:4025	A. We sell it to the other raw sugar mills in Florida.

10:16:43 1 Q. And do those mills turn the sugarcane into raw sugar 10:16:48 2 and sell that? 10:16:49 3 They do. Α. 10:16:50 4 Approximately how much sugarcane does US Sugar sell Ο. to third-party mills each year? 10:16:54 5 10:16:56 6 It depends on the size of the crop, but it's between 10:17:00 7 750,000 to 1,500,000 tons of sugarcane a year goes to the 10:17:06 8 other raw sugar mills. 10:17:08 9 Could US Sugar's facility at Clewiston refine the 10:17:1210 additional raw sugar milled by those third-party mills? 10:17:1611 Α. No. 10:17:1612 Q. Why not? We are already operating at above nameplate capacity 10:17:1813 Α. 10:17:2414 and we have to run it full out. 10:17:2615 Does US Sugar seek to maximize its refined sugar Q. 10:17:3116 output? 10:17:3117 Absolutely. Α. 10:17:3218 Q. And why does US Sugar seek to maximize its refined 10:17:3719 sugar output? 10:17:3720 We are a highly fixed costs business, and by that 10:17:4121 what I mean is it cost me almost the same whether I make a 10:17:4522 hundred pounds or a million pounds of sugar, because so many 10:17:4823 of those costs you just have to spend like when you farm an 10:17:5124 acre, you spend, the tractor goes through it whether you get one stock of cane or a million. So to lower the unit costs, 10:17:5525

10:18:00 1 I need as many units being made as possible. And then that 10:18:04 2 increases profitability. 10:18:06 3 So what would happen if US Sugar reduced its output Ο. of refined sugar? 10:18:10 4 10:18:12 5 It would be devastating economically because our unit 10:18:15 6 costs of what we did produce would just skyrocket. 10:18:21 7 Ο. And why do you believe they would skyrocket? 10:18:26 8 We see that happen when like this year we've had a Α. 10:18:29 9 freeze, and we didn't make quite as much sugar as we should 10:18:3310 have and our costs just go through the roof. Now, since you have become the CEO of US Sugar, 10:18:3611 Q. 10:18:4012 what's happened to US Sugar's refined sugar output? Approximately doubled our output. 10:18:4413 10:18:4614 0. And what has US Sugar done to increase its refined 10:18:5115 sugar output during your tenure? 10:18:5316 Well, the first thing I did was put the right people 10:18:5517 in, like Neil Smith runs our manufacturing operations, but 10:18:5918 then we put in operational excellence and maintenance 10:19:0519 excellence where we seek to increase the daily average of 10:19:0920 what's going on, we measure everything, so it's worked. 10:19:1521 Q. Why is US Sugar acquiring Imperial? 10:19:1722 There is a number of reasons. And not in order of 10:19:2123 significance, just in the order in which I remember them. 10:19:2424 But one is as you've mentioned we produce more sugarcane than we can process. And right now, I'm only getting the 10:19:3125

10:19:35 1 agricultural profits. But if I own another refinery, then I 10:19:41 2 can acquire that raw sugar and refine it myself and I pick up two of the three buckets of profits, the AG profits and 10:19:44 3 the refining, I won't have the raw sugar. 10:19:49 4 Let me just stop there to make sure I understand. 10:19:51 5 0. 10:19:54 6 what you're saying, is you have the -- you grow the sugar, 10:19:58 7 you grow the sugarcane so that's one part of it? 10:20:01 8 Α. Yes. 10:20:01 9 Q. And then you have to sell it to the mill because you 10:20:0810 don't have any more milling capacity, is that correct? That's correct. 10:20:1011 Α. 10:20:112 Okay. But then if you own Imperial, now you can buy Q. it back from the mills and refine it in Port Wentworth? 10:20:1613 10:20:2114 Α. That is correct. 10:20:2115 I'm sorry I interrupted you. Q. 10:20:2416 Other reasons, Imperial makes products that we do not Α. 10:20:2917 including brown and powdered sugar. I think that's very 10:20:3218 good. I also since we're highly fixed costs, I can spread 10:20:3719 my overhead. Right now Louis Dreyfus charges Imperial 5 10:20:4320 million a year for overhead, and we can do it a lot cheaper, 10:20:4721 because we won't need to add very many people, we can fold it right in, that will lower the costs at Wentworth, but 10:20:5122 10:20:5@3 also lower the cost at Clewiston, so those are some of the 10:21:0024 reasons we want to do it. 10:21:0125 It's also a hedge against weather. We're a farm

10:21:05 1	in hurricane alley and like this year we sometimes have
10:21:09 2	winter freezes and we've already sold a lot of that sugar
10:21:12 3	with customer commitments and then if your crop gets hurt,
10:21:16 4	we can't cover it.
10:21:17 5	If I had Wentworth, which goes on imported sugar
10:21:21 6	a lot of it, we could cover our problems once we had a
10:21:26 7	weather phenomenon, so that's another good reason. And also
10:21:32 8	in the Farm Bill, twice in modern history the Congress has
10:21:36 9	not renewed the Farm Bill. When that happens, a port
10:21:4010	refinery which imports raw sugar is a much better economic
10:21:4611	situation than growing it here in the United States.
10:21:5012	\mathbb{Q} . Could you please turn to JTX 34 in your binder, sir.
10:21:5813	A. All right.
10:21:5914	Q. And JTX 34, this is could you tell us what this
10:22:0415	is?
10:22:0516	A. This looks like it is pages from a report that I made
10:22:1017	to the board of directors on the Imperial acquisition.
10:22:1518	MR. BUTERMAN: Your Honor, I don't believe there
10:22:1719	are any objections, and we would ask to move JTX 34 into
10:22:220	evidence.
10:22:2321	MR. NIERLICH: No objection, Your Honor.
10:22:2422	THE COURT: Thank you. It's admitted.
10:22:2&3	(JTX Exhibit No. 34 was admitted into evidence.)
10:22:2924	BY MR. BUTERMAN:
10:22:2925	Q. Now, Mr. Buker, does US Sugar have an agreement with

10:22:34 1 any of those third-party mills that you mentioned a few 10:22:38 2 moments ago to acquire the raw sugar produced from 10:22:41 3 sugarcane? 10:22:42 4 Α. We do. 10:22:43 5 Which -- how many -- with which entities do you have Q. 10:22:52 6 an agreement? 10:22:53 7 Α. We have an agreement with the Sugarcane Growers 10:22:58 8 Cooperative of Florida. And what will that agreement entail? 10:22:58 9 10:23:0110 Well, it entails that I can shift all of my excess Α. 10:23:0811 cane there, and it entails the method that they will pay us 10:23:1312 for that cane which is their standard method, but then it gives me the right to buy all of the raw sugar produced from 10:23:1613 10:23:1914 that cane at a standing price. 10:23:2315 At a more general level, does this transaction Ο. 10:23:2716 provide US Sugar with the opportunity to be able to refine 10:23:3117 all of the sugarcane that it grows? 10:23:3318 Α. Yes. 10:23:3419 And that's not currently happening, correct? Q. 10:23:3620 Α. No, it is not. 10:23:3721 Q. And about how much raw sugar produced from US Sugar's 10:23:4322 sugarcane does US Sugar anticipate being able to send to 10:23:4823 Port Wentworth? Again, it depends on the crop and the weather 10:23:4924 Α. conditions, but somewhere between one-and-a-half and three 10:23:5125

10:23:54 1 million hundredweight. 10:23:56 2 To your knowledge, does Imperial currently grow any sugarcane itself? 10:24:01 3 10:24:02 4 Α. No, it does not. 10:24:03 5 Q. And do you know where Imperial sources the raw sugar 10:24:06 6 that it uses to produce refined sugar? 10:24:09 7 Α. Yes. They buy some from domestic raw sugar 10:24:15 8 producers. They buy others from producers who have import 10:24:20 9 rights under NAFTA, those would be Mexican sugar producers. 10:24:2410 And then they buy sugar from producers on the forty 10:24:2811 countries on the world market that have rights under the 10:24:3012 Farm Bill to import raw sugar. Will US Sugar's ability to use raw sugars milled from 10:24:3413 10:24:4014 its own sugarcane at Port Wentworth, allow Port Wentworth to 10:24:4515 operate better in your view? 10:24:4616 In my opinion, yes. Α. 10:24:4717 Q. And how so? 10:24:4818 It will give us a known secured base of raw materials Α. 10:24:5519 but then you can be a little more opportunistic on buying 10:25:0020 the rest which means hopefully you can get it at an 10:25:0321 advantageous price. 10:25:0622 Now assuming the transaction is allowed to close, 0. 10:25:0923 will the Port Wentworth facility be less dependent on foreign raw sugar imports than it is today? 10:25:1324 Α. 10:25:1525 Somewhat.

10:25:16 1	Q. And does US Sugar increase capacity utilization
10:25:22 2	though Imperial?
10:25:22 3	A. Yes.
10:25:23 4	Q. How so?
10:25:24 5	A. Well, we did it at Clewiston, we had a 1931 old
10:25:31 6	facility and we renovated it and got through putting it up,
10:25:37 7	we would apply the same people and the same processes there.
10:25:41 8	\mathbb{Q} . Now, how much refined sugar does US Sugar plan to
10:25:45 9	produce at the Port Wentworth facility?
10:25:4810	A. 17-and-a-half million hundredweight.
10:25:5211	Q. And does US Sugar currently produce enough sugarcane
10:25:5612	so that it could provide all the raw sugar needed to supply
10:26:0113	the Port Wentworth facility?
10:26:0314	A. No.
10:26:0415	Q. Where will US Sugar cane get the additional raw sugar
10:26:0816	it will require to run the Port Wentworth facility at the
10:26:1117	expected production level?
10:26:1318	A. The same places that Imperial does now, from other
10:26:1919	raw producers in the U.S., from those that import under
10:26:220	NAFTA which again will be primarily Mexican sugar factors
10:26:2921	and then from other foreign sugar factors in those foreign
10:26:3422	countries that have the USDA rights to import.
10:26:3723	THE COURT: You said that you plan to produce
10:26:3924	seven-and-a-half million hundredweight there, right?
10:26:4325	THE WITNESS: 17-and-a-half.

10:26:45 1	THE COURT: 17-and-a-half hundredweight. Do you
10:26:48 2	know how much they currently produce?
10:26:50 3	THE WITNESS: At a peak, but I'm talking
10:26:52 4	something very different. I'm talking steady state, I think
10:26:55 5	if they had a great year, they would do fifteen. But we're
10:26:59 6	all so highly fixed cost, that's a huge increase,
10:27:03 7	economically.
10:27:06 8	THE COURT: And you're saying you want to do it
10:27:08 9	steadily year after year whereas they're up and down?
10:27:1210	THE WITNESS: That is correct.
10:27:1411	Q. Now, is the USDA involved in determining the amount
10:27:1712	of raw sugar that may be imported into the United States?
10:27:213	A. Yes.
10:27:2114	Q. And does US Sugar advocate for whether the USDA
10:27:2915	should take actions regarding sugar imports?
10:27:3216	A. Yes.
10:27:317	Q. Why does you mean US Sugar advocate before the USDA
10:27:3818	regarding imports?
10:27:3919	A. Because the amount of imports vary directly changes
10:27:420	the price of sugar.
10:27:4721	Q. If US Sugar acquires the Port Wentworth facility,
10:27:522	will US Sugar continue to advocate for additional imports of
10:27:5723	raw sugar?
10:27:5724	A. Yes.
10:27:5725	Q. Why?

10:27:58 1 Α. Because we need to supply the Port Wentworth 10:28:03 2 facility. And it needs to run at full capacity. 10:28:06 3 0. If the USDA increases the amount of raw sugar that may be imported, will that increase the supply of raw sugar 10:28:10 4 10:28:15 5 that's available to the full market? 10:28:17 6 Α. Yes. 10:28:18 7 Q. Now, do you know what United's other members think 10:28:23 8 about US Sugar's advocacy in favor of more foreign imports? 10:28:29 9 Α. They don't like it. 10:28:3010 And why is that? Q. 10:28:3111 Α. Because it lowers the price. 10:28:3812 Would you say that this is an example of how your Q. 10:28:4113 incentives may not match up with the incentives of the other United members? 10:28:4614 10:28:4715 Α. That is correct. 10:28:4916 Now, Mr. Buker, the government contends that US 10:28:5317 Sugar's acquisition of Imperial is going to lead to higher prices for customers in an area that they've defined as the 10:28:5618 10:29:0019 southeast. What's your response to that? 10:29:0120 Respectfully, I don't think they understand the sugar Α. 10:29:021 market. 10:29:022 Why do you say that? Q. 10:29:0723 Well, when we increase the throughput and it will Α. 10:29:1524 lower prices. I mean, just more supply always lowers prices. And since that, you know, our factory and 10:29:1925

10:29:26 1 Imperial's factory are south of the Mason Dixon Line it first lowers it in that area but then it will be everywhere. 10:29:30 2 10:29:33 3 And why do you say it will be everywhere? Ο. 10:29:36 4 Α. We sell everywhere. 10:29:38 5 Q. And by we, you mean United sells everywhere? 10:29:41 6 Yes, I mean United and it's more supply in the market Α. 10:29:44 7 and the market looks at this nationally, the buyers and 10:29:47 8 everyone else. 10:29:49 9 MR. BUTERMAN: Thank you. I have no further 10:29:5110 questions. 10:29:5111 THE COURT: Thank you. Cross-exam. 10:29:5712 MR. NIERLICH: Your Honor, good morning. 10:29:5913 Nierlich for the United States. May I proceed? 10:30:0114 THE COURT: Please. 10:30:015 CROSS-EXAMINATION BY MR. NIERLICH: 10:30:0116 10:30:0217 Mr. Buker, good to see you again. Good morning. Q. 10:30:048 A. Good morning. 10:30:049 Before we begin, thank you for your service. I also Q. 10:30:0920 wanted to check, did you receive a binder from us? 10:30:1221 Α. I don't think so. 10:30:1422 MR. NIERLICH: Your Honor, may I approach to 10:30:1723 provide the binder? 10:30:3224 Mr. Buker, you have been a member of the United Q. 10:30:325 Sugars board of directors since 2005, right?

10:30:39 1 Α. Yes. 10:30:39 2 You're also a member of the executive committee of Q. United Sugars, right? 10:30:43 3 10:30:44 4 Α. Yes. United, not US Sugar, makes the arrangements to 10:30:45 5 Q. 10:30:49 6 transport US Sugar's granulated sugar to customers, right? 10:30:54 7 Α. Correct. 10:30:54 8 Customers provide the specifications for granulated Q. 10:30:59 9 sugars to United, not to US Sugar, correct? 10:31:0110 Correct. Α. I want to turn briefly to your role in negotiations 10:31:0311 Q. 10:31:0612 to acquire Imperial. Mr. Buker, United negotiated unsuccessfully to buy Imperial before US Sugar began 10:31:1113 negotiating with Imperial; is that right? 10:31:1514 10:31:1615 That is correct. Α. 10:31:1816 You participated in United's negotiations with 10:31:2217 Imperial, right? 10:31:2318 That is correct. Α. 10:31:2419 As one of the four CEOs of the United member firm, Q. 10:31:2820 you were responsible for oversight of the negotiations on 10:31:3121 behalf of United, right? 10:31:3322 Α. Right. 10:31:3423 Ultimately United didn't go forward with an Ο. 10:31:3724 acquisition of Imperial because the gap between what United offered and Imperial demanded was just too big, right? 10:31:4025

10:31:44 1	A. Yes.
10:31:44 2	Q. After United discontinued negotiations, you led
10:31:48 3	negotiations with Imperial on behalf of US Sugar, right?
10:31:51 4	A. Yes.
10:31:52 5	Q. But you also provided updates concerning US Sugar's
10:31:57 6	negotiations with Imperial to the United executive
10:32:00 7	committee, right?
10:32:01 8	A. Yes.
10:32:02 9	Q. Mr. Buker, if you could turn in your binder to the
10:32:0410	tab marked PTX 494. Mr. Buker, these are the minutes of the
10:32:2511	executive committee's meeting?
10:32:2512	A. Yes.
10:32:2513	Q. And you attended this meeting?
10:32:2814	A. Yes.
10:32:3015	MR. NIERLICH: Plaintiff requests to admit PTX
10:32:3316	494 into evidence.
10:32:3417	MR. BUTERMAN: No objection, Your Honor.
10:32:3518	THE COURT: It's admitted.
10:32:3519	(PTX Exhibit No. 494 was admitted into
10:32:3520	evidence.)
10:32:3521	BY MR. NIERLICH:
10:32:3722	Q. Mr. Buker, if you could please turn to page 3.
10:32:4023	A. All right.
10:32:4224	Q. You provided an update on Project Seine 2.0 to other
10:32:4725	members of the United executive committee, is that right?

10:32:54 1	A. Yes.
10:32:55 2	Q. And Project Seine 2.0 refers to US Sugar's effort to
10:33:00 3	acquire Imperial; right?
10:33:02 4	A. Yes.
10:33:03 5	Q. And you provided this update during a recess?
10:33:06 6	A. Yes.
10:33:07 7	Q. Set that aside, Mr. Buker. Let's turn to a few
10:33:11 8	documents you signed. Can you turn to the tab PTX 304.
10:33:25 9	A. All right.
10:33:2610	Q. Sir, is plaintiffs Exhibit 304 the Asset Purchase
10:33:3011	Agreement by which US Sugar would acquire Imperial?
10:33:312	A. Yes.
10:33:313	Q. Did you sign this document? Refer to page 117 if you
10:33:4014	would like to confirm that?
10:33:4215	A. Thank you. Yes.
10:33:4716	MR. NIERLICH: Plaintiff request to admit PTX
10:33:5017	304 into evidence, Your Honor.
10:33:518	MR. BUTERMAN: No objection.
10:33:519	THE COURT: It's admitted.
10:33:520	(PTX Exhibit No. 304 was admitted into
10:33:5421	evidence.)
10:33:5422	BY MR. NIERLICH:
10:33:5523	Q. Mr. Buker, please turn to the tab JTX 040.
10:34:024	A. All right.
10:34:0725	Q. Mr. Buker, is JTX 040 the amended and restated

10:34:12 1	uniformed member sugar marketing agreement between United
10:34:16 2	Sugars and U.S. Sugar Corporation dated September 20, 2007?
10:34:21 3	A. Yes.
10:34:21 4	Q. Did you sign this document? Refer to page 16 if you
10:34:26 5	would like to confirm.
10:34:27 6	A. All right. Yes.
10:34:33 7	MR. NIERLICH: Your Honor, plaintiff request to
10:34:35 8	admit JTX 040 into evidence.
10:34:38 9	MR. BUTERMAN: No objection.
10:34:3910	THE COURT: It's admitted.
10:34:4011	(JTX Exhibit No. 040 was admitted into
10:34:4112	evidence.)
10:34:4113	BY MR. NIERLICH:
10:34:4214	Q. Mr. Buker, please turn to the next tab, 041.
10:34:4പ്5	A. All right.
10:34:4ർ 6	Q. Is this document an April 20th, 2021, amendment to
10:34:5017	the marketing agreement between US Sugar and United, the
10:34:5418	document we were just looking at JTX 040?
10:34:5719	A. Yes.
10:34:5&20	Q. Did you sign this document? Page 9?
10:35:0421	A. Yes.
10:35:0722	MR. NIERLICH: Your Honor, plaintiff request to
10:35:1023	admit JTX 041 into evidence.
10:35:1224	MR. BUTERMAN: No objection.
10:35:1325	THE COURT: Thank you. It's admitted.

10:35:14 1 (JTX Exhibit No. 041 was admitted into 10:35:16 2 evidence.) BY MR. NIERLICH: 10:35:16 3 Mr. Buker, this amendment, JTX 041, was designed to 10:35:17 4 Ο. compensate US Sugar in connection the Imperial acquisition, 10:35:21 5 10:35:26 6 is that correct? 10:35:26 7 Α. Yes. 10:35:27 8 Mr. Buker, you testified a few minutes ago concerning Q. 10:35:30 9 some of the reasons for US Sugar's acquisition of Imperial 10:35:3410 and talked a little bit about excess sugarcane, is that right? 10:35:3811 10:35:3812 Α. Yes. And one thing you stated was that US Sugar currently 10:35:3913 Ο. delivers 750,000 to 1.5 million tons of excess cane to other 10:35:4214 10:35:4715 mills; is that correct? 10:35:4816 Α. Yes. 10:35:4817 How does that compare to the total tons of cane Q. 10:35:5318 produced by US Sugar and the independent farmers delivering 10:35:5819 cane to US Sugar? 10:35:5920 Α. The cane that is delivered to US Sugar is 10:36:0521 eight-and-a-half million tons. 10:36:0722 So it's somewhere around 10, 15 percent of the excess Q. 10:36:1323 cane? 10:36:1324 Α. Yeah, I would think that's reasonable. 10:36:1725 0. Mr. Buker, if you could please turn to the tab PTX

10:36:21 1	509.
10:36:29 2	A. All right.
10:36:30 3	Q. Mr. Buker, plaintiff's Exhibit 509 is a set of
10:36:34 4	materials provided by US Sugar to the US Sugar board of
10:36:37 5	directors in June of 2021?
10:36:39 6	A. Yes.
10:36:41 7	MR. NIERLICH: Your Honor, plaintiff request to
10:36:43 8	admit plaintiffs Exhibit 509 into evidence.
10:36:46 9	MR. BUTERMAN: No objection.
10:36:4610	THE COURT: Thank you. It's admitted.
10:36:4611	(PTX Exhibit No. 509 was admitted into
10:36:4812	evidence.)
10:36:4813	BY MR. NIERLICH:
10:36:4914	Q. Mr. Buker, please turn to slide 9 of that
10:36:5315	Exhibit 509.
10:36:5പ് 6	A. How do I know what page is slide 9? Slide 9 on our
10:37:0117	numbering. Fine, I'm there.
10:37:0318	Q. Thank you, sir.
10:37:0419	The chart in the upper left of slide 9 of PTX
10:37:0720	509 shows tons of cane produced by US Sugar and the
10:37:1221	independent farmers delivering cane to US Sugar for 2018,
10:37:1@2	2019, and 2020, is that correct?
10:37:1&3	A. Yes.
10:37:1&4	Q. And it shows the portion that is excess cane versus
10:37:225	that which was milled at US Sugar's facility in Clewiston?

10:37:26 1	A. Yes.
10:37:26 2	Q. And those figures are accurate?
10:37:28 3	A. Yes. Well, as accurate as an estimate can be.
10:37:33 4	Q. Well, we are referring to historical figures?
10:37:36 5	A. The historical figures are accurate.
10:37:37 6	Q. Thank you, sir.
10:37:38 7	US Sugar does not have any specific plans to
10:37:41 8	increase the amount of sugarcane that US Sugar grows in the
10:37:45 9	next three years, correct?
10:37:5010	A. There will be small amounts of cane coming on to
10:37:5511	production that we haven't yet harvesting, but there are no
10:37:5912	major plans.
10:38:0013	\mathbb{Q} . And US Sugar does not have any plans to increase the
10:38:0314	amount of sugarcane acquired from independent growers in the
10:38:0715	next three years; is that correct?
10:38:0916	A. That is correct.
10:38:1117	Q. Mr. Buker, you talked a little about what happens to
10:38:1518	that excess cane a few minutes ago. US Sugar currently
10:38:2119	delivers sugarcane to three other mills in Florida, is that
10:38:2420	correct?
10:38:2421	A. That's correct.
10:38:2422	Q. And those mills process the cane into raw sugar, is
10:38:2723	that correct?
10:38:2724	A. That's correct.
10:38:2825	Q. And those mills sell the raw sugar to a refiner like

10:38:31 1	ASR?
10:38:32 2	A. That is correct.
10:38:33 3	Q. That will change if US Sugar completes the
10:38:36 4	acquisition of Imperial, right?
10:38:37 5	A. Yes.
10:38:38 6	Q. One of the mills US Sugar sells extra cane to is
10:38:42 7	operated by the Sugar Cane Growers Cooperative, correct?
10:38:46 8	A. That's correct.
10:38:46 9	Q. And US Sugar has an ownership interest in the Sugar
10:38:5110	Cane Growers Cooperative through US Sugar's wholly owned
10:38:541	subsidiary South Bay Growers, right?
10:38:5712	A. That is correct.
10:38:5813	Q. Sir, if you could turn to tab DTX 514, please.
10:39:1614	A. All right.
10:39:1815	Q. Defendant Exhibit 514 is an agreement between U.S.
10:39:2216	Sugars wholly owned subsidiary South Bay Growers and the
10:39:2517	Sugarcane Growers Cooperative, right?
10:39:2818	A. Yes.
10:39:2819	Q. Is this the agreement with the Sugarcane Growers
10:39:320	Cooperative that you were describing a few minutes ago?
10:39:3421	A. Let me look a minute.
10:39:4022	Yes.
10:39:4123	Q. This agreement provides certain rights to US Sugar to
10:39:4424	acquire raw sugar from the mill operated by SCGC, right?
10:39:4925	A. Yes.

10:39:51 1 MR. NIERLICH: Your Honor, plaintiff request to 10:39:53 2 admit exhibit DTX 514 into evidence. MR. BUTERMAN: No objection. 10:39:56 3 THE COURT: Thank you. It's admitted. 10:39:57 4 10:39:57 5 (DTX Exhibit No. 514 was admitted into 10:39:59 6 evidence.) 10:39:59 7 BY MR. NIERLICH: 10:39:59 8 Q. Mr. Buker, the raw sugar from Sugar Cane Growers 10:39:59 9 Cooperative won't be sufficient to fully supply the Savannah 10:40:0410 refinery in the event this transaction is completed, correct? 10:40:0611 10:40:0712 That is correct. Α. 10:40:0713 So even if US Sugar acquires the Savannah refinery, Q. 10:40:1314 that refinery would still need to import raw sugar, right? Α. 10:40:1315 Correct. 10:40:1416 US Sugar signed the Asset Purchase Agreement to 10:40:1917 acquire Imperial's Savannah refinery in March 2021, right? 10:40:2318 Α. Yes. 10:40:2319 You wrote to the Secretary of Agriculture the next Q. 10:40:2620 month to state that US Sugar will support raw sugar imports, 10:40:3021 right? 10:40:3022 Α. Yes. 10:40:3123 Sir, if you could turn to exhibit PTX 229. Q. 10:40:4024 Α. All right. 10:40:4125 Mr. Buker, are the second and third pages of Q.

10:40:44 1 plaintiff's Exhibit 229 a letter that you sent to the 10:40:47 2 Secretary of Agriculture dated April 27th, 2021? 10:40:52 3 Α. Yes. MR. NIERLICH: Your Honor, plaintiff request to 10:40:54 4 admit Plaintiff Exhibit 229 into evidence. 10:40:56 5 10:40:58 6 MR. BUTERMAN: No objection. 10:40:58 7 THE COURT: Thank you. It's admitted. 10:40:58 8 (PTX Exhibit No. 229 was admitted into 10:41:00 9 evidence.) 10:41:0010 BY MR. NIERLICH: Mr. Buker, if you could turn to the second page of 10:41:0111 10:41:0312 that document which is the first page of your letter, and 10:41:0713 the second paragraph. Is it correct that you wrote the 10:41:1214 following sentence to the Secretary of Agriculture: "In 10:41:1615 addition, going forward, US Sugar will continue to support 10:41:2116 robust raw sugar imports because it will need large amounts 10:41:2517 of imported raw sugar to operate the Port Wentworth facility like Imperial Sugar does today." 10:41:2918 10:41:3219 Α. Yes. 10:41:3420 Mr. Buker, was that the first time that you had Q. 10:41:3621 advocated for more raw sugar imports? 10:41:3922 To the best of my recollection. Α. 10:41:4223 Mr. Buker, you testified briefly concerning increases Ο. 10:41:424 to Imperial's production or the production at the Port Wentworth refinery. Would you agree with me that you are 10:41:5025

10:41:53 1 not qualified to analyze the conditions of the equipment at 10:41:57 2 Imperial's Port Wentworth facility? 10:42:05 3 Not entirely, no. Α. What do you mean by that, sir? 10:42:10 4 Ο. 10:42:13 5 Well, I am not qualified to make a precise Α. 10:42:18 6 estimation, I'm experienced enough to know what general 10:42:22 7 condition of a sugar factory is. 10:42:25 8 Sir, do you recall having your deposition taken about Q. 10:42:33 9 two months ago? 10:42:3410 Yes. Α. 10:42:3411 Q. Can you turn to the last tab in your binder, 10:42:4012 page 187, please? 10:42:4013 Yes. What page do you want me at. Α. 10:42:4914 187, starting at the very bottom, line 25. 0. 10:43:0015 All right. Α. 10:43:0116 Sir, do you see I asked you starting at 187:25, I Q. 10:43:0517 asked you the question, overall how would you compare the condition of equipment at Imperial's Port Wentworth facility 10:43:0818 10:43:1119 with the condition of equipment at US Sugar's Clewiston 10:43:1520 refinery. You answered, I would not. I then asked you, you 10:43:2021 would not compare them. And you responded, I'm not qualified. Do you see that, sir? 10:43:222 10:43:2423 That's true, I didn't compare them to US Sugar. 10:43:2924 if you ask me like you just did, can you tell me what the conditions are, I would say precisely no, but I can tell you 10:43:3325

10:43:38 1	from general conditions.
10:43:40 2	Q. Sir, US Sugar hasn't committed to any specific plans
10:43:44 3	for the Port Wentworth facility if the transaction closes,
10:43:48 4	correct?
10:43:48 5	A. That is correct.
10:43:49 6	Q. Sir, is Elaine Wood, US Sugar's CFO, in charge of the
10:43:58 7	financial analysis of U.S. Sugar's acquisition of Imperial?
10:44:02 8	A. Yes.
10:44:02 9	Q. Including any synergy analysis performed by US Sugar?
10:44:0ഒ0	A. Yes.
10:44:1011	Q. Mr. Buker, you're generally familiar with the USDA
10:44:1412	sugar program, right?
10:44:1513	A. Yes.
10:44:1514	Q. You also describe it as the Farm Bill earlier?
10:44:1815	A. Yes.
10:44:1916	Q. Does the USDA directly set any prices for domestic
10:44:2517	raw sugar?
10:44:2518	A. No.
10:44:2പ 9	Q. Does the USDA directly set any prices for imported
10:44:3120	raw sugar?
10:44:3121	A. No.
10:44:3322	Q. Does the USDA control the port of entry for imported
10:44:3723	raw sugar?
10:44:3824	A. No.
10:44:3925	Q. Does the USDA directly set the prices at which

10:44:43 1	refined sugar is sold?
10:44:45 2	A. No.
10:44:48 3	MR. NIERLICH: Thank you, Mr. Buker. Nothing
10:44:51 4	further.
10:44:51 5	MR. BUTERMAN: No redirect, Your Honor.
10:44:53 6	THE COURT: Thank you, sir. You are excused.
10:44:54 7	This is a good time for us to take our morning break.
10:44:58 8	(A brief recess was taken.)
11:02:53 9	THE COURT: All right. Everyone, please be
11:02:5പ്0	seated.
11:02:5711	What's next?
11:02:5812	MR. CAMERON: Good morning, Your Honor. With
11:03:0013	Your Honor's permission, defendants call Michael Gorrell to
11:03:0814	the stand.
11:03:0915	THE COURT: His position?
11:03:1116	MR. CAMERON: Mr. Gorrell is the president and
11:03:1317	CEO of Imperial Sugar.
11:03:2218	COURT CLERK: Please raise your right hand.
11:03:2419	Please state and spell your full name for the record.
11:03:220	THE WITNESS: Michael Gorrell. M-I-C-H-A-E-L,
11:03:321	G-O-R-R-E-L-L.
11:03:4222	MR. CAMERON: Your Honor, may I proceed?
11:03:4@3	THE COURT: Please.
11:03:4724	DIRECT EXAMINATION
11:03:4725	BY MR. CAMERON:
	-

11:03:47 1	Q. Good morning, Mr. Gorrell.
11:03:49 2	A. Good morning.
11:03:50 3	Q. Where are you currently employed?
11:03:52 4	A. I'm employed at Louis Dreyfus Company.
11:03:54 5	Q. What is your current job title?
11:03:55 6	A. I am president and CEO of Imperial Sugar Company.
11:03:59 7	Q. What, if anything, is the relationship between
11:04:01 8	Imperial Sugar and the Louis Dreyfus Company?
11:04:03 9	A. Imperial Sugar Company is a wholly owned subsidiary
11:04:0710	of Louis Dreyfus.
11:04:0811	Q. How long have you been the president and CEO of
11:04:112	Imperial Sugar?
11:04:1213	A. Since about August 2012.
11:04:1414	Q. How long have you worked in the sugar industry?
11:04:1615	A. For about twenty-six years.
11:04:1816	Q. Mr. Gorrell, what does the Imperial Sugar Company do?
11:04:2117	A. So we refine cane raw sugar at our sugar refinery in
11:04:2718	Port Wentworth, Georgia, and we market sugar and molasses
11:04:3119	throughout the United States.
11:04:3120	Q. You mentioned the refinery in Port Wentworth. Does
11:04:3521	Imperial have any other facilities, sir?
11:04:3722	A. We have a bulk transfer liquid melt station in
11:04:4123	Ludlow, Kentucky outside of Cincinnati. We also have an
11:04:4524	administrative office in Sugarland, Texas.
11:04:4725	Q. From where does Imperial gets it raw cane sugar that

11:04:51 1 it refines at the Port Wentworth refinery? 11:04:53 2 Well, Imperial, we don't grow any sugarcane ourselves nor do we process sugarcane into raw sugar, so generally 11:04:56 3 over 90 percent of the sugar that we get we have to import. 11:05:00 4 Does the Port Wentworth refinery generally run at 11:05:04 5 11:05:09 6 full capacity each year? 11:05:11 7 Α. No. On average we run about 75 percent capacity but 11:05:15 8 there are some years where we run only 60 to 65 percent. 11:05:18 9 Can you describe the types of refined sugar products 11:05:210 that Imperial sells? We have the standard refined EFG products everybody 11:05:2111 Α. 11:05:2612 has been talking about. We also make brown sugar, powdered 11:05:2913 sugar, liquid sugar, and some specialty products. And just to remind everybody what does EFG stand for? 11:05:3214 0. 11:05:3515 Extra fine granulated. Α. 11:05:3816 How would you describe the state of the facilities at Q. 11:05:4117 the Port Wentworth refinery? It really depends on which part of the refinery you 11:05:4318 Α. 11:05:4619 look at. We're still operating some equipment from the 11:05:4920 1940's, there is some other very old equipment in the refinery. Unfortunately in 2008 there was a terrible 11:05:5321 accident that occurred at the refinery, and after that 11:05:5722 11:05:5923 accident the company used the insurance money to rebuild some parts of the refinery. 11:06:0324

Aside from the parts of the refinery that were

11:06:0425

Ο.

11:06:07 1 rebuilt after the accident that you referred to, why hasn't Imperial upgraded the parts of the facility that you 11:06:11 2 11:06:15 3 described as very old? 11:06:16 4 Look, if you go back, the company has been in 11:06:20 5 financial difficulty, it went bankrupt in 2001. To be 11:06:24 6 honest, the job of multiple CEOs over that period was to sell assets, close assets. After the accident, the focus 11:06:29 7 11:06:34 8 was on rebuilding obviously, and then almost immediately it 11:06:37 9 went up for sale again. And then not long after Louis 11:06:4210 Dreyfus acquired Imperial we went through some regulatory changes which made the outlook very uncertain for us. 11:06:4511 11:06:512 So what is Louis Dreyfus' or Imperial's current Ο. 11:06:5413 approach to capital expenditures at the Imperial Sugar 11:06:5414 Company? 11:07:0015 We really just focus on maintenance and what I call 11:07:0316 stay in business sort of cap ex, in addition to safety, 11:07:047 health, environmental, ones with a strong focus on making sure the refinery is safe to operate. 11:07:1018 11:07:1219 Is safety, health and environmental sometimes called Q. 11:07:1720 SHE for short? 11:07:1721 Α. Yes. 11:07:1722 And why is it that LDC and Imperial has decided to Q. 11:07:2123 limit capital expenditures at the Port Wentworth refinery to 11:07:2524 maintenance plus safety, health and environmental? Α. As I mentioned, there were some regulatory changes 11:07:2825

11:07:31 1 that occurred in 2015, and we're in a situation where we are 11:07:35 2 a very high cost producer, our raw sugar costs are very high, our raw sugar costs in any given year make up 70 to 11:07:40 3 80 percent of our total costs. Due to this, we have such an 11:07:45 4 uncertain future, LDC has been trying to sell this business 11:07:49 5 11:07:55 6 for over five years now. That's more than half the time 11:07:58 7 that we have owned it. 11:07:59 8 Does that situation have any relationship to whether Q. 11:08:01 9 or not it makes sense to invest more money into the business 11:08:0410 at the present? 11:08:0411 Α. That's sort of the environment, and it's logical, 11:08:0712 we're going to do what we can to keep the business open from one year to the next and make sure it's safe for the 11:08:1013 11:08:1314 employees, but it doesn't make a lot of sense to do more 11:08:1515 than that. 11:08:1516 Mr. Gorrell, you mentioned regulatory changes. 11:08:1917 you describe any regulations that impact Imperial's business? 11:08:2218 11:08:2219 There are quite a lot of regulations around the US Α. 11:08:2620 Sugar market, but the big ones are the one that affect our 11:08:2921 raw sugar supply. 11:08:3122 And what are the regulations that affect your raw Q. 11:08:3423 sugar supply? 11:08:3424 So on one hand you have the US Sugar Program which is Α. managed by the USDA. On the other hand, you have the U.S. 11:08:3825

11:08:43 1 Mexico sugar suspension agreements which are managed by the 11:08:47 2 Department of Commerce, but in very close consultation with 11:08:50 3 USDA. 11:08:52 4 What is the US Sugar Program that you just mentioned? 11:08:55 5 US Sugar Program is a whole host of regulations. 11:08:59 6 think we saw before there is dual mandate, where the primary 11:09:05 7 mandate is that the U.S. government needs to provide price 11:09:08 8 support for the domestic processors of sugarcane and sugar 11:09:12 9 beets in the United States. And they do that by granting 11:09:1510 nonrecourse loans and managing the marketplace in such a way that you don't get oversupplied and threaten default against 11:09:2111 11:09:2712 those loans. The second mandate is very clear, it's to 11:09:3013 ensure an adequate supply of raw and refined sugar in the 11:09:3414 United States. 11:09:3415 How does the USDA accomplish those two mandates you Ο. 11:09:3816 just described? 11:09:3917 On the domestic processor front, what it does is issue marketing allocation, the tradeoff is for those 11:09:4218 11:09:4619 non-recourse loans, which provides caps on how much the 11:09:4920 domestic processors are allowed to sell, generally that can 11:09:5221 be no lower than minimum 85 percent of the domestic market 11:09:5722 price. 11:09:5723 On the import side, the USDA very closely 11:10:024 manages the availability of low tier duty or zero duty sugar that can come into the marketplace, anything that comes in 11:10:025

11:10:09 1 above that is subject to the high-tier duty which is very 11:10:13 2 significant costs. So what impact, if any, does the US Sugar Program 11:10:16 3 Ο. have on Imperial? 11:10:20 4 It's two big things. Number one, raw sugar is 70 to 11:10:21 5 11:10:26 6 80 percent of our cost base and it makes our cost of raw 11:10:30 7 sugar very, very high relative to the rest of the industry. 11:10:33 8 The other thing that it does is it puts constraints on the 11:10:38 9 amount of imports, generally our average is about 75 percent 11:10:4210 of capacity, so we can't fully dilute our fixed costs. How, if at all, does the situation that you just 11:10:4911 Q. 11:10:5212 described impact Imperial's ability to compete? 11:10:543 The reality is that the domestic, you know, the 11:11:0114 domestic producers have an enormous head start on us on 11:11:045 price. It's super clear, we can't compete on price with 11:11:116 this group of entities. 11:11:1217 Now, I would like to show you a document which is in Q. the binder in front of you for the defendants, and it's a 11:11:1518 11:11:1819 document marked Defendants Trial Exhibit 219. Can you find 11:11:220 that in the binder, sir? 11:11:221 Α. Yes, I have it here. 11:11:2722 Can you describe this document, please, for the Q. 11:11:3023 Court? 11:11:3024 So, this is an internal e-mail and it's got a Α. PowerPoint attached to it. 11:11:3425

11:11:35 1	\mathbb{Q} . What are the dates of the document?
11:11:37 2	A. The e-mail is June 4th, 2019, and the PowerPoint is
11:11:41 3	May of 2019.
11:11:43 4	Q. And did you participate in the creation of the
11:11:46 5	PowerPoint that's attached to this e-mail?
11:11:47 6	A. Yes, I did.
11:11:49 7	MR. CAMERON: Your Honor, I would like to move
11:11:51 8	Defendants Trial Exhibit 219 into evidence. I understand
11:11:54 9	there are no objections.
11:11:5510	MS. GARRETT: No objection.
11:11:5611	THE COURT: Thank you. It's admitted.
11:11:5612	(DTX Exhibit No. 219 was admitted into
11:11:5613	evidence.)
11:11:5614	BY MR. CAMERON:
11:11:5915	Q. So Mr. Gorrell, I would like to direct your attention
11:12:0116	to slide 9 of the PowerPoint that's attached to the e-mail.
11:12:0417	And it should come up on your screen in front of you.
11:12:0718	Do you see that?
11:12:0819	A. Can you still hear me?
11:12:1020	Q. Yes, I can hear you just fine.
11:12:1221	A. Sorry.
11:12:1322	Q. All right. Are you there?
11:12:1423	A. Yes.
11:12:1524	\mathbb{Q} . Okay. Sir, so if you see this slide, at the top
11:12:1925	there is a reference to an import-based, price uncompetitive

11:12:25 1 sugar refinery, do you see that? 11:12:26 2 Α. Yes, I see that. 11:12:28 3 Is that a reference to Imperial? Ο. 11:12:30 4 Α. Yes. 11:12:30 5 Q. When was that statement made? 11:12:32 6 Α. In May of 2019. 11:12:34 7 Q. Would you still apply that description to Imperial 11:12:39 8 today? 11:12:39 9 Α. Yes. If anything, I would call it -- it's an import 11:12:4310 based even more price uncompetitive sugar refinery. I would also like to ask you about some of the 11:12:4611 Q. 11:12:4912 numbers on this slide. What do the numbers on this slide 11:12:5213 represent? 11:12:5214 Α. The point on this slide as I was trying to show the 11:12:5615 cost base that we confront versus the domestic producers, 11:13:0016 and in turn, the minimum prices at which we can afford to 11:13:0517 sell our sugar versus where they can sell theirs. 11:13:0718 Where are the minimums that are referenced in the Ο. 11:13:1019 document come from, sir? 11:13:1120 Α. So for the domestic producers, that comes off of the 11:13:1521 US Sugar Program when the USDA publishes those loan rates 11:13:2022 for those nonrecourse loans. In our case it was the price 11:13:2523 we were paying at the time for raw sugar and adding our 11:13:2824 processing cost to that.

The information you used here for domestic cane and

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11:13:32 1 beet growers you said was published by the USDA, is that 11:13:36 2 information public? 11:13:36 3 Yes, it is. Α. 11:13:37 4 Based on these numbers, how did Imperial's minimum Ο. 11:13:40 5 price compare to that of domestic cane and beet refiners in 11:13:45 6 2019? 11:13:46 7 Α. You can see at the time they were between 7 and \$0.09 a pound more expensive than they were. 11:13:50 8 11:13:53 9 Have those numbers changed at all since 2019? 11:13:5610 Yes, they have changed significantly. If you look at Α. the raw sugar costs in there, we have baked in there \$0.26, 11:13:5811 11:14:0412 \$0.27 per pound for raw sugar. Today, the prices are between 36 and \$0.37 a pound. We have lost \$0.10 a pound of 11:14:0713 11:14:1314 additional competitiveness against these guys, so it's 17 to 11:14:1715 \$0.19 per pound. 11:14:1816 Through this document you refer to a minimum FOB selling price. What do you mean by that? 11:14:2217 11:14:2418 Α. FOB is our trade term for free on board, sugar at 11:14:2919 factory before transportation. 11:14:3120 What happens to the price difference between Imperial Q. 11:14:3421 and the domestic cane and beet producers once you add in freight? 11:14:3622 11:14:3623 It depends on where you're shipping it from in the Α. end, but big picture across the U.S. is that the differences 11:14:3924

that we may have on freight versus them to get to the

11:14:4325

11:14:47 1 customers are negligible compared to the price or the cost 11:14:52 2 difference that we have confronting our businesses to get it 11:14:54 3 to FOB stage. Sir, you mentioned in your testimony that it's 11:14:56 4 difficult for Imperial to compete. So who else sells 11:14:59 5 11:15:02 6 refined sugar in the United States? 11:15:04 7 Α. So I would like to bucket it into the different 11:15:09 8 groups. You have got the vertically integrated cane sugar 11:15:13 9 refiners, you got the domestic beet processors, you got the 11:15:1710 import based refiners like Imperial, you got liquid sugar refiners, you have foreign, or U.S. affiliates of foreign 11:15:2111 11:15:2612 exporters, you got international trade houses, and you got 11:15:3113 distributors of all sorts of shape and sizes around the 11:15:3514 United States. 11:15:3515 Would importers be included on that list? Q. 11:15:3716 Yeah, quite a few of those people do import sugar. Α. 11:15:4117 Do all the types of companies that you just described Q. sell sugar into the southeast quadrant of the country? 11:15:4418 11:15:4819 Yes, they do. Α. 11:15:4920 Then if you take into account all of the categories Q. 11:15:5121 you just mentioned, approximately in your view, sir, how many entities sell refined sugar in the United States and 11:15:5322 11:15:5723 compete with Imperial?

And compete with Imperial? 35 to 45.

So let me ask you just a little bit more about some

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11:16:05 1 of those categories. You mentioned vertically integrated 11:16:08 2 cane refiners. Could you provide some examples? Sure. You got Florida Crystal. You have US Sugar. 11:16:11 3 Α. You have Louisiana Sugar Refining. More recently you have 11:16:15 4 11:16:19 5 Zucramex. Zucramex a Mexican milling group that processes 11:16:24 6 sugar cane into raw sugar and they decided to build a sugar 11:16:28 7 refinery in San Diego. 11:16:30 8 In your view and based on your experience, sir, is Q. 11:16:34 9 Imperial cost competitive against vertically integrated cane 11:16:3710 refiners? 11:16:3711 Α. No, we are not even close. 11:16:3912 Why is that? Q. As I explained, our input costs are significantly 11:16:3913 higher than theirs are, in addition to that they have the 11:16:4214 11:16:4615 luxury of being able to plan to run their refining capacity 11:16:4916 at a hundred percent capacity whereas the constraints on our 11:16:5217 business are such that we only average 75 percent. You mentioned beet processors. Again, in your view 11:16:5518 Q. 11:16:5819 and based on your experience, sir, is Imperial cost 11:17:0220 competitive against beet processors? 11:17:0421 Α. No. 11:17:0422 You also mentioned liquid refiners. Could you Q. 11:17:0823 explain, what is a liquid refiner? 11:17:1024 So a liquid refiner is somebody who brings in raw Α. sugar and instead of taking it all the way to the dry stage 11:17:1325

11:17:18 1 like we do, they stop at that the liquid stage. 11:17:21 2 Q. Does Imperial also sell liquid sugar? 11:17:24 3 Yes, we do. Α. Could you provide some examples of liquid refiners in 11:17:25 4 0. 11:17:28 5 the US today? 11:17:29 6 Α. CSC Sugar, with a number of facilities around the US, 11:17:33 7 you have Sugar Services doing it now, D&I Sweeteners, Manlake, L&S Sweeteners, Sucro Sourcing. 11:17:38 8 11:17:42 9 0. In your view and based on your experience, do liquid 11:17:4510 refiners have any competitive advantage? 11:17:4811 Α. Yes, it means generally smaller units that get set up 11:17:5212 very close to the target customers so they have quite a transportation advantage over us, but also because of the 11:17:5513 profile of how they get set up, they run on lower fixed cost 11:17:5814 11:18:0315 than we do. 11:18:0416 Has Imperial ever lost business to a liquid refiner? Q. 11:18:0717 Α. Yes. 11:18:0718 Q. Has it lost business to CSC? 11:18:1019 Α. Yes. 11:18:1020 Q. Could you give an example? 11:18:1221 Α. Yeah. If you go back, we used to sell a lot of liquid sugar in the Memphis area to customers like Unilever, 11:18:1522 11:18:1923 Kellogg's, et cetera, frankly we haven't sold to these guys

> You mentioned importers, could you explain what you 0.

in years, CSC has -- with Sugar Services.

11:18:2324

11:18:2825

11:18:30 1 mean by importers in this context?

