

allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: June 24, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. George's Foods, LLC, et. al.; 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 Western District of Virginia in *United States of America v. George's Foods, LLC, et. al.*, Civil Action No. 5:11-cv-00043. On May 10, 2011, the United States filed a Complaint alleging that George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, "George's") acquisition of Tyson Foods, Inc.'s ("Tyson's") Harrisonburg, Virginia chicken processing complex, consummated May 7, 2011, violated Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on June 23, 2011, requires the Defendants to make certain capital improvements to the Harrisonburg facility.

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 Western District of Virginia. 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, and responses thereto, will be published in the **Federal Register** and filed with the Court. 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 Western District of Virginia, Harrisonburg Division

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8000, Washington, DC 20530, Plaintiff, v. George's Foods, LLC, P.O. Drawer G, Springdale, Arkansas 72765, George's Family Farms, LLC, P.O. Drawer G, Springdale, Arkansas 72765, and George's, Inc, 402 West Robinson Avenue, Springdale, Arkansas 72764, Defendants.
Civil Action No.: 5:11-cv-00043

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action for equitable relief against George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, "George's") for violating Section 7 of the Clayton Act, 15 U.S.C. 18. This lawsuit challenges George's acquisition of Tyson Foods, Inc.'s ("Tyson's") Harrisonburg, Virginia chicken processing complex, consummated May 7, 2011 (the "Transaction"). The Transaction violates Section 7 of the Clayton Act because its effect may be substantially to lessen competition for the services of broiler growers operating in and around the Shenandoah Valley area of Virginia and West Virginia. The United States alleges as follows:

I. Nature of Action

1. The United States learned about the Transaction on or about March 18, 2011, when Tyson and George's publicly announced George's intent to buy Tyson's Harrisonburg chicken processing complex. The United States subsequently opened an investigation into the proposed deal, and issued Civil Investigative Demands ("CIDs") on April 18, 2011, seeking information on the potential competitive effects of the acquisition and George's proposed business justifications for purchasing the plant. After serving the CIDs, the United States engaged in numerous discussions with the parties to seek the

production of relevant information as quickly as possible. These discussions were continuing at the close of business on Friday, May 6, 2011. On Saturday, May 7, 2011, without any notice to the United States and before responding to the CIDs, George's and Tyson entered into an asset purchase agreement and simultaneously closed the Transaction. The parties undertook this action even though they knew that the United States had serious concerns about the Transaction and had requested to be notified prior to the parties' closing the Transaction.

2. George's and Tyson are competing chicken processors, each operating facilities involved in the production, processing, and distribution of "broilers," which are chickens raised for meat products. George's and Tyson vigorously compete with each other not only in the sale of chicken products, but also for the services of farmers, called "growers," who care for and raise chicks from the time they are hatched until the time they are ready for slaughter.

3. Processors compete for growers in areas where the processors' plants are close together. Prior to consummation of the Transaction, the Shenandoah Valley region of Virginia and West Virginia was one such area where George's and Tyson competed head-to-head for broiler grower services. There, George's and Tyson operated facilities about 30 miles away from each other—George's with a processing facility in Edinburg, Virginia and a feed mill in Harrisonburg, Virginia; and Tyson with a processing facility in Harrisonburg, Virginia and a feed mill in Mount Jackson, Virginia (between Harrisonburg and Edinburg). Transportation costs are such that processors typically contract with growers within limited geographic areas surrounding their facilities. Because of their close proximity, the area from which Tyson and George's recruit growers for their respective Shenandoah Valley facilities overlap substantially. For growers in that region, Tyson and George's are two of only three processors to whom growers can sell their services.

4. On May 7, 2011, George's entered into an agreement with Tyson under which George's acquired Tyson's Harrisonburg, Virginia chicken processing complex. The complex is capable of processing approximately 32 million chickens per year. Tyson contracted with over 120 area growers to support this facility. As a result of the Transaction, George's controls approximately 43% of chicken processing capacity in the Shenandoah Valley, with only one other remaining

competitor, Pilgrim's Pride Corporation ("Pilgrim's Pride").

5. Competition among processors is critical to ensure that the hundreds of Shenandoah Valley-area growers receive competitive prices and contract terms for their services. There are nearly 500 broiler growers in the Virginia portion of the Shenandoah Valley alone, and in 2007, processors paid growers in the region about \$40 million to raise approximately 160 million chickens.

6. The growers' ability to switch to a competing processor has been an important competitive restraint on processors. Elimination of Tyson as an alternative buyer will allow George's unilaterally to decrease prices or degrade contract terms to farmers for grower services in that region. Although there is one other competing processor in the area, Pilgrim's Pride, that processor does not have sufficient capacity to take on significant numbers of growers if George's were to depress payments to growers. The Transaction also makes it more likely that George's and Pilgrim's Pride will engage in anticompetitive coordination to depress prices for broiler grower services.

7. The Transaction therefore violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Jurisdiction and Venue

8. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, in order to prevent and restrain George's from continuing to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

9. Defendants purchase broiler grower services in the flow of interstate commerce, and their activities substantially affect interstate commerce. The 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 and 1337.

10. Defendants transact business and are found within the Western District of Virginia. Venue is proper in this district under 15 U.S.C. 22 and 28 U.S.C. 1391(b) and (c).

III. Defendants

11. George's Foods, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. George's Family Farms, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. George's, Inc. is a corporation organized and existing under the laws of the State of Arkansas. George's Foods, LLC and George's Family Farms, LLC were joint purchasers of Tyson's

Harrisonburg complex. Related George's entities operate production facilities in Springdale, Arkansas; Cassville, Missouri; and Edinburg, Virginia.

IV. Trade and Commerce

A. The Broiler Growing Industry

12. Chicken processors produce a variety of fresh, frozen, further processed, and ready to eat chicken products for retail, institutional, big-box, and food-service outlets. George's and Tyson are each vertically integrated, *i.e.*, both run in-house breeding operations, hatcheries, feed-mills, slaughtering plants, and further processing plants staffed with company employees. This type of chicken producer is commonly referred to as an "integrator." The one significant operation not performed in-house is actually raising the chickens from the time they are hatched until the time they are ready for slaughter, which takes about thirty-five to sixty days. This task is contracted out to hundreds of small, independent farmers, called "growers."

13. Growers work under production contracts with a nearby processor. The processor typically provides the chicks, feed, and any necessary medicine. The processor also transports the chicks and feed to the farms, and transports the chickens to the processing plant. The grower typically provides the chicken houses, equipment, labor, and other miscellaneous expenses related to chicken care. The processor maintains ownership of the birds throughout the process.

14. Caring for chickens requires regular deliveries of feed from the processor, which bears the associated transportation costs. In addition, when delivering mature birds for processing, the greater the distance between the grower and the processor, the greater the chicken mortality, chicken weight loss, and labor costs. For these reasons, processors value having growers located close to the processing facilities.

15. There is no cash market for the purchase of broilers, so farmers who want to raise broilers must contract with a nearby integrator to raise chicks owned by that integrator.

16. Processors typically compensate growers through a competitive "tournament" system, which includes a base payment and a performance component. Growers with premium housing typically receive a higher base rate. Relative performance can also be a significant factor in how much a grower is paid: growers will receive greater payments if their broilers have lower mortality rates and more efficient feed conversion than other growers also

delivering to the integrator at the same period. As a result, a grower's pay can fluctuate greatly from flock to flock.

17. When a grower enters the business, he or she must build houses to shelter the chickens. Chicken houses typically cost between \$100,000 and \$300,000 depending on their size and features. In some instances, growers have been able to convert existing turkey houses to chicken houses, but such conversions still require significant investment.

18. Despite the growers' long-term investment in real-estate, facilities and equipment, contracts for grower services are often very short-term—sometimes just a single flock. Processors do not typically guarantee growers a specific number or flocks per year, nor do they guarantee growers a certain number of birds per flock.

19. Growers, by regulation under the Packers and Stockyards Act, can terminate their relationship with a processor by giving 90 days notice. Growers' primary source of bargaining power when negotiating with integrators is the ability to switch to another integrator. Prior to the Transaction, there were three integrators in the Shenandoah Valley—Tyson, George's, and Pilgrim's Pride. Now, growers in the Shenandoah Valley have just two alternatives, George's and Pilgrim's Pride.

B. Relevant Market

20. The purchase of broiler grower services from chicken farmers in the Shenandoah Valley and nearby areas is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act.

21. In order to enter the chicken growing business, growers make significant investments that are highly specific to broiler production. They must build chicken houses that may cost from \$100,000 to \$300,000, and have a 30-year economic life. Many growers take out substantial loans in order to make these investments. Chicken houses have no practical alternative use. If a grower were to stop raising chickens, his or her best option would likely be to raze the chicken-raising facilities because converting a chicken house to a house suitable for another use involves substantial expense. For instance, converting a chicken house to one suitable for turkey growing can cost more than \$100,000. Most chicken farmers would not abandon their investments in chicken houses in response to small decreases in the prices and other contract terms they receive for their services. The relevant

product market is the purchase of broiler grower services.

22. Processors typically contract with growers who are located close to their processing complexes. The processors must bear the cost of transporting feed and live birds to the grower. Due to storage constraints, processors deliver feed to growers several times a week. Indeed, processors often offer incentives to encourage growers to build houses near the processing complex. In the Shenandoah Valley, processors rarely contract with growers who are located more than fifty to seventy-five miles from the processor's feed mill and processing plant. The geographic area within which a chicken processor contracts with growers (*i.e.*, the area within which the processor delivers chicks and feed and picks up mature broilers) is known as the "draw area" for the facility. The overlapping draw areas of Tyson and George's, consisting of the Shenandoah Valley area within a commercially reasonable range of their processing facilities, is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

23. In response to a small but significant, non-transitory price decrease by processors, growers within fifty to seventy-five miles of the Edinburg and/or Harrisonburg facilities would not switch to processors outside the Shenandoah Valley region, switch to providing any other service, or cease growing chickens, in sufficient numbers to render such a price decrease unprofitable.

C. Anticompetitive Effects

24. The Transaction will likely lessen competition for purchases of grower services in the relevant geographic market. As a result of the Transaction, George's controls approximately 43% of chicken processing capacity in the Shenandoah Valley. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), the post-acquisition HHIs increased by approximately 700 points, resulting in a post-acquisition HHI of over 5,000 points. As defined and explained in Appendix A, where, as here, changes in HHIs establish that an acquisition significantly increases concentration resulting in a highly concentrated market, such acquisitions are presumed likely to enhance market power. *See Horizontal Merger Guidelines* § 5.3. By reducing the number of purchasers of broiler grower services from three to two in the Shenandoah Valley, the Transaction will likely result in reduced competition, with likely effects including depressed prices paid and

less attractive contract terms offered to farmers.

25. Prior to the Transaction, the only competitive buyers for grower services in the Shenandoah Valley were George's, Tyson, and Pilgrim's Pride. Tyson's former facility in Harrisonburg is capable of processing about 32 million chickens per year. George's facility in Edinburg is about 30 miles north of Harrisonburg and is capable of processing about 88 million chickens per year. Pilgrim's Pride operates two facilities in the region: one in Timberville, which lies between Harrisonburg and Edinburg, and is capable of processing 18 million chickens per year, and one in Moorefield, West Virginia, approximately 40 miles from Harrisonburg (about 125 million chickens per year). Alternative processors are too far away to be viable economic alternatives.

26. Farmers have benefited from competition between Tyson, George's, and Pilgrim's Pride in a variety of respects. In addition to the base rate offered to growers, there are a number of other factors that affect the total compensation offered to farmers. The contracts offered by the three processors are to some degree different, and farmers consider these differences when choosing an integrator or deciding to switch. These differences illustrate the various ways in which processors compete. For example:

a. Integrators may differ greatly in the extent to which they share various costs with the growers. For instance, George's pays the full cost of treating the chickens' bedding (a necessary step to prepare a house for a new flock), while Tyson only pays half.

b. Integrators also compete for grower services in the number of flocks they provide growers per year, a factor which greatly affects a farmer's income. In recent times, "lay-outs," or the time between flocks, for some growers in the Shenandoah Valley have stretched from ten to twelve days to three or four weeks for some growers, leaving growers with fewer flocks per year. If a grower cannot shift to another integrator when lay-outs increase, his or her only choice is to let houses sit idle.

c. Another point of differentiation is the extent to which processors encourage (or require) growers to make substantial investments to upgrade their houses. For example, an integrator may insist that all growers convert their chicken houses from the standard "curtain" ventilation to the more efficient "tunnel" ventilation. If a grower prefers not to make such an investment, he or she may refuse to

upgrade the facilities and move to another integrator that does not require tunnel ventilation, if one is available.

d. Similarly, processors differ in the extent to which they support grower investment in upgrades to their houses. When Tyson's recently sought new houses for its Edinburg plant, it offered interested growers the option of entering into a longer-term contract with a set number of flocks and price per pound.

