PUBLIC VERSION: CONTAINS REDACTIONS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. GEORGE'S FOODS, LLC, GEORGE'S FAMILY FARMS, LLC, and GEORGE'S, INC., *Defendants*.	)	Civil Action No. 5:11-cv-00043 Judge: Glen E. Conrad Chief U.S. District Judge

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR ENTRY OF AN EXPEDITED SCHEDULING ORDER

Plaintiff, the United States of America, files this memorandum in opposition to Defendants' (George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, "George's")) Motion for Entry of an Expedited Scheduling Order.

The Complaint in this action alleges that George's acquisition of the Tyson poultry processing complex in Harrisonburg eliminates one of only three competing poultry processors that purchase broiler chicken growers' services in the Shenandoah Valley. In standard antitrust analysis, this "3 to 2" transaction, as the Complaint alleges, raises the likelihood that George's will reduce prices paid to growers and provide less attractive contract terms, and also increases the risk of coordination between George's and the sole remaining poultry processor in the area. These allegations raise serious,

complex antitrust issues that require the development and reasoned consideration of a full factual record, as well as expert analysis. Appellate courts have repeatedly cautioned that trial courts should not unduly rush the discovery process when considering such allegations, which will require the resolution of disputes concerning, *inter alia*, product and geographic market, competitive harm, efficiencies and, very likely in this case, a "failing division" defense.

Defendants' proposed schedule seeks to impose an unreasonable and unworkable rush to judgment that would require all discovery, including expert and third party discovery, to be completed in less than four weeks, with a trial set for the end of June. Indeed, Defendants' proposed schedule would require both the parties and third parties to complete document production just *two days* after the service of discovery demands. Defendants provide no explanation as to how the required discovery could be accomplished within this proposed timeframe.

The United States, in contrast, proposes an accelerated yet realistic schedule that would require the parties to move quickly and efficiently to first complete discovery on a critical issue that may provide the basis for a consensual resolution of this dispute and then, if necessary, to complete the remaining discovery necessary for trial. Specifically, it appears that Defendants will seek to justify the acquisition on the basis of the "failing division" defense. This defense requires that Defendants show both that the acquired plant had negative cash flow on an operating basis, taking into account appropriate cost allocation rules, and that there are no alternative viable buyers that would pose a less significant danger to competition. It is likely that full discovery on this issue can be

completed in approximately two weeks and will provide an opportunity for the parties to realistically assess the merits of further litigation.

There is no basis for the extremely truncated schedule Defendants propose. To the contrary, Defendants' motion continues an inexplicable course of conduct that seems purposely intended to provoke, rather than avoid, unnecessary litigation. In the week preceding the acquisition, the United States had been working with Tyson and George's to seek production of evidence that would address the United States's concerns, including evidence concerning the failing division defense. Without notice, however, Defendants closed the transaction on a Saturday. The minimal information Tyson and George's provided was not sufficient to do the appropriate analysis of the complex issues noted above. Faced with the likelihood of anticompetive harm and insufficient evidence to fully evaluate whether there were any procompetitive justifications for the acquisition or whether the failing division defense was applicable, the United States had no alternative but to bring this action, as authorized under the Clayton Act.

Having rejected the opportunity to resolve the United States's legitimate concerns prior to its acquisition, Defendants cannot now be permitted to use the fact of that acquisition to deprive the United States of the full and fair opportunity to obtain and present evidence to show the harm that this acquisition may cause. We therefore respectfully request that the Court enter the United States's proposed schedule that, as set forth in our Proposed Order (attached as Exhibit 1 to the Declaration of Jill A. Ptacek, "Ptacek Dec."), would (1) prioritize discovery relating to the failing division defense—a discrete and potentially dispositive issue amenable to quick review—to be completed by June 7, 2011, with a status conference on that issue on or around June 14, 2011; and (2)

require discovery on all other factual issues to be completed by July 19, 2011, expert discovery to be completed by August 23, 2011, and a trial on the merits the week of September 12, 2011, or as near to that date as possible in light of the Court's docket.[1]

