

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION

600 Pennsylvania Avenue, N.W.
Washington, DC 20580

DISTRICT OF COLUMBIA

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Washington, DC 20001

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STATE OF MINNESOTA

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St. Paul, MN 55155

STATE OF NEBRASKA

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STATE OF OHIO

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STATE OF TENNESSEE

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Nashville, TN 37243

Civil Action No. 15-cv-00256 (APM)

**FILED UNDER SEAL
(PUBLIC VERSION)**

COMMONWEALTH OF VIRGINIA

900 East Main Street
Richmond, VA 23219

Plaintiffs,

v.

SYSCO CORPORATION

1390 Enclave Parkway
Houston, TX 77077-2099

and

**USF HOLDING CORP. and
US FOODS, INC.**

9399 West Higgins Road, Suite 500
Rosemont, IL 60018

Defendants.

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION PURSUANT TO
SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys, and the District of Columbia; the States of California, Illinois, Iowa, Maryland, Minnesota, Nebraska, Ohio, and Tennessee; and the Commonwealths of Pennsylvania and Virginia (collectively, “Plaintiff States”), acting by and through their respective Attorneys General, petition this Court, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26, for a temporary restraining order and preliminary injunction enjoining Sysco Corporation (“Sysco”) from consummating its proposed merger (the “Merger”) with USF Holding Corp. and US Foods, Inc. (together, “US Foods”). Absent such provisional relief, Sysco and US Foods (collectively, “Defendants”) would be free to consummate the Merger after 11:59pm on March 2, 2015.

Plaintiffs require the aid of this Court to maintain the status quo during the pendency of an administrative proceeding on the merits scheduled to begin on July 21, 2015, which the Commission already has initiated pursuant to Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18, 21, and Section 5 of the FTC Act, 15 U.S.C. § 45. That administrative proceeding will determine the legality of the Merger, subject to judicial review by a federal Court of Appeals, and will provide all parties full opportunity to conduct discovery and present testimony and other evidence regarding the likely competitive effects of the Merger.

NATURE OF THE CASE

1. This is an action to temporarily restrain and preliminarily enjoin the consummation of an anticompetitive merger between intense rivals, Sysco and US Foods. Defendants are—by a wide margin—the two largest broadline foodservice distributors in the United States and each other’s closest competitor. Sysco and US Foods are the only two broadline distributors with nationwide networks of distribution centers, making them the best options for customers with facilities spread across the country. Defendants also compete fiercely with one another in numerous local areas to serve independent restaurants and other foodservice customers. The vigorous head-to-head competition between Sysco and US Foods yields substantial benefits to customers in the form of lower prices, better service, and higher product quality. The Merger would eliminate that competition and those benefits. Indeed, Sysco characterizes the proposed merger as [REDACTED]

US Foods explained to its employees that it is [REDACTED]

[REDACTED] If consummated, the Merger threatens significant harm to a wide range of foodservice customers, who will be forced to absorb the increased costs and, in many cases, pass them on to consumers.

2. Broadline foodservice distributors, or “broadliners,” play a critical role in the foodservice industry. Broadliners sell and deliver food and related products to a variety of foodservice operators, including restaurants, hospitals, hotels, school cafeterias, and other places where people eat “food away from home.” Broadliners warehouse, sell, and distribute a “broad line” of food and food-related products, including national-brand and private-label (i.e., their own distributor-brand) products. Because they can serve as a “one-stop-shop” for their customers, broadliners are a vital, cost-effective source for most or all of a foodservice operator’s food and food-related products. Foodservice operators depend on broadline foodservice distributors for frequent and flexible delivery service (including next-day and emergency delivery), high levels of customer service, product depth and breadth, and value-added services, such as order tracking, menu planning, and nutrition analysis.

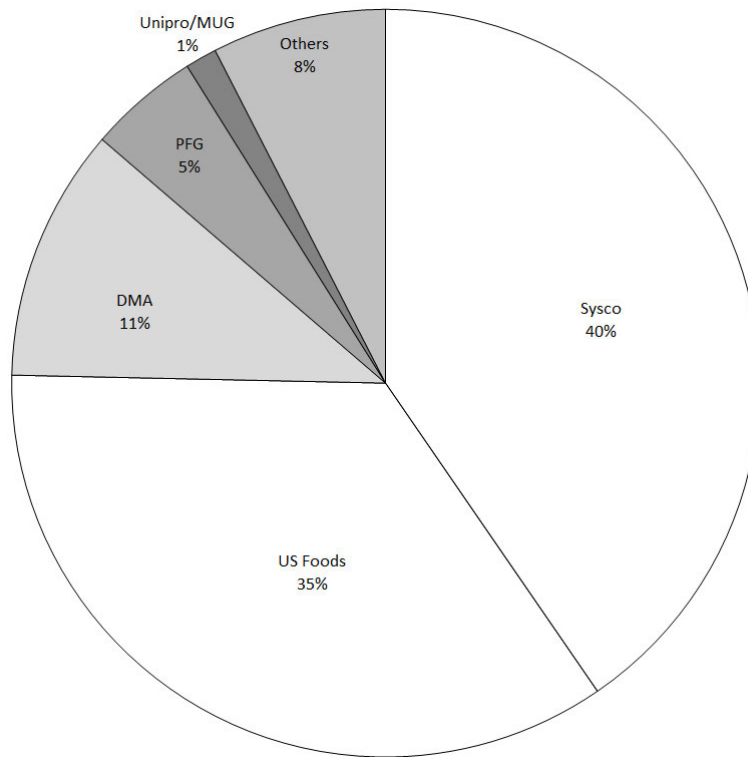
3. Broadline foodservice distribution is distinct from other types of foodservice channels, such as systems foodservice distribution, specialty foodservice distribution, and cash-and-carry stores. None of these other forms of distribution is reasonably interchangeable with, or an adequate substitute for, broadline foodservice distribution because each lacks critical attributes that customers of broadline distribution require and that broadline distributors offer.

4. Defendants compete to provide broadline foodservice distribution services to a wide variety of customers, ranging from single-location restaurants to national hotel chains and other customers with locations dispersed throughout the country. Single-location restaurants, small local restaurant chains, and other local customers (also known as “street” customers) purchase broadline distribution services (and distributed products) from broadliners with a proximate distribution center, and typically without a contract. Customers with numerous facilities dispersed nationally or across multiple regions of the United States (“National

Customers”), such as national hotel chains, foodservice management companies, and group purchasing organizations (“GPOs”), typically purchase broadline foodservice distribution services (and distributed products) pursuant to contracts awarded through requests for proposal (“RFPs”) or bilateral negotiations.

5. National Customers have requirements that certain broadline foodservice distributors are best positioned to fulfill. For example, because of administrative and cost efficiencies, among other reasons, National Customers require or typically contract with a broadline distributor that offers consistency of pricing, service, ordering, and products across all of their geographically dispersed locations, as well as efficient ordering and contracting processes. As a result, many National Customers are most effectively served by a broadline foodservice distributor that has the capability to provide nationwide coverage. Defendants are the only two single-firm broadline distributors that meet these requirements. The only remaining options for National Customers are consortia of regional broadline distributors, such as Distribution Market Advantage (“DMA”), or an ad hoc region-by-region network of distributors, both of which have significant disadvantages and in some cases are not viable options.

6. Defendants are the two major players in the market for broadline foodservice distribution services sold to National Customers. This Merger would combine the two top choices—by far—for a significant number of National Customers and create a firm with a dominant share of the market. Post-Merger, Sysco would control approximately 75% of the sales of broadline foodservice distribution services to National Customers. *See* Figure 1, below. The next-largest distributor has only 11% of this market. Thus, the Merger would result in a post-Merger Herfindahl-Hirschman Index of 5,836 and an increase in concentration of 2,800 in this market.

FIGURE 1: ESTIMATES OF BROADLINE MARKET SHARES FOR NATIONAL CUSTOMERS

7. Under the relevant case law and the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”), the extraordinarily high post-Merger market share, the market-concentration level, and the increase in concentration in the market for broadline foodservice distribution services sold to National Customers render the Merger presumptively unlawful.

8. Defendants also compete vigorously with one another for the business of local customers (i.e., customers, such as independent restaurants or other “street” accounts, with a single location or a few locations geographically concentrated in a single local area). In numerous local markets, the Merger would combine the two largest—and in certain local markets the only two meaningful—broadline distributors. Local markets in which the Merger would substantially lessen competition include the local markets listed in Appendix A. Defendants’ post-Merger market share would be 50% or higher in at least 32 local markets

across the country and result in significant increases in concentration in already concentrated markets. In each of those 32 local markets in the United States, the Merger is presumptively unlawful under the relevant case law and the Merger Guidelines.

9. For both National Customers and local customers in numerous local markets, Sysco and US Foods are unambiguously each other's closest competitor. Unmatched by other broadline distributors, Defendants possess similarly vast networks of distribution centers, salesforces, fleets of delivery trucks, and other competitive advantages. US Foods' own strategic planning documents recognize the [REDACTED]

[REDACTED] Customers use this interchangeability to play one off the other to obtain lower pricing and better terms. Indeed, Sysco and US Foods frequently lower prices, increase discounts, and offer financial and other incentives to keep customers from using the other distributor and to take business away from each other.

10. Sysco and US Foods are the two best and most often used options for National Customers. In fact, some National Customers consider Defendants the only viable options for their broadline distribution needs. Regional consortia and ad hoc region-by-region networks have many significant disadvantages—including limited geographic footprints, inconsistent product offerings and pricing, higher costs, and logistical and coordination challenges—compared to the only integrated national broadline distributors, Sysco and US Foods. Because of these disadvantages, these regional consortia and ad hoc networks are of limited competitive significance compared to Sysco and US Foods, which is borne out in these distributors' minimal shares of sales to National Customers, as Figure 1 above demonstrates. Thus, the Merger would eliminate competition between the two largest, most significant, and most attractive alternatives

for National Customers, leaving them with only significantly less effective—if not inadequate—alternatives (i.e., regional consortia and ad hoc regional networks). These alternatives cannot constrain the post-Merger Sysco. Thus, Sysco will be able to charge supracompetitive prices—that is, charge higher prices or offer fewer discounts and other financial incentives to National Customers relative to what it could charge if faced with competition from US Foods—and it will have a diminished incentive to maintain or improve quality for these customers.

11. Sysco and US Foods are also the two best options for customers in many local markets. Defendants command the number one and number two positions among broadline distributors in many local markets because of their proximate distribution centers, vast salesforces, broad product offerings, value-added services, large truck fleets, scale, and other competitive advantages. Combined, Defendants will dominate the local markets alleged in Appendix A. Thus, the Merger would eliminate competition between the two largest, most significant, and most attractive alternatives for many local customers. Other broadline distributors in these local markets cannot constrain the merged Sysco / US Foods. Thus, Defendants will have the ability to charge supracompetitive prices to, and will have a diminished incentive to maintain or improve quality for, local customers.

12. Defendants' plan to divest 11 of US Foods' distribution centers to Performance Food Group ("PFG") (the "Proposed Divestiture"), announced on February 2, 2015, does not remedy the competitive harm caused by the Merger because it does not restore the competition lost by eliminating US Foods as an independent competitor. Adding 11 distribution centers to PFG's current footprint will not replace the competition lost for National Customers because PFG still will lack (i) the necessary geographic coverage to serve National Customers, and (ii) the capacity, operational efficiencies, reputation, product breadth, and industry-specific

expertise to compete with the merged Sysco / US Foods as effectively as US Foods competes with Sysco today. The Proposed Divestiture also does not address the competitive harm caused by the Merger in many local markets. Therefore, the Proposed Divestiture is inadequate and does not prevent the substantial competitive harm caused by the Merger.

13. Defendants cannot show that new entry or expansion by existing distributors would be timely, likely, or sufficient to counteract the anticompetitive effects of the Merger. Significant barriers to entry into broadline distribution exist in both the national market and many local markets, making entry or expansion difficult and incapable of constraining the merged entity.

14. Defendants cannot show cognizable efficiencies that would offset the likely and substantial competitive harm from the Merger.

15. On February 19, 2015, by a 3-2 vote, the Commission found reason to believe that the Merger would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially reducing competition, leading to higher prices and lower quality.

16. A temporary restraining order enjoining the Merger is necessary to preserve the Court's ability to afford full and effective relief after considering the Commission's application for a preliminary injunction. Preliminary injunctive relief is imperative to preserve the status quo and protect competition during the Commission's ongoing administrative proceeding. Allowing the Merger to proceed would harm consumers and undermine the Commission's ability to remedy the anticompetitive effects of the Merger if it is ultimately found unlawful after a full trial on the merits and any subsequent appeals.

JURISDICTION AND VENUE

17. This Court's jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b); Section 16 of the Clayton Act, 15 U.S.C. § 26; and 28 U.S.C. §§ 1331, 1337, and 1345. This is a civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by an Act of Congress to bring this action.

18. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

Whenever the Commission has reason to believe –

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public – the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. *Upon a proper showing that weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest*, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond (emphasis added)

19. In conjunction with the Commission, the Plaintiff States bring this action for a preliminary injunction under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Sysco and US Foods from violating Section 7 of the Clayton Act, 15 U.S.C. § 18, pending the Commission's administrative proceeding. The Plaintiff States have the requisite standing to bring this action because the Merger would cause antitrust injury in the markets for broadline foodservice distribution services sold to customers in their states.

20. Defendants are, and at all relevant times have been, engaged in activities in or affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12. Defendants also are, and at all relevant times have been, engaged in commerce in each of the Plaintiff States.

21. Defendants transact substantial business in the District of Columbia and are subject to personal jurisdiction therein. Venue, therefore, is proper in this district under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

THE PARTIES AND THE PROPOSED MERGER

22. Plaintiff, the Commission, is an administrative agency of the United States government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

23. The Plaintiff States, by and through their respective Attorneys General, bring this action pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26 in their sovereign or quasi-sovereign capacities as *parens patriae* on behalf of the citizens, general welfare, and economy of each of their states.

24. Defendant Sysco is a publicly traded corporation organized under the laws of Delaware with headquarters in Houston, Texas. Sysco is the largest North American distributor of food and related products primarily to the foodservice industry. Sysco distributes food and related products and provides services to approximately 425,000 customers across the United States, including independent restaurants, healthcare and educational facilities, lodging

establishments, and other foodservice customers. In its fiscal year 2014, Sysco generated sales of \$46.5 billion.

25. Defendant Sysco operates through three business divisions: Broadline; SYGMA, which provides “systems” (also known as “custom”) foodservice distribution services; and “Other,” which is a division that provides, among other things, specialty produce distribution. Sysco’s Broadline division includes 72 distribution centers in the United States that distribute a full line of food and related products to foodservices operators. SYGMA distributes a more limited set of food and related products to certain large chains, primarily quick-service restaurants. In fiscal year 2014, the breakdown of total Sysco sales by division was approximately 81% Broadline, 13% SYGMA, and 6% Other.

26. Defendant US Foods, Inc. is a privately held corporation based in Rosemont, Illinois, and incorporated under the laws of Delaware. US Foods, Inc. is a wholly owned subsidiary of Defendant USF Holding Corp., which is owned and controlled by investment funds associated with or managed by Clayton, Dubilier & Rice, Inc., and KKR & Co., L.P.

27. Defendant US Foods Holding Corp. is the second-largest distributor of food and food-related products in the United States. US Foods Holding Corp. operates 61 distribution centers from which it provides broadline distribution services throughout the United States. In its fiscal year 2013, US Foods Holding Corp. generated approximately \$22 billion in sales to more than 200,000 customers nationwide.

28. On December 8, 2013, Sysco and US Foods signed a definitive merger agreement (“Merger Agreement”), pursuant to which Sysco would acquire all shares of US Foods in a transaction valued at \$8.2 billion. The Merger Agreement expires on September 8, 2015.

29. Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, and a timing agreement between Defendants and Commission staff, unless enjoined by this Court, Defendants would be free to consummate the Merger after 11:59pm on March 2, 2015

30. On February 19, 2015, by a 3-2 vote, the Commission found reason to believe that the Merger would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C § 45, by substantially lessening competition. That same day, the Commission commenced an administrative proceeding on the antitrust merits of the Merger before an Administrative Law Judge, with the merits trial scheduled to begin on July 21, 2015. The ongoing administrative proceeding provides a forum for all parties to conduct discovery, followed by a merits trial with up to 210 hours of live testimony. *See* 16 C.F.R. § 3.41 (2014). The decision of the Administrative Law Judge is subject to appeal to the full Commission, which, in turn, is subject to judicial review by a United States Court of Appeals.

31. In authorizing the filing of this complaint in this Court, the Commission has determined that (1) it has reason to believe the Merger would violate the Clayton Act and the FTC Act by substantially lessening competition in one or more lines of commerce, and (2) an injunction of the Merger pending the resolution of the Commission's administrative proceedings and any appeals will promote the public interest, so as to minimize the potential harm to customers and preserve the Commission's ability to order an adequate remedy if it concludes, after the hearing, that the Merger is unlawful.

RELEVANT MARKETS

A. Relevant Product Markets

32. Broadline foodservice distribution entails the warehousing, sale, and distribution of a wide range of product categories and a variety of products within those categories, along

with high levels of customer service and value-added services. Broadline foodservice distribution is not reasonably interchangeable with other forms of food distribution (e.g., systems or specialty distribution); it is distinguished by a number of key factors, including but not limited to:

- a. Product Breadth and Depth: Customers of broadline distributors demand, and broadline distributors offer their customers, a distinct combination of products that other distribution channels do not offer. This combination includes a broad array of stock keeping units (“SKUs”) in many different product categories, including canned and dry goods, dairy, meat, poultry, produce, seafood, frozen foods, beverages, and related products, such as chemicals, equipment, and paper goods. Carrying products in all of these categories—and a wide variety of SKUs within each category—allows broadline distributors to satisfy customer demand for product breadth and depth that is unavailable through any other channel of distribution.
- b. Private-Label Products: Foodservice customers often demand, and broadline distributors typically carry, a broad selection of private-label (i.e., distributor-branded) food and food-related products that are typically lower cost than branded items.
- c. Customer Service: Customers demand, and broadline foodservice distributors typically provide, high levels of customer service, a frequent and flexible delivery schedule (including next-day and emergency deliveries), and other value-added services, such as order tracking, menu planning, and nutritional information.

33. Reflecting customer demands, these key distinguishing characteristics, among others, make broadline foodservice distribution a distinct relevant product market. For example, broadline distributors tend to have significantly larger product portfolios and salesforces than other types of distributors, including systems and specialty distributors. Broadliners tend to use distribution centers specifically for broadline distribution, and broadline distribution centers tend to be larger than distribution centers used for systems and specialty distribution. Moreover, because a different set of competitors provides broadline foodservice distribution than provides systems and specialty distribution, respectively, the competitive conditions for broadline foodservice distribution differ from other types of distribution.

34. When determining their pricing, broadline foodservice distributors primarily consider the pricing of other broadline foodservice distributors, with other forms of distribution playing no significant role.

35. Other foodservice channels—namely, systems foodservice distribution, specialty foodservice distribution, and brick-and-mortar cash-and-carry stores—are not in the relevant product market. The competitive conditions in each of these channels are distinct from broadline distribution because different sets of distributors compete to provide each service.

