of section 733(b) of the Act (19 U.S.C. 1673b(b)).[3] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 2019 (84 FR 28069). The hearing was held in Washington, DC on October 3, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on November 21, 2019. The views of the Commission are contained in USITC Publication 4992 (November 2019), entitled *Strontium Chromate from Austria and France: Investigation Nos. 731–TA–1422–1423 (Final).*

By order of the Commission.

Issued: November 21, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–25666 Filed 11–25–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1100]

Certain Reload Cartridges for Laparoscopic Surgical Staplers; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainants' Unopposed Motion To Amend the Complaint, Case Caption, and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 14) of the presiding administrative law judge (''ALJ'') granting an unopposed motion to amend the complaint, case caption, and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On July 5, 2019, by publication in the **Federal Register**, the Commission instituted this investigation based on a complaint filed by Ethicon LLC of Guaynabo, PR; Ethicon Endo-Surgery, Inc. of Cincinnati, Ohio; and Ethicon US, LLC of Cincinnati, Ohio (collectively ''Ethicon''). 84 FR 32220 (July 5, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain reload cartridges for laparoscopic surgical staplers by reason of infringement of one or more claims of U.S. Patent Nos. 9,844,379; 9,844,369; 7,490,749; 8,479,969; and 9,113,874. *Id.* The Commission's notice of investigation names the following as respondents: Intuitive Surgical Inc., of Sunnyvale, CA; Intuitive Surgical Operations, Inc., of Sunnyvale, CA; Intuitive Surgical Holdings, LLC, of Sunnyvale, CA; and Intuitive Surgical S. De R.L. De C.V. of Mexicali, Mexico. *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On September 24, 2019, Ethicon moved for leave to amend the complaint, case caption, and notice of investigation. The complaint originally identified the accused products as ''laparoscopic surgical staplers, associated reload cartridges, and components thereof'' and was titled ''Certain Laparoscopic Surgical Staplers, Reload Cartridges, and Components Thereof,'' but was modified by Ethicon prior to institution to remove staplers and stapler components from the description of accused products and the case caption. Ethicon's motion sought to reincorporate staplers and stapler components into the description of the accused products and the case caption.

On October 23, 2019, the ALJ issued Order No. 14, the subject ID, granting Ethicon's motion. The ALJ found that Ethicon's motion was supported by good cause and that the proposed amendments would not unnecessarily prejudice the public interest or the rights of the parties to the investigation.

No petitions for review were filed.

The Commission has determined not to review the subject ID. From this point forward, the caption for this investigation shall be ''Certain Laparoscopic Surgical Staplers, Reload Cartridges, and Components Thereof.''

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR 210).

By order of the Commission.

Issued: November 21, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–25682 Filed 11–25–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Symrise AG, 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 District of Columbia in *United States of America* v. *Symrise AG, et al.,* Civil Action No. 1:19–cv–03263. On October 30, 2019, the United States filed a Complaint alleging that Symrise AG's proposed acquisition of IDF Holdco, Inc. and ADF Holdco, Inc.'s chicken-based food ingredients business would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Symrise AG to divest its Banks County facility in Georgia that manufactures and sells chicken-based food ingredients.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division

[3] 84 FR 22438 and 84 FR 22443 (May 17, 2019).

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, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Robert Lepore, Acting Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8000, Washington, DC 20530 (telephone: 202–307–6349).

Amy Fitzpatrick,

Counsel to the Senior Director of Investigations and Litigation.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20530 Plaintiff, v. *Symrise AG, Mühlenfeldstraβe 1, 37603 Holzminden, Germany* and *IDF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809* and *ADF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809,* Defendants.

CASE NO.: 1:19–cv–03263
JUDGE: Hon. Royce Lamberth

Complaint

The United States of America brings this civil action pursuant to Section 7 of the Clayton Act, 15 U.S.C. 18, to enjoin the acquisition of International Dehydrated Foods, LLC (''IDF'') and American Dehydrated Foods, LLC (''ADF'') (collectively ''IDF/ADF'') from IDF Holdco, Inc. and ADF Holdco, Inc. by Symrise AG (''Symrise'') and to obtain other equitable relief. The United States alleges as follows:

I. Nature of the Action

1. Symrise's acquisition of IDF/ADF would combine two of the leading manufacturers and sellers of chicken-based food ingredients made from human-grade natural chicken, including chicken broth, chicken fat, and cooked chicken meat (hereafter ''chicken-based food ingredients'') and sold to food manufacturers in the United States. Symrise and IDF/ADF manufacture chicken-based food ingredients for use by manufacturers of food for people and pets (collectively ''food manufacturers'') in products such as soups, stews, sauces, gravies, dry seasonings, and baking mixes.