As discussed in detail below, the schedule imposes no hardship on Defendants or growers. Defendants have assumed the existing Tyson contracts with growers and, under the acquisition agreement, [redacted]

I. BACKGROUND

On March 18, 2011, Tyson and George's publicly announced George's intent to buy Tyson's Harrisonburg chicken processing complex, a transaction that would combine the operations of two of only three chicken processors in the Shenandoah Valley region. On its face, the transaction raised significant competitive concerns with respect to the purchase of broiler grower services in that area. The acquisition would significantly increase concentration in an already highly concentrated market, giving George's approximately 43% of the chicken processing capacity in the Shenandoah Valley. As a result, the transaction may increase George's incentive and ability to unilaterally decrease prices or degrade contract terms for grower services in that region or make it more likely that George's and Pilgrim's Pride, the other local processor, would engage in anticompetitive coordination to depress prices for grower services. The volume of commerce at issue is substantial as the three processors in the Shenandoah Valley paid growers in the region about $40 million for their services in 2007 alone.

[1] The parties are also negotiating the terms of a Preservation of Assets Order that would provide that George's maintain and preserve the Harrisonburg assets and assume and honor all Tyson grower contracts during the pendency of these proceedings.

As soon as it learned of the pending transaction, the Antitrust Division of the Department of Justice ("the Division") began inquiring into the details of the proposed deal, its likely effects on competition, and any possible countervailing factors, in particular the applicability of the failing division defense, discussed below. Because the purchase price of the transaction was less than the minimum reporting threshold under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, the parties had no statutory obligation to notify and provide information to the Department of Justice and the Federal Trade Commission before consummating the transaction. The Department of Justice nevertheless has the statutory authority to investigate and challenge transactions regardless of size. For that reason, parties to transactions that raise competitive concerns typically work with the Division to resolve the issues in order to avoid burdensome post-closing litigation.

Tyson and George's initially appeared prepared to follow the same cooperative process, and on March 23, 2011, the Division began making specific, narrowly-tailored requests for voluntary production of information relevant to the investigation. Tyson, however, soon made clear that it was not seriously interested in cooperation as it insisted that it would provide notice to the Division prior to closing only if the Division agreed *not* to issue compulsory process in the form of civil investigation demands ("CIDs").[2] (Ptacek Dec. Exh. 2)

When the Division's initial requests for voluntary production of information failed to yield prompt and fulsome responses, the Division issued CIDs on April 18, 2011. The letter accompanying the CIDs emphasized that the Division was still willing to

[2] While parties have a legal right to close non-reportable transactions without providing notice, it is highly unusual for parties to condition providing such notice on the Division foregoing the use of investigative tools.

work with Tyson and George's to minimize the burden of compliance and to quickly focus on any potentially dispositive issues. Toward that end, the Division specifically invited Tyson to provide evidence that it satisfied the requirements of the failing division defense. (Ptacek Dec. Exh. 3)

On April 21, Tyson wrote to the Division stating that it was "hopeful" that it could show the Division why the contemplated transaction was pro-competitive and specifically requested a meeting "to explain to the Division why any effort to prevent the consummation of the sale would be inappropriate." (Ptacek Dec. Exh. 4) The Division agreed to the requested meeting, which occurred on May 2. In the several days following the meeting, the Division contacted Tyson and George's to follow-up on the points raised at the meeting and to discuss the material requested in the CIDs. Nevertheless, while the Division was engaged in these discussions, Tyson and George's closed the acquisition without warning on Saturday, May 7.

On Monday, May 9, Tyson and George's purported to respond to the CIDs. The responses were exceedingly sparse. Excluding a group of largely duplicative standard grower contracts, production manuals, and the sales agreement itself, George's produced fewer than 200 pages of documents. Moreover, with respect to a number of key requests – such as requests for information regarding processor competition for grower services – George's refused to respond on the basis that the requests were "irrelevant" and "not reasonably calculated to lead to the discovery of admissible evidence." Among the requests George's deemed "irrelevant" were those relating to the effect of the number of processors in a given area on compensation paid to growers; methods used to recruit new growers; and competition for the procurement of grower services – all subjects that go to

the heart of an antitrust inquiry. George's also refused to provide any information with regard to any efficiencies associated with the transaction or its plans for the Tyson assets, other than the Asset Purchase Agreement and a brief powerpoint presented to the Division during the May 2 meeting.

Shortly after the United States filed the Complaint in this case, Defendants proposed a schedule to the United States that is substantially similar to the one Defendants proposed to the Court, calling for all discovery, including fact discovery, expert discovery, and motions for discovery disputes to be completed by June 17, 2011. The United States responded that the proposed schedule was not workable and subsequently provided for discussion purposes an alternative schedule that called for the conclusion of all discovery by September 16, 2011 and a trial on the merits to commence on or about October 31, 2011. Defendants rejected that proposal but did not proffer a compromise.

In contrast, the United States indicated its willingness to consider further compromise and agreed to provide a new proposal by noon on Tuesday, May 17. Inexplicably, Defendants did not wait for the new proposal but instead filed the instant Motion late on Monday, May 16. Defendants used the United States's original proposal as a straw man to contrast with the schedule they have asked the Court to enter, even though the United States's original schedule was offered simply as way to begin negotiations.

Since the Complaint was filed, there have been press reports indicating that there is at least one potential bidder which has expressed interest in purchasing the Harrisonburg assets, a cooperative of local poultry growers.

II. ARGUMENT

A. The United States's Proposed Schedule is Reasonable and Allows For the Development of an Appropriate Trial Record

The United States proposes a reasonable but ambitious schedule that provides adequate time to prepare for an efficient trial before this Court. Specifically, the United States proposes a two-track discovery process: (1) complete discovery on the "failing division" issues by June 7, 2011, with a status conference on that issue on or around June 14, 2011; and (2) conduct concurrent discovery on all other factual issues to be completed by July 19, 2011, expert discovery to be completed by August 23, 2011, and a trial on the merits the week of September 12, 2011, or as near to that date as possible in light of the Court's docket. *See* United States's Proposed Scheduling Order (Ptacek Dec. Exh. 1).

1. Expedited discovery on the "failing division" issue may significantly focus and truncate the remainder of the litigation.

Antitrust law recognizes that an otherwise anticompetitive transaction may go forward when parties can satisfy the "failing firm" defense.[3] Similarly, courts have applied the concept to sales of business units instead of an entire firm.[4] The Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade

[3] The rationale for the defense is that in cases where the assets at issue are financially distressed, current market shares may not be appropriate proxies for their future competitive significance. If the firm is not likely to be an effective competitor absent the transaction, then the transaction is unlikely to produce an adverse effect on competition. *See Citizen Publ'g Co. v. United States*, 394 U.S. 131, 136-37 (1969) (describing the "failing firm" doctrine).

[4] *See generally F.T.C. v. Great Lakes Chem. Corp.*, 528 F. Supp. 84, 96 (N.D. Ill. 1981).

Commission ("*Guidelines*")[5] utilize the following criteria when analyzing failing division claims:

> (1) applying cost allocation rules that reflect true economic costs, the division has a persistently negative cash flow on an operating basis, and such negative cash flow is not economically justified for the firm by benefits such as added sales in complementary markets or enhanced consumer goodwill; and (2) the owner of the failing division has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep its tangible and intangible assets in the relevant market and pose a less severe danger to competition than does the proposed acquisition. *Guidelines*, § 11 (footnotes omitted).

