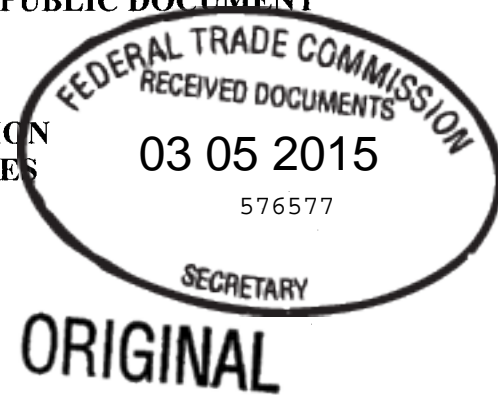


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

Sysco Corporation
a corporation,

USF Holding Corp.
a corporation,

and

US Foods, Inc.
a corporation.

Docket No. 9364

**ANSWER AND DEFENSES OF RESPONDENT
USF HOLDING CORP. AND US FOODS, INC.**

Pursuant to Rule 3.12 of the Federal Trade Commission's ("Commission") Rules of Practice for Adjudicative Proceedings, Respondents USF Holding Corp. and US Foods, Inc., (collectively, "US Foods"), by and through its attorneys, admits, denies, and avers as follows with respect to the Administrative Complaint ("Complaint") filed by the Commission as follows:

INTRODUCTORY STATEMENT

US Foods states that the premise of the Complaint—that the merger between Sysco and US Foods is anticompetitive—is ill-conceived and reflects an erroneous application of the antitrust laws to business behavior that is inherently localized, populated with numerous competitors, marked by on-going entry, and defined by fierce competition. The Commission's challenge to the merger therefore is a repudiation of well-established antitrust doctrine.

I.

NATURE OF THE CASE

1. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco. US Foods otherwise denies the allegations contained in Paragraph 1. US Foods avers that the Commission's selective quotation of unidentified written material offered without context is misleading as framed, and US Foods respectfully refers the Court to the quoted documents.

2. US Foods admits that broadline foodservice distributors are a part of the foodservice industry and that broadline foodservice distributors transact with a variety of foodservice operators. US Foods lacks information to respond to allegations concerning the needs of unidentified foodservice operators because those needs vary widely among a diverse set of customers in different areas and in different industries. US Foods avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences. US Foods otherwise denies the allegations contained in Paragraph 2.

3. US Foods lacks information to respond to allegations concerning the preferences of unidentified foodservice operators because those preferences can and do vary widely among a diverse set of customers in different areas and in different industries. US Foods avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered as a homogenous bloc with one set of purchasing characteristics, purchasing options, product preferences, or business practices. US Foods denies the allegations in Paragraph 3 in all other respects.

4. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco, to provide foodservice products to a variety of foodservice operators including, but not limited to, single-location restaurants, small local restaurant chains, national hotel chains, and customers with dispersed locations. US Foods avers that it lacks information to respond to allegations concerning the purchasing or contracting practices of unidentified foodservice operators because those practices vary widely among a diverse set of customers. US Foods further avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences. US Foods otherwise denies the allegations contained in Paragraph 4, and specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

5. US Foods admits that Distribution Market Advantage (“DMA”) distributes products to foodservice operators. US Foods avers that it lacks information to respond to allegations concerning the purchasing preferences of the unidentified foodservice operators because those preferences vary widely among a diverse set of customers in different areas and in different industries. US Foods further avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences. US Foods otherwise denies the allegations contained in Paragraph 5. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

6. US Foods admits that US Foods, and many others, distribute products to a variety of foodservice operators. US Foods further admits that the Herfindahl-Hirschman Index (“HHI”) is used by the Commission as a measure of purported concentration. US Foods otherwise denies the allegations contained in Paragraph 6. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws. To the extent Figure 1 requires a response, US

Foods lacks information sufficient to respond, but specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

7. US Foods denies the allegations contained in Paragraph 7, except to the extent that Paragraph 7 contains legal conclusions to which no response is required. US Foods specifically denies that broadline foodservice distribution services to “National Customers” constitute a relevant market and that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

8. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco. US Foods otherwise denies the allegations contained in Paragraph 8, except to the extent that Paragraph 8 contains legal conclusions to which no response is required. US Foods avers that to the extent Appendix A of the Complaint states legal conclusions, no response is required, but specifically denies that the merger will have anticompetitive effects in any of the “markets” purportedly identified in Appendix A.

9. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco. US Foods avers that the Commission’s selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the quoted documents. US Foods lacks information to respond to allegations concerning the negotiating techniques of unidentified foodservice operators. US Foods denies the allegations contained in Paragraph 9 in all other respects. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

10. US Foods admits that it attempts to satisfy customer needs and provide the best service in distributing foodservice products. US Foods admits that Sysco and US Foods will not compete against each other after they are merged into a single company, but avers that the merged company would be a more robust, efficient, and effective competitor to the thousands of other foodservice distributors and wholesalers, including Performance Food Group (“PFG”) and DMA, and that customers would directly benefit from the merger. US Foods lacks information to respond to allegations concerning the beliefs of unidentified foodservice operators because those beliefs can and do vary widely among a diverse set of customers in different areas and in different industries. US Foods avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences. US Foods otherwise denies the allegations contained in Paragraph 10. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

11. US Foods admits that it seeks to provide the best service in distributing foodservice products to its customers. US Foods avers that to the extent Appendix A of the Complaint states legal conclusions, no response is required, but specifically denies that the

merger will have anticompetitive effects in any of the “markets” purportedly identified in Appendix A. US Foods otherwise denies the allegations contained in Paragraph 11, except to the extent that Paragraph 11 contains legal conclusions to which no response is required.

12. US Foods admits that Respondents announced on February 2, 2015, that Sysco would divest eleven US Foods distribution centers by selling them to PFG upon consummation of the Sysco-US Foods merger. US Foods otherwise denies the allegations contained in Paragraph 12. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

13. US Foods denies the allegations contained in Paragraph 13.

14. US Foods denies the allegations contained in Paragraph 14.

II.

BACKGROUND

A.

Jurisdiction

15. US Foods admits the allegations contained in Paragraph 15.

16. US Foods admits the allegations contained in Paragraph 16.

B.

Respondents

17. On information and belief, US Foods admits the allegations contained in Paragraph 17.

18. On information and belief, US Foods admits the allegations contained in Paragraph 18.

19. US Foods admits the allegations contained in Paragraph 19.

20. US Foods admits the allegations contained in Paragraph 20.

C.

The Merger

21. US Foods admits the allegations contained in Paragraph 21.

III.

THE PURPORTEDLY RELEVANT PRODUCT MARKETS

22. US Foods admits that broadline foodservice distribution can involve, among other things, the warehousing, sale, and distribution of products. US Foods avers that it lacks information to respond to allegations concerning the desires of unidentified customers because customer preferences can and do vary widely among a diverse set of foodservice operators in different areas and in different industries. US Foods denies the allegations contained in Paragraph 22 in all other respects. US Foods specifically denies that broadline foodservice distribution is not reasonably interchangeable with other forms of food distribution.

23. US Foods denies the allegations contained in Paragraph 23, except to the extent Paragraph 23 contains legal conclusions to which no response is required. US Foods specifically denies that broadline foodservice distribution services constitute a relevant product market.

24. US Foods lacks information to form a belief as to the truth of the allegations regarding other broadline foodservice distributors' pricing decisions. US Foods denies the allegations contained in Paragraph 24 in all other respects.

25. US Foods denies the allegations contained in Paragraph 25.

26. On information and belief, US Foods admits that Sysco's SYGMA division is a distinct business unit dedicated to systems distribution. US Foods lacks information to respond to allegations regarding other systems distributors' internal considerations when deciding whether to take on business. US Foods denies the allegations contained in Paragraph 26 in all other respects.

27. US Foods admits that customers can and do use a myriad of distributors, including broadline distributors, systems distributors, and specialty distributors. On information and belief, US Foods admits that Sysco operates some specialty distribution businesses separately from its broadline distribution business. US Foods denies the allegations contained in Paragraph 27 in all other respects.