2. Food manufacturers purchase chicken-based food ingredients to provide taste, nutritional content, and functional characteristics to the food manufacturers' end products. Food manufacturers have few alternatives to chicken-based food ingredients, which provide the unique flavor and texture profiles of food manufacturers' branded soups, sauces, and gravies. In addition, United States Department of Agriculture regulations require chicken-based food ingredients to be manufactured domestically, which prevents food manufacturers from turning to imports.

3. IDF/ADF is the established United States market leader in the manufacture and sale of chicken-based food ingredients for food manufacturers, with a market share of approximately 54%.

4. Symrise, a leading manufacturer of chicken-based food ingredients in Europe recently entered the United States market by building a state-of-the-art chicken-based food ingredients plant in Banks County, Georgia. The plant opened in October 2018. Symrise is poised to become the second-largest manufacturer of chicken-based food ingredients in the United States, as its newly opened Banks County plant represents 23% of the manufacturing capacity in the market.

5. Symrise now seeks to acquire IDF/ADF. If the acquisition is allowed to proceed, the competition between these companies in the manufacture and sale of chicken-based food ingredients in the United States will be lost, and the merged firm will control 75% of the capacity in the market, leading to higher prices, reduced service quality, and diminished innovation.

6. Accordingly, as alleged more specifically below, the acquisition, if consummated, likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. Defendants and the Transaction

7. Defendant Symrise is a global company headquartered in Holzminden, Germany.

Symrise has diversified operations in multiple lines of business, including a chicken-based food ingredients business run by its Diana Food and Diana Pet Food subsidiaries. Symrise is the market leader in Europe in manufacturing and selling chicken-based food ingredients to food manufacturers. In 2019, Symrise began to sell products from its newly constructed plant in Banks County, Georgia, to United States food manufacturers, including to some of IDF/ADF's largest customers. The plant represents approximately 23% of the capacity in the market for the manufacture and sale of chicken-based food ingredients.

8. Defendants IDF Holdco, Inc. and ADF Holdco, Inc. are the ultimate parent entities of IDF and ADF, family-owned limited liability companies headquartered in Springfield, Missouri. IDF manufactures chicken-based food ingredients. ADF holds the family's interests in Food Ingredient Technologies, LLC (''Fitco'') which also manufactures chicken-based food ingredients. The chicken-based food ingredients operations of IDF and ADF's Fitco business are run in an integrated fashion and include plants in Anniston, Alabama and Monett, Missouri. Like Symrise, IDF/ADF manufactures and sells chicken-based food ingredients to food manufacturers in the United States. IDF/ADF is the largest supplier of chicken-based food ingredients in the United States with a capacity-based market share of approximately 54% and 2018 fiscal year sales of $177 million.

9. Pursuant to a Purchase Agreement dated January 31, 2019 (''Transaction''), Symrise will acquire IDF/ADF, and related assets for approximately $900 million.

III. Jurisdiction and Venue

10. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

11. Defendants manufacture chicken-based food ingredients in the flow of interstate commerce, and their sale of chicken-based food ingredients substantially affects interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

12. Defendants have consented to venue and personal jurisdiction in the District of Columbia for adjudication of this matter. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(b) and (c).

IV. Relevant Market

13. Chicken-based food ingredients manufactured and sold to food manufacturers is a relevant product market and line of commerce under Section 7 of the Clayton Act. Food manufacturers have no reasonable substitutes for chicken-based food ingredients. Because food manufacturers have no reasonable alternatives to chicken-based food ingredients, few, if any, food manufacturers would substitute to other products in response to a price increase.

14. Food manufacturers choose from chicken-based food ingredients suppliers that can provide the flavor, nutritional profile, and functional characteristics required by the food manufacturers' manufacturing processes. The market for chicken-based food ingredients is nationwide. Symrise and IDF/ADF compete with one another for customers throughout the United States.

15. A well-accepted methodology for assessing whether a group of products and services sold in a particular area constitutes a relevant market under the Clayton Act is to ask whether a hypothetical monopolist over all the products sold in the area would raise prices for a non-transitory period by a small but significant amount, or whether enough customers would switch to other products or services or purchase outside the area such that the price increase would be unprofitable. *Fed. Trade Comm'n & U.S. Dep't of Justice Horizontal Merger Guidelines* (2010); *accord Fed. Trade Comm'n* v. *Whole Foods Mkt.,* 548 F.3d 1028, 1038 (D.C. Cir. 2008). A hypothetical monopolist of chicken-based food ingredients manufactured and sold in the United States likely would impose at least a small but significant price increase because few if any customers would substitute to purchasing other products. Therefore, the manufacture and sale of chicken-based food ingredients in the United States is a relevant market under Section 7 of the Clayton Act.

V. Likely Anticompetitive Effects

16. The proposed acquisition is likely to lead to anticompetitive effects. As an initial matter, the transaction is presumptively anticompetitive. The Supreme Court has held that mergers that significantly increase concentration in concentrated markets are presumptively anticompetitive and, therefore, unlawful. *See United States* v. *Phila. Nat'l Bank,* 374 U.S. 321, 363–65 (1963). To measure market concentration, courts often use the Herfindahl-Hirschman Index (''HHI'') as described in the *Horizontal Merger Guidelines.*[1] Mergers that increase the HHI by more than 200 and result in an HHI above 2,500 in any market are presumed to be anticompetitive.

17. The relevant market is highly concentrated and would become more concentrated as a result of the Transaction. IDF/ADF's share of the relevant market based on its maximum capacity to process chicken into ingredients is approximately 54%. Symrise's new Banks County plant has the capacity to take a 23% share of the market. None of the remaining manufacturers holds larger than 6% share.

18. The market for the manufacture and sale of chicken-based food ingredients in the United States currently is highly concentrated, with an HHI over 3,500. The Transaction would increase the HHI by about 2,400, rendering the Transaction presumptively anticompetitive under Supreme Court precedent.

19. Defendants are two of only a few firms that have the technical capabilities and expertise to manufacture and sell chicken-based food ingredients in the United States. Defendants vigorously compete on price, service quality, and product development, and customers have benefitted from this competition.

20. The Transaction would eliminate the competition between Defendants to manufacture and sell chicken-based food ingredients to food manufacturers in the United States. After the Transaction, Symrise would gain the incentive and ability to raise its prices significantly above competitive levels, reduce its investment in research and development, and provide lower levels of service.

VI. Absence of Countervailing Factors

21. Entry by a new manufacturer of chicken-based food ingredients or expansion of existing marginal manufacturers would not be timely, likely, and sufficient to prevent the substantial lessening of competition caused by the elimination of IDF/ADF as an independent competitor.

22. Successful entry into the market for the manufacture and sale of chicken-based food ingredients in the United States is difficult, costly, and time consuming. Any entrant would need to develop infrastructure, research and development capabilities to allow it to manufacture ingredients to match the taste and other characteristics desired by customers, supply relationships to provide reliable access to raw materials, and a track record of successfully meeting customer needs in the food industry. Because of the significant investment food manufacturers make in developing products according to specific taste, nutritional, and other characteristics, as well as the high costs of any problem or delay in production, food manufacturers are unlikely to switch away from established chicken-based food ingredients manufacturers, making it difficult for new chicken-based food ingredients manufacturers to enter the market. As an example, it took Symrise, an experienced food ingredients manufacturer with extensive chicken-based food ingredients operations in Europe, almost three years to construct the plant in Banks County, Georgia, that opened recently. Finally, as noted above, United States Department of Agriculture regulations prevent food manufacturers from importing products from abroad.

23. Defendants cannot demonstrate cognizable and merger-specific efficiencies that would be sufficient to offset the Transaction's anticompetitive effects.

VII. Violation Alleged

24. The effect of the Transaction, if consummated, would likely be to lessen substantially competition for chicken-based food ingredients manufactured and sold to food manufacturers in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Unless restrained, the Transaction would likely have the following effects, among others:

(a) Competition in the market for chicken-based food ingredients sold to food manufacturers in the United States would be substantially lessened;

(b) prices for chicken-based food ingredients sold to food manufacturers in the United States would increase;

(c) the quality of chicken-based food ingredients sold to food manufacturers in the United States would decrease; and

(d) innovation in the market for chicken-based food ingredients sold to food manufacturers in the United States would diminish.