27. Switching to another processor is the grower's only practicable recourse in the face of unfavorable contract terms. Farmers make substantial sunk investments in specialized chicken-raising facilities, often going deep into debt. It is prohibitively costly to convert those facilities to other uses. Growers do not have a cash market to turn to, nor can they feasibly turn to processors outside the Shenandoah Valley.

28. The Transaction eliminated one of only three alternative outlets for farmers in the Shenandoah Valley. As a result of the transaction, many George's and former Tyson growers no longer have an alternative to turn to, and have no choice but to contract with George's. Pilgrim's Pride does not have sufficient capacity to take on growers in sufficient numbers to thwart an exercise of market power by George's. Likewise, Pilgrim's Pride growers in the region will be harmed because they will lose one of their only two alternative sources for selling their services.

29. If a grower cannot switch or threaten to switch to another integrator when any of the terms of his or her contract deteriorate, he or she would likely choose to accept inferior terms rather than to have no contract at all. The Transaction is therefore likely to enhance George's incentive and ability to force growers to accept lower prices and less favorable contractual terms for grower services. This loss of competition could take the form of lower base prices, fewer allowances for miscellaneous expenses, longer layouts between broiler growing services, or other unfavorable adjustments to growers' contracts. In addition, the Transaction likely will enable easier and more durable coordinated interaction between George's and its only remaining competitor, Pilgrim's Pride.

V. Absence of Countervailing Factors

30. New entry into the production and sale of broiler chickens is costly and time consuming. Construction of a large-scale chicken processing facility would require investment of at least \$35 million and take two or more years to obtain necessary permits, plan, design, and build. In addition, there are significant costs and inefficiencies

associated with the start-up period of a new chicken processing facility. Repositioning by firms or facilities that slaughter primarily turkeys would require additional capital investment. Moreover, a turkey processor seeking to add chicken products to its offering would first need to find customers for its output prior to contracting with growers. Entry or repositioning into broiler chicken production would therefore not be timely, likely, or sufficient to defeat a small but significant, non-transitory decrease in the price of broiler grower services.

VI. Cause of Action

31. The United States incorporates the allegations of paragraphs 1 through 30 above.

32. George's acquisition of Tyson's Harrisonburg, Virginia chicken complex will substantially lessen competition for the purchase of broiler grower services in the Shenandoah Valley in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The Transaction would likely have the following effects, among others:

- a. Actual and potential competition between George's and Tyson in the procurement of broiler grower services in the Shenandoah Valley will be eliminated;
- b. Competition generally in the procurement of broiler grower services in the Shenandoah Valley will be substantially lessened; and
- c. Suppliers of broiler growing services will receive less than competitive prices or less competitive contract terms for their services.

VII. Requested Relief

33. The United States requests that:

- a. The acquisition of Tyson's Harrisonburg, Virginia poultry complex by George's be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

- b. Divestiture of such assets and interests sufficient to restore competition in the Shenandoah Valley be ordered;

- c. George's be permanently enjoined from further ownership and operation of the assets acquired as part of the Transaction;

- d. The United States be awarded their costs of this action; and

- e. The United States be awarded such other and further relief as the case requires and the Court deems just and proper.

Dated: May 10, 2011.

Respectfully submitted,
For Plaintiff United States:

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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
By: Glen E. Conrad, Chief United States District Judge

Competitive Impact Statement

Plaintiff United States of America ("United States"), 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

The Complaint in this case alleges that the acquisition by George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, "Defendants" or "George's") of the Harrisonburg, Virginia chicken processing complex from Tyson Foods, Inc., Tyson Farms, Inc. and Tyson Breeders, Inc. ("Tyson") likely would substantially lessen competition for the services of broiler growers operating in and around the Shenandoah Valley area of Virginia and West Virginia, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

On June 23, 2011, the United States filed a proposed Final Judgment designed to remedy the effect of the competitive harm caused by George's acquisition of the Harrisonburg facility ("the Transaction"). The proposed Final Judgment, which is explained more fully below, requires George's to make certain capital improvements and

modifications at the Harrisonburg complex.