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- A. Well, look, across the valley there are a lot of different people importing sugar in the U.S., you got the, as I said, the US subsidiary of foreign exporters, people like, Pantaleon Commodities or Zucramex USA, you got international trade houses like Wilmar, Czarnikow, ED&F Man, you have got distributors, whole host of distributors around that do that, and then you also -- you go to the other end of the spectrum, we have even seen Michigan Sugar importing refined sugar in the last couple of years.
- Q. Sir, in your view and based on your experience do importers have any competitive advantages over Imperial?

 A. Yeah. Look, they're accessing low cost supply directly from the origin. The last couple of years we be
- directly from the origin. The last couple of years we have seen a million to a million-and-a-half tons of imported refined sugar coming to this country. It's right there in the USDA statistics. It's low cost because it benefits these zero or duty or low tier quotas, but also they can bring it in all over the country.
- Q. You mentioned distributors. Could you provide some examples of distributors who in your view compete with Imperial?
- A. Sure. I mean, you have Indiana Sugar, you have Batory Foods, you have Evergreen Sweeteners, St. Charles Trading, ICI Foods, Atlantic Ingredients, ADM, Archer

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Gorrell - direct 11:20:10 1 Daniels Midland, Cedar Lake Products, Blackhive. 11:20:13 2 Q. Is Evergreen a distributor, sir? 11:20:15 3 Yeah, I think I mentioned Evergreen, too. Α. 11:20:18 4 How is it possible that distributors are able to Ο. 11:20:21 5 compete with Imperial? 11:20:23 6 Well, look, if you look at their toolbox they have 11:20:26 7 got quite a lot in their toolbox. To start with, instead of just marketing sugar out of your refinery with the higher 11:20:30 8 11:20:34 9 cost base, et cetera, they're able to access domestic beet 11:20:3810 processors, domestic vertically integrated refiners, low cost supply, the ability to bring over the imports as well. 11:20:4211 11:20:4512 Quite often, these guys have a base whether it's 11:20:5013 a warehouse that they bring sugar in for storage when 11:20:5314 they're able to buy it cheap. And a number of them have 11:20:5615 transfer stations, like what we have in Ludlow where they 11:21:0016 bring in bulk railcars, they breakdown that bulk rail into 11:21:0517 liquid sugar or bulk dry trucks. They'll often convert it to brown sugar, powdered sugar, and just put EFG in the bag. 11:21:0918 11:21:1419 The whole art of that model for them is they're taking sugar 11:21:1720 from far away that trades at a very low cost, getting in the 11:21:2321 area efficiently and make it local for the customer in the 11:21:2722 way the customer wants it. 11:21:2823

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11:21:3425

On top of that, some of these guys are running their own domestic transportation fleets which allows them to control cost in that element. Quite a number of them are

11:21:37 1 way more lateral than we are because they sell multiple 11:21:40 2 products to the customers whereas we just focus on sugar and 11:21:44 3 molasses. Are distributors located all over the country? 11:21:45 4 Ο. 11:21:47 5 Α. Yes, they are. 11:21:48 6 And if somebody said the distributors only sell small Q. 11:21:51 7 volumes of refined sugar to customers, would you agree? 11:21:54 8 They'd be dead wrong. If you sit down and analyze Α. 11:21:58 9 the numbers, I think they're about 25 percent of the 11:22:0110 marketplace. 11:22:0111 Q. We talked a little bit about Imperial's competitors. 11:22:0512 I would like to ask about Imperial's customers. How many 11:22:0813 customers does Imperial serve? 11:22:0914 Α. In any particular year I think between two and 300. 11:22:1215 And what types of customers does Imperial serve? Q. 11:22:1516 So you have the industrial users, you got grocery Α. 11:22:1917 stores, we also look at club stores because they are a little different than them. You have got -- we also supply 11:22:2318 11:22:2619 the military commissaries as well. You got food service distributors, you know, as I said, distributors of various 11:22:3120 11:22:3521 shapes and sizes throughout the U.S. 11:22:3722 So Mr. Gorrell, you have explained to us that it's Q. 11:22:4023 difficult for Imperial to compete. But if that's the case, 11:22:4424 why is it that Imperial has between 2 and 300 customers per 11:22:4&25 year?

11:22:48 1 Α. Look, because of our cost base as well as, you know, our position in the marketplace we try to set ourselves up 11:22:53 2 to be able to serve a wide array of customers. If somebody 11:22:57 3 is willing and able to pay our higher sugar cost and our 11:23:01 4 processing costs we try to set ourselves up to be able to 11:23:08 5 11:23:11 6 serve them, quite often that means we're second or third or 11:23:15 7 fourth supplier, sometimes people use the word residual 11:23:19 8 supplier, but also what tends to happen is the domestic 11:23:22 9 processors may sell their sugar much earlier in the selling 11:23:2610 season and when they're done selling and we -- and/or getting to the end of their selling campaigns, that's when 11:23:3011 11:23:3212 people like us, who are based off the imports, it will be our turn and we'll sell more of our sugar in later in the 11:23:3613 11:23:4114 season. 11:23:4115 You mentioned Imperial is a residual supplier, Ο. 11:23:4416 correct? 11:23:4417 Α. Yes. 11:23:4518 Does it also serve as a backup supplier? Q. 11:23:4819 Α. Yes. 11:23:4820 Q. Does Imperial no -- strike that. 11:23:5021 How does Imperial know when its prices aren't 11:23:5322 competitive? 11:23:5423 The customers tell us this all the time. Α. 11:23:524 I would like to show you a document, sir, which is Q. marked as Defendants Trial Exhibit 145. 11:23:5925

11:24:02 1	Do you have that there, sir?
11:24:04 2	A. Yes, I do.
11:24:05 3	Q. Okay. Could you tell me, what is this?
11:24:08 4	A. This is an e-mail chain that I had received from your
11:24:12 5	team and I forwarded it to LDC management.
11:24:15 6	Q. Did you write the e-mail at the top of this chain?
11:24:18 7	A. Yes, I did.
11:24:19 8	MR. CAMERON: Your Honor, I would like to move
11:24:21 9	Defendants' Trial Exhibit 145 into evidence. I don't
11:24:2310	believe there are objections.
11:24:241	THE COURT: Any objections?
11:24:2512	MS. GARRETT: No objections.
11:24:2613	THE COURT: Thank you.
11:24:2614	(DTX Exhibit No. 145 was admitted into
11:24:2715	evidence.)
11:24:2716	BY MR. CAMERON:
11:24:2717	Q. Mr. Gorrell, could you tell us what this is document?
11:24:3018	A. This is an e-mail that one of our salespeople, Kim
11:24:3519	Youngblood, received from a customer, Post Foods, and I was
11:24:3920	forwarding it to various LDC employees.
11:24:4321	Q. Which customer was it, did you say Post?
11:24:422	A. Post Foods.
11:24:4&3	Q. Now, in Ms. Youngblood's e-mail she refers to
11:24:5124	Jonesboro and Asheboro, do you see that?
11:24:5425	A. Yes, I do.

11:24:54 1 Q. Sir, do you know where those cities are located? 11:24:58 2 Jonesboro is in Arkansas, Asheboro is in central to Α. 11:25:02 3 east North Carolina. 11:25:03 4 Ms. Youngblood writes in her e-mail "Post can take 0. 11:25:08 5 beet or cane." 11:25:08 6 Do you see that? 11:25:09 7 Α. Yes, I do. 11:25:09 8 Sir, where are sugar beets grown? Q. 11:25:13 9 Α. Some of them are grown up in Michigan but quite 11:25:1610 frankly most of them are grown in the northwest province of 11:25:2011 the country, the Red River Valley we have heard about, 11:25:2512 Colorado, Montana, quite a lot in Idaho. 11:25:2813 Sir, why is it a customer that is located in Arkansas 11:25:3114 or North Carolina would buy beet sugar grown in the northwest and Midwest part of the United States? 11:25:3515 11:25:3716 Quite frankly out there they produce more sugar than 11:25:4217 they use in that quadrant of the country, it's cheap and frankly the U.S. government sets up the program that 11:25:4618 11:25:5019 guarantees them the ability to sell it. A lot of that sugar 11:25:5320 moves on railcars and it is really an efficient way to get 11:25:5721 it across the country. If you think about it, you think of 11:25:5922 the cost advantage they have on us, you can bring bulk sugar 11:26:0423 all the way from Idaho, you can get it to a Post facility at

Asheboro cheaper than we can buy raw sugar and deliver it,

so we would have to refine the sugar for free, convince the

11:26:1124

11:26:1425

11:26:18 1 railroad to move it to Asheboro for free and they could 11:26:20 2 still beat us in price. 11:26:21 3 Would it be the same for beet farmers looking to ship Ο. in Georgia, would they have the same advantage? 11:26:25 4 11:26:28 5 Α. Yes. 11:26:28 6 Look at this e-mail, what is the gist of the feedback Q. 11:26:32 7 that Post is giving Imperial here? 11:26:34 8 They're saying we're too high. Α. Was it common for Imperial to hear that feedback from 11:26:36 9 Q. 11:26:3910 customers? 11:26:3911 Α. We get this all the time. 11:26:4012 And again that's what you're telling them in this Q. 11:26:4313 e-mail? 11:26:4414 Α. Yes. 11:26:4415 Why did you convey this feedback to your colleagues Q. 11:26:4916 at LDC? 11:26:5117 At that time the business, we were really in rough Α. shape and I was trying to show them look, this is what we're 11:26:5418 11:26:5719 dealing with every day. It's not for lack of effort this 11:27:0120 business is struggling. 11:27:0221 Q. Where in the country are Imperial's customers 11:27:0522 located? 11:27:0523 We sell sugar all over the country but quite honestly Α. 11:27:0924 if you want to look at where we sell most of our sugar, you

draw a line from Texas up to Chicago.

11:27:1325

11:27:16 1 Q. Would that include Pennsylvania, Indiana, Ohio and 11:27:21 2 the like? 11:27:21 3 Α. Yes. 11:27:21 4 Does Imperial organize itself into sales regions? Ο. 11:27:25 5 Α. No, that doesn't really make sense for our business. We look at it by segment. 11:27:28 6 11:27:30 7 Q. And what do you mean by segment? So what we have is two people on distributor and food 11:27:32 8 Α. 11:27:36 9 service, we got two people on consumer grocery and club 11:27:4010 stories and we got two people on industrial. 11:27:4211 Q. How does Imperial get refined sugar to its customers? 11:27:4512 We'll ship it to our customers either by truck or Α. 11:27:4813 railcar or quite often our customers will come to our site 11:27:5314 and pick it up there. 11:27:5515 MR. CAMERON: With Your Honor's permission I 11:27:5716 would like to put up a demonstrative which is demonstrative DDX 005. 11:27:5917 Mr. Gorrell, what is this? 11:28:0318 Ο. 11:28:0419 This is a chart, we use this in customer Α. 11:28:0820 presentations sometimes and what you see is the stars are 11:28:1321 our Savannah sugar refinery. You got those orange diamonds which are two warehouses that we use for package goods. 11:28:1922 11:28:2323 Those yellow diamonds are bulk transfer or melt stations that we use throughout the country. 11:28:2824

And, sir, how do those transfer stations impact

11:28:3025

0.

11:28:34 1 Imperial's transportation cost? 11:28:36 2 What we do is we put it on bulk railcars, get it up there, break it down and into either a bulk truck or it gets 11:28:40 3 liquified there and made liquid sugar and transferred by 11:28:46 4 truck to neighboring customers. It's a way of making our 11:28:50 5 11:28:53 6 sugar local to the customer and taking the transportation 11:28:56 7 cost out of the system. 11:28:57 8 Can other suppliers use those transfer stations? Q. 11:29:01 9 In the Ludlow, Kentucky one, that triangle up in 11:29:0510 Cincinnati, we just put our own trucks through that. All the other ones, everybody else uses them. Quite frankly I 11:29:0811 11:29:1312 think for our portion of those we're in the minority. 11:29:1613 use those a lot less than competitors. 11:29:1814 Sir, are you aware that the Department of Justice has Ο. 11:29:2215 proposed two potential geographic markets in the case, a 11:29:2516 broader market and a narrower market? 11:29:2817 Α. Yes. Does Imperial sell sugar outside of those two 11:29:2818 Q. 11:29:3119 proposed markets? 11:29:3220 Α. Yes. 11:29:321 Q. Do suppliers outside of those two proposed markets or regions compete for customers inside both of those markets? 11:29:3722 11:29:4123 Absolutely. Α.

How is it possible then for suppliers located outside

those two regions to compete for customers inside those

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11:29:4525

Q.

11:29:49 1 regions?

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Look, you just got to look at their profiles. I mean, the one is right next to us. I mean, there are two sugar refineries in Louisiana, I think maybe the two biggest sugar refineries in the US based on throughput, they're right there, they're closer to a number of customers than we are even out of Savannah. And more importantly, they are way lower cost than we are because of the raw sugar costs. As I talked about with the beet companies, you know, as I mentioned before, you can take beet sugar all the way out in Idaho and move it into the southeast, they can get it into that quadrant of the country quite frankly cheaper than we can get raw sugar to the front door. If you look at the importers, you got a whole range of importers starting with Florida, Alabama, all the way up the east coast where the importers can come in the country at low cost.

- Q. Mr. Gorrell, I would like to introduce another document which is marked as defendants trial Exhibit 193. It should be in your binder. Do you have that, sir?
- A. Yes.
- Q. Can you describe what this is?
- A. Yes, this is an e-mail back and forth between me and Jonathan Bamberger.
- MR. CAMERON: Your Honor, I would like to move defendants trial Exhibit 193 into evidence.

11:31:11 1 MS. GARRETT: No objection. 11:31:13 2 THE COURT: Thank you. 11:31:13 3 (DTX Exhibit No. 193 was admitted into evidence.) 11:31:14 4 11:31:14 5 BY MR. CAMERON: 11:31:15 6 Mr. Gorrell, if I can direct your attention to the 11:31:17 7 response to Mr. Bamberger in the middle of the page, about 11:31:20 8 halfway, it says sugar moves north into the northeast through Savannah all the time, is that consistent with your 11:31:24 9 11:31:2710 understanding today? 11:31:2811 Α. Yes, it's happening today. 11:31:3012 You also wrote the southeast is surplus and the Ο. 11:31:3413 northeast is deficit. What did you mean about that? 11:31:3714 Basically in the southeast we have more sugar Α. 11:31:4015 production than we have sugar use, and so more supply less 11:31:4516 demand and we're surplus, northeast is the opposite, they 11:31:4917 consume and use more sugar in the northeast than they produce up there, so sugar moves up to the northeast both 11:31:5218 11:31:5519 from the southeast but also from the northwest. 11:31:520 When you said southeast in this document, what were 11:32:0021 you referring to? 11:32:0122 I looked at the southeast quadrant of the country 11:32:0423 where we got two Louisiana Sugar Refineries, we got the 11:32:0824 Florida refinery, Savannah refinery, liquid refineries in Memphis or near Memphis, and then CSC has one in Virginia as 11:32:1325

11:32:18 1 **well.**

- Q. Now, I would like to shift topics and ask about the actual transaction at issue in this case. I think you said that LDC has been trying to sell Imperial for five years, is
 - A. Yes, just over five years.

that correct?

- Q. So, sir, as a nearly thirty-year veteran in the sugar industry in the US, what do you think would happen if United tried to raise prices in the alleged broader market proposed by the DOJ following a merger?
- A. Quite frankly, I think it would be a dumb move because there is a line of people looking to grow their business and get to the customer. Doing something like that, I don't think it's going to work and frankly it would be a gift to these guys to basically send our customers their way. The last thing you want to do is lose customers especially when you want to get the refinery running up to capacity.
- Q. If the merger does not proceed, do you have any views regarding Imperial's future?
- A. Yeah.
- Q. Could you explain?
- A. I mean, to be honest, I'm quite worried. The situation that we're in, it's not going to change here, we're going to continue to be the high cost producer, just

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- 11:32:4812
- 11:32:5113
- 11:32:5514
- 11:32:5815
- 11:33:0316
- 11:33:0517
- 11:33:0918
- 11:33:0919
- 11:33:1220
- 11:33:1521
- 11:33:1722
- 11:33:1&3
- 11:33:224
- 11:33:2625

11:33:31 1	the way the sugar program is wired, raw sugar is
11:33:34 2	constrained, it's coming in at a very high cost, we can't
11:33:37 3	fully dilute our fixed cost. As I said, we have been for
11:33:42 4	sale for more than half the time that LDC has owned us now
11:33:45 5	so it's not like we're going to change our approach to
11:33:49 6	capital in this case. And there is good reasons for that.
11:33:51 7	Personally I'm not going to give up on this team. They have
11:33:54 8	been through quite a bit in the last twenty-five years, but
11:33:58 9	I think all of us feel grateful each year that we can keep
11:34:0210	the refinery going. It's not an exciting prospect, but it
11:34:0711	is what it is.
11:34:0812	MR. CAMERON: Thank you, Mr. Gorrell.
11:34:1213	Thank you, Your Honor.
11:34:1314	THE COURT: Thank you.
11:34:1415	Ms. Garrett.
11:34:2816	MS. GARRETT: Good morning. Permission to
11:34:2917	proceed, Your Honor?
11:34:3018	THE COURT: Absolutely.
11:34:3119	CROSS-EXAMINATION
11:34:3120	BY MS. GARRETT:
11:34:3121	Q. Good morning, Mr. Gorrell. Nice to meet you in
11:34:3422	person.
11:34:3423	A. Good morning. Nice to see you.
11:34:3&4	Q. Prices can go up or down in the sugar market, right?
11:34:4225	A. Yes, that's correct.

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11:34:44 1	Q. And Imperial can have a good financial year or it can
11:34:48 2	have a more difficult financial year, right?
11:34:52 3	A. Yes.
11:34:53 4	Q. Trade patterns can also shift in the sugar market,
11:34:58 5	right?
11:34:58 6	A. They do, yes.
11:34:59 7	Q. And the regulatory framework can change, right?
11:35:03 8	A. The regulatory framework can change, yes.
11:35:07 9	\mathbb{Q} . The sugar market is volatile, isn't it?
11:35:1010	A. It depend on your definition of volatile, but yes,
11:35:1611	volatile.
11:35:1612	Q. Well, we had this conversation during your
11:35:1913	deposition. If you could get your binder there with the
11:35:2314	blue tab on it, on the front.
11:35:2715	A. These are pink. But I'll try.
11:35:3216	Q. The cover.
11:35:3217	A. Sorry. Got it.
11:35:3818	Q. I would like to ask you to please turn to page 193,
11:35:4419	14 of the litigation deposition, it's the second tab.
11:35:4920	A. Okay.
11:35:5021	Q. And you will go to page 193, line 14.
11:36:0122	A. Yes.
11:36:0223	Q. And I asked you this question the sugar market is
11:36:0624	volatile, right, and your answer is, the sugar market is
11:36:1025	volatile. Did I read that correctly?

A. Yes, you did.
Q. And then I asked you at 193:22, what does volatility
mean to you, and your answer at 193:23, volatility to me
means that not only do prices go up and down, but you also
see over time trade patterns shift. Did I read that
correctly?
A. Yes.
\mathbb{Q} . As a sugar refiner you can close that binder now.
As a sugar refiner, one of the ways you compete
is by being reliable; right?
A. Yes.
Q. And reliability can mean quality, right?
A. One of them.
Q. And reliability can mean timely delivery, right?
A. Yes.
Q. You are responsible for letting your senior managers
know how the Imperial business is doing; right?
A. Yes.
Q. And you prepare structured monthly management
presentations for senior managers at LDC, right?
A. Yes, together with one other person.
Q. Is that other person Maureen Orloski?
A. Yes.
Q. Maureen Orloski, she is the comptroller for North
American Sugar, right?

11:37:26 1	A. Yes.
11:37:26 2	Q. And you work with Maureen to provide accurate monthly
11:37:30 3	presentations to the managers at LDC, right?
11:37:32 4	A. We do, yes.
11:37:35 5	Q. If you please turn to page PTX 117 in your binder
11:37:40 6	without the blue tab.
11:37:41 7	A. I'm sorry, what number was that again?
11:37:44 8	Q. 117 .
11:37:46 9	A. Okay. Got it.
11:37:5110	Q. PTX 117 is a December 20th, '21 e-mail from Maureen
11:37:5811	Orloski with an attachment, right?
11:38:012	A. Yes, it is.
11:38:0313	Q. And the attachment to the e-mail in PTX 117 is the
11:38:0814	October 2021 North American Sugar Platform Overview.
11:38:1215	Correct?
11:38:1216	A. Yes, it is.
11:38:1417	MS. GARRETT: Your Honor, plaintiff would like
11:38:1518	to move PTX 117 into evidence, but we ask that we turn off
11:38:2019	the public screen because a significant portion of the
11:38:2320	information that we're going to discuss has been designated
11:38:2721	as confidential, but we want to make it easier for you, too.
11:38:3022	MR. CAMERON: And no objection, Your Honor.
11:38:323	THE COURT: All right.
11:38:3424	(PTX Exhibit No. 117 was admitted into
11:38:3725	evidence.)

	GOTICIT CLOSS
11:38:37 1	BY MS. GARRETT:
11:38:38 2	\mathbb{Q} . Could you please turn to the page ending in 487. It
11:38:44 3	has the heading, NA Sugar Historical Cash Flow. And we're
11:38:51 4	going to put that up on the screen for you, too, to make it
11:38:54 5	a little bit easier to see.
11:38:57 6	Now, NA sugar refers to the business being sold
11:39:02 7	to US Sugar, right?
11:39:03 8	A. Yes, it is. There is very, very small carve out, but
11:39:08 9	it's insignificant.
11:39:0910	\mathbb{Q} . And we are going to discuss this document, but I ask
11:39:1411	that you do not say the actual numbers because they have
11:39:1812	been designated as confidential by your counsel. Okay?
11:39:2113	A. Okay.
11:39:2314	Q. Now, do you see the column with the heading Total
11:39:2615	Life to Date 2021?
11:39:3016	A. Yes, I do.
11:39:317	Q. And do you see EBITDA row?
11:39:3718	A. Yes, I do.
11:39:3819	Q. The number in the EBITDA row of total life to date
11:39:4320	2021 column is positive, right?
11:39:4521	A. Yes, it is.
11:39:4622	Q. Now, do you see the row entitled total incremental
11:39:5223	cash to LDC less working capital. It's highlighted there on
11:39:5924	your screen?

Yes, I see that.

11:40:0125

11:40:02 1	Q. And in that same 2021 column, the total incremental
11:40:08 2	cash to LDC less working capital row is positive; right?
11:40:13 3	A. Yes, it is.
11:40:14 4	Q. Now this whole chart on this page in PTX 117 is
11:40:21 5	reported in thousands, right?
11:40:23 6	A. Yes, it is.
11:40:24 7	Q. So we will have to add three zeros to the numbers in
11:40:28 8	the table to get the actual figures, right?
11:40:30 9	A. You are correct.
11:40:3110	Q. We can put PTX 117 to the side.
11:40:3511	Mr. Gorrell, LDC's bonuses are discretionary,
11:40:4112	right?
11:40:4213	A. Yes, they are.
11:40:4314	Q. You've received a bonus from LDC the last three years
11:40:4815	of your employment, correct?
11:40:4916	A. Yes, I have.
11:40:5017	Q. Could you please turn to JTX 51. It's the first tab
11:40:5518	in your binder?
11:40:5719	MS. GARRETT: And Your Honor, with your
11:40:5&0	permission, counsel has requested that Mr. Gorrell's
11:41:0321	compensation information not be shown in public, so
11:41:0@2	plaintiff is offering JTX 51 without saying the actual
11:41:1423	figures that are in that particular document.
11:41:124	THE COURT: Okay. And you're offering that into
11:41:2225	evidence?

11:41:22 1	MS. GARRETT: Yes, Your Honor.
11:41:24 2	MR. CAMERON: No objection, Your Honor.
11:41:26 3	THE COURT: It's admitted.
11:41:28 4	(JTX Exhibit No. 51 was admitted into evidence.)
11:41:29 5	BY MS. GARRETT:
11:41:29 6	Q. Mr. Gorrell, JTX 51 is a document prepared at your
11:41:35 7	counsel's request. Figure A in JTX 51 is the bonus you
11:41:39 8	received last year, right?
11:41:41 9	A. That is correct.
11:41:4110	\mathbb{Q} . And figure B in JTX 51 is the bonus you will receive
11:41:4711	if US Sugar's acquisition of Imperial closes while you're an
11:41:5112	LDC employee, right?
11:41:5313	A. That is correct.
11:41:5514	Q. I would like to turn to tab PTX 106 in your binder.
11:42:0315	It's the third tab.
11:42:0616	A. Okay.
11:42:0617	Q. PTX 106 is a July 2021 e-mail from you to USDA
11:42:1418	officials attaching a letter to Secretary Vilsack and
11:42:1919	others, correct?
11:42:1920	A. That is correct.
11:42:2121	Q. And could you just turn to the last page you have in
11:42:2422	that exhibit, your signature is there at the end of that
11:42:2723	letter; is that correct?
11:42:2824	A. That is correct.
11:42:2925	MS. GARRETT: Your Honor, plaintiffs move to

11:42:30 1 admit PTX 106 as evidence. 11:42:33 2 MR. CAMERON: No objection, Your Honor. 11:42:35 3 THE COURT: Thank you. It's admitted. (PTX Exhibit No. 106 was admitted into 11:42:37 4 11:42:38 5 evidence.) 11:42:38 6 BY MS. GARRETT: 11:42:39 7 So we'll put that on the screen and I want to draw your attention to the first page of your letter which begins 11:42:42 8 11:42:45 9 on the page ending in 983. And you can see that on the 11:42:5010 screen for you there. On 983 the first line starts, "Thank 11:42:5411 you for your July 1st response to our April letter." 11:43:0012 Do you see that? 11:43:0013 Yes, I do. Α. 11:43:0114 Now, you wrote the USDA at least twice in 2021 to Ο. request more sugar imports, correct? 11:43:0715 11:43:0916 Α. I believe that's correct, yes. 11:43:1117 Now, if you turn the page and turn your attention to Q. 11:43:1518 the second bullet in the second to last paragraph of PTX 11:43:2019 106, I would like to draw your attention there. And we're 11:43:2420 going to put it on the screen for you as well. 11:43:2721 In July 2021, you recommended that the USDA increase TRQ imports by 200,000 tons; right? 11:43:3122 11:43:3523 Yes, I did. Α. And we can -- let me just ask. In response to your 11:43:3724 Q. 2021 letter, the USDA at multiple points throughout the year 11:43:4325

11:43:49 1 increased the supply of sugar, right? 11:43:52 2 Α. Yes, they did. 11:43:54 3 But that same year, Imperial still had to increase Q. prices to its customers, right? 11:43:59 4 Yes, we did, because we unfortunately still had to 11:44:01 5 Α. 11:44:07 6 import raw sugar paying the high-tier duty throughout the 11:44:11 7 later part of the year. 11:44:12 8 So Imperial increased its price in 2021, right? Q. 11:44:16 9 Α. Yes, commensurate with our raw sugar price increases 11:44:2010 that we were incurring. I'm sorry, Mr. Gorrell, I'm just asking a yes or no 11:44:2111 Q. 11:44:2512 question. Did you increase the prices in the 2021 despite the letter writing to the USDA? 11:44:2913 11:44:3214 Α. Yes, we did. 11:44:3315 Can you please turn to PTX 350 in your binder. Q. 11:44:3916 Α. Okay. 11:44:4017 Now, you're familiar with how Imperial operates, Q. right? 11:44:4318 11:44:4319 Α. Yes, I am. 11:44:4520 Q. And you were also involved in soliciting potential 11:44:5021 buyers for the business, right? 11:44:5122 Α. Yes, I was. 11:44:5223 PTX 350 is a version of the presentation Imperial Q. 11:44:5724 used when soliciting US Sugar to buy Imperial Sugar?

Α.

Yes.

11:44:5925

11:45:01 1	MS. GARRETT: Your Honor, plaintiffs would like
11:45:03 2	to move PTX 350 into evidence.
11:45:05 3	MR. CAMERON: No objection, Your Honor.
11:45:06 4	THE COURT: Thank you. It's admitted.
11:45:06 5	(PTX Exhibit No. 350 was admitted into
11:45:08 6	evidence.)
11:45:08 7	BY MS. GARRETT:
11:45:09 8	Q. Earlier you were talking about your capacity
11:45:11 9	utilization, moments ago. Do you recall that testimony?
11:45:1310	A. Yes, I do.
11:45:1411	Q. Could you please turn to page 9 of PTX 350. PTX 350
11:45:2012	states that the capacity utilization at the refinery is
11:45:2513	approximately 80 to 90 percent. Right? Do you see that
11:45:2914	there?
11:45:29.4 11:45:29.5	there? A. Yes, I see that.
11:45:2915	A. Yes, I see that.
11:45:2915 11:45:3016	A. Yes, I see that. Q. If you please turn to page 24 of PTX 350. And we'll
11:45:2915 11:45:3016 11:45:4117	A. Yes, I see that. Q. If you please turn to page 24 of PTX 350. And we'll put that on the screen for you as well. PTX 350 describes
11:45:2915 11:45:3016 11:45:4117 11:45:4618	A. Yes, I see that. Q. If you please turn to page 24 of PTX 350. And we'll put that on the screen for you as well. PTX 350 describes Imperial's packaging facility as state of the art, right?
11:45:29.5 11:45:30.6 11:45:41.7 11:45:46.8 11:45:50.9	A. Yes, I see that. Q. If you please turn to page 24 of PTX 350. And we'll put that on the screen for you as well. PTX 350 describes Imperial's packaging facility as state of the art, right? A. Yes, it does.
11:45:2915 11:45:3016 11:45:4117 11:45:4618 11:45:5019 11:45:5120	A. Yes, I see that. Q. If you please turn to page 24 of PTX 350. And we'll put that on the screen for you as well. PTX 350 describes Imperial's packaging facility as state of the art, right? A. Yes, it does. Q. We can put PTX 350 to the side.
11:45:2915 11:45:3016 11:45:4117 11:45:4618 11:45:5019 11:45:5120 11:45:5521	A. Yes, I see that. Q. If you please turn to page 24 of PTX 350. And we'll put that on the screen for you as well. PTX 350 describes Imperial's packaging facility as state of the art, right? A. Yes, it does. Q. We can put PTX 350 to the side. I would like to direct your attention to an
11:45:29.5 11:45:30.6 11:45:41.7 11:45:46.8 11:45:50.9 11:45:51.20 11:45:55.21 11:46:01.22	A. Yes, I see that. Q. If you please turn to page 24 of PTX 350. And we'll put that on the screen for you as well. PTX 350 describes Imperial's packaging facility as state of the art, right? A. Yes, it does. Q. We can put PTX 350 to the side. I would like to direct your attention to an exhibit that you looked at in the smaller black binder that
11:45:2915 11:45:3016 11:45:4117 11:45:4618 11:45:5019 11:45:5120 11:45:5521 11:46:0122 11:46:0423	A. Yes, I see that. Q. If you please turn to page 24 of PTX 350. And we'll put that on the screen for you as well. PTX 350 describes Imperial's packaging facility as state of the art, right? A. Yes, it does. Q. We can put PTX 350 to the side. I would like to direct your attention to an exhibit that you looked at in the smaller black binder that you used with Mr. Cameron, that was your defendants' binder

11:46:17 1 THE COURT: If you need more room, you can put 11:46:20 2 things up here on the side. 11:46:22 3 THE WITNESS: Thank you. 11:46:22 4 Ο. And I want to draw your attention to -- that's the 11:46:25 5 one that you need to use, right there that you moved out of your way, the black binder, and I want to draw your 11:46:28 6 11:46:31 7 attention to DTX 219. 11:46:34 8 Α. Okay. 11:46:34 9 Q. And I would like for you to turn to page 16 of DTX 11:46:3910 219. And it doesn't have the page number on it, but it's right after 15, so if you get to 15, you'll see the next 11:46:4811 11:46:5112 one. 11:46:5113 See that. Α. 11:46:5314 MS. GARRETT: Your Honor, the heading -- I apologize. 11:46:5515 11:46:5616 Mr. Gorrell, the heading of the page ending in DTX 11:47:0217 219, the heading on the page 16 of DTX 219 which is not numbered, says threats 4/4, the portfolio dimension, right? 11:47:0918 11:47:1519 Yes, I see that. Α. 11:47:1720 And one of the threats identified in DTX 219 is on Q. paper, close competitors such as United in Florida should 11:47:2521 invest in an efficient packaging line, reshape their sales 11:47:3022 11:47:323 force and attack Imperial packaged margins, do you see that? 11:47:4024 Α. I see that, yes.

We can put DTX 219 to the side.

11:47:4125

11:47:46 1 I would like to turn your attention to PTX and 11:47:50 2 we're going to go back to the white binder without the blue tab on the front. Okay? 11:47:54 3 11:47:56 4 Α. Yes, ma'am. 11:47:58 5 Q. And I want to draw your attention to PTX 145. 11:48:08 6 Α. Okay. 11:48:10 7 Q. Now, you receive e-mails sent to the SGL refined 11:48:17 8 trading? 11:48:17 9 Α. Yes I do. 11:48:1810 And PTX 145 contains an e-mail to the SGL refined Q. trading group, right? 11:48:2411 11:48:2612 Α. Yes, it does. 11:48:2713 MS. GARRETT: Your Honor, plaintiffs move to 11:48:2914 admit PTX 145. 11:48:3015 MR. CAMERON: No objection, Your Honor. 11:48:3216 THE COURT: It's admitted. 11:48:3317 (PTX Exhibit No. 145 was admitted into evidence.) 11:48:3418 11:48:3419 BY MS. GARRETT: We'll put this up on the screen. I would like to 11:48:3420 11:48:3721 draw your attention to the August 28th, 2019, e-mail and 11:48:4522 we're going to bring that up larger for us. We can see it a 11:48:4923 little better. This is an e-mail from, sent on Wednesday, 11:48:5724 August 28, 2019. If you look at the actual document, you can see that's from the side of the -- Beth Smith is a 11:49:0125

11:49:07 1 salesperson at Imperial, correct? 11:49:09 2 Α. Yes, she is. 11:49:11 3 This is a discussion about Bud's Best Cookies as a 0. new customer, is that correct? 11:49:15 4 11:49:16 5 Α. Yes it is. 11:49:16 6 And Ms. Smith wrote in the second line of that 11:49:20 7 e-mail, "United came back and offered them better, but I'm 11:49:22 8 happy to say, they chose us." Did I read that correctly? 11:49:24 9 11:49:2610 Α. Yes, you did. 11:49:2711 Q. You can put PTX --11:49:3012 THE COURT: More importantly, did you get the 11:49:3213 samples of the cookies? 11:49:3414 THE WITNESS: No, I didn't, unfortunately. 11:49:3715 Mr. Gorrell, I just would like to ask a couple of Q. 11:49:4016 questions about your direct or indirect communications with 11:49:4317 your competitors. Now, you do not share your pricing strategy with your competitors, do you? 11:49:4718 11:49:4919 Α. No, we do not. And you do not share your spot prices with your 11:49:5420 Q. 11:49:5&1 competitors either, right? 11:49:5922 Α. That is correct. 11:50:0423 It is against Imperial's company policy to share spot Q. 11:50:1024 pricing information with Imperial's competitors, right?

Α.

That is correct.

11:50:1325

Gorrell - redirect 11:50:14 1 MS. GARRETT: Thank you. No further questions. 11:50:16 2 THE COURT: All right. Thank you. 11:50:17 3 Redirect. 11:50:18 4 REDIRECT EXAMINATION BY MR. CAMERON: 11:50:19 5 11:50:20 6 Mr. Gorrell, just a couple of quick questions. Q. 11:50:24 7 Plaintiffs counsel asked you about the document 11:50:28 8 that increased prices in 2021 despite the fact that you had 11:50:32 9 wrote a letter to the USDA. And I think you were in the 11:50:3510 process of explaining that but weren't able to, so I wanted to give you the opportunity to finish what you were trying 11:50:3911 11:50:4212 to say? 11:50:4213 11:50:4614

11:50:5015

11:50:5216

11:50:5517

11:51:0018

11:51:0219

11:51:0420

11:51:0921

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11:51:123

11:51:2024

11:51:2525

So basically, what I was saying is that USDA did increase supply but unfortunately they did not increase supply to the point where we would be able to operate a sugar refinery for the balance of year without having to import raw sugar from the world market and pay the high-tier duty which is 15.4 cents.

THE COURT: What is the low tier duty?

THE WITNESS: The low tier duty is \$0.064 per pound, but that low tier duty is waived for any countries that have preferential agreements with US, so zero from Mexico, Central America, basically forty something countries that have access to U.S. under the preferential programs. The only ones that actually pay the duty I think are

11:51:30 1 Argentina and Brazil. Maybe I'm missing one or two, GSP and 11:51:36 2 its programs are waived. Ms. Garrett also directed you to plaintiffs trial 11:51:37 3 0. Exhibit 350 and a reference in that document to the capacity 11:51:40 4 utilization of 80 to 90 percent. Could you explain 11:51:44 5 11:51:48 6 utilization was at that level at that time and how it 11:51:53 7 relates to what we talked about previously? 11:51:55 8 Yeah, March 4th, 2020, we were reacting to the beet Α. 11:52:01 9 freeze, so in truth I think during the calendar year 2020, 11:52:0410 we averaged 86 or 87 percent, so that was our expectation at the time. Unfortunately there were more opportunity for us, 11:52:1111 11:52:1412 but reliability issues got to us, we didn't refine as much 11:52:1913 sugar as we hoped that year. 11:52:2114 Was that level of utilization capacity unusual in Ο. 11:52:2615 your experience? 11:52:2616 I think that was a twenty year record, maybe 2003, 11:52:3017 they closed the sugar refinery in 2003 in Sugarland so there was a temporary surge in Savannah. 11:52:3518 11:52:3919 And that was because of the beet freeze? Q. 11:52:4120 Α. 2020 was because of the beet freeze. 11:52:4421 Q. And so would you change your testimony in any way 11:52:422 about the fact that the average capacity utilization at the 11:52:5023 Port Wentworth refinery is 75 percent? 11:52:5324 That is correct, we have ranged from the low sixties Α. up to this record that we had in 2020. 11:52:5725

11:53:01 1 Q. Ms. Garrett also asked you about a reference in a 11:53:04 2 PowerPoint to the state of the art packaging facilities at 11:53:09 3 Port Wentworth. Does that have any connection to the accident that you describe during your direct testimony? 11:53:12 4 11:53:15 5 Yes, the insurance rebuild, it was about 11:53:19 6 \$225 million. I wasn't there at the time, but they were 11:53:25 7 quite proud of it and one of the big things in that space. We were moving sugar around the facility with a pipeline, 11:53:28 8 11:53:32 9 the accident occurred due to conveyers, so basically food 11:53:3610 safe and people safe which is one of the big things, that alone was a \$30 million investment. 11:53:4011 11:53:4212 Is it correct that you still have those facilities 11:53:4413 from the 1940's that you mentioned operating alongside that packaging facility? 11:53:4814 11:53:4915 Α. Yeah, unfortunately yes. 11:53:5216 MR. CAMERON: Thank you very much. 11:53:5317 Thank you, Your Honor. Thank you, sir. You are excused. 11:53:5418 11:53:5619 What's next? MR. BUTERMAN: Your Honor, defendant calls Neil 11:53:5720 11:53:5921 Smith. Neil Smith is the senior vice-president of sugar manufacturing at US Sugar. My colleague, Ms. Reeves, will 11:54:0222 11:54:0823 be handling that. 11:54:2824 COURT CLERK: Please raise your right hand.

Please state and spell your full name for the record.

11:54:3425

11:54:37 1	THE WITNESS: Neil Franklin Smith. N-E-I-L,
11:54:44 2	F-R-A-N-K-L-I-N, S-M-I-T-H.
11:54:44 3	NEIL FRANKLIN SMITH, having been duly sworn, was
11:54:52 4	examined and testified as follows:
11:54:52 5	DIRECT EXAMINATION
11:54:58 6	BY MS. REEVES:
11:54:59 7	Q. Good afternoon, Mr. Smith. Can you please state your
11:55:02 8	name for the record.
11:55:03 9	A. I'm Neil Franklin Smith.
11:55:040	Q. What is your position at US Sugar?
11:55:0611	A. I'm the senior vice-president of sugar manufacturing.
11:55:0912	\mathbb{Q} . And when you first joined US Sugar in 2002, what was
11:55:1313	your role?
11:55:1414	A. I was a refinery manager.
11:55:1615	Q. When did you take on your current role?
11:55:1916	A. In 2006.
11:55:217	Q. How long have you been in the sugar business?
11:55:2218	A. Forty-two years.
11:55:2319	Q. Can you give us a brief description of the positions
11:55:220	you have held in the sugar industry over the last
11:55:3021	forty-two years?
11:55:3122	A. Had an international career in sugar holding
11:55:3723	positions in production and research during the first ten
11:55:4124	years. And then largely in management and senior management
11:55:4525	the last thirty-two years, fixing troubled plants.

11:55:48 1 Q. And what was your last job prior to coming to US 11:55:53 2 Sugar? 11:55:53 3 I worked for a beet factory in North Dakota. Α. 11:55:57 4 Why were you hired there? 0. 11:55:58 5 Α. It's a troubled plant and they needed my expertise. 11:56:01 6 Do you know why you were hired by US Sugar? Q. 11:56:03 7 Α. The same reason, there was a troubled plant needing 11:56:07 8 my expertise. 11:56:08 9 0. What are your responsibilities at US Sugar today? 11:56:1110 Basically I take the -- the cane is delivered to the Α. 11:56:1511 factory, I take it from a stalk of sugarcane, I turn it into 11:56:1912 a granular refined sugar. I have a multi discipline workforce, approximately 440 people. And I also control the 11:56:2313 ancillary plants that help support making and refining 11:56:2814 11:56:3215 sugar. 11:56:3216 I would like to pull up what has been marked exhibit Q. JTX 035. 11:56:3717 Mr. Smith, do you have that in front of you? 11:56:3918 11:56:4119 Α. I do. 11:56:4120 Q. Do you recognize this document? 11:56:4321 Α. Yes. 11:56:4322 And what is it? Q. 11:56:4523 It was internal report I prepared, the proposed Α. 11:56:5124 operation strategy that we would be following post-acquisition of Port Wentworth refinery. 11:56:5425

11:56:56 1 Q. And the Port Wentworth is the Imperial refinery? 11:56:58 2 Α. The Imperial refinery, yes. 11:57:00 3 How have you been involved in evaluating the proposed Q. acquisition of Imperial by US Sugar? 11:57:04 4 My responsibility has been on the technical side so I 11:57:06 5 Α. have made a technical evaluation of the Imperial refinery. 11:57:11 6 11:57:15 7 Q. And as part of the technical analysis, what did you 11:57:18 8 do? We visited the plant on several occasions, we took a 11:57:18 9 Α. 11:57:2110 look at the equipment, met with certain key staff, reviewed 11:57:2511 documentation, brought in a team of my own experts to look at different aspects of the plant as well as some outside 11:57:3012 11:57:3413 consultants to look at stuff which required specialty for. 11:57:3814 Focusing not on the packaging facility which was 0. rebuilt after the fire, but focusing on the refinery, what 11:57:4215 was your view of the facility after you visited it? 11:57:4716 11:57:4917 It was a dump. Α. 11:57:5018 Why is that your opinion? Q. 11:57:5219 Well, like many factories that had three owners in Α. 11:58:0020 the last thirty years, they haven't necessarily invested 11:58:0421 properly in the plant, there is peeling paint, rusted steel, leaking pipes, broken concrete, just generally it's not well 11:58:0822 11:58:1323 maintained. 11:58:1424 Let's look at what you have done at Clewiston since Q.

you have been there. Can we turn to page 13, please.

11:58:1725

11:58:22 1	what does the graph show, Mr. Smith?
11:58:25 2	A. That is the the graph represents the annual
11:58:30 3	production and the average daily production of the Clewiston
11:58:34 4	refinery from the years '06, '07, to the years '19, '20.
11:58:39 5	\mathbb{Q} . And the actual production are the green bars and the
11:58:42 6	average daily production is the black line?
11:58:44 7	A. Yes.
11:58:44 8	\mathbb{Q} . And based on this chart, what was the annual
11:58:48 9	production at the Clewiston refinery in the 2006/2007 time
11:58:5310	period?
11:58:5311	A. It was at about 11.1 million hundredweight.
11:58:5612	\mathbb{Q} . What is the annual production of the Clewiston
11:59:013	refinery in the 2019/2020 refinery year?
11:59:0214	A. About 17 hundredweight.
11:59:0515	Q. 17.9?
11:59:0716	A. 17.9.
11:59:0817	Q. And that's an increase of about seven million
11:59:118	hundredweight?
11:59:1219	A. That's correct.
11:59:1220	Q. And increase of percentage of production at about 65
11:59:121	percent?
11:59:122	A. Yes.
11:59:123	Q. Were you involved in achieving this increase?
11:59:1924	A. Yes, I was.

Q. And how was US Sugar able to achieve this increase?

11:59:24 1 Α. In 2006 when I took over, I instituted a program of 11:59:29 2 operational excellence, which focused upon many aspects of the plant, trying to take it from a reactive to a proactive 11:59:33 3 culture and identify where to apply the resources and 11:59:39 4 capital that we had available to make the biggest impact in 11:59:42 5 11:59:47 6 increases refined sugar. 11:59:49 7 Q. What are metrics? 11:59:50 8 Metrics are measurement devices used within that Α. 11:59:53 9 particular program. Aimed largely at identify -- it's 11:59:5810 triage process, what we're doing is we're looking to measure 12:00:0111 things that affect refined sugar output and with that, we're 12:00:0512 able to work out which are the most important things to 12:00:0813 spend our money on. 12:00:0914 After you took over the plant in 2006, how many 0. metrics did your team develop at Clewiston? 12:00:1415 12:00:146 Α. Hundreds. 12:00:1717 Were these metrics in place prior to your arrival? Q. 12:00:2018 Α. Largely not. 12:00:2119 And let's now talk about the implications of that for Q. 12:00:2520 the throughput rate. Have the metrics and organization 12:00:2821 although excellence program we just discussed allowed US Sugar to run Clewiston at a higher average throughput rate? 12:00:3222 12:00:3523 Yes, they have. Α. 12:00:3624 Have those changes allowed US Sugar to run Clewiston Q. for more days during the year? 12:00:3925

Yes, they have. 12:00:41 1 Α. 12:00:41 2 Since 2006 how has US Sugar changed the number of Q. operational days at Clewiston? 12:00:46 3 In 2006, I think they ran 310 days, by '19, 2019, 12:00:47 4 Α. 2020, we have been running about 355 days. 12:00:53 5 12:00:58 6 And now let's talk about Port Wentworth. How would Q. 12:01:01 7 you describe the current operating philosophy at the Port 12:01:07 8 Wentworth plant? 12:01:07 9 I think the way I describe it, it's a flex-type 12:01:1010 running option, it flexes based upon sales. What do you mean it runs in like a flex state? 12:01:1411 Q. 12:01:1712 Unlike other facilities like our own, which would run Α. 12:01:2113 on a steady state situation, this particular plant speeds up 12:01:2414 and slows down its operations, will shut down for more days, 12:01:2815 causing more stress upon the equipment to meet sales 12:01:3316 demands. 12:01:3317 And comparing flex state to the operational Q. philosophy at Clewiston, what is the philosophy at 12:01:3618 12:01:4119 Clewiston? 12:01:4120 The philosophy at Clewiston basically we're looking 12:01:421 for a steady state operation, it's more consistent, anything 12:01:4922 that runs a steady state, it's more efficient. 12:01:523 Does US Sugar plan to increase the number of 0. 12:01:524 operating days at Port Wentworth?

Α.

It does.

12:01:5&5

12:01:59 1	Q. How many days do you plan to ultimately operate Port
12:02:03 2	Wentworth?
12:02:04 3	A. 355 days.
12:02:05 4	Q. You plan to use metrics to do this?
12:02:07 5	A. Yes, indeed.
12:02:08 6	Q. Do you know what Port Wentworth's production amount
12:02:11 7	was in 2020?
12:02:13 8	A. It was about 16.1 million, I believe.
12:02:18 9	Q. And did you perform an analysis to estimate the
12:02:2010	amount of output that US Sugar can achieve at the Port
12:02:2511	Wentworth facility?
12:02:2512	A. I did.
12:02:2513	Q. And what was the result of that analysis?
12:02:2714	A. We could probably produce the 17 hundredweight.
12:02:3315	Q. And does US Sugar have a plan for how it will achieve
12:02:3716	the 17.5 million hundredweight production amount?
12:02:4017	A. Yes, it does.
12:02:4118	Q. How does it plan to do that?
12:02:4219	A. It will be by duplicating what we did at Clewiston,
12:02:4720	we will end up utilizing operational excellence initiative
12:02:5221	and target capital application.
12:02:5@2	Q. Based on your forty-two years of experience and your
12:02:5923	history with restoring troubled plants, do you believe US
12:03:0224	Sugar will be able to achieve its planned increase at Port
12:03:025	Wentworth?