VIII. Requested Relief

25. The United States requests that this Court:

(a) Adjudge Symrise's proposed acquisition of IDF/ADF to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Permanently enjoin and restrain Defendants from consummating the proposed acquisition by Symrise of IDF/ADF or from entering into or carrying out any contract, agreement, plan, or

[1] *See* U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), *available at http://www.justice.gov/atr/public/guidelines/hmg-2010* html. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

understanding, the effect of which would be to combine Symrise and IDF/ADF;

(c) Award the United States its costs for this action; and

(d) Award the United States such other and further relief as the Court deems just and proper.

Dated: October 30, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

Makan Delrahim
Assistant Attorney General

Bernard A. Nigro, Jr.
Deputy Assistant Attorney General

Kathleen S. O'neill
Senior Director of Investigations & Litigation

Robert A. Lepore
Acting Chief, Transportation, Energy & Agriculture Section

Patricia C. Corcoran
Assistant Chief, Transportation, Energy & Agriculture Section

William M. Martin
Jeremy Evans (D.C. Bar #478097)
Barbara W. Cash
Attorneys for the United States, U.S. Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20530, (202) 598–8193, William.martin@usdoj.gov.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20530 Plaintiff, v. *Symrise AG, Mühlenfeldstraβe 1, 37603 Holzminden, Germany* and *IDF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809* and *ADF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809,* Defendants.

[Proposed] Final Judgment

Whereas, Plaintiff United States of America, filed its Complaint on October 30, 2019, the United States and Defendants, Symrise AG (''Symrise''), ADF Holdco, Inc. (''ADF Seller'') and IDF Holdco, Inc. (''IDF Seller''), 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, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestiture required below can and will be made and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture 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

The Court has jurisdiction over the subject matter of and each of the parties to this action.

The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

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

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

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

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

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

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

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

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

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

J. ''Divestiture Assets'' means:

1. All interests and rights Diana Food holds in the Banks County facility;

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

3. All tangible assets located at the Banks County facility and all tangible assets located elsewhere primarily related to the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility. Tangible assets includes, but is not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization relating to Chicken-Based Food Ingredients manufactured at the Banks County facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records relating to Chicken-Based Food Ingredients manufactured at the Banks

County facility. Defendant Symrise may retain a copy of records necessary for tax, accounting, or regulatory purposes. To the extent any records also include commercially sensitive information, proprietary information, or personally identifiably information pertaining solely to Defendant Symrise's businesses, operations, or products not being transferred to Acquirer, Defendant Symrise may withhold or redact such portions of said records prior to Defendant Symrise's transfer to Acquirer;

4. All intangible assets used in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, including, but not limited to all patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names; technical information; computer software and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees relating to Chicken-Based Food Ingredients manufactured at the Banks County facility including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments.

Notwithstanding the above definition,

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

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

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

III. Applicability

A. This Final Judgment applies to Symrise, IDF Seller, and ADF Seller as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed, within forty-five (45) calendar days after the entry of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event the Defendants attempt to divest the Divestiture Assets to an Acquirer other than Kerry, Inc., Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide Acquirer and the United States with organization charts and other information relating to the personnel who spend all, or a majority of their business time involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, including name, job title, experience, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable Acquirer to make offers of employment. Upon request, Defendants shall make such personnel available for interviews with Acquirer during normal business hours at a mutually agreeable location and will not interfere with any negotiations by Acquirer to employ such personnel involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility. Interference with respect to this paragraph includes, but is not limited to, offering to increase the salary or benefits of such personnel involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility other than as part of a company-wide increase in salary or benefits granted in the ordinary course of business.

D. Defendant Symrise shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel who spend all, or a majority of their business time involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility and to make inspections of the Banks County facility; access to any and all environmental, zoning, and other permit documents and information; access to any of the underlying documents for the Diana Food Bonds-for-Title Transaction; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process. For any employees who elect employment with Acquirer, Defendants shall waive all noncompete and nondisclosure agreements. For a period of eighteen (18) months after the divestiture has been completed under Section IV or V, Defendants may not solicit to hire, or hire, any employee hired by Acquirer, unless: (1) Acquirer agrees in writing that Defendants may solicit or hire that employee; or, (2) the employee responds to a general advertisement or solicitation not targeted at employees who accept employment with Acquirer. Nothing in

Paragraphs IV(C) and (D) shall prohibit Defendant Symrise from maintaining reasonable restrictions on the disclosure by any employee who accepts an offer of employment with Acquirer of Defendant Symrise's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to Defendant Symrise's businesses and clients, and (3) unrelated to the Divestiture Assets.

E. Defendant Symrise shall warrant to Acquirer that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets. At the option of Acquirer, and subject to approval by the United States, Defendant Symrise shall enter into a transition services agreement to provide back office and information technology support for the Banks County facility for a period ranging between three (3) and twenty (20) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional three (3) months. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing needed assistance. The Symrise employees tasked with providing these transition services may not share any competitively sensitive information of Acquirer with any other Symrise, IDF Seller, or ADF Seller employee. If Acquirer seeks an extension of the term of this transition services agreement, Defendants shall notify the United States in writing at least three (3) months prior to the date the transition services agreement expires.

G. Defendant Symrise shall warrant to Acquirer (1) that there are no material defects in the environmental, zoning, certifications, or other permits pertaining to the operation of the Divestiture Assets, and (2) that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, certifications, or other permits relating to the operation of the Divestiture Assets.

H. At the option of Acquirer, and with the written consent of the United States, Defendants may convey, transfer, or otherwise sell Divestiture Assets to the Development Authority in exchange for tax-exempt bonds pursuant to the Diana Food Bonds-for-Title Transaction arrangement in order to facilitate the divestiture. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business in the manufacture and sale of Chicken-Based Food Ingredients in the United States, and that the divestiture will remedy the competitive harm alleged in the Complaint. If any of the terms of an agreement between Defendants and Acquirer to effectuate the divestitures required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment shall determine Defendants' obligations. The divestiture, whether pursuant to Section IV or V of this Final Judgment:

1. Shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the market for the manufacture and sale of Chicken-Based Food Ingredients; and

2. shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants gives Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendant Symrise pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any agents and consultants retained by the Divestiture Trustee, all remaining money shall be paid to Defendant Symrise and the trust shall then be terminated. The compensation of the Divestiture Trustee and any agents and consultants retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendant Symrise are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any agents or consultants, provide

written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information, or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered by this Final Judgment within six (6) months of appointment, the Divestiture Trustee must promptly provide the United States with a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. The United States will have the right to make additional recommendations consistent with the purpose of the trust to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of the Final Judgment, which, if necessary, may include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. In the event Defendants are divesting the Divestiture Assets to an Acquirer other than Kerry, Inc., within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not, in its sole discretion, it objects to the Acquirer or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit, signed by each Defendant's chief financial officer and general counsel, describing the fact and manner of Defendants' compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in

Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, 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, including agents 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 Defendants, 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 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 responses 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 the 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).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the 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.

XIII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of the Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in this Section.

XIV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

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, 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.

Date: _____

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

United States District Judge

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20530, Plaintiff, v. *Symrise AG, Mühlenfeldstraβe 1, 37603 Holzminden, Germany* and *IDF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809* and *ADF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809,* Defendants.

Case No.: 1:19–cv–03263
Judge: Hon. Royce Lamberth

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), 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

On January 31, 2019, Symrise AG (''Symrise'') agreed to acquire International Dehydrated Foods, LLC (''IDF''), and American Dehydrated Foods, LLC (''ADF'') (collectively ''IDF/ADF''), from IDF Holdco, Inc. and ADF Holdco, Inc., for approximately $900 million. The United States filed a civil antitrust Complaint on October 30, 2019, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the manufacture and sale of chicken-based food ingredients (including chicken broth, chicken fat, and cooked chicken meat) for manufacturers of food for people and pets (collectively ''food manufacturers'') in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest, to Kerry, Inc. (''Kerry''), a global manufacturer of ingredients and recipe solutions for the food and beverage industry, or another acquirer approved by the United States, Symrise's newly constructed facility located in Banks County, Georgia (the ''Banks County facility'') which was built to manufacture and sell chicken-based food ingredients; along with certain tangible and intangible assets (collectively, the ''Divestiture Assets''). Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the Divestiture Assets are operated as a competitively independent, economically viable and ongoing business concern, which will remain independent and uninfluenced by Symrise, and that competition is maintained during the pendency of the ordered divestiture.

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 will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants

Symrise, an Aktiengesellschaft, or publicly listed company, organized under the laws of Germany, is headquartered in Holzminden, Germany. Symrise is active globally in three main business segments: (i) Flavor; (ii) nutrition; and (iii) scent and care. In its 2018 fiscal year, Symrise had global sales of EUR 3.154 billion (or approximately $3.53 billion). Symrise's nutrition segment, represented by its Diana division, which also operates in the United States, specializes in producing natural functional ingredients for food manufacturers and aquaculture.

