

**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)	
)	
US Foods Holding Corp.,)	
a corporation,)	
)	Docket No. C-4688
Services Group of America, Inc.,)	
a corporation,)	
)	
and)	
)	
Food Services of America, Inc.,)	
a corporation.)	

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.

The Commission considered the matter and determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent US Foods is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 9399 W. Higgins Road, Suite 100, Rosemont, Illinois, 60018.
2. Respondent SGA is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 16100 N. 71st St., Suite 500, Scottsdale, Arizona, 85254.
3. Respondent FSA is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 16100 N. 71st St., Suite 400, Scottsdale, Arizona, 85254. Respondent FSA is a subsidiary of Respondent SGA.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. “US Foods” means US Foods Holding Corp., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by US Foods Holding Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the date the Acquisition is completed, “US Foods” includes FSA, and the following other SGA subsidiaries: Amerifresh, Inc., Ameristar Meats, Inc., Gampac Express, Inc., and Systems Services of America, Inc.
- B. “SGA” means Services Group of America, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Services Group of America, Inc. (including, but not limited to, FSA, Amerifresh, Inc., Ameristar Meats, Inc., Gampac Express, Inc., and Systems Services of America, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- 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 issuance and service of a final Decision and Order by the Commission in this matter.
- G. “Monitor” means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph VIII. of the Decision and Order or Paragraph V. of this Order to Maintain Assets.
- H. “Orders” means the Decision and Order in this matter and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective until the Divestiture Date:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Broadline Divestiture Assets, and shall not cause the wasting or deterioration of any of the Broadline Divestiture Assets. Respondents shall not cause the Broadline Divestiture Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Broadline Divestiture Assets.
- B. Respondents shall conduct the business of the Broadline Divestiture Assets in the regular and ordinary course of business, in accordance with past practice (including regular repair and maintenance efforts), and otherwise direct and ensure this result, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Broadline Divestiture Assets in the regular and ordinary course of business, in accordance with past practice.

- C. Respondents shall not terminate the operation of any of the Broadline Divestiture Assets, and shall continue to maintain the Broadline Distribution Assets related to each of the Broadline Distribution Centers in the regular and ordinary course of business, in accordance with past practice.
- D. Respondents shall maintain the organization and properties of each of the Broadline Distribution Centers, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each of the Broadline Distribution Centers. Among other actions as may be necessary to comply with these obligations, Respondents shall, without limitation:
1. Maintain all operations at each of the Broadline Distribution Centers in the regular and ordinary course of business, in accordance with past practice, including maintaining customary hours of operation and departments;
 2. Use best efforts to retain employees at each of the Broadline Distribution Centers; when vacancies occur, replace the employees in the regular and ordinary course of business, in accordance with past practice; and not transfer any employees from any of the Broadline Distribution Centers;
 3. Provide each employee of the Broadline Distribution Centers with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Broadline Distribution Centers;
 4. Not transfer any Broadline Distribution Assets from any Broadline Distribution Center, other than in the ordinary course of business, in accordance with past practice;
 5. Make all payments required to be paid under any Contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with each of the Broadline Distribution Centers, in each case in a manner in accordance with past practice;
 6. Maintain the Business Information of each of the Broadline Distribution Centers;
 7. Provide each of the Broadline Distribution Centers with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to the related Broadline Distribution Business, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for each of the Broadline Distribution Centers;

8. Continue, at least at their scheduled pace, any additional expenditures for each of the Broadline Distribution Centers authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all repairs, renovations, distribution, marketing, and sales expenditures;
 9. Provide such resources as are necessary to respond to competition and to prevent any diminution in sales at each of the Broadline Distribution Centers;
 10. Make available for use by each of the Broadline Distribution Centers funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, any assets related to the operation of the Broadline Distribution Centers;
 11. Provide support services to each of the Broadline Distribution Centers at least at the level as were being provided to such Broadline Distribution Centers by Respondents as of the date the Consent Agreement was signed by Respondents; and
 12. Maintain, and not terminate or permit the lapse of, any Governmental Authorizations necessary for the operation of any Broadline Distribution Center.
- E. The purpose of this Order to Maintain Assets is to: (1) maintain and preserve the Broadline Divestiture Assets as viable, marketable, competitive, and ongoing businesses until the divestiture required by the Decision and Order is achieved; (2) ensure that Respondents obtain no Confidential Business Information relating to the Broadline Divestiture Assets, except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) remedy any anticompetitive effects of the Acquisition.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall cooperate with and assist each Acquirer, when applicable, to evaluate and retain any and all Relevant Employees necessary to operate the Broadline Divestiture Assets in substantially the same manner as Respondents prior to the divestiture, including but not limited to:
 1. Within a reasonable time, but in no event later than 20 days after a request from an Acquirer, Respondents shall (i) identify all Relevant Employees, (ii) allow the Acquirer to inspect the personnel files and other documentation of all Relevant Employees, to the extent permissible under applicable laws, and (iii) allow the Acquirer, to the extent permitted by law, an opportunity to meet personally with and interview any Relevant Employee outside the presence or hearing of any employee or agent of Respondents;