12:03:06 1	A. Yes, indeed.
12:03:07 2	Q. Why?
12:03:07 3	A. We have done it before. We have got a track record,
12:03:11 4	we have the right people, the right subject matter experts,
12:03:14 5	we know how to do this and we're able to take that knowledge
12:03:18 6	and be able to apply it to Imperial facility.
12:03:22 7	Q. And do you believe that Imperial could achieve this
12:03:25 8	capacity increase without US Sugar?
12:03:27 9	A. No.
12:03:2710	Q. Why not?
12:03:281	A. They don't have the culture that is necessary to be
12:03:3012	able to implement such a program.
12:03:3413	Q. And the expertise?
12:03:3814	A. Or the expertise.
12:03:3915	\mathbb{Q} . And Mr. Smith, if US Sugar is able to close the
12:03:4216	transaction of Imperial, who will be in charge of running
12:03:4517	the Port Wentworth facility?
12:03:4718	A. I will.
12:03:5019	MS. REEVES: Thank you, Your Honor. No further
12:03:5220	questions. Defendants would like to move JTX 035 into
12:03:5721	evidence.
12:03:5722	THE COURT: Any objection?
12:03:5923	MS. PEARL: No objection.
12:04:0424	THE COURT: It's admitted.
12:04:0425	(JTX Exhibit No. 035 was admitted into

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Smith - cross

12:04:04 1	evidence.)
12:04:10 2	MS. PEARL: Good afternoon, Your Honor. My name
12:04:13 3	is Stephanie Pearl on behalf of the United States. May I
12:04:14 4	proceed?
12:04:15 5	THE COURT: Please.
12:04:16 6	CROSS-EXAMINATION
12:04:16 7	BY MS. PEARL:
12:04:17 8	Q. Good afternoon.
12:04:18 9	During 2020, you and your team made several
12:04:2210	visits to Imperial to assess the operations of the plant,
12:04:2511	correct?
12:04:2512	A. Yes.
12:04:2613	Q. And you and your team put together a trip reports
12:04:2814	based on these visits, correct?
12:04:3015	A. Correct.
12:04:3016	Q. And these reports were presented to the lenders of
12:04:3317	the deal, correct?
12:04:3418	A. I believe so.
12:04:3519	Q. Based on your visits, you would agree that Imperial's
12:04:3&0	packaging facility is impressive, right?
12:04:4121	A. Yes.
12:04:4122	Q. And you also learned during your site visits that
12:04:4523	Imperial had increased its average monthly raw sugar melt
12:04:4824	over the last few years, correct?
12:04:5025	A. Correct.

Smith - cross

12:04:52 1 Q. Now, Mr. Smith, your proposed post transaction plan for Port Wentworth is based on a plan as you discussed that 12:04:57 2 12:05:03 3 you used at US Sugar, correct? 12:05:06 4 Repeat the question. Α. 12:05:07 5 Your proposed post-transaction plan for Port Wentworth is based on a plan that you used at US Sugar, 12:05:13 6 12:05:15 7 correct? 12:05:16 8 Α. Correct. 12:05:16 9 You didn't put together this plan for US Sugar by Q. 12:05:1910 yourself, right? 12:05:2011 Α. Correct. 12:05:2112 You hired a third party, correct? Q. 12:05:2413 We hired two third parties to give us input into it. Α. 12:05:2814 And one of these third parties that you mentioned Ο. helped put in place the backbone of your plan, correct? 12:05:3115 12:05:3516 Yes. Okay. Correct. Α. 12:05:3917 And this third party presented areas for US Sugar to Q. focus on, correct? 12:05:4218 12:05:4319 Α. Correct. 12:05:4420 And US Sugar followed this third-party guidance, Q. 12:05:4&1 right? We haven't taken possession, so I would say no, we 12:05:5022 12:05:5423 haven't taken possession, so we can't actually say we followed that guidance until we actually do it. 12:05:5824 12:06:0025 I'm talking about at US Sugar you hired a third

Smith - cross

12:06:04 1 party? 12:06:04 2 I'm sorry, my apologies, it was a joint effort. they did was help facilitate the understanding but we 12:06:08 3 developed the metrics ourselves. 12:06:11 4 12:06:13 5 Mr. Smith, you were deposed, I took your deposition a Q. couple of months ago, correct? 12:06:17 6 12:06:18 7 Α. Correct. 12:06:19 8 Q. You have a binder in front of you. And the last tab is a depo transcript, do you see that. 12:06:24 9 12:06:3110 Α. Yes. 12:06:3111 Q. We're go to turn to page 215 of your deposition 12:06:3512 transcript. Are you there? 12:06:4613 Α. I am. 12:06:4714 0. All right. So we were talking about your work at Clewiston at this point. And if you look at line 4, you 12:06:5015 12:06:5416 were asked, "Did you come up with this list or did Lifecycle 12:06:5817 Engineering at Charleston?" 12:06:5918 Did I read that correctly? 12:07:0119 Α. Yes. 12:07:0220 Q. And line 6, "It was basically we brought in 12:07:0721 Lifecycle. We talked to them. They presented the areas that we needed to do, and we followed their guidance." 12:07:1022 12:07:1223 Did I read that correctly? 12:07:1324 Α. Yes. Mr. Smith, if you could turn in your binder to PTX 12:07:1825 Q.

12:07:22 1	512. It's in the same binder.
12:07:39 2	A. I don't appear to have a tab that says 512. I have
12:07:45 3	534, 535.
12:07:49 4	\mathbb{Q} . It could be one of the earlier tabs. I can bring you
12:07:52 5	a copy if that's okay with Your Honor?
12:07:54 6	A. That's okay.
12:07:58 7	\mathbb{Q} . No worries. And Mr. Smith, do you see this is an
12:08:01 8	e-mail from Derek du Plooy to yourself, Neil Smith?
12:08:04 9	A. Yes.
12:08:0510	Q. It's dated February 17, 2021?
12:08:0711	A. I do.
12:08:0812	Q. And it's attaching a report on Clewiston
12:08:113	transformation, do you see that?
12:08:1214	A. Yes.
12:08:1215	Q. Do you recognize this cover letter and the attached
12:08:1616	document?
12:08:2317	A. Yes.
12:08:248	Q. And this document was prepared at your request;
12:08:2719	correct?
12:08:2720	A. Correct.
12:08:2&1	$\mathbb{Q}.$ This document provides more detail about your work at
12:08:3122	Clewiston, right?
12:08:3223	A. Yes.
12:08:3424	MS. PEARL: Your Honor, we offer into evidence
12:08:3625	PTX 512.

12:08:40 1 MS. REEVES: No objection. 12:08:41 2 THE COURT: Thank you, it's admitted. (PTX Exhibit No. 512 was admitted into 12:08:41 3 12:08:43 4 evidence.) 12:08:43 5 BY MS. PEARL: Mr. Smith, let's talk about your proposed post 12:08:43 6 12:08:46 7 transaction Port Wentworth plan which I discussed during 12:08:49 8 your direct. 12:08:50 9 Sir, just to start, you don't know why Imperial 12:08:5310 has made a business judgment to use a different operating 12:08:5711 philosophy than US Sugar, correct? 12:08:5912 Α. Correct. And Mr. Smith, your proposed plan doesn't contemplate 12:09:0013 12:09:0514 an increase in Imperial refinery's overall capacity, correct? 12:09:0815 12:09:0816 Α. Correct. 12:09:0917 Your plan is to increase capacity utilization, right? Q. 12:09:1318 Α. Correct. 12:09:1419 And one way you plan to do this is by increasing the Q. 12:09:1720 number of operating days at Imperial? 12:09:2021 Α. Correct. I would like to bring back up on the screen what has 12:09:2022 Q. 12:09:2423 already been entered in evidence as JTX 035. And this is the proposed post transaction plan you were discussing, 12:09:2924 12:09:325 correct?

12:09:33 1 Α. Correct. 12:09:33 2 All right. Let's move to page 11. Can you see at Q. the top sir, it says operating days? 12:09:40 3 I do. 12:09:43 4 Α. Underneath that there is a box that says Port 12:09:44 5 Ο. Wentworth refinery over the last five years, do you see 12:09:47 6 12:09:49 7 that? 12:09:49 8 I do. Α. From 2017 to at least 2020, Imperial itself has been 12:09:50 9 Q. 12:09:5510 increasing the number of operating days at Port Wentworth, correct? 12:09:5911 12:09:5912 Α. Yes. In 2020, Imperial operated 345 days, right? 12:10:0113 Q. 12:10:0714 Α. Correct. 12:10:0815 You mentioned on direct and it's stated in your Q. 12:10:116 report that your stated goal is to increase the number of 12:10:1417 operating days to 355. Correct? 12:10:1618 Α. Correct. 12:10:1819 Mr. Smith, you do not expect to run Imperial 355 days Q. 12:10:2420 a year within the first year of post-transaction, right? 12:10:2721 Α. No, we intend to increase it over three years. 12:10:3022 And actually during your deposition you said it would Q. 12:10:3323 be a stretch goal to achieve 355 days a year within five years post close, right? 12:10:3924

12:10:4225

Α.

Yes.

12:10:43 1 Q. Mr. Smith, you did not discuss with anyone at Imperial whether operating 355 days a year would be 12:10:48 2 feasible, right? 12:10:52 3 12:10:52 4 Α. Right. You don't know whether Imperial is independently 12:10:53 5 Q. 12:10:56 6 planning to increase its operating days, correct? 12:10:59 7 Α. Correct. 12:11:00 8 All right. Let's turn now to the exhibit, it's going Q. 12:11:05 9 to page 15, appendix A. We'll have to blow that up a bit. 12:11:2010 This is a CapEx plan for Imperial that you put together, right? 12:11:2511 12:11:2612 Α. Yes. 12:11:2713 And most of the capital expenditures in the areas of Q. spend are described as sustaining capital right? 12:11:3114 12:11:3615 Α. Yes. 12:11:3616 You understand sustaining capital to be capital used 12:11:4017 to replace or repair existing capital, right? 12:11:4318 Α. Existing equipment, yes. 12:11:4519 Existing equipment, thank you. And so sustaining Q. 12:11:4920 capital is something like maintenance, correct? 12:11:5721 Α. Sustaining capital is replacing things that already 12:12:0122 exist that are worn out or reached the end of their life, 12:12:0423 that is usually how sustaining capital is defined. 12:12:0724 Mr. Smith, Imperial's capital plan that Imperial put Q. together, that served as the basis for the plan that you put 12:12:1125

Smith - redirect

12:12:14 1	together for Imperial, right?
12:12:15 2	A. Correct.
12:12:16 3	Q. Mr. Smith, you believe US Sugar can implement this
12:12:19 4	plan because Imperial has all the people in place, the
12:12:22 5	engineers, the knowledge, and the know-how to do the
12:12:26 6	projects that you've identified, correct?
12:12:31 7	A. I believe yes, correct.
12:12:35 8	MS. PEARL: Thank you, Your Honor. No further
12:12:36 9	questions.
12:12:3610	THE COURT: Thank you. Any redirect?
12:12:3911	MS. REEVES: Very briefly.
12:12:4412	REDIRECT EXAMINATION
12:12:4513	BY MS. REEVES:
12:12:4614	Q. Mr. Smith, there was a beet freeze in 2019 to 2020,
12:12:5015	correct?
12:12:5116	A. Correct.
12:12:5117	Q. And do you know Imperial's CEO just testified that
12:12:5618	Imperial ran those years at an unusually high level?
12:12:5919	A. I am not aware of his testimony.
12:13:0320	MS. REEVES: No further questions. Thank you
12:13:0521	Your Honor.
12:13:0522	THE COURT: Thank you. Thank you, sir. You're
12:13:0823	excused.
12:13:0824	What's next?
12:13:1725	MS. GIORDANO: Your Honor, defendant call

12:13:20 1	Dr. Barbara Fesco from the United States Department of
12:13:25 2	Agriculture.
12:13:34 3	COURT CLERK: Please raise your right hand.
12:13:44 4	Please state and spell your full name for the record.
12:13:55 5	THE WITNESS: Barbara Fecso. B-A-R-B-A-R-A. F
12:14:03 6	as in frank, E, C as in cat, S as in Sam, O.
12:14:09 7	BARBARA FECSO, having been duly sworn, was
12:14:15 8	examined and testified as follows:
12:14:18 9	MS. GIORDANO: May I proceed, Your Honor?
12:14:2310	THE COURT: Please.
12:14:241	DIRECT EXAMINATION
12:14:242	BY MS. GIORDANO:
12:14:2513	Q. Good morning, Dr. Fecso.
12:14:2614	A. Hi.
12:14:2715	Q. We have met once before virtually when I took your
12:14:3016	deposition in the case, is that right?
12:14:317	A. Yes.
12:14:3218	Q. Nice to see you in person.
12:14:3319	A. Yes.
12:14:3420	Q. Where do you currently work?
12:14:3521	A. I work at USDA.
12:14:3722	Q. That's the United States Department of Agriculture?
12:14:323	A. Yes.
12:14:4024	Q. And what is your current title?
12:14:4325	A. I am the commodity analysis branch chief of the

12:14:47 1	economic and policy analysis division of farm production and
12:14:55 2	conservation business officer of USDA.
12:14:57 3	Q. And you are a Ph.D. economist, is that right?
12:15:00 4	A. Yes.
12:15:01 5	Q. When did you get your Ph.D.?
12:15:02 6	A. 1994.
12:15:03 7	Q. And what do you consider to be your area of
12:15:06 8	expertise?
12:15:07 9	A. Policy and resource economics.
12:15:1110	Q. You focus on agricultural policy in particular?
12:15:1511	A. Yes.
12:15:1512	Q. How long have you worked at the USDA?
12:15:1713	A. Since 1994.
12:15:1914	Q. About thirty years?
12:15:2215	A. Almost, yes.
12:15:2316	Q. And how long have you worked on sugar in particular?
12:15:267	A. Since 2002.
12:15:2818	Q. Twenty years?
12:15:2919	A. Yes.
12:15:3020	Q. And you're familiar of course with something you
12:15:3321	heard a lot about in this case so far called the Federal
12:15:3722	Sugar Program?
12:15:3723	A. Yes.
12:15:3824	Q. That's a program that's been in place since at least
12:15:4125	as far back as the 1981 Farm Bill?

12:15:44 1 Α. Yes. 12:15:44 2 We'll get into the details of it in a little bit, I promise, but at a high level, the Federal Sugar Program, 12:15:47 3 that's a series of tools that the USDA has that allows you 12:15:51 4 to control the amount of raw and refined sugar that's 12:15:56 5 12:15:59 6 available for sale in the U.S. markets? 12:16:01 7 Α. Yes. 12:16:02 8 And during your time at USDA, what responsibilities Q. 12:16:05 9 have you had for the Federal Sugar Program? 12:16:0810 My responsibilities include collecting and publishing Α. data from beet and cane processors and cane refiners on a 12:16:1411 12:16:1812 monthly basis. Using that data to forecast supply and demand variables for the WASDE, the World Agriculture Supply 12:16:2413 and Demand Estimate report which is put out monthly. And 12:16:2814 12:16:3215 then using the results of that and other things to advise 12:16:3516 the under secretaries on whether we need to take action to 12:16:3917 rebalance the sugar market. You mentioned the WASDE, the monthly WASDE report, is 12:16:4118 Ο. 12:16:4619 it fair to say that's one of the most closely watched USDA 12:16:5020 publications in the sugar industry? 12:16:5221 Α. It is up there with some of the others, yes. 12:16:5422 You said one of your responsibilities is to make Q. 12:16:5723 recommendations to the undersecretaries about whether to increase the supply of sugar in the U.S.; is that right?

12:17:0024

12:17:0425

Α.

Yes.

12:17:04 1	Q. And in order to make informed recommendations about
12:17:08 2	that, do you feel you need to have sort of a very detailed
12:17:12 3	understanding of the domestic and foreign influences on the
12:17:17 4	sale of sugar in the U.S.?
12:17:18 5	A. Yes, I do.
12:17:19 6	Q. And as part of your job, do you regularly talk to all
12:17:23 7	different participants in the sugar industry, sellers,
12:17:27 8	buyers, analysts?
12:17:29 9	A. I yes, I talk to all sides of industry
12:17:3410	participants.
12:17:3411	Q. Regularly, right?
12:17:3712	A. Yes.
12:17:3713	Q. Is it fair to say that over your lengthy career at
12:17:4114	USDA you acquired an extremely detailed understanding of how
12:17:4615	the domestic sugar industry operates?
12:17:4816	A. Yes, definitely.
12:17:5017	Q. And fair to say that you have a very detailed
12:17:5218	understanding of how USDA operates the sugar program?
12:17:5പ 9	A. Yes.
12:17:5720	Q. Is there anyone today that works at USDA that has a
12:18:0121	longer continuous tenure working on the sugar program than
12:18:0522	you?
12:18:023	A. In the capacity of making recommendations to the
12:18:1024	undersecretaries, no.
12:18:1225	Q. Now, Dr. Fecso, you're aware that the Department of

12:18:17 1 Justice has sued to block US Sugar's acquisition of Imperial 12:18:21 2 based primarily on a concern that the merged company is going to be able to raise prices in a particular geographic 12:18:25 3 area they call the southeast, right? 12:18:29 4 12:18:31 5 Α. Yes. 12:18:32 6 Now based on your lengthy tenure at USDA and your 12:18:36 7 experience in the industry, do you believe that US Sugar's 12:18:39 8 acquisition of Imperial will have a negative impact on the 12:18:43 9 domestic sugar industry? 12:18:4510 I believe there is potential for the merger to have a Α. positive impact on the industry. 12:18:4911 12:18:5112 Can you explain why that is? Q. 12:18:5413 Explain why that is? Yes. Α. 12:19:0114 THE COURT: And do so in terms that we can 12:19:0415 understand. 12:19:0516 THE WITNESS: Yes. Talking to the owners, or 12:19:0917 the potential parties that would be involved, they told me 12:19:1518 about their plans. I seen that there could be efficiency. 12:19:2219 There is a potential for Florida to send supplies of raw 12:19:2720 sugar to Imperial. Right now Imperial doesn't have a 12:19:3021 domestic source of sugar. There is a potential for another 12:19:3722 voice to be heard besides Imperial Sugar when they come to 12:19:4123 USDA and ask for us to increase imports to relieve tightness 12:19:4724 in the raw market.

And because of the efficiencies that I see are

12:19:5025

12:19:54 1 possible with this merger, the engineers, for instance, from 12:19:59 2 US Sugar revitalizing the Imperial facility, things like that, there could be cost savings and those cost savings 12:20:04 3 12:20:09 4 could result in lower refined prices. 12:20:15 5 So you mentioned that you understand that US Sugar 0. 12:20:19 6 intends to send raw sugar grown by its farmers in Florida up 12:20:24 7 to the Imperial plant to be refined; right? 12:20:27 8 Α. Yes. 12:20:27 9 And one of the consequences you just mentioned about 12:20:3210 that is that Imperial could have a domestic source of raw supply for its plant, right? 12:20:3711 12:20:3912 Α. Yes. 12:20:3913 Focusing on that in particular, what is the Q. 12:20:4114 consequence of that in your view? 12:20:4415 Α. Well, it would be another source of supply for 12:20:4816 Imperial, so if it had more sugar coming from the domestic 12:20:5317 source, it my relieve their need to import as much. 12:20:5918 And do you believe that would have any impact on the Ο. 12:21:0219 prices at which Imperial -- United might be able to sell 12:21:0720 sugar out of the Imperial plant? 12:21:0921 Α. I think there is potential for this merger to result in cost savings for the Imperial facility which would give 12:21:1522 12:21:1923 them the potential to lower their refined sugar price that 12:21:2324 they're offering in the market. 12:21:2525 0. Do you believe that if this transaction is allowed to

12:21:30 1 conclude, that it is likely to lead to higher sugar prices 12:21:34 2 anywhere in the U.S.? 12:21:36 3 I think the likelihood is -- that prices could in Α. fact be lowered. 12:21:42 4 12:21:43 5 0. In the event that prices were to increase as a result 12:21:47 6 of this transaction, would you expect there to be a supply 12:21:53 7 response from other sugar suppliers to bring those prices 12:21:57 8 back down? 12:21:58 9 If prices -- if Imperial and United decided to raise 12:22:0510 prices, it would attract the attention of other producers in 12:22:0911 the country and sugar would flow in and compete at lower 12:22:1312 prices to get that business. And that's even if USDA didn't do anything, is that 12:22:1513 Ο. 12:22:1914 right? 12:22:1915 Right. There is market forces that could cause sugar Α. 12:22:2316 to flow to areas of tightness and compete at high prices, 12:22:2717 yes. 12:22:2718 Q. And if for some reason those supply responses for 12:22:3219 those competitors were not sufficient by themselves to bring 12:22:3620 the prices back down, do you agree that USDA has the 12:22:4121 regulatory tools in place at its disposal to bring those 12:22:4622 prices back down? 12:22:4723 Yes, USDA has a set of tools it can use to bring in 12:22:5124 more sugar to get prices down. Ο. Let's talk a little bit more about the factual basis 12:22:5525

12:22:59 1 behind those opinions you just gave. So from your many years of experience in the industry, is it fair to say that 12:23:05 2 12:23:09 3 you're very familiar with the suppliers of sugar in the 12:23:13 4 industry? 12:23:13 5 Α. Yes. 12:23:13 6 Do you consider it part of your job to have a very 12:23:16 7 good understanding of who is competing with who and where? I like to know as much as possible about the 12:23:19 8 Α. 12:23:21 9 interactions between companies. I'm not one to just look at numbers on a page and make -- draw conclusions, I need more 12:23:2510 12:23:3011 information from that to inform my leaders' decisions. 12:23:312 And I take it it's also part of your job to 0. 12:23:3613 understand how sugar moves around the country, right? 12:23:3914 Yes. Α. 12:23:4015 And based on your experience, do you agree that sugar 12:23:4416 flows from areas in the US that have excess sugar to areas 12:23:4917 where they need more sugar? 12:23:5218 Α. You would think so, yes. 12:23:5419 You have seen that happen, right? Q. 12:23:520 Α. Well, price, if there is a shortage of sugar the 12:24:0021 price will go up and that will attract available sugar from other sources to that area. 12:24:0422 12:24:0623 And in fact, what you have witnessed and what you 12:24:0924 have seen happen is that because of those factors, it's true that refined sugar can travel pretty long distances from 12:24:1225

12:24:20 1 where it's produced to where it's actually used? 12:24:22 2 Yes, I know that to exist. Α. 12:24:24 3 I think the way you describe it to me in your Ο. deposition was that refined sugar goes where the market 12:24:28 4 wants it to go. Is that how you think about it? 12:24:31 5 12:24:33 6 Α. Yes. 12:24:34 7 Q. Another way you describe it to me was that the cure for high prices is basically high prices, right? 12:24:38 8 12:24:41 9 Α. Yes. 12:24:4210 And what you meant by that is when somebody tries to Q. 12:24:4711 raise prices, competitors are going to react, they're going to be attracted by those high prices, they're going to come 12:24:5012 in and bring those prices right back down, right? 12:24:5413 12:24:5614 Α. Yes. 12:24:5615 And that's something you witnessed time and time Q. again in all your years in the sugar industry? 12:24:5916 12:25:0517 Α. Yes. 12:25:0518 Q. And again, even if USDA itself takes no action at 12:25:0919 all, that's just how the market operates? 12:25:1120 Α. Yes, market forces work to redistribute sugar to 12:25:1521 where it's needed, yes. 12:25:1822 Now, when the USDA is thinking about taking certain Q. 12:25:223 actions under the sugar program, you would typically think about the market, sort of nationally in the aggregate, 12:25:2624 12:25:2925 right?

12:25:29 1	A. Yes.
12:25:30 2	Q. And, again, the reason why you think about it sort of
12:25:33 3	nationally in the aggregate is because of what we have been
12:25:36 4	talking about, sugar flows where it needs to go, right?
12:25:39 5	A. Yes.
12:25:39 6	Q. And you have become familiar with Imperial based on
12:25:44 7	your work at USDA?
12:25:46 8	A. Very, yes.
12:25:47 9	Q. Of course as you talked about earlier, you know that
12:25:4910	Imperial doesn't have much of a domestic source of supplied
12:25:5311	sugar so it has to depend on imports of foreign raws, right?
12:25:5712	A. Yes.
12:25:5813	Q. And in your experience, if USDA doesn't bring in
12:26:0314	enough of the low cost foreign raws, what's the consequence
12:26:0815	of that for the prices at which Imperial can sell sugar?
12:26:1216	A. If we do not bring in enough raw supplies, the price
12:26:1817	will go up. And if it goes up high enough to cause
12:26:2218	high-tier imports to come in, Imperial might resort to
12:26:2619	buying foreign sugar and paying the extra duty. In order to
12:26:2920	maintain their profit margins, they would have to raise the
12:26:321	price that they sell into the marketplace.
12:26:3@2	\mathbb{Q} . And based on all the various market participants that
12:26:4023	you talk to regularly and all the monitoring that you do of
12:26:4424	all the factors in the industry, is it correct to
12:26:4725	characterize Imperial as a low price seller who is out there

12:26:52 1 today driving down the price of sugar? 12:26:55 2 No, I don't consider -- they are a price setter, if Α. 12:27:00 3 anything. What the you mean by that, is they're the high price 12:27:00 4 0. supplier? 12:27:04 5 12:27:05 6 Α. Yes. 12:27:05 7 Q. Let's talk a little bit more about the sugar program. And again, at least since 1981, the Farm Bill, there has 12:27:09 8 12:27:13 9 been this policy in place in our country to support American 12:27:1710 farmers, including American sugar farmers, right? Yes, that's the idea behind the loan program is to 12:27:2111 Α. 12:27:2512 support the price. And that federal policy reflects a judgment that we 12:27:2613 12:27:2914 as a country, we want to try to protect the domestic food 12:27:3415 supplies that the American farmers provide, right? 12:27:3716 Well, that's not exactly in our mandate, but the idea 12:27:4117 is guaranteed floor prices to producers. 12:27:4718 Well, the reason -- we'll talk about that floor for a 0. 12:27:5119 The reason that the sugar program use USDA tools to minute. 12:27:5520 control the supply, because it's a matter of economics, 12:27:5921 that's one way to control price, right? 12:28:0122 Α. Yes. 12:28:0123 And if you restrict the amount of sugar that's Ο. 12:28:0424 available for sale, you can keep those prices high enough above that floor so that the farmers can get enough money 12:28:0725

12:28:11 1	for their crops, right?
12:28:12 2	A. Yes.
12:28:12 3	Q. I'm sorry?
12:28:13 4	A. Yes.
12:28:14 5	Q. And, in fact, conversely, if you increase supply,
12:28:18 6	that can cause prices to come down?
12:28:20 7	A. Yes.
12:28:21 8	Q. The basic economics of supply and demand, right?
12:28:26 9	A. Yes.
12:28:2710	Q. Now, while USDA is certainly focused on maintaining
12:28:3311	that price floor, you're also mindful of not letting prices
12:28:3712	get too high, too, right?
12:28:4013	A. In most cases, yes.
12:28:4214	\mathbb{Q} . And that's because the other side of the equation
12:28:4515	from the farmers, are the sugar buyers who need to acquire
12:28:5016	sugar to make all the sweetened products that we have in
12:28:5517	this country right?
12:28:5618	A. We do try to balance the demand of suppliers and
12:29:0019	buyers.
12:29:0020	\mathbb{Q} . The sugar buyers are sometimes called sugar users?
12:29:0421	A. Yes.
12:29:0422	Q. And sugar users, you based on people that you have
12:29:0&3	talked to, you know that they want to try to keep their
12:29:1124	costs down so they generally want their sugar to be as low
12:29:1525	of a price as they can get it, right?

12:29:17 1 Α. If I were a buyer, I would want to be able to get the sugar that I need, at the quality that I need, at the time 12:29:22 2 that I need it, at the lowest price. 12:29:26 3 12:29:30 4 So on the one hand there is the federal policy to 0. keep a price floor for the farmers, make sure that they can 12:29:33 5 12:29:37 6 get enough money and on the other hand you got the sugar 12:29:40 7 users who want to keep prices lower and it's USDA's job to try to strike that right balance, is that right? 12:29:45 8 12:29:47 9 Our job is to maintain adequate supplies of raw and 12:29:5110 refined sugar, that's our mandate. 12:29:5311 Q. And in order to do that, one of the things you do in 12:29:5812 order to make adequate supplies is you try to balance the supply and demand dynamics, is that right? 12:30:0213 12:30:0514 Α. Yes. 12:30:0515 Based on your experience, it's true that sugar users Ο. are often lobbying USDA to do things that are going to bring 12:30:0816 12:30:1317 in more supplies, increase supplies, right? 12:30:1518 Α. We get letters from users and sellers. 12:30:1819 And the reason they want you to bring in more supply Q. 12:30:220 is because they think that's going to keep the price of 12:30:2521 sugar lower, right? 12:30:2622 Α. Yes. 12:30:2823 And you mentioned just a minute ago, but part of the Ο. USDA's sugar program mandate is to ensure there are adequate 12:30:3124 supplies of raw and refined sugar in the US? 12:30:3625

12:30:39 1 Α. Right. Yes. 12:30:40 2 At least during your time at USDA, that mandate has Q. been interpreted at least implicitly to require the concept 12:30:44 3 that sugar prices should be reasonable; is that right? 12:30:49 4 12:30:56 5 Reasonable prices is embedded in the idea of adequate 12:31:01 6 supplies, yes. 12:31:02 7 Q. Because one way to determine whether supplies are adequate is to look at what's happening with prices, right, 12:31:05 8 12:31:09 9 that's one way to look at it? 12:31:110 That is one way to look at it. Α. 12:31:1211 Q. And if USDA believes that prices are too high, that 12:31:1612 can be an indication that supplies are not adequate and that there may be more supply needed, is that right? 12:31:2013 Well, you said if USDA believes. I am not the 12:31:2414 Α. decision maker, I don't know what they believe. I make 12:31:315 12:31:3716 recommendations based on data, and I have my own feelings 12:31:4117 about supply and demand. Let me ask you then as someone who has done this for 12:31:4418 Ο. 12:31:4719 the last 20 years, if you in making your recommendation, you 12:31:5120 believe that prices are too high, that's an indication to 12:31:5421 you that maybe more supply is needed and that might inform a recommendation to bring in more supply, is that right? 12:31:5722 12:32:0023 Α. Yes. And it's true that during your tenure at USDA what 12:32:0124 Q. you have witnessed and what you have seen is that the 12:32:0425

12:32:07 1 various administrations, they have managed the Federal Sugar 12:32:11 2 Program to ensure that there are adequate supplies available at reasonable prices with each administration determining 12:32:14 3 what it believes are reasonable; is that right? 12:32:17 4 12:32:20 5 Α. Yes. And adequate. 12:32:23 6 Okay. You should have a binder in front of you, it's 12:32:27 7 the black binder with the defendants' name on top of it. 12:32:30 8 Yeah, that's the other one. There you go. Can you turn in 12:32:35 9 that binder to tab DTX 278. 12:32:4510 Α. Okay. 12:32:4511 Q. Are you there? 12:32:4612 Α. Yes. 12:32:4613 Dr. Fecso, you have seen letters like this before, Q. right? 12:32:5014 12:32:5015 Α. Yes. 12:32:5116 These are letters that the secretary, the highest 12:32:5417 position at USDA sends in response to -- to somebody this 12:33:0018 happens to be the National Confectioners Association, the 12:33:0319 USDA sends it to response to people who are asking for 12:33:0720 certain actions to be taken in response to the Federal Sugar 12:33:1021 Program, right? 12:33:1122 Α. Yes. 12:33:1123 And you yourself have drafted some of these letters Q. 12:33:1424 over your career? 12:33:1525 Α. Many.

12:33:16 1	\mathbb{Q} . This is just an example here we see the secretary of
12:33:18 2	the USDA stating please be assured the US Department of
12:33:24 3	Agriculture will work to diligently represent the interests
12:33:27 4	of all our stake holders and manage the program to provide
12:33:30 5	adequate supplies of both raw and refined sugar at
12:33:34 6	reasonable prices. Is that right?
12:33:35 7	A. Yes.
12:33:37 8	Q.
12:33:38 9	MS. GIORDANO: Your Honor I move to admit DTX
12:33:4010	278 as evidence.
12:33:4111	THE COURT: Any objection? Any objection?
12:33:4512	MR. THORNBURGH: No objection. Sorry.
12:33:4713	THE COURT: All right. It's admitted.
12:33:4914	(DTX Exhibit No. 278 was admitted into
12:33:4914 12:33:5015	(DTX Exhibit No. 278 was admitted into evidence.)
12:33:5015	evidence.)
12:33:5d 5 12:33:5d 6	evidence.) BY MS. GIORDANO:
12:33:5d 5 12:33:5d 6 12:33:517	evidence.) BY MS. GIORDANO: Q. Dr. Fecso, one of the indicators that USDA uses to
12:33:5d 5 12:33:5d 6 12:33:5f 7 12:33:5f 8	evidence.) BY MS. GIORDANO: Q. Dr. Fecso, one of the indicators that USDA uses to determine whether supplies are adequate is something called
12:33:5d.5 12:33:5d.6 12:33:5f.7 12:33:5f.8 12:33:5f.9	evidence.) BY MS. GIORDANO: Q. Dr. Fecso, one of the indicators that USDA uses to determine whether supplies are adequate is something called the stocks-to-use ratio?
12:33:5015 12:33:5016 12:33:5117 12:33:5518 12:33:5819 12:33:5920	evidence.) BY MS. GIORDANO: Q. Dr. Fecso, one of the indicators that USDA uses to determine whether supplies are adequate is something called the stocks-to-use ratio? A. That's one of the most important things, yes.
12:33:5015 12:33:5016 12:33:5117 12:33:5518 12:33:5819 12:33:5920 12:34:0121	evidence.) BY MS. GIORDANO: Q. Dr. Fecso, one of the indicators that USDA uses to determine whether supplies are adequate is something called the stocks-to-use ratio? A. That's one of the most important things, yes. Q. Can you explain what that is?
12:33:5015 12:33:5016 12:33:5117 12:33:5518 12:33:5819 12:33:5920 12:34:0121 12:34:0322	evidence.) BY MS. GIORDANO: Q. Dr. Fecso, one of the indicators that USDA uses to determine whether supplies are adequate is something called the stocks-to-use ratio? A. That's one of the most important things, yes. Q. Can you explain what that is? A. Okay. So we USDA puts out a monthly report called
12:33:5015 12:33:5016 12:33:5117 12:33:5518 12:33:5819 12:33:5920 12:34:0121 12:34:0322 12:34:0923	evidence.) BY MS. GIORDANO: Q. Dr. Fecso, one of the indicators that USDA uses to determine whether supplies are adequate is something called the stocks-to-use ratio? A. That's one of the most important things, yes. Q. Can you explain what that is? A. Okay. So we USDA puts out a monthly report called the world A G supply and demand estimates and they put it

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year of certain supply variables, certain demand variables. So supplies is equal to beginning stock which are the aggregate, across beet and cane processors, cane refiners, plus their total production forecast, plus any imports that are forecast for that fiscal year, those three things add up to total supply and then there is several use categories that equal total use, so supply minus use equal ending stock and you divide that by total used and that is your stock-to-use ratio for the year, the forecast. As a general matter, does the higher stock-to-use Q. ratio signal that there is more supply available in the marketplace and thus prices are generally lower? Normally, yes. And again, as a general matter, does a lower stock-to-use ratio signal that supplies are tighter and prices are a little bit higher? Yes. Α. And typically what range of stocks-to-use ratio does Q. USDA manage the sugar program to try to maintain? Α. USDA tries to manage -- between a 13-and-a-half and 15-and-a-half percent stock to use ratio. And although there certainly are sections to this, I Q. understand, but as a general matter it's true that when the stocks-to-use ratio is between that 13-and-a-half and 15-and-a-half percent range, USDA typically considers the

12:35:57 1 prices that result from that range to be reasonable; is that 12:36:01 2 right? 12:36:01 3 Well, there are aberrations, but usually historically Α. 12:36:07 4 when -- the stocks to use were below 13-and-a-half percent, we would get high-tier imports and if they were above 12:36:12 5 12:36:16 6 15-and-a-half percent, a greater likelihood of forfeiture, 12:36:20 7 so between that 13-and-a-half to 15-and-a-half we had a safe 12:36:26 8 range of prices. 12:36:27 9 Now, the range of stocks to use of 13-and-a-half to 12:36:3110 15-and-a-half, that's not in a statute somewhere, right? 12:36:3511 Α. No, it was adopted back in the late 1990s. 12:36:3812 That's something USDA could change if it wants to? Q. 12:36:4113 Yeah, I mean, they could change their approach. 12:36:4514 There is nothing to change. Not in stone or written 12:36:5015 anywhere. 12:36:5116 And it's true, isn't it, even over your career, even 12:36:5517 when the stocks-to-use ratio has been between that range of 13-and-a-half and 15-and-a-half, there have been times when 12:36:5818 12:37:0119 USDA has still brought in more supply even when you are in 12:37:020 range right? 12:37:0721 Α. Yes. 12:37:0722 And USDA doesn't rigidly adhere to stocks to use Q. 12:37:1323 ratio as the only metrics to consider when it's thinking 12:37:124 about taking action under the sugar program, right? 12:37:1925 Α. No, there are many other factors to consider.

12:37:22 1	Q. And one of those is what is happening with prices,
12:37:24 2	right?
12:37:25 3	A. Yes.
12:37:25 4	Q. Now, when USDA believes that are additional supplies
12:37:30 5	that are needed in the marketplace, it has a variety of
12:37:32 6	tools at its disposal that it can use, correct?
12:37:35 7	A. Correct.
12:37:36 8	Q. And one set of those tools that you can use to
12:37:38 9	increase the volume of sugar let me start again. One set
12:37:4210	of tools allows USDA to increase the volume of sugar that
12:37:4711	domestic processors are allowed to sell; is that right?
12:37:5012	A. Yes.
12:37:5013	\mathbb{Q} . And those are a set of tools that are known as the
12:37:5314	domestic marking allotments?
12:37:5615	A. Yes.
12:37:5പ് 6	\mathbb{Q} . And marketing allotments, what those do is they place
12:37:5917	a legal limit on the amount of sugar that domestic
12:38:0318	processors are allowed to sell, is that right?
12:38:0ഒ9	A. Yes.
12:38:0720	Q. However, what USDA determines that additional
12:38:1221	supplies are needed, you have the power to increase those
12:38:1422	allotments, right?
12:38:1723	A. Yes, it only works if they have more sugar to sell.
12:38:2124	Q. Well, a recent example of that happened just this
12:38:2425	past December, right?

12:38:24 1	A. Yes.
12:38:25 2	Q. Can you turn in your binder to tab DTX 464.
12:38:32 3	A. Okay.
12:38:33 4	\mathbb{Q} . And this is an announcement that USDA put out on
12:38:39 5	December 21, 2021. Do you recall that?
12:38:41 6	A. Yes.
12:38:41 7	Q. And you were critically involved in this
12:38:44 8	announcement, right?
12:38:46 9	A. Yes.
12:38:4610	Q. And this is an example of USDA increasing marketing
12:38:5011	allotment in particular to allow beet processors to sell
12:38:542	more sugar; is that right?
12:38:5പ്3	A. Yes, I had beet processors that were blocked from
12:38:5914	selling all their expected supply.
12:39:0215	Q. And by that, you meant they had more they could sell
12:39:0516	but the allotment prevented them from doing so?
12:39:0817	A. Yes.
12:39:0918	\mathbb{Q} . Can you turn to page 2, at the top of page 2 in the
12:39:1319	top paragraph there. What we see here is that in that sort
12:39:1720	of first sentence there, is the reason or one of the reasons
12:39:2021	USDA took this action was specifically because there were
12:39:2@2	current high sugar prices. Do you see that?
12:39:2&3	A. That's what it says, yes.
12:39:3024	Q. And USDA intended that increasing supply here might
12:39:3625	help with those current high sugar prices, right?

12:39:40 1	A. That's what it says, yes, speaks for itself.
12:39:44 2	Q. And this exhibit shows that one of the beet
12:39:47 3	processors, if we can go down on to the chart that was
12:39:50 4	particularly benefitted by this action at the time was a
12:39:54 5	company called Michigan Sugar?
12:39:56 6	A. Yes.
12:39:56 7	Q. And Michigan Sugar is a beet processor?
12:40:00 8	A. Yes.
12:40:00 9	\mathbb{Q} . Before USDA took this action, Michigan Sugar was not
12:40:0410	able to sell as much sugar as it wanted to because it was
12:40:0811	bumping up against its marketing allotment?
12:40:1112	A. Yes.
12:40:113	Q. And this action by USDA, it allowed Michigan Sugar to
12:40:1714	sell more?
12:40:1715	A. Yes.
12:40:1916	MS. GIORDANO: I move to admit, Your Honor, DTX
12:40:2117	464 into evidence.
12:40:2318	MR. THORNBURGH: No objection.
12:40:2419	THE COURT: Thank you. It's admitted.
12:40:2520	(DTX Exhibit No. 464 was admitted into
12:40:2@1	evidence.)
12:40:2@2	BY MS. GIORDANO:
12:40:2723	\mathbb{Q} . Dr. Fecso, let's talk about imports if we can. The
12:40:3024	other set of tools that USDA has to increase supplies if you
12:40:3425	think it's necessary relate to USDA's control over sugar

12:40:38 1 imports, correct? 12:40:40 2 Α. Yes. 12:40:40 3 Is it true that there are about forty countries in 0. the world that produce sugar that can be imported into the 12:40:43 4 12:40:46 5 US? 12:40:47 6 Α. Under the WTO, yes. 12:40:49 7 Q. You understand there are some special rules for some 12:40:53 8 other countries, like Mexico? 12:40:53 9 Α. And then there is TRQs, too. 12:40:5510 Is it true in any given marketing year there is Q. typically lots of available sugar out there that can be 12:40:5811 12:41:0112 imported into the U.S.? Well, sometimes the world has -- is in deficit so 12:41:0213 12:41:0814 it's not always the case. 12:41:1015 Is it generally the case that there is sugar always Q. 12:41:1316 available for import? 12:41:1417 US has the highest price market in the world. other countries have surplus. They would love to send it to 12:41:1818 12:41:2219 us instead of some lower price country. 12:41:2420 Q. As a general matter is it true that the price of 12:41:2721 sugar that's available on the world market, is it typically 12:41:2922 lower than U.S. prices like you just said? 12:41:3223 Α. Yes. 12:41:3224 Is it typically sometimes can be much lower? Q. Α. Yes. 12:41:3525

12:41:37 1	Q. And so if the U.S. were to allow all of that lower
12:41:40 2	priced foreign sugar into the country, that could cause U.S.
12:41:44 3	prices to plummet, right?
12:41:47 4	A. It could drag down to US industry.
12:41:51 5	Q. That could be a problem for your federal sugar policy
12:41:55 6	because that could cause the prices for domestic processors,
12:41:58 7	domestic farmers to fall below that floor that you have
12:42:03 8	created, right?
12:42:04 9	A. Yes.
12:42:0410	Q. And to protect against that, what we have done is
12:42:0811	we've created as a country a structure that limits the
12:42:1112	amount of foreign imports that can come in, right?
12:42:1413	A. Yes.
12:42:1414	Q. And a system of tariff rate quotas, that's one of the
12:42:1915	major strategy to limit the amount of imports that can come
12:42:2316	in?
12:42:2317	A. Yes.
12:42:2318	Q. And tariff rate quotas sometimes know as TRQ?
12:42:2719	A. Yes.
12:42:2720	Q. What is a tariff rate quota is is a quantity of sugar
12:42:3221	that can be imported into the country at a low duty or no
12:42:362	duty?
12:42:3623	A. Yes.
12:42:3624	$\mathbb{Q}.$ In fact, unlimited amounts of sugar can be imported
12:42:4025	into the country, but anything that comes in above the TRQ

12:42:43 1 amount, that's much more expensive, right, subject to a 12:42:47 2 higher duty? 12:42:48 3 Yes. Α. 12:42:49 4 And that amount that comes in above the TRQ amount, 0. 12:42:53 5 that's a Tier II sugar or high-tier sugar? 12:42:56 6 Yes, but we also have the Mexican amounts, separate. Α. 12:43:01 7 Q. I'm going to get to Mexico in one second, but thank 12:43:04 8 you for that. 12:43:04 9 Is it fair to say that because TRQ sugar, 12:43:1010 because it enters at a low or no duty that it can be a pretty effective price constraint in the US marketplace? 12:43:1311 12:43:1912 Yes, I would say so. Α. Now, USDA has the ability to increase the amount of 12:43:2213 12:43:2714 TRQ sugar that come over into the country over the course of 12:43:3215 a marketing year? 12:43:3316 Yes. We have rules in the sugar program to bring in 12:43:3617 more TRQ imports. 12:43:3818 Q. And you can increase TRQ imports for both raw and 12:43:4219 refined sugar? 12:43:4220 Α. Yes. 12:43:4321 Q. Now, one of the reasons that USDA might increase TRQs during a particular year is because it perceives that 12:43:4922 12:43:5323 additional imports are needed to maintain adequate supply at reasonable prices, right? 12:43:5824 Α. 12:44:0025 Yes.

12:44:01 1 Q. And, in fact, the harmonized tariff schedule which 12:44:06 2 governs the TRQ, that schedule expressly says USDA can bring in more imports whenever it believes that additional 12:44:11 3 12:44:15 4 supplies may be needed at adequate prices, right? 12:44:19 5 Α. It is discretionary. 12:44:24 6 Now, if companies in the US are importing significant 12:44:28 7 quantities of TRQ sugar, that's typically because domestic prices are higher, right? 12:44:33 8 Typically, yes. 12:44:34 9 Α. 12:44:3510 When domestic prices rise so that they're at or above Q. 12:44:4011 Tier II prices, companies are likely to import more Tier II 12:44:4512 sugar instead of buying it domestically? There are exceptions, it depends on the need. 12:44:4813 12:44:5014 That does happen still, right? Ο. 12:44:5215 I got an e-mail yesterday from a trader down in Α. southern Illinois that was being offered \$0.60 sugar. 12:44:5616 12:44:5917 That's much higher than the world prices with the high-duty right now, but that's in the world and he needed it 12:45:0218 12:45:0519 yesterday at that location, so higher prices can -- domestic 12:45:1220 can trade higher than the world price plus duty. 12:45:121 Q. As a general matter do you agree that Tier II prices, they can function effectively as a price ceiling right in 12:45:2022 12:45:2323 some circumstances? 12:45:2424 Α. Most cases, yes.

Let's talk about Mexico a little bit.

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12:45:32 1 special rules that govern imports from Mexico, right? 12:45:35 2 Α. Yes. There is a long history related to this, to Mexico 12:45:35 3 Ο. and the suspension agreements, but suffice it to say there 12:45:38 4 are agreements in place called the U.S./Mexico suspension 12:45:41 5 12:45:46 6 agreement that limit the amount of sugar that can be 12:45:48 7 imported from Mexico? 12:45:50 8 It limits the quantity and the prices. Α. 12:45:52 9 Q. And USDA again, you can increase those imports from 12:45:5710 Mexico when you feel it's appropriate, right? 12:45:5911 Α. Yes, we're able to increase Mexico's export. 12:46:0312 Can you turn to tab DTX 515 in your binder. Q. 12:46:1713 USDA Sugar and Sweeteners Outlook Report from March 22, '22, right? 12:46:2114 12:46:2115 Α. Yes. 12:46:2116 And this is a report that USDA publishes every month Q. 12:46:2617 right after the WASDE comes out? 12:46:2818 Α. Yes. 12:46:3019 And you're involved in preparing these outlook Q. 12:46:3520 reports, right? 12:46:3621 Α. This is prepared by the Economic Research Service, I 12:46:4022 just clear it. 12:46:4223 You review it before the report goes out? 0. 12:46:4524 Α. Yes. 12:46:4625 And publishing things like these reports and the 0.