36. Systems foodservice distribution is not reasonably interchangeable with, or an adequate substitute for, broadline foodservice distribution. Customers that require broadline distribution services cannot use systems distribution because systems distributors do not provide the necessary breadth of products, customer service, delivery frequency, and proximity to customer locations (due to their typically sparser networks of distribution centers). Notably, Sysco's SYGMA division is a distinct business unit dedicated to systems distribution. Other

distinguishing features of systems distribution versus broadline distribution include the following:

- a. Systems distributors primarily service large chain quick-service restaurants that develop restaurant-proprietary food products with food manufacturers and contract for most of their food products directly with those manufacturers. As a result, systems customers demand, and systems distributors typically provide, only warehousing and distribution services, and systems distributors do not themselves sell food.
- b. Systems distributors have significantly fewer salespeople, carry a limited number of SKUs, have significantly smaller distribution centers, lack distributor-branded private-label offerings, make larger and less flexible deliveries, travel greater distances to reach customers, and offer fewer value-added services.
- c. Because of systems distributors' infrastructure and business model, customers need to be a certain minimum size and scale for systems distributors to consider taking on their business, which alone eliminates systems distribution as an option for virtually all local customers.

37. Specialty foodservice distribution is not reasonably interchangeable with, or an adequate substitute for, broadline foodservice distribution. Specialty distributors focus on one or a small number of product categories, such as produce or seafood. As a result, compared to broadline distributors, specialty distributors have limited product breadth (i.e., they carry fewer SKUs), have a smaller delivery fleet, employ fewer salespeople, often offer higher quality or unique products, typically charge higher prices, and have significantly smaller distribution

centers. Although some customers of broadline distribution services also use specialty distributors to complement their broadline distributor, customers could not cost effectively or practicably buy the majority, much less all, of their foodservice products from specialty distributors. Notably, Sysco operates multiple specialty distribution businesses separately from its broadline distribution business.

38. Cash-and-carry stores, such as Restaurant Depot and club stores like Costco and Sam's Club, are not reasonably interchangeable with, or an adequate substitute for, broadline distribution services. The primary reason is that the vast majority of cash-and-carry stores do not deliver. Customers have to shop for and transport the food themselves, which is resource-intensive and impracticable for most customers, including because customers typically do not own refrigerated trucks to transport food. To the extent they use cash-and-carry stores at all, foodservice customers generally use such stores only for limited purposes, such as filling a temporary item shortage or when their purchase volumes are so low that they cannot use broadline distribution services. Furthermore, cash-and-carry stores lack a number of attractive features that are important to customers of broadline distribution services, including: product breadth, sufficient product quality, the option to make purchases at multiple cash-and-carry locations on the same customer account (i.e., centralized purchasing), discounted contract purchasing, and the consistent availability of products across all facilities. Consequently, cash-and-carry stores are not a reasonable alternative to broadline distribution for many customers and are not an option for National Customers.

39. Broadline foodservice distributors are not meaningfully constrained competitively by systems distributors, specialty distributors, or cash-and-carry stores. As such, an insufficient number of customers of broadline distribution services would switch to other distribution

channels or brick-and-mortar stores to render a small but significant and non-transitory increase in the price of broadline foodservice distribution services unprofitable for a hypothetical monopolist of such services.

40. Accordingly, broadline foodservice distribution services is a relevant product market.

41. National Customers are a distinct set of customers for broadline foodservice distribution services because their contracting and service requirements are substantially different from local broadline customers. National Customers include—but are not limited to—GPOs consisting of nationally dispersed members, such as hospitals, nursing homes, and other institutions; foodservice management companies that operate cafeterias and other venues nationwide; and hotel and restaurant chains with locations dispersed throughout the United States.

42. National Customers centrally negotiate their contracts with broadline foodservice distributors, but they place orders from, and require delivery to, multiple geographically dispersed locations. Due to that geographic dispersion, National Customers typically contract with a broadline foodservice distributor that has distribution centers proximate to all (or virtually all) of their locations. In addition, National Customers typically contract with a broadliner that can provide—across all of their locations—product consistency and availability, efficient contract management and administration (e.g., centralized ordering and reporting, a single point of contact, and consistent pricing across all locations), volume discounts from aggregated purchasing, and the ability to expand geographically with the same broadline foodservice distributor. Accordingly, many National Customers typically contract with a broadline foodservice distributor that is national in scope. A hypothetical monopolist of broadline

foodservice distribution services sold to National Customers could profitably impose a small but significant price increase on such distribution services to make such a price increase profitable.

43. Defendants distinguish between National Customers and local customers in the ordinary course of business. Defendants' documents describe the distinct requirements of "National Customers" as including, among other needs, "efficient ordering across multiple locations," "consistency of service, pricing, and products across multiple markets," a "large number" of foodservice SKUs, and [REDACTED] US Foods describes "National Accounts" as "[c]ontracted customers located across the country."

44. Thus, broadline foodservice distribution services sold to National Customers is a second relevant product market in which to analyze the Merger's likely effects.

B. Relevant Geographic Markets

45. Defendants compete for the sale of broadline foodservice distribution services to National Customers and local customers. Accordingly, it is appropriate to analyze the competitive effects of the Merger in a national market and in the local markets in which Defendants compete.

1) The United States

46. Defendants compete to provide broadline foodservice distribution to National Customers through a network of distribution centers strategically located around the country to serve locations throughout the continental United States.

47. National Customers are customers that operate or manage a number of locations dispersed nationwide or across multiple regions of the United States. As a result, National Customers require a geographically dispersed network of distribution centers to serve their facilities. A substantial number of National Customers also choose their broadliner based on its ability to provide centralized and consistent services and terms across their facilities, including:

(1) centralized contracting, (2) consistent pricing and terms, (3) a single point of contact, (4) consistent product availability, (5) a single reporting/auditing function, (6) efficient administration of the broadline distribution contract, and (7) volume discounts from aggregating purchases. Additionally, National Customers typically contract with a distributor that has a geographically dispersed network because it allows the National Customer to add facilities in new locations without having to contract with a new broadliner.

48. Defendants, other broadline distributors, customers, and other industry participants recognize the existence of a national market for broadline foodservice distribution services. For example, Defendants refer to themselves as the only two national broadline foodservice distributors, structure their corporate organizations to compete for and service National Customers specifically, and promote themselves to customers as “national” distributors. Notably, several regional distributors formed a consortium (DMA) in an effort to serve National Customers on a national basis. Furthermore, Defendants engage in national planning for National Customers and deal with National Customers’ multistate businesses on the basis of nationwide contracts that include, among other nationwide terms, pricing schedules that apply nationwide.

49. Therefore, for broadline distribution services sold to National Customers, the United States is the relevant geographic market.

2) Local Markets

50. For customers with a single location or a few locations geographically concentrated in a single local area, broadline foodservice distribution competition occurs on a local level. Local customers of broadline services require proximity to distribution centers because they often need frequent or next-day deliveries (often at specific delivery times),

fulfillment of emergency orders, quick replacement of broken or missing products, and high levels of customer service.