The United States 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. Events Giving Rise to the Alleged Violation

A. Defendants and the Transaction

George's Foods, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. George's Family Farms, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. George's, Inc. is a corporation organized and existing under the laws of the State of Arkansas. Related George's entities operate production facilities in Springdale, Arkansas; Cassville, Missouri; and Edinburg, Virginia.

On March 18, 2011, Tyson and George's publicly announced George's intent to buy Tyson's Harrisonburg processing complex and related assets (including a feed mill and hatchery). The Antitrust Division of the United States Department of Justice opened an investigation of the potential competitive effects of the proposed acquisition. On May 7, 2011, George's closed the acquisition, for a purchase price of approximately \$3.1 million for the facilities and an additional amount for equipment and current inventory. On May 10, 2011, the United States filed this lawsuit, challenging the acquisition as a violation of Section 7 of the Clayton Act.¹

B. Background

George's and Tyson are competing chicken processors, each operating facilities involved in the production, processing, and distribution of "broilers," which are chickens raised for meat products. Chicken processors, such as George's and Tyson, rely on the services of farmers, called "growers," to care for and raise chicks from the time they are hatched until the time they are ready for slaughter.

Growers work under production contracts with a nearby processor. The

¹ After notifying the parties of the Antitrust Division's concerns regarding the Transaction, the parties failed to provide the Division the information it requested to fully examine the Transaction.

processor usually provides the chicks, feed, and any necessary medicine. The processor also transports the chicks and feed to the farms, and transports the chickens to the processing plant. The grower typically provides the chicken houses, equipment, labor, and other miscellaneous expenses related to chicken care. The processor maintains ownership of the birds throughout the process.

There is no cash market for the purchase of broilers, so farmers who want to raise broilers must contract with a nearby processor to raise chicks owned by that processor.

Transportation costs (in particular, for the regular deliveries by the processors of feed to their growers) are such that processors typically contract with growers within a limited geographic area surrounding their facilities. Thus, broiler processors compete with each other for growers in geographic areas where the processors' plants are close together. Prior to the Transaction, the Shenandoah Valley region of Virginia and West Virginia was one such area where George's and Tyson competed head-to-head for broiler grower services.

Tyson's Harrisonburg, Virginia facility has the capacity to process approximately 625,000 birds per week. The plant is relatively small by industry standards, and is located on a site that prevents expansion to increase its overall processing capacity. Prior to the Transaction, Tyson consistently had been operating the plant at a level of approximately 450,000 birds per week, well below its capacity. Tyson had contracts with approximately 120 growers located in the Shenandoah Valley region to supply birds to the Harrisonburg facility.

George's Edinburg, Virginia facility has the capacity to process approximately 1,650,000 birds per week. George's has contracts with approximately 190 growers located in the Shenandoah Valley region to supply birds to the Edinburg facility.

JBS/Pilgrim's Pride also operates facilities in the Shenandoah Valley region. It has a processing plant in Timberville, Virginia with an approximate capacity of 660,000 birds per week and a processing plant in Moorefield, West Virginia, with an approximate capacity of 2,400,000 birds per week.

George's facility in Edinburg and the Tyson facility in Harrisonburg that George's acquired are approximately 30 miles away from each other. Because of the close proximity of the two facilities, the area from which Tyson and George's recruited growers for their respective facilities overlapped substantially.

C. The Relevant Market

The purchase of broiler grower services from chicken farmers in the Shenandoah Valley region is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act. In response to a small but significant, non-transitory price decrease by processors, growers within fifty to seventy-five miles of the Edinburg and/or Harrisonburg facilities would not switch to processors outside the Shenandoah Valley region, switch to providing any other service, or cease growing chickens, in sufficient numbers to render such a price decrease unprofitable.

The purchase of broiler grower services is a relevant product market. To enter the chicken growing business, growers make significant investments that are highly specific to broiler production. They must build chicken houses that may cost from \$100,000 to \$300,000 and often take out substantial loans to make those investments. Chicken houses have no practical alternative use and most growers would not abandon their investments in chicken houses in response to small decreases in the prices (or degradations of other contract terms) they receive for their services.

Processors typically contract with growers who are located close to their processing complexes as processors must bear the cost of transporting feed and live birds to the grower. In the Shenandoah Valley region, processors rarely contract with growers located more than fifty to seventy-five miles from the processor's feed mill and processing plant. The overlapping draw areas of Tyson and George's in the Shenandoah Valley region (*i.e.*, the areas within which the companies deliver chicks and feed and pick up mature broilers for their processing facilities) is a relevant geographic market within the meaning of Section 7 of the Clayton Act and growers would not switch to processors outside the overlapping draw areas in response to small decreases in the prices (or degradations of other contract terms) they receive for their services.

D. Competitive Effects of the Transaction

The Complaint alleges that the Transaction would likely lessen competition for purchases of grower services in the relevant geographic market. Prior to the Transaction, George's, Tyson and JBS/Pilgrim's Pride competed against each other for grower services in the Shenandoah Valley region. The transaction will reduce the

number of competitors in the relevant market from three to two and will leave George's with approximately 40% of the processing capacity in the market. The Complaint alleges that the reduction in the number of processors resulting from the Transaction would likely have the effect of enhancing George's incentive and ability to force growers to accept lower prices and less favorable contractual terms for grower services; in short, the Transaction would lead George's to exercise monopsony power.²

E. Entry Into Chicken Processing

New entry into the processing of broiler chickens is costly and time consuming. Entry or repositioning into broiler chicken processing in the Shenandoah Valley region would therefore not be timely, likely, or sufficient to counteract a reduction in demand for grower services resulting from the Transaction.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires George's to acquire and install certain assets and improvements for its Shenandoah Valley poultry processing facilities. As explained below, requiring the described improvements will enhance George's ability and financial incentive to operate the Harrisonburg facility acquired from Tyson at a greater scale than occurred pre-Transaction. Requiring these improvements gives the United States confidence that George's will have an increased demand for chickens and, consequently, an increased demand for grower services that will benefit growers in the Shenandoah Valley region.

A. Terms of the Proposed Final Judgment

Specifically, Section IV of the proposed Final Judgment requires George's within 60 days following entry of the proposed Final Judgment (subject to two 30-day extensions at the discretion of the United States) to enter into contracts to implement the following improvements:

First, George's must install at the Harrisonburg plant an individually frozen ("IF") freezer with a rated capacity of 5,000 pounds per hour. Installation of the IF freezer will be made as soon as practicable after the signing of the purchase contract, but no later than twelve months following the date on which the contract is executed.

² This loss of competition could take the form of lower base prices, fewer allowances for miscellaneous expenses, longer layouts between broiler growing services, or other unfavorable adjustments to growers' contracts.

IF freezers are highly specialized equipment designed for the uniform individual freezing of small food items, such as chicken wings and other parts, at a high rate of throughput. The freezers typically cost in excess of \$1.5 million and require significant expense for installation. George's will be able to use the IF freezer to process chicken that it slaughters at both its Harrisonburg and Edinburg facilities.

Second, George's must purchase and install at either the Harrisonburg or Edinburg complex a whole leg or thigh deboning line with the capacity to debone a minimum of fifty legs per minute or new automated lines with similar capacities. Installation of this equipment will be made as soon as practicable after the signing of the purchase contract, but no later than twelve months following the date on which the contract is executed. George's will be able to use the deboning equipment to enhance the mix of the types of chicken products that are processed at both its Harrisonburg and Edinburg facilities.

Third, George's will make significant repairs to the roof of the processing plant at the Harrisonburg complex. Completion of the roof repairs will be made as soon as practicable after the signing of the repair contract, but no later than six months following the date on which the contract is executed.

Section V of the proposed Final Judgment grants the United States access, upon reasonable notice, to Defendants' records and documents (including relevant contracts) relating to matters contained in the proposed Final Judgment. Defendants also, upon request, must make their employees available for interviews or depositions and answer interrogatories and prepare written reports relating to matters contained in the proposed Final Judgment.

The Final Judgment will remain in effect until notification by the United States, or motion by the Defendants, to the Court of Defendants' completion of all of the improvements and modifications required to be made by the Final Judgment.

