



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

November 19, 2019

Nicole Mouskondis
State of Utah

RE: *In the Matter of US Foods and SGA*, File No. 181 0215, Docket No. C-4688

Dear Ms. Mouskondis:

Thank you for the comment that you submitted electronically in connection with the Consent Order issued by the Commission to settle antitrust concerns that would otherwise arise from US Foods Holding Corp.'s ("US Foods") acquisition of Services Group of America, Inc.'s Food Group of Companies, including its broadline foodservice distribution company, Food Services of America ("FSA"). The Commission reviewed the proposed acquisition to determine if the combination of US Foods and FSA was likely to substantially lessen competition in violation of Section 7 of the Clayton Act.

The Commission placed your comment on the public record and has given it careful consideration. Your comment addressed the proposed settlement in Eastern Idaho, in which US Foods divested the FSA Boise distribution center, and related employees and tangible assets, to Shamrock Foods Co. ("Shamrock"). You are the owner of Nicholas & Company, a broadline foodservice distributor headquartered in Salt Lake City, Utah. Nicholas & Company provides broadline foodservice distribution services to customers in the Eastern Idaho region, among other areas, out of its Salt Lake City distribution center. You view the distance between the Eastern Idaho area and your distribution center as a competitive disadvantage in terms of transportation costs, and anticipate eventually requiring a Boise/Eastern Idaho distribution center to be a more competitive option in that area. Your comment concerns your view that the process by which Shamrock was selected as the divestiture acquirer was flawed, and you identify two primary concerns: (1) Nicholas & Company was not given the opportunity to bid for the distribution center; (2) you believe the FTC misinformed market participants that Nicholas & Company had no interest in the Boise/Eastern Idaho area.

Concerns that Nicholas & Company was not asked to bid

First, the Commission does not select divestiture bidders, the merging parties do, so any opportunity to bid was at the discretion of the merging parties. That said, any divestiture buyer must be acceptable to the Commission as a replacement for the competition lost through the merger. In addition to meeting other criteria, an acceptable buyer therefore should not already have a meaningful competitive presence within the relevant market in which competition is likely to be harmed.

As your letter itself makes clear, Nicholas & Company is already doing substantial broadline distribution business in Eastern Idaho. In fact, it is one of the four “major providers of broadline foodservice distribution in Eastern Idaho,” as alleged in the Commission’s Complaint. Therefore, a divestiture to Nicholas & Company would likely fail to address the lost competition in that market.

Concerns about misinformation about Nicholas & Company

Second, the investigatory process has stringent confidentiality provisions that apply to every communication with outside parties. FTC staff would not have been at liberty to, nor did they, discuss any confidential information from or about Nicholas & Company with any party or third party. The confidentiality provisions are of utmost importance to our ability to conduct our investigations, and we fully understand that without assurances of confidentiality, third parties’ candor and willingness to provide relevant information may be chilled.

In its work on antitrust and consumer protection issues, the Commission finds it helpful to hear from a variety of sources, and we appreciate your interest in this matter.

By direction of the Commission.

April Tabor
Acting Secretary