51. Broadline distributors typically generate the majority of their local business from customers located within approximately 100 miles of their distribution centers. Broadline distributors deliver from distribution centers that are geographically proximate to their customers because it is more cost-effective and profitable to have dense delivery routes, and regulations limit the number of hours a driver of a delivery truck can spend on the road. Moreover, Defendants and other broadline distributors have field salesforces dedicated to serving customers in local areas.

52. Because it is necessary, or at least highly advantageous, for distribution centers to be close to customer locations, foodservice industry participants—including Defendants, other broadline distributors, and customers—generally recognize local areas or individual geographic regions as distinct markets. Each of the localized areas in which Defendants compete with one another to provide broadline foodservice distribution services constitutes a relevant geographic market.

53. It is appropriate to analyze the proposed Merger's competitive effects in the numerous local markets in which Sysco and US Foods compete against one another. Under the Merger Guidelines, when suppliers can price discriminate (i.e., charge different prices) based on the location of customers, it can be appropriate to define geographic markets around the region into which sales are made to customers. Because Sysco and US Foods can price discriminate based on customers' locations, relevant local markets here are defined as the overlapping trade areas of the Defendants' distribution centers (i.e., the locations of the local customers that could be served by both Defendants' distribution centers). These overlapping trade areas constitute

relevant markets because they are the areas where the Defendants currently compete against each other and where the Merger would eliminate competition.

54. For illustration, the overlapping trade areas of Sysco and US Foods in Las Vegas, Nevada, constitute a relevant local geographic market for purposes of analyzing the effects of the proposed transaction. Sysco and US Foods both have distribution centers, sales representatives, and support infrastructure in Las Vegas. Defendants can price discriminate against customers in Las Vegas because the customers' broadline distribution alternatives are limited to the set of broadline distributors that could serve Las Vegas.

55. For purposes of analyzing the effects of the proposed Merger on local customers, the relevant geographic markets in which harm is likely to result are those local markets identified in Appendix A.

MARKET STRUCTURE AND THE MERGER'S PRESUMPTIVE ILLEGALITY

56. Sysco and US Foods are the only two broadline distributors with a truly nationwide presence. Post-Merger, the combined entity would have a dominant share of sales to National Customers and to customers in numerous local markets. In addition, the Merger would greatly increase concentration in already highly concentrated markets. Therefore, under the relevant case law and the Merger Guidelines, the Merger is presumptively unlawful.

A. Market Structure and Concentration—National Market

57. The Merger Guidelines and courts measure concentration using the Herfindahl-Hirschman Index ("HHI"). The HHI is calculated by totaling the squares of the market shares of every firm in the relevant market. Under the Merger Guidelines, a merger is presumed likely to create or enhance market power—and is presumptively illegal—when the post-merger HHI exceeds 2,500 and the merger increases the HHI by more than 200 points.

58. In the market for broadline distribution services sold to National Customers—including sales by regional distributors (via consortia or individually) to National Customers—the parties control the vast majority of sales and the market is highly concentrated. Post-Merger, Sysco would control 75% of this relevant market. See Table 1, below. The next largest competitor would possess only about 11% of the market. Post-Merger, the market would be substantially more highly concentrated than it is today. The Merger would result in a post-Merger HHI of 5,836 and an increase in concentration of 2,800 points, or 14 times the increase necessary to establish a presumption of competitive harm.

TABLE 1: ESTIMATES OF MARKET SIZE AND SHARE: SALES TO NATIONAL CUSTOMERS

	2013 National Revenues (\$B)	Share	Pre-Merger HHI	Post-Merger HHI
<i>Sysco</i>		40%	1,600	
<i>US Foods</i>		35%	1,225	
Combined Post-Merger		75%		5,625
DMA		11%	121	121
PFG		5%	25	25
Unipro/MUG		1%	1	1
Others ¹		8%	64	64
Total Market			3,036	5,836
Change in HHI:				2,800

Based on the combined shares, market concentration, and increase in concentration, the Merger is presumptively illegal under the relevant case law and Merger Guidelines.

B. Market Structure and Concentration—Local Markets

59. The competitors in each local market are the firms currently selling broadline distribution services into the relevant geographic market or firms to which customers could practicably turn for broadline foodservice distribution. Firms that compete in the local market

¹ Others include Ben E. Keith Company (“BEK”); Food Services of America (“FSA”), a part of Services Group of America (“SGA”); Gordon Food Service (“GFS”); HPC Foodservice, Inc. (“HPC”); Jacmar Foodservice Distribution (“Jacmar”); Labatt Food Service (“Labatt”); Maines Paper & Food Service, Inc. (“Maines”); Merchants Foodservice (“Merchants”); Nicholas and Company (“Nicholas”); Reinhart Foodservice L.L.C. (“Reinhart”); and Shamrock Foods (“Shamrock”).

may be located outside the boundaries of a geographic market, as long as they currently provide, or could rapidly provide, broadline distribution services into the specified local market.

60. Sysco and US Foods are the two largest competitors in most local markets across the country. In 32 local markets in which Sysco and US Foods compete head-to-head, Sysco's post-Merger market share in the sale of broadline foodservice distribution services would be 50% or higher. All of these markets would be highly concentrated after the Merger (HHIs between 2,997 and 10,000) with large increases in concentration (HHI increases between 1,053 and 3,695). For example, in Columbia/Charleston, South Carolina, the post-merger HHI would increase by 2,264 to 5,731.

61. Therefore, the Merger is presumed likely to create or enhance market power—and is presumptively illegal—in each of those local markets. Appendix A provides a list of these 32 local geographic markets, Defendants' combined market shares, HHI levels, and the increases in concentration.

**ANTICOMPETITIVE EFFECTS: THE MERGER WOULD ELIMINATE VITAL
HEAD-TO-HEAD COMPETITION BETWEEN SYSCO AND US FOODS**

62. The Merger would eliminate significant direct, head-to-head competition between Defendants, the two largest broadline foodservice distributors in both the national market and the local markets alleged herein. Customers ranging from the corner diner to hospital and nursing home cafeterias to hospitality venues—and all of the diners who eat at these and hundreds of thousands of other venues—benefit substantially from the competition between Sysco and US Foods in the form of lower prices, better service, and higher product quality. By eliminating vigorous competition between Sysco and US Foods, the Merger would significantly reduce these

benefits, harming businesses that offer food away from home and, ultimately, their end consumers.