2. Respondents shall (i) not offer any incentive to any Relevant Employee to decline employment with the Acquirer, (ii) remove any contractual impediments 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 the 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, including continuation of all employee benefits and regularly scheduled raises and bonuses, as necessary to accept offers of employment with the Acquirer.
- B. For a period of 2 years after the Divestiture Date, Respondents shall not solicit or induce any Relevant Employee who has accepted an offer of employment with an Acquirer to terminate such employment; *provided, however*, that Respondents may (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the Relevant Employees; (ii) hire Relevant Employees if employment has been terminated by an Acquirer, or who apply for employment with Respondents, so long as such Relevant Employees were not solicited by Respondents in violation of this paragraph; or (iii) hire any Relevant Employees if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that Relevant Employee, or where such an offer has been made and the Relevant Employee has declined the offer.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall (i) not disclose, directly or indirectly, (including as to Respondents' employees) Confidential Business Information to any Person other than (a) the relevant Acquirer; (b) other Persons authorized by that Acquirer or staff of the Commission to receive such information; (c) the Commission; (d) the Monitor; and (e) the Divestiture Trustee if one is appointed; and (ii) not use for any reason or purpose any Confidential Business Information received or maintained by Respondents relating to the Broadline Divestiture Assets and/or Broadline Distribution Centers; *provided, however*, that Respondents may disclose or use such Confidential Business Information in the course of:

1. Performing their obligations or as permitted under this Order to Maintain Assets, the Decision and Order, or the Divestiture Agreements; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Broadline Divestiture Assets or Broadline Distribution Centers, or as required by law.
- B. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Paragraph IV.A. of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph IV. as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph IV., including implementation of access and data controls, training of employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.
- D. Prior to the Acquisition Date, Respondents shall (i) not use or disclose, and as applicable, destroy all records of DMA Confidential Business Information as instructed by DMA, including but not limited to, information related to DMA operations, governance, Third Party relationships, capabilities, business plans, strategies, and projections; and (ii) certify in the subsequent compliance report submitted to the Commission that all DMA Confidential Business Information has been destroyed, and (iii) provide notice to DMA of the same; *provided, however*, (1) DMA Confidential Business Information that is necessary to fulfill Respondents' ongoing obligations to customers shall not be destroyed until such time that it is no longer necessary to fulfill such obligations, and (2) as of the Acquisition Date, all copies of DMA Contracts shall be in the sole custody of the legal department of Respondents, which shall release information to other employees of Respondents only as needed to fulfill Respondents' ongoing obligations to customers. Respondents may retain a copy of DMA Confidential Business Information in accordance with internal policies and procedures for legal, regulatory and compliance purposes, and may disclose or use such DMA Confidential Business Information for the purpose of complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcement actions threatened or brought against the Broadline Divestiture Assets or Broadline Distribution Centers, or as required by law. *Provided further, however*, at the Acquirer's option, any DMA Confidential Business Information relating to the Broadline Distribution Center transferred to the requesting Acquirer shall be transferred to that Acquirer by Respondent FSA prior to being destroyed. Notice of the destruction of DMA Confidential Business

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 necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of the Orders.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the Consent of US Foods, which Consent shall not be unreasonably withheld. If US Foods has not opposed, in writing, including the reasons for opposing, the selection of a proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to US Foods of the identity of any proposed substitute Monitor, US Foods shall be deemed to have Consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, US Foods shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of the Orders and the Divestiture Agreements in a manner consistent with the purposes of the Orders.
- D. Respondents shall Consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of the Orders and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all obligations and perform all responsibilities as required by the Orders, and the Divestiture Agreements;

- b. Monitoring any Transition Assistance and transition services agreements; and
 - c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirers, except as allowed in the Orders.
2. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in the Orders and (ii) act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of any Respondent or of the Commission.
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Divestiture Agreements.
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request related to Respondents' compliance with their obligations under the Orders and the Divestiture Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Divestiture Agreements.
 5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
 6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
 7. Respondents shall report to the Monitor in accordance with the requirements of the Orders and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor,

including any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders 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; *provided, however*, 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 each of 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 V.C., 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 Orders 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, and have complied with all the provisions of this Order to Maintain Assets; *provided, however*, 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 submitted 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 US Foods shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent US Foods;
- B. Any proposed acquisition, merger, or consolidation of Respondent US Foods;
- C. Any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon five (5) days' written notice to the applicable Respondent made to its principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

IX.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

- A. Three days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34;
- B. The day after Respondents or a Divestiture Trustee completes the divestiture required by the Decision and Order; *provided, however*, that, if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate the day after the Decision and Order becomes final;

- C. The day after Respondents, with the concurrence of the Acquirer, certifies in writing to the Commission as to the completion of all Transition Assistance provided by Respondents to the Acquirer; or
- 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