While the Defendants have not yet answered the Complaint, the United States believes that it is highly likely that they will assert a failing division defense here. Defendants have repeatedly highlighted the issue – asserting to the Division, to the local growers, to the press,[6] and now to the Court,[7] that Tyson's primary reason for selling the Harrisonburg facility was to stem persistent losses – all in an apparent attempt to bolster a claim that they meet the first prong of the defense. Tyson has also asserted that it would be "futile" to shop the plant because there is no other potential buyer. While assertions of "futility" will not suffice to meet the case law standards for an appropriate shop,[8] it would likely be relatively quick and easy for Defendants to determine potential interest by other viable purchasers.

---

[5] *Available at* http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf .

[6] The day the United States filed its Complaint, a Tyson representative was quoted saying: "Tyson Foods' sale to George's . . . saved an unprofitable poultry operation that was in danger of closing." *DOJ sues to block sale of Tyson Foods plant in Virginia, saying deal would stifle competition*, Wash. Post, May 10, 2011, *available at* http://www.washingtonpost.com/national/justice-department-files-antitrust-suit-challenging-sale-of-tysons-harrisonburg-operations/2011/05/10/AF55najG_story html.

[7] See Defendants' Memorandum in Support of Entry of An Expedited Scheduling Order ("Def. Mem.") at 3 ("[T]he Harrisonburg complex that is the subject of this action was losing approximately $140,000 a week and has lost more than $10 million over the last three years.").

[8] *See United States v. Diebold, Inc.*, 369 U.S. 654, 655, (1962) (reversing summary judgment where material questions of fact existed as to whether defendant "was the only bona fide prospective purchaser for [the acquired firm's] business").

The United States proposes to conduct prompt discovery – both as to the economic losses associated with Tyson's operation of the facility and the existence of alternative viable purchasers – relating to a possible failing division claim. The United States's proposed schedule includes two weeks for discovery on that issue. If, at that point, the United States is satisfied that Defendants can meet the failing division defense, that conclusion may provide a basis for prompt resolution of this matter. Because the United States's proposed schedule presumes the parties will be simultaneously conducting discovery on other issues, focusing on the failing division defense upfront will not unnecessarily prolong the time needed for fulsome discovery on liability issues.

2. The United States's proposed schedule is reasonable and consistent with law and common practice.

By their nature, antitrust cases typically involve complex legal, factual, and economic matters. This case is no exception. There are numerous key issues that will be before the Court in this trial, including product and geographic market definition; the likelihood of competitive harm in the relevant market; whether the ability of other firms to enter or expand would be timely, likely or sufficient to deter or counteract any competitive harm; the assessment of any cognizable efficiencies (for example, the efficiencies George's believes may be achieved based on its experiences outside of the Shenandoah Valley); and the assessment of any defenses, such as the failing division issues discussed above.

Each of these issues involves extremely fact-intensive analysis. The parties will need to conduct discovery to develop the record as to each of these issues, including discovery from each other and from third parties. Discovery will be needed from growers, cooperatives, and Pilgrim's Pride (the other chicken processor in the

Shenandoah Valley). In addition, George's will likely argue that other firms are in the relevant market, such as turkey processors and Perdue (which operates a "further processing" plant), or are likely to enter the market, thereby necessitating discovery from those entities as well. Moreover, expert discovery will include pre-trial exchange of reports, depositions of testifying experts, and any related motions practice. Defendants' proposal simply does not take into account the discovery that will need to occur.

In most litigated antitrust cases (including the cases cited by Defendants in support of their claim that merger cases are typically litigated on expedited schedules), the United States had substantial opportunity to conduct discovery prior to filing the Complaint. Here, in contrast, Tyson and George's have not provided basic information necessary to develop evidence on the allegations. Based on their numerous objections to date, the United States anticipates that discovery disputes could prolong the time necessary for that process.

