DEPARTMENT OF JUSTICE
Antitrust Division

United States, State of Illinois, State of Iowa, and State of Missouri v. Tyson Foods, Inc. and The Hillshire Brands Company;
Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America, State of Illinois, State of Iowa, and State of Missouri v. Tyson Foods, Inc. and The Hillshire Brands Company, Civil Action No. 1:14-cv-01474-JEB. On August 27, 2014, the United States and the States of Illinois, Iowa, and Missouri filed a Complaint alleging that the proposed acquisition by Tyson Foods, Inc. ("Tyson") of The Hillshire Brands Company ("Hillshire") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Tyson to divest Heinold Hog Markets, its division that purchases sows.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW, Suite 1010, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at http://www.usdoj.gov/atr, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such

comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet website, filed with the Court and, under certain circumstances, published in the *Federal Register*. Comments should be directed to William H. Stallings, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: 202-514-9323).

Patricia A. Brink,
Director of Civil Enforcement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
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Suite 8000
Washington, D.C. 20530,

STATE OF ILLINOIS,
by its Attorney General, Lisa Madigan,
100 West Randolph Street
Chicago, Illinois 60601,

STATE OF IOWA,
Iowa Department of Justice
Special Litigation Division
Hoover Office Building-Second Floor
1305 East Walnut Street
Des Moines, Iowa 50319, *and*

STATE OF MISSOURI,
Office of the Attorney General
Consumer Protection Division
Post Office Box 899
Jefferson City, Missouri 65102
Plaintiffs,

v.

TYSON FOODS, INC.,
2200 Don Tyson Parkway
Springdale, Arkansas 72762-6999, *and*

THE HILLSHIRE BRANDS COMPANY,
400 South Jefferson Street
Chicago, Illinois 60607
Defendants.

CASE: 1:14-cv-01474-JEB

JUDGE: Hon. James Boasberg

FILED: 08/27/2014

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the States of Illinois, Iowa, and Missouri (collectively, "Plaintiffs") bring this civil antitrust action to enjoin the proposed acquisition by Tyson

Foods, Inc. ("Tyson") of The Hillshire Brands Company ("Hillshire") (collectively, "Defendants") and to obtain other equitable relief. Plaintiffs allege as follows:

I.

NATURE OF THE ACTION

1. Tyson and Hillshire compete against each other and against others to procure sows from farmers in the United States. Farmers earn approximately $700 million annually from sales of sows and rely on competition among purchasers to ensure competitive prices. Tyson's proposed acquisition of Hillshire would eliminate head-to-head competition between the companies and create a firm that would account for over a third of all sows purchased from farmers in the United States.

2. Sows are female pigs that are raised for the purpose of breeding hogs. At the end of their productive breeding lives, sows are sold for slaughter. Packers such as Hillshire use the meat from sows in the production of pork sausage. In contrast, hogs are swine raised solely for the purpose of slaughter; their meat is typically used for pork products other than sausage.

3. Tyson, through its Heinold Hog Markets division ("Heinold"), purchases sows from farmers and re-sells them to packers, including Hillshire. Tyson has buying stations located throughout the Midwest that procure sows directly from local farmers, sort the sows according to different characteristics, and ship them to packers according to each packer's particular requirements. Packers overwhelmingly use marketers such as Heinold to procure sows rather than purchase directly from farmers due to the efficiencies marketers offer in terms of sorting, shipping, and other services. Hillshire is one of the few packers that purchases sows directly from farmers; as such, it competes directly against Heinold to procure sows from farmers.

4. On July 1, 2014, Tyson and Hillshire entered into a definitive agreement under which Tyson will acquire Hillshire. Unless enjoined, the proposed acquisition is likely to lessen competition substantially in the market for the purchase of sows from farmers in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II.

JURISDICTION AND VENUE

5. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and the Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The Plaintiff States, by and through their respective Attorneys General, bring this action as *parens patriae* on behalf of the citizens, general welfare, and economy of each of their states.

6. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Tyson, through Heinold, and Hillshire purchase sows from farmers located throughout the United States. This Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

7. Defendants have consented to venue and personal jurisdiction in this District.

III.