A. The Merger Would Likely Harm Competition for National Customers

63. Defendants are each other's closest competitor and by far the largest providers of broadline distribution services to National Customers. They are the only two single-firm broadline distributors with national geographic reach and, as such, are best positioned to serve National Customers. Sysco and US Foods both offer to National Customers what no other distributor can offer: a national footprint with more than 60 distribution centers each; correspondingly large truck fleets and salesforces; greater product breadth and depth than any other competitor, including private-label products; and significant value-added offerings, such as order tracking, menu planning, and nutritional information. The scale of Sysco and US Foods—including their distribution networks, warehouse capacity, truck fleet, employees, and revenues—is similar to each other and dwarfs the next-largest broadline distributor (a regional broadline distributor). *See* Table 2, below.

TABLE 2: COMPARISON OF DISTRIBUTORS' BROADLINE CAPABILITIES²

Distributor	Broadline Sales (\$B) ³	Broadline DCs	Broadline Sq. Ft.	Broadline Salesforce	Truck Fleet Size
Sysco		72			
US Foods		61			
Combined		133			
PFG		24			
Gordon					
Reinhart					
DMA ⁴					
Ben E. Keith					
FSA					
Shamrock					
Cheney Bros.					
Labatt					
Maines					
Merchants					
Nicholas					
Cash-Wa					
Jacmar					
Pate Dawson					
HPC					

64. As the only two broadline distributors with national scale, Sysco and US Foods are most often the first and second choices for National Customers. Indeed, Defendants predominantly win National Customers from, and lose National Customers to, each other.

65. Defendants compete aggressively on price and non-price terms to win national broadline business from each other. Sysco and US Foods frequently respond to competing bids or offers from the other by lowering prices to customers. Price competition between Defendants

² The figures in Table 2 include totals for each distributor (i.e., their entire business) and are not limited to sales to National Customers or distributions assets / personnel dedicated to National Customers. Because the figures in Table 2 include these distributors' local sales / business, they greatly overstate their presence in market for the sale of broadline distribution services to National Customers.

³ For all distributors other than Defendants, the "Broadline Sales (\$B)" column reflects all sales (including sales of systems foodservice distribution) made from any distribution center that had broadline sales. Therefore, these figures overstate the broadline sales totals of multiple non-Defendant distributors to the extent that they service non-broadline (e.g., systems) customers from broadline or hybrid distribution centers.

⁴ The number of broadline distribution centers, broadline square footage, and trailer figures for DMA reflect the total distribution assets of DMA's members (BEK, FSA, GFS, HPC, Jacmar, Maines, Nicholas, Reinhart, and Shamrock). The broadline sales and total salesforce figures reflect actual DMA numbers.

includes lowering list prices, reducing margins, eliminating fuel surcharges, and providing significant cash incentives to win or keep National Customer accounts.

66. National Customers benefit from the competition between Defendants because it enables them to pit Sysco and US Foods against each other to obtain lower prices and better terms. National Customers switch, or threaten to switch, their business from Sysco to US Foods, and vice versa, to obtain better prices, discounts, cash incentives, favorable service concessions, and other beneficial terms.

67. The following are just a tiny fraction of the examples of direct price competition between Sysco and US Foods for National Customers:

- a. In competition with Sysco for the business of [REDACTED], US Foods internally recognized that “Sysco will ‘come hard’ after [REDACTED] Only ‘true’ options for . . . [REDACTED] is either Sysco or USF[.] The regional players will bid, but not be seriously considered.” In response to the competition from Sysco, US Foods “offer[ed] an [REDACTED] reduction from [its] current program margin for a [REDACTED]. The total annualized investment would be approx. [REDACTED] at current sales levels. This [was] an aggressive bid that [US Foods] expect[ed] to be competitive. That said, US Foods expect[ed] that Sysco [would] present an even more aggressive offer.”
- b. [REDACTED], issued an RFP for broadline foodservice distribution services in [REDACTED]. During the RFP process, [REDACTED] used US Foods as “leverage” to obtain a better offer from Sysco, a incumbent supplier. In particular, after Sysco submitted its initial proposal, “[REDACTED] asked for further enhancement of [Sysco’s] offer in order to keep USF out of the mix. [REDACTED] was getting a lot of pressure from [REDACTED] to add USF.” [REDACTED] felt that [REDACTED] recently testified that [REDACTED]. According to [REDACTED], other distributors could not provide [REDACTED] because Sysco [REDACTED]. The year after [REDACTED] awarded its contract to Sysco, Sysco noted that [REDACTED] in order to keep USF from being made an approved distributor.”

- c. Sysco won the business of [REDACTED], even though US Foods “put a lot on the table” to win the business. [REDACTED] was able [REDACTED] due to the presence of US Foods [REDACTED]
- d. [REDACTED], informed Sysco that it was “priced significantly higher [REDACTED] vs [US Foods] as [REDACTED] was] analyzing [REDACTED],” and [REDACTED] was “going to send [Sysco] [REDACTED] to see what [Sysco could] do to lower [its] price.”
- e. In response to a bid from US Foods, “Sysco made ‘concessions’ to their current agreement in order to maintain [the] business” of [REDACTED], a fast casual [REDACTED] restaurant.
- f. In response to competition from US Foods, Sysco reduced the prices it offered to [REDACTED], a restaurant with locations dispersed throughout the United States. [REDACTED] then took Sysco’s reduced offer and “asked [US Foods] to move the transition [bonus] from [REDACTED] to [REDACTED] which [would] be more in line with Sysco.” US Foods agreed to the increased transition bonus, after which [REDACTED] asked Sysco “to match [US Foods’] offer of [a] [REDACTED] signing [bonus] to keep [the business].”
- g. [REDACTED], a [REDACTED] restaurant with locations throughout the country, used an offer from US Foods as leverage to get a better deal from Sysco, which “matched [US Foods’] offer and provided a [REDACTED] signing incentive.” US Foods had offered a [REDACTED] signing bonus.
- h. In the face of competition from US Foods, Sysco retained the business of [REDACTED], a [REDACTED] restaurant with locations in various places throughout the country, by “lowering the current [prices] and offering a [REDACTED] stay bonus.”
- i. As the competition with US Foods was “heating up” for [REDACTED], a [REDACTED] with several locations across the country, Sysco “put up [REDACTED] for [REDACTED] business (for [REDACTED]) and matched [US Foods’] margins.”

