

**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.*

Civil Action No.: 1:14-cv-01474-JEB

Judge: Hon. James E. Boasberg

Date Filed: November 19, 2014

**UNITED STATES' MOTION AND SUPPORTING MEMORANDUM  
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), plaintiff United States of America ("United States") moves for entry of the proposed Final Judgment, attached as Exhibit A, filed in this civil antitrust proceeding. The proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest.

The Competitive Impact Statement ("CIS"), filed by the United States on August 27, 2014, explains why entry of the proposed Final Judgment is in the public interest. The United

States has attached to this Memorandum as Exhibit B a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

**I. Background**

On August 27, 2014, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of The Hillshire Brands Company (“Hillshire”) by Tyson Foods, Inc. (“Tyson”) would substantially lessen competition in the market for the purchase of sows from farmers in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Accordingly, the Complaint seeks to permanently enjoin Tyson’s acquisition of Hillshire as a violation of Section 7 of the Clayton Act.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (“Hold Separate”) and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition, and a Competitive Impact Statement (“CIS”). The Court signed and entered the Hold Separate on August 27, 2014. The proposed Final Judgment requires defendants to divest Tyson’s sow purchasing business, also known as Heinold Hog Markets (the “Divestiture Assets”). The Hold Separate requires defendants to 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. The CIS explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest.

The United States and the 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 the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## **II. Compliance with the APPA**

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. *See* 15 U.S.C. §16(b). In compliance with the APPA, the United States filed the CIS on August 27, 2014; published the proposed Final Judgment and CIS in the Federal Register on September 4, 2014 (*see United States, et al. v. Tyson Foods, Inc. and The Hillshire Brands Company*, 79 Fed. Reg. 52751); and caused summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in the *Washington Post* for seven days beginning on September 4, 2014 and ending on September 10, 2014.

The sixty-day period for public comments ended on November 10, 2014, and the United States received no comments. Attached is a Certificate of Compliance that states that all requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

### **III. Standard of Judicial Review**

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 in accordance with the statute, the court shall 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).

The United States set forth the public interest standard under the APPA in its CIS and incorporates those statements herein. The United States alleges in its Complaint that the acquisition of Hillshire by Tyson would substantially lessen competition in the United States in the purchase of sows from farmers, which likely would result in less aggressive bidding and the receipt by farmers of lower prices for sows. The remedy in the proposed Final Judgment resolves the alleged competitive effects by requiring defendants to divest Tyson’s sow purchasing business. Defendants have provided the plaintiffs with notice pursuant to Paragraph VI. of a proposed purchaser. The United States, in consultation with the Plaintiff States, is evaluating the

proposed purchaser to determine if it is qualified under the standards set forth in Paragraph IV.H. of the proposed Final Judgment. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law, and no comments have been received. The proposed settlement is consistent with the public interest.

#### **IV. Conclusion**

For the reasons set forth in this Memorandum and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the Final Judgment without further hearings. The United States respectfully requests that the Final Judgment attached hereto be entered as soon as possible.

Dated: November 19, 2014

Respectfully submitted,

/s/

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