

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Joseph J. Simons, Chairman**  
                                 **Noah Joshua Phillips**  
                                 **Rohit Chopra**  
                                 **Rebecca Kelly Slaughter**  
                                 **Christine S. Wilson**

In the Matter of	)	
	)	
<b>US Foods Holding Corp.,</b>	)	
<b>a corporation,</b>	)	
	)	<b>Docket No. C-4688</b>
<b>Services Group of America, Inc.,</b>	)	
<b>a corporation,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>Food Services of America, Inc.,</b>	)	
<b>a corporation.</b>	)	

**ORDER TO MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent US Foods Holding Corp. (“US Foods”) of certain subsidiaries of Respondent Services Group of America, Inc. (“SGA”), including SGA’s Food Services of America, Inc. (“FSA”) (collectively, “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of 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.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Orders” or “Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.



- C. FSA means Food Services of America, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by FSA, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. Acquisition Date means the date the Acquisition is consummated.
- E. Broadline Divestiture Assets means the Boise Broadline Divestiture Assets, the Fargo Broadline Divestiture Assets, and the Kent Broadline Divestiture Assets.
- F. Decision and Order means the:
  1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
  2. Final Decision and Order issued by the Commission following the "#. †"âìíJU ",2" !"ó\2"



8. Continue

2. Respondents shall (i) not offer any incentive to any Relevant Employee to decline employment with the Acquirer, (ii) remove any contractual impediment that may deter any Relevant Employee from accepting employment with the Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondents that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any Relevant Employee by the Acquirer; and
3. Respondents shall to the extent permissible by law (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any Relevant Employee who accepts an offer of employment from the Acquirer and (ii) provide each Relevant Employee with reasonable financial incentive



Information shall be provided to DMA in writing and a copy shall be sent to the staff of the Federal Trade Commission.

V.

**IT IS FURTHER ORDERED** that:

- A. Bradford A. Wise shall be appointed Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders
- B. No later than one (1) day after the Acquisition Date, Respondents shall, pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix 1 (Monitor Agreement) and Non-Public Appendix A (Monitor Compensation) to the Order, transfer to the Monitor all the rights, powers, and authorities ~~may~~ <sup>may</sup> permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of the ~~Order~~.





including any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Order and the Divestiture Agreements.

8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning the performance by Respondents of their obligations under this Order, and the Divestiture Agreements.
  9. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; ~~if~~, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor ~~and~~ the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor pursuant to Paragraph above.
- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order and the Divestiture Agreements.
- H. A Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the Order.

## VI.

IT IS FURTHER ORDERED that within 30 days after the date this Order to Maintain Assets is issued by the Commission, and every 30 days thereafter until Respondents have fully complied with this Order to Maintain Assets, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with all the provisions of the Order to Maintain Assets; ~~if~~, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the reports required ~~to be~~ by Respondents pursuant the Decision and Order. Respondents shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor. Respondents shall include in its reports, among other things that are required from time to time, a full description of the efforts to comply with this Order.

**VII.**

**IT IS FURTHER ORDERED** that Respondent Food shall notify the Commission

- C. The day after Respondent, with the concurrence of the Acquirer, certifies in writing to the Commission as to the completion of all Transition Assistance provided by Respondent to the Acquirer.
- D. The day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

April J. Tabor  
Acting Secretary

SEAL:

ISSUED: September 10, 2019