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12:46:48 1 monthly WASDE report, that's consistent with the USDA belief 12:46:54 2 and transparency about what's happening with supply and demand, that's a good thing for participants in the sugar industry, right? 12:47:02 4 Again, it was a decision made that yes, the industry 12:47:05 6 would like to know as much as possible about the sugar data 12:47:10 7 that we collect. So this is the result. Q. And is it true as a general matter that USDA believes 12:47:18 9 the things like the outlook form that you do and these 12:47:2110 publications that you make, as a general matter do you believe that facilitating information sharing through the 12:47:2712 USDA, that's the type of transparency that leads to a well-functioning open market? You know, some administrators are not as willing to be transparent as others. It depends. I personally believe 12:47:3815 12:47:4316 that the best way to run the program is to be as transparent as possible. Can you turn to page 23 in DTX 515. We see here, are Q. you there? 12:48:0119 Α. Yes. Q. There is a special article called sugar actions at a glance? 12:48:0523 Α. Yes. And this is describing actions that USDA has taken to Q. 12:48:0925 increase imports --

12:48:10 1	A. Yes.
12:48:11 2	Q when it believes that more sugar is needed?
12:48:13 3	A. Yes.
12:48:13 4	Q. And it discusses a number of tools that you and I
12:48:16 5	already talked about today and some others in addition to
12:48:19 6	that?
12:48:19 7	A. Yes.
12:48:19 8	Q. If you look at the second full paragraph that we've
12:48:23 9	called out here, what we see is that USDA's management of
12:48:2610	the sugar program is governed by several statutory
12:48:2911	principles and that's citing the Harmonized Tariff schedule
12:48:3512	you and I just talked about?
12:48:3613	A. Yes.
12:48:3614	Q. Can you turn to page 26 of this exhibit.
12:48:4415	A. Yes.
12:48:4416	Q. What we see here is a chart that identifies some of
12:48:4717	the many times USDA has taken actions under the sugar
12:48:5118	program to increase imports?
12:48:5319	A. Yes.
12:48:5420	Q. Now, this isn't all the actions you have taken, this
12:48:5721	is just some of them, right?
12:48:5822	A. No, it's not all the actions.
12:49:0123	Q. And each of the numbers on here just so we're so
12:49:0524	the Court is aware, each of those numbers reflect an amount
12:49:0825	of additional volume that you brought in when you thought

12:49:11 1	additional supply was needed?
12:49:13 2	A. Yes.
12:49:15 3	Q. Now, what is the blue line we see on here?
12:49:19 4	A. It looks like it's the refined beet sugar price would
12:49:23 5	be a Milling & Baking price.
12:49:25 6	Q. And that's a publication by Sosland?
12:49:28 7	A. Sosland, yes.
12:49:29 8	\mathbb{Q} . And Sosland. And it's true that Sosland is the major
12:49:33 9	source that USDA uses to track refined sugar prices, right?
12:49:3810	A. Yes.
12:49:3811	\mathbb{Q} . There are a number of industry publications out there
12:49:4212	that are the similar to Sosland that track refined prices,
12:49:4713	right?
12:49:4814	A. Yes.
12:49:4815	Q. There are industry reports like JSG, Milling &
12:49:5316	Baking, Commodity Information, and those are all things
12:49:5617	you're familiar with?
12:49:5718	A. There are several publications.
12:49:5919	Q. And you reviewed these third-party reports pretty
12:50:0320	regularly each month as part of your duties?
12:50:0521	A. Weekly.
12:50:022	Q. More frequently than that?
12:50:0723	A. Yes.
12:50:0&4	Q. And you regularly talk to the analysts that prepare
12:50:1125	these types of third-party reports?

12:50:14 1	A. Yes.
12:50:14 2	Q. You find these reports and these conversations with
12:50:17 3	these third parties also and that's helpful for you as
12:50:20 4	you're making decisions under the Sugar Program, right?
12:50:23 5	A. It's helpful for me.
12:50:25 6	Q. And it's also true that USDA's Economic Research
12:50:29 7	Service publishes some of the Sosland prices on its website,
12:50:36 8	right?
12:50:38 9	A. The USDA puts out publications, yes, by the month,
12:50:4110	prices, various price theories.
12:50:4311	Q. And those they use Sosland as the source, right?
12:50:4612	A. Well, for the refined beet price they also have the
12:50:5113	raw price up, the world price, different prices.
12:50:5614	Q. And the prices that the refined prices we're talking
12:50:5915	about that USDA publishes from Sosland, those are what are
12:51:046	commonly known as spot prices?
12:51:0517	A. Spot prices, yes.
12:51:0718	Q. And sometimes called list prices?
12:51:0919	A. Yes, same thing.
12:51:1020	Q. Let's see if we can sum up what we have talked about
12:51:1421	today. I take it that you would agree that USDA has lots of
12:51:1722	different tools at its disposal to increase sugar supplies
12:51:2123	if it feels that supplies are not adequate at reasonable
12:51:2@4	prices?
12:51:2725	A. USDA has been given a set of tools to manage

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Fesco - direct

12:51:31 1 supplies, yes. 12:51:32 2 And these are all tools that USDA has used for just 12:51:36 3 that reason; right? To make sure that no factory closes and to address 12:51:37 4 Α. 12:51:44 5 high processes, yes. 12:51:46 6 And it's fair to say based on everything you know Q. 12:51:49 7 about the people you talk to that the sugar suppliers in 12:51:52 8 this industry, they are well aware that USDA has all these 12:51:55 9 tools at its disposal to the increase supply, right? 12:51:5810 Most of them. There might be a little bubble gum Α. 12:52:0211 company that doesn't know about us, but yes, most. 12:52:0412 And USDA has done it before and you can do it again Ο. 12:52:0813 whenever you think it's necessary, is that right? 12:52:1014 Α. We have the set of tools that we can use at our 12:52:1315 disposal to make decisions to increase supplies. 12:52:1716 MS. GIORDANO: Thank you, Dr. Fecso. No further 12:52:1917 questions. THE COURT: All right. How long do you think 12:52:2018 12:52:2319 your cross is going to take? MR. THORNBURGH: Your Honor, it would probably 12:52:2720 12:52:2821 be more than ten minutes if that's the question you're 12:52:3122 getting at. THE COURT: All right. I know you're up here 12:52:323 12:52:3524 from -- is it okay if we take a thirty-minute lunch break or do you have to be back in DC? 12:52:3925

12:52:41 1	THE WITNESS: No, I don't have to be back. I
12:52:43 2	might never go back.
12:52:44 3	THE COURT: So let's take our thirty-minute
12:52:47 4	lunch break, or thirty-eight minutes. Let's come back at
12:52:50 5	1:30.
12:52:52 6	(A brief recess was taken.)
13:27:30 7	THE COURT: All right. Please be seated.
13:34:30 8	Cross-exam.
13:34:32 9	MS. GIORDANO: Your Honor, neglected to move the
13:34:3410	admission of DTX 515 in evidence.
13:34:3811	THE COURT: Any objection?
13:34:4012	MR. THORNBURGH: No objection.
13:34:4113	THE COURT: It's admitted.
13:34:4114	(DTX Exhibit No. 515 was admitted into
13:34:4215	evidence.)
13:34:4216	MR. THORNBURGH: Good afternoon, Your Honor.
13:34:4517	John Thornburgh for the United States. May I proceed?
13:34:4818	THE COURT: Yes, please.
13:34:5019	CROSS-EXAMINATION
13:34:5020	BY MR. THORNBURGH:
13:34:5121	Q. Good afternoon, Dr. Fecso, I hope you enjoyed your
13:34:5322	lunch.
13:34:5423	Dr. Fecso, did your job responsibilities at the
13:34:5@4	USDA include reviewing sugar-related transactions for
13:35:0125	compliance with fed antitrust laws?

13:35:04 1 Α. No. 13:35:04 2 And more generally, Dr. Fecso, what is your understanding of which fed agency has responsibility for 13:35:07 3 ensuring sugar related transactions comply with federal 13:35:10 4 antitrust laws? 13:35:15 5 13:35:16 6 Department of Justice. Α. 13:35:18 7 Q. Have you ever previously worked with the Department of Justice on a federal antitrust case, Dr. Fecso? 13:35:21 8 13:35:24 9 Α. No. 13:35:2410 Dr. Fecso, did you undertake your own quantitative Q. analysis of the proposed transaction between US Sugar and 13:35:2711 13:35:3112 Imperial? The only quantitative analysis I did was early on 13:35:3213 13:35:3614 when I just took data from sales delivery from beet and cane processors and cane refiners going back as long as I had it. 13:35:4215 13:35:4716 So I had sales by company, by year and I grouped it by how I 13:35:5317 perceived the marketing agents to cover those properties. 13:35:5818 Ο. Thank you. 13:35:5819 And besides that analysis that you just 13:36:0120 described, Dr. Fecso, did you do any other quantitative 13:36:0421 analyses related to the proposed transaction? On paper with statistic or regression analysis, 13:36:0722 13:36:1023 things like that, no. 13:36:1124 Okay. Dr. Fecso, is your testimony today about the Q. proposed transaction, does that reflect your personal 13:36:125

13:36:20 1 opinion or the opinion of the USDA? 13:36:22 2 That is my personal opinion based on educated and 13:36:27 3 informed observations. 13:36:29 4 And Dr. Fecso, do you have any personal knowledge as 0. 13:36:32 5 to whether the USDA has an official agency position on the 13:36:36 6 proposed transaction? 13:36:37 7 My understanding is the Department of Ag has a Α. position that it has no position. 13:36:41 8 13:36:44 9 Thank you. 13:36:4410 Dr. Fecso, a few minutes ago before lunch, you 13:36:4911 mentioned in response to a question from defendant's counsel 13:36:5212 that you thought the transaction might result in some efficiencies or potentially lower prices, do you recall 13:36:5513 13:36:5814 that? 13:36:5815 Α. Yes. 13:36:5916 How did you come to form your belief that the 13:37:0117 transaction could result in efficiencies? 13:37:0418 Α. It was based on the conversation I had with Matt 13:37:1019 Wineinger and Mike Gorrell and Elaine Wood and Robert Buker 13:37:1520 the day before they announced the transaction, they set up a 13:37:1821 meeting with me and we thoroughly went over what the plan was for this. And knowing these people as long as I have, 13:37:2222 13:37:2723 it sounded -- I had high faith that it was good. 13:37:3124 Did the individuals that you just mentioned,

Dr. Fecso, did they show you any data to support their

Q.

13:37:3425

13:37:38 1 claims about the purported efficiency? 13:37:41 2 Α. No. And so Dr. Fecso, is your belief about the potential 13:37:42 3 0. efficiencies based on your conversation with the parties or 13:37:46 4 did you perform any additional quantitative analysis? 13:37:49 5 Well, it's mostly based on the conversation, but I 13:37:53 6 13:37:59 7 have been around long enough and I understand the interrelationships and in my mind I can do a quantitative 13:38:04 8 13:38:07 9 analysis, yes. 13:38:0810 But Dr. Fecso, did you do any quantitative analysis Q. 13:38:1111 on paper outside of your mind? 13:38:1212 Α. No. What is your level of confidence, Dr. Fecso, that the 13:38:1313 Q. transaction would result in efficiencies? 13:38:1814 13:38:2015 I'm pretty confident, yes. Α. 13:38:2316 Dr. Fecso, do you recall that I took your deposition Q. 13:38:2517 earlier in this litigation? 13:38:2718 Α. Yes. 13:38:2819 Can I -- in the binder in front of you, there should Q. 13:38:320 be, the last tab of the binder to your left there it do 13:38:4121 United was the supplier should have your deposition transcript in there, and if you could please turn to 13:38:4322 13:38:423 page 238 of the last tab. Dr. Fecso, I want to direct your attention to the line 21 on page 238? 13:39:0824

13:39:1125

Α.

Okay.

13:39:12 1 Q. And so Dr. Fecso at your deposition I asked you? QUESTION: Question okay, so would it be fair, 13:39:15 2 13:39:18 3 Dr. Fecso to say that your view about the transaction and the efficiency that would result from it is an educated 13:39:21 4 13:39:24 5 guess? And your answer was yes, do you recall that. 13:39:27 6 Α. Yes. 13:39:28 7 Q. Okay. Dr. Fecso so, if US Sugar does acquire Imperial, would the USDA be able to require United to offer 13:39:33 8 13:39:38 9 lower prices? 13:39:3810 No, that's not in our jurisdiction. Α. 13:39:4111 Q. And Dr. Fecso, were you provided internal documents and communications that were produced to the Department of 13:39:4612 Justice in this litigation? 13:39:5013 13:39:5114 Α. No. Defendant's counsel asked you before lots of 13:39:5315 Q. 13:39:5816 questions about how sugar flows in the United States, do you 13:40:0117 recall that? 13:40:0118 Α. Yes. 13:40:0219 Are you familiar with something called the Jones Act, Q. 13:40:0520 Dr. Fecso? 13:40:0521 Α. Yes. 13:40:0622 What is the Jones Act? Q. 13:40:0723 My understanding it's like a workman's compensation Α. 13:40:1124 program for sailors, and it's funded by the requirement that 13:40:1725 any vessels that transports cargo between U.S. ports must

13:40:21 1 have a U.S. crew, a U.S. flag, must be built in the U.S., et 13:40:26 2 cetera, and that adds costs to transportation. 13:40:29 3 And what is your understanding, Dr. Fecso, of how the 0. 13:40:33 4 Jones Act impacts the movement of sugar in the United 13:40:37 5 States? 13:40:37 6 It has been an impediment to the movement. Sugar. Α. 13:40:41 7 Q. Do you have a specific example that describes how 13:40:45 8 that occurs? 13:40:46 9 In recent years there has been a glut of sugar in the 13:40:5210 Louisiana and the Gulf area, and if the sugar could have 13:40:5611 been used on the east coast, but the Jones Act has enough 13:41:0212 cost to the transportation that it makes it cheaper for the 13:41:0613 east coast to import sugar from the world or Mexico than 13:41:0914 from the Gulf. 13:41:115 Ο. Thank you. 13:41:1216 I want to switch gears a little built, 13:41:1517 Dr. Fecso. Who within the USDA sugar program makes the 13:41:1918 ultimate decision about increasing the supply of sugar in 13:41:2219 the United States? 13:41:2420 Α. I don't know. I just make recommendations and 13:41:2721 somebody else above me makes the decision. 13:41:2922 And Dr. Fecso, while you have been at the USDA in Ο. 13:41:3423 your experience, does the decision maker at the USDA share 13:41:3724 with you the sources of information they consider when

making those decisions for the USDA sugar program?

13:41:4025

13:41:44 1 Α. Most likely not. 13:41:46 2 Dr. Fecso, do you know who the ultimate decision Q. 13:41:49 3 maker at the USDA sugar program will be in the future or is that unknowable at this point in time? 13:41:54 4 13:41:56 5 It's unknowable at this time. 13:41:58 6 Dr. Fecso, based on your long tenure at the USDA as 13:42:04 7 defendant's counsel described, will the USDA always make the 13:42:09 8 same decision with regards to the sugar program when face 13:42:12 9 had with similar market conditions and circumstances? 13:42:1410 No, decisions are based on the administration at the Α. 13:42:1811 time. 13:42:1812 Q. Thank you. Dr. Fecso, what is your understanding of where 13:42:1913 13:42:2314 the USDA sugar program gets its mandate? 13:42:2615 My understanding is that it's based off the 2008 Farm Α. 13:42:3116 Bill that established the sugar program. 13:42:3317 Q. Thank you. And what is your understanding of the sugar 13:42:3318 13:42:3519 program's mandate based on the 2008 Farm Bill? 13:42:3920 Our mandate is to ensure there are adequate supplies 13:42:4321 of raw and refined sugar and it supplies us with tools to bring in imports if we need more sugar, but there is a 13:42:4722 13:42:5123 warning embedded in the language that says you can bring in 13:42:5424 imports, but don't bring in so many that you cause

forfeitures.

13:42:5725

13:42:59 1 Q. Dr. Fecso, do you understand the 2008 Farm Bill to 13:43:04 2 require the USDA to ensure reasonable prices of refined sugar in the United States? 13:43:08 3 Could you repeat that? 13:43:11 4 Α. 13:43:12 5 Ο. Sure. 13:43:13 6 Do you understand the 2008 Farm Bill to require 13:43:17 7 the USDA to ensure reasonable prices of refined sugar in the 13:43:22 8 United States? 13:43:23 9 The 2008 Farm Bill requires USDA to maintain adequate 13:43:2810 supplies of raw and refined sugar, price is embedded, 13:43:3211 implicit in that language. 13:43:3412 Is there any requirement with regards to prices that Ο. 13:43:3713 the prices be reasonable with regards to the 2008 Farm Bill? 13:43:4214 Reasonable prices is not mentioned in the language of Α. 13:43:4515 the 2008 Farm Bill. 13:43:4916 Defendant's counsel asked you a few questions about 13:43:5317 the Harmonized tariff schedule and the provision in there that gives the secretary of agriculture authority to ensure, 13:43:5718 13:44:0119 quote reasonable supplies, adequate supplies at reasonable 13:44:0520 prices, do you recall that? 13:44:021 Α. Yes. 13:44:022 Dr. Fecso, does the USDA have an official definition Q. 13:44:1023 of what is quote reasonable as relates to that statutory 13:44:1424 provision?

No. It's discretionary.

13:44:1525

Α.

13:44:18 1	Q. Dr. Fecso, when the USDA takes action to increase
13:44:22 2	sugar imports into the United States, does the agency have
13:44:26 3	the ability to direct that sugar to specific ports of entry?
13:44:29 4	A. No.
13:44:30 5	Q. And when the USDA takes action to increase sugar
13:44:34 6	imports, does the agency know how this additional sugar will
13:44:39 7	impact prices in specific areas of the country?
13:44:42 8	A. We don't know with certainty, but we're inclined to
13:44:45 9	think that more imports would have a negative impact on
13:44:4910	prices.
13:44:5011	Q. Thank you.
13:44:5012	Dr. Fecso, I now would like to ask open your
13:44:5പ്3	binder to PTX 300, please?
13:44:5914	A. Okay.
13:45:0015	Q. And Dr. Fecso, are you familiar with this document?
13:45:0916	A. Yes.
13:45:1117	MR. THORNBURGH: Your Honor, plaintiff moves to
13:45:1318	admit plaintiffs Exhibit 300 into evidence.
13:45:1619	MS. GIORDANO: No objection.
13:45:1720	THE COURT: Thank you, it's admitted.
13:45:1921	(PTX Exhibit No. 300 was admitted into
13:45:2022	evidence.)
13:45:2023	BY MR. THORNBURGH:
13:45:2224	Q. Dr. Fecso, can you please explain to the Court what
13:45:2@5	this document is?

13:45:27 1 Α. This is an announcement that USDA would reassign 13:45:32 2 surplus beet and cane sugar allotments among the processors 13:45:38 3 and then the surplus to imports, it was also an increase in the TRQ and an extension of one of that year TRQ to enter. 13:45:42 4 Dr. Fecso, when the USDA takes action like this to 13:45:48 5 13:45:52 6 increase the supply of sugar that the United States, is this 13:45:54 7 the typical form of a press release that would accompany 13:45:57 8 that decision? 13:45:58 9 Yes, it's a typical, we sometimes there is a federal 13:46:0410 register notice along with a news release. 13:46:0711 Q. I would like to direct your attention, Dr. Fecso to 13:46:1012 page 3 of this press release, please. And there is an excerpt up here on the screen in the courtroom and the 13:46:1713 13:46:2014 screen in front of you. And it says USDA is taking these 13:46:2315 actions after determining that additional supplies of raw 13:46:2716 cane sugar are required in the U.S. market." Do you see 13:46:3017 that? 13:46:3018 Α. Yes. 13:46:3119 And Dr. Fecso, is that consistent or inconsistent Q. 13:46:3520 with your understanding of why USDA took these action in 13:46:4021 September 2020 to increase the supply of domestic sugar? 13:46:4422 That is consistent. Α. 13:46:4523 Q. Put that document aside, Dr. Fecso. 13:46:4924 Dr. Fecso, again, when you were being questioned by defendant's counsel you mentioned USDA monitors refined 13:46:5525

13:46:59 1 spot prices, do you recall that? 13:47:01 2 Α. Yes. 13:47:03 3 To your knowledge, Dr. Fecso, are the spot prices Ο. that the USDA monitors broken out by cane and beet 13:47:06 4 13:47:10 5 processors or are they aggregated together? 13:47:14 6 The refined spot prices are aggregated at regional 13:47:19 7 levels in the U.S. And Dr. Fecso so, what is your understanding of why 13:47:20 8 Q. 13:47:24 9 they were broken out by region of the country? 13:47:2710 They're broken out by region because there is no one Α. 13:47:3011 national price for sugar in the country, the price is dependent on location, population centers, transportation to 13:47:3412 get it to the buyer, things like that. 13:47:3913 13:47:4214 Dr. Fecso so, does the USDA monitor contract prices Ο. between sugar producers and their customers? 13:47:4615 13:47:4916 Α. No. 13:47:5017 Does the USDA have access to contractual prices Q. 13:47:5518 negotiated between a sugar producer and its customers? 13:47:5819 We don't require it sometimes though somebody will Α. 13:48:0220 offer it, but we don't require that. 13:48:0421 Q. Dr. Fecso, does the USDA dictate the prices offered by a refined sugar producer or are those prices the result 13:48:0922 13:48:1423 of negotiations between sugar producers and their customers? USDA does not dictate prices. 13:48:1724 Α. Dr. Fecso, how if at all does the USDA dictate the 13:48:2025

13:48:25 1 customer service that sugar producers offer their customers? 13:48:28 2 Α. USDA has no involvement in customer relationships. 13:48:33 3 A few minutes ago in response to my question, you Ο. mentioned that sometimes you'll talk to sugar producers and 13:48:36 4 they'll give you some pricing information, do you recall 13:48:41 5 that? I'll rephrase, I don't want to put words in your 13:48:45 6 13:48:51 7 mouth. Dr. Fecso, do you sometimes have conversations with sugar producers where pricing comes up? 13:48:54 8 13:48:58 9 That's less likely, I usually ask about prices and 13:49:0210 things that might be disrupting, you know, disruptions in 13:49:0611 the supply chain. 13:49:0712 And when prices do come up, Dr. Fecso, would you ever Ο. take pricing information that one sugar processor has shared 13:49:1113 13:49:1614 with you and share it with another sugar processor? 13:49:1915 Α. No. 13:49:1916 Q. Why not? 13:49:2017 Because that would -- that is not our job. I stay Α. 13:49:2718 away from prices, discussions. Dr. Fecso, does the USDA have responsibility for 13:49:3119 Q. 13:49:320 policing -- excuse me, let me try that again. Does the USDA 13:49:4121 have responsibility for policing information sharing among sugar industry participants for compliance with federal 13:49:4422 13:49:5023 antitrust laws? 13:49:5024 Α. No.

Before lunch, Dr. Fecso, defendant's counsel asked

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13:49:55 1 you a couple of questions about transparency. Do you recall 13:49:58 2 that? 13:49:58 3 Α. Yes. And when you mentioned -- when you were referring to 13:49:59 4 0. transparency, were you referring to the USDA being 13:50:03 5 transparent with the industry? 13:50:07 6 13:50:11 7 Α. Yes, I believe so. 13:50:18 8 I would ask now that we display DTX 515 up on the Q. 13:50:24 9 screen, specifically page 26. And Dr. Fecso, while that's 13:50:3010 being put up on the screen, I would like to ask you about historical sugar prices. Do you recall a time when 13:50:3311 13:50:3712 Imperial's Port Wentworth refinery was closed for an 13:50:4113 extended period of time? It closed February 8, 2008, after the explosion that 13:50:4214 Α. 13:50:4915 day. 13:50:4916 And so what, if anything, happened to domestic sugar Q. 13:50:5317 prices after this explosion? As you can see, from that chart, prices skyrocketed. 13:50:5518 Α. 13:51:0219 And Dr. Fecso, did the USDA take any actions to Q. 13:51:020 increase the supply of sugar available in the United States 13:51:0921 as prices were going up as shown here on the chart? We took some actions, we didn't take any actions in 13:51:1322 Α. 13:51:1823 2009 and that escalated prices even further and we tried to 13:51:2524 correct in 2010. During this period of time, it appears that the 13:51:2625 0.

13:51:29 1 prices remained elevated. Is that your recollection? 13:51:33 2 Yes, they were two, three times the support price. Α. 13:51:40 3 Eventually prices came back down as shown on this Ο. chart; is that right? 13:51:45 4 Yes, when prices are high for a sustained period, it 13:51:46 5 gets attention, and there is a supply response and that's 13:51:50 6 13:51:54 7 exactly what we see, people planted more acres in Mexico and 13:51:59 8 the domestic. 13:52:00 9 Dr. Fecso, you mentioned during this time when prices 13:52:0310 were coming down, Mexico was importing large amounts of 13:52:0711 sugar, is that right? 13:52:0712 Α. Yes. 13:52:0813 What Mexico was importing --Q. 13:52:1014 THE COURT: Mexico is importing or exporting 13:52:1315 into the U.S. 13:52:1516 MR. THORNBURGH: Importing Your Honor. 13:52:147 THE COURT: Mexico is importing into Mexico. 13:52:2018 MR. THORNBURGH: United States is importing 13:52:2219 sugar in from Mexico to the United States. 13:52:2420 During the time period during the Port Wentworth 13:52:2821 explosion there were any restrictions on the volume of sugar that could be imported in from Mexico? 13:52:3122 13:52:3323 No, it was operating under NAFTA which was fully 13:52:3724 implemented on January 1st, 2008, so they had unrestricted access to your market duty free. 13:52:4325

13:52:44 1 Q. Is the same framework in place today for sugar being 13:52:48 2 imported from Mexico? No, as a result of all the forfeitures that occurred 13:52:50 3 Α. in 2013 there was the creation of the suspension agreement 13:52:52 4 that now managers trade between the U.S. and Mexico. 13:52:57 5 13:53:01 6 How if at all does that impact the volume of sugar Q. 13:53:04 7 that can be imported into the United States from Mexico? 13:53:07 8 Α. It is restricted. Dr. Fesco, now I want to talk a little bit about 13:53:12 9 Q. 13:53:1610 current sugar prices if we could. This chart here has prices that go up into October 2021. So let me ask you 13:53:2111 13:53:2712 this. What is your understanding of the current refined 13:53:3013 sugar prices in the United States? 13:53:3214 Α. They're on the high side. 13:53:3415 Are they in line with what's shown here on Q. 13:53:3916 October 2021? 13:53:4117 Α. Yes. They should be. Yes. 13:53:4518 Q. And Dr. Fecso, it appears from the chart, but correct 13:53:4919 me if I'm wrong, that prices have been elevated for some period of time, is that right? 13:53:5320 13:53:5421 Α. Yeah, they started creeping up last summer, 2020, 13:53:5922 April. Q. 13:53:5923 Has the USDA taken any actions, Dr. Fecso in the last 12 months to increase the supply of sugar in the United 13:54:0424 States? 13:54:0725

13:54:07 1 Α. Yes, we have. 13:54:09 2 More than one action? Q. 13:54:11 3 Yes. We've reallocated TRQs, we have given Mexico Α. more, we have increased marketing allotments, things like 13:54:18 4 13:54:23 5 that. Dr. Fecso, what is the current forfeiture price range 13:54:24 6 Q. 13:54:29 7 for refined sugar under the USDA sugar program? For refined sugar it's about \$0.25 a pound. 13:54:32 8 Α. 13:54:36 9 0. So shown on the chart here, the current prices are above that? 13:54:3910 They're a good 10, 12, \$0.15 higher. 13:54:4011 Α. 13:54:4612 When was the last time that you can recall that Ο. domestic refined sugar prices were at forfeiture levels? 13:54:4913 13:54:5414 Well, there was a little period in 2016. But 2013 Α. certainly had forfeiture levels. 13:54:5915 13:55:0216 How often does that occur that prices come down to 13:55:0517 forfeiture levels, Dr. Fesco? 13:55:0818 Α. Well, not often but since we had the suspension agreement I don't forecast that ever happening as long as 13:55:1319 13:55:120 the agreement is in place. 13:55:1821 Q. Again, defendants counsel asked you a question about Tier II sugar, do you recall that? 13:55:2122 13:55:223 Α. Yes. 13:55:2324 Just to be clear, Dr. Fecso, when you refer to the Q. price of Tier II sugar, is that a specific constant price? 13:55:2725

13:55:32 1	A. No, it's based on the world price relative to the
13:55:35 2	domestic price.
13:55:37 3	\mathbb{Q} . So what goes into determining the price of Tier II
13:55:41 4	sugar?
13:55:41 5	A. It's the number 11 world price plus some
13:55:46 6	transportation and miscellaneous costs, 4, \$0.05, plus
13:55:53 7	15-and-a-half, \$0.16, high-duty.
13:56:05 8	MR. THORNBURGH: Dr. Fecso, I have no further
13:56:07 9	questions for you. Thank you very much.
13:56:1110	THE WITNESS: All right.
13:56:1511	MS. GIORDANO: May I proceed, Your Honor?
13:56:1512	REDIRECT EXAMINATION
13:56:1913	BY MS. GIORDANO:
13:56:1914	Q. Dr. Fecso, Mr. Thornburgh just asked you about
13:56:2315	actions that USDA had taken in the last 12 months to
13:56:2ർ6	increase the supply, do you recall those questions?
13:56:2817	A. Yes.
13:56:2918	Q. Based on your lengthy experience managing the Federal
13:56:3319	Sugar Program, if USDA had not taken all those actions in
13:56:320	the last 12 months, would prices of sugar be higher than
13:56:4021	they are today?
13:56:4022	A. Yes.
13:56:4123	MS. GIORDANO: Thank you. No further questions.
13:56:4224	THE COURT: I have a couple of questions. So I
13:56:4525	think I understood you to say that in your view a regional

13:56:48 1 analysis, we have heard a lot about national versus 13:56:51 2 regional. But in your view a regional analysis doesn't make complete sense because sugar flows and transport isn't 13:56:55 3 limited to regions, is that right? 13:56:59 4 13:57:02 5 THE WITNESS: Because sugar flows. 13:57:04 6 THE COURT: Sugar flows so what I think what you 13:57:07 7 were saying is that if the price gets high in one region, 13:57:10 8 sugar will flow in from another region to control that price, is that right. 13:57:14 9 13:57:1410 THE WITNESS: Yes, exactly. 13:57:1511 THE COURT: I think you testified that Imperial is a higher priced competitor, is that right. 13:57:1712 THE WITNESS: Yes, they have no source of raw 13:57:2013 13:57:2214 sugar domestically. 13:57:2415 THE COURT: So in your view one of the positives 13:57:2616 from the merger could be that they would then have access to 13:57:3017 US Sugar's raw sugar excess and that could reduce its cost, 13:57:3518 right? 13:57:3519 THE WITNESS: Yes, and also US Sugar would be 13:57:3820 writing letters to USDA asking for more imports. 13:57:4321 THE COURT: So you would have -- why is it 13:57:4522 better to have US Sugar asking for more imports rather than 13:57:4923 Imperial? 13:57:5024 THE WITNESS: Imperial tends to stand-alone when they're asking for increased access to the U.S. The other 13:57:525

13:57:59 1 cane refiners have their own domestic sources, so either --13:58:05 2 it's usually the users and Imperial that are writing letters 13:58:08 3 to us to increase import access. THE COURT: Now, do you have any understanding 13:58:11 4 of Imperial's market position over a period of time or not? 13:58:14 5 THE WITNESS: I -- as I mention I collect data 13:58:18 6 13:58:23 7 from beet and cane processors and cane refiners on a monthly basis, and I have history going back to 1996 by month of 13:58:27 8 13:58:32 9 their stocks, their melt rates, their production, their 13:58:3610 deliveries, their ending stocks. And I can look at this year's forecast based in compare it to the past and get a 13:58:4111 13:58:4712 good feel for the position they're in. THE COURT: Do you have any understanding as to 13:58:5013 13:58:5214 whether Imperial's position has been market position has been decreasing, increasing or staying the same over the 13:58:5415 13:58:5816 last number of years? 13:59:017 THE WITNESS: I guess I can answer that. asked me, right? It's yes, it's been declining. 13:59:0318 13:59:0719 THE COURT: Substantially? 13:59:0920 THE WITNESS: Well it depends on, you know, your definition of substantial. I can see every year it's 13:59:1221 declining more. 13:59:1722 13:59:2023 THE COURT: We have heard some testimony about market concentration in the Herfindahl Hirschman index, do 13:59:224 13:59:2825 you know what that is?

13:59:30 1	THE WITNESS: I don't personally. My cohort at
13:59:32 2	work has calculated it.
13:59:34 3	THE COURT: Happens do you know whether it's
13:59:37 4	been calculated for the sugar industry over any period of
13:59:41 5	time?
13:59:42 6	THE WITNESS: My cohort has calculated it.
13:59:44 7	THE COURT: But that's not something you know?
13:59:46 8	THE WITNESS: No.
13:59:46 9	THE COURT: And as I understood, is it your
13:59:5010	understanding and I understand this isn't necessarily the
13:59:5411	position of the USDA, but is it your understanding that if
13:59:5812	anticompetitive behavior resulted from the proposed merger
14:00:0213	that the USDA would be aware of it and have the ability to
14:00:0പ്4	address it?
14:00:0d4 14:00:0715	address it? THE WITNESS: We would be aware of it, but I
14:00:0715	THE WITNESS: We would be aware of it, but I
14:00:0715 14:00:0916	THE WITNESS: We would be aware of it, but I don't know what we can do to address it except use the tools
14:00:0715 14:00:0916 14:00:1417	THE WITNESS: We would be aware of it, but I don't know what we can do to address it except use the tools that we have. And I don't know if that would address
14:00:0715 14:00:0916 14:00:1417 14:00:1818	THE WITNESS: We would be aware of it, but I don't know what we can do to address it except use the tools that we have. And I don't know if that would address anticompetitive behavior.
14:00:0715 14:00:0916 14:00:1417 14:00:1818 14:00:1919	THE WITNESS: We would be aware of it, but I don't know what we can do to address it except use the tools that we have. And I don't know if that would address anticompetitive behavior. THE COURT: And if the anticompetitive behavior
14:00:0715 14:00:0916 14:00:1417 14:00:1818 14:00:1919 14:00:2220	THE WITNESS: We would be aware of it, but I don't know what we can do to address it except use the tools that we have. And I don't know if that would address anticompetitive behavior. THE COURT: And if the anticompetitive behavior were to result in higher prices, would the USDA be able to
14:00:0715 14:00:0916 14:00:1417 14:00:1818 14:00:1919 14:00:2721	THE WITNESS: We would be aware of it, but I don't know what we can do to address it except use the tools that we have. And I don't know if that would address anticompetitive behavior. THE COURT: And if the anticompetitive behavior were to result in higher prices, would the USDA be able to address that aspect?
14:00:0715 14:00:0916 14:00:1417 14:00:1818 14:00:1919 14:00:2220 14:00:2721 14:00:2822	THE WITNESS: We would be aware of it, but I don't know what we can do to address it except use the tools that we have. And I don't know if that would address anticompetitive behavior. THE COURT: And if the anticompetitive behavior were to result in higher prices, would the USDA be able to address that aspect? THE WITNESS: Yes.
14:00:0715 14:00:0916 14:00:1417 14:00:1818 14:00:1919 14:00:2220 14:00:2721 14:00:2822 14:00:2923	THE WITNESS: We would be aware of it, but I don't know what we can do to address it except use the tools that we have. And I don't know if that would address anticompetitive behavior. THE COURT: And if the anticompetitive behavior were to result in higher prices, would the USDA be able to address that aspect? THE WITNESS: Yes. THE COURT: All right. Any other questions?

14:00:36 1	THE COURT: All right. Thank you very much.
14:00:38 2	THE WITNESS: All right.
14:00:39 3	THE COURT: All right. What's next?
14:00:52 4	MR. BARBUR: Good afternoon, Your Honor. Peter
14:00:53 5	Barbur representing LDC and Imperial. And defendants call
14:01:00 6	Dr. Nicholas Hill.
14:01:11 7	COURT CLERK: Please raise your right hand.
14:01:15 8	Please state and spell your full name for the record.
14:01:32 9	THE WITNESS: Nicholas Hill. N-I-C-H-O-L-A-S,
14:01:3 d 0	H-I-L-L.
14:01:3811	NICHOLAS HILL, having been duly sworn, was
14:01:4212	examined and testified as follows:
14:01:4713	MR. BARBUR: Your Honor, may I proceed?
14:02:0314	THE COURT: Please.
14:02:0315	DIRECT EXAMINATION
14:02:0316	BY MR. BARBUR:
14:02:0417	Q. Dr. Hill, how are you employed?
14:02:0പ8	A. I'm a partner at the Bates White Consulting.
14:02:1019	Q. What is your educational background?
14:02:1220	A. I have a Ph.D. in economics from Johns Hopkins
14:02:121	University.
14:02:1722	Q. And what is your field of expertise?
14:02:123	A. Economics.
14:02:2124	Q. What did you do after you received your Ph.D.?
14:02:225	A. So I worked for seven years at the U.S. Department of

14:02:30 1	Justice in their Antitrust Division, then I worked for two
14:02:34 2	years at the Federal Trade Commission which is the other
14:02:38 3	major U.S. antitrust agency, also as a staff economist. And
14:02:42 4	then I rejoined the DOJ as a supervising economist for three
14:02:47 5	years.
14:02:47 6	Q. Did you receive any awards while you were at the DOJ?
14:02:50 7	A. I did.
14:02:50 8	Q. Would you describe that?
14:02:51 9	A. I received an Attorney Generals Distinguished Service
14:02:5510	award for my work on the Aetna/Humana merger.
14:02:5711	Q. What sort of consulting work have you done since you
14:03:0012	joined Bates White?
14:03:0213	A. So I have largely worked on merger cases in a variety
14:03:0514	of industries.
14:03:0515	Q. Over the course of your government service and your
14:03:0916	time at Bates White, approximately how many mergers have you
14:03:1417	worked on?
14:03:1418	A. It's more than a hundred.
14:03:1719	Q. Have you been recognized by in court as an expert
14:03:2120	on economic issues?
14:03:2321	A. I have.
14:03:2422	Q. Could you describe them?
14:03:2523	A. Sure. So Your Honor, I have testified three times.
14:03:2824	The first time was successfully on behalf of the FTC and its
14:03:3225	attempt to block the merger of Tronox and Cristal. Then I

14:03:36 1	testified successfully on behalf of the defense in the FTC
14:03:41 2	attempt to block the merger of Evonik-PeroxyChem and then I
14:03:43 3	testified on behalf of FTC successfully in its attempt to
14:03:48 4	block the merger, they changed their names, I think it was
14:03:52 5	Peabody Energy and Arch Resources.
14:03:54 6	Q. Have you been following the trial?
14:03:56 7	A. I have.
14:03:56 8	Q. Did you see Dr. Rothman's testimony?
14:03:59 9	A. I did.
14:04:0110	MR. BARBUR: Your Honor, we offer Dr. Hill as an
14:04:0311	expert in the field of economics.
14:04:0612	THE COURT: Any objection?
14:04:0913	MR. STRONG: No objection. Your Honor.
14:04:1014	THE COURT: He's accepted.
14:04:1015	BY MR. BARBUR:
14:04:1216	Q. Dr. Hill, did you prepare demonstrative exhibits to
14:04:1417	use with your testimony today?
14:04:1618	A. I have.
14:04:1719	\mathbb{Q} . Can we display that, we marked it as DTX 008 for
14:04:2320	identification. What was your assignment in this case?
14:04:2721	A. My assignment was to evaluate the likely effect of
14:04:3122	the transaction on competition and also to evaluate
14:04:3523	Dr. Rothman's reports.
14:04:3624	\mathbb{Q} . Let's turn to the next slide. Does this provide an
14:04:4225	overview of your testimony today?

Yes, it does. 14:04:44 1 Α. 14:04:46 2 So let's start with the approach to evaluating a Q. 14:04:51 3 merger. What kind of evidence do you look at in assessing 14:04:54 4 whether a merger is likely to result in anticompetitive 14:04:58 5 effects? 14:04:59 6 So when evaluating the effect of the merger, I look 14:05:02 7 at the qualitative evidence the quantitative evidence and 14:05:06 8 I'll also do an economic analysis of the data. 14:05:09 9 Is this simply a matter of applying technical or 14:05:1210 mechanical tests? No. Your Honor, each industry has a very different, 14:05:1311 Α. 14:05:1812 attempt at different competitive rhythms, so a lot of the 14:05:2213 process is learning about how the industry works and figuring out which data you can use to successfully analyze 14:05:2414 14:05:2815 competition. 14:05:2916 What tools do you use to assess whether a merger is 14:05:3217 likely to result in anticompetitive effects? 14:05:3418 Α. So again, I evaluate usually the quantitative and 14:05:3819 qualitative evidence and then I use some sort of economic 14:05:4320 models to try to understand how competition works, but I 14:05:421 will usually also look at simpler quantitative evidence as 14:05:5022 well, to try to get a picture. 14:05:5123 Are you familiar with the DOJ and FTC Horizontal 14:05:5724 Merger Guidelines? Α. 14:05:5725 The 2010 quidelines?

14:05:58 1 Q. Yes. And have you used those before? 14:06:00 2 Α. I have. 14:06:01 3 Did you use them in this case? 0. 14:06:03 4 I have, yes. Α. 14:06:03 5 In your view what is the -- a proper role of the Q. horizontal merger guidelines? 14:06:09 6 14:06:10 7 Α. The horizontal merger guidelines lay out a framework for evaluating a merger and then the job of the person 14:06:13 8 14:06:16 9 evaluating the mergers is to take the evidence and fit into 14:06:2010 that framework to analyze the likely effect of the 14:06:2211 transaction. 14:06:2412 Can you apply the horizontal merger guidelines 0. 14:06:2713 mechanically? 14:06:2814 As I said, each industry has its own rhythms, so there is a process of fitting the analysis into the 14:06:3315 14:06:3616 quidelines, and the quidelines aren't specific about many 14:06:4017 things, so it's more of a framework and then you're performing the best analysis you can, given the limitations 14:06:4318 14:06:4519 of data and other things. 14:06:4720 And how do you think about the role of market 14:06:4921 definition in assessing the possible effects of a merger? The way I think about it is, Your Honor, the economy 14:06:5322 14:06:523 has a lot of different products, so market definition is the process of identifying the products of interest where 14:07:0024 competition may be affected and also identifying where 14:07:0325

14:07:06 1 customers might turn to purchase those products. 14:07:08 2 What are the dimensions of the market? 14:07:10 3 Yeah, so the first dimension is usually about the Α. product market definition so that's what are the products of 14:07:14 4 interest and then there is a geographic dimension, so where 14:07:17 5 do customers look to purchase the product. 14:07:20 6 14:07:22 7 Q. I think the Court has heard testimony about unilateral effects. What are unilateral effects? 14:07:24 8 14:07:27 9 I think of unilateral effects of whether just 14:07:3010 removing the head-to-head competition between the merging firms would by itself, lead to a substantial lessening in 14:07:3311 14:07:3812 competition. 14:07:3813 What are coordinated effects? 14:07:4014 Α. I think of coordinated effects, if a transaction makes it more likely that the firms will agree to compete 14:07:4215 14:07:4616 less aggressively as a result of the transaction, that would 14:07:4917 be a coordinated effect. You mentioned models. In your view what role should 14:07:5018 0. 14:07:5419 models play in assessing the effects of a merger? 14:07:520 So for kind of an important role, we use models to Α. 14:08:0221 try to estimate the effects of the transaction. Personally, I tend to look holistically, again, at the quantitative 14:08:0422 14:08:0823 evidence, the qualitative evidence, modeling, and try to bring it altogether and see what the actual picture. 14:08:1124

Do competitive effect models for mergers typically

14:08:1425

Ο.

14:08:18 1 predict some price increases? 14:08:20 2 Yes, many competitive effects models don't build in 14:08:20 3 mitigating factors like entry or expansion or efficiencies, so many will just as a default matter predict price 14:08:26 4 increase, so if you're not controlling for the mitigating 14:08:32 5 14:08:35 6 factors of the model it predicts mechanically a price 14:08:38 7 effect. 14:08:40 8 With respect to this merger, what was your overall 14:08:43 9 conclusion? 14:08:4410 I think the merger is unlikely to substantially Α. 14:08:4711 reduce competition. 14:08:5012 Is your overall conclusion regarding the effects of 0. 14:08:5313 the merger supported by other market participants? 14:08:5614 Α. Yes, it is. There has been testimony from, among others, Dr. Fecso who was just here, Michigan Sugars, 14:08:5915 representative of Michigan Sugar, representative of Domino, 14:09:0516 14:09:0817 possibly ASR, they have also testified that they don't think the transaction is likely to reduce competition. 14:09:1218 14:09:1519 What is your evaluation of Dr. Rothman's analysis of Q. 14:09:1820 the merger? 14:09:1921 Α. I think his analysis is flawed. And notwithstanding those flaws, how do Dr. Rothman's 14:09:2122 Q. 14:09:2623 ultimate conclusions compare to yours? So we disagree on what we think is the proper 14:09:2824 Yes. Α.

modeling effects, but I think both of our modeling when put

14:09:325

14:09:36 1	into proper context predicts no significant price effects.
14:09:39 2	\mathbb{Q} . How does Dr. Rothman define the relevant market, the
14:09:43 3	relevant product market, we'll start there?
14:09:45 4	A. Dr. Rothman defines the relevant product market as
14:09:49 5	the production and sale of refined sugar.
14:09:51 6	Q. Do you agree with that definition?
14:09:53 7	A. I do not.
14:09:53 8	Q. Why not?
14:09:54 9	A. Market definition is about demand, what are customers
14:09:5910	looking for. And what I have seen of the evidence,
14:10:0211	customers are not overly concerned about whether the sugar
14:10:0512	they're purchasing has been produced by the entity itself,
14:10:0913	they're purchasing from a number of different potential
14:10:1314	suppliers.
14:10:1315	Q. How does Dr. Rothman treat US Sugar?
14:10:1516	A. Dr. Rothman treats US Sugar as a and United Sugar
14:10:2017	and all the other incentives of United Sugar as a single
14:10:2318	entity with perfectly aligned members.
14:10:2619	Q. Do you agree with that?
14:10:2&0	A. I do not.
14:10:2921	Q. And does Dr. Rothman present any analysis to support
14:10:322	his conclusion with respect to the role of United?
14:10:3723	A. He does not.
14:10:3824	Q. Does Dr. Rothman include distributors in his market?
14:10:4325	A. No, he excludes distributors.

14:10:46 1 Q. And you agree with that? 14:10:47 2 Α. I do not. Let's turn to geographic market. What steps do you 14:10:49 3 0. take to define a geographic market? 14:10:52 4 So, Your Honor, here I usually take two distinctive 14:10:54 5 14:10:59 6 steps. The first step is try to identify what I will call a 14:11:03 7 candidate market, what are the products and geographic area 14:11:06 8 in which customers are looking to buy the product. And then 14:11:08 9 I'll try to test that market using the available evidence to 14:11:1210 see if it makes sense as a relevant market. And what factors do you consider when evaluating 14:11:1511 Q. 14:11:1912 whether a candidate market is a proper geographic market? 14:11:2213 So typically I'll look at a range of things. So I'll 14:11:2614 look at whether the -- if you're defining the geographic 14:11:3015 market look at is there differential pricing in this market, 14:11:3316 is there past evidence that prices have differed in this 14:11:3617 region or area compared to the rest of the country. I'll look to see if there has been any natural experiments where 14:11:3918 14:11:4319 supply has changed in one area and see how that affected prices in the region of interest. And, you know, then I'll 14:11:420 14:11:5121 typically also perform a hypothetical monopolist test. 14:11:5422 Do you look at real world evidence and industry Q. 14:11:5923 issues? 14:11:5924 Yeah. If you -- so in some industries you will see Α.

recognition inside the industry that a particular geographic

14:12:0325

14:12:07 1 area is thought of as a distinct area that has its own 14:12:11 2 dynamics compared to other areas. 14:12:13 3 Overall, what is your conclusion with respect to how Ο. Dr. Rothman defines his geographic market? 14:12:16 4 14:12:18 5 Α. I think his geographic markets are overly broad, 14:12:21 6 narrow, sorry. 14:12:23 7 Q. Thank you. 14:12:24 8 And did Dr. Rothman begin with an analysis of 14:12:27 9 real world evidence to identify candidate markets? 14:12:3010 No, I believe he testified that he took the Α. 14:12:3311 geographic markets that were proposed by the United States. 14:12:3612 And do you agree with the way that Dr. Rothman Ο. 14:12:3913 applied his hypothetical monopolist test? 14:12:4114 Α. I do not. I think his hypothetical monopolist test 14:12:4315 is flawed. 14:12:4416 Q. We'll come back to that later. 14:12:4717 Did you identify any alternative markets that you believe are more appropriate than Dr. Rothman's markets? 14:12:5018 14:12:5319 Α. I did. 14:12:5420 Q. What were those? So I identified two markets, Your Honor. One is what 14:12:5521 Α. 14:12:5822 I call the competitive overlap market which is the area in 14:13:0123 which today United and Imperial compete. And then I looked 14:13:024 at the entire United States. And do you find any concentration concerns in your 14:13:0925

14:13:13 1 proposed markets? 14:13:14 2 Α. No. You talked about a national market. In order to 14:13:16 3 0. 14:13:20 4 define a market consisting of the entire United States, do 14:13:26 5 you need to assume, for example, that a supplier in 14:13:30 6 California is as competitive in Florida as a Florida 14:13:34 7 supplier would be? 14:13:35 8 No. And so a simple example I would give to that, 14:13:39 9 Your Honor, if you imagine there is a product and there is 14:13:4110 three producers of it. There is one in California, there is one in Delaware, and there is one in the center of the 14:13:4411 14:13:4712 country. The two producers on the coast may not directly 14:13:5113 compete with each other frequently, but the producer in the 14:13:5414 center, if they see a price change on the either coast can 14:13:5915 redirect production in that direction, so prices may be 14:14:0216 equalized nationally, even though there is not direct 14:14:0517 head-to-head competition between the firms on the coast. 14:14:0818 Turning to unilateral effects, do you agree with Q. 14:14:1219 Dr. Rothman's opinion concerning unilateral effects? 14:14:1520 Α. I do not. 14:14:1521 Q. Did you identify any factors that Dr. Rothman left 14:14:1922 out of his analysis of unilateral effects? 14:14:223 Α. I did.

14:14:2224

14:14:2325

Q.

Α.

What were those?

So I think Dr. Rothman in his analysis didn't take

14:14:27 1	account properly of entry and expansion, the possibility
14:14:31 2	that firms rivals would respond to higher prices to try to
14:14:35 3	increase their supply. I believe he didn't take account of
14:14:38 4	efficiencies properly, the possibility that the merged firm
14:14:42 5	will compete more aggressively post merger. He didn't take
14:14:46 6	into account the role of the USDA. He didn't include
14:14:50 7	distributors in his analysis. And he also assumed, Your
14:14:53 8	Honor, that United and U.S. Sugar are a single unified
14:14:57 9	entity.
14:14:5810	Q. What models did Dr. Rothman use?
14:15:0011	A. Dr. Rothman used two models.
14:15:0212	Q. And what conclusions did you reach about
14:15:0613	Dr. Rothman's models?
14:15:0714	A. I think that his models are flawed, but as I said
14:15:1015	earlier, I believe if you look past the flaws they still
14:15:1416	predict small price increases.
14:15:1817	Q. Did you construct any models of your own?
14:15:2118	A. I did.
14:15:2119	Q. What are they?
14:15:220	A. I constructed two models, one a bidding model and the
14:15:2@1	other was a relative cost model.
14:15:2&2	Q. Overall, how are the result of your models compared
14:15:3123	to the results from Dr. Rothman's models?
14:15:3324	A. My models predict very minimal price increases, but
14:15:3925	compared to Dr. Rothman's, his models also predict very

14:15:43 1 small price increases. Even though we differed 14:15:46 2 significantly on how best to model it, I think we ended up 14:15:50 3 in relatively the same place. Do you agree with Dr. Rothman's conclusions with 14:15:51 4 0. respect to coordinated effects? 14:15:54 5 14:15:56 6 I do not. Α. 14:15:56 7 Q. Did you examine whether factors about the sugar industry made coordination likely or unlikely? 14:15:59 8 14:16:02 9 Α. I did. 14:16:0210 And what did you conclude? Q. 14:16:0411 Α. So, I think the sugar industry has a number of -- or sorry, the sugar industry has a number of characteristics 14:16:0912 14:16:1113 that make coordinated behavior unlikely. First, there are 14:16:1614 large sophisticated buyers. 14:16:1815 Second, the large sugar buyers, producers, 14:16:1916 allocate supply using procurement auctions which tends to 14:16:2317 sharpen competition. And there are a number of maverick firms in the industry, firms that are looking to expand. 14:16:2818 14:16:3219 And here unlike in some industries there is no past history 14:16:3520 of coordination. 14:16:3721 Q. Dr. Rothman points to a number of e-mails that he says supports his conclusion with respect to coordinated 14:16:4022 14:16:4523 effects. Did you review those e-mails? 14:16:4724 I did. Α.

And do you agree with Dr. Rothman's assessment of

14:16:4825

14:16:51 1 those e-mails? 14:16:52 2 Α. I do not. 14:16:53 3 Do those e-mails suggest any actual coordination or Ο. 14:16:58 4 agreement? 14:16:58 5 Α. They do not. 14:17:00 6 Do the e-mails suggest any mechanism for reaching any 14:17:04 7 tacit or explicit agreement to raise prices? 14:17:08 8 Α. They do not. 14:17:09 9 Before we walk through your opinions in more detail, 14:17:1410 can you describe for the Court some of the key facts you think need to be considered in order to assess competitive 14:17:1711 14:17:2012 effects in the sugar industry? I think it's a couple of facts that I don't 14:17:2213 think will surprise Your Honor. I think sugar travels long 14:17:2414 14:17:2815 distances. I think that Imperial is a high cost firm. 14:17:3216 think that there are a number of maverick firms in this 14:17:3617 industry looking to expand. And I think that there are low barriers to entry and expansion. 14:17:3918 14:17:4219 Just so we are clear, what is a maverick firm? Q. 14:17:4920 So, a maverick firm is a firm that has an incentive 14:17:5021 to compete aggressively, even if that may lower the price in 14:17:5322 the marketplace. 14:17:5423 Why do you say Imperial is not a maverick? 0. So, firms that have a very high cost are not in a 14:17:5724 Α. position to be a maverick. It's very difficult for them to 14:17:5925

14:18:02 1 compete very aggressively. In some ways these high cost 14:18:05 2 firms are anti-mavericks, a firm that goes along to get 14:18:10 3 along. 14:18:10 4 I would like to turn to some more detail about your opinions beginning with product market definition. 14:18:14 5 14:18:18 6 mentioned that Dr. Rothman wrongly treats United as the 14:18:22 7 relevant entity. Can you explain that further? 14:18:27 8 Sure. So in Dr. Rothman's analysis he treats US 14:18:32 9 Sugar as the purchaser, is attempting to purchase Imperial, 14:18:3610 but in his analysis he treats United as the decision maker and he argues that the members of United have such aligned 14:18:4011 14:18:4312 incentives that it is as though United is the one purchasing 14:18:4813 Imperial. 14:18:4914 And the purpose of this chart, Your Honor, and 14:18:5115 I'll walk through it, is to try to show that the members of 14:18:5416 United do not necessarily have aligned incentives. 14:18:5917 may be times when they do, and there may be times when they 14:19:0218 don't. So the figure here is broken up into two blocks. 14:19:0519 the left, we have an initial setting. And here we have --14:19:020 this is just a rough example, we see the one dollar per hundredweight market price is illustrative. 14:19:1521 14:19:1722 But, in this initial period here, US Sugar, 14:19:2023 American Crystal, Minn Dak and Wyoming, four members of 14:19:2324 United are all producing 100 hundredweights. And United

shares revenue on a pro rata basis, each of them because

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14:19:31 1 they put in 25 percent of the production, gets 25 percent of the revenues. You can see the price is \$1. Each of them is 14:19:35 2 producing 100, so it's sold for \$100, each of them is 14:19:39 3 14:19:44 4 getting \$100 in revenue. In the block that's marked final this is when US 14:19:47 5 14:19:52 6 Sugar has decided unilaterally to increase its output. And 14:19:56 7 here it's gone from producing 100 to producing 200. You 14:20:00 8 heard testimony from Dr. Fecso that when you see an increase 14:20:05 9 in quantity, the market price is going to go down. 14:20:0910 have the market price falling from \$1 to \$0.75 per 14:20:1411 hundredweight. Now this increase by US Sugar increases its 14:20:1812 share of the pool, and its member revenue increases from 100 14:20:213 to 150. So, US Sugar in this example is increasing its 14:20:2814 revenue through its unilateral decision to expand output. But, American Crystal, Minn Dak and Wyoming, the other 14:20:3215 14:20:3616 members don't see any increase in output and they see the 14:20:3917 market price fall. So their revenue decreases. So, the 14:20:4318 example here is showing that there are situations, such as 14:20:4619 this one, where US Sugar may have an incentive to expand, 14:20:5120 but that may not be in the best interest of the other 14:20:5421 members of United. So do the four members of United have aligned 14:20:5522 Ο. 14:21:0023 incentives with respect to pricing? 14:21:0224 No, not necessarily. Each one is making -- so Your Α.

Honor, the structure of United is that the individual

14:21:025

This is just an example where a change in output in

14:21:09 1 members make their own decisions about production and then 14:21:12 2 United sells the sugar that they produce. And so the decisions that each individually makes may or may not be 14:21:16 3 beneficial to the other members. 14:21:20 4 14:21:21 5 Q. Did you analyze any real world evidence concerning 14:21:25 6 this? 14:21:25 7 Α. Yes. If you could please advance one more slide. 14:21:28 8 So this, Your Honor, is this chart with a 14:21:32 9 similar structure here, but we're using crop year 2019 on 14:21:3610 the left and crop year 2020 on the right. And as you heard 14:21:4011 testimony that in the crop year 2020 there was a beet freeze 14:21:4512 which severely damaged the harvest of beets in upper 14:21:5013 Indeed if you look at the chart and you compare 14:21:5314 reduction, the quantity columns for American Crystal in 2019 14:21:5715 and 2020, you'll see it fell from roughly 36 million 14:22:0216 hundredweight to about 23 million hundredweight. And Minn 14:22:0617 Dak and Wyoming also see falls in their production. Sugar on the other hand, which was not affected by the beet 14:22:1118 14:22:1419 freeze, saw a modest increase in its quantity produced. 14:22:1820 effect of the beet freeze where there was an involuntary 14:22:2321 reduction of output, by the beet members of United meant 14:22:2522 that their share of the pool fell significantly. 14:22:2923 of the pool for US Sugar increased significantly and member 14:22:3324 revenues rose for US Sugar and fell for the other members of

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United.

14:22:40 1 this case involuntary, can have different impacts on the 14:22:44 2 different members of United. It's just showing that their 14:22:47 3 members do not necessarily have perfectly aligned incentives. 14:22:50 4 How does Dr. Rothman's treatment of United affect his 14:22:51 5 14:22:55 6 calculation of concentration and market share? 14:22:58 7 Α. So I think it overstates it because he's assuming that United is a single United decision maker, but in fact 14:23:01 8 14:23:05 9 the members of US Sugar -- sorry, the members of United may 14:23:0910 have different incentives. 14:23:1011 Q. Are you saying that United is not at all relevant in this case? 14:23:1312 14:23:1413 No. So, United's role is to sell all the sugar 14:23:1814 produced by the members. And I think one way you can think about it is the most conservative assumption would be to say 14:23:2315 14:23:2716 that each member of United is an independent entity making 14:23:3117 its own decisions on everything, including pricing, and the 14:23:3418 most aggressive would be to say, all the members of United 14:23:3919 Sugar are perfectly aligned with each other in the same 14:23:4320 instance. Dr. Rothman takes that most aggressive position 14:23:421 in his analysis, I think somewhere in between is more realistic. 14:23:4922 14:23:5023 Let's turn to distributors. How does Dr. Rothman treat distributors in his market? 14:23:5324

Dr. Rothman treats them as customers.

14:23:5425

Α.

14:23:57 1 Q. Do you agree with that treatment? 14:24:01 2 Α. I do not. 14:24:02 3 Why not? 0. 14:24:03 4 Distributors make sales to customers. And we have Α. 14:24:08 5 heard testimony of them competing with other suppliers to 14:24:12 6 win customers and if you -- for example, if you look in the 14:24:15 7 upper right-hand corner here, Your Honor, that's the Indiana 14:24:19 8 Sugar logo. They sold on the order of about 14:24:24 9 in Dr. Rothman's southeast region where the 14:24:2810 total sales are 50 million, so they were about 14:24:3011 of all sales. They compete, they sell to customers. 14:24:3412 Dr. Rothman says that distributors should be excluded 14:24:3713 from the market because they are dependent on refiners. 14:24:4114 you agree with that? 14:24:4215 I do not. Α. 14:24:4316 Let's turn to the next slide. What does this show? 14:24:4817 So this chart, Your Honor, is looking at production by distributors -- sorry, the sources of supply for 14:24:5118 14:24:5519 distributors for 2020 and 2021. And we just presented both years, just to show that it looks very similar across the 14:25:0020 14:25:0421 years. And what it is showing if you look at the 2021 bar 14:25:0922 is the gray area it's imports. And then that green area is 14:25:1423 The red area is Imperial. The blue area is Domino. 14:25:1924 And what is showing is the distributors buy from a variety 14:25:225 of sources. And this gives them independence and the

14:25:28 1 ability to compete with other suppliers. 14:25:30 2 And how does Dr. Rothman's treatment of the 14:25:33 3 distributors affect his market share and market concentration calculation? 14:25:36 4 Again, it will tend to over share -- over -- it will 14:25:37 5 14:25:41 6 tend to overstate his market shares for the parties and it 14:25:44 7 will tend to overstate his concentration, because he's 14:25:48 8 assuming that the distributors are not independent. 14:25:50 9 Are you saying that the distributors compete to serve 14:25:5510 every customer and sale? 14:25:5511 Α. No. So again, distributors compete to serve some 14:25:5812 customers, they may not compete to serve others. 14:26:0213 completely eliminating them from every market is aggressive. 14:26:0514 It's similar to the position that US Sugar -- the members of 14:26:1015 United are all perfectly aligned in their incentives. 14:26:1416 Have you reached a conclusion about the proper 14:26:1717 relevant product market in this case? 14:26:1918 Α. I have. 14:26:1919 What is your conclusion? Q. 14:26:220 Α. I think the proper product market here is the sale of 14:26:2521 refined sugar to wholesale customers. 14:26:2922 If the Court were to conclude that Dr. Rothman's Ο. 14:26:3423 product market definition is correct, how would that affect 14:26:3724 your analysis?

It wouldn't affect it. To be conservative, I

Α.

14:26:3725

14:26:40 1 followed Dr. Rothman in my treatment of both distributors 14:26:43 2 and in my treatment of US Sugar and United, and even with those aggressive assumptions, my analysis shows there is 14:26:48 3 unlikely to be substantial reduction in competition. 14:26:52 4 14:26:55 5 Let's turn to geographic market. In your view what Q. 14:26:59 6 is the proper methodology for defining a geographic market? 14:27:02 7 Α. So I think the first step for defining geographic market is to take a holistic look across an array of 14:27:06 8 14:27:12 9 evidence of where the customers turn to for supply. 14:27:1610 What is a price discrimination market? Q. 14:27:1811 So, Your Honor, there are two types of markets that 14:27:2112 are often defined, the first is defined around the location 14:27:2313 of producers. The second is defining the location around 14:27:2614 the location of customers. And that's also referred to as 14:27:3015 price discrimination market. So the idea is that prices may 14:27:3616 differentially change for a group of customers in a 14:27:3817 particular geographic market. 14:27:4118 When is it appropriate to define a price 14:27:4319 discrimination market? 14:27:4520 So, usually you want to be sure you can raise the 14:27:4921 price differentially for this geographic area and not raise 14:27:5322 it in other areas. That typically requires at least two 14:27:5@3 things to be true. So one is you have to be able to 14:27:5924 identify the location for the customer. If you don't know where they are coming from it is hard to price discriminate 14:28:0325

14:28:04 1 against them. And then second, you want to be sure that 14:28:07 2 there won't be arbitrage or opportunistic buying particular to the buyer. So, if I raise prices in one part of the 14:28:11 3 country, the customers can buy outside of that region and 14:28:14 4 move it into the region to defeat the higher prices, it's 14:28:16 5 14:28:20 6 not going to be possible to price discriminate against them. 14:28:27 7 Q. What is the impact of having too narrow of a market? If you have too narrow of a market, your market 14:28:32 8 Α. 14:28:35 9 shares and concentrations will not be reliable. 14:28:3810 And did you analyze Dr. Rothman's geographic market Q. definitions in this case? 14:28:4211 14:28:4312 Α. I did. 14:28:4413 And what did you conclude? Ο. 14:28:4614 Α. So I think they're flawed. I would start with, I think the markets he defined are arbitrary, so rather than 14:28:5015 14:28:5416 starting with a holistic view and identifying the reasonable 14:28:5817 geographic area, he accepted the markets that were proposed by the United States. I think he didn't test those markets 14:29:0118 14:29:0419 properly. I think as I mentioned earlier, if you're 14:29:0720 alleging the prices are going to rise differentially in a 14:29:1121 particular area, typically you want to show some specific evidence such as prices have risen in that area before 14:29:1522 14:29:1923 without rising elsewhere. And one way you can do that is 14:29:224 some sort of natural experiment, if there is change in supply, did I see prices that that region rise but not rise 14:29:2625

14:29:29 1 elsewhere. And then finally, you perform a hypothetical monopolist test, to test whether it's likely that this is a 14:29:33 2 properly defined market. 14:29:35 3 Do you think that Dr. Rothman properly applied the 14:29:37 4 Ο. hypothetical monopolist test? 14:29:41 5 14:29:41 6 I do not. Α. 14:29:43 7 Q. What geographic markets does Dr. Rothman identify? 14:29:49 8 I think if we advance one more slide you'll see a Α. 14:29:53 9 picture of his markets. I believe you have seen these 14:29:5510 before, Your Honor, but the dark green here is Dr. Rothman's, what I would call the Georgia plus market, 14:29:5911 14:30:012 Georgia and states that border it, and then anything in green, whether it's light green or dark green is what 14:30:0513 Dr. Rothman calls the southeast or the United States calls 14:30:0914 14:30:1315 the southeast market. 14:30:1516 Does Dr. Rothman define these as price discrimination 14:30:1917 markets? 14:30:2018 Α. He does. 14:30:2019 And do Dr. Rothman's markets meet the requirements of Q. 14:30:2520 a price discrimination market? 14:30:2821 Α. I don't believe that they do, no. I believe that the -- he has not properly accounted for the likelihood of 14:30:322 14:30:3723 arbitrage by customers inside these regions. 14:30:4024 You said that Dr. Rothman's geographic markets are Q. arbitrary. Can you provide an example of how that is so? 14:30:4525

Hill - direct 14:30:49 1 Α. Sure. If we advance one more slide. 14:30:53 2 So, Your Honor, this is a breakdown of Imperial's 2021 sales by state. And so let me give you a 14:30:56 3 guide first to the color coding. If you see a state in dark 14:31:00 4 blue, that means it's in Dr. Rothman's Georgia plus market. 14:31:04 5 14:31:07 6 If you see it in dark blue or light blue, it's in the southeast market. And if you see it in red, it's in neither 14:31:11 7 14:31:15 8 of those markets. And so what -- and I have sorted the 14:31:19 9 states here from left to right from largest to smallest, by 14:31:2210 Imperial's sales in 2021. And this picture, Your Honor, will look the same if you use other recent years. It won't 14:31:2611 14:31:312 be identical but essentially the same. You can see Texas which is the third largest state for Imperial has been 14:31:3613 14:31:3914 excluded. Indiana has been excluded. Pennsylvania has been 14:31:4315 excluded. But much smaller states like Alabama have been 14:31:4816 included. So, the selection of which of these states is in 14:31:5117 and out of the market seems arbitrary. Overall, what portion of Imperial's sales does 14:31:5318 Ο. 14:31:5619 Dr. Rothman exclude? 14:31:520 Α. So for the Georgia plus market about 47 percent of 14:32:0421 sales for Imperial in 2021 were outside the Georgia plus 14:32:0822 market. For the southeast the number is closer to about 14:32:1223 33 percent.

Q. And let's go to the next slide. You also prepared a slide on the Mid-Atlantic region. Do you want to describe

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14:32:1725

14:32:20 1 this?

A. Sure. Here, Your Honor, we're zooming in on some states in the Mid-Atlantic. You can see here green means that the state was included in Dr. Rothman's market and red means that it was excluded. And you can see that Virginia was included, and then Pennsylvania and New Jersey were both excluded. And then Maryland which is significantly smaller than either was included. So again the selection of states here seems arbitrary.

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- 14:32:5111
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- 14:33:1116
- 14:33:1317
- 14:33:1618
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- 14:33:4025

- Q. Why is the exclusion of Pennsylvania significant?
- A. So if you advance one more slide, please. So here,
 Your Honor, on the left you have -- we've tried to show
 market shares at the state level, we call them state shares.
 On the left we have Maryland and on the right we have
 Pennsylvania. Again, the parties here, United is -- United
 here is in green and Imperial is in red.

You can see that in Pennsylvania, which remember was a state in which there are significantly more sales for Imperial than in Maryland. United and Imperial also have significantly more market share. And yet this state, Pennsylvania, was excluded. And Maryland where United and Imperial have a smaller share and Imperial makes significantly less sales was excluded -- was included, sorry.

Q. Let's turn to the southwest, what portion of

14:33:42 1	Imperial's sales in the southwest does Dr. Rothman exclude?
14:33:46 2	A. He excludes the vast majority. So this slide has
14:33:50 3	similar structure to the two slides. If it's in red that
14:33:54 4	means the state was excluded and if it's in green, Your
14:33:57 5	Honor, it means it was included. And we can see on the far
14:34:00 6	right, Mississippi is in green despite Imperial having
14:34:05 7	negligible sales there and on the left section Texas which
14:34:10 8	is the third largest state has been excluded.
14:34:14 9	THE COURT: Tell me, where do these names come
14:34:1710	from? Do you define the southwest or did somebody else?
14:34:2111	THE WITNESS: This is from a document that
14:34:2312	Dr. Rothman cited in his initial report.
14:34:2513	THE COURT: That one with the country with all
14:34:2614	the different colors on it?
14:34:2815	THE WITNESS: It's a different one, but it's
14:34:3016	very close to that in his report. It's a document that
14:34:3217	breaks Imperial in sales regions. My understanding is
14:34:3618	Imperial itself doesn't use these sales regions, but the
14:34:3919	southwest was one of the defined regions in the document
14:34:4220	Dr. Rothman cited.
14:34:421	THE COURT: I don't think of Mississippi being
14:34:4622	in the southwest.
14:34:4723	THE WITNESS: No, I agree with you.
14:34:5024	MR. BARBUR:
14:34:5025	Q. Let's go to the next slide. What does this show,

Dr. Hill? 14:34:52 1 14:34:53 2 Sure. So this is another slide from Dr. Rothman's 14:34:56 3 report which he presented as evidence supporting his market definition. This is by McKeany-Flavell. You can see their 14:35:00 4 14:35:05 5 logo on the lower right-hand side there. This is what they 14:35:08 6 report to be Imperial primary marketing region in pink and 14:35:12 7 red and secondary marketing region in blue. Here, 14:35:15 8 Dr. Rothman's markets exclude some of the states that are in 14:35:20 9 these regions and include areas that are not in these 14:35:2410 regions. 14:35:2711 Q. You also mentioned arbitrage. What is arbitrage? 14:35:312 So arbitrage is opportunistic buying, taking Α. 14:35:3613 advantage in the context of a geographic markets, purchasing 14:35:3914 in an area where prices are low and moving it to an area 14:35:4415 where prices are higher. 14:35:4516 Why does arbitrage matter in a price discrimination 14:35:4917 market? So when you're defining a price discrimination 14:35:4918 Α. 14:35:5319 market, Your Honor, you want to believe that the prices can 14:35:5520 rise in that area for customers. One way that might be 14:35:5921 defeated is if customers would purchase at a low price 14:36:0322 outside the market and arrange transportation for themselves 14:36:0523 into the market. 14:36:024 Q. How does Dr. Rothman account for arbitrage in his

14:36:1025

analysis?

14:36:11 1 Α. He does not fully account for arbitrage in his 14:36:15 2 analysis. 14:36:15 3 Have you seen evidence that sugar flows and that Ο. arbitrage is possible? 14:36:19 4 There is extensive evidence that sugar is able to 14:36:20 5 14:36:25 6 travel long distances. I would give a couple of examples of 14:36:28 7 that, which you may already be familiar, Your Honor. One, I 14:36:32 8 think the Court has heard Savannah, Georgia sells 14:36:35 9 significant volumes in Texas which is on the order of a 14:36:3810 thousand miles away. Similarly, from the perspective of United, 14:36:4011 14:36:4212 United make sales in what I call Dr. Rothman's southeast 14:36:4713 region from the Red River Valley which is also a significant 14:36:5114 distance away. Finally, as Dr. Fecso testified, there are 14:36:5515 significant imports into the United States every year from 14:36:5816 countries outside of the United States. Sugar can move 14:37:0217 internally and sugar can also come in externally. 14:37:0418 Let's turn to the next slide. This is a United Sugar Ο. 14:37:0919 document that I think has been displayed before. What is it 14:37:1220 showing? 14:37:1221 Α. This is on the same theme, Your Honor. This is 14:37:1522 United documents, and it's showing the flows of industrial 14:37:1923 bulk sugar around the United States. And you can see the 14:37:2324 arrows are moving in all directions and it's showing sugar moving significant distances. 14:37:2725

14:37:29 1 Q. And is sugar flowing both into and out of 14:37:34 2 Dr. Rothman's proposed markets? 14:37:36 3 That's correct. There is an arrow flowing in from Α. Louisiana where there is a Domino facility and also a 14:37:39 4 Cargill facility, and then you see sugar flowing out in the 14:37:43 5 red arrow that's pointing up into the northeast. 14:37:47 6 14:37:50 7 Q. Is it relevant whether the proposed geographic market has distinct prices? 14:37:53 8 14:37:55 9 Α. It is. 14:37:5610 Why is that? Q. So distinct prices, Your Honor, give an indication 14:37:5811 Α. 14:38:012 that it is feasible to raise prices in a particular area. 14:38:0613 So when you're applying a geographic price discrimination 14:38:0914 market, the hypothesis is the price is going to rise there to those customers and not elsewhere. So, a past history of 14:38:1415 prices being significantly different across regions or areas 14:38:1816 14:38:2117 tells you yes, that looks like it happens in the ordinary 14:38:2518 course of the industry. 14:38:2719 What evidence have you seen with respect to whether Q. 14:38:3020 Dr. Rothman's proposed market have distinct prices? 14:38:3421 Α. So if we please advance one more slide. Here, Your Honor, we have prepared two charts and we're comparing the 14:38:3922 14:38:4223 first table here is comparing prices in Dr. Rothman's regions in 2021 to pricing in the bordering states. So any 14:38:424 state that borders that region. 14:38:5025

14:38:52 1	So if you look at the Georgia plus region, for
14:38:55 2	example, the first column shows you the average price for
14:39:00 3	hundredweight in that region in 2021, and then the next
14:39:03 4	column shows the average price in boarding states and then
14:39:07 5	the end shows the percentages.
14:39:09 6	What we see in the first table here is there is
14:39:11 7	no meaningful differences in prices between the states in
14:39:15 8	Dr. Rothman's regions and the states that border it. And
14:39:18 9	the second figure, the second table here is performing the
14:39:2210	same exercise but it's comparing the states in Dr. Rothman's
14:39:2511	regions to states outside of Dr. Rothman's regions. So we
14:39:2912	look at a broader comparison group of states. And again, we
14:39:3313	are not seeing significant indifferences.
14:39:3614	THE COURT: That is every other state in the
14:39:4015	country.
14:39:4016	THE WITNESS: That's right, Your Honor. I tried
14:39:4217	to do it two ways. You have the bordering states to try to
14:39:4518	look at the ones that are very close by and then say what
14:39:4919	about if you look at all the states.
14:39:5120	Q. Is it relevant whether prices equalize nationally?
14:39:5421	A. It is.
14:39:5522	Q. Why is that?
14:39:5@3	A. So this was the similar to the example I was talking
14:39:5924	about earlier, Your Honor, if you have evidence of price
I	

seeming to adjust on a national basis, it suggests that it

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14:40:06 1 is not going to be feasible to raise the price in a specific part of the country if prices are reorganizing themselves 14:40:10 2 14:40:15 3 nationally. 14:40:15 4 Are you aware of a natural experiment that can be used to test this? 14:40:18 5 14:40:19 6 Sure. If you could please advance one more slide. Α. 14:40:22 7 Here, Your Honor, we're looking at the beet 14:40:24 8 freeze which you heard a lot about at this point. It's 14:40:28 9 represented by the thick black line, vertical line. 14:40:3210 the date of the onset of the beet freeze. And these are United's refined sugar prices broken out by something called 14:40:3611 14:40:4112 the USDA regions. 14:40:4313 So what we're showing in the figure here, you 14:40:4614 can see the onset of the beet freeze and prices don't seem 14:40:5015 to change differentially in the blue line which is north 14:40:5516 central which is the area in which there was a significant 14:40:5717 reduction in output. If prices were highly regionalized and regions have very different pricing, you would expect to see 14:41:0218 14:41:0519 that when the supply fell substantially in the north central 14:41:1020 prices there would rise, because they lost that supply but they wouldn't rise elsewhere. Instead what we see is prices 14:41:1321 14:41:1722 across the country adjusting. 14:41:1923 And this chart refers to United. Did you look at

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Α.

other firms prices?

I did.

14:41:25 1 Q. What does that show? I also looked at prices for Cargill, for Imperial, 14:41:26 2 Α. and for ASR. And so for those firms, I saw a similar 14:41:29 3 pattern of prices. I looked at a combination of those four. 14:41:35 4 14:41:38 5 I saw prices nationally seemed to adjust nationally rather 14:41:43 6 than regionally. 14:41:43 7 Dr. Rothman criticizes your analysis of the beet 14:41:48 8 freeze. He says you did not show that the beet freeze had 14:41:51 9 any discernible affect on prices and you did not perform any 14:41:5610 statistical analysis to show such an affect. Do you agree? 14:41:5911 Α. No. So Your Honor, Dr. Rothman in his reply report 14:42:0312 made those criticisms, and after I read his reply report, I 14:42:0813 did a simple difference-in-difference regression which is a 14:42:1114 statistical technique to test whether prices did adjust 14:42:1515 nationally, and the results of the test were that they did. 14:42:2216 MR. STRONG: Your Honor, we have need to object 14:42:2417 that testimony. That's not in Dr. Hill's report and we learned about that for first time in his deposition. 14:42:2718 14:42:3019 THE COURT: You were able to ask him about it at 14:42:3220 his deposition? 14:42:3221 MR. STRONG: Yes, but we didn't get his backup 14:42:3622 data until later that afternoon. It's basically impossible 14:42:3823 to cross him on it. 14:42:4024 MR. BARBUR: Your Honor, we provided the backup data as soon as we could. We had just received 14:42:425

14:42:45 1 Dr. Rothman's reply report and then we had Dr. Hill's 14:42:50 2 deposition schedule. He did testify about it and they do 14:42:52 3 have the backup. THE COURT: Okay. I going to overrule the 14:42:55 4 objection because things are moving so fast and you did have 14:42:58 5 14:43:00 6 an opportunity to discuss that at his deposition. 14:43:00 7 BY MR. BARBUR: 14:43:04 8 Dr. Rothman also says that your data show notable Q. 14:43:08 9 differences in prices across regions. Do you agree? 14:43:1210 I do not. Α. 14:43:1311 Q. Why not? 14:43:1412 So the, Dr. Rothman presented in his reply reports a Α. graph of, I think he showed United's prices by region. But 14:43:1813 14:43:2314 two points that I think are important there. The first is 14:43:2715 he does those by USDA region. He doesn't anywhere in his 14:43:3116 reply report argue that there is evidence that prices vary 14:43:3417 in his regions to or proposed markets vis-a-vis the rest of the country. 14:43:3718 14:43:3819 And then second, in his reply report he simply 14:43:4220 produces a graph of United's prices. He doesn't look at 14:43:4621 prices in a region as a whole. I think it's important as I 14:43:5022 did with his region to look at aggregate pricing in the 14:43:5323 region as a whole. 14:43:5424 Have you ever testified in a case where you did Q.

observe distinct pricing across regions?

14:43:525

I testified in the FTC versus Tronox and Cristal 14:44:01 1 Α. 14:44:06 2 matter, Your Honor, I defined a price discrimination market of North America. This was a case involving titanium 14:44:10 3 chloride dioxide, which is a kind of chemical. So there I 14:44:14 4 defined North America as a relevant price discrimination 14:44:19 5 14:44:21 6 market. There, we had a number of factors that are not 14:44:26 7 present here. 14:44:26 8 First, in the titanium dioxide industry there is broad recognition above North America as a separate region 14:44:31 9 14:44:3410 of interest. 14:44:3511 Second, prices in North America vary 14:44:3912 significantly compared to other regions and over time it was 14:44:4313 as high as 20 percent above other regions. 14:44:4614 Third, there we had a natural experiment, 14:44:4915 unfortunately a plant in Europe caught fire and had to shut 14:44:5316 down, so there was a significant reduction in production in 14:44:5617 Europe. And what happens was prices rose very sharply in Europe, but they didn't rise as sharply at home, so the 14:45:0118 14:45:0519 prices didn't equalize across the region. I should note, 14:45:0720 Chloride Titanium dioxide, there are functionally no imports of chloride titanium dioxide into North America. 14:45:121 14:45:1622 Let's turn to Dr. Rothmans use of the hypothetical Ο. 14:45:1923 monopolist test. Can you describe that test for the Court? 14:45:2124 Α. Sure. 14:45:225 So the hypothetical monopolist test, Your Honor,

14:45:25 1 asks, if there was just a single supplier, would that 14:45:30 2 supplier merge with all its current competitors into one and then you ask the question, would that monopolist have an 14:45:34 3 14:45:39 4 incentive to raise price--the incentive and the ability to raise prices, it's commonly used to try to define a market. 14:45:43 5 14:45:48 6 How does Dr. Rothman rely on the hypothetical 14:45:51 7 monopolist test? 14:45:51 8 Dr. Rothman asserts that he performed a hypothetical Α. 14:45:56 9 monopolist test for his markets and so they are valid 14:45:5910 markets. In your view, is it appropriate to rely only on the 14:45:5911 Q. 14:46:0312 hypothetical monopolist test in defining a markets? 14:46:0513 No, I think it's better to rely on all of the 14:46:0814 evidence including the hypothetical monopolist test, so for 14:46:1215 example, the Tronox case I was talking about, we had the 14:46:1416 other evidence and then we had the hypothetical monopolist 14:46:1617 test. So sort of the facts of the industry were sort of a check on hypothetical monopolist test. 14:46:2018 14:46:2219 Dr. Rothman says that the hypothetical monopolist Q. 14:46:2520 test shows that his market is not too narrow. Do you agree? 14:46:3021 Α. I do not. I think his test is flawed. 14:46:3322 What are the categories of flaws? Q. 14:46:3623 So I think the key problem with his test, he didn't Α. 14:46:3924 adequately consider arbitrage across the regions. I see the 14:46:4525 slide are down which is unfortunate. Great.

14:46:47 1 Here are three areas of arbitrage that I think 14:46:52 2 he didn't adequately account for. So, the first is imports that are currently going to other parts of the country, Your 14:46:55 3 Honor, could be redirected into Dr. Rothman's proposed 14:46:58 4 14:47:01 5 markets. 14:47:02 6 Second, there are many customers in 14:47:04 7 Dr. Rothman's proposed markets that have customer locations 14:47:07 8 outside of those regions. So those customers could purchase 14:47:11 9 for those locations outside of the proposed markets and move 14:47:1510 and then just arrange transportation to move it into the 14:47:1811 proposed markets. 14:47:1912 And then finally today, many customers inside 14:47:2213 Dr. Rothman's proposed markets purchase at the location of 14:47:2614 the supplier and then arrange transportation themselves. 14:47:3015 Those customers who already today are purchasing at the 14:47:3316 location of the supplier could purchase at suppliers outside 14:47:3617 the regions at the lower price and then arrange 14:47:3918 transportation to move it into the regions. 14:47:4219 Let's focus on imports and look at the next slide. Q. 14:47:420 What is this showing? 14:47:4721 Α. So here, Your Honor, we're looking at refined 14:47:5022 sugar imports into other regions of the United States in 14:47:5323 2020. So on the left we have Dr. Rothman's Georgia plus 14:47:5824 region, and so in green what I am showing here is total sales in that region in 2020. So they were about 34 million 14:48:025

hundredweight. And then the blue bar is showing total
imports into the U.S., into other parts -- sorry, total
imports into other parts of the United States. So it's
around 18 million hundredweight.

And Dr. Rothman doesn't consider the possibility
that customers could purchase imports outside the market and

that customers could purchase imports outside the market and redirect them into the Georgia plus region. So you know, the hypothetical test here is prices going up by five to ten percent, would customers try to get imports to redirect other parts of the country into the Georgia plus region, you have the same thing in the southeast region.

- Q. Can you explain why you think that Dr. Rothman does not properly account for the ability of customers to pick up refined sugar at locations outside of his regions?
- A. Sure. So, Your Honor, today something on the order in both Dr. Rothman's regions, 30 to 35 percent of customers pick up at their supplier. Indeed, today when prices are equalized across all the regions, three percent of customers purchase at a supplier location outside of Dr. Rothman's regions and move it in. So today we already observed this behavior. But Dr. Rothman rules it out as a significant source of arbitrage.
- Q. Does Dr Rothman account for customers with locations outside of his markets?
- A. Not fully, no, he does not. Dr. Rothman argues that

14:48:06 1 14:48:09 2 14:48:14 3 14:48:19 4 14:48:20 5 14:48:25 6 14:48:30 7 14:48:35 8 14:48:41 9 14:48:4410 14:48:4811 14:48:5112 14:48:5513 14:48:5914 14:49:0415 14:49:0616 14:49:1117 14:49:1418 14:49:1819 14:49:2120 14:49:2521 14:49:2922

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14:49:40 1 few customers in his regions have locations outside of the 14:49:44 2 market. So he argues most of them are contained within his 14:49:48 3 regions. That's true if you count based on the number of customers. But if you weight customers by volume, by the 14:49:52 4 14:49:56 5 amount they're actually purchasing in the Georgia plus or southeast region, more than 75 percent of purchases in 14:49:59 6 14:50:03 7 Dr. Rothman's regions are made by customers who have a 14:50:07 8 location outside of the market. 14:50:08 9 And I believe on the first day of this 14:50:1110 proceeding, Your Honor, Mr. Riippa from General Mills testified that General Mills has the ability under its 14:50:1511

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And I believe on the first day of this
proceeding, Your Honor, Mr. Riippa from General Mills
testified that General Mills has the ability under its
contracts to redirect purchases from one part of the country
to another if it wishes. That's exactly the sort of
redirecting they can use to defeat. If you told General
Mills it's going to be ten percent higher, if you want to
purchase this from Georgia plus or southeast but the old
price is less in Texas, you think they would be able to
purchase it in Texas and ask for it to be redirected.

- Q. Let's turn to HHI because you have explained for the Court what an HHI is?
- A. HHI stands for the Herfindahl-Hirschman Index. It's something that economists use to evaluate concentration in a market.
- Q. And are you familiar with the presumption concerning HHI, the horizontal merger guidelines?

14:51:14 1 Α. Yes. So, Your Honor, the 2010 Horizontal Merger 14:51:19 2 Guidelines say if a merger significantly increases concentration and results in a highly concentrated market 14:51:22 3 then it presumed to create market power. By significantly 14:51:26 4 increasing concentration, the guidelines mean there is 14:51:29 5 200 points or more increase in the HHI value and highly 14:51:34 6 14:51:37 7 concentrated means the HHI for the market as a whole is above 2,500. 14:51:41 8 14:51:42 9 The HHI regional level where the structural 14:51:4710 presumption applies, does that mean that the merger is 14:51:5111 necessarily anticompetitive? 14:51:5212 Α. It does not. The HHI calculations are something that 14:51:5613 one does early in a case to try to determine is it likely 14:52:0014 that there will be an effect here, but one still has to do the full competitive effects analysis. 14:52:0315 14:52:0516 Do you believe that this transaction leads to a 14:52:0917 presumption of a properly defined market? I do not. 14:52:1218 Α. 14:52:1219 Q. Why not? 14:52:1320 Α. As I said, I think Dr. Rothman's market has been 14:52:1621 defined too narrowly. I think if you expand his market definition, then it will result in markets, more plausible 14:52:2022 14:52:2423 markets, in which the presumption does not apply. 14:52:2624 Let's turn to the next slide. Q. 14:52:2925 Did you examine alternative potential markets to

14:52:32 1 Dr. Rothman? 14:52:33 2 I did. I looked at two as I mentioned earlier, one 14:52:37 3 here is the United States and one is the competitive overlap region. The second, is one where I looked at the areas 14:52:40 4 14:52:43 5 today in which Imperial made substantial sales. So overlaps 14:52:48 6 with, competes with United. 14:52:50 7 Q. And in your view is it logical to, does it define a market based on where the parties compete? 14:52:54 8 If you're trying to assess whether transactions are 14:52:56 9 14:53:0010 likely to affect competition, it can be a reasonable to 14:53:0311 define the market in which they overlap. 14:53:0612 Are you aware of any cases where the Department of Ο. 14:53:1013 Justice has defined a market based on the competitive 14:53:1414 overlap? 14:53:1415 I worked on a case in 2010 when I was at the Division Α. 14:53:1816 of Dean Foods case, where Dean Foods, Your Honor, purchased 14:53:2117 some milk processing plants in the upper midwest. And there the geographic market was defined around the area in which 14:53:2518 14:53:3119 foremost which was where the smaller of the two firms had 14:53:3520 substantial sales. 14:53:3621 Q. What is the significance of that case for this case? 14:53:3922 I mean, I think the definition that the United States 14:53:4223 used there was reasonable in that case and I think it's 14:53:4524 reasonable here as well.

Do either of your alternative markets lead to a

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Ο.

14:53:52 1 **presumption?**

A. No, they do not. So here, Your Honor, this chart is looking at the -- whether the presumption applies in these plausible alternative markets. So on the horizontal axis here, you have the HHI with the merger, this is the post merger HHI. And then on the vertical axis, you have the increase in HHI that would occur due to the transaction.

areas in which the presumption did not apply. And the white are the areas in which the presumption would apply. And then the dots, the circular dots are all United States and the squares are competitive overlap. And then green is 2020, and red is 2021. And you can see for both plausible alternative markets in both years, the structural presumption would not apply.

- Q. Let's turn to unilateral effects. What do economists typically look at what they're examining unilateral effects?
- A. So economist typically look at evidence of head-to-head competition between the parties.
- Q. Does it matter how close the competition is?
- A. It is usually unlikely that there will be a significant unilateral effect if competition is not close.
- Q. And is it typical to analyze whether any factors may mitigate any other anticompetitive effects?
- A. Yes, typically one looks at whether a competitive

14:53:52 1 14:53:53 2 14:53:57 3 14:54:00 4 14:54:06 5 14:54:09 6 14:54:14 7 14:54:17 8 14:54:21 9 14:54:2510 14:54:2811 14:54:3312 14:54:3713 14:54:4214 14:54:4615 14:54:4816 14:54:5217 14:54:5618 14:55:0019 14:55:0220 14:55:0521 14:55:1022 14:55:1423 14:55:1924 14:55:2325

14:55:27 1 effect will be mitigated by entry or expansion, so existing 14:55:31 2 or new firms taking a more aggressive position in the market. It typically looks at efficiencies, where the 14:55:34 3 14:55:38 4 transaction would make the merged firm a more aggressive 14:55:42 5 competitor. 14:55:42 6 And also there may be other mitigating factors 14:55:45 7 such as here the fact that Dr. Rothman and I following him, 14:55:50 8 assume that US Sugar and United are single decision making 14:55:54 9 entity, and here also the role of the USDA can be a 14:55:5810 potential mitigating factor. You mentioned entry and expansion. Why is that 14:56:0111 Q. 14:56:0412 important? 14:56:0513 So if the merged firm attempted to raise prices and 14:56:0914 other competitors would expand their production or enter the 14:56:1315 market in response, it could defeat any attempt to raise 14:56:1816 price by making it unprofitable for the merged firm to try 14:56:2217 to raise the price. 14:56:2318 Is there any evidence in this case of entry and Ο. 14:56:2619 expansion in the sugar industry? 14:56:2820 Yes, Your Honor, I'm aware of at least four important 14:56:3221 examples of entry and expansion. So the first is 14:56:3522 Cargill/LSR a producer in Louisiana in Gramercy who has 14:56:4223 expanded in the past and are again in the process of 14:56:4424 expanding their production. Second, Sucro Sourcing is building a new facility. Cargill expanding, Sucro Sourcing 14:56:4825

14:56:54 1 is building a new refinery in Upstate New York, just opening 14:56:56 2 a refinery. 14:56:56 3 Michigan Sugar is in the process of making capital improvements to keep up with its current production. 14:56:59 4 There is firm known as CSC who you may have heard about in 14:57:03 5 testimony who have expanded in the recent past and shown a 14:57:07 6 14:57:11 7 willingness to building plants close to customers to try to 14:57:16 8 service them. 14:57:17 9 Turn to the next slide --14:57:1910 THE COURT: Oh, that last slide, go back for one 14:57:2611 second. The dots that you have in there, is that using your 14:57:3312 product market? 14:57:3513 THE WITNESS: This is -- Your Honor, this is 14:57:3714 using Dr. Rothman's product market. THE COURT: You're using his product market, the 14:57:3915 14:57:4216 production and sale of refined sugar? 14:57:4517 THE WITNESS: That's correct, Your Honor. I'm following him and his treatment of US Sugar and United 14:57:4618 14:57:4919 as a single entity. I'm following him in not giving 14:57:5420 distributors any market share. 14:57:5@1 THE COURT: So this is the only difference here is that you expanded the geographic market? 14:57:5822 14:58:0123 THE WITNESS: That's correct, Your Honor. 14:58:0324 BY MR. BARBUR: And on that HHI chart, you include distributors here? 14:58:0425 0.

14:58:09 1	A. I do not.
14:58:12 2	Q. And do you use Dr. Rothman's product market or your
14:58:16 3	product market?
14:58:17 4	A. I'm using Dr. Rothman's product market.
14:58:20 5	Q. Thank you.
14:58:28 6	Did you consider other mitigating factors?
14:58:31 7	A. See if I may briefly, we were on this slide.
14:58:36 8	Q. I am sorry.
14:58:36 9	A. So you asked me what does this chart show, I think.
14:58:4010	So this is CSC's actual sales in the southeast. And the
14:58:4411	point I was making here, Your Honor, is just you can see in
14:58:4812	2017, since 2017, CSC has significantly increased its sales.
14:58:5613	Q. Focusing on other mitigating factors, do you think
14:59:0214	the role of the USDA is important?
14:59:0315	A. I do.
14:59:0416	Q. Why?
14:59:0517	A. I think we heard testimony from Dr. Fecso that the
14:59:0918	USDA may take action to try to mitigate price increases.
14:59:1419	And so firms in the market, think more broadly, we heard a
14:59:120	good deal of testimony from industry participants that they
14:59:2321	spent a lot of time thinking about what USDA is doing. I
14:59:2@2	interpret that as evidence that USDA actions are important
14:59:2923	and do affect prices if in this industry.
14:59:3124	And I think it's reasonable to take account of
14:59:3325	the fact that the USDA, the prices, if the merged firm were

14:59:38 1 to attempt to raise prices, the USDA might take action and 14:59:44 2 the merged firm might take that possibility of action into consideration. 14:59:48 3 What's your understanding of the tools that the USDA 14:59:49 4 14:59:52 5 has at its disposal? 14:59:55 6 I think broadly speaking, USDA has a number of tools, 14:59:58 7 but the one I think of, Your Honor, as you heard Dr. Fecso 15:00:03 8 testify, is the ability to increase imports and it also has 15:00:06 9 the ability to adjust allotments, so move allotments from 15:00:1110 one firm to another or imports to increase the supply of 15:00:1511 sugar. 15:00:1512 Have you seen examples of where the USDA has done Ο. 15:00:1913 that in past? 15:00:1914 Α. So certainly during the 2020 beet freeze as Dr. Fecso 15:00:2415 testified, USDA increased the amount of imports, lower duty 15:00:2916 imports. 15:00:3017 Do you think it's important to account for Q. efficiencies when assessing unilateral effects? 15:00:3418 15:00:3819 Α. Yes. 15:00:3820 Q. Why is that? 15:00:3921 Α. Efficiencies that result from a transaction, may give 15:00:4222 the merged firm the incentive to compete more aggressively 15:00:4823 than the stand-alone firms have. 15:00:5024 Q. What efficiency have you identified here? Α. I think I see three broad efficiencies. I think we 15:00:5325

15:00:58 1 have seen testimony about the fact that today US Sugar has 15:01:02 2 more raw sugar than it can refine and post transaction intends to re-divert some of that raw sugar to Port 15:01:05 3 Wentworth where Imperial's production facility is located. 15:01:11 4 15:01:16 5 I think second, US Sugar has been able to expand production at US Sugar's Clewiston refinery by a significant 15:01:20 6 15:01:25 7 amount. And I think it will try to do the same at Port 15:01:29 8 Wentworth. 15:01:29 9 And finally, today United may be serving some 15:01:3210 customers that are located closer to Imperial, Imperial may 15:01:3511 be serving some customers that are closer to United. 15:01:4112 merger the merged firm could re-optimize and serve customers 15:01:4513 more efficiently. 15:01:4714 Let's turn to the next slide. I think we saw a Ο. similar one this morning. What is this showing? 15:01:5015 15:01:5216 This chart is looking at the increase in Clewiston's 15:01:547 annual output by fiscal year compared to 2015, Your Honor. So each bar if you look at the 2016 bar, it's showing you 15:02:0018 15:02:0419 the percentage increase in output that year compared to 2015 15:02:020 for Clewiston. And the point here is just -- and I believe 15:02:1321 you heard testimony about it this morning that Clewiston starting back in 2006 has been able to roughly double its 15:02:1622 15:02:2023 total production at Clewiston. 15:02:2324 Does Dr. Rothman consider efficiencies at all in Q.

analyzing unilateral effects?