In October 2018, Diana Food, part of the Diana division within Symrise, opened the Banks County facility. The Banks County facility marked Symrise's entrance into the U.S. market for the manufacture and sale of chicken-based food ingredients for food manufacturers, to compete with incumbent suppliers, such as IDF/ADF. Production at the Banks County facility began in 2019. Diana Food's sales for chicken-based food ingredients manufactured at the Banks County facility continue to ramp up and Symrise expects, and has budgeted for, significant sales by year-end 2019. Moreover, Symrise envisions continuing to gain shares of the U.S. market thereafter.

IDF Holdco, Inc. and ADF Holdco, Inc. are the ultimate parent entities of IDF and ADF. IDF and ADF are limited liability companies headquartered in Springfield, Missouri. IDF manufactures and sells chicken-based food ingredients. ADF owns 50% of Food Ingredient Technologies, LLC (''Fitco'') which also manufactures and sells chicken-based food ingredients. Although legally separate entities, IDF and ADF operate as an integrated business unit and collectively are the largest developers and manufacturers in the United States of chicken-based food ingredients for food manufacturers. The companies develop and manufacture chicken-based food ingredients at facilities in Monett, Missouri, and Anniston, Alabama. IDF/ADF's 2018 annual total sales were approximately $266 million, of which approximately $177 million was attributable to the sale of chicken-based food ingredients.

B. The Competitive Effects of the Transaction

1. Relevant Markets

As explained in the Complaint, the manufacture and sale of chicken-based food ingredients (including chicken broth, chicken fat, and cooked chicken meat) for food manufacturers is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. 18. The ingredients at issue are human-grade quality and are relied upon by food manufacturers for their taste and nutritional attributes. The chicken broth, chicken fat, and cooked chicken meat are each available in different forms and offer different taste profiles, nutrition, and ingredient characteristics that allow for limited substitution with other products.

Alternatives to chicken-based food ingredients may lack the taste, nutritional attributes, form, or labelling abilities desired by food manufacturers. For example, a purchaser of human-grade natural chicken broth for use in a finished chicken broth may not switch to turkey broth. Nor is a purchaser of human-grade natural cooked chicken meat likely to switch to turkey, tofu, or any other meat product for use in chicken noodle soup when the price of human-grade natural chicken broth or cooked chicken meat increases by a significant non-transitory amount.

Additionally, some pet food manufacturers producing end-products with certain ingredient or health claims use only human-grade chicken-based food ingredients, and cannot make the necessary ingredient or health claims with non-human-grade products.

Although some food manufacturers may be able to reformulate their end-products to decrease the amount of chicken-based food ingredients called for in a certain formula or recipe, at least some manufacturers may not be able to reformulate to an extent that would allow for complete substitution. Additionally, even a small reformulation to limit the amount of chicken-based food ingredients used in a given recipe requires time-consuming

reformulation work by food manufacturers. This is especially true because a food manufacturer may need its end-product to maintain the same nutritional and taste attributes that consumers expect, making switching, even in small amounts, impractical and potentially costly. For these reasons, a hypothetical profit-maximizing monopolist manufacturer and seller of chicken-based food ingredients for food manufacturers in the United States could profitably impose at least a small but significant and non-transitory price increase.

The relevant geographic market for the manufacture and sale of chicken-based food ingredients for food manufacturers is the United States. Domestic customers of chicken-based food ingredients for use in food for human consumption or pet consumption cannot buy the products from outside of the United States to use domestically because of restrictions imposed by the United States Department of Agriculture (''USDA'') that prohibit importation into the United States of natural chicken ingredients. Accordingly, the United States is the relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Competitive Effects

As explained in the Complaint, the proposed acquisition would eliminate the burgeoning competition between IDF/ADF and Symrise, the likely effect of which would be a substantial lessening of competition for the manufacture and sale of chicken-based food ingredients for food manufacturers, resulting in higher prices and lower quality products. The relevant market is highly concentrated, with IDF/ADF having a 54% market share by capacity of the chicken-based food ingredients market and 2018 sales of $177 million. Symrise recently entered this market through the construction of the Banks County facility which began to sell chicken-based food ingredients to food manufacturers earlier this year, including to some of IDF/ADF's largest customers. The brand-new plant has the capacity to take approximately 23% of the market, making it IDF/ADF's largest competitor