68. Defendants themselves also recognize the intensity of the price competition between them. For example, upon learning of another aggressive Sysco bid aimed at luring a National Customer away from US Foods, [REDACTED]
[REDACTED] US Foods has shown itself game for the battle. As US Foods’ [REDACTED] wrote after the Merger was announced, [REDACTED] That

sentiment was shared by industry analysts at [REDACTED]

[REDACTED]. In April 2012, [REDACTED] reported [REDACTED]

that [REDACTED]

[REDACTED]

69. The Merger would eliminate this pervasive and significant head-to-head competition for National Customers' business. Post-Merger, Sysco would face significantly less meaningful competition than it does today with US Foods, which is the only broadline foodservice distributor with the geographic scope and other resources that comes close to matching Sysco. Consequently, Sysco will not need to compete as aggressively on price to win business from National Customers and, thus, will be able to price at supracompetitive levels.

70. Sysco and US Foods also compete aggressively on non-price terms to win National Customers by offering high-quality products and services. Defendants currently risk losing business to each other if customers perceive one company's products and service inferior or lacking. Defendants improve and expand their product lines and services to compete with, and win customers from, each other. [REDACTED] observed that, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] After the Merger, Sysco would face substantially less competition for National Customers and, correspondingly, would have less incentive to improve, or even maintain, its current level of products or service to win or keep business.

71. Regional broadline distributors and distribution consortia do not meaningfully constrain Defendants today. They will be even less able to do so post-Merger when Sysco will be dominant. These broadline distributors' paltry market shares of sales to National Customers

compared to Defendants' shares show their insignificance. US Foods itself recognized, when referring to two of its largest National Customers, that those customers' only [REDACTED] options are [REDACTED]

USF internally expressed the same sentiment about competition from regional players after announcement of the Merger: [REDACTED]

72. Contracting separately with multiple distributors region-by-region (without using a consortium) is even less attractive than working with a consortium—in many cases, it is impracticable—for the same reasons. As one National Customer emphasized to US Foods shortly before the Merger announcement, it needs a [REDACTED] [REDACTED] because contracting with multiple regional broadline distributors is [REDACTED] with a [REDACTED]

B. The Merger Would Likely Harm Competition for Local Customers

73. Sysco and US Foods are each other's closest competitor across a range of competitively significant attributes in the relevant geographic markets. Defendants have greater product breadth, broader private-label product portfolios, and more value-added services than local and regional broadline distributors. Sysco and US Foods also generally have larger distribution centers, more sales representatives, and more trucks than other local and regional broadline distributors. *See* Table 2, *supra*.

74. While regional broadline distributors are present to varying degrees in various local markets, Sysco and US Foods are the two largest—often by far—broadline distributors in the relevant geographic markets. Sysco views itself as [REDACTED]

[REDACTED] US Foods believes that it has the [REDACTED]
[REDACTED]

75. Sysco and US Foods compete intensely for customers in the relevant geographic markets, to the direct benefit of customers. On a daily basis in these local markets, Sysco and US Foods compete most fiercely with each other, offering lower prices, upfront payments, and other financial incentives to win business from each other. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

76. Eliminating the significant head-to-head competition between Defendants would lead to supracompetitive prices, reduced product offerings, and diminished product quality and service for customers in the relevant geographic markets. In describing the post-Merger world, one local customer stated that his restaurant would [REDACTED]
Another local customer likened post-Merger competition between regional broadline distributors and the merged Sysco / US Foods to [REDACTED] Indeed, [REDACTED]
[REDACTED] was excited about the Merger because it
[REDACTED] and [REDACTED]
[REDACTED]

LACK OF COUNTERVAILING FACTORS

77. Defendants cannot demonstrate that new entry or expansion by existing firms would be timely, likely, or sufficient to offset the anticompetitive effects of the Merger. A firm

seeking to enter or expand in the market for broadline foodservice distribution to National Customers would face significant barriers to success. Creating a national broadline distribution network anywhere close to that offered by Sysco or US Foods would be time and resource intensive. As [REDACTED] internally concluded, US Foods and Sysco have a [REDACTED] [REDACTED] that is insulated because [REDACTED]

78. Expansion by regional firms or networks likewise would face serious obstacles and would not prevent or remedy the Merger's likely anticompetitive effects for National Customers. One key obstacle is having the geographic footprint to serve National Customers. All other broadline foodservice distributors have far fewer distribution centers than either Defendant does. The next-largest broadline distributor after the Defendants, PFG, currently has 24 distribution centers compared to the 61 that US Foods operates and the 72 that Sysco operates today. Thus, other broadline distributors are many years and significant capital investments away from being in a position to replace the competition currently provided by US Foods, even assuming they were likely to expand their geographic footprints.

79. In local markets, broadline distributors also face significant obstacles to entry, and any meaningful entry would likely take at least several years and is unlikely to achieve similar scale to US Foods today. Building a new distribution center in a new, *non-adjacent* geographic area (known as "greenfield entry") is rare because of the financial risk of buying costly distribution infrastructure and perishable inventory for an area where the distributor has no customer base. Instead, distributors typically expand by first "stretching" distribution services into an *adjacent* territory using an existing distribution center and local sales representatives;

only after distributors achieve significant sales in the adjacent territory do they build a new distribution center (known as a “fold-out”). But even fold-outs are financially risky, expensive, time-consuming, and logistically challenging. Broadline distribution is a capital-intensive business, requiring large distribution centers equipped with refrigeration and freezer capability to store perishable inventory, as well as large fleets of trucks, a field salesforce, and information technology infrastructure. Indeed, fold-out broadline distribution centers can cost tens of millions of dollars and take many years to complete. Additionally, stretch distribution is more costly because of the longer delivery miles, so a distributor typically is at a cost (and service) disadvantage until the fold-out distribution center is built and operating at an efficient scale.

80. Distributors seeking to enter or expand also must recruit and hire a competent and experienced salesforce. Sysco and US Foods have substantially more sale representatives than other broadline distributors. To hire enough sales representative to enter or expand on a sufficient scale to constrain the merged firm in local markets would take a significant amount of time and effort, particularly in light of non-competition and non-solicitation agreements that incumbent distributors have with their employees.

81. Additionally, entrants must satisfy regulatory requirements, and overcome reputational barriers to entry and Defendants’ strong incumbency advantage. Even after a new distribution center opens, it often takes years for a fold-out to achieve sales similar to incumbent broadline distributors. Thus, entry would not be timely, likely, or sufficient in the relevant local markets to counteract the anticompetitive effects of the Merger.

82. Defendants cannot demonstrate cognizable efficiencies that would be sufficient to rebut the strong presumption and evidence that the Merger likely would substantially lessen competition in the relevant markets.