DEFENDANTS AND THE PROPOSED TRANSACTION

8. Tyson Foods, Inc. is a Delaware corporation with its principal place of business in Springdale, Arkansas. In 2013, Tyson had total revenues of approximately $34.4 billion. Tyson is one of the world's largest meat companies. It produces, distributes, and markets chicken, beef, pork, and prepared food products. Tyson Hog Markets, Inc., a subsidiary of Tyson and Tyson Fresh Meats, Inc., purchases hogs for Tyson's hog processing facilities. Tyson does not process sows. Tyson does, however, buy and resell sows through Heinold. In 2013, Heinold had overall revenues of approximately $270 million.

9. The Hillshire Brands Company is a Maryland corporation with its principal place of business in Chicago, Illinois. Hillshire is a manufacturer and marketer of brand name food products for the retail and foodservice markets, including sausage, hot dogs, and luncheon meats. Its brand names include Jimmy Dean, Ball Park, and Hillshire Farm. Hillshire's total revenues were approximately $3.9 billion for the year ended June 29, 2013.

10. On July 1, 2014, Tyson and Hillshire entered into a definitive agreement for the acquisition by Tyson of Hillshire. On July 16, 2014, Tyson commenced a tender offer to purchase all of Hillshire's outstanding shares. The tender offer is conditioned on the valid tendering, without a valid withdrawal, of at least two-thirds of Hillshire's outstanding stock prior to expiration of the offer. As of August 12, over 70% of Hillshire's outstanding shares had been validly tendered and not validly withdrawn.

IV.

TRADE AND COMMERCE

A. The Sow Packing Industry

11. Sausage producers primarily buy sows from marketers such as Heinold. Marketers purchase sows from individual farmers and assemble truck loads (with approximately 100 sows per load) for delivery to sausage plants. Marketers utilize buying stations to procure sows from farmers. A buying station includes space for offloading and loading sows, pens for holding the sows, scales, and administrative space. Sows are usually kept at a buying station no longer than three days and may be shipped out to a slaughterer the same day they arrive from a farm.

12. Larger marketers have multiple buying stations. Heinold operates eight buying stations located in Atkinson, Illinois; Burlington, Indiana; Randall and Sioux City, Iowa; Jones, Michigan; Windom, Minnesota; Monroe City, Missouri, and St. Paul, Nebraska. Heinold buys sows from more than 2,400 farmers located throughout the United States. In 2013, Heinold purchased about 660,000 sows from farmers in the United States, paying more than $150 million to farmers.

13. Hillshire slaughters sows and produces sausage at a facility in Newbern, Tennessee. Whereas most other sausage producers purchase nearly all of their sows from marketers, Hillshire is unique among major sausage manufacturers in that it purchases over half of its sows directly from farmers. The sows that Hillshire purchases from farmers are usually transported directly by truck from the farm to Hillshire's Tennessee facility. Hillshire purchases sows from approximately 100 farmers located throughout the United States. In 2013, it purchased more than 250,000 sows from farmers in the United States, paying approximately $80 million to farmers.

14. The frequency and number of a particular farmer's sales of sows depends on the size of its breeding operations. Larger operations sell sows every week; smaller operations sell sows much less frequently. Some operations are of a sufficient size to be able to sell sows by the truckload whereas many farms sell lots of smaller sizes.

B. <u>The Relevant Market</u>

15. There are no economic uses for slaughtered sows other than for the production of pork sausage. It is highly unlikely that a small decrease in the prices paid for sows would be rendered unprofitable by a switch of the sale of sows to other purchasers for any other use.

16. The purchase of sows from farmers is a relevant antitrust product market. In part because income from sow sales represents a small percentage of the overall revenues of a hog breeding operation, a small decrease in the prices farmers receive for sows typically would not affect farmers' decisions about when to slaughter sows, the size of their breeding operations, or whether to abandon their investments in hog breeding altogether. Although the sale of sows constitutes a small percentage of overall revenues, farmers rely on this source of income as an important contribution to their earnings.