15:02:2825

15:02:31 1 Α. I would say he thinks that there will not be 15:02:34 2 efficiencies, so he doesn't include efficiencies in his 15:02:37 3 analysis. What is the effect of that approach? 15:02:37 4 15:02:40 5 I think that over states -- I think that tends to 15:02:42 6 overstate the competitive effects, because I think it is 15:02:46 7 likely to have efficiencies. 15:02:47 8 Q. What is the effect of the fact that Dr. Rothman 15:02:50 9 treats United as an relevant decision maker? 15:02:5310 I think that has a similar affect. The members of Α. 15:02:5611 United do not have perfectly aligned incentives. 15:03:0012 treating them all as a single unitary decision maker will 15:03:0413 tend to have the effect of overstating the likelihood of 15:03:0914 anticompetitive effects. 15:03:1015 Does Dr. Rothman analyze whether customers switch Ο. 15:03:1416 between United and Imperial? 15:03:1517 Α. He does. 15:03:1718 Q. And do you agree with his analysis? 15:03:1919 No, I think that analysis is flawed. Α. Let's take a look at the next slide. Could you walk 15:03:2120 Q. 15:03:2421 the Court through this one? 15:03:2622 Α. Sure. 15:03:2623 So this is looking at a plant owned by Pepsi 15:03:3124 Company in Kissimmee, Florida. And on the left we have its purchases from United in 2018 and 2020, and these are the 15:03:325

15:03:39 1 years that Dr. Rothman compares in his report when he's 15:03:42 2 looking at switching. So you can see that, Your Honor, that in both years United is the lion share of supply at this 15:03:45 3 plant. And Imperial supplies very, very little at this 15:03:50 4 15:03:55 5 plant. There is de minimus amount in both years. But Dr. Rothman considers this a switch from United to Imperial 15:04:00 6 15:04:05 7 and includes it in his analysis because United's sales fell by a small amount and Imperial went up by a very small 15:04:07 8 15:04:13 9 amount. I don't think that's the right way to look at it. 15:04:1510 Let's go to the next slide. Q. 15:04:1711 Is this another example? 15:04:1812 Α. Yes. Here, Your Honor, we're looking at Kraft Foods' 15:04:2113 location in Dover, Delaware. You can see here United increased its sales from 2019 to 2020 at this location. 15:04:2514 because Imperial also increased its sales, this goes into 15:04:2915 Dr. Rothman's analysis as a switch from United to Imperial, 15:04:3316 15:04:3717 and again, I don't think that's the correct way to do this. Aside from these examples, do you think that 15:04:4018 Ο. 15:04:4219 Dr. Rothman's switching analysis is sound? 15:04:4520 I don't think it is. Here is a table summarizing 15:04:4821 that switching analysis. So the first column here, Your Honor, just a brief word here. When we say diversion here, 15:04:5122 15:04:5523 what we're saying is if a hundred customers left Imperial, how many of them would go to United. That's a way to think 15:04:5924 about what you're seeing. 15:05:0325

15:05:05 1 And if you look here, we're looking at the 15:05:07 2 diversion from 2018 to 2020. 2018 to 2019 and 2019 to 2020. 15:05:14 3 In his report Dr. Rothman presents 2018 to 2020 and says this is evidence of significant diversion between parties. 15:05:19 4 If you break it down year by year, you can see that in 2018 15:05:22 5 to 2019 reading across the Georgia plus region, Dr. 15:05:26 6 15:05:32 7 Rothman's methodology predicts that if a hundred customers left Imperial, 130 would join United. That's not feasible. 15:05:35 8 15:05:39 9 There is only a hundred customers to allocate. 15:05:4210 If you look at 2019 to 2020, again Dr. Rothman 15:05:4511 looking at the competitive overlap said that if a hundred customers left Imperial, minus 29 of them would join United, 15:05:4812 15:05:5313 which doesn't make sense. I don't think the switching 15:05:5614 methodology is right. Let's turn to the model, what is a GUPPI? 15:05:5715 Q. 15:06:0016 Α. The GUPPI stands for Generalized Upper Pricing 15:06:047 Pressure Index. Is a GUPPI value a predicted price increase? 15:06:048 Q. 15:06:1119 No, a GUPPI value, Your Honor, is a measure of upward Α. 15:06:1720 price pressure. 15:06:1721 Q. Does a GUPPI or does Dr. Rothman's GUPPI model take account of entry, expansion, efficiencies or any other 15:06:2222 15:06:2623 mitigating factors? It does not. 15:06:2724 Α.

And does a small GUPPI value indicate that prices are

15:06:2925

0.

likely to increase?

It does not. So because the GUPPI framework doesn't take account of mitigating factors, typically small values, small GUPPI values are interpreted as not being significant evidence. So one of the creators of the model, Dr. Carl Shapiro when he was at DOJ, had a rule if the GUPPI was below five percent, he thought that was not likely to be significant evidence of price issue. Because the model did not take into account other mitigating factors.

> THE COURT: Are there always mitigating factors? THE WITNESS: No, not always.

- Q. Let's take a look at the next slide. What are we showing?
- Α. Looking at Dr. Rothman's reply report, we're looking at the GUPPIs for the combined firm. So the left we have the Georgia plus market and on the right we have the southeast market. So in blue, we have Dr. Rothman's GUPPI based on state shares and on the right we have GUPPI based on switching analysis. You can see the merged firm's GUPPI in each case is below this five percent.
- How do you go about translating a GUPPI value to a price effect?
- So, Your Honor, you make another assumption about how likely it is, or what percentage of a price increase would be passed through by the firm to its customers.

15:06:33 1 15:06:34 2 15:06:38 3 15:06:43 4 15:06:48 5 15:06:53 6 15:06:59 7 15:07:01 8 15:07:04 9 15:07:0710 15:07:0911 15:07:112 15:07:1413

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15:07:1715 15:07:2116

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15:07:58 1 Q. And what pass through rates does Dr. Rothman use? 15:08:02 2 So he uses pass through rates associated with linear Α. 15:08:09 3 demand. Linear demand assumes that 50 percent of a price increase will be passed through. Logit is more complex, but 15:08:12 4 15:08:17 5 it's safe to say here that it assumes more than 50 percent will be passed through. 15:08:20 6 15:08:21 7 Q. Does Dr. Rothman do any analysis to support those 15:08:24 8 numbers? 15:08:24 9 Α. No. 15:08:2510 He just assumes them? Q. 15:08:2711 Α. That's correct. 15:08:3012 Would Dr. Rothman predicted price increases decrease Q. 15:08:3513 further if he used use a lower pass through rate? 15:08:3714 Yes. So, Your Honor, there is a 1 to 1. If you Α. decrease the pass through rate, the smaller the pass through 15:08:4015 15:08:4416 rate gets the smaller the price effect associated with 15:08:4717 GUPPI. So if your pass through rate is 0 percent, you can have any GUPPI you want and there is no price effect. 15:08:5018 15:08:5319 you have a 100 percent pass through then a GUPPI is 15:08:5720 equivalent to a price increase. 15:09:0021 Ο. Let's turn to Dr. Rothman's other model. What is that model? 15:09:0322 15:09:0423 Dr. Rothman other model is what he calls the 15:09:0724 second-score bidding model.

And how does that work?

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0.

15:09:09 1 Α. In the second score bidding model, the idea is 15:09:14 2 customers purchase their sugar by auction, procurement auction and they ask suppliers to submit bids, they rank the 15:09:17 3 suppliers according to various characteristics including 15:09:23 4 price and they choose the supplier with the highest score. 15:09:27 5 And then the price is set based on how close the second 15:09:31 6 15:09:36 7 closest supplier was to the supplier with the highest score. 15:09:42 8 And do you think that Dr. Rothman's second-score Q. 15:09:45 9 bidding model is reliable? 15:09:4610 In this industry, I think that it is not. Α. 15:09:4911 Q. Can you explain why? 15:09:5012 Sure. So in the second score bidding model, Your Α. 15:09:5413 Honor, there are sort of two key inputs. The first is margins and the second is something to capture switching or 15:09:5814 15:10:0215 diversion. So here what Dr. Rothman was testifying 15:10:0516 yesterday, he relied upon state shares to calculate his 15:10:0917 diversions, so you have margins and some measure of 15:10:1318 diversion. 15:10:1419 The model takes the margins that are fed to it 15:10:1920 and then it predicts margins for the firms in this industry 15:10:221 and the author of the paper that introduced this methodology 15:10:2522 said first check on the validity of the model is whether the 15:10:2923 actual margins match the predicted margins. For 15:10:3324 Dr. Rothman's model the actual margins and predicted margins don't match. 15:10:3725

15:10:38 1 Q. Go to the next slide. What is this showing? 15:10:41 2 So, this is a slide looking at visually, on the left Α. we have Georgia plus and on the right we have the southeast. 15:10:44 3 This is looking at the difference between United and 15:10:47 4 Imperial's margins. Dr. Rothman calculated margins for 15:10:50 5 15:10:53 6 United and Imperial and roughly speaking he found for United 15:10:57 7 about a 25 percent margin and Imperial about a five percent 15:11:01 8 So we're looking here at the observed margins, margin. 15:11:06 9 that's the difference between United and Imperial's margins. 15:11:0910 So it's on the order of 16 percentage points here. 15:11:1311 In his model the predicted margin difference 15:11:1712 between the firms is only one percent so it predicts they have substantially the same margin. But in fact his own 15:11:2113 actual margins calculations show this is not the case. And, 15:11:2514 15:11:2815 you know, given the structure of the model, the model is 15:11:3216 saying it takes the actual margins and it produces predicted 15:11:3717 margins based on how its modeling competition, and the two just don't match so it just doesn't seem to be working in 15:11:4018 15:11:4319 the refined sugar industry. 15:11:4520 What does it say about the reliability of his models? Q. 15:11:4&1 Α. I don't think there was much in this model that was reliable. 15:11:5122 15:11:5223 And in his reply expert report Dr. Rothman says you Ο. 15:11:5724 reran this model and using United only margins and Imperial only margins, does that resolve the problems? 15:12:0125

So

Hill - direct

15:12:04 1 Α. It did not resolve the problem. So in his initial 15:12:08 2 report, you know, Dr. Rothman gave the model a blended margin, so he gave it a margin that combined the margins of 15:12:12 3 United and Imperial. In his reply report, he said I'm going 15:12:16 4 to do it two other ways, I'm going to give it just United 15:12:20 5 15:12:23 6 margin so see what it predicts and I'm going to give it just 15:12:27 7 Imperial margin to see what it predicts. 15:12:30 8 When he gives it just United margins, the model 15:12:33 9 matches United margins, but it gets Imperial's margins very 15:12:3710 wrong, and when he gives it Imperials margins, it matches Imperial margins, but it gets United margins very wrong. 15:12:3911 15:12:4012 the exact same problem is present when he uses it in his reply report as in his initial report. 15:12:4413 15:12:4814 Setting aside all the errors that you describe, does Ο. 15:12:5215 Dr. Rothman second-score bidding model predict significant 15:12:5716 price increases? 15:12:5817 In my opinion it does not. This slide here, Your Honor, is taken from Dr. Rothman's initial report. Looking 15:13:0118 15:13:0419 at the second-score bidding model, we have a column for each 15:13:0920 one of Dr. Rothman's regions and we have a row for each 15:13:1521 seller. You can see that Dr. Rothman predicts three percent 15:13:1822 for United, three to four for Imperial and then he presents 15:13:2023 with a merged firm 3 to 4 percent. But the model doesn't 15:13:2424 predict that other customers will see any price effect. if you look across all customers in his regions, the region 15:13:2825

15:13:32 1 wide price effects are one percent in the southeast and two 15:13:35 2 percent in the Georgia plus. So these are not significant price effects. 15:13:39 3 Did you conduct your own analysis of unilateral 15:13:42 4 Ο. effects here? 15:13:46 5 15:13:47 6 I did. Α. 15:13:47 7 Q. What did you do? 15:13:47 8 So I did two different models, one called the bidding Α. 15:13:51 9 model and one called the relative cost model. 15:13:5410 Did you also look at qualitative evidence? Q. 15:13:5811 Α. I did, I also evaluated qualitative evidence and 15:14:0312 quantitative evidence. 15:14:0413 Why is it important to do a qualitative analysis of 15:14:0814 competition? 15:14:0815 It's useful to make sure the predictions you are Α. 15:14:116 making are consistent with reasonable facts. 15:14:1517 Q. What is the qualitative evidence that you reviewed 15:14:1818 show? 15:14:1819 So if you advance one more slide please. So there Α. 15:14:220 are some examples I listed in my reports, Your Honor, of 15:14:2521 competition for customers where many other sugar refiners 15:14:2922 were competing with United and Imperial so these are two 15:14:3323 examples of them. The first is McKee who, among other 15:14:3724 brands, makes Little Debbie, Little Debbie products. Here you can see that McKee -- I will just avoid the specifics, 15:14:4225

15:14:45 1 just in an abundance of caution, had many other suppliers 15:14:49 2 competing to supply its business and Imperial has not been successful in competing with this business and there is a 15:14:53 3 quote from an Imperial employee about this. 15:14:56 4 15:14:58 5 In the bottom we have Kraft Heinz, I think you 15:15:03 6 heard about the example, Your Honor, it has 37 plants in the 15:15:05 7 United States. Imperial bid for one of those plants and 15:15:09 8 three other suppliers are also competing to serve -- I'm 15:15:12 9 sorry, are serving business at that plant today. 15:15:1410 Did you analyze whether Imperial and United are close Q. competitors? 15:15:1911 15:15:2012 Α. I did. What did you conclude? 15:15:2013 Ο. 15:15:2214 Α. I don't believe they're close competitors. 15:15:2315 Is there a difference between United and Imperial's Ο. 15:15:2716 cost of raw sugar? 15:15:2817 Yes. So this slide is looking at the difference in raw -- estimated raw sugar costs for Imperial and for US 15:15:3418 15:15:3819 Sugar. So US Sugar is in blue on the left and Imperial is 15:15:4220 in red on the right. And I think this is -- has been a 15:15:4521 repeated theme. Imperial has very high costs for acquiring 15:15:5022 raw sugar because it purchases it often imported, whereas US 15:15:523 Sugar produces its own raw sugar. 15:15:5724 And what is the implication of this for whether the Q.

two firms are close competitors?

15:16:0325

15:16:05 1 Α. I think you heard Mr. Gorrell testify that Imperial 15:16:10 2 is a high cost firm, and as such, it has difficulty competing. I think he referred to US Sugar and United as 15:16:12 3 the vertically integrated producers. 15:16:16 4 15:16:18 5 Go to the next slide. What do you put here? 15:16:21 6 Here again, I won't read these out of caution, but 15:16:25 7 these are quotes from industry participants confirming that 15:16:30 8 there is a view that Imperial is high cost firm due to its 15:16:39 9 high raw sugar cost. 15:16:3910 Did you also review the testimony of Jeffrey Gholson Q. of Brill? 15:16:4411 15:16:4512 Α. I did. 15:16:4613 Did that support the fact that Imperial is a high Q. cost supplier? 15:16:4814 15:16:4915 It did. Α. 15:16:5016 Is there a difference in the size of a customers that 15:16:5317 Imperial and United serve? 15:16:5518 Α. There is. So this chart here is looking at the 15:16:5919 average bulk customer size for Imperial and United in 2021. 15:17:0520 So United is on the left and Imperial is on the right. And you can see that United's average customer size is on the 15:17:0921 15:17:1322 order of twice the size of Imperial. So I think this is 15:17:1623 consistent with the testimony that you have heard, Your 15:17:1924 Honor, that United tends to have large long-term contracts with its customers serving them for high volumes and 15:17:2425

15:17:27 1	Imperial is more likely to be competing for spot volume or I
15:17:32 2	believe the term people have used as a replacement supplier
15:17:35 3	or something along those lines.
15:17:36 4	THE COURT: So customer size doesn't mean the
15:17:38 5	size of the customer itself, it's the amount that's sold?
15:17:41 6	THE WITNESS: That's correct, Your Honor, the
15:17:43 7	amount that it's purchasing.
15:17:45 8	Q. Yesterday, Dr. Rothman identified a handful of
15:17:48 9	examples of head-to-head competition. Do you recall that?
15:17:5110	A. I do.
15:17:5111	Q. And to put that in perspective, how many United and
15:17:5612	Imperial customers are there in the markets that Dr. Rothman
15:18:0113	has defined?
15:18:03.4	A. Those numbers are in my report. I can check quickly.
15:18:0915	I think it's about 550 for the southeast and about 430 or so
15:18:1316	for the Georgia plus. Let me check. So for the southeast
15:18:2617	it's 543 and for Georgia plus it's 428.
15:18:3118	Q. Thank you.
15:18:3119	Did you construct any models to test whether
15:18:3720	unilateral effects were present?
15:18:3921	A. I did.
15:18:3922	Q. What did you do?
15:18:4023	A. So I calculated I constructed two model, one was
15:18:4524	the bidding model and the other one the relative cost model.
15:18:4925	Q. And in your model, do you consider Imperial's raw

15:18:53 1 sugar cost disadvantage? 15:18:55 2 Α. I do not. I followed Dr. Rothman in ignoring that. And you considering distributors in your models? 15:18:59 3 0. I do not, again, following Dr. Rothman. 15:19:01 4 Α. 15:19:04 5 Q. Do you consider other mitigating factors such as USDA 15:19:08 6 and entry and expansion? 15:19:10 7 Α. I do not consider those. I do, Your Honor, my models 15:19:15 8 include efficiencies, but I present my results with and 15:19:18 9 without efficiencies. 15:19:1910 Can you describe your bidding model? Q. 15:19:2311 Α. Sure. 15:19:2312 So, Your Honor, the bidding model at its heart has a very simple view. It looks for a set of customers for 15:19:2613 15:19:3014 whom United and Imperial today are the two best options, so 15:19:3315 they are competing head to head. And then it ask how close 15:19:3716 is the next best alternative. If the transaction would 15:19:4017 eliminate the competition between them, would another firm be well placed to replace that. To do that I use 15:19:4418 15:19:4819 transportation costs, so I look for, for example, all the 15:19:5120 customers United is serving and for Imperial is the best 15:19:5521 alternative or the lowest cost transportation alternative. 15:19:5922 I look at the transportation cost of the next best 15:20:0223 alternative and I take that difference as a measure of the additional price increase that would occur if Imperial no 15:20:0524

longer competed with United and I do the same for Imperial

15:20:0925

15:20:13 1 customers. 15:20:13 2 What are the results of your bidding model? 15:20:16 3 Right. So this slide here across the bottom here, Α. 15:20:19 4 Your Honor, we have four geographic regions, the US, 15:20:23 5 competitive overlap, southeast and Georgia plus. And then 15:20:26 6 the height of the bar that's here communicates predicted 15:20:29 7 price increases. Blue is without efficiencies, and green is 15:20:34 8 with efficiencies. And so you can see that the Predicted 15:20:39 9 Price Effects here are minimal. 15:20:4110 Rothman claims that the margins in your bidding Q. Dr. 15:20:4411 model are unrealistically low, do you agree? 15:20:4812 Α. I do not. 15:20:4913 Ο. Why not? 15:20:5014 Α. So the bidding model does not take as an input 15:20:5415 margins and it does not output margins, the model is really 15:20:5816 focused on this question are customers for who United and 15:21:0217 Imperial are the two best alternatives, how close is the 15:21:0418 next best alternative. You can't use it to calculate 15:21:0719 margins. 15:21:020 Can you next describe your other model, the relative 15:21:1421 cost model? 15:21:1422 The relative cost model has a similar idea. 15:21:1823 it's this question how much competition is going to be lost 15:21:2124 here if we remove Imperial competing with United and United

competing with Imperial. And so in that model, I start with

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15:21:30 1 micro level data on all of the customers and I ask the question, what price is the customer paying today and how 15:21:35 2 does that vary depending upon how far away its current 15:21:38 3 supplier is from it -- I'm sorry, what its current supplier 15:21:43 4 cost to serve it is, what are the costs to serve it of the 15:21:47 5 15:21:52 6 other three best alternatives. And I also include other 15:21:55 7 factors such as the size of the customer, do large customers 15:21:59 8 get some sort of volume discount. So I'm trying to use 15:22:03 9 actual data on prices to see how that varies with 15:22:0610 competition. And what are the results of your relative cost model? 15:22:0611 Q. 15:22:1112 The relative cost model, once I estimate the model, I Α. 15:22:1513 then ask the question, if I remove Imperial as a constraint on United and I remove United as a constraint on Imperial, 15:22:1914 15:22:2315 by how much would prices increase. This chart has the same 15:22:2616 structure as the previous one. We have the four geographic 15:22:2917 regions across the bottom and then blue we have the predicted prices with no efficiencies and in green we have 15:22:3218 15:22:3619 the predicted prices increases with efficiencies. You can 15:22:4020 see whatever region we use whether we use efficiencies or 15:22:4421 not the predicted price's increase is de minimis. 15:22:4722 So overall, how do results of your models compare Ο. 15:22:5123 with the results of Dr. Rothman models? 15:22:5324 So, Your Honor, I would say my predicted results are Α.

lower than his. The lower end of his results and my results

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Hill - direct 15:23:01 1 are not very distant. This chart is sort of trying to bring 15:23:05 2 that together. You look at the first two - so each of the columns here, one, the first column is the Georgia plus 15:23:07 3 region and the second column is the Southeast region and 15:23:10 4 then I have the Hill bidding model and the Hill relative 15:23:13 5 15:23:18 6 cost model. In lines three and four from Dr. Rothman's 15:23:22 7 initial report I took his GUPPI model predictions, using 15:23:26 8 50 percent pass through and then I used his second score 15:23:29 9 bidding model. You can see that in his initial report his 15:23:310 results were actually not terribly dissimilar to mine. were a little bit higher, but we're in a similar ballpark. 15:23:3611 15:23:4112 In Row 5 and 6 I present some results from his reply report. So between his initial report and his reply 15:23:4413 report, Dr. Rothman fixed an issue with his GUPPI formula 15:23:4814 15:23:5115 and he moved from 2020 data to 2021 data. You can see the 15:23:5616 effect of those changes in Row 5, his GUPPI model fell from

about one percent line 3 to 0.8 percent in the Georgia plus market. And in the Southeast 1 percent to 0.7 percent.

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And then finally, I present on the last line, Dr. Rothman in his reply report estimated his second-score bidding model using Imperial only margins, United only margins and also combined margins. Here just to be transparent, this is one of his lowest estimates. I took his estimates for second-score bidding model using Imperial only margins and the Predicted Price Effects are actually

15:24:37 1 below the numbers you listed here. This is not adjusting 15:24:41 2 for region wide, but you can see they're 0.9 and 0.8 percent. So his estimates are higher than mine, but I 15:24:46 3 would say that all of our estimates are realistically 15:24:49 4 predicting very low price events. 15:24:53 5 15:24:56 6 Let's turn on to next slide. What is this showing? 15:24:59 7 Α. This is a slide from Dr. Rothman's presentation yesterday, and I think it's helpful for understanding in 15:25:01 8 15:25:04 9 some of the differences in our results and also seeing that 15:25:0810 maybe they aren't so different after all. 15:25:1011 So in the left-hand pane here Dr. Rothman 15:25:1312 presented yesterday that what he calls his narrower market, 15:25:1613 what I call the Georgia plus market he predicts 30.5 million 15:25:2114 in harm. In the broader or southeast market he's predicting 15:25:2515 36.2 million in harm. He says this is from the elimination 15:25:2916 of head-to-head competition. 15:25:3017 Below that I just translated that into a percentage price increase for his entire region and I did 15:25:3318 15:25:3619 that by calculating what is the total volume of commerce for 15:25:4020 refined sugar in that region and I just divided his 30.5 by that volume of commerce. And you can see it's 1.9 and 1.5 15:25:4521 percent. So again, our numbers are in a similar ballpark 15:25:5022 15:25:5@3 here. 15:25:524 Then on the right-hand side, Dr. Rothman said

well, the first pane on the left is head-to-head

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15:26:03 1 competition, but you also need to consider the impact of 15:26:06 2 increased coordination. And here he adds his projected price effect from the increased coordinated interaction and 15:26:11 3 he gets to this by saying he assumes that today, ASR and 15:26:14 4 United are refraining from competing with one another on ten 15:26:19 5 15:26:26 6 percent opportunities. I see no evidence to support this. 15:26:28 7 And he doesn't present any evidence to support this. 15:26:31 8 he says what if it increased to 30 percent as a result of 15:26:34 9 the transaction, how much additional harm would there be. 15:26:3710 Then he adds that calculation onto the head-to-head competition harm from the left, that's how he gets to these 15:26:4311 15:26:4512 numbers. I don't believe that the transaction is likely to 15:26:4913 significantly increase coordinated interaction and I don't 15:26:5314 think there is any evidence that today ASR and United don't 15:26:5615 compete on ten percent. So I don't believe the estimates on 15:27:0016 the right-hand side are reasonable. The ones on the 15:27:0317 left-hand side as I said, they're different from mine because he's using slightly different models, but I think 15:27:0518 15:27:0919 we're in a similar ballpark. 15:27:1020 Just so we're clear, these 10 percent and 20 percent 15:27:1421 numbers, did Dr. Rothman present any analysis to support 15:27:1722 them? 15:27:1723 No, he did not. He just examined what would happen Α. 15:27:2124 if ASR and United didn't compete on 10 percent, 20 percent and 30 percent of opportunities. But he doesn't explain why 15:27:2525

15:27:30 1 they might -- why they might not do that, how they would identify which opportunities not to compete with one another 15:27:35 2 and he doesn't present any evidence that they're doing this 15:27:38 3 15:27:41 4 today. Dr. Rothman has said that your model overemphasizes 15:27:41 5 15:27:45 6 transportation costs. Do you agree with that? 15:27:47 7 Α. So I would say that my reading of both the United States complaint and Dr. Rothman's initial report is that 15:27:52 8 15:27:55 9 transportation is an important factor in competition in 15:27:5810 refined sugar. I took that seriously and built models to 15:28:0211 look at that. And I don't think that my models are overly 15:28:0612 reliant on it. What it's saying is, controlling for other 15:28:1013 factors, is it likely that someone else could step into the 15:28:1314 shoes of United and Imperial and continue to compete. 15:28:1915 Have you review evidence from third parties in this Ο. 15:28:2216 case? 15:28:2217 Α. I have. 15:28:2318 0. What is this showing? 15:28:2419 So again, as I said at the beginning, we have here Α. 15:28:2620 some testimony from Dr. Fecso but there is also testimony 15:28:3021 from representatives of Michigan Sugar and Domino ASR saying 15:28:3522 that they don't think the transaction is likely to 15:28:3823 significantly reduce competition. 15:28:4224 Let's talk about coordinated effects. What are Q. 15:28:4525 coordinated effects in the context of a merger?

15:28:48 1 Α. So, a transaction is said to have a coordinated 15:28:51 2 effect if it will increase the likelihood that the firms in 15:28:55 3 the industry will agree not to compete aggressively in the 15:28:59 4 market. And what conditions typically need to be met for 15:28:59 5 0. coordination to be possible? 15:29:03 6 15:29:05 7 Α. So coordination involves foregoing short run profits in the hopes of getting longer run profits through 15:29:10 8 15:29:12 9 coordinating with one another. So to get to that point, 15:29:1610 firms usually have to reach some sort of agreement be it tacit or explicit about how they're going to coordinate. 15:29:1911 15:29:2412 That's one requirement. 15:29:2413 A second is they typically need to be able to monitor one another's behavior. And then third they need to 15:29:2714 15:29:3215 have some mechanism for punishing one another if someone no 15:29:3616 longer coordinates. There is this short run incentive if 15:29:4017 your competitors are competing softly and you compete aggressively unexpectedly, you can steal a lot of business 15:29:4318 15:29:4719 from them. So typically you have to have some way of punish 15:29:5120 them if they do that to try to stay on the straight and 15:29:5421 narrow road. Do firms always have an incentive to coordinate? 15:29:5422 Q. 15:30:0123 No. So again, it's a trade off between the short run 15:30:0324 incentive to cheat and to try to steal business from your rivals and the potential long period run payoff if you all 15:30:0725

15:30:14 1 agree not to compete. 15:30:14 2 Have you analyzed whether the characteristics of the sugar industry make coordination likely? 15:30:17 3 I think that the sugar industry has a number 15:30:20 4 Α. of characteristics. I think the sugar industry has a number 15:30:23 5 15:30:27 6 of maverick firms, firms that will compete aggressively even 15:30:31 7 if it means the margin prices fall. I think that those 15:30:37 8 sharpen competition and make coordination less likely. 15:30:41 9 think there are sophisticated customers here and I think 15:30:4510 there is no history of past coordination. 15:30:4811 Q. Did Dr. Rothman analyze where the transaction was 15:30:5212 likely to increase incentives? 15:30:5713 He purported to do so. Α. 15:30:5914 Ο. What was his purported analysis? 15:31:0215 Dr. Rothman used his second score bidding model and Α. 15:31:0516 as I said, Your Honor, he calculated what would the price 15:31:0817 increase be if ASR and United agreed not to compete on 10, 20 or 30 percent of opportunities. And so, he then 15:31:1218 15:31:1619 calculated how much more money they could make if they did 15:31:1920 that. But he doesn't explain how they would agree on which 10, 20, 30 percent not to compete on, how they would agree 15:31:2321 on 10, 20, 30 percent, it's very short on the mechanisms. 15:31:2722 15:31:3123 And he also doesn't consider, he calculates the payoff, what 15:31:3524 would be the benefit if we coordinate, but he doesn't

calculate what would be the incentive to cheat. If your

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15:31:42 1 rival thinks that you're not competing, you can steal 15:31:45 2 customers. He looks at one side of the ledger and assumes the benefits but not the costs. 15:31:49 3 15:31:51 4 Dr. Rothman says the sugar industry is conducive to Ο. 15:31:55 5 coordination because there are a small number of firms. 15:31:59 6 you agree with that? 15:32:00 7 Α. I don't agree with that. 15:32:01 8 Q. Why not? 15:32:02 9 I think Dr. Rothman's conclusion there was based on 15:32:0510 his narrow markets. In his narrow markets there is only a 15:32:1011 small number of relevant firms. When you broaden the market 15:32:1412 to the competitive overlap market or the national market, I would say the sugar industry has a large number of 15:32:1713 15:32:2014 competitors. 15:32:2015 Dr. Rothman also claims the demand for sugar is Ο. 15:32:2316 inelastic and this makes coordination more likely. Do you 15:32:2717 agree with that? 15:32:2818 Α. I don't. In his initial report Dr. Rothman cited to 15:32:3119 an academic paper that estimated the price elasticity demand 15:32:3620 of sugar. Your Honor, the price of elasticity is, if the 15:32:4021 price went up by ten percent, how much would customers buy 15:32:4422 If something goes up in price, typically you buy less less. 15:32:4923 of it. The more essential the product is, the more unlikely 15:32:5324 it is you will substitute away from it. Oil, for example, is inelastic. People tend to buy oil even with the price 15:32:525

15:33:00 1 rises. Many other products will be elastic. Dr. Rothman 15:33:04 2 took an estimate from this academic paper and said it showed the demand is inelastic. I don't know what happened, but he 15:33:08 3 misread the paper and, in fact, the paper shows that the 15:33:12 4 15:33:15 5 demand is elastic. So the argument that refined sugar is 15:33:20 6 inelastic is incorrect. 15:33:21 7 Ο. You mentioned earlier Dr. Rothman also points to several e-mails in support of his conclusion on coordinated 15:33:25 8 15:33:32 9 effects. Did you review those mails? 15:33:3510 I did. Α. 15:33:3511 Q. Do those documents show actual coordination? 15:33:3812 They don't. Α. 15:33:3913 Do those documents show that the industry is likely 0. 15:33:4114 or vulnerable to coordination? 15:33:4515 I don't believe so. Α. 15:33:4516 Dr. Rothman points to some documents that he says 15:33:5217 indicate interdependence on sugar suppliers. In your view, what is the significance of those documents? 15:33:5618 15:33:5819 So here Dr. Rothman points to a small number of Α. 15:34:0220 documents, I believe it's five. I would say that the best 15:34:021 way the documents show is that competitors in the sugar industry realize if they make strategic decisions about 15:34:0922 15:34:1323 price, their competitors will react to those prices. not unusual in many industries. 15:34:124 15:34:1825 Dr. Rothman also points that he claimed to show price

15:34:22 1 transparency as between ASR and United. Did you review 15:34:26 2 those documents? 15:34:26 3 Yes. Α. And do those documents provide any support for his 15:34:27 4 Ο. theory that ASR and United will coordinate on 10 or 20 or 15:34:30 5 15:34:37 6 30 percent of transactions? 15:34:38 7 Α. I don't believe so. 15:34:43 8 And do those documents support the idea that the Q. 15:34:47 9 refined sugar industry is vulnerable to coordination? 15:34:5110 I don't believe so. Α. 15:34:5211 Q. In your deposition in this case, the DOJ asked you a 15:34:5612 number of questions about your testimony in the Tronox case on coordination. Do you recall that? 15:35:0013 15:35:0214 Α. I do. 15:35:0315 Is that case like this? Ο. 15:35:0416 It is not. So in that case I testified on 15:35:0717 coordinated effects, I thought both were likely in the case, the courts said titanium dioxide, that transaction had a 15:35:1318 15:35:1819 number of different features so first the transaction was 15:35:2020 eliminating a maverick firm, a firm that was trying to 15:35:2521 expand, this transaction does not do that. That industry 15:35:2822 had a recent history of alleged coordination. And this 15:35:323 transaction, this industry does not have that. industry, the parties, the firms in the industry would make 15:35:3624 public statements when prices, when demand was falling, they 15:35:4025

15:35:44 1	would make public statements that we all need to
15:35:47 2	collectively work together to keep the price high. It's
15:35:50 3	important that we don't share and undercut market price.
15:35:54 4	Those were both I will just say they made public
15:35:58 5	statements along those lines. Again, we don't have those
15:36:01 6	kinds of documents.
15:36:04 7	MR. BARBUR: Thank you, Dr. Hill. I have no
15:36:09 8	further questions.
15:36:09 9	THE COURT: Thank you. How about before
15:36:1210	cross-examination we take our afternoon break.
15:50:341	(A brief recess was taken.)
15:50:342	THE COURT: All right. Good afternoon. Please
15:50:3613	be seated.
15:50:3714	Cross-exam.
15:50:4115	MR. STRONG: Yes, Your Honor. We thank you for
15:50:4316	the Court's patience through here. Good afternoon. Curtis
15:50:4817	Strong for the United States. May I proceed?
15:50:5018	THE COURT: Absolutely.
15:50:5019	CROSS-EXAMINATION
15:50:5020	BY MR. STRONG:
15:50:5221	Q. Dr. Hill, good to see you again.
15:50:5322	A. Good to see you again, Mr. Strong.
15:50:5523	Q. You agree that a merger, that if a merger is likely
15:50:5924	to result in significant coordinated effects, that alone is
15:51:0325	reason enough to block a merger, correct?

15:51:09 1 Α. Setting aside mitigating factors, yes, if you have a 15:51:15 2 strong coordinated effect. 15:51:16 3 You agree with the general sentiment that coordinated 0. 15:51:19 4 effects are possibly even if there hasn't been history of past pricing in the industry? 15:51:23 5 15:51:25 6 That's true. Α. 15:51:25 7 Q. Dr. Hill, the defendants wrote in their pretrial brief that it is, "it is virtually unprecedented for a court 15:51:29 8 15:51:32 9 to block a merger solely on coordinated effects evidence." 15:51:3510 Do you agree with that sentence? That is a legal conclusion. I don't know if that's 15:51:361 Α. 15:51:3912 true or not. As an economic theory, Dr. Hill, coordinated effects 15:51:4013 0. 15:51:4414 predates unilateral effects by decades, isn't that right? I would say not. Of course the Cournot model, which 15:51:4915 Α. 15:51:5416 I think is a unilateral effect model is from 1700 something. 15:51:5917 Unilateral effects wasn't a theory that was include Q. in the horizontal theory guidelines until 1982, correct? 15:52:0218 15:52:0719 I don't know that. Α. 15:52:0720 Q. You coauthored an article in October of 2019 entitled 15:52:1321 Four Key Aspects of the Tronox-Cristal Litigation, correct? 15:52:1722 That's correct. Α. 15:52:1823 We looked at that article in your deposition, Q. 15:52:2024 correct? Α. 15:52:2025 Correct.

15:52:21 1 MR. STRONG: Your Honor, we're not going to 15:52:23 2 enter it into evidence, but just to make it easier for the Court and everyone to follow along, maybe we publish this to 15:52:26 3 15:52:29 4 the screen. 15:52:30 5 BY MR. STRONG: 15:52:30 6 You have this in your binder at tab 5, but it may be 15:52:33 7 easier, we'll highlight it, either way. That is your name there above paragraph 1? 15:52:38 8 15:52:42 9 Α. That's correct. 15:52:4210 Let's take a look at page 8 under the section that's Q. titled Coordinated Effect Theories Are Alive and Well. 15:52:4611 15:52:5012 Α. Okay. 15:52:5113 Please take a look at the third sentence in that 0. 15:52:5314 paragraph. Let me know when you're there. 15:52:5515 Yes. Scholarly literature. Α. 15:52:5716 It says "Scholarly literature has recognized that coordinated effects theories have been and remain integral 15:53:0117 to antitrust enforcement." 15:53:0518 15:53:0719 Is it accurate that scholarly literature has 15:53:1120 recognized the importance of coordinated effect theories? 15:53:1321 Α. Yes, I would say so. 15:53:1522 The second clause of the sentence says that "The 0. 15:53:1723 relative absence of litigation of cases involving coordinate effects theories may have led some observers to conclude 15:53:224 that it was no longer likely that a coordinated case might 15:53:2625

15:53:31 1 be brought, let alone one in all but the most extreme of 15:53:35 2 circumstances." 15:53:35 3 Did I read that correctly? 15:53:36 4 Α. That is what the sentence says, yes. 15:53:38 5 And Dr. Hill, you don't agree, do you, with the Q. conclusion of the observers in that sentence, correct? 15:53:41 6 15:53:44 7 Α. No, Tronox was a coordinated effects, decided coordinated effects. 15:53:49 8 15:53:50 9 Let take a quick look at the final sentence of that 0. 15:53:5410 paragraph. Α. 15:53:541 Sure. I'm there. 15:53:5512 The first independent clause of that sentence states, Q. 15:54:0013 "The Tronox case as well as a closer reading of the agency's 15:54:0314 recent activity shows that any belief that coordinated 15:54:0615 effects has 'died' would be misplaced." 15:54:1016 Did I read that correctly? 15:54:1217 Α. You did, sir. 15:54:1318 Q. You still believe that's an accurate statement, 15:54:1519 correct? 15:54:1520 Α. Yes. 15:54:1721 Q. One more thing from that article. If we can take a look at page 9. There a paragraph there that begins "this 15:54:2222 15:54:2623 analysis." Are you there? 15:54:2724 Α. Yes. 15:54:2825 It says "This analysis reinforces the agencies need

15:54:32 1 not to demonstrate a high likelihood of future or past price 15:54:36 2 fixing, i.e., explicit collusion to prevail on blocking the merger, instead the agencies can prevail solely by showing 15:54:42 3 an increased risk of tacit coordination." 15:54:45 4 15:54:47 5 Did I read that correctly? 15:54:48 6 Yes. Α. 15:54:49 7 Q. And you still agree with that statement, correct? Yes, I think that's correct. 15:54:51 8 Α. 15:54:53 9 Now, it's your testimony that the exchanges with Q. 15:54:5810 Mr. Wistisen in this case do not give ASR and United an 15:55:0411 increased ability to take their competitors' actions into 15:55:0712 account when setting prices. Have I understood your 15:55:1013 testimony correctly, sir? 15:55:1214 Α. I don't know that I testified specifically on that 15:55:1515 point. 15:55:1516 Okay. What would be your opinion on that point, sir? Q. 15:55:1717 So, I would say that if you look at the e-mails that Dr. Rothman cites in his report, I guess I would make a 15:55:2218 15:55:2519 number of points. First, that information is available, 15:55:2820 similar information is available from other sources. 15:55:3121 second, it's high level list price type information. third, having read all of these e-mails, the overriding 15:55:3722 15:55:4023 impression I got from those e-mails is that United being a 15:55:4524 relatively aggressive competitor, there is a lot of

discussion of United taking action that Mr. Wistisen thinks

15:55:4825

15:55:51 1	are unusual aggressive.
15:55:53 2	\mathbb{Q} . And that view that you just expressed just now forms
15:55:56 3	the bases, one of bases of your conclusion that there is not
15:55:59 4	likely to be coordinated effects in this case, correct?
15:56:02 5	A. I would say the bases are
15:56:04 6	Q. Yes or no?
15:56:06 7	A. I guess I would say no.
15:56:09 8	\mathbb{Q} . Dr. Hill, we are on a timer.
15:56:11 9	A. I would say no. The things I testified to I think
15:56:1310	are the real basis for my conclusion.
15:56:161	Q. And if the Court were to conclude that United and ASR
15:56:2012	sales teams were likely considering the information received
15:56:2313	from Mr. Wistisen in making bids, would that show evidence
15:56:2914	in your view of coordinated effects?
15:56:3115	A. I would have to see the evidence.
15:56:3316	Q. You have been here for the trial, you have watched
15:56:3517	the evidence, correct? And you have seen the evidence?
15:56:3918	A. I have seen some of it. I also have been reviewing
15:56:4219	my reports so I haven't seen all of it.
15:56:4520	Q. You may have missed some of the evidence in this
15:56:4721	case, correct?
15:56:4722	A. I did not see Mr. Sproull's testimony.
15:56:4923	Q. The horizontal merger guidelines provided that
15:56:524	parallel accomodating conduct count for coordinated effects,
15:56:5725	correct.

15:56:57 1	A. The guideline certainly mentions parallel
15:57:00 2	accommodating conduct.
15:57:00 3	Q. You mentioned that there is not a history of past
15:57:03 4	price fixing in this industry, right?
15:57:05 5	A. I think I said there hadn't been a history of past
15:57:10 6	coordination.
15:57:11 7	\mathbb{Q} . You are aware, though, that the United States sued a
15:57:14 8	number of sugar refineries in 1974 in the Northern District
15:57:17 9	of California for price fixing, right?
15:57:2010	A. Right. But the guidelines say even if there is a
15:57:2511	recent history of price fixing, conditions in the industry
15:57:2812	have not significantly changed.
15:57:2913	Q. You think that the conditions in the industry have
15:57:3314	significantly changed since 1974, is that your testimony?
15:57:3515	A. I would say conditions have significantly changed
15:57:3916	since the suspension agreements came into effect.
15:57:4017	Q. But sugar is still sucrose, right?
15:57:4418	A. Correct.
15:57:4519	Q. Sugar is still heavy in large quantities, right?
15:57:4920	A. If you take a large amount of it, then it's heavy.
15:57:5321	Q. Sugar is still transported by truck and rail, yes?
15:57:5@2	A. That's correct.
15:57:5723	Q. Sugar is still made from beets and cane, right?
15:58:0024	A. Right.
15:58:0125	Q. And sugar refiners are still exchanging forward

15:58:04 1 looking pricing information and sensitive information 15:58:07 2 through an intermediary; right? 15:58:10 3 I'm not sure that I would say the information is Α. 15:58:12 4 sensitive. If you looked at Milling and Baking, the USDA, 15:58:16 5 there is lots of sources of information of this type. Your conclusion today is based on your opinion that 15:58:20 6 15:58:22 7 the information exchanged through Mr. Wistisen was not sensitive information, correct? 15:58:26 8 15:58:28 9 My conclusion is based on the testimony I gave on the 15:58:3110 factors that I think makes this industry unlikely to be vulnerable to coordination. 15:58:3511 But you believe the information exchanged by ASR and 15:58:3512 0. 15:58:3813 United through Mr. Wistisen is not sensitive information, 15:58:4214 that's your testimony? Yeah, I mean, look --15:58:4315 Α. 15:58:4416 Yes or no? Q. 15:58:4517 Α. Yes. 15:58:4618 Q. Okay. 15:58:4619 Wait, I'm not even sure what I'm answering. Α. 15:58:4920 Q. Your testimony today is that the information that --15:58:5121 your view is that the information exchanged between ASR and United through Mr. Wistisen is not sensitive information, 15:58:5@2 15:59:0023 that's your testimony, yes or no? I would say it's largely not competitively sensitive. 15:59:0124 Α. You agree that the -- switching topics here for a 15:59:0525

15:59:08 1	second. We're going to talk about geographic market here.
15:59:12 2	You agree that geographic markets can be drawn
15:59:15 3	around customers as a general matter, right?
15:59:17 4	A. That's correct.
15:59:17 5	Q. You analyzed geographic markets based on customer
15:59:21 6	locations?
15:59:21 7	A. Correct.
15:59:22 8	Q. You remember looked at geographic markets that may
15:59:25 9	have been drawn around customers quite a bit while you were
15:59:2910	at the Department of Justice?
15:59:301	A. Certainly on both Humana and the Foremost case I
15:59:3512	looked at those markets, yes.
15:59:3613	Q. And in this case, you agree it's acceptable to think
15:59:3914	about defining a market around customers, right?
15:59:4215	A. Yes.
15:59:4316	\mathbb{Q} . In fact, your regions are based around the location
15:59:4717	of customers, right?
15:59:4818	A. Correct.
15:59:5019	Q. Relying on ordinary course documents can be a part of
15:59:520	a principle basis for choosing a geographic region, correct?
15:59:5921	A. It can be part of it.
16:00:0022	Q. And you have seen references to the southeast
16:00:0323	generally in ordinary course documents in this case, right?
16:00:0524	A. Correct. They do not necessarily comport with the
16:00:025	southeast definition of Dr. Rothman.

