UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeny

In the Matter of

Docket No. 9364

broadline foodservice distributor that has the capability to provide nationwide coverage. Respondents 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.

8. Respondents also compete vigorously with

B.

Respondents

17. Respondent 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

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

26. 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 thei

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,

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

IV.

B.

Local Markets

40. 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.

41. 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, Respondents and other broadline distributors have field salesforces dedicated to serving customers in local areas.

42. Because it is necessary, or at least highly advantageous, for distribution centers to be close to customer locations, foodservice industry participants—including Respondents, other broadline distributors, and customers—generally recognize local areas or individual geographic regions as distinct markets. Each of the localized areas in which Respondents

45. 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.

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

	2013 National Revenues ($B)	Share	Pre-Merger HHI	Post-Merger HHI
Sysco		*40%*	*1,600*	
US Foods		*35%*	*1,225*	
Combined Post-Merger		75%		5,625

TABLE 2: COMPARISON OF DISTRIBUTORS' BROADLINE CAPABILITIES[2]

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					

54. As the only two broadline distributors with national scale, Sysco and US Foods are most

56. National Customers benefit from the competition between Respondents 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.

57. 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 ,
   US Foods internally recognized that "Sysco will 'come hard' after [ ]
   . . . . Only 'true' options for . . . 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 reduction from [its] current program margin for a . The total

Foods compete most fiercely with each other, offering lower prices, upfront payments,

69. 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.

70. 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.

71. Additionally, entrants must satisfy regulatory requirements, and overcome reputational barriers to entry and Respondents' 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.

B.

Efficiencies

72. Extraordinary Merger-specific efficiencies are necessary to outweigh the Merger's likely significant harm to competition in the relevant markets. Respondents 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.

C.

The Proposed Divestiture

73. On February 2, 2015, Respondents 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 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 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).

74. 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.

75. 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.

VIII.

VIOLATION

COUNT I—ILLEGAL AGREEMENT

76. The allegations of Paragraphs 1 through 75 above are incorporated by reference as though fully set forth.

77. The Merger Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C § 45.

COUNT II—ILLEGAL ACQUISITION

78. The allegations of Paragraphs 1 through 77 above are incorporated by reference as though fully set forth.

79. The Merger, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Cl

NOTICE

Notice is hereby given to the Respondents that the twenty-first day of July, 2015, at 10 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.2l(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.3l(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Merger challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended,