

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER
TO AID PUBLIC COMMENT**

*In the Matter of Tractor Supply Company and Orscheln Farm and Home LLC
File No. 211-0083, Docket No. C-4776*

I. INTRODUCTION AND BACKGROUND

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) to be put on the public record for comment. The Consent Agreement is with Tractor Supply Company (“Tractor Supply”) and Orscheln Farm and Home LLC (“Orscheln”) (collectively, the “Respondents”). The proposed Decision and Order (“D&O”), included in the Consent Agreement and subject to final Commission approval, is designed to remedy the anticompetitive effects that would result from Tractor Supply’s proposed acquisition of Orscheln.

On February 17, 2021, Tractor Supply and Orscheln entered into an agreement whereby Tractor Supply would acquire Orscheln for approximately \$320 million (“the Proposed Transaction”). The Commission’s Complaint alleges that the Proposed Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by removing a direct and substantial farm store competitor in 84 relevant markets. The elimination of this competition would result in significant competitive harm; specifically, absent a remedy, the Proposed Transaction would allow the combined entity to increase prices above competitive levels unilaterally. Similarly, absent a remedy, there is significant risk that the combined entity may decrease quality, selection, and service aspects of its stores below competitive levels in the relevant markets.

The Consent Agreement, which contains the proposed D&O and Order to Maintain Assets, would remedy the alleged violations by requiring divestitures to replace competition that otherwise would be lost in the relevant markets because of the Proposed Transaction. Under the terms of the proposed D&O, Respondents are required to divest 84 stores and related assets in 84 local geographic markets (collectively, the “relevant markets”) in 10 states (Arkansas, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Ohio, Oklahoma, and Texas) to the Commission-approved buyers, Bomgaars Supply, Inc. (“Bomgaars”) and Buchheit Enterprises, Inc. (“Buchheit”). The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture store in the normal course of business through the date the store is ultimately divested to Bomgaars and Buchheit.

The Consent Agreement with the proposed D&O and the Order to Maintain Assets has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the D&O as well as any comments received, and decide whether it should withdraw, modify, or make the D&O final. The Commission is issuing the Order to Maintain Assets when the Consent Agreement is placed on the public record.

II. THE RESPONDENTS

Respondent Tractor Supply operates over 2,000 farm stores, with stores located in every state except Alaska. Tractor Supply is the largest farm store chain, by store count, in the United States.

Respondent Orscheln operates 166 farm stores under the Orscheln Farm & Home banner in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Ohio, Oklahoma, and Texas. Orscheln is the second largest farm store chain, by store count, in the United States.

III. COMPETITION IN THE RELEVANT MARKETS

The Proposed Transaction presents substantial antitrust concerns for the products sold and services provided at brick-and-mortar farm stores. Farm stores offer their customers a broad, in-store assortment of products across multiple product categories to meet their farming, ranching, or other rural lifestyle needs, along with staff knowledgeable about the products. Farm stores sell a wide range of products, including, but not limited to, large animal and pet feed; supplies to care for horses, other livestock, and pets; fencing; equipment and tools used for farm or lawn and garden maintenance; workwear; and home goods. This broad product mix enables customers to purchase products to meet substantially all their farm or rural lifestyle needs and to receive accompanying service from knowledgeable employees at a single store. The brick-and-mortar shopping environment also provides customers with the ability to touch and feel products before buying them, and in-person access to knowledgeable sales staff. The ability to offer consumers this in-person, one-stop shopping experience is a key difference between farm stores and other retailers.

Other types of brick-and-mortar retailers are not reasonable substitutes for farm stores. Retail stores other than farm stores, including big box general merchandisers, grocery stores, pet stores, and home improvement stores may sell some of the same products as farm stores, but they do not carry the same breadth and variety of rural lifestyle products as farm stores. Such retailers typically lack the breadth of rural lifestyle products that enables farm stores to meet substantially all of their customers' rural lifestyle needs in one convenient stop.

Online retailers also are not reasonable substitutes for brick-and-mortar farm stores. Online retailers cannot provide their customers the ability to touch and feel products prior to purchase, nor can they offer in-person access to knowledgeable sales staff to learn about products best suited for their rural lifestyle needs. Additionally, online retailers require time to deliver their products to their customers, while farm stores provide their customers with immediate access to products that meet essential or immediate needs, such as animal feed when a customer runs out or components to fix broken farm equipment. Furthermore, many products sold at farm stores are not conducive to selling online, as they are large and heavy, and therefore impractical or expensive to ship.

The relevant geographic markets in which to analyze the effects of the Proposed Transaction are the areas within a reasonable drive of Orscheln's stores listed in Exhibit A, as these are areas in which Respondents' farm stores compete. When choosing between farm store

competitors, a customer is typically choosing between farm stores within a reasonable driving distance of the customer's farm or home. The area within a reasonable drive of a farm store varies depending on a store's location, geography, population density, traffic conditions, and other local characteristics. While individual markets may be significantly smaller, typically no relevant geographic market is broader than the area within a 60-mile drive of the stores.

The Proposed Transaction would eliminate direct and substantial competition between Respondents Tractor Supply and Orscheln to the detriment of their customers in the relevant markets. Respondents are close competitors and focus on the same types of customers. They compete on price and non-price factors, such as customer service and product selection, resulting in lower prices and other benefits to their customers. With this head-to-head competition removed, the Proposed Transaction would enable the combined entity to increase prices and decrease the quality and selection of products and services at their farm stores in the relevant markets.

Entry into the relevant markets that is timely and sufficient to prevent or counteract the expected anticompetitive effects of the Proposed Transaction is unlikely to occur. Entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a farm store, obtaining necessary permits and approvals, constructing a new farm store or converting an existing structure to a farm store, and generating sufficient sales to have a meaningful impact on the market. As a result, new entry sufficient to achieve a significant market impact and act as a competitive constraint is unlikely to occur in a timely manner.

IV. THE PROPOSED ORDER AND THE ORDER TO MAINTAIN ASSETS

The proposed D&O and the Order to Maintain Assets effectively remedy the likely anticompetitive effects in the relevant markets. The proposed D&O, which requires the divestiture of Orscheln stores in each of the 84 relevant markets to Commission-approved, upfront buyers, will restore competition that otherwise would be eliminated in these markets as a result of the Proposed Transaction. The proposed buyers, Buchheit and Bomgaars, appear to be suitable purchasers that are well-positioned to enter the relevant markets through the divested stores and prevent competitive harm that would otherwise likely result from the Potential Transaction.

The proposed D&O requires Respondents to divest 12 stores, as ongoing businesses, and related assets to Buchheit within 10 days of Respondents consummating the Proposed Transaction. For up to six months afterwards Respondents will provide transitional assistance to Buchheit to ensure that Buchheit can operate the stores similarly to how the stores were operated prior to the Proposed Transaction.

Buchheit appears to be a suitable purchaser for the 12 divestiture stores it intends to acquire. Buchheit is a family-owned company that has operated retail stores since the 1930s. It currently operates eight farm stores in Missouri and Illinois and has over 650 employees. Buchheit also operates a warehousing and shipping service through Buchheit Logistics and a feed and fertilizer manufacturer through Buchheit Agriculture. Buchheit has sufficient financing

to fund the acquisition and operate the newly acquired stores. Buchheit also appears to have sufficient distribution and supply capabilities for both the newly acquired stores and its currently operated stores.

The proposed D&O further requires Respondents to divest 72 stores, as ongoing businesses, and related assets to Bomgaars within 10 days of Respondents consummating the Proposed Transaction. For up to 15 months afterwards Respondents will provide transitional assistance to Bomgaars to ensure that Bomgaars can operate the stores similarly to how the stores were operated prior to the Proposed Transaction.

The proposed D&O also requires that the Respondents divest Orscheln's distribution center in Moberly, Missouri to Bomgaars. The Orscheln stores that Tractor Supply will be acquiring and keeping currently utilize the Moberly distribution center. The proposed D&O requires Tractor Supply to transition these Orscheln stores out of the Moberly distribution center and to permanently cease reliance on the Moberly distribution center no later than December 31, 2023. Bomgaars will take ownership of the distribution center within ten days thereafter.

Bomgaars appears to be a suitable purchaser for the 72 divestiture stores it intends to acquire and for Orscheln's distribution center in Moberly, Missouri. Bomgaars is a family-owned farm store operator with over 70 years of experience running farm stores in the Midwest. Bomgaars has over 100 farm stores located throughout eight midwestern states and approximately 3,000 employees. Bomgaars has sufficient financing to fund the acquisition and operate the newly acquired stores and distribution center. Also, with the addition of the divested distribution center, Bomgaars appears to have sufficient distribution and supply capabilities for both the newly acquired stores and its currently operated stores.

The proposed D&O contains additional provisions designed to ensure the adequacy of the proposed relief. For example, the proposed D&O and the Order to Maintain Assets require Respondents to continue operating and maintaining the divestiture stores in the normal course of business until the date that each store is sold to the buyer. If, at any time before the proposed D&O is made final, the Commission determines that Bomgaars or Buchheit is not an acceptable buyer, Respondents must rescind the divestiture(s) and divest the assets to a different buyer that receives the Commission's prior approval. The proposed D&O imposes other terms, including the obligation to provide Transition Assistance and an obligation to facilitate the buyers interviewing and hiring employees.

Moreover, the proposed D&O sets a strict timeline by which the Respondents must separate the retained Orscheln stores from the Moberly distribution center, requiring separating 12 by April 30, 2023, 40 by July 31, 2023, 60 by October 31, 2023, and the remaining stores by December 31, 2023. Additionally, the proposed D&O includes some newer provisions to ensure its effectiveness, including provisions that appoint a Transition Manager for each buyer, who will be responsible for directing the provision of Transitional Assistance to that buyer, require physical separation of the employees providing assistance to each buyer, and increase the frequency of compliance reporting.

The proposed D&O also requires the appointment of Larry Appel as an independent Monitor to oversee the Respondents' compliance with the requirements of the proposed D&O and the Order to Maintain Assets, and to keep the Commission informed about the status of the transfer of the divested assets. Additionally, the proposed D&O requires the Respondents to receive the Commission's prior approval, for a period of 10 years, to acquire any interest in a farm store that has operated or is operating within a 60-mile radius of a divested store. Finally, the proposed D&O also prohibits the Respondents from entering into or enforcing agreements to restrict a new owner from operating a farm store at any store Respondents may sell in these areas.

The proposed D&O also contains a ten-year prior approval provision relating to the buyers, which prohibits them from selling acquired stores for a period of three years after the proposed D&O is issued, except to an acquirer that receives the prior approval of the Commission. The initial three-year period is followed by an additional seven-year period during which the buyers are required to receive prior approval from the Commission to sell an acquired store to a buyer that operates one or more farm stores within a 60-mile radius of a divested store the respective buyer acquired.

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The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the proposed D&O final. This analysis is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

Exhibit A

State	City	Address	Store #	Buyer
Arkansas	Jonesboro	1817 E Parker Road Jonesboro, Arkansas 72404	163	Buchheit
	Paragould	420 Highway 49 North Paragould, Arkansas 72451	137	Buchheit
	Pocahontas	1966 Highway 62 West Pocahontas, Arkansas 72455	138	Buchheit
	Springdale	211 N. Maestri Road Springdale, Arkansas 72762	44	Bomgaars
Indiana	Charlestown	1085 ½ Market Street Charlestown, Indiana 47111	112	Bomgaars
	Corydon	1805 Gardner Lane Corydon, Indiana 47112	111	Bomgaars
	Greenfield	1875 East Main Street Greenfield, Indiana 46140	107	Bomgaars
	Lawrenceburg	181 South Tanners Creek Drive Lawrenceburg, Indiana 47025	106	Bomgaars
	North Vernon	2110 N. State Highway 3 North Vernon, Indiana 47265	162	Bomgaars
	Richmond	2100 National Road West Richmond, Indiana 47374	108	Bomgaars
	Scottsburg	1326 North Gardner Street Scottsburg, Indiana 47170	126	Bomgaars
	Tell City	212 East Highway 66 Tell City, Indiana 47586	134	Bomgaars
	Washington	1 Cherry Tree Plaza Washington, Indiana 47501	110	Bomgaars
	Winchester	970 East Washington Street Winchester, Indiana 47394	144	Bomgaars
Iowa	Fairfield	2107 West Burlington Avenue	20	Bomgaars

State	City	Address	Store #	Buyer
		Fairfield, Iowa 52556		
	Ottumwa	1331 Vaughn Drive Ottumwa, Iowa 52501	99	Bomgaars
Kansas	Atchison	605 S. 10 th Street Atchison, Kansas 66002	80	Bomgaars
	Basehor	15256 Wolf Creek Parkway Basehor, Kansas 66007	157	Bomgaars
	Concordia	1620 Lincoln Street Concordia, Kansas 66901	127	Bomgaars
	Dodge City	1701 North 14 th Avenue Dodge City, Kansas 67801	34	Bomgaars
	El Dorado	2908 W. Central Avenue El Dorado, Kansas 67042	69	Bomgaars
	Garden City	1309 North Taylor Avenue Garden City, Kansas 67846	55	Bomgaars
	Gardner	18710 South Gardner Road Gardner, Kansas 66030	172	Bomgaars
	Goddard	20200 West Kellogg Avenue Goddard, Kansas 67052	161	Bomgaars
	Great Bend	5320 10 th Street Great Bend, Kansas 67530	31	Bomgaars
	Hays	2900 Broadway Avenue Hays, Kansas 67601	58	Bomgaars
	Hutchinson	1500 East 11 th Street Hutchinson, Kansas 67501	32	Bomgaars
	Iola	1918 North State Street Iola, Kansas 66749	148	Bomgaars
	Lawrence	1541 E 23 rd Street Lawrence, Kansas 66046	48	Bomgaars
	Louisburg	1160 West Amity Street Louisburg, Kansas 66053	147	Bomgaars

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	Manhattan	427 Hummels Place Manhattan, Kansas 66502	39	Bomgaars
	McPherson	2204 East Kansas Avenue McPherson, Kansas 67460	60	Bomgaars
	Newton	321 Windward Drive Newton, Kansas 67114	43	Bomgaars
	Parsons	211 East Main Street Parsons, Kansas 67357	21	Bomgaars
	Pratt	1601 1 st Street Pratt, Kansas 67124	33	Bomgaars
	Salina	360 North Ohio Street #57 Salina, Kansas 67401	57	Bomgaars
	Topeka	1133 SW Wanamaker Road Topeka, Kansas 66604	37	Bomgaars
Kentucky	Murray	700 A North 12 th Street Murray, Kentucky 42071	93	Buchheit
	Radcliff	135 East Lincoln Trail Radcliff, Kentucky 40160	154	Bomgaars
Missouri	Blue Springs	1100 S Hwy 7 Lot 1 Blue Springs, Missouri 64014	174	Buchheit
	Columbia	3300 Paris Road Columbia, Missouri 65202	9	Buchheit
	Columbia (South)	3910 South Providence Road Columbia, Missouri 65203	158	Buchheit
	Dexter	1525 West Business Highway 60 Dexter, Missouri 63841	47	Bomgaars
	Fulton	1310 Business 54 South Fulton, Missouri 65251	11	Buchheit
	Holden	1000 East 10 th Street Holden, Missouri 64040	120	Bomgaars
	Houston	1476 South Sam Houston Blvd.	118	Bomgaars