28. US Foods avers that it lacks information to respond to allegations concerning the desires of unidentified customers because customer preferences vary widely among a diverse set of foodservice operators in different areas and in different industries. US Foods further avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences. US Foods denies the allegations contained in Paragraph 28 in all other respects. US Foods specifically denies that that cash-and-carry stores are not reasonably interchangeable with, or an adequate substitute for, broadline distribution services. US Foods further specifically denies "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

29. US Foods denies the allegations contained in Paragraph 29.

30. US Foods denies the allegations contained in Paragraph 30, except to the extent that Paragraph 30 contains legal conclusions to which no response is required. US Foods specifically denies that broadline foodservice distribution is a relevant product market.

31. US Foods admits that foodservice management companies and hotel and restaurant chains, among others, are sometimes customers of broadline foodservice distributors, and avers that GPOs are sometimes both competitors and customers of broadline foodservice distributors for purposes of antitrust analysis. US Foods denies the allegations contained in Paragraph 31 in all other respects. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

32. US Foods lacks information to respond to allegations concerning the negotiating, ordering, or contracting habits of unidentified customers because customer habits vary widely among a diverse set of foodservice operators in different areas and in different industries. US Foods avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences. US Foods otherwise denies the allegations contained in Paragraph 32, except to the extent that Paragraph 32 contains legal conclusions to which no response is required. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws, and therefore denies the characterizations contained in Paragraph 32.

33. US Foods avers that the Commission’s selective quotation of unidentified written material offered without context is misleading as framed, and US Foods respectfully refers the Court to the quoted documents. US Foods denies the allegations contained in Paragraph 33 in all other respects. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

34. US Foods denies the allegations contained in Paragraph 34, except to the extent that Paragraph 34 contains legal conclusions to which no response is required. US Foods specifically denies that broadline foodservice distribution is a relevant product market, and that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice distribution customers for purposes of the antitrust laws.

IV.

THE PURPORTEDLY RELEVANT GEOGRAPHIC MARKETS

35. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco, to provide foodservice products to a wide variety of foodservice customers. US Foods denies the allegations contained in Paragraph 35 in all other respects. US Foods specifically denies that broadline foodservice distribution services constitute a relevant product market, that there is a national market for foodservice distribution, and that “National Customers,” as that phrase is

used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

A.

The United States

36. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco, to provide foodservice products to foodservice customers. US Foods further admits that it operates distribution centers in certain locations in the United States. US Foods otherwise denies the allegations contained in Paragraph 36 and specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

37. US Foods lacks information to respond to allegations concerning the requirements or motivations of unidentified foodservice operators because those requirements and motivations vary widely among a diverse set of customers in different areas and in different industries. US Foods otherwise denies the allegations contained in Paragraph 37, and specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws. US Foods avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences.

38. US Foods admits that several regional distributors formed a consortium known as DMA. US Foods avers that it lacks information to respond to allegations concerning the views and opinions of unspecified broadline distributors, customers, and industry participants. US Foods otherwise denies the allegations contained in Paragraph 38. US Foods specifically denies that broadline foodservice distribution services constitute a relevant product market, that there is a national market for foodservice distribution, and that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws. US Foods avers that the Commission’s description of unidentified statements purportedly attributable to Respondents, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the full underlying statements or documents, once identified, for a complete and accurate description of their contents.

39. US Foods denies the allegations contained in Paragraph 39. US Foods specifically denies that broadline foodservice distribution services to “National Customers” constitute a relevant market and that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

B.

Purported Local “Markets”

40. US Foods admits that competition for the distribution of foodservice products occurs on a local level. US Foods denies the allegations contained in Paragraph 40 in all other respects.

41. US Foods admits that certain regulations limit the number of hours a driver of a delivery truck can spend on the road, and that US Foods has a salesforce dedicated to serving customers. US Foods denies the allegations contained in Paragraph 41 in all other respects.

42. US Foods avers that it lacks information to respond to allegations concerning the views and opinions of unspecified broadline distributors, customers, and industry participants. US Foods denies the allegations of Paragraph 42, except to the extent that Paragraph 42 contains legal conclusions to which no response is required. US Foods specifically denies that broadline foodservice distribution services constitute a relevant product market.

