

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

<p><b>In re Pork Antitrust Litigation</b></p> <p>This Document Relates To: All Actions</p>	<p>Case No. 18-cv-01776-JRT-JFD</p> <p style="text-align:center"><b>DEFENDANTS’ RESPONSE TO THE STATEMENT OF INTEREST OF THE UNITED STATES</b></p>
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With a goal of streamlining the Court’s consideration of the extensive filings at this stage of the litigation, Defendants respond to the Statement of Interest of the United States (“Statement”), ECF 2616, to make three specific points.

*First*, courts recognize two distinct types of claims under Section 1 of the Sherman Act: “[m]ost agreements are evaluated under the ‘rule of reason,’” while *per se* liability is reserved for “[c]ertain kinds of agreements” that are presumed anticompetitive. *Minn. Ass’n of Nurse Anesthetists v. Unity Hosp.*, 208 F.3d 655, 659 (8th Cir. 2000) (rejecting plaintiff efforts to distort “this basic Section 1 analysis”). Consistent with these two distinct frameworks for Section 1 claims, the Statement recognizes that information exchanges must be analyzed under the rule of reason when the claim challenges the exchange of information itself as unlawful. *See, e.g.*, Statement 1 (describing challenges to “free-standing information exchange” based upon anticompetitive effects); *id.* at 8 (“Standalone information-sharing claims are evaluated under the rule of reason.”); *id.* at 7-10 (making arguments about how to conduct a rule-of-reason analysis for such standalone information-exchange claims). Thus, to the extent the Court considers the Statement, it is relevant solely

to the mechanics of analyzing the Consumer Indirect Purchaser Plaintiffs’ (“Consumer Plaintiffs”) rule-of-reason claim. Notably, the Department of Justice did not bring a *per se* claim against Agri Stats in *United States v. Agri Stats Inc.*, No. 0:23-cv-03009; expressly pleaded only a rule-of-reason claim instead, *see Agri Stats*, ECF 50, 2d Am. Compl. ¶¶ 162-67; and makes no argument in the Statement about the legal framework for proving *per se* liability.

*Second*, the Statement highlights the absence of any legal support for some sort of nebulous Section 1 claim that is neither *per se* nor rule-of-reason. *See* ECF 2490 (asserting such a nebulous theory). Instead, the Statement confirms that Section 1 plaintiffs must plead *either a per se claim or a rule-of-reason claim*. *See, e.g.*, Statement 7.

*Third*, the Statement adds little to the legal arguments that the parties’ briefs have thoroughly presented to the Court regarding consideration of the Consumer Plaintiffs’ rule-of-reason claim. Defendants direct the Court to the briefing of cross motions on that claim. *See* ECF 2268, 2352, 2531, 2535, 2647 & 2662.

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Respectfully submitted,

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