State	City	Address	Store #	Buyer
Missouri		Houston, Missouri 65483		
	Jane	107 Gordon Hollow Road Jane, Missouri 64856	160	Bomgaars
	Jefferson City	2304 Missouri Boulevard Jefferson City, Missouri 65109	41	Buchheit
	Kirksville	2302 South Baltimore Street Kirksville, Missouri 63501	153	Buchheit
	Marshfield	1331 Spur Drive Marshfield, Missouri 65706	135	Bomgaars
	Monroe City	1110 Hwy. 24-36 East Unit #50 Monroe City, Missouri 63456	151	Bomgaars
	Poplar Bluff	2235 N. Westwood Blvd. Poplar Bluff, Missouri 63901	84	Bomgaars
	Republic	1055 US Highway 60 East Republic, Missouri 65738	117	Bomgaars
	Sedalia	2424 South Limit Sedalia, Missouri 65301	1	Bomgaars
	St. Joseph	137 North Belt Highway St. Joseph, Missouri 64504	53	Bomgaars
	Sullivan	124 East South Service Road Sullivan, Missouri 63080	38	Bomgaars
	Troy	1 Lincoln Center, Highway 47 Troy, Missouri 63379	45	Bomgaars
	Warsaw	1551 Commercial Street Warsaw, Missouri 65355	125	Bomgaars
	Washington	860 Washington Corners Washington, Missouri 63090	12	Bomgaars
Waynesville	110 C W Parker Lane Waynesville, Missouri 65583	24	Bomgaars	
	Beatrice	2415 North 6 th Street Beatrice, Nebraska 68310	95	Buchheit

State	City	Address	Store #	Buyer
Nebraska	Gothenburg	716 4 th Street Gothenburg, Nebraska 69138	101	Bomgaars
	Grand Island	515 South Webb Road Grand Island, Nebraska 68803	115	Bomgaars
	Hastings	1315 West J Street Hastings, Nebraska 68901	42	Bomgaars
	Kearney	910 Third Avenue Kearney, Nebraska 68845	25	Bomgaars
	Lexington	1701 Plumcreek Parkway Lexington, Nebraska 68850	100	Bomgaars
	Lincoln	5640 Cornhusker Highway Lincoln, Nebraska 68507	63	Bomgaars
	McCook	1602 North Highway 83 McCook, Nebraska 69001	70	Bomgaars
	Nebraska City	2412 South 11 th Street Nebraska City, Nebraska 68410	67	Bomgaars
	North Platte	2501 East 4 th Street North Platte, Nebraska 69101	102	Buchheit
	York	518 S Lincoln Avenue York, Nebraska 68467	27	Bomgaars
Ohio	Mount Orab	206 Sterling Run Blvd. Mount Orab, Ohio 45154	173	Bomgaars
Oklahoma	Ada	724 Arlington Center Ada, Oklahoma 74820	22	Bomgaars
	Ardmore	1925 N. Rockford Road Ardmore, Oklahoma 73401	86	Bomgaars
	Duncan	4800 N. Highway 81 Duncan, Oklahoma 73533	85	Bomgaars
	Durant	2424 West Main Street Durant, Oklahoma 74701	83	Bomgaars
	Muskogee	6 East Shawnee Road	56	Bomgaars

State	City	Address	Store #	Buyer
		Muskogee, Oklahoma 74403		
	Nowata	329 South Ash Street Nowata, Oklahoma 74048	156	Bomgaars
	Okmulgee	2000 South Wood Drive Okmulgee, Oklahoma 74447	23	Bomgaars
	Pryor	715 North Mill Street Pryor, Oklahoma 74361	54	Bomgaars
Texas	Decatur	1200 W. US Business Hwy 380 Decatur, Texas 76234	178	Bomgaars
	Sherman	2725 Hwy. 75 North Sherman, Texas 75090	175	Bomgaars
	Waco	2701 S. Jack Kultgen Expressway Waco, Texas 76706	177	Bomgaars
	Weatherford	102 College Park Drive Weatherford, Texas 76086	176	Bomgaars