43. US Foods admits that there are some geographic locations that are served by Sysco and US Foods, in addition to many other distributors and wholesalers, and that Respondents compete with each other and other distributors and wholesalers in those locations. US Foods denies the allegations contained in Paragraph 43 in all other respects, except to the extent that Paragraph 43 contains legal conclusions to which no response is required.

44. US Foods admits that Sysco and US Foods offer services to customers in Las Vegas, Nevada. US Foods denies the allegations contained in Paragraph 44 in all other respects, except to the extent that Paragraph 44 contains legal conclusions to which no response is required.

45. US Foods denies the allegations contained in Paragraph 45, except to the extent that Paragraph 45 contains legal conclusions to which no response is required. US Foods avers that to the extent Appendix A of the Complaint states legal conclusions, no response is required, but specifically denies that the merger will have anticompetitive effects in any of the “markets” purportedly identified in Appendix A.

V.

**PURPORTED MARKET STRUCTURE AND THE MERGER’S PURPORTED
PRESUMPTIVE ILLEGALITY**

46. US Foods denies the allegations contained in Paragraph 46, except to the extent that Paragraph 46 contains legal conclusions to which no response is required. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

A.

Purported Market Structure and Concentration—National Market

47. US Foods admits that the HHI is used by the Commission as a measure of purported concentration and avers that the Horizontal Merger Guidelines issued by the Antitrust Division of the United States Department of Justice and the Federal Trade Commission on August 19, 2010, speak for themselves. US Foods further avers that the Horizontal Merger Guidelines do not necessarily mirror, nor substitute for, controlling case law. US Foods otherwise denies the allegations contained in Paragraph 47.

48. US Foods denies the allegations contained in Paragraph 48, except to the extent that Paragraph 48 contains legal conclusions to which no response is required. US Foods specifically denies that broadline foodservice distribution services to “National Customers” constitute a relevant market and that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws. To the extent Table 1 requires a response, US Foods avers that Table 1 is misleading, and denies the accuracy of the information included therein, because, among other things, “National Customers,” as that phrase is used by the Commission, do not represent a unique class of foodservice customers.

B.

Purported Market Structure and Concentration—Local Markets

49. US Foods admits that foodservice distribution firms located outside the Commission’s arbitrary “geographic” markets can and do readily compete with foodservice distribution firms located within those arbitrarily-derived geographic markets. US Foods denies the allegations contained in Paragraph 49 in all other respects and specifically denies that broadline foodservice distribution services constitute a relevant product market.

50. US Foods admits that there are some geographic locations that are served by Sysco and US Foods, in addition to many other distributors and wholesalers, and that Respondents compete with each other and a myriad of other distributors and wholesalers in those locations. US Foods denies the allegations contained in Paragraph 50 in all other respects, except to the extent Paragraph 50 contains legal conclusions to which no response is required.

51. US Foods denies the allegations contained in Paragraph 51, except to the extent Paragraph 51 contains legal conclusions to which no response is required. US Food avers that to the extent Appendix A of the Complaint states legal conclusions, no response is required, but US Foods specifically denies that the merger will have anticompetitive effects in any of the “markets” purportedly identified in Appendix A.

VI.

PURPORTED ANTICOMPETITIVE EFFECTS

52. US Foods admits that Sysco and US Foods compete vigorously against one another and a myriad of other foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco. US Foods further admits that Sysco and US Foods will not compete against each other after they are merged into a single company, but avers that the merged company would be a more robust, efficient, and effective competitor to the thousands of other foodservice distributors and wholesalers, including PFG and DMA, and that customers would directly benefit from the merger. US Foods denies the allegations contained in Paragraph 52 in all other respects. US Foods specifically denies that broadline foodservice distribution services constitute a relevant product market and that there is a national market for foodservice distribution.

A.

The Merger Will Purportedly Likely Harm Competition for “National Customers”

53. US Foods admits that Sysco and US Foods compete vigorously against one another and a myriad of providers to provide products to a variety of foodservice operators. US Foods admits that Sysco and US Foods each have more than sixty distribution centers, as well as truck fleets and salesforces, and that each offer private-label products, order tracking, menu planning, and nutritional information. US Foods denies the allegations contained in Paragraph 53 in all other respects. US Foods specifically denies that broadline foodservice distribution services to “National Customers” constitute a relevant market, that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws, and that Sysco and US Foods are each other’s “closest” competitors. To the extent a response to Table 2 is required, US Foods lacks sufficient information to respond, but specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

54. US Foods lacks information to respond to allegations regarding the preferences underlying unidentified foodservice operators’ purchasing decisions because those preferences vary widely among a diverse set of customers. US Foods avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences. US Foods denies the allegation contained in Paragraph 54 in all other respects. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

55. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco, on the basis of price and non-price terms. US Foods avers that, as in any competitive industry, the perceived pricing of competitors is one of the many factors that a foodservice distributor or wholesaler may take into account when setting its prices. US Foods denies the allegations contained in Paragraph 55 in all other respects, and specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

56. US Foods admits that it competes with a myriad of other foodservice distributors and wholesalers, including Sysco. US Foods lacks information to respond to allegations regarding the motivations underlying unidentified foodservice operators' purchasing decisions because those motivations vary widely among a diverse set of customers in different areas and in different industries. US Foods avers that every foodservice operator has unique needs and purchasing options at any given moment in time and, as such, customers cannot be considered a homogenous bloc with one set of preferences. US Foods denies the allegations contained in Paragraph 56 in all other respects, and specifically denies that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

57. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco. US Foods avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Foods denies the allegations contained in Paragraph 57 in all other respects, and specifically denies that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

58. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco, on the basis price and non-price terms. US Foods avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Foods denies the allegations contained in Paragraph 58 in all other respects, and specifically denies that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

59. US Foods denies the allegations contained in Paragraph 59 and specifically denies that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

60. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco, on the basis of price and non-price terms. US Foods further admits that it offers high-quality product and services. US Foods avers that, as in any competitive industry, the perceived products and services of competitors are among the many factors that a foodservice distributor or wholesaler may take into account when establishing its products and services. US Foods further avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Foods denies the allegations contained in Paragraph 60 in all other respects and specifically denies that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

61. US Foods avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Foods denies the allegations contained in Paragraph 61 in all other respects and specifically denies that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

62. US Foods avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Foods denies the allegations contained in Paragraph 62 in all other respects and specifically denies that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

B.

The Merger Will Purportedly Likely Harm Competition for Local Customers

63. US Foods admits that there are some geographic locations that are served by Sysco and US Foods, in addition to many other distributors, cash-and-carry stores, specialty distributors, and wholesalers, and that Respondents compete with each other and a myriad of other distributors, cash-and-carry stores, specialty distributors, and wholesalers in those locations. US Foods denies the allegations contained in Paragraph 63 in all other respects.

64. US Foods admits that regional broadline distributors are present in local markets. US Foods avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Foods denies the allegations contained in Paragraph 64 in all other respects.

65. US Foods admits that it competes vigorously against all foodservice distributors, cash-and-carry stores, specialty distributors, and wholesalers, including Sysco. US Foods avers that the Commission's reference to an unspecified database, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the cited material, once identified, for a complete and accurate description of its contents. US Foods lacks sufficient information to form a belief as to the truth of allegations concerning requests made by unidentified Sysco sales representatives. US Foods denies the allegations contained in Paragraph 65 in all other respects.

66. US Foods lacks information sufficient to admit or deny the unspecified statements by unidentified customers or unidentified Sysco employees. US Foods avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the

quoted documents, once identified, for a complete and accurate description of their contents. US Foods denies the allegations contained in Paragraph 66 in all other respects.

VII.

PURPORTED LACK OF COUNTERVAILING FACTORS

A.

Purported Barriers to Entry and Expansion

67. US Foods avers that the Commission's selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and US Foods respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Foods denies the allegations contained in Paragraph 67 in all other respects. US Foods specifically denies that broadline foodservice distribution services to "National Customers" constitute a relevant market, that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws, and that there are significant barriers to entry for foodservice distribution providers.

68. On information and belief, US Foods admits that Sysco currently operates 72 distribution centers. US Foods admits that it currently operates 61 distribution centers. US Foods denies the allegations contained in Paragraph 68 in all other respects, and specifically denies that "National Customers," as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

69. US Foods denies the allegations contained in Paragraph 69 and specifically denies that there are significant barriers to entry for foodservice distribution providers and that stretch distribution is more costly.

70. US Foods lacks information sufficient to form a belief as to the truth of the allegations concerning other foodservice distributors' internal considerations regarding the offering of foodservice distribution services. US Foods denies the allegations contained in Paragraph 70 in all other respects.

71. US Foods admits that foodservice distributors are subject to certain regulatory requirements. US Foods denies the allegations contained in Paragraph 71 in all other respects. US Foods specifically denies that there are significant barriers to entry for foodservice distribution providers.

B.

Efficiencies

72. US Foods denies the allegations contained in Paragraph 72.

C.

The Proposed Divestiture

73. US Foods admits that on February 2, 2015, Respondents announced that Sysco would divest 11 US Foods distribution centers by selling them to PFG, upon consummation of the Sysco-US Foods merger. US Foods admits that it currently operates 61 distribution centers and that, on information and belief, Sysco would operate 122 distribution centers post-merger. US Foods otherwise denies the allegations contained in Paragraph 73, except to the extent that Paragraph 73 contains legal conclusions to which no response is required. US Foods specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

74. US Foods denies the allegations contained in Paragraph 74 and specifically denies that “National Customers,” as that phrase is used by the Commission, represent a unique class of foodservice customers for purposes of the antitrust laws.

75. US Foods denies the allegations contained in Paragraph 75.

VIII.

PURPORTED VIOLATION

COUNT I—PURPORTED ILLEGAL AGREEMENT

76. Except as where specifically admitted above, the allegations contained in Paragraphs 1 through 75 of the Complaint are denied.

77. US Foods denies the allegations contained in Paragraph 77.

COUNT II—PURPORTED ILLEGAL ACQUISITION

78. Except as where specifically admitted above, the allegations contained in Paragraphs 1 through 75 of the Complaint are denied.

79. US Foods denies the allegations contained in Paragraph 79.

AFFIRMATIVE AND OTHER DEFENSES

US Foods asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with Commission:

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. The alleged relevant geographic market definitions fail as a matter of law.
4. The Complaint fails adequately to allege a relevant product market.

5. The Complaint fails to allege harm to competition.
6. The Complaint fails to allege harm to any consumers.
7. The Complaint fails to allege harm to consumer welfare.
8. The combination of the Respondents' businesses will be procompetitive. The merger will result in substantial merger-specific efficiencies, cost synergies, and other procompetitive effects that will directly benefit consumers. These benefits greatly outweigh any and all proffered anticompetitive effects.
9. US Foods reserves the right to assert any other defenses as they become known to US Foods.

WHEREFORE, having fully answered the Complaint, US Foods respectfully requests that the Commission: (1) deny the Commission's contemplated relief; (2) dismiss the Complaint in its entirety with prejudice; (3) award US Foods its costs of suit, including expert's fees and reasonable attorneys' fees, as may be allowed by law; and (4) award such other or further relief as the Commission may deem just and proper.

Dated: March 5, 2015

Respectfully submitted,

By: /s/ Joseph F. Tringali

Joseph F. Tringali

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Counsel for Respondents US Foods Holding Corp. and US Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2015 with the Court's permission, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
SECRETARY
FEDERAL TRADE COMMISSION
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I also certify that I delivered via electronic mail and U.S. Mail a copy of the foregoing document to:

The Honorable Judge D. Michael Chappell
ADMINISTRATIVE LAW JUDGE
FEDERAL TRADE COMMISSION
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I further certify that I delivered via electronic mail a copy of the foregoing document to:

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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

March 5, 2015

By: /s/ Joseph F. Tringali

Joseph F. Tringali

Notice of Electronic Service for Public Filings

I hereby certify that on March 05, 2015, I filed via hand a paper original and electronic copy of the foregoing Answer and Defenses of Respondent USF Holding Corp. and US Foods, Inc. , with:

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I hereby certify that on March 05, 2015, I filed via other means, as provided in 4.4(b) of the foregoing Answer and Defenses of Respondent USF Holding Corp. and US Foods, Inc. , with:

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