16:00:12 1	Q. You put up a slide just today that showed the states
16:00:17 2	in the narrow market highlighted in red, correct?
16:00:19 3	A. That's correct.
16:00:20 4	Q. And you relied yourself on this slide to make a point
16:00:24 5	about arbitrage, right?
16:00:25 6	A. This was about sugar flowing, for sugar moving long
16:00:30 7	distances, but
16:00:32 8	\mathbb{Q} . That word up there at the top says arbitrage, right?
16:00:35 9	A. It does.
16:00:3 d 0	Q. Dr. Hill, your own report says that only three
16:00:3911	percent of customers within the government's alleged market
16:00:4212	pick up sugar outside of those markets; is that right?
16:00:4613	A. Yes, I testified to that.
16:00:4814	Q. You testified in the Tronox case in Federal Court
16:00:5315	about geographic market, correct?
16:00:5416	A. Correct.
16:00:5517	Q. Let's take a quick look at that testimony and
16:00:5918	similarly, Your Honor, may we publish it just for ease of
16:01:0319	everyone following along.
16:01:0720	MR. STRONG: Your Honor, may we publish to the
16:01:0921	screen the testimony?
16:01:1022	THE COURT: Yes.
16:01:1223	Q. Let's go to your testimony on page 381.
16:01:1724	A. I'm there.
16:01:1825	Q. On line 4, you were asked if you analyzed whether

16:01:22 1 there could be a global market in that case and then you 16:01:26 2 explain why not. Is that a fair characterization? That's fair. 16:01:30 3 Α. You then discussed Section 4 of the horizontal 16:01:30 4 0. 16:01:35 5 written guidelines, do you see that? 16:01:37 6 Yes. Α. 16:01:38 7 0. You testified in third sentence of that paragraph, 16:01:40 8 "what it says if you define a relevant market you should not 16:01:44 9 go further because when you define an overly broad market, 16:01:4710 you introduce substitutes that are not actually close 16:01:5111 substitutes and give them too much weight." 16:01:5312 Did I read that correctly? You did. But I would just interpret typically. If 16:01:5413 you look a little further down in my testimony I said you 16:01:5714 16:02:0015 typically want to focus on the narrowest market. 16:02:0416 You still agree with what you said there in the 16:02:0717 Tronox case? 16:02:0718 I do. Α. 16:02:0819 You also agree that it is not necessarily sound Q. 16:02:1020 economics to assume that everywhere two companies compete 16:02:1521 must comprise a single market. That's what you told me in 16:02:1822 your deposition correct? 16:02:1823 That's correct. Α. Companies can sell into different geographic markets, 16:02:1924 can't they? 16:02:225

16:02:23 1 Α. They can. 16:02:24 2 If a large geographic market passes the hypothetical monopolist test, it's still possible that a smaller 16:02:28 3 geographic area might also pass the hypothetical monopolist 16:02:31 4 16:02:33 5 test, correct? 16:02:34 6 That's correct. Α. 16:02:35 7 Q. Let's take --16:02:37 8 THE COURT: Can I ask a question. You keep 16:02:39 9 saying -- I meant to ask it yesterday, pass the hypothetical 16:02:4210 monopolist test, which way does that go? 16:02:4511 MR. STRONG: So if the government's regions pass 16:02:4712 the hypothetical monopolist test, in the view of the Court we have a disagreement, but in the view of the Court then 16:02:5013 16:02:5314 that would mean that is an area that it would be appropriate 16:02:5615 to calculate market shares and do the HHI calculation to 16:03:0016 determine whether the government had a presumption of harm 16:03:0217 in that case. THE COURT: So passing it is -- passing is more 16:03:0318 16:03:0919 on the side of being a market that a monopolist would want 16:03:1420 to monopolize? 16:03:1621 MR. STRONG: You got it. 16:03:1822 Passing it seems like, like failing THE COURT: 16:03:2023 it means you're anticompetitive. 16:03:2324 MR. STRONG: We'll take into account for the horizontal merger guidelines. 16:03:2525

16:03:27 1	THE WITNESS: Let me just make a minor addendum.
16:03:29 2	You may have multiple markets and you may need to identify
16:03:31 3	the most relevant market, so multiple markets may pass the
16:03:34 4	test and you may have a market that's the most relevant for
16:03:37 5	analyzing competitiveness.
16:03:40 6	THE COURT: Got it.
16:03:43 7	Q. Lets take a look at Figure 11 in your report. This
16:03:45 8	is an Imperial document, right?
16:03:47 9	A. Yes.
16:03:4710	Q. And ordinary course an Imperial document, right?
16:03:5111	A. I believe that's right, yes.
16:03:5312	Q. The chart references shipments by region, correct?
16:03:5713	A. Correct.
16:03:5814	\mathbb{Q} . And the first region listed is the southeast region,
16:04:0215	right?
16:04:0216	A. That's correct.
16:04:0217	Q. It list Alabama, Florida, Georgia, North Carolina and
16:04:0718	South Carolina, correct?
16:04:0819	A. That's right.
16:04:020	\mathbb{Q} . And all of those are in the government's narrower
16:04:1221	market, except that the narrower market also includes
16:04:1522	Tennessee, correct?
16:04:1@3	A. Correct.
16:04:124	Q. Fifty-three percent of Imperial's sales we're done
16:04:2025	with that one.

16:04:20 1 Fifty-three percent of Imperial's sales are to 16:04:23 2 states in the narrower market, correct? 16:04:26 3 I would say to customers in the narrower market. Α. 16:04:28 4 Fair enough. Approximately two-thirds of Imperial's Ο. 16:04:31 5 sales are also to customers within the broader market; 16:04:34 6 right? 16:04:36 7 Α. Yes. 16:04:38 8 You're aware, aren't you, Dr. Hill, that section 4.2 Q. 16:04:42 9 of the horizontal merger guidelines says the scope of 16:04:4710 geographic markets often depends on transportation costs, 16:04:5011 you're aware of that? 16:04:5112 I will agree with that. I am not aware of the Α. 16:04:5513 specific language. 16:04:5514 And we didn't look at it when we opened your Tronox 0. testimony, but you testified in Tronox that "the guidelines 16:04:5915 16:05:0316 are the best and clearest thing on how to evaluate the 16:05:0717 likely effect of a horizontal merger. Did I get that more or less correct in your recollection? 16:05:1018 16:05:1219 Α. Yes. 16:05:1320 And in this case, you agree that transportation costs Q. 16:05:121 and proximity to customers affect which producers supply a particular customer location, correct? 16:05:2122 16:05:2323 Α. I agree. 16:05:2524 Let's take a look at your Table 2 from your report. Q. I'm sorry, we're going to look at Dr. Rothman's Table 2. 16:05:3025

16:05:35 1	You read that Table 2 from Dr. Rothman's report, correct?
16:05:38 2	A. I did.
16:05:39 3	Q. You didn't dispute any of the figures from that table
16:05:43 4	in your report, correct?
16:05:43 5	A. Yeah, I wasn't entirely sure what to make of this
16:05:47 6	table, so I did not dispute any of it.
16:05:49 7	Q. You never even cited Dr. Rothman's Table 2 in your
16:05:53 8	entire report, correct?
16:05:54 9	A. Correct.
16:05:5510	Q. The word backyard doesn't appear in your entire
16:05:5811	report, correct?
16:05:5912	A. I'll take your word for it. I don't know.
16:06:013	Q. You testified earlier regarding some criticisms that
16:06:0414	you have of Dr. Rothman's hypothetical monopolist test,
16:06:0715	correct?
16:06:0716	A. Correct.
16:06:0817	Q. But for all those criticisms, you didn't present a
16:06:1118	single hypothetical monopolist test in your report in this
16:06:1419	case, did you?
16:06:1420	A. That's correct.
16:06:121	Q. You know how to run a hypothetical monopolist test,
16:06:1922	right, Dr. Hill?
16:06:1923	A. Yeah. But none of my competitive effects models rely
16:06:2424	on defining a relevant market, they're all market
16:06:2825	independent.

16:06:28 1 Q. What I'm asking you is whether you know how to run a 16:06:32 2 hypothetical monopolist test? 16:06:32 3 I do. Α. You have performed that in other cases, correct? 16:06:33 4 0. 16:06:35 5 Α. I have. 16:06:35 6 But here you chose not to run a hypothetical Q. 16:06:38 7 monopolist test on the narrower market, correct? 16:06:40 8 Α. Correct. 16:06:40 9 Q. You didn't run a hypothetical monopolist test on the 16:06:4310 broader markets either, right? 16:06:4411 Α. Correct. 16:06:4512 So there is no hypothetical monopolist test that you Q. 16:06:4813 run in your report in which either of the geographic markets 16:06:5214 defined in the complaint actually fail the test, correct? 16:06:5615 That's correct. Α. 16:06:5816 Let's talk about your -- I think we have gone back 16:07:0217 and forth on the language whether you call them plausible 16:07:048 markets or regions, which of those would you like to use 16:07:0919 today? 16:07:0920 I call them both, but I think regions is safe for 16:07:1221 anything that's not being defined as a market, we call them 16:07:1622 candidate markets if you prefer. 16:07:1823 You asked me to talk about them as regions in your 16:07:2124 depositions, right, or in your deposition, correct? Α. Possibly. I don't remember. 16:07:2325

16:07:25 1	Q. The two regions that you talk about in your report
10:07:25 1	2. The two regions that you talk about in your report
16:07:30 2	are the overlap, competitive overlap region and the national
16:07:35 3	region, right?
16:07:36 4	A. I also talk about Dr. Rothman's region, but yes, I
16:07:39 5	mention both.
16:07:39 6	\mathbb{Q} . Those are the two alternative plausible markets that
16:07:42 7	you talk about in your report, correct?
16:07:44 8	A. Correct.
16:07:45 9	Q. And you didn't run a hypothetical monopolist test on
16:07:4710	either of those, either, correct?
16:07:4911	A. Correct.
16:07:5012	Q. You're not aware of any reference in the horizontal
16:07:5413	merger guidelines referring to a competitive overlap test,
16:07:5714	correct?
16:07:5715	A. Correct.
16:07:5816	Q. Your competitive overlap region includes Michigan and
16:08:0217	Ohio among other states, right?
16:08:0518	A. That's correct.
16:08:0519	Q. Your own backup data, Dr. Hill, shows that Michigan
16:08:020	Sugar has a 57 percent share within the State of Michigan;
16:08:1321	is that right?
16:08:1422	A. It could be. I don't know.
16:08:123	Q. Would it surprise you to learn that Michigan Sugar's
16:08:1924	share is 57 percent within the State of Michigan?
16:08:2225	A. No.

16:08:22 1 Q. Your own backup data shows that Michigan Sugar has a 16:08:27 2 44 percent market share in Ohio, right? It could well be. 16:08:30 3 Α. 16:08:31 4 Would it surprise you to learn that Michigan Sugar Q. has a 44 percent share within the State of Ohio? 16:08:34 5 16:08:37 6 Α. No. 16:08:38 7 Q. Would it surprise you to learn that your own backup 16:08:41 8 data, Michigan Sugar's share of sales was within Georgia at 16:08:46 9 one percent? 16:08:4710 No. Α. And at 0.1 percent in Florida? 16:08:4811 Q. 16:08:5212 Α. No. 16:08:5213 And 0.1 percent in South Carolina? Q. A. 16:08:5614 No, I don't know those numbers, but I wouldn't be surprised. 16:08:5915 16:08:5916 But it won't surprise you? Q. 16:09:0117 Α. Correct. 16:09:018 You also discussed Texas during your direct Q. 16:09:0419 testimony, correct? 16:09:0520 Α. Correct. 16:09:021 Q. You told me at your deposition that you haven't 16:09:0922 specifically analyzed whether Texas customers buying refined 16:09:1323 sugar have the same competitive options as customers in 16:09:1724 Georgia, right? 16:09:1825 Α. Correct.

16:09:18 1 Q. And it's not necessarily true that customer in Texas 16:09:22 2 have the same competitive options as customers in Georgia, 16:09:25 3 correct? 16:09:26 4 Α. Correct. Again, your own backup data shows that CSC has a 16:09:27 5 Q. 17 percent market share in Texas for 2021, would that 16:09:33 6 16:09:37 7 surprise you? 16:09:37 8 No, they have a facility in Texas. Α. 16:09:40 9 Q. Would it surprise you if CSC has a 0.3 percent market 16:09:4510 share in Georgia? 16:09:4711 Α. No. 16:09:5012 Your own backup data also shows that Western has an Q. 16:09:5313 eight percent market share in Texas for 2021 and a 0.9 percent share in Georgia, would that surprise you? 16:09:5714 16:10:0015 No, the shares by market, if you look at shares at a Α. 16:10:0416 state level they vary greatly, so I think we looked at 16:10:0717 Dr. Rothman's Maryland, the parties have a combined share of 16:10:118 less than ten percent, and it's going to vary significantly 16:10:1419 from state to state. 16:10:120 LSR has approximately twice the market share in Texas 16:10:2021 that it does in the narrower and broader markets, right? 16:10:2522 I don't know that, but it wouldn't surprise me. Α. 16:10:2623 Did you hear Mr. Cameron tell the Court in opening Ο. statement that the defendants' position is that the market 16:10:3124 is a national market? 16:10:325

16:10:34 1 Α. I did. 16:10:35 2 But again, you're not actually taking the position on Q. 16:10:37 3 whether there is a national market, right? 16:10:40 4 Α. Correct. 16:10:40 5 And you heard Mr. Swart and Mr. Hanson testify that Q. same day that United thinks about USDA regions when 16:10:45 6 16:10:48 7 typically analyzing demand flows, did you hear that? 16:10:52 8 I did. Α. You're aware, are you not, that the USDA south is 16:10:54 9 Q. 16:10:5910 based on the USDA census regions? 16:11:0311 Α. I thought it was based on census bureau regions. 16:11:0612 Census bureau regions. Q. 16:11:0813 You're also aware that the broader market that 16:11:1014 the United States has alleged in this case is based off of -- based on two out of three census regions in the USDA 16:11:1415 16:11:1816 south, right? 16:11:1817 Α. Correct. 16:11:2018 And the west south central area that is not included Q. 16:11:2419 in the government's alleged markets includes Texas that we 16:11:2820 just discussed, right? 16:11:2921 Α. Correct. Okay. And it also includes Louisiana, Arkansas and 16:11:3022 Q. 16:11:3523 Oklahoma, correct? 16:11:324 Α. Yes, there may be another state in there.

Texas, Louisiana, Arkansas and Oklahoma?

16:11:4025

16:11:44 1	A. Okay.
16:11:45 2	Q. Mr. Snow, if we could pull up DDX, this is Dr. Hill's
16:11:51 3	slide that he just put up on slide 12, please.
16:12:00 4	There is only a very small portion of those
16:12:03 5	states that's covered by Imperial's secondary marketing
16:12:08 6	reasonable; correct?
16:12:09 7	A. So this is McKeany-Flavell's purported market.
16:12:14 8	Q. But you relied on this during your testimony just
16:12:18 9	now?
16:12:1810	A. No. I presented this as a document that Dr. Rothman
16:12:211	relied upon.
16:12:2212	Q. This was a document that was used in the ordinary
16:12:2613	course, correct?
16:12:2714	A. I don't know what was done with this document but I
16:12:3015	would assume so.
16:12:3116	Q. But in any event, whoever put it together the
16:12:3417	secondary marketing region does not include those states
16:12:3618	that we just talked about, right, Louisiana, Arkansas,
16:12:4119	Oklahoma and Texas except for a very small part, correct?
16:12:4720	A. That is correct.
16:12:5021	Q. You did not cite any ordinary course documents in
16:12:5222	your report showing that refiners set a single price
16:12:5623	nationally, correct?
16:12:5724	A. Correct.

Q. In fact, customers generally get locations specific

16:12:5725

16:13:01 1 prices, don't they? 16:13:03 2 My understanding of the General Mills testimony was that it got one price, one FOB price for all its locations 16:13:06 3 and then it pays a transportation surcharge. I haven't --16:13:11 4 16:13:16 5 Let's take a look at your deposition. That might be Ο. easier if you could open it up to page 159. 16:13:18 6 16:13:22 7 Α. Sure. 16:13:39 8 We're looking at lines 14 to 16. Just let me know Q. 16:13:44 9 when you're there. 16:13:4410 I'm there. Α. 16:13:4511 Q. "Question: In fact customers generally get location 16:13:4812 specific price, don't they? 16:13:5013 "Answer: That's correct." 16:13:5114 That's what I asked you and that's what you 16:13:5315 said? 16:13:5316 That's correct. Α. 16:13:5417 You haven't analyzed choices, Mr. Barbur talked about Q. this during your direct, you haven't analyzed choices made 16:13:5718 16:14:0119 by customers in southern California to determine whether 16:14:0420 they routinely consider the same refiner options as 16:14:0821 customers in and around Georgia, have you? 16:14:1022 That's correct. Α. 16:14:1023 In fact, you haven't reviewed any evidence relating 0. to which companies make bids to serve customers in southern 16:14:1424 California, is that correct? 16:14:1925

16:14:20 1	A. That's correct.
16:14:20 2	Q. We briefly discussed Idaho during your deposition as
16:14:23 3	well, right?
16:14:25 4	A. We may well have. I'll take your word for it.
16:14:28 5	Q. You say you didn't know a lot about the competitive
16:14:29 6	situation in Idaho, correct?
16:14:32 7	A. Correct.
16:14:33 8	Q. Let's take a look at Figure 21 from your report,
16:14:37 9	Dr. Hill. Now, your chart in Figure 21 shows that Imperial
16:14:4610	makes one to two percent of its sales in the Northeast,
16:14:5211	Mountain, West Coast, Alaska and Hawaii regions combined,
16:14:5812	correct?
16:14:5913	A. Correct.
16:15:00.4	Q. But those would be included in your national region,
16:15:0215	correct?
16:15:0316	A. That's correct.
16:15:047	Q. Let's take a look at your Figure 23 of your report.
16:15:1218	Now, you have your all U.S. region and your
16:15:1619	competitive overlap region there, right?
16:15:1720	A. That's correct.
16:15:1821	Q. If you add United's and Imperial's market share in an
16:15:222	all U.S. market, you get 31 percent; correct?
16:15:2623	A. Correct.
16:15:2924	Q. 31 percent is higher than 30 percent, isn't it
16:15:3325	Dr. Hill?

16:15:33 1	A. Correct.
16:15:34 2	Q. And the combined share would be the largest in the
16:15:37 3	country, isn't that right?
16:15:39 4	A. Correct.
16:15:40 5	Q. Domino would have 25 percent in an all U.S. region?
16:15:45 6	A. That's correct.
16:15:45 7	Q. And the only other company with more than a ten
16:15:48 8	percent share would be NSM, correct?
16:15:50 9	A. Correct.
16:15:5110	\mathbb{Q} . And you haven't calculated NSM's share by region to
16:15:5511	determine where most of NSM agency's sales occur, right?
16:15:5812	A. Correct.
16:15:5913	\mathbb{Q} . And if you look at the competitive overlap region
16:16:0214	there.
16:16:0215	A. Yeah.
16:16:0316	\mathbb{Q} . And you add United and Imperial together, you get
16:16:0 6 17	37 percent; is that right?
16:16:0818	A. Yes.
16:16:0919	Q. Domino would have about 27 percent?
16:16:1120	A. Correct.
16:16:1121	\mathbb{Q} . And no other refiner would have more than a nine
16:16:1522	percent share; is that right?
16:16:123	A. Right, in both regions there are a number of other
16:16:1924	refiners with significant shares.
16:16:2225	Q. But none more than nine percent, right?
16:16:2225	Q. But none more than nine percent, right?

16:16:25 1 Α. Correct. Let's take a look at Figure 24. Your Figure 24 shows 16:16:25 2 Q. 16:16:33 3 market concentration based on the regions you proposed in your report; correct? 16:16:36 4 16:16:38 5 Α. That's correct. 16:16:39 6 You used Dr. Rothman's share methodology when 16:16:43 7 calculating HHI in that one, correct? 16:16:46 8 Α. Correct. 16:16:47 9 For the all U.S. region, the increase in HHI would be Q. around 300 points both for 2020 and 2021, is that fair? 16:16:5010 That's fair. 16:16:5511 Α. 16:16:5612 For the competitive overlap region, the increase in Q. 16:16:5913 HHI would be somewhere between 400 and 600 points for both 2020 and 2021, right? 16:17:0414 16:17:045 That's correct. Α. 16:17:0616 Q. And all those numbers are higher than 200, correct? 16:17:1017 Α. That's correct. 16:17:1118 We're going to switch gears here for a second. I'11 Q. talk about United and US Sugar. Okay. United is the 16:17:1519 16:17:1920 exclusive marketing arm of its four member owners, correct? 16:17:2321 Α. That is correct. If a customer wants to purchase refined sugar that 16:17:2422 Q. 16:17:2723 has been refined by any of the United member owners, they have to purchase through United, correct? 16:17:3224

Α.

That's correct.

16:17:3525

16:17:36 1 Q. United doesn't provide multiple bids separately for 16:17:40 2 each member owner, does it? 16:17:41 3 Not to my knowledge. Α. 16:17:42 4 United sets a single bid on behalf of its member Ο. 16:17:46 5 owners for a particular RFP at a given point in time, right? Correct. 16:17:51 6 Α. 16:17:51 7 Q. At the time of a bid, all member owners have the same incentives on the price of that bid, don't they? 16:17:55 8 16:18:01 9 Α. I think -- I'm a little confused by the question. 16:18:0610 Just to speed it up, let's take a look at your Q. deposition on page 23. 16:18:0911 16:18:1112 Okay. I'm there. Α. 16:18:2613 We're going to look at lines 22 to 25. I asked you, 16:18:3014 but at the time of a bid, all the member owners have the same incentive on the price of that bid, right? Answer, I 16:18:3315 16:18:3816 think so. That was the question I asked you and that was 16:18:4017 the answer you gave me, right? 16:18:4118 Α. Yeah. And again -- yeah. 16:18:4419 You used United sales and your market share Q. 16:18:4720 calculations, correct? 16:18:4821 Α. That's correct. You used United sales and transportation costs in 16:18:4922 Q. 16:18:5223 your economic models, right? 16:18:5524 Α. Correct.

Let's take a look, Mr. Snow, if we could put up

16:18:525

16:19:05 1	slides from Dr. Hill on, slide 3. You talked about this in
16:19:21 2	your direct examination, right?
16:19:22 3	A. Correct.
16:19:23 4	Q. Those numbers are made up, right?
16:19:25 5	A. These numbers are illustrative, yes.
16:19:28 6	\mathbb{Q} . Let's take a look at the next slide, slide 4. Slide
16:19:36 7	4, the numbers for this slide here are based on the beet
16:19:43 8	freeze; correct?
16:19:44 9	A. Yeah, this is crop year 2019 which is not affected,
16:19:4910	and the beet freeze of crop year 2020.
16:19:5311	\mathbb{Q} . So this was not the result of a strategic choice by
16:19:5712	member owners, correct?
16:19:5813	A. That's correct.
16:19:5914	Q. Now, you haven't analyzed how divergent the United
16:20:0915	member owner interests are in terms on how it would effect
16:20:1316	the transaction, correct?
16:20:1417	A. Correct.
16:20:1618	Q. United chooses the price level on which it bids on
16:20:1819	RFP, correct?
16:20:1920	A. That's correct.
16:20:1921	Q. And you analyzed the merger based on price effects,
16:20:2322	correct?
16:20:2323	A. Correct.
16:20:2424	Q. You haven't analyzed the
16:20:2625	A. Sorry. I mean, my analysis is not just price

16:20:32 1 effects, but I do for my model based on price. 16:20:34 2 You haven't analyzed the creation or existence of Q. 16:20:37 3 United or how it came to be, right? 16:20:39 4 Α. That's correct. 16:20:40 5 Q. You're not an expert on firm composition, are you? 16:20:43 6 Α. I am not. 16:20:45 7 Q. You understand that the USDA gives allocation to refiners, correct? 16:20:49 8 16:20:52 9 I am not -- it gives allocation to -- the way I 16:20:5910 understand it, to people to produce raw sugar, if they are cane and if they are beet producers to produce refined 16:21:0311 16:21:0612 sugar. 16:21:0713 Okay. So there is a limit on how much the refiners 16:21:0914 can increase output, is that fair? 16:21:1315 Α. Yes. Although I should just note that the USDA 16:21:1916 sometimes raises those allocations. I believe Michigan 16:21:2217 Sugar had a very good harvest this year or last year and USDA raised its allocation. 16:21:2618 16:21:2819 Sometimes they do that, correct? Q. 16:21:3020 Α. Correct. 16:21:3021 Q. Sometimes you just have your allocation? 16:21:3322 I don't know if it's typical or not. There is an Α. 16:21:3723 allocation for both beet producers and raw cane. 16:21:3924 You're not aware, Dr. Hill, of any disagreement or Q.

conflict between member owners related to output decisions,

16:21:4225

correct?
A. I believe Mr. Buker testified today that his plan to
increase output at Imperial was not popular with the other
members of the co-op.
\mathbb{Q} . If there was a large difference in incentive, they
might not have an incentive to stay in the cooperative at
all, right?
A. Conceivably.
\mathbb{Q} . Let's switch gears here and let's talk about
competition between United and Imperial. Okay?
A. Okay.
Q. You don't dispute that United and Imperial compete,
do you?
A. No.
\mathbb{Q} . Let's take a look at your Figure 26. And Figure 26,
the columns there include four competitors, right? Do you
see that?
A. Correct.
\mathbb{Q} . And this chart was meant to respond to a chart that
Dr. Rothman had which only included Imperial and United,
right?
A. Well, this chart I think is showing that I don't
think the methodology used here is reliable.
Q. Now, the competitors you chose there were Cargill,
Domino, Imperial and United, right?

16:22:51 1	A. Correct.
16:22:52 2	Q. And your report doesn't specify why you chose those
16:22:55 3	four competitors, does it?
16:22:56 4	A. No.
16:22:57 5	Q. You told me in deposition that you didn't remember
16:22:59 6	why you picked those four, do you recall that?
16:23:02 7	A. I do.
16:23:02 8	Q. You chose those four because they illustrate your
16:23:05 9	point the best, isn't that right, Dr. Hill?
16:23:0710	A. I did not.
16:23:0811	Q. These are the four companies that have the most
16:23:1112	overlap with each other in the narrower and broader markets,
16:23:1413	don't they?
16:23:1514	A. I don't know that. I don't know that.
16:23:1715	Q. You didn't include NSM or Michigan or Western in this
16:23:2116	chart, did you?
16:23:2117	A. No .
16:23:2218	Q. There are no distributors on this chart, right?
16:23:2519	A. Correct.
16:23:220	Q. The chart shows that Imperial's large market, the
16:23:3021	chart shows that Imperial large customers in the broader
16:23:3322	market, United overlaps on 56 percent of those customers,
16:23:3&3	correct?
16:23:3&4	A. Strictly speaking I think this is the top 50
16:23:4225	customers to be specific, but yes.

16:23:44 1 Q. They overlap on 56 percent of those customers, 16:23:46 2 correct? 16:23:47 3 Again, here overlap just means that they also have Α. sales in that location or that -- I think --16:23:50 4 16:23:53 5 Q. For that customer, correct? 16:23:54 6 Correct. But it could be one sale. This is part of Α. 16:23:59 7 the reason I don't think this is a reliable methodology, 16:24:01 8 it's just not clear what this is producing. 16:24:04 9 Ο. In any event, 56 percent is more than half, right? 16:24:0710 That's true. Α. And it also shows that Imperial overlaps on 16:24:0811 Q. 16:24:1112 77 percent of United's customers in the broader market, 16:24:1413 right? 16:24:1514 Α. Correct. 16:24:1615 And in the narrower market Imperial overlaps with Q. 16:24:2016 38 percent of United's large customers, right? 16:24:2317 That's correct. And the smallest of the listed Α. producers. 16:24:2618 16:24:2719 And of the customers served by Imperial United Q. 16:24:3020 overlaps 54 percent, right? 16:24:3121 Α. Again, the lowest of all, yes. 16:24:3322 And it's not your view, is it, Dr. Hill, that Q. 16:24:3723 competitors in a market must always be each other's closest 16:24:4124 competitor for there to be harm from that merger, right? 16:24:4425 Α. Yes, I agree.

16:24:45 1 Q. Let's talk about distributors. Distributors buy 16:24:49 2 sugar from refiners, correct? 16:24:51 3 Some distributors buy sugar from refiners. Α. Some 16:24:55 4 distributors refine their own sugar. Some distributors melt 16:24:59 5 sugar. 16:24:59 6 Refiners collectively control the critical input of Q. 16:25:04 7 refined sugar for distributors, correct? 16:25:06 8 For all refiners, including importers, correct. Α. 16:25:10 9 Well, again, the distributors who independently refine their 16:25:1310 own sugar, no. 16:25:1411 Q. Okay. You believe it's important for distributors to 16:25:1812 have independent sources of supply, don't you? Α. 16:25:2013 I do. 16:25:2114 Let's take a quick look at a slide you presented 0. earlier today about distributors. Those big gray boxes up 16:25:2415 16:25:2916 there, those are imports, right? 16:25:3117 Α. That is correct. 16:25:3218 Q. You are aware that Dr. Rothman includes imports in 16:25:3619 his market share; right? Α. 16:25:3720 Correct. 16:25:3821 Q. And in both charts the red and green volumes combined would be the volume of a merged United and Imperial firm, 16:25:4522 16:25:4923 correct? 16:25:4924 Α. Correct.

So that leaves somewhere in the ballpark in terms of

16:25:4925

0.

16:25:52 1 percentages about 10, 15, 20 percent, something like that, 16:25:57 2 you can do the math based on the remaining bars, is that fair? 16:26:00 3 16:26:00 4 But I don't think -- you're thinking about how this 16:26:03 5 is going to affect market share calculations, it's misguided because you have to deduct sales to distributors from the 16:26:07 6 16:26:09 7 share of the competitors in the market and then you have to independently assign them to distributors. 16:26:11 8 You can explain all that on redirect. I'm just 16:26:14 9 16:26:1710 asking about the numbers. I don't -- let me see, do a quick calculation. 16:26:1811 Α. Ι 16:26:2412 would estimate it's on the order -- in the left-hand graph 16:26:2813 it's probably on the order of about 20 percent, or maybe 15 to 20. 16:26:3214 16:26:3315 That's what I asked you, right? That was a yes? Q. 16:26:3816 Α. Yes. 16:26:3917 Distributors typically add a markup when they sell Q. refined sugar, right? 16:26:4218 16:26:4319 Α. Correct. 16:26:4420 A refiner may choose not to sell to a distributors Q. 16:26:4921 unless they have some kind of contract that requires them to, correct? 16:26:5122 16:26:5223 Α. Correct. 16:26:5224 Refiners could try to distribute their own sugar Q. directly and not sell to distributors, correct? 16:26:525

16:26:58 1	A. That's correct.
16:26:58 2	Q. United has done that for certain customers in
16:27:02 3	Chicago, correct?
16:27:05 4	A. That was my understanding, yes.
16:27:05 5	Q. You told me at your deposition that distributors are
16:27:09 6	good for reaching certain customers, correct?
16:27:10 7	A. Yes.
16:27:11 8	Q. Sometimes distributors are selling to customers that
16:27:14 9	refiners can't sell to or decide not to sell to, right?
16:27:1810	A. They may be. I don't have direct evidence of that.
16:27:2111	Q. Refiners refer customers to distributors at times for
16:27:2512	smaller orders of sugar; is that right?
16:27:2713	A. They may.
16:27:2914	Q. Refiners sometimes refer to distributors as partners,
16:27:3315	is that right?
16:27:3416	A. Yes, so the distributors do play, many distributors
16:27:3817	play a dual role.
16:27:4018	Q. Just asking whether they refer to them as partners
16:27:4219	sometimes. Is that a yes or no?
16:27:4520	THE COURT: Just so we're clear, I usually let
16:27:4721	witnesses answer yes, you must answer yes or no if you can
16:27:5022	first, but they get a brief explanation.
16:27:5323	MR. STRONG: That's fine, Your Honor.
16:27:5424	THE COURT: Because I don't like having a record
16:27:5@5	where he doesn't believe it but he's not allowed to explain.

16:28:00 1	That goes for all witnesses.
16:28:02 2	MR. STRONG: That's fair. Thank you, Your
16:28:03 3	Honor.
16:28:04 4	BY MR. STRONG:
16:28:05 5	\mathbb{Q} . Refiners at times may benefit from sales by
16:28:08 6	distributors, right?
16:28:09 7	A. Correct.
16:28:10 8	Q. In your view where a distributor is a distribution
16:28:15 9	arm, those sales should count towards a refiners market
16:28:1910	share, right?
16:28:2011	A. Agreed.
16:28:212	Q. You don't calculate market shares for distributors in
16:28:243	your report; is that right?
16:28:2514	A. That's correct.
16:28:2615	Q. You don't include distributors in your market share
16:28:2816	calculations at all, right?
16:28:3017	A. That's correct.
16:28:318	Q. You also don't include distributors' sales in your
16:28:3519	economic model, correct?
16:28:320	A. That's also correct.
16:28:3821	Q. You talked about the Dean Foods case?
16:28:4022	A. Correct.
16:28:4123	Q. Now, that was a case about milk?
16:28:4524	A. Fluid and school milk, yes.
16:28:4925	Q. Some of that milk was sold by producers to

16:28:53 1 distributors, correct? 16:28:53 2 Α. Correct. 16:28:54 3 And the distributors in that case did not get market 0. share, correct? 16:28:57 4 16:28:57 5 Α. That's correct. Let's talk about your economic models. You discussed 16:28:59 6 16:29:06 7 two economic models that you used to estimate harm of the merger during your direct testimony; right? 16:29:10 8 16:29:12 9 Α. That's correct. 16:29:1310 One is a bidding model? Q. Α. 16:29:1611 Correct. And the other is a second price auction, correct? 16:29:1612 Q. That's correct. So I'm sorry, the second, relative 16:29:1913 Α. 16:29:2314 cost model. The relative cost model? 16:29:2415 Q. I mean a second score auction type format. 16:29:2816 A. 16:29:3217 Thank you, Dr. Hill. Q. 16:29:3418 In a second price auction, the model assumes 16:29:3919 that a customer chooses the suppliers that submits the 16:29:3920 lowest bid but pays a price equal to the second lowest bid 16:29:4321 submitted, correct? You're asking me in my models? 16:29:4522 Α. 16:29:4723 In your models, yes? Q. 16:29:4924 No, in the bidding model it starts with United Α. 16:29:5225 customers and then looks at -- United customers for whom

16:29:56 1 Imperial is the lowest cost alternative and the same for 16:30:00 2 Imperial. And then in the relative cost model, again, it 16:30:03 3 starts with who is the supplier and then estimates the relationship between the price paid by that customer, the 16:30:06 4 16:30:12 5 distance to their current supplier and their distance to 16:30:16 6 alternatives. 16:30:17 7 Now, you assume for purposes of the model that the Q. 16:30:21 8 production and manufacturing costs of the refiners is the 16:30:25 9 same across all refiners, correct? 16:30:2810 Correct. Well -- yeah, correct enough. Α. 16:30:311 Q. And the only cost difference between refiners in your 16:30:3712 bidding model is their transportation cost to customers, 16:30:4013 right? 16:30:4114 Α. To put it slightly differently, I'm just assuming 16:30:4415 that on average those differences are not significant and 16:30:4716 I'm focusing on transportation costs. 16:30:5017 Let's take a look at what you said in your Q. deposition. Open it up to page 196. Let me know when 16:30:5318 16:31:0519 you're there. 16:31:0520 Α. I'm there. 16:31:021 Q. We're taking a look at lines 21 to 25. 16:31:1122 "QUESTION: So the only cost difference between 16:31:1323 the refiners in your model is their transportation cost to 16:31:124 the customers?

"ANSWER: Correct."

16:31:1725

16:31:18 1 Is that the question that I asked you and the 16:31:20 2 answer that you gave me? It is. 16:31:21 3 Α. You used Dr. Rothman's methodology for calculating 16:31:22 4 0. 16:31:26 5 freight, right? Correct, we -- I think we actually made some minor 16:31:27 6 16:31:31 7 differences but we basically mirrored each other. And the bidding model, you present each supplier's 16:31:34 8 Q. 16:31:37 9 bid, its total cost of supply, right? The bidding model, do you mean the relative cost 16:31:4310 Α. 16:31:5111 model or the bidding model? We can move on. Why don't we talk about the relevant 16:31:5312 Q. cost model for a minute. In the relevant cost model, you 16:31:5613 16:32:0114 ran a regression, right? 16:32:0215 Α. Yes. 16:32:0316 You determined that transportation cost do in fact 16:32:0617 influence the price paid by customers, right? 16:32:0818 Α. That's right. In both of your models, transportation cost play 16:32:0919 Q. 16:32:1320 crucial role in competition, correct? 16:32:1421 Α. Yes. In your view, though, there are factors beyond 16:32:1722 Q. 16:32:2023 transportation costs that could affect whether a supplier wins the business? 16:32:2524 16:32:2625 Α. That's correct.

16:32:26 1	Q. Reliability is something that a customer could
16:32:29 2	consider?
16:32:29 3	A. Correct.
16:32:30 4	Q. Quality of the product is something that a customer
16:32:32 5	could consider?
16:32:33 6	A. Correct.
16:32:34 7	Q. Customer service is something a customer could
16:32:39 8	consider?
16:32:39 9	A. Correct.
16:32:3910	Q. Customers could have particular specifications for
16:32:4211	their sugar, right?
16:32:4312	A. That's correct.
16:32:4413	$\mathbb{Q}.$ Just a few more. Delivery time is something a
16:32:5014	customer could consider?
16:32:5115	A. Correct.
16:32:5216	Q. A refiner's sold position could play a role in what
16:32:5817	price the refiner submits, right?
16:33:018	A. Correct. A refiner with a very an oversold
16:33:0719	position, my estimate a different bid than a refiner with a
16:33:1020	lot of sugar to move, yes.
16:33:1221	Q. Competing sales opportunities can influence what
16:33:1522	price the refiner submits, right?
16:33:1&3	A. They could.
16:33:2024	Q. Credit terms and payment options are something that a
16:33:2425	customer might think about when choosing a supplier, right?

16:33:27 1 Α. Agreed. 16:33:27 2 Last one, packaging options also may affect a Q. customer's willingness to purchase from a supplier? 16:33:31 3 16:33:34 4 Α. Correct. 16:33:35 5 If we could take a look at your report at Q. That paragraph says that "to simulate the 16:33:38 6 paragraph 377. 16:33:44 7 change in price post merger, I recalculate each of the relative freight costs as if United and Imperial are one 16:33:51 8 16:33:55 9 firm." 16:33:5610 That's accurate, right? 16:33:5711 Α. That's correct. 16:33:5812 Q. The next sentence says that the coefficient estimates 16:34:0413 on each of these variables. By these variables you mean the 16:34:0814 relative freight cost, right? That's what it says in the 16:34:1215 previous sentence? 16:34:1216 A. Right. 16:34:1317 Q. So the sentence says that the coefficient 16:34:1718 estimates on each of these variables dictate how these 16:34:2119 changes in cost correspond to a change in price? That's 16:34:2620 what you wrote, correct? 16:34:2621 Α. Right. And your bidding model assumes different suppliers 16:34:2722 Q. 16:34:3023 differentiate from each other solely based on transportation costs, right? 16:34:3424

I wouldn't say that's quite right because in the

16:34:3425

Α.

16:34:37 1 model I start with United's suppliers and I look -- but the 16:34:41 2 distance between the current Imperial and United when 16:34:44 3 they're the closest alternative today and the next closest 16:34:47 4 alternative is solely based on transportation cost. And the effects that you calculate in the bidding 16:34:50 5 0. 16:34:53 6 model is driven by the distance from Imperial or United and 16:34:56 7 the next lowest cost supplier, right? It's the distance between -- the transportation cost 16:34:59 8 Α. 16:35:04 9 difference between the current closest constraint which is 16:35:0810 either Imperial or United and the second. 16:35:0911 Q. US Sugar's Clewiston facility is about thirty miles 16:35:1412 from ASR's South Bay facility, is that correct? 16:35:1713 That's right. Α. 16:35:1914 You have seen evidence in this case that the 0. 16:35:2115 difference in bid submission between ASR and United are 16:35:2516 orders of magnitude greater than what would be implied by 16:35:2817 the difference in transportation cost between those two suppliers, right? 16:35:3118 16:35:3119 I'm not aware of that evidence. I'm not saying it Α. 16:35:3420 doesn't exist. 16:35:3521 Q. You heard the testimony of Mr. Riippa in this case? 16:35:3722 I did. Α. 16:35:3723 In the numbers from that testimony are confidential, Ο. 16:35:4024 but you have been made aware of them, right? Α. 16:35:4225 I didn't -- I was watching remotely so I didn't

16:35:46 1 actually see the numbers. 16:35:47 2 You heard the testimony of Mr. Cagle in this case? Q. 16:35:49 3 I did not. Α. 16:35:51 4 Let's talk about efficiency real quick. 0. 16:35:54 5 mentioned that on your direct. Okay? You haven't done any evaluation of how much more 16:36:10 6 16:36:13 7 secure the supply of sugar would be at Port Wentworth with the merger compared with what Port Wentworth is doing today, 16:36:16 8 16:36:22 9 correct? 16:36:2310 Aside from US Sugar's estimate of how much raw sugar Α. 16:36:2911 it -- that's correct. 16:36:3012 If SCGC were to send additional sugar to Port Ο. Wentworth, that particular sugar would not be available for 16:36:3613 16:36:3814 other purchasers, correct? 16:36:4115 Α. Correct. 16:36:4116 And you haven't done any analysis to determine 16:36:4417 whether whoever loses access to that sugar supply would be less able to constrain a merger of United and Imperial, 16:36:4818 16:36:5219 correct? 16:36:5320 Α. Correct. You also have not done an independent evaluation of 16:36:5421 Q. the opportunity costs for US Sugar or SCGC of selling sugar 16:36:5722 16:37:0323 to Port Wentworth as compared to selling it to whoever is purchasing it today, correct? 16:37:0824

Can you repeat that question, please?

16:37:0925

Α.

16:37:11 1 Q. You also have not done an independent evaluation of 16:37:15 2 the opportunity costs for US Sugar of SCGC of selling sugar to Port Wentworth as compared to selling to whoever is 16:37:21 3 purchasing that sugar today, right? 16:37:25 4 16:37:27 5 Α. Correct. 16:37:28 6 You have not in your report or today concluded that 16:37:32 7 the overall amount of sugar will increase in any market as a result of this merger, correct? 16:37:36 8 16:37:39 9 I would say -- I think my report says that I expect 16:37:4410 production to increase at Port Wentworth. At Port Wentworth. Okay. But overall --16:37:4711 Q. 16:37:5112 Α. But I didn't do an overall, yeah. 16:37:5513 Okay. Let me just -- you discuss in your report that Q. 16:37:5914 US Sugar estimates that it will increase output at Port 16:38:0315 Wentworth from 15 million hundredweight in 2021 to 17 16:38:1016 million hundredweight in 2025, correct? 16:38:1217 Α. Correct. 16:38:1318 You cite a financial model 4D 12 in your report for Q. 16:38:1819 support for that, correct? 16:38:1920 Α. Correct. And Mr. Buker actually testified on it 16:38:2321 today. 16:38:2422 In that spreadsheet, the production is assumed to be Ο. 16:38:2923 equal to sales quantity, isn't that right? 16:38:3124 I believe so. Α.

16:38:325

0.

There is a conservative scenario in that spreadsheet,

isn't there? 16:38:37 1 16:38:37 2 Α. There is. 16:38:38 3 And the conservative scenario in the spreadsheet 0. cited there are actually no increases from 2021 to 2025, 16:38:43 4 16:38:47 5 correct? 16:38:48 6 That's correct. Α. 16:38:48 7 Q. You haven't done any independent evaluation to 16:38:52 8 determine whether the sales from Port Wentworth will be 16:38:56 9 equivalent to the numbers in that spreadsheet, fair? 16:38:5910 Fair. Α. 16:38:5911 You also haven't done an independent evaluation of Q. 16:39:0312 how much Imperial could increase its output on its own 16:39:0713 compared to the projections in the spreadsheet, correct? 16:39:0914 I disagree with that a little. I think I said in my Α. 16:39:1315 deposition and also my report, Imperial to date has not 16:39:1716 undertaken these increases, so United has been able to 16:39:2117 increase its output at Clewiston, Imperial has not increased 16:39:2618 output at Port Wentworth commensurate. 16:39:2919 Let's take a look at what you said in your Q. deposition. Okay? 16:39:320 16:39:321 Α. Sure. Open it up to page 320 there. 16:39:3422 Q. 16:39:3923 Α. I'm there. 16:39:4424 "QUESTION: Have you done any independent evaluation Q. of how much Imperial could increase its output on its own 16:39:425

16:39:50 1 compared to the projections in this spreadsheet? 16:39:53 2 "ANSWER: No, I have not. Other than, you know, 16:39:55 3 the statements from Louis Dreyfus that it doesn't intend to invest in this facility, I should say invest material 16:39:59 4 16:40:03 5 improvements." 16:40:03 6 That was the question I asked and that was the 16:40:05 7 answer you gave, correct? 16:40:06 8 I think this is a little misleading because we had a Α. discussion about this and I made the point I made earlier 16:40:08 9 16:40:1110 and here I'm referencing back to that same Louis Dreyfus 16:40:1411 statement, it doesn't intend to invest in material 16:40:1712 improvements. 16:40:1713 You also haven't done an independent evaluation of 16:40:2214 Louis Dreyfus' incentives to invest in Port Wentworth, 16:40:2715 correct? 16:40:2716 Well, again, I think I said in my -- yes, I haven't 16:40:3217 done an independent evaluation, but I do discuss in my 16:40:3618 report they have stated that they are not intending to 16:40:3819 invest in material improvements. 16:40:3920 Q. They are trying to sell the asset, right? 16:40:4221 Α. That's correct. You didn't incorporate any efficiencies in projected 16:40:4322 Q. 16:40:4923 increases and in outputs in your model? 16:40:5124 Α. Yes.

Let's talk about transportation costs.

16:40:5225

0.

16:40:55 1	MR. STRONG: I have a couple more topics, Your
16:40:58 2	Honor.
16:40:58 3	THE COURT: Couple more topics?
16:40:59 4	MR. STRONG: Yeah, it will be quick.
16:40:59 5	THE COURT: You're over twelve hours already.
16:41:03 6	MR. STRONG: I got ten minutes before Mr. Hanna
16:41:07 7	pulls me down.
16:41:08 8	THE COURT: You have got to save some time for
16:41:09 9	closing.
16:41:0910	BY MR. STRONG:
16:41:1011	Q. You accepted \$12 million of transportation cost in
16:41:1312	your model?
16:41:1413	A. That's correct.
16:41:1414	Q. You also cited that same spreadsheet we were just
16:41:1715	talking about for those figures?
16:41:1916	A. That's correct.
16:41:1917	Q. That spreadsheet actually tops out at 10 million?
16:41:2318	A. That's correct.
16:41:2319	Q. And you understand that that amount was modeled to be
16:41:2720	returned to United member owners, correct?
16:41:2921	A. I don't think that's quite right. I think they say
16:41:3222	that that's the change in the net selling price and then
16:41:3523	they're silent on what exactly is going to happen to it and
16:41:3924	whether there will be any other decrease in price.
16:41:4225	Q. Do you remember a note from that spreadsheet that

16:41:45 1 says amount to be returned to members? 16:41:46 2 Α. I don't. 16:41:47 3 If we can just quickly take a look at your Q. deposition, maybe that will help refresh your recollection. 16:41:50 4 Okay. Where would you like me to go? 16:41:54 5 Α. 16:41:56 6 I'm sorry, page 327. You're going to be at lines 2 16:42:03 7 through 6: 16:42:04 8 "QUESTION: The language also says amount to be 16:42:06 9 returned to members, not included in NSP above. Do you see 16:42:1110 that? 16:42:1111 "ANSWER: I do. 16:42:1212 "QUESTION: Is it your understanding that the word 'members' means the member owners of United? 16:42:1413 16:42:1814 "ANSWER: Yes, I would think so." 16:42:2115 Those are the questions I asked you and that was 16:42:2316 the answer you gave, correct? 16:42:2417 Right. And then below it I say exactly what I just Α. said, I think the net selling price is the price minus cost. 16:42:2718 16:42:3219 In any event, you incorporated those synergies into Q. 16:42:3720 your model? 16:42:3821 Α. Correct. 16:42:3822 And the transportation costs were calculated --Q. 16:42:4123 I'm sorry, they are in the bidding model, but they Α. 16:42:4524 are not in relative cost model. 16:42:4925 The transportation cost synergies were calculated at

16:42:52 1 the United level, not the US Sugar level, correct? 16:42:55 2 Α. Correct. 16:42:56 3 It's not your understanding that the merging parties 0. 16:43:00 4 contemplated that the cost of shipping from the same 16:43:03 5 location to the same customer would go down post merger, 16:43:07 6 correct? 16:43:08 7 Α. That I think is correct. 16:43:10 8 But the cost of shipping from the same location is Q. 16:43:14 9 lower in the model right? 16:43:1610 Yeah, that's correct. Α. 16:43:1911 Q. In any event, efficiencies even in your model make a 16:43:2412 very small difference, correct? 16:43:2713 Yes, they make a negligible price increase, very 16:43:3214 slightly more negligible. 16:43:3315 MR. STRONG: Two more topics, Your Honor. 16:43:3516 You discussed entry and expansion with Mr. Barbur Q. 16:43:3917 earlier. Do you recall that? I do. 16:43:4018 Α. 16:43:4019 You discussed -- hold on one second. Q. 16:43:4820 I'll just skip to the end on this one. 16:43:4921 You haven't done any analysis in your report to determine how much prices would need to rise to incentivize 16:43:5222 16:43:5523 entry, correct? 16:43:524 Α. That's correct. Let's talk about the USDA real quick and then we'll 16:44:0025

16:44:04 1	be done.
16:44:05 2	Dr. Hill, you don't disagree that it has been
16:44:08 3	the USDA's goal since 1981 to adjust imports so that the
16:44:13 4	domestic prices remain above minimum support level, right?
16:44:19 5	A. Certainly it's a goal of the USDA to keep prices
16:44:23 6	above the minimum support levels.
16:44:24 7	Q. The USDA strives to maintain a stock-to-use ratio
16:44:29 8	between 13.5 and 15.5 percent?
16:44:33 9	A. That's correct.
16:44:3310	\mathbb{Q} . And although the USDA maintains a stock-to-use ratio,
16:44:3711	there is still competition that occurs between refiners
16:44:4012	today, correct?
16:44:4113	A. That's correct.
16:44:4214	\mathbb{Q} . The market price for refined sugar changes, right?
16:44:4415	A. Correct.
16:44:4516	\mathbb{Q} . It's not your view that the USDA allows additional
16:44:5117	imports every time prices rise to a particular customer,
16:44:5418	right?
16:44:5419	A. Correct.
16:44:5520	Q. Or in a particular region, correct?
16:44:5721	A. Correct.
16:45:0322	Q. It's your understanding that the Harmonized Tariff
16:45:0723	schedule that was discussed with Dr. Fecso earlier was
16:45:1024	discretionary, correct?
16:45:1125	A. That's what she testified to, yes.