The Defendants' proposed schedule includes deadlines that simply cannot be met. For example, it requires that both party and third party discovery be returned by May 27, mere days after their proposed order states the parties must serve discovery requests. This schedule effectively precludes obtaining any meaningful discovery. The Defendants' schedule further proposes that the United States must identify its fact witnesses no later than May 24 and have served any deposition notices by May 26 – with both deadlines occurring prior to the United States receiving any documentary or interrogatory information via discovery. The Defendants' proposed schedule does not provide sufficient or reasonable time for the parties to exchange relevant information,

review it, and make informed decisions as to the identities of their witnesses or the persons appropriate to depose under the timeline in the Defendants' proposed order.

The timeframe proposed by Defendants would be extraordinarily rushed for any antitrust litigation, but especially one in which the United States has had virtually no opportunity to gather evidence prior to filing of the Complaint. The Seventh Circuit said of an antitrust case tried at the pace Defendants propose: "We are conscious that this case went to decision like greased lightning. Seven weeks from complaint to trial is unheard of in antitrust litigation." *Chicago Prof'l Sports Ltd. v. Nat.l Basketball Ass'n*, 961 F.2d 667, 676 (7th Cir. 1992) (affirming injunction in antitrust case decided seven weeks from complaint to trial, while noting that, if the defendant had protested, "we would have been inclined to question whether it was prudent to issue a final, rather than a preliminary, injunction so quickly.").

The D.C. Circuit made much the same point when it reviewed a rushed decision of the District Court in a merger challenge:

> I appreciate that the district court expedited the proceeding as a courtesy to the defendants, who wanted to consummate their merger just thirty days after the hearing, *Whole Foods*, 502 F.Supp.2d at 4, but the court should have taken whatever time it needed to consider the FTC's evidence fully. For the reasons stated above, the district court's conclusion that the FTC showed no likelihood of success in an eventual § 7 case must be reversed and remanded for proceedings consistent with this opinion. *F.T.C. v. Whole Foods Market, Inc.*, 548 F.3d 1028, 1041 (D.C. Cir. 2008).

The discovery schedule proposed by the United States is consistent with the approach used in judicial review of many other mergers. In fact, in the recent and analogous case of *United States v. Dean Foods*, No. 10-CV-59 (E.D. Wis., filed Jan. 22, 2010), a challenge to a non-HSR reportable consummated merger involving agriculture processing facilities, the Court ordered an initial schedule that had discovery lasting for

over *one year* from the filing of the complaint.[9] Schedules in other cases also allowed for meaningful discovery. *See, e.g., United States v. Lockheed Martin Corp., et al.*, No. 98-CV-00731 (D.D.C. filed Mar. 23, 1998) (168 days from complaint to hearing); *United States v. Northwest Airlines Corp., et al.*, No. 98-74611 (E.D. Mich. filed Oct. 23, 1998) (740 days from complaint to trial on the merits on consummated transaction); *United States v. Carilion Health Sys., et al.*, 707 F. Supp. 840, 841 (W.D. Va. 1989), *aff'd*, No. 89-2625, 1989 WL 157282 (4th Cir. Nov. 29, 1989) (trial commenced more than six months after complaint filed); *United States v. Primestar, Inc. et al.*, No. 98-CV-01193 (D.D.C. filed May 12, 1998) (263 days from complaint to trial on the merits).

Defendants selectively point to four cases that they suggest show that trial schedules in merger litigation generally proceed in highly compressed time frames. Those cases are inapposite as all entailed significant pre-complaint discovery and/or a compelling reason for urgency, such as a hostile takeover or bankruptcy proceedings. The trial in *United States v. Oracle Corp.*, 331 F. Supp. 2d 1098 (N.D. Cal. 2004), took place in the context of a hostile takeover and followed an *eight-month* pre-complaint investigation. And as Defendants' counsel well knows, highly unique exigent circumstances surrounded the scheduling in *United States v. SunGard Data Sys., Inc.*, 172 F. Supp. 2d 172 (D.D.C. 2001). This case involved a firm providing critical business continuity services supporting the nation's commercial infrastructure (this was shortly after September 11, 2001) that was operating in bankruptcy, threatened with the loss of personnel, and forcing companies to make critical choices during this period about where to get these services. Moreover, voluminous amounts of documents – 700 boxes – had

