

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
450 5th Street, NW, Suite 8000
Washington, DC 20530

Plaintiff,

v.

Symrise AG
Mühlenfeldstraße 1
37603 Holzminden, Germany

and

IDF Holdco, Inc.
3801 East Sunshine Street
Springfield, MO 65809

and

ADF Holdco, Inc.
3801 East Sunshine Street
Springfield, MO 65809

Defendants.

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” means Kerry, Inc., a Delaware corporation, and Kerry Luxembourg S.a.r.l., a Luxembourg société à responsabilité limitée, or the entity to whom Defendants divest the Divestiture Assets.

B. “Symrise” means Defendant Symrise AG, an Aktiengesellschaft, or publicly listed company, organized under the laws of Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “IDF Seller” means Defendant IDF Holdco, Inc., a Missouri corporation, with its headquarters in Springfield, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “ADF Seller” means Defendant ADF Holdco, Inc., a Missouri corporation, with its headquarters in Springfield, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Diana Food” means Diana Food, Inc. (previously known as Diana Naturals, Inc.), a wholly-owned subsidiary of Symrise and an Oregon corporation with its headquarters in Silverton, Oregon, its successors and assigns, and its subsidiaries and divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents and employees.

F. “Development Authority” means the Development Authority of Banks County, Georgia, which currently holds legal title to the real estate and real property related to the Banks County facility pursuant to the Diana Food Bonds-for-Title Transaction.

G. “Banks County facility” means the production facility and surrounding real estate located at 171 Diana Way Commerce, GA 30529, owned by the Development Authority, leased to Diana Food pursuant to the Diana Food Bond-for-Title Transaction, and built to manufacture certain Chicken-Based Food Ingredients.

H. “Chicken-Based Food Ingredients” means ingredients manufactured and sold to food manufacturers for use in food for human consumption or pet consumption (including chicken broth, chicken fat, and cooked chicken meat) made in whole or in part from human-grade natural chicken.

I. “Diana Food Bonds-for-Title Transaction” means the current ownership and lease arrangement between Diana Food and the Development Authority for the Banks County facility.

J. “Divestiture Assets” Divestiture Assets” means:

1. All interests and rights Diana Food holds in the Banks County facility;
2. All bonds, bond documents, grant documents, and lease agreements to which Diana Food is a party, related to the Banks County facility;

3. All tangible assets located at the Banks County facility and all tangible assets located elsewhere primarily related to the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility. Tangible assets includes, but is not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization relating to Chicken-Based Food Ingredients manufactured at the Banks County facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records relating to Chicken-Based Food Ingredients manufactured at the Banks County facility. Defendant Symrise may retain a copy of records necessary for tax, accounting, or regulatory purposes. To the extent any records also include commercially sensitive information, proprietary information, or personally identifiable information pertaining solely to Defendant Symrise's businesses, operations, or products not being transferred to Acquirer, Defendant Symrise may withhold or redact such portions of said records prior to Defendant Symrise's transfer to Acquirer;

4. All intangible assets used in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, including, but not limited to all patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names; technical information; computer software and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety

procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees relating to Chicken-Based Food Ingredients manufactured at the Banks County facility including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments.

Notwithstanding the above definition,

(1) Defendant Symrise shall license to Acquirer, through a perpetual and transferable license that is paid up, royalty free, worldwide, and irrevocable, any know-how, including research and development information, unpatented inventions, rights in research and development, and technical data or information, that is (i) controlled by Defendant Symrise, (ii) used in or necessary to the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, and (iii) used in or necessary to the development, production, servicing, and sale of other Symrise products;

(2) the Divestiture Assets do not include the intangible assets that the Defendant Symrise shall provide as services or use to provide services identified in any transition services agreement entered between the Acquirer and Defendant Symrise, as described *infra* in Paragraph IV(G); and

(3) the Divestiture Assets do not include any trademarks, trade names, service marks, or service names containing the name “Symrise” or “Diana.”

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the market for the manufacture and sale of Chicken-Based Food Ingredients in order to remedy the effects that the United States alleges would otherwise result from Symrise’s acquisition of International Dehydrated Foods, LLC and American Dehydrated Foods, LLC from IDF Seller and ADF Seller. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain uninfluenced by Symrise, and that the level of competition that existed between Defendants prior to the transaction is maintained during the pendency of the ordered Divestitures.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court’s own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (“APPA”), and without further notice to any party or other

proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending its entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X, as though the same were in full force and effect as the Final order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation; the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment; and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made and that Defendants will not later raise any claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendant Symrise shall preserve, maintain, and continue to operate the Divestiture Assets as independent, ongoing, economically viable competitive businesses, with management, sales and operations of such assets held entirely separate, distinct, and apart from those of Symrise's other operations. Symrise shall not coordinate its production, marketing, or terms of sale of any products with those produced by or sold under any of the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendant Symrise shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the manufacture and sale of Chicken-Based Food Ingredients; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution, or sales of products by or under any of the Divestiture Assets will be kept separate and apart from Defendants' other operations.

C. Defendant Symrise shall maintain at previously approved levels for 2019, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Divestiture Assets.

D. Defendant Symrise shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and V(B) of this Hold Separate Stipulation and Order.

E. Defendant Symrise shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

G. Defendant Symrise shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books, and records that report on a

periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Defendant Symrise's employees who spend all, or a majority of their business time with responsibility for the production, operation, distribution, development, or sale of products and services at the Banks County facility shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer. Upon objection by the United States to such transfer, such employees shall not be transferred or reassigned.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets and who will be responsible for Defendants' compliance with this Section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his or her duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

VI. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestiture required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: October 29, 2019

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

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ORDER

IT IS SO ORDERED by the Court, this _____ day of _____.

United States District Judge