16:45:16 1 Q. You can't make any prediction that the USDA would 16:45:20 2 take action or would not take action if prices increased in 16:45:23 3 a given region, correct? 16:45:26 4 Correct. My prediction was about the possibility Α. that it might happen. 16:45:28 5 16:45:31 6 And you don't purport to be an expert on the USDA, Q. 16:45:35 7 correct? 16:45:35 8 That is correct. Α. 16:45:38 9 0. You have no reason to believe that the USDA will 16:45:4110 change its view on the appropriate stock-to-use ratio if the 16:45:4511 merger is not approved, right? 16:45:4712 If the merger is approved or not approved? Α. 16:45:5113 If the merger is not approved. Q. 16:45:5314 Α. No, I think no. 16:45:5415 And you have no reason to believe that the USDA will Q. 16:45:5716 change its view on the appropriate stock-to-use ratio if the 16:46:0117 merger is approved? 16:46:0318 Α. Correct. 16:46:0419 And you haven't analyzed whether the USDA has Q. 16:46:1220 increased imports based on the price of refined sugar in the 16:46:1521 United States while the stocks-to-use ratio remained between 13.5 to 15.5 percent, correct? 16:46:1822 16:46:2123 Α. Correct. 16:46:2224 Q. Last question. 16:46:2325 Nowhere in your report do you express the

16:46:25 1	opinion that the USDA will in fact allow additional imports
16:46:30 2	if prices to customers rise as a result of this merger,
16:46:33 3	correct?
16:46:34 4	A. Correct.
16:46:35 5	MR. STRONG: That's all. Thank you, Your Honor.
16:46:38 6	THE COURT: Thank you. Redirect.
16:46:42 7	MR. BARBUR: No redirect, Your Honor.
16:46:43 8	THE COURT: Thank you. You are excused.
16:46:47 9	What's next?
16:46:4910	THE WITNESS: Thank you, Your Honor.
16:46:5411	MS. DWYER: Your Honor, at this time the
16:46:5712	defendants would like to play three video depositions of
16:47:0013	third parties all of whom have requested to seal the
16:47:0314	courtroom, so Post Foods, CSC and Indiana Sugars.
16:47:1015	THE COURT: How much time is this going to take.
16:47:1316	MS. DWYER: The three videos altogether are an
16:47:1517	hour and eighteen minutes. Individually they're
16:47:1818	twenty-six minutes, thirty-one minutes and nineteen minutes
16:47:2019	respectively.
16:47:2320	THE COURT: That's going to take us past
16:47:2521	6 o'clock, so pick two.
16:47:2722	MS. DWYER: We'll do the first two, Thomas Crown
16:47:3023	and Paul Farmer.
16:47:3724	THE COURT: What's coming after this?
16:47:4025	MR. BUTERMAN: So Your Honor, we have I believe

16:47:44 1	four or five videos total that we have to play. And I
16:47:48 2	apologize for that. We're trying to work out that issue for
16:47:53 3	tomorrow morning with the witness, otherwise unfortunately
16:47:58 4	that's a video. And I think the one live witness and then
16:48:01 5	we close.
16:48:03 6	THE COURT: All right. You guys are running out
16:48:05 7	of time, too.
16:48:06 8	MR. BUTERMAN: We have calculated our time, Your
16:48:07 9	Honor, and we will be leaving an hour for closings as well.
16:48:1310	THE COURT: All right. I assume most of this
16:48:161	hour-and-a-half is yours. Because the government doesn't
16:48:2112	have an hour-and-a-half.
16:48:2313	MR. BUTERMAN: I just looked at some of the
16:48:2414	videos. I think that the government doesn't go over
16:48:2815	their allotment on these, so they are more of ours. I have
16:48:3616	the run times here. So for the first gentleman, Mr. Crown,
16:48:4717	it is we're going to do for Mr. Crown 21 minutes and
16:48:5918	57 seconds to defendants, the government is 4 minutes and
16:49:0419	13 seconds.
16:49:0520	For the second one, Mr. Farmer, defendants are
16:49:1121	20 minutes and the government is 11 minutes.
16:49:1422	THE COURT: Okay.
16:49:1923	(Videotape deposition of Thomas Crown:)
16:49:2624	Q. Mr. Crown, who do you currently work for?
16:49:2825	A. Post Holdings, Inc.

16:49:30 1 Q. And what's your job title? 16:49:32 2 I am director, ingredient procurement. Α. And how long have you worked at Post Holdings? 16:49:40 3 Q. 16:49:42 4 Ten years. Α. 16:49:44 5 And you mentioned that Post consumer brands makes Q. cereal. What are Post's most popular lines? 16:49:49 6 16:49:52 7 Honey Bunches of Oats; Post Raisin Bran; Grapenuts; Α. Pebbles, Cocoa Pebbles, Fruity Pebbles; Honeycombs; Great 16:50:01 8 16:50:10 9 Grains. I'm sure there's others. 16:50:2210 Who do you consider to be Post's main competitors? Q. 16:50:2511 Α. General Mills and Kellogg's. 16:50:2712 And how many manufacturing plants does Post have that Q. 16:50:3113 make cereal? 16:50:4014 Post has five U.S.-based manufacturing plants. Α. 16:50:4415 And is one of those manufacturing plants in Asheboro, Q. 16:50:4816 North Carolina? 16:50:5117 Yes, it is. Α. 16:50:5718 And how many of Post's plants use sugar? Q. 16:51:0119 All of them. Α. 16:51:0420 And do you oversee the sugar procurement for all of Q. 16:51:0921 them? Yes, I do. 16:51:1022 Α. 16:51:1223 And in terms of volume, do you know how much Post --0. do you know how much sugar Post uses each year across all of 16:51:1824

16:51:2425

its plants?

marketing for Louisiana Sugar Refining. We do some business

with Imperial. And we do some business with Domino. And we

16:51:26 1 Α. Yes, I do. And how much is that? 16:51:28 2 Q. 16:51:29 3 Α. And how much refined sugar is Asheboro buying in a 16:51:34 4 0. given year? 16:51:41 5 16:51:42 6 I will buy of sugar into that Α. 16:51:47 7 facility. 16:51:49 8 And refined sugar can be made from both sugarcane and Q. sugar beet; is that right? 16:51:55 9 16:52:0210 Yeah, sugar comes from two sources, cane sugar and Α. sugar beets. 16:52:0711 16:52:0812 And which of these sources will Asheboro take? Q. 16:52:1213 They have the flexibility of using either one. 16:52:1714 we are indifferent to which one would be shipped in there. 16:52:2415 And how many different suppliers of sugar does Post Ο. 16:52:2816 buy from -- you know, across all of its plants? 16:52:3217 Α. I'm going to say probably half a dozen. 16:52:3818 Can you name them? Ο. 16:52:4219 There's going to be -- we buy from United Sugar, Α. 16:52:4820 which is the marketing arm for US Sugar, and several other 16:52:5&1 beet co-ops. We buy from National Sugar Marketing, which is 16:53:0522 the marketing entity for a couple of beet co-ops. We buy 16:53:1023 from Michigan Sugar. We also buy from Cargill, who does the

16:53:1724

16:53:2625

- also do business with a company called CSC.
- 16:53:39 2 Q. Any others that come to mind?
- 16:53:43 3 A. And we're also doing business with a company called Sucro Can.
- 16:53:50 5 Q. Anybody else?
- 16:53:53 6 A. As far as sugar, Sweetener Supply Company.
- 16:54:02 7 Q. Anyone else?
- 16:54:30 8 A. The last one I can think of, Indiana Sugars.
- Q. When Post is buying from these suppliers, does it typically buy pursuant to a contract?
- 16:54:411 A. Yes. We will make contracts with companies for a specific volume at a specific price.
- 2. And when suppliers are making quotes to you, can they bid on business for, you know, multiple plants in different parts of the country?
 - A. Yes, they can.
- 16:55:0617 Q. And how often does that happen?
- 16:55:0918 A. I'd say all the time.
- 16:55:1219 Q. And is that something you encourage on your end as 16:55:1720 well?
- 16:55:1&1 A. Yes, it is.
- 16:55:2122 Q. Why?

16:55:0516

16:55:223
A. I'm always trying to obtain the best price for my
16:55:224
company regardless of what entity it is I'm going to be
16:55:325
buying from.

16:55:35 1 Q. How many suppliers do you typically give business to 16:55:43 2 at a given plant? 16:55:46 3 I've had as many as four different vendors into a Α. plant. I've had two vendors to a plant. I've also had, in 16:55:51 4 16:55:58 5 some cases, one vendor into a plant. So it can vary. And what do you see as some potential benefits, if 16:56:05 6 16:56:11 7 there are any, of being single-sourced at a given plant? An advantage of being single-sourced might be I might 16:56:20 8 Α. 16:56:27 9 be able to generate a lower price by having -- by having a vendor be the sole supplier in there. They might have a 16:56:3310 16:56:3911 motive to give me a lower price if they have all of the 16:56:4412 volume. 16:56:5113 Do you consider criteria other than price in awarding Ο. 16:56:5614 any of the businesses at Post plants? Yes. The price, while obviously very important, I 16:56:5815 Α. also have to have service and quality. And what I mean by 16:57:0216 16:57:1017 that is: When we place orders, I have to be able to, you know, have that sugar delivered on time and in the right 16:57:1418 amount. 16:57:1819 16:57:1820 And so, you know, when we were talking about service, Q. 16:57:2121 is that kind of going to kind of a continuity of supply issue for you? 16:57:2822 16:57:2923 It's continuity of supply and it's on-time deliveries 16:57:3424 based upon our needs for that material to arrive so the

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plant can, you know, maintain its production schedule.

16:57:43 1 Q. Does the number of refinery plants or processing 16:57:46 2 plants that a supplier has affect their ability to minimize some kind of run of the mill disruptions that, kind of, can 16:57:51 3 otherwise happen in delivering sugar? 16:57:55 4 My opinion would be yes. 16:57:58 5 Α. 16:58:03 6 And why is that? Q. 16:58:04 7 Α. The example that I would provide is that when I buy from United Sugars, they are the marketing arm for multiple 16:58:10 8 16:58:18 9 manufacturing sites of beet cooperatives and the US Sugar 16:58:2910 corporation in Florida. And when I buy sugar from them, they have the ability to source that sugar from multiple 16:58:3411 16:58:4012 locations in order to fill my shipments and keep me running. 16:58:4613 So have you found it to be the case that if, you 16:58:5114 know, one plant goes down, you can still get your deliveries when you're supposed to because it's just going to come from 16:58:5715 a different plant in the system? 16:59:0216 16:59:0417 That has been my experience. 16:59:0518 And for you at Post, does that make suppliers that 16:59:0919 have multiple plants within their system more attractive to 16:59:1920 you when you're deciding where to award business? 16:59:2321 Α. It will certainly be something that I think about and consider. 16:59:2622 16:59:3423 Who are the suppliers that have shipped to Asheboro 0. in the last five years? 16:59:3924

United Sugars, Louisiana Sugar Refining under the

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Α.

- 16:59:45 1 name of Cargill, National Sugar Marketing, and Imperial 17:00:04 2 Sugar. 17:00:04 3 Q. Has Asheboro ever received any sugar from Indiana Sugars as well? 17:00:10 4 17:00:15 5 A. No, they have not. 17:00:16 6 So we talked a little bit about United Sugars. Q. 17:00:21 7 long have you or has Post been a customer of United? 17:00:24 8 Post has been buying sugar from United Sugars as long Α. 17:00:28 9 as I've been the buyer of sugar, which has been for ten 17:00:3310 years now. And does United Sugars send both beet and cane sugar 17:00:3611 Q. 17:00:4312 into Asheboro? 17:00:4613 Α. Yes, they do. 17:00:5214 Q. At a high level, is United typically Asheboro largest 17:00:5915 supplier? 17:01:0016 There have been years where United has been the sole Α. 17:01:0417 supplier into Asheboro. 17:01:1418 That was actually my next question, so you answered Q. 17:01:1919 that one. 17:01:2020 Α. But there are also years where they have not supplied 17:01:2521 sugar into Asheboro. 17:01:2822 Q. What are some of the reasons why Post has given 17:01:323 business to United at Asheboro in the past?
- 17:01:4 \bigcirc \bigcirc \bigcirc \bigcirc So does that mean that frequently United is the

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Α.

Price.

- 17:01:43 1 | lowest price being quoted for Asheboro?
- A. When United is awarded the business into Asheboro, they will have the lowest price offered to me.
 - Q. Does United sell to other Post plants other than Asheboro?
 - A. Yes, they do.

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- Q. And which ones are those?
- A. They have actually sold sugar into all of the other Post facilities.
- Q. And then when United sends beet sugar into Asheboro, where is that coming from?
- A. I don't know the exact facilities, but I would expect it would come from one of their beet cooperative facilities in the upper Midwest out of North Dakota and Minnesota.
- Q. And so after United, you -- you also mentioned that Asheboro buys from the supplier Cargill; is that right?
- A. Yes.
- Q. Are they a large supplier to Asheboro?
- A. In the last five years there have been years where they have been the sole supplier into Asheboro.
- Q. And have there also been years in the last five years where Cargill was the largest of multiple suppliers into Asheboro?
- A. Yes.
- Q. And where -- and where is LSR's refinery located?

- 17:03:31 1 A. New Orleans.
- 17:03:32 2 Q. And so when Cargill is shipping sugar to Asheboro
- 17:03:38 3 from New Orleans, is that coming by rail?
- 17:03:49 4 A. Yes, it is.
- 17:03:52 5 Q. And I should have said this: When LSR ships to
- 17:03:58 6 Asheboro, it's entirely cane sugar; is that right?
- 17:04:04 7 A. Yes, it is.
- 17:04:06 8 Q. So have there been times in the last five-year
- 17:04:11 9 stretch where Cargill has beaten United on price to supply
- 17:04:1510 **Asheboro?**
- 17:04:1d1 A. Yes.
- 17:04:1d2 | Q. So does this also mean that there have been times in
- 17:04:2013 the last five years where Cargill has beaten everyone on
- 17:04:2714 price to supply into Asheboro?
- 17:04:3015 A. Yes.
- 17:04:3716 Q. Are you aware that LSR has announced plans to expand
- 17:04:4317 capacity at its refinery in Louisiana?
- 17:04:4818 A. I have heard that.
- 17:04:519 Q. Do you expect that -- in your experience, do you
- 17:04:520 | expect that the LSR expansion will make Cargill more
- 17:05:0021 competitive for Asheboro's business?
- 17:05:0322 A. I would be speculating, but I think it could be a
- 17:05:0723 positive for us.
- 17:05:1024 Q. And why is that?
- 17:05:125 A. Because they would have more domestic sugar or access

17:05:22 1 to domestic sugar to market.

- Q. And why is that a positive for you?
- A. Because as a domestically sourced producer, they have more flexibility in their pricing versus having to buy their sugar on the -- what's called the futures market, the 16 market, where it's an imported price. So as having access to domestically produced sugar, my expectation is they'd have more price flexibility.
- Q. Earlier today you mentioned that NSM has supplied to Asheboro within the last five years; is that right?
- A. Yes.
- Q. And have those shipments been bulk?
- A. Bulk -- bulk railcars and -- okay. And I'm sorry, I just remembered this. They also do supply some of the 50-pound bags of EFG sugar into Asheboro.
- Q. And do you know, when NSM is shipping into Asheboro, is it shipping from Renville or Idaho or some combination?
- A. My understanding is it's all coming from Renville.
- Q. Is Imperial's refinery near Savannah the closest refinery to Asheboro?
- A. I don't know the exact mileage of Savannah to

 Asheboro versus Clewiston, Florida, or Baltimore, Maryland.
- Q. Is it one of the closest refineries to Asheboro?
- A. Yes.
- Q. And in your experience, does that mean that Imperial

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17:07:46 1 is also the most -- the cheapest refinery for Post to buy 17:07:53 2 for Asheboro? 17:08:05 3 No, it does not. Α. How would you describe the prices that Imperial has 17:08:06 4 0. 17:08:09 5 quoted you for Asheboro in the past? In the past, they have been competitive and had the 17:08:12 6 17:08:15 7 best price where I have been able to buy material from them, and then there are the occasions where they are not 17:08:20 8 17:08:24 9 competitive and do not have the best price into Asheboro. 17:08:3610 And have there been more instances where they have Q. 17:08:4111 not had the best price into Asheboro than instances where 17:08:5212 they have? 17:08:5213 I would say that my recollection is that in that last 17:08:5714 two or three years, they have not been competitive on their pricing into Asheboro. 17:09:0115 17:09:0316 And does that mean that in the last few years that 17:09:0817 suppliers such as Cargill have been more price competitive into Asheboro? 17:09:1218 17:09:1719 The other vendors have had better pricing than what Α. 17:09:2520 Imperial has offered to me. 17:09:3121 Q. So would it be fair to say that Domino's sales into Asheboro have been comparatively small in the last five 17:09:3622 17:09:4023 years? 17:09:4124 Α. Extremely small.

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0.

And why is that?

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- A. They did not have the best price.
- Q. How do you think that their prices compare? You said they didn't have the best price. Was it close or was it not even close?
- A. It would depend on how you define close. You know, in the sugar business, a penny a pound or two pennies a pound makes a big difference. And I can't -- I can't recollect just how far out or how much higher they would be versus what the lowest price was that I ended up paying.
- Q. If US Sugar had two cane refining plants in its system, do you see that as a potential benefit from -- purely from a continuity-of-supply perspective?
- A. Yes, I would.
- Q. And I think, and part of the reasons that you described, you said that the price will vary depending on the designation. What did you mean by that?
- A. It is that I buy the sugar on a delivered price to the individual cereal plants. So each facility -- each of our cereal plants is going to have a different delivered price for their sugar.
- Q. So would it be fair to say that the freight cost -all else being equal, the freight cost from a supplier that
 is closer to the facility will be lower than the freight
 cost from a supplier that is farther from the facility?
- A. Yes.

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- Q. What are some of the benefits of having multiple suppliers to a facility?
- A. The benefits would include continuity of supply, price competition in that if I were to continue to solicit prices from companies and never buy anything from them, they might decide to not want to supply me with, say, competitive prices. So I like to keep vendors interested in doing business with us, and that is one mechanism by which we can do that.
- Q. Sitting here today, do you have an understanding of how much -- in terms of percentage, how much of the sugar at Asheboro was provided by Imperial?
- A. I can't put a number on it. All I can say is that it's -- you said outside of the force majeure year, it has been very small.
- Q. Why do you -- I think you said that Imperial is one of the suppliers for Asheboro. Why are they one of the suppliers?
- A. Well, at certain times in the force majeure year, for example, they might have been the only vendor that would sell me sugar into there, and they had it available. In other cases, it might be because I have needed to buy some spot sugar because of continuity of supply issues. But perhaps going back further, they might have had the most attractive price.

17:13:40 1 So I would say for any or some of those reasons, 17:13:44 2 they have supplied Asheboro. So let's talk about take the force majeure year. 17:13:50 3 0. that year it seems like -- sounds like you reached out to 17:13:54 4 Imperial and purchased from Imperial; is that right? 17:13:58 5 17:14:00 6 Yes. Α. 17:14:00 7 Q. And in that year -- when we say the force majeure 17:14:05 8 year, we mean the year in which United invoked a force 17:14:09 9 majeure because of disruptions in supply. Are we talking 17:14:1510 about the same thing? 17:14:1611 Α. Yes. 17:14:1912 In that year were you glad that Imperial was able to Q. provide -- to satisfy Post's sugar needs on a quick 17:14:2313 short-term basis? 17:14:2914 17:14:3315 I would say I was happy that I was able to buy sugar Α. 17:14:3916 to keep my facility operating. 17:14:4217 Q. Do you view Imperial as an important supplier of sugar to Post? 17:14:4718 17:14:5019 Imperial Sugar supplies very little sugar to the Post Α. 17:14:5920 Company. 17:14:5921 Q. Right. But that's not really my question. 17:15:0222 question is do you view them as an important supplier in the 17:15:0523 market for Post? 17:15:024 I would have to say is that Imperial Sugar, their Α.

facility is important, but as far as being a supplier to

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Post, based on our volume, I think the answer would have to 17:15:14 1 17:15:20 2 be no. 17:15:24 3 And why have you chosen not to purchase from Michigan 0. Sugar for the Asheboro facility? 17:15:28 4 17:15:32 5 Α. Their prices were not competitive. 17:15:37 6 (End of videotape deposition.) 17:15:43 7 MS. DWYER: Your Honor, we don't have any 17:15:45 8 exhibits for Thomas Crown. 17:15:47 9 We would like to call Paul Farmer from CSC by 17:15:5210 deposition. THE COURT: Mr. Hanna, you didn't have any 17:15:5311 17:15:5712 exhibits? 17:15:5713 MR. HANNA: No, Your Honor. 17:15:5714 (Videotape deposition of Paul Farmer:) 17:16:0115 Q. Mr. Farmer, can you state your position and the 17:16:0316 company you work for? 17:16:0417 Α. President and CEO of CSC Sugar. 17:16:0718 How long have you been president and CEO of CSC Q. 17:16:1119 Sugar? 17:16:1120 Α. Since I started in 2004. 17:16:1521 Q. And what is CSC Sugar's business? 17:16:1822 Α. Our core business is supplying raw sugar to refining 17:16:2323 companies in the United States. And our more recent but 17:16:2524 minority business is refining of raw sugar into liquid sugar products. 17:16:3125

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Q. So what did you say the core business was?

refineries in the United States.

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A. Supplying raw sugar to the refineries -- cane sugar

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Q. And then the other business you said was what?

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A. We are a refiner of raw sugar, but we -- our only product is liquid sugar.

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Q. And what is the way that CSC makes liquid sugar?

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A. Predominantly we start with a raw sugar product and

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go through a -- many refining steps to end up with a

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finished liquid sugar refined product, but not granulated.

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Q. So is there a name for CSC's process for making

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liquid sugar?

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A. There is no name for the process. However we call

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Q. What is Sugaright's business?

our liquid sugar division Sugaright.

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A. Refining raw sugar into a refined liquid product.

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Q. Do you ever ship liquid sugar from El Paso to

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California?

do.

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A. We have in the past. I don't believe we currently

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Q. Where do you normally -- what's the distance you

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normally ship liquid sugar from El Paso?

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A. We ship as close as two miles away to as far as Cedar City, Utah, which I would guess is five or 600 miles away.

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I don't know offhand. And I believe we also ship to Denver,

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- 17:18:20 1 which is 900 miles away.
 - Q. Do you ever -- do you ever ship liquid sugar by rail?
- Yes. Not currently. Α.
 - When did you -- when was the period in which you 0. shipped liquid sugar by rail?
 - I don't recall the exact years, but it was approximately three to four years. Somewhere probably 2012, more or less, to 2015, or '16. And that shipment was generally from El Paso, Texas to Los Angeles. It's generally --
 - Q. And --
 - It's generally not done in the industry. Α.
 - Why is it generally not done in the industry? Ο.
 - Α. Because the transit times on the railcars are unreliable and, therefore, you know, you don't know how long your finished product's going to be sitting in your railcar potentially, you know, overheating or cooling off too much or just degrading over time. Railroads are not that reliable when it comes to just in time.
 - Are there advantages to shipping liquid sugar by tanker?
 - Yeah, delivery by truck. You can deliver it to very precise times, time slots. Rail -- in railcars, the -- for longer, you know, yeah. For longer distances, railcars theoretically make sense, but the issue around the

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reliability of the time -- of the schedule of the arrival is
the issue, which makes it more difficult.

- Q. Is it a -- is it a problem if liquid sugar sits too long in a railcar?
- A. Yes.
- Q. And why is that a problem?
- A. Regular liquid sucrose generally has a shelf life of less than thirty days under perfect conditions. And a rail -- a railcar in the desert is not a perfect condition, so...
- Q. And the liquid tanker trucks, how far do they normally travel from your plants to deliver liquid sugar?
- A. I don't know the average miles that our company ships. I can say that we have plants that are a thousand feet away from certain customers and other ones we deliver 900 miles. On average, we say liquid sugar is uneconomical to ship more than probably 250 miles.
- Q. Are there some companies that prefer to purchase dry sugar rather than liquid sugar?
- A. Yes.
- Q. And what sort of companies are those that prefer to purchase dry sugar?
- A. I don't think there is any specific type of company.

 You know, it just comes down to the management's choice of whichever company it is.
- Q. Does CSC sell liquid sugar to any company that uses

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17:21:37 1 it for a nonliquid product? 17:21:40 2 Α. Yes. 17:21:41 3 And what company is that? Q. There are many companies. We sell to 17:21:42 4 Α. We sell to 17:21:50 5 17:21:54 6 17:21:55 7 And they use the liquid sugar in the nonliquid 17:22:00 8 product? 17:22:01 9 Α. That's correct. 17:22:0310 And who are some of the companies that Q. purchase liquid sugar from CSC? 17:22:0811 17:22:1112 We deliver to I don't Α. , though, go in 17:22:1413 believe our sales to 17:22:2914 It probably goes in 17:22:3315 17:22:3416 Do you know where your sales to go? What 17:22:3917 products the liquid sugar goes into? 17:22:4418 Α. 17:22:4519 Why do you think the suspension agreement was Q. 17:22:4820 adopted? 17:22:4821 Α. Specifically to harm my company. 17:22:5122 And who do you think wanted to harm your company? Q. 17:22:5323 Everybody involved with the American Sugar Coalition, Α. 17:22:5724 which is virtually all sugar producers and refiners in the United States other than CSC. 17:23:0225

- 17:23:05 1 Q. And what is CSC's financial condition now?
- 17:23:09 2 Α. Much better.
- 17:23:11 3 What do you mean by "much better"? Q.
 - Our company is stable, healthy. Α.
 - How was CSC able to improve its financial condition Q. from 2019 to 2022?
 - Α. Business conditions have generally improved, both in volume and refining margins.
 - And have prices of liquid sugar generally gone up? 0.
 - The price of sugar in the United States is up about Α. 40 percent due to a poorly managed program by the U.S. government, who is tightening up the supply and screwing the consumers. So yes, the prices are up.
 - Do you have concerns that the price of sugar might 0. even go higher?
 - The price is currently at the virtual maximum price where anybody in the United States could bring sugar from anywhere in the world and pay a tax of about 15 to \$0.16 a pound and bring it in, and the total price delivered would be more or less the same -- the price that U.S. growers -grower/refiners are getting for their sugar today. So no, it's not likely to go much higher unless the world market price goes higher. It's already at the theoretical maximum price.
 - Do you have a view as to what the potential impact of

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this transaction could be on sugar prices?

- A. My view is that transaction is irrelevant in the industry because the Imperial Sugar refinery was virtually obsolete in 1998 when US Sugar built its refinery in Florida. There is a surplus refining capacity in the southeast. The transaction will have no effect on the industry.
- Q. Do you think it will impact prices at all? I'm sorry, what was your answer?
- A. No, I don't.
- Q. And why do you think that?
- A. Because in the -- in the southeast area, there is already stiff competition from three large US players, US Sugar coming from Florida, Domino or American Sugar Refining Company coming south from Baltimore and east from New Orleans; as well as LSR which is targeting Louisiana growers coming east from New Orleans, so there is already significant competition in that area. And the price is already at the maximum. Can't get any higher. The government's already screwed the consumer.
- Q. Okay. So the total cost of building a micro-refinery would be five to 20 million plus whatever the land and building cost?
- A. That's correct.
- Q. This is on CSC Sugar's letterhead and the date is

- 17:25:56 1 August 1, 2018. And it's letter to the Honorable Wilbur L.
- 17:26:01 2 Ross, Jr., Secretary of Commerce. Do you see this,
- 17:26:04 3 **Mr. Farmer?**
- 17:26:05 4 A. I do.
- 17:26:05 5 Q. And do you recognize this document?
- 17:26:07 6 A. I do. I wrote it.
- 17:26:10 7 Q. And on the fifth page, do you seen a company
- 17:26:15 8 certification?
- 17:26:15 9 A. I do.
- 17:26:1710 Q. And is that your signature on page 5?
- 17:26:211 A. Yes.
- 17:26:2312 Q. And in the company certification, do you see that you
- 17:26:2713 | certify that the public information and any business
- 17:26:3014 proprietary information of CSC Sugar LLC contained in this
- 17:26:3515 submission are accurate and complete to the best of my
- 17:26:3816 **knowledge?**
- 17:26:3817 A. Yes.
- 17:26:4018 Q. And if you can turn to the next page, the paragraph
- 17:26:449 beginning, "The U.S. cane refining industry is already very
- 17:26:480 concentrated with only a few players."
- 17:26:5021 A. Yes.
- 17:26:5122 \ Q. And what did you mean by that sentence, "The U.S.
- 17:26:523 cane refining industry is already very concentrated with
- 17:26:5824 only a few players."
- 17:26:5925 A. Exactly what it says which is that there are -- there

17:27:07 1 are -- there are a few refining companies, and one of them 17:27:11 2 is more than 50 -- I think at the time was about 56 percent of the entire cane refining capacity belonged to ASR. 17:27:14 3 only stand-alone cane refiners that weren't vertically 17:27:18 4 17:27:23 5 integrated with growers in the United States were Imperial 17:27:27 6 Sugar and CSC Sugar at the time. 17:27:30 7 Q. And the last sentence in that paragraph says "the industry needs diversified capacity, not monopoly." 17:27:33 8 17:27:37 9 What did you mean by that statement? Α. 17:27:3810 Exactly what it says, word for word. 17:27:4011 Q. What does diversified capacity mean in that sentence? 17:27:4412 Capacity not owned by one of the current large Α. 17:27:4813 players. 17:27:5014 And what were you asking Secretary Ross to do? 0. 17:28:0215 I was asking him to kill the amendment to the Α. 17:28:0716 suspension agreement that was specifically targeted to 17:28:1017 disrupt the supply chain of good quality sugar to my company. 17:28:1618 17:28:2219 And what did Secretary Ross do? Q. 17:28:2420 Nothing. He basically bowed down to the sugar 17:28:281 interest in the United States, the American Sugar Coalition, or cartel, whatever you want to call it. And basically put 17:28:3222 17:28:3723 through the change in the suspension agreement and virtually 17:28:4124 destroyed my company. And would you say that CSC Sugar is a minor 17:28:4425

17:28:49 1 participant in the market for refined sugar?

- CSC is a minor player in the overall refined sugar market in the United States. We are probably less than five percent. However, for liquid sugar in the market segments that we're in, we are probably considered a larger player but in a very specific narrow market.
- Q. So whatever the definition of southeast is, we could get the percentage of CSC's business by looking at that data?
- Α. Yes.
- Q. Okay. And --
- I would like to say that, to my knowledge, we have Α. not and currently do not ever see or compete with US Sugar or Imperial with any of our customers that I'm aware of. you know, although we may -- you may look at us in the same territory, to my knowledge I've never heard that we are competing against them for anything, either one.
- And are CSC's sales in the south generally limited to Ο. the sale of liquid sugar?
- Α. Yes.
- Q. And is the sales generally limited to liquid sugar manufactured -- plants located in close proximity to customers?
- Α. Yes. Yes.
- And you said that when making those sales you don't 0.

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- 17:29:520
- 17:30:0121
- 17:30:022
- 17:30:1123
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17:30:16 1 see United or Imperial as competitors?

A. We -- well, so most of those sales are to customers that take only cane sugar and not beet. And therefore, United or -- well, we generally don't see sugar from US Sugar in Florida or from Imperial competing. Once again, we may -- yeah. When we offer sugar, we are not told by the buyer who the -- who the competitors are, but to my knowledge, we have not lost a business or competed against Imperial or US Sugar, but I may not have all of the information on that. But to my knowledge, we haven't run across anybody at US Sugar. I don't even know anybody at US Sugar.

- Q. Mr. Farmer, would you pull up what's been marked as Exhibit 6 to your deposition. It's the confidential information memorandum.
- A. Yep.

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Q. Okay. If you go to the second page of Exhibit 6, sir. Do you see there is a notice and the first sentence says, "This confidential information memorandum (this memorandum) has been approved by CSC Sugar LLC."

Do you see that?

- A. Yes.
- Q. Was that a true statement?
- 17:31:4724 A. Yes.
 - Q. Mr. Farmer, when did CSC build its first liquid sugar

17:31:53 1 refinery? 2006. 17:31:54 2 Α. Q. And where was that one located, sir? 17:31:56 3 El Paso, Texas. 17:31:58 4 Α. 17:32:01 5 Q. And --17:32:02 6 But at the same time we built another one in Joplin, Α. 17:32:07 7 Missouri. And since then, you have built additional refineries 17:32:07 8 Q. 17:32:11 9 in Tennessee, correct? 17:32:1310 Correct. Α. And you've built an additional refinery in Virginia, 17:32:1311 Q. 17:32:1812 correct? 17:32:1813 Α. Correct. 17:32:1814 Q. You've built an additional refinery in Illinois, 17:32:2215 correct? 17:32:2216 Correct. It was later shut down, but that's correct. Α. 17:32:2517 And you built a refinery in Pennsylvania in Fairless Q. Hills, correct? 17:32:3118 17:32:3119 Α. Correct. 17:32:3120 Q. And Fairless Hills, that's about fifty miles from 17:32:3521 Wilmington, Delaware? Α. That's correct. 17:32:3622 17:32:3623 Q. And then you moved your facility from Fort Worth to Dallas, Texas, is that correct? 17:32:4124

Α.

Correct.

17:32:4325

- Q. The Dallas facility, sir, when did you start construction on that?
- 17:32:49 3 A. I would say -- June or -- I think June or July of 17:33:01 4 2021.
- Q. Okay. So you started construction in June or July of 2021, and when was it done?
- 17:33:07 7 A. I believe the first load was shipped in the last few days of 2021.
- 17:33:13 9 Q. Okay.

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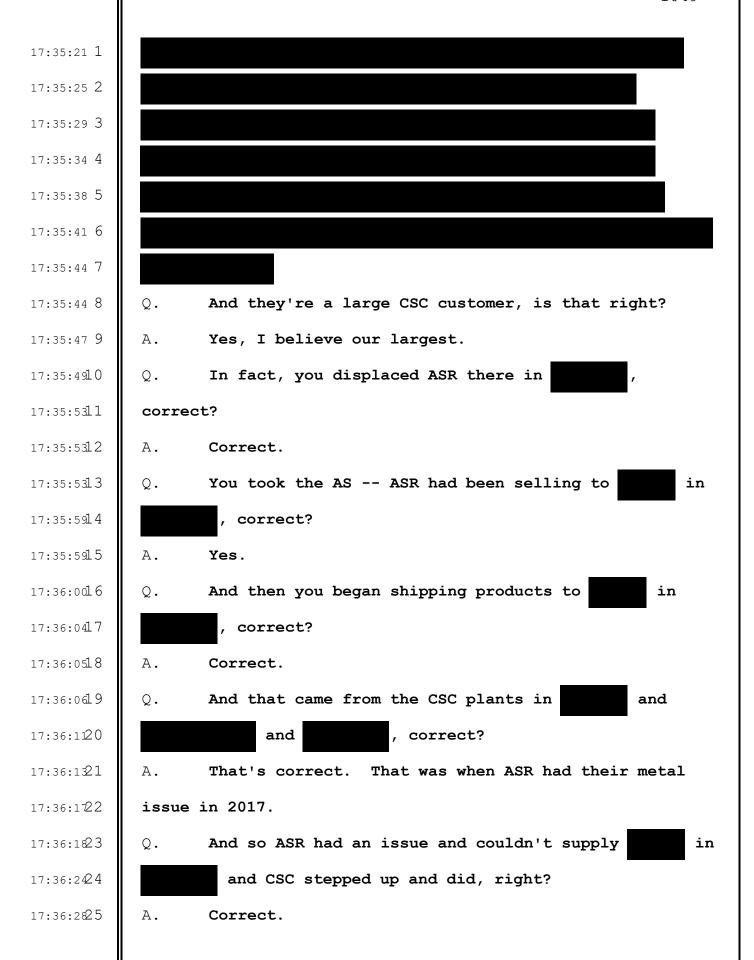
- 17:33:140 A. Probably the last week of 2021.
- Q. So the construction period there was about six months. Is that -- is that about right?
- 17:33:2013 A. That's correct.
- Q. Okay. And what was the -- what was the cost of building the Dallas, Texas, facility?
 - A. I don't recall the exact number, but it's probably four to \$5 million.
 - Q. Is it fair to say that CSC has been able to refine its model and has a model that it can replicate now?
- 17:33:420 A. Yes.
- Q. And so the Dallas facility that was recently built,
 it follows the model that you employed in Virginia and
 Tennessee; is that right?
- 17:33:524 A. Correct.
- 17:33:5725 Q. Okay. And that facility, again, took six months to

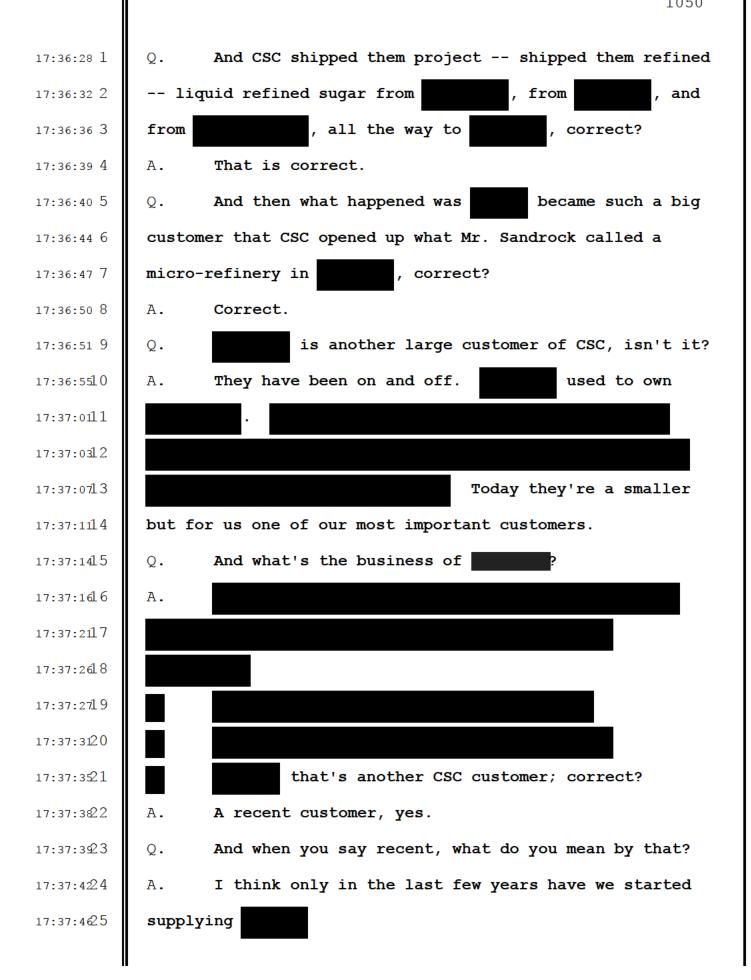
17:34:00 1 build, correct? 17:34:01 2 Α. Correct. Okay. All right. Does CSC consider itself to be an 17:34:02 3 0. innovator in the field of sugar refining and production? 17:34:07 4 17:34:10 5 Α. Yes. 17:34:10 6 In what ways do you believe CSC is innovative? Q. 17:34:15 7 Α. Initially, it was determining that the product that 17:34:19 8 my competitors sold was the wrong finished product for the 17:34:24 9 -- for the needs of the customers. And it was designing an 17:34:3010 alternative finished product, specifically a higher color 17:34:3311 liquid sugar. And then on top of that, basically, you know, 17:34:3712 proprietary design of the -- of the flow within the 17:34:4213 refinery, and the -- and the concept of the micro-refineries 17:34:4614 close to the customer, which significantly reduces 17:34:5015 transportation issues and increases reliability. 17:34:5516 And, you know, Sugaright 350 in other words, 350 17:35:0417 RBUs has become the industry standard for almost all dairy products, correct? 17:35:0718 17:35:0819 Α. Correct. Examples of CSC customers, I think you talked about a 17:35:020 Q. 17:35:1121 company called earlier today, correct? 17:35:1322 Α. Correct. 17:35:1323 And what is the business of as you understand Q. 17:35:1724 it?

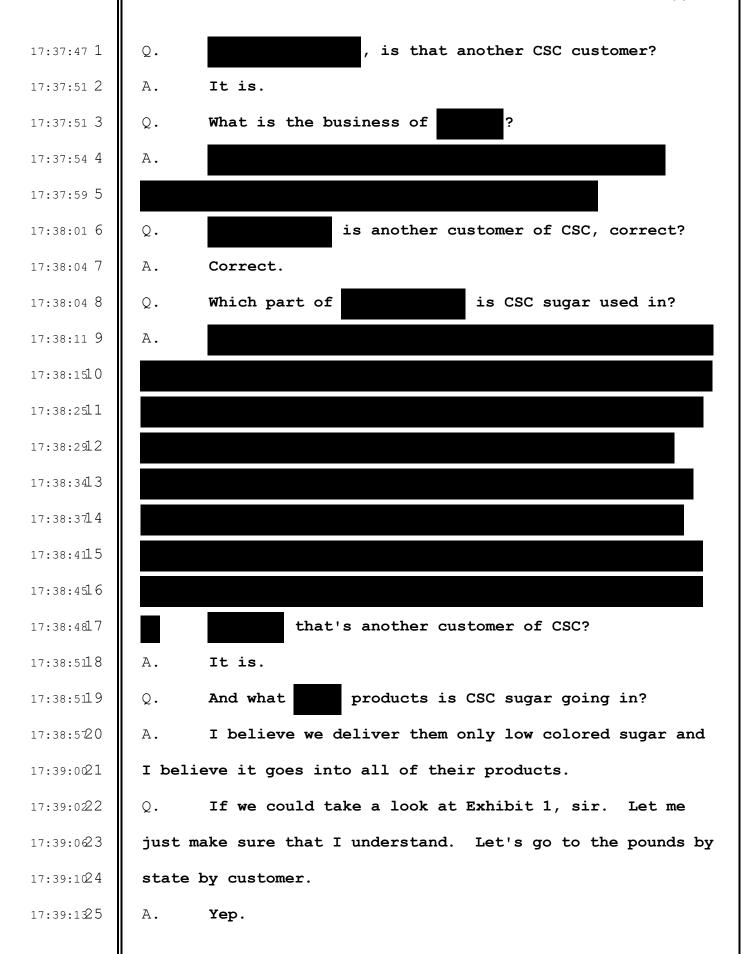
Α.

17:35:1825

It's one of







17:39:14 1 Q. And do you see that column B, Row 7, there's a 17:39:22 2 heading "AL." I assume that's Alabama? I believe that's correct. 17:39:26 3 Α. 17:39:28 4 Okay. And then it appears to have the total sales by 0. dry pound by CSC into the state of Alabama by year; is that 17:39:32 5 17:39:36 6 correct? 17:39:36 7 Α. That is correct. 17:39:43 8 And so, for example, in 2020, CSC sold nearly Q. 17:39:48 9 dry pounds of refined sugar into the state of 17:39:5210 Alabama; correct? 17:39:5411 Α. That's correct. 17:40:0312 And if you go down to Row 188, does that show the Q. 17:40:0813 sales by CSC of liquid refined sugar to customers in the 17:40:1314 state of Tennessee for the years 2016 to 2021? 17:40:1815 Α. Correct. 17:40:1916 And the sales by CSC to customers in the state of 17:40:2217 Tennessee have from 2016 to 2021; correct? 17:40:2818 Α. That's correct. 17:40:2819 Going from Q. 17:40:320 pounds? 17:40:3621 Α. That is correct. And Mr. Farmer, by 2020 -- by 2020, CSC was selling 17:40:3922 Q. 17:40:423 dry pounds to customers throughout the nearly United States; correct?

17:40:5124

17:40:5225

Α.

Correct.

17:40:52 1	Q. And by 2021, that increased again to
17:40:59 2	dry pounds; correct?
17:41:01 3	A. Correct.
17:41:02 4	Q. Okay. So by 2021, it's dry pounds up
17:41:08 5	from, I believe it's dry pounds in 2011,
17:41:14 6	correct?
17:41:15 7	A. Correct.
17:41:15 8	Q. So a growth of well over pounds from
17:41:20 9	2011 to 2021, correct?
17:41:2210	A. Correct.
17:41:2711	\mathbb{Q} . And as reflected in slide 32 on Exhibit 6, in 2019, a
17:41:3312	new CSC refinery came onboard in Harrisonburg, Virginia,
17:41:4113	correct?
17:41:4214	A. Correct.
17:41:4215	Q. And that led to increased sales volume; correct?
17:41:4716	A. That's correct.
17:41:5117	Q. And slide 11 of Exhibit 6 talks about Sugaright's
17:41:5518	competitive advantages, and it includes "facilities
17:42:0019	strategically located on key logistic corridors and in
17:42:020	regions with concentrations of large customers." What's
17:42:0821	meant by that, sir?
17:42:0922	A. What's meant is that we strategically located our
17:42:1723	plants along a logistics chain of multiple customers. And,
17:42:2024	you know, the food industry in the United States over the

last one hundred years, based -- 100 years ago, all the food

17:42:2325

factories were in the cities. And today, virtually all the 17:42:28 1 17:42:32 2 food factories are nowhere near the city. They're a few hundred miles away inland where labor is better, the roads 17:42:36 3 are better and there is no congestion, we look for target 17:42:40 4 areas where there are multiple industrial users along with 17:42:45 5 17:42:50 6 economical logistics chain for both input and output of our 17:42:54 7 refinery.

- If I can get you to turn to slide 13 of Exhibit 6, Q. sir.
- Yep, I have it up. I have it open. Α.
- And then it lays out what CSC and Sugaright believe Q. the advantages of the Sugaright's refining process are, correct?
- Α. That's correct.
- And we talked about those today, "reduced product Ο. costs", "fewer processing steps", "less energy consumption by 75 to 85 percent", "lower water consumption", and you say "greater reliability from modern refineries and equipment", is that correct? WITNESS: Yes. And are those the benefits that CSC touts to potential customers of its Sugaright refining process?
- Α. Yes.
- And are those the benefits that CSC touts to 0. potential customers of its Sugaright refining process?
- Α. Yes.

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17:43:52 1 Q. And Sugaright has been successful in convincing 17:43:59 2 customers to adopt its Sugaright refining process over the 17:44:03 3 last ten years; correct? 17:44:04 4 Α. Correct. 17:44:08 5 So, for example, there no plans to expand into Q. 17:44:12 6 Georgia? 17:44:12 7 Α. That's correct, there is are no plans to expand in the southeast. 17:44:15 8 17:44:16 9 How long has it taken to plan and build CSC's other 17:44:2110 facilities? 17:44:2111 Α. It generally takes about a year. 17:44:2312 And the cost of that, you said, was between five and Q. \$20 million, plus land and building costs? 17:44:2713 17:44:3514 Α. Yeah, the base refinery is generally speaking more or less 5 to \$7 million. 17:44:3915 17:44:4516 (End of videotape.) 17:44:4717 MS. DWYER: Your Honor, defendants would like to move into evidence DTX 314 which was Farmer Exhibit 6, 17:44:4918 17:44:5419 exhibit JTX 002, which was Farmer Exhibit 1. 17:44:520 MR. HANNA: No objection. 17:44:5821 THE COURT: Thank you. They're admitted. (JTX Exhibit No. 002 and DTX Exhibit No. 314 17:44:5822 17:44:5823 were admitted into evidence.) THE COURT: All right. So the next one is 17:45:0224 17:45:025 nineteen minutes?

17:45:07 1	MS. GREENWALD: Yes, Your Honor.
17:45:08 2	THE COURT: Yeah, I don't think I have the
17:45:10 3	stamina for that right now. Not that they're not
17:45:14 4	fascinating. Okay. So tell me what I can expect tomorrow.
17:45:20 5	MR. BUTERMAN: Yes, Your Honor. I just did the
17:45:23 6	calculations, it looks like we have a few more videos, and
17:45:28 7	then there is one live witness. We anticipate that we will
17:45:33 8	be resting I'm going to say sometime around 10:30 in the
17:45:38 9	morning give or take.
17:45:4010	THE COURT: Who is the live witness?
17:45:4111	MR. BUTERMAN: The live witness is Mr. Carter
17:45:4412	from Cargill.
17:45:4713	THE COURT: Okay. And are you still trying to
17:45:5114	figure out your rebuttal?
17:45:5315	MR. HANNA: Yes, Your Honor. I'm going to look
17:45:5516	at the time. We were planning to reserve an hour for
17:45:5817	closing, so I want to take I will let you know in the
17:46:0318	morning.
17:46:0319	THE COURT: All right. Anything else?
17:46:0720	MR. BUTERMAN: Nothing.
17:46:0&1	MR. HANNA: No, Your Honor.
17:46:0922	THE COURT: Have a good night.
23	(Court adjourned at 5:46 p.m.)
24	I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.
25	/ / - 1 ~ ··

/s/ Dale C. Hawkins