[9] *See* http://www.justice.gov/atr/cases/f261100/261123 htm (Scheduling and Case Management Order issued June 3, 2010).

already been produced as part of SunGard and Comdisco's compliance with a Second Request.[10] Here, there is no externally-imposed deadline imposed by a bankruptcy process, no imminent threat to the business, and the parties to this transaction never produced documents remotely on the scale of a Second Request response.[11]

B. The "Expedited" Schedule Sought by Defendants is Not Warranted

Defendants assert that their expedited schedule is necessary because the lawsuit threatens George's ability to make certain improvements at the Harrisonburg plant in order to increase the plant's output from 525,000 birds per week to 625,000 birds per week. (Def. Mem. at 3) Defendants cite four related concerns in that regard, none of which justify the schedule that George's requests, especially given the Department's willingness to conduct an expedited proceeding that would have this matter concluded by September (only eleven weeks after Defendants' proposed schedule). We address each in turn below.

At the outset, however, it is important to note that the pendency of this action does not prevent George's from operating the plant and making improvements as it sees fit. The only interim relief the Department has requested from George's is that George's commit to assume and honor the existing grower contracts and preserve the assets.

---

[10] Some of these distinctions are explained in a publication written by SunGard's counsel, also Defendants' counsel in this matter. *See* John D. Harkrider, *Resolving Complex Antitrust Cases Promptly*, ICARUS, Summer/Fall 2002, http://www.avhlaw.com/media/article/28_JDH-Resol_20Complex_20AT_20Cases.pdf.

[11] The remaining two cases relied on by Defendants were originally scheduled as preliminary injunction hearings, and were consolidated only well into the proceedings—and only with the United States's consent. *See United States v. Long Island Jewish Medical Center*, 983 F. Supp. 121, 125 (E.D.N.Y. 1997) ("During the hearing conducted by the Court on the plaintiff's motion for a preliminary injunction, the parties agreed that the plenary trial of this action on the merits was to be advanced and consolidated with the hearing."); *United States v. Baker Hughes Inc.*, 731 F. Supp. 3, 4 n. 1 (D.D.C.), *aff'd*, 908 F.2d 981 (D.C. Cir. 1990) (parties agreed to consolidation "[a]fter a full hearing on a motion for preliminary injunction").

George's has said that it has no objections in principle to such relief. George's has stated that it already has assumed the Tyson grower contracts and is currently taking steps to ramp up production at Harrisonburg from 425,000 birds per week to 525,000 birds per week. (Def. Mem. at 3) In short, there is no idling of the assets or diminution of the business during the pendency of the litigation.

Turning to the Defendants' arguments in support of their proposed schedule, they begin with two related points. First, they claim that until this matter is resolved, it will be difficult for growers to obtain financing for new chicken houses, and second, even if financing were available, it would be unwise for growers and George's to enter into long-term contracts. The United States's schedule would, at worst, only cause a minimal delay. As Defendants observe, building *new* chicken houses requires a significant investment from growers. (Aff. of Robert Kenney, ¶ 6.b.) Houses can cost between $100,000 and $300,000, requiring loans that can take 30 or more years to pay off. The effect on growers of a couple of months delay in a decision of that magnitude is *de minimis* compared to the harm that could come to growers from the permanent loss of competition at stake here. In fact, the 75 form declarations from growers submitted by Defendants state that growers are *not* concerned about the effects of the transaction in the short term: "[I]n the short term, the sale of the Harrisonburg plant to George's should not negatively impact my facility given that George's will honor the terms of my contract with Tyson." (*E.g.*, Dec. of Rodney Turner, ¶ 10) Tellingly, none of the growers addressed in their declarations what impact the loss of competition resulting from the sale may have on their businesses in the long term. Any short-term delays in making

additional investments should not trump the Court's need for sufficient time to reach a decision upon a fully developed record.