17. Hog breeding operations are concentrated in the central area of the United States, including Iowa, Illinois, and Missouri, and in North Carolina. All else equal, farmers prefer to transport sows as short a distance as possible, unless the price that the farmer receives justifies shipping the sows farther. For instance, Hillshire sometimes fully compensates the farmer for transportation costs, which makes it economical for farmers located hundreds of miles away from the Hillshire plant to sell to Hillshire. Sows are commonly shipped throughout the central area of the United States where the

purchasing facilities of the merging parties are located and where a major portion of sow sales and slaughter take place. The overwhelming majority of sow purchases occur within this region. As sows are also shipped even farther distances to slaughter facilities throughout the nation, the United States is the outer bounds of a relevant geographic market.

18. Thus, the purchase of sows from farmers in the United States is a relevant market (*i.e.*, a line of commerce and a section of the country) under Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Anticompetitive Effects

19. The acquisition of Hillshire by Tyson will combine two of the major purchasers of sows from farmers in the United States and create a company that would account for approximately 35% of all purchases in this market. Using the Herfindahl-Hirschman Index (HHI), a standard measure of concentration, the post-acquisition HHI would increase by more than 500 points, resulting in a post-acquisition HHI of approximately 2100.

20. Farmers have benefited from competition between Tyson and Hillshire in a variety of respects. Farmers track offering prices from sow purchasers. For many farmers, at particular points in time, the merging parties constitute their two best alternatives. The purchasing facilities of the merging parties are two of a small number of potential buyers from whom farmers seek or receive quotes. As the transaction eliminates a significant competing bidder, bidding is likely to be less aggressive and farmers are likely to receive lower prices for sows. As the prices offered decrease, farmers may ship sows to more distant purchasers. This additional shipping time and

cost constitute an economic inefficiency that would follow from the elimination of competition between Hillshire and Tyson.

21. Tyson's acquisition of Hillshire would eliminate actual and potential competition between Heinold Hog Markets and Hillshire, leaving farmers with fewer outlets for their sows and lower prices in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

D. Absence of Countervailing Factors

22. Successful entry or repositioning into the market for the purchase of sows from farmers would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Slaughterers that do not currently purchase sows directly from farmers are unlikely to begin to do so because they value the sorting and weighing services performed by marketers at their buying stations. Entry by new marketers or expansion by existing marketers sufficient to replace the market impact of the loss of competition resulting from the transaction is also unlikely. The process of locating and acquiring land, obtaining permits, and constructing buying stations would require an extensive period of time and would be unlikely to occur in response to anticompetitive price decreases resulting from the merger.

V.

VIOLATION ALLEGED

23. Plaintiffs hereby incorporate paragraphs 1 through 22.

24. Unless enjoined, Tyson's proposed acquisition of Hillshire is likely to substantially lessen competition and restrain trade in the purchase of sows from farmers

in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways:

a. actual and potential competition between Tyson and Hillshire in the purchase of sows from farmers in the United States will be eliminated;

b. competition in the purchase of sows from farmers in the United States will be substantially lessened; and

c. prices paid to farmers in the United States for sows will likely decrease.

VI.

REQUEST FOR RELIEF

25. Plaintiffs request that:

a. Tyson's proposed acquisition of Hillshire be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. Defendants and all persons acting on their behalf be preliminarily and permanently enjoined and restrained from consummating the proposed transaction or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Tyson and Hillshire;

c. Plaintiffs be awarded its costs for this action; and

d. Plaintiffs receive such other and further relief as the Court deems just and proper.

Dated this 27th day of August, 2014.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/
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Assistant Attorney General for Antitrust

/s/
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/s/
PATRICIA A. BRINK
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Dated: August 26, 2014

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CERTIFICATE OF SERVICE

I, Angela L. Hughes, hereby certify that on August 27, 2014, I caused a copy of the foregoing Complaint, Proposed Final Judgment, Hold Separate Stipulation and Order, Competitive Impact Statement, and United States' Explanation of Consent Decree Procedures to be served on Defendants Tyson Foods, Inc. and The Hillshire Brands Company by electronic mail to their duly authorized legal representatives of the Defendants, as follows:

FOR DEFENDANTS

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THE HILLSHIRE BRANDS COMPANY
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF ILLINOIS, STATE OF IOWA, and STATE OF MISSOURI, *Plaintiffs*, v. TYSON FOODS, INC., and THE HILLSHIRE BRANDS COMPANY, *Defendants*.	**CASE: 1:14-cv-01474-JEB** **JUDGE: Hon. James Boasberg** **FILED: 08/27/2014**

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.
NATURE AND PURPOSE OF THE PROCEEDING

Defendant Tyson Foods, Inc. ("Tyson") and Defendant The Hillshire Brands Company ("Hillshire") (collectively, "Defendants") entered into an agreement on July 1, 2014, pursuant to

which Tyson will acquire all of the outstanding shares of Hillshire. The all-cash transaction, which includes Hillshire's outstanding net debt, is valued at approximately $8.55 billion. The United States filed a civil antitrust Complaint on August 27, 2014, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially in the market for the purchase of sows from farmers in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, Plaintiffs also filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are to divest Tyson's sow purchasing business, also known as Heinold Hog Markets (the "Divestiture Assets"). Under the terms of the Hold Separate, the Defendants will take certain steps to ensure that Tyson Hog Markets, Inc., a subsidiary of Tyson that includes the Divestiture Assets, is operated as a competitively independent, economically viable and ongoing business concern that will remain independent of Hillshire's sow purchasing operation and will be uninfluenced by the consummation of the acquisition, and that competition between Tyson and Hillshire in the purchase of sows from farmers is maintained during the pendency of the ordered divestiture.

Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Defendant Tyson is a Delaware corporation with its headquarters in Springdale, Arkansas. In 2013, Tyson had total revenues of approximately $34.4 billion. Tyson is one of the world's largest meat companies, producing, distributing, and marketing chicken, beef, pork, and prepared foods. Tyson's subsidiary Tyson Fresh Meats, Inc. is responsible for the purchase of hogs and cattle for Tyson's processing facilities; hog purchases are handled by Tyson Hog Markets, Inc., a subsidiary of Tyson Fresh Meats. In addition to buying hogs for Tyson's processing facilities, Tyson Hog Markets' subsidiary Heinold Hog Markets ("Heinold"), buys and resells sows.[1] In 2013, Heinold had revenues of approximately $270 million.

Defendant Hillshire is a Maryland corporation headquartered in Chicago, Illinois. Hillshire is a manufacturer and marketer of brand name food products for the retail and foodservice markets, including sausage, hot dogs, and luncheon meats. Its brand names include Jimmy Dean, Ball Park, and Hillshire Farm. Hillshire's total revenues were approximately $3.9 billion for the year ended June 29, 2013.

On July 1, 2014, Tyson and Hillshire entered into a definitive agreement for the acquisition by Tyson of Hillshire. On July 16, 2014, Tyson commenced a tender offer to purchase all of Hillshire's outstanding shares. The tender offer is conditioned on the valid tendering, without a valid withdrawal, of at least two-thirds of Hillshire's outstanding stock prior

[1] Sows are female hogs that have produced at least one litter and will no longer be used for breeding. Heinold also purchases boars and outs (runts or deformed hogs) from farmers.

to expiration of the offer. As of August 12, over 70% of Hillshire's outstanding shares had been validly tendered and not validly withdrawn.

B. Industry Background

Sows are female pigs raised for the purpose of breeding hogs. Sows are sold for slaughter at the end of their productive breeding lives. Packers use the meat from sows in the production of pork sausage. In contrast, hogs are swine raised solely for the purpose of slaughter; their meat is typically used for pork products other than sausage.

Sausage producers, other than Hillshire, primarily buy sows from marketers such as Heinold. Marketers purchase sows from individual farmers and assemble truck loads (with approximately 100 sows per load) for delivery to sausage plants. Marketers utilize buying stations to procure sows from farmers. The frequency and number of a particular farmer's sales of sows depends on the size of its breeding operations. Larger operations sell sows every week; smaller operations sell sows much less frequently. Some operations are of a sufficient size to be able to sell sows by the truckload whereas many farms sell lots of smaller sizes.

Heinold operates eight buying stations located in Atkinson, Illinois; Burlington, Indiana; Randall and Sioux City, Iowa; Jones, Michigan; Windom, Minnesota; Monroe City, Missouri, and St. Paul, Nebraska. Heinold buys sows from more than 2,400 farmers located throughout the United States. In 2013, Heinold purchased about 660,000 sows from farmers in the United States, paying more than $150 million to farmers.