83. On February 2, 2015, Defendants announced the Proposed Divestiture, under which PFG will purchase 11 US Foods distribution centers and associated assets. The Proposed Divestiture will not enable PFG to replace US Foods as a formidable competitor to Sysco for the sale of broadline foodservice distribution services and will not counteract the significant competitive harm caused by the Merger. Including the assets from the Proposed Divestiture, PFG would be less than [REDACTED] the size of US Foods today in terms of broadline sales revenue to National Customers and substantially smaller in terms of the number of broadline distribution centers (35 versus 61). Even with the Proposed Divestiture, PFG would be about [REDACTED] the size of the merged Sysco / US Foods in terms of broadline revenue, with about a quarter the number of broadline distribution centers (35 versus 122).

84. In particular, the Proposed Divestiture will not remedy the Merger's reduction in competition for National Customers because PFG will be an inferior competitor compared to pre-Merger US Foods and particularly inferior compared to post-Merger Sysco / US Foods. PFG will lack (i) a network of distribution centers capable of serving National Customers, due to remaining gaps in geographic coverage; (ii) the capacity or operational efficiencies to serve National Customers as effectively as an independent US Foods; and (iii) other qualities that are important to National Customers, such as competitive IT infrastructure, a track record for effectively servicing broadline National Customers across the U.S., a comparably broad private-label product offering, overall product breadth, and sufficient value-added services.

85. For similar reasons, the Proposed Divestiture will not remedy the Merger's harm in many relevant local geographic markets. In many of the relevant geographic markets, the Proposed Divestiture will have no effect because PFG will not acquire any additional assets, leaving local market conditions unchanged.

**LIKELIHOOD OF SUCCESS ON THE MERITS,
BALANCE OF EQUITIES, AND NEED FOR RELIEF**

86. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission, whenever it has reason to believe that a proposed merger is unlawful, to seek preliminary injunctive relief to prevent consummation of a merger until the Commission has had an opportunity to adjudicate the merger's legality in an administrative proceeding. In deciding whether to grant relief, the Court must balance the likelihood of the Commission's ultimate success on the merits against the public equities. The principal public equity weighing in favor of issuance of preliminary injunctive relief is the public interest in effective enforcement of the antitrust laws. Private equities affecting only Defendants' interest cannot defeat a preliminary injunction.

87. The Commission is likely to succeed in proving that the effect of the Merger may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, or Section 5 of the FTC Act, 15 U.S.C § 45. In particular, Complaint Counsel for the Commission is likely to succeed in demonstrating, among other things, that:

- a. The Merger would have anticompetitive effects in the market for broadline foodservice distribution services sold to National Customers and in the relevant local geographic markets for broadline foodservice distribution services;
- b. Substantial and effective entry or expansion in these markets is difficult and would not be likely, timely, or sufficient to offset the anticompetitive effects of the Merger; and

- c. The efficiencies asserted by Defendants are insufficient as a matter of law to justify the Merger.
- d. The Proposed Divestiture is unlikely to remedy the substantial lessening of competition resulting from the Merger.

88. Preliminary relief is warranted and necessary. Should the Commission rule, after the full administrative trial, that the Merger is unlawful, reestablishing the status quo ante of vigorous competition between Sysco and US Foods would be difficult, if not impossible, if the Merger has already occurred in the absence of preliminary relief. Moreover, in the absence of relief from this Court, substantial harm to competition would likely occur in the interim, even if suitable divestiture remedies were obtained later.

89. Accordingly, the equitable relief requested here is in the public interest.

Wherefore, the Commission and the Plaintiff States respectfully request that the Court:

- 1. Temporarily restrain and preliminarily enjoin Defendants from taking any further steps to consummate the Merger, or any other acquisition of stock, assets, or other interests of one another, either directly or indirectly;
- 2. Retain jurisdiction and maintain the status quo until the administrative proceeding that the Commission has initiated is concluded;
- 3. That Plaintiffs be awarded their costs of this action, including attorneys' fees to the Plaintiff States; and
- 4. Award such other and further relief as the Court may determine is appropriate, just, and proper.

Dated: February 19, 2015

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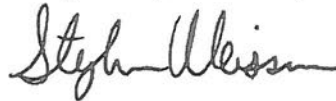
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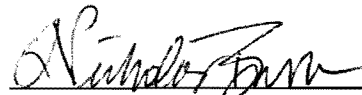
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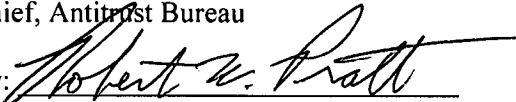


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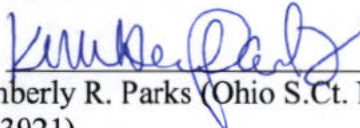
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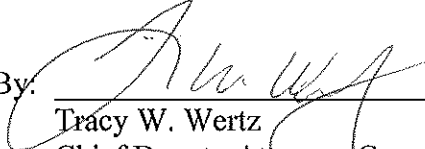
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APPENDIX A: LOCAL MARKET SHARE AND CONCENTRATION INFORMATION

Local Market	Defendants' Post-Merger Share	Δ HHI	Post-Merger HHI
*San Diego, CA	100%	3,537	10,000
*Las Vegas, NV	93%	3,695	8,635
Omaha/Council Bluffs, NE/IA	90%	1,475	8,224
*Kansas City, MO/KS	86%	3,619	7,582
Philadelphia, PA	84%	3,114	7,113
Chicago, IL	83%	3,164	6,991
Memphis, TN	81%	3,086	6,905
Washington/Baltimore, DC/MD	80%	2,874	6,477
Bloomington, IL	77%	2,917	6,244
Pensacola, FL	77%	2,817	6,150
*Los Angeles, CA	76%	2,900	5,886
*Minneapolis, MN	76%	2,880	6,106
*San Francisco Bay Area, CA	76%	2,684	5,929
Raleigh/Durham, NC	74%	2,563	5,634
Central Pennsylvania	72%	2,537	5,448
Columbia/Charleston, SC	72%	2,264	5,731
Tampa, FL	69%	2,254	5,088
Orlando, FL	68%	2,265	4,979
Fargo, ND	67%	2,216	4,828
*Cleveland, OH	66%	1,698	4,506
Birmingham, AL	64%	2,009	4,290
Pittsburgh, PA	64%	1,816	4,597
Atlanta, GA	63%	1,959	4,931
*Salt Lake City, UT	63%	1,951	4,815
St. Louis, MO	63%	1,936	4,428
Jackson, MS	63%	1,903	4,754
Southwest Virginia	62%	1,931	4,260
Charlotte, NC	62%	1,696	4,555
Rochester, NY	57%	1,591	3,492
Lubbock, TX	56%	1,470	3,702
Milwaukee, WI	53%	1,053	3,498
Albany, NY	51%	1,054	2,997

* Asterisks denote markets where a divestiture has been proposed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of February, 2015, I served the foregoing on the following counsel via electronic mail:

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