B. The Proposed Final Judgment Is in the Public Interest

The improvements required by the proposed Final Judgment serve the public interest by ensuring that George's has the ability and incentive to increase production at its Shenandoah Valley poultry processing facilities. This will increase George's demand for grower services and thereby benefit Shenandoah Valley growers.

The key aspects of the remedy are the installation of the IF freezer, which will allow George's to produce higher margin items at both of its Shenandoah Valley facilities, and the deboning equipment, which will allow George's to alter the mix of products produced at these facilities. Together, these improvements will allow George's to produce products more highly valued in the marketplace and thereby earn higher margins. The improvements also will reduce the variable costs George's incurs in its Shenandoah Valley operations. The improvements are merger-specific in that an alternative purchaser of the Harrisonburg plant would not likely have been able to justify the equipment's high cost without the ability to spread the overhead cost across the output of two plants, as George's can.

These improvements likely will result in the following procompetitive effects:³ The additions of the IF freezer and the deboning line will provide George's with an incentive to maintain high production levels at both plants so as to spread the Harrisonburg plant's increased fixed costs over a greater volume. For George's to fully realize the cost savings from the Transaction and to maximize its return on the investments required by the Final Judgment, George's will need to operate the plant at capacity—something Tyson had only rarely done in the past few years. The significant cost of the improvements (as well as the roofing repairs to the Harrisonburg facility) thus provides a substantial economic incentive that is consistent with George's public commitment to keeping the Harrisonburg plant open and fully operational.⁴

The increases in output from the improvements will in turn lead to a significant increase in total number of chickens George's must procure from area growers.⁵ This increased demand for chickens will increase demand for grower services in the Shenandoah Valley region beyond the level

demand when Tyson owned the Harrisonburg plant.

The remedy called for in the proposed Final Judgment does not re-create an independent competitor. The remedy is, however, an effective one given the particular facts and circumstances of this matter because George's increased demand for grower services is likely to be sufficient to counteract potential adverse effects from the Transaction. The Horizontal Merger Guidelines ("the Guidelines") state that incremental cost reductions flowing from "merger-generated efficiencies" may "reduce or reverse any increases in the merged firm's incentive to elevate price" post transaction.⁶ *Horizontal Merger Guidelines* § 10. The Guidelines instruct that in analyzing the competitive effects of a transaction, the United States can consider whether verifiable, transaction-specific efficiencies "would be sufficient to reverse the [transaction's] potential harm to [growers] in the relevant market, e.g., by preventing price [decreases] in that market." *Id.* As discussed above, the improvements required by the proposed Final Judgment give the United States confidence that the resulting increased output will serve to counteract any potential competitive harm.

Moreover, there were significant concerns associated with the viability of the Harrisonburg processing plant. With a capacity of 625,000 birds per week, the Harrisonburg plant is relatively small compared to other industry slaughter plants (other than plants typically used to process birds for narrow specialty markets). The Harrisonburg plant has operated at a loss over the past few years, with Tyson losing more than \$10 million in the three years preceding the sale to George's. For well over half of that time, output at the plant was under 525,000 birds per week.

Taking all the facts and circumstances into consideration, including the likely benefits resulting from the required improvements, the proposed Final Judgment is an effective remedy that is in the public interest.

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

³ George's also estimates that area-specific synergies between its two Shenandoah Valley plants—such as rationalizing feed deliveries in the draw areas and combining product from both plants to fill customer orders in a single shipment—will lead to significant annual savings.

⁴ Altogether, the cost for the improvements will likely exceed George's purchase price for the Harrisonburg facility.

⁵ George's has already assumed the contracts of all the broiler growers with whom Tyson had written agreements at the time of the Transaction and has offered those growers a contractual addendum extending the contract terms to 2018. Tyson only had contracts in place sufficient to increase the Harrisonburg plant output to 525,000 head per week.

⁶ The Guidelines' reference to price elevation relates to acquisitions causing effects on the selling side (*i.e.*, downstream). In the instant case, the focus is on the buying side with the concern that the Transaction will enhance George's incentive to decrease prices paid to growers.

