Analysis of Agreement Containing Consent Orders
To Aid Public Comment

In the Matter of US Foods Holding Corp. and
Services Group of America, Inc., File No. 181-0215, Docket No. C-4688

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from US Foods Holding Corp. ("USF"), and Services Group of America, Inc. ("SGA") (collectively, "Respondents"). The purpose of the Consent Agreement is to remedy the anticompetitive effects that otherwise would result from USF's acquisition of SGA's Food Group of Companies (the "Proposed Acquisition") in and around Boise, Idaho (hereafter "Eastern Idaho"), in and around Bismarck, North Dakota, (hereafter "Western North Dakota"), in and around Fargo, North Dakota (hereafter "Eastern North Dakota"), in and around Kent, Washington (hereafter the "Seattle Area"), and nationwide for multi-regional and national customers.

Among other things, the proposed Consent Agreement requires USF to divest certain of SGA's distribution centers and broadline distribution assets, including employees and tangible assets that are necessary to the operation of the businesses in Eastern Idaho, Western and Eastern North Dakota, and the Seattle Area to Shamrock Foods Co. ("Shamrock"), Cash-Wa Distributing ("Cash-Wa"), and Harbor Wholesale Foods ("Harbor"), respectively.

The Commission and the Respondents have also agreed to an Order to Maintain Assets. This order requires USF and SGA to maintain the assets that the Consent Agreement requires divestiture of, pending their divestiture. The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in the market for broadline foodservice distribution in Eastern Idaho, Western North Dakota, Eastern North Dakota, the Seattle Area, and nationwide for multi-regional and national broadline distribution customers.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or finalize the Consent Agreement.

II. The Respondents and the Transaction

USF, headquartered in Rosemont, Illinois, is the second-largest distributor of food and food-related products in the United States. USF operates 61 distribution facilities throughout the United States, all of which provide broadline distribution, and some of which serve national chain customers (providing more of a systems-type service). In fiscal year 2017, USF generated approximately $24 billion in sales to over 200,000 customers nationwide. Nearly $6 billion of those sales were to independent (i.e., non-chain) restaurants.

Headquartered in Scottsdale, Arizona, Services Group of America, Inc. is a holding company made up of six operating companies. SGA is comprised of Food Services of America ("FSA"), a broadline foodservice distributor (notably, FSA is the only SGA business unit that generates competitive concern); Systems Services of America ("SSA"), a systems distributor; Amerifresh, a specialty produce distributor; Ameristar Meats, a specialty meat processor; and GAMPAC, a supply chain and logistics company. In fiscal year 2017, SGA generated approximately $3.2 billion in sales. SGA has nine broadline distribution centers, three systems distribution centers, and three specialty facilities. FSA and SSA are members of Distribution Market Advantage ("DMA"), a supply chain and marketing cooperative owned by eight independent regional foodservice distributors who are also its members. Through DMA, FSA is able to serve national accounts in coordination with other large regional distributors.

On July 28, 2018, USF entered into a Stock Purchase Agreement with SGA. Pursuant to the agreement, USF will purchase all of the outstanding common stock of SGA's Food Group of Companies in an all-cash acquisition valued at $1.8 billion.

III. Broadline Foodservice Distribution in Eastern Idaho, Western North Dakota, Eastern North Dakota, the Seattle Area, and Nationwide

Broadline foodservice distribution and broadline foodservice distribution to national customers are the relevant product markets in which to assess the effects of the Proposed Acquisition. Broadline foodservice distribution involves the sale and distribution of a broad range of national-brand and private-label food and foodservice-related products (such as paper towels, disposable cups, etc.) to a range of customers who serve food-away-from-home to consumers, such as restaurants, hospital cafeterias, stadiums, and schools. Broadline distributors offer customers a distinct combination of products and services that are not replicated by other foodservice distribution channels, including a wide array of stock keeping units (SKUs) to provide customers with product breadth and depth, a broad selection of private-label (i.e., distributor-branded) food products, a frequent and flexible delivery schedule (including next-day delivery), and other value-added services, such as order tracking, menu planning, and nutritional information. Customers value the ability to purchase this bundle of products and services from a single broadline distributor.

There are four local relevant geographic markets in which to analyze the transaction's effects: (1) Eastern Idaho, (2) Western North Dakota, (3) Eastern North Dakota, and (4) the Seattle Area. Competition to serve broadline customers plays out locally. The business of broadline distribution involves regularly loading food (much of which is perishable) and related items onto trucks, driving to customer locations, unloading the merchandise, and returning to the distribution center in time to repeat this process for the next day's deliveries. Customers, therefore, select from among broadline distributors within a reasonable radius of their location. Likewise, broadline distributors are limited in their distribution radius by cost and service considerations. USF and FSA compete from proximate distribution centers to serve customers in Eastern Idaho, Western North Dakota, Eastern North Dakota, and the Seattle Area, and these are thus appropriate geographic markets. FSA serves both North Dakota markets out of its Fargo distribution center, but other distributors serving the Eastern North Dakota market do not serve

Western North Dakota, and thus the competitive conditions are different and it is appropriate to define two geographic markets within the state.