Third, Defendants claim that if this matter is not resolved before August, they may miss out on sales of additional chicken going forward.[12] It appears that such additional sales were not an issue to George's when it entered into the transaction. Rather, George's wanted to make sure it would have an outlet for the plant's existing output. [redacted] (Ptacek Dec. Exh. 5). Moreover, George's states that "contracting opportunities continue to roll in throughout the fall." (Kenney Aff. ¶ 10) Accordingly, any impact the litigation may have on lost sales of potential increased output from the Harrisonburg plant – to the extent such harm occurs – will be short-lived.

Finally, Defendants assert that the uncertainty created by this litigation will cause it to forego making certain improvements to the plant, *i.e.*, the installation at Harrisonburg of an IF (individually frozen) freezer and certain additional processing equipment, that would allow it to bid on certain contracting opportunities in August. (Kenney Aff. ¶¶ 8-10). These claims are not sufficient to justify George's extraordinarily truncated trial schedule. When George's closed this transaction, it was aware that the United States had outstanding antitrust concerns, and George's took steps to protect itself in the event the United States filed suit. Indeed, George's contemplated the possibility of an extended [redacted] process to resolve the resulting competition issues. [redacted]

[12] Defendants raise this issue for first time in its Motion. Indeed, the *only* reason Tyson or George's had previously cited for wanting to swiftly close the deal was Tyson's need to stem financial losses associated with operating the Harrisonburg plant.

PUBLIC VERSION: CONTAINS REDACTIONS

[redacted] (Ptacek Dec. Exh. 6). These improvements are the same improvements that George's now claims it will not undertake due to the litigation. Moreover, with respect to the IF freezer, [redacted]

III. CONCLUSION

Plaintiff proposes an aggressive schedule that provides adequate time to prepare this case for an efficient trial before this Court. Because this case will affect hundreds of poultry growers who depend on competitive prices and contract terms for their livelihoods, there is every reason to fully develop the issues for the Court, on an aggressive, but reasonable, schedule that reflects the importance of the matter.

Respectfully submitted,

/s/

JILL PTACEK
CAROLINE E. LAISE
WILLIAM H. STALLINGS
Attorneys
Transportation, Energy and Agriculture Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 8000
Washington, DC 20530
Telephone: (202) 307-6607
Facsimile: (202) 307-2784
E-mail: jill.ptacek@usdoj.gov

Attorney for the United States

PUBLIC VERSION: CONTAINS REDACTIONS

CERTIFICATE OF SERVICE

I hereby certify that, on May 20, 2011, a redacted version of "Plaintiff's Response in Opposition to Defendants' Motion for Entry of an Expedited Scheduling Order" and the "Declaration of Jill Ptacek" with accompanying Exhibits 1, 2, 3 and 4 were filed with the Clerk of Court using the CM/ECF system, which then sent a notification of such filing (NEF) to counsel of record.

I also certify that an unredacted version of "Plaintiff's Response in Opposition to Defendants' Motion for Entry of an Expedited Scheduling Order" and the "Declaration of Jill Ptacek" with Exhibits 1 through 6 are being hand-filed with the Court, along with a Motion to Seal the Response and Ptacek Declaration Exhibits 5 and 6, and sent by email to:

John D. Harkrider
Axinn, Veltrop & Harkrider LLP
114 West 47th Street
New York, NY 10036
jdh@avhlaw.com

William B. Poff
Woods Rogers PLC
10 S. Jefferson Street, Suite 1400
Roanoke, VA 24038-4125
poff@woodsrogers.com

Respectfully submitted,

/s/

JILL A. PTACEK
Attorney
Transportation, Energy and Agriculture Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 8000
Washington, DC 20530
Telephone: (202) 307-6607
Facsimile: (202) 307-2784
E-mail: jill.ptacek@usdoj.gov