Hillshire slaughters sows and produces sausage at a facility in Newbern, Tennessee. Whereas most other sausage producers purchase nearly all of their sows from marketers, Hillshire is unique in that it purchases over half of its sows directly from farmers. The sows that Hillshire purchases from farmers are usually transported directly by truck from the farm to

Hillshire's Tennessee facility. Hillshire purchases sows from approximately 100 farmers located throughout the United States. In 2013, it purchased more than 250,000 sows from farmers in the United States, paying approximately $80 million to farmers.

C. Relevant Markets

There are no economic uses for slaughtered sows other than for the production of pork sausage. It is highly unlikely that a small decrease in the prices paid for sows would be rendered unprofitable by farmers switching to selling sows to other purchasers for any other uses.

The purchase of sows from farmers is a relevant antitrust product market. In part because income from sow sales represents a small percentage of the overall revenues of a hog breeding operation, a small decrease in the prices farmers receive for sows typically would not affect farmers' decisions about when to slaughter sows, the size of their breeding operations, or whether to abandon their investments in hog breeding altogether. Although the sale of sows constitutes a small percentage of overall revenues, farmers rely on this source of income as an important contribution to their earnings.

Hog breeding operations are concentrated in the central area of the United States, including Iowa, Illinois, and Missouri, and in North Carolina. All else equal, farmers prefer to transport sows as short a distance as possible, unless the price that the farmer receives justifies shipping the sows farther. For instance, Hillshire sometimes fully compensates the farmer for transportation costs, which makes it economical for farmers located hundreds of miles away from the Hillshire plant to sell to Hillshire. Sows are commonly shipped throughout the central area of the United States where the purchasing facilities of the merging parties are located and where a major portion of sow sales and slaughter take place. The overwhelming majority of sow purchases occur within this region. As sows are also shipped even farther distances to slaughter

facilities throughout the nation, the United States is the outer bounds of a relevant geographic market.

Thus, the purchase of sows from farmers in the United States is a relevant market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act, 15 U.S.C. § 18.

D. Anticompetitive Effects of Tyson's Acquisition of Hillshire

The market for the purchase of sows from farmers is concentrated. The acquisition of Hillshire by Tyson will combine two of the major purchasers of sows from farmers in the United States and would create a company that accounts for approximately 35% of all purchases in this market. Using the Herfindahl-Hirschman Index, the post-acquisition HHI would increase by more than 500 points, resulting in a post-acquisition HHI of approximately 2100.

Farmers have benefited from competition between Tyson and Hillshire in a variety of ways. Farmers track prices offered by sow purchasers. For many farmers, at particular points in time, the merging parties constitute their two best alternatives. The purchasing facilities of the merging parties are two of a small number of potential buyers from whom farmers seek or receive quotes. As the transaction eliminates a significant competing bidder, bidding is likely to be less aggressive and farmers are likely to receive lower prices for sows. As the prices offered decrease, farmers may need to ship sows to more distant purchasers. This additional shipping time and cost constitute an economic inefficiency that would follow from the elimination of competition between Hillshire and Tyson.[2]

[2] Mergers of competing buyers can enhance market power on the buying side of a market, raising significant antitrust concerns. *See* U.S. Dep't of Justice and Federal Trade Commission, HORIZONTAL MERGER GUIDELINES (2010), §12.

Successful entry or repositioning into the market for the purchase of sows from farmers would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Slaughterers that do not currently purchase sows directly from farmers are unlikely to begin to do so because they value the sorting and weighing services performed by marketers at their buying stations. Entry by new marketers or expansion by existing marketers sufficient to replace the market impact of the loss of competition resulting from the transaction is also unlikely. The process of locating and acquiring land, obtaining permits, and constructing buying stations would require an extensive period of time and would be unlikely to occur in response to anticompetitive price decreases resulting from the merger.