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 George's.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States 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 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 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 and 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 Fifth Street, 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, incurring the time, expense,

and risk of a full trial on the merits in order to force George's to divest the Harrisonburg processing complex. The United States is satisfied, however, that the improvements and modification George's will implement at the Harrisonburg complex pursuant to the Final Judgment will ensure continued, and increasing, demand for grower services in the Shenandoah Valley region.

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 60-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.*, 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), 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

mechanisms to enforce the final judgment are clear and manageable").⁷

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 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 evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *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).⁸ 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*

⁷ The 2004 amendments substituted "shall" for "may" in directing relevant factors for a 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).

⁸ 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'").

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 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.

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 Senator 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 11.⁹

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.

Respectfully submitted,
Dated: June 23, 2011.

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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
By: Glen E. Conrad, Chief United States District Judge,

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on May 10, 2011, and the United States and Defendants George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, "Defendants"), 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, this Final Judgment requires the prompt and certain

⁹ *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. Dairyman, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (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, 93d Cong., 1st Sess., 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.").

acquisition and installation of certain assets, and modification of other assets, by Defendants at the Harrisonburg, Virginia, chicken processing complex;

And Whereas, Defendants have represented to the United States that the asset acquisitions, installations and modifications required below can and will be made, that Defendants will abide by the obligations required below, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the 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.

II. Definitions

As used in this Final Judgment:

A. The term "George's" means George's, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing, including George's Foods, LLC and George's Family Farms, LLC. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which the company holds at least a 25 percent interest, regardless of how the company's interest is measured (e.g., number of shares, degree of control, board seats or votes).

B. The term "Edinburg complex" means the chicken processing plant owned by George's located in Edinburg, Virginia, and any real property specifically used to support growers that produce for that plant, including feed mills or hatcheries.

C. The term "Harrisonburg complex" means the chicken processing plant formerly owned by Tyson Foods, Inc., located in Harrisonburg, Virginia, and any real property specifically used to support growers that raise chickens for that plant, including feed mills or hatcheries.

D. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

III. Applicability

This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with them who receive

actual notice of this Final Judgment by personal service or otherwise.

IV. Relief

A. Defendants shall, no later than 60 days following entry of this Final Judgment, subject to two additional extensions of 30 days each at the reasonable discretion of the United States, deliver to the United States Department of Justice Antitrust Division ("Antitrust Division") executed contracts providing for the following improvements or modifications:

1. The purchase and installation at the Harrisonburg complex of an approximately 5,000 pound per hour rated capacity (for disjointed wings) individually frozen (IF) freezer. Completion of installation of the IF freezer will be made as soon as practicable after the signing of the purchase contract, but no later than twelve months following the date on which the contract is executed.

2. The purchase and installation at *either the Harrisonburg or Edinburg complex* of a whole leg or thigh deboning line with the capacity to debone a minimum of fifty legs per minute and/or new automated lines with similar capacities. Completion of installation of the whole leg or thigh deboning line will be made as soon as practicable after the signing of the purchase contract, but no later than twelve months following the date on which the contract is executed.

3. The repair of approximately 13,300 square feet of roofing of the processing plant at the Harrisonburg complex, including removal of an existing ballasted roof and replacement with a non-ballasted roof system. The new roof system will be suitable for a poultry processing plant. Completion of the roof repairs will be made as soon as practicable after the signing of the repair contract, but no later than six months following the date on which the contract is executed.

B. Defendants shall notify the United States within two business days of entering each such contract and shall provide the United States with a copy of any purchase, installation or construction agreements entered into by the Defendants relating to implementing the improvement or modification within seven days of entering each such contract.

C. Defendants shall notify the United States within two business days of the completion of each improvement or modification required by Section VI.A and shall within seven days provide the United States with written verification that the improvement or modification was completed.

D. All documents required to be produced to the United States under Paragraph IV(B) shall be delivered by certified mail to the following address: Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth St., NW., Washington, DC 20530.

V. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, 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 Antitrust Division ("Antitrust Division"), 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 Defendant, 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 copies 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 individual counsel present, 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 the executive branch of the United 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).

VI. 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.

VII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire upon notification by the United States, or motion by the Defendants, to the Court of Defendants' completion of all of the improvements and modifications required by Section IV above.

VIII. 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' 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.

Dated: __, 20__.

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

Chief United States District Judge Glen E. Conrad.

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