USF and FSA compete closely to serve local broadline customers in Eastern Idaho, Western North Dakota, Eastern North Dakota, and the Seattle Area. The transaction would eliminate a key broadline distributor in each of these markets, limiting customers' ability to switch between distributors and leverage them in order to obtain more competitive pricing and better service. The few remaining competitors in the relevant markets would be insufficient to alleviate competitive concerns. As a result, the Proposed Acquisition will likely lead to higher prices and diminished service for local broadline customers in the four local markets.

The effects of the Proposed Acquisition must also be evaluated in the national market. Through its membership in a consortium of regional distributors, DMA, FSA competes with USF for the provision of broadline distribution services to multi-regional and national accounts. If DMA were to lose all of FSA's distribution centers from its network, it would be rendered a significantly less attractive competitor than it is today to many multi-regional and national customers. As a result, the Proposed Acquisition will likely result in higher prices and reduced quality and service to national customers.

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the acquisition in the Eastern Idaho, Western North Dakota, Eastern North Dakota, Seattle Area, and national markets. The broadline foodservice distribution industry is capital and labor intensive, rendering entry challenging and time consuming, with significant operational and financial risks. Prospective entrants or expanders face three main obstacles: (1) developing the requisite sales forces and customer base; (2) establishing a properly outfitted distribution center, truck fleet, and driver base for operations and delivery; and (3) building the volume of perishable and non-perishable SKUs necessary to serve broadline customers. To overcome these hurdles, a new entrant or an adjacent company trying to expand must commit a tremendous amount of capital and time to develop relationships with potential customers, build or expand an existing facility, and assemble the equipment required for distribution in that area. Thus, due to the considerable time and investment required to build a functional broadline distribution operation in a new market, entry and expansion are unlikely to be timely, or sufficient to deter or counteract the Proposed Acquisition's anticompetitive effects.

IV. The Proposed Consent Agreement

The proposed Consent Order remedies the likely anticompetitive effects in each of the relevant markets by requiring divestitures to Shamrock, Cash-Wa, and Harbor within 30 days of the Proposed Acquisition's closing. Until the completion of each divestiture, the Respondents are required to abide by the Order to Maintain Assets, which requires them to maintain the viability, marketability, and competitiveness of the divestiture assets until the divestitures are completed. The proposed Consent Order appoints a Monitor to ensure the Respondents' compliance with the Order to Maintain Assets, Consent Order, and Divestiture Agreements in anticipation of and following the divestiture.

Additionally, the proposed Consent Order requires the Respondents to provide transitional services to the approved acquirer for at least 24 months after the divestiture, as needed, to assist the acquirer with the transfer and operation of the divested assets. Finally, the proposed Consent Order contains standard terms regarding the acquirer's access to employees, protection of Material Confidential Information, and compliance reporting requirements, among other things.

A. Eastern Idaho

The proposed Consent Order remedies the likely anticompetitive effects in Eastern Idaho by requiring the divestiture of FSA's distribution center in Boise to Shamrock. The divestiture assets and rights include the distribution center and selected broadline distribution assets, including employees and tangible assets necessary to operate the business.

B. Western and Eastern North Dakota

The proposed Consent Order remedies the likely anticompetitive effects in both Western and Eastern North Dakota by requiring the divestiture of FSA's distribution center in Fargo to Cash-Wa. The divestiture assets and rights include the distribution center and selected broadline distribution assets, including employees and tangible assets necessary to operate the business.

C. The Seattle Area

The proposed Consent Order remedies the likely anticompetitive effects in the Seattle Area by requiring the divestiture of FSA's distribution center in Kent to Harbor. The divestiture assets and rights include the distribution center and selected broadline distribution assets, including employees and tangible assets necessary to operate the local broadline distribution business. Although the proposed Consent Order only requires USF to divest one of FSA's two Seattle-area broadline distribution centers, this remedy will prevent any increase in market concentration levels and preserve the status quo in the Seattle Area broadline distribution market because three major broadline distributors will remain.

D. National

The proposed Consent Order remedies the likely anticompetitive effects in the national market by replacing the loss of FSA from DMA's network with divestiture of the Kent, Boise, and Fargo distribution centers to three purchasers that are existing members of the DMA consortium. The divestiture assets and rights that Shamrock, Cash-Wa, and Harbor will acquire will enable each buyer to operate the local broadline distribution businesses in their respective local markets, but also to provide effective coverage to the DMA network in these regions so that DMA can continue to be an attractive option to, and effective competitor for, multi-regional and national customers.

The proposed Decision and Order will have a term of ten (10) years.

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The sole purpose of this analysis is to facilitate public comment on the proposed Consent Agreement. This analysis does not constitute an official interpretation of the proposed Consent Agreement or modify its terms in any way.