Tyson's acquisition of Hillshire would eliminate actual and potential competition between Tyson and Hillshire, leaving farmers with fewer outlets for their sows and lower prices in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

III.
EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the market for purchases of sows from U.S. farmers by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires the Defendants, within 90 days after the filing of the Complaint, or five days after notice of entry of the Final Judgment, whichever is later, to divest all of Heinold ("the Divestiture Assets"), which constitute all the assets Tyson currently uses to compete against Hillshire for sow purchases from U.S. farmers. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

The terms of the proposed Final Judgment require the Defendants to divest the

Divestiture Assets within 90 days. If Defendants are unable to accomplish the divestiture within this period, the United States, after consultation with the Plaintiff States, may extend this period up to 60 days and shall notify the Court in such circumstances. A prompt divestiture has the benefits of restoring competition lost as a result of the acquisition and reducing the possibility that the value of the assets will be diminished.

Section V(B) of the Hold Separate Stipulation and Order specifies that the Divestiture Assets will be maintained as a viable business and that Hillshire employees will not gain access to customer or supplier lists specific to the Divestiture Assets prior to divestiture.

Section IV(B) of the proposed Final Judgment requires the Defendants to furnish information to prospective acquirers in an attempt to sell the divestiture assets.

Section X of the proposed Final Judgment provides that the United States may appoint a Monitoring Trustee with the power and authority to investigate and report on the parties' compliance with the terms of the Final Judgment and the Hold Separate during the pendency of the divestiture, including keeping Tyson Hog Markets separate from the sow purchasing operations of Hillshire. The Monitoring Trustee would not have any responsibility or obligation for the operation of the parties' businesses. The Monitoring Trustee will serve at Defendants' expense, on such terms and conditions as the United States approves, and Defendants must assist the trustee in fulfilling its obligations. The Monitoring Trustee will file monthly reports and will serve until the divestitures are complete. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section V of the Final Judgment.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides

that the Court will appoint a Divestiture Trustee selected by the United States to effect the sale of the Divestiture Assets. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that Defendant Tyson will pay all costs and expenses of the Divestiture Trustee. The Divestiture Trustee's commission will be structured so as to incentivize the Divestiture Trustee to complete the divestiture as quickly as possible while trying to obtain the highest possible price for the Divestiture Assets. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States which set forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the Divestiture Trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the Divestiture Trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the market for the purchase of sows from U.S. farmers.

IV.
REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V.
PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

William H. Stallings
Chief, Transportation, Energy, and Agriculture Section
Antitrust Division
United States Department of Justice
450 5th St. NW
Suite 8000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the

parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI.
ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Tyson's acquisition of Hillshire. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the market for the purchase of sows from U.S. farmers. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII.
STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[3]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted

[3] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

evaluation of what relief would best serve the public." *United States v. BNS Inc*., 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp*., 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting

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[4] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. John Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[5]

[5] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, at *22 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

VIII.

DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 27, 2014

Respectfully submitted,

_____/s/_____
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF ILLINOIS, STATE OF IOWA, and STATE OF MISSOURI, *Plaintiffs*, v. TYSON FOODS, INC., and THE HILLSHIRE BRANDS COMPANY, *Defendants*.	**CASE: 1:14-cv-01474-JEB** **JUDGE: Hon. James Boasberg** **FILED: 08/27/2014**

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and the States of Illinois, Iowa, and Missouri (collectively "Plaintiffs"), filed their Complaint on August 27, 2014, and Plaintiffs and Defendants Tyson Foods, Inc. ("Tyson") and The Hillshire Brands Company ("Hillshire") by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, Plaintiffs require Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to which Defendant Tyson divests the Divestiture Assets.

B. "Tyson" means Defendant Tyson Foods, Inc., a Delaware corporation with its headquarters in Springdale, Arkansas, its successors and assigns, and its subsidiaries, including

Tyson Fresh Meats, Inc., divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Tyson Fresh Meats, Inc." means Tyson Fresh Meats, Inc, a subsidiary of Tyson.

D. "Hillshire" means Defendant The Hillshire Brands Company, a Maryland corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Divestiture assets" means the entire business of Heinold Hog Markets, including any and all of the tangible or intangible assets used primarily in connection with Heinold Hog Markets, including but not limited to, all leasehold and real property rights associated with the buying stations located at 700 East Henry, Atkinson, Illinois 61235; 3125 So St Rd 29, Burlington, Indiana 46915; 3069 380th St, Story City, Iowa 50248; 624 Cunningham Dr, Sioux City, Iowa 51106; 12760 M60 West, Jones, Michigan 49061; 401 Route W, Monroe City, Missouri 63456; 954 14th Ave, St. Paul, Nebraska 68873; and 2720 Hwy 60, Windom, Minnesota 56101; any inventory, office furniture, materials, supplies, livestock pens, scales and other tangible property and assets used primarily in connection with operating the BOS purchasing business; all licenses, permits, and authorizations issued by any governmental organization relating to operating the BOS purchasing business, subject to licensor's approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to operating the BOS purchasing business, including supply agreements and employee contracts; all customer and Producer lists, specifications, contracts, accounts, and credit records; all records relating to the business of operating BOS buying stations including repairs; all intangible assets used in the development, production, and operation of the

BOS purchasing business, including, but not limited to, exclusive use of the Heinold Hog Markets name and trademark, all the licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials, substances and BOS.

F. "Heinold Hog Markets" means Heinold Hog Markets, Tyson's BOS purchasing business that is part of Tyson Hog Markets, Inc., a subsidiary of Tyson Fresh Meats, Inc.

G. "BOS" means boars (un-castrated male hogs), outs (runts or deformed hogs), and sows (female hogs that have produced at least one litter).

H. "Buying station" means those facilities identified in II.E. above at which BOS are purchased from Producers, sorted, weighed, and subsequently sold and shipped to processors or packers.

I. "Plaintiff States" means the States of Illinois, Iowa, and Missouri.

J. "Producers" means owners or operators of facilities at which hogs are bred or farrowed.

K. "Proposed Transaction" means Tyson's proposed acquisition of Hillshire pursuant to the Agreement and Plan of Merger entered into by Tyson and Hillshire dated July 1, 2014.

III. Applicability

A. This Final Judgment applies to Tyson and Hillshire, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendant Tyson sells or otherwise disposes of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendant Tyson need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 90 calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion after consultation with the Plaintiff States. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total, and shall notify the Court in such circumstances.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine.

Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation and management of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Defendant employee whose primary responsibility is the operation and management of the Divestiture Assets. For a period of twelve (12) months following entry of the Final Judgment, the Defendants shall not solicit to hire, or hire, any Tyson employee hired by the Acquirer unless (1) such individual is terminated or laid off by the Acquirer, or (2) the Acquirer agrees in writing that Defendants may solicit or hire that individual.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

F. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets. Following the sale of the Divestiture Assets,

Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business purchasing BOS. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States's sole judgment after consultation with the Plaintiff States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of purchasing of BOS; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's

efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If Defendant Tyson has not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States and the Plaintiff States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, after consultation with the Plaintiff States, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be

conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendant Tyson, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendant Tyson and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendant Tyson are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to the Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants,

accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information, or any applicable privilege for any of the forgoing. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's

recommendations. To the extent such reports contains information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendant Tyson or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and the Plaintiff States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, after consultation with the Plaintiff States, may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional

information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested of them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by

this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants'

earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Appointment of Monitoring Trustee

A. Upon application of the United States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, and shall have such other powers as this Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants' compliance with this Final Judgment and the Hold Separate Stipulation and Order and the Defendants' progress toward effectuating the purposes of this Final Judgment, including but not limited to: keeping Tyson Fresh Meats, Inc. separate from the sow purchasing operations of Defendant Hillshire.

C. Subject to Section X(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Defendants any consultants, accountants, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment. Any such consultants, accountants, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement with Defendants and on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the Monitoring Trustee and Defendants are unable to reach agreement on the trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any

consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports monthly, or more frequently as needed, with the United States, and, as appropriate, the Court setting forth Defendants' efforts to comply with its obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Final Judgment.

J. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Monitoring Trustee.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including

consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their counsel present (individual and/or Defendant's counsel), regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of (i) the executive branch of the United States, or (ii) the Plaintiff States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any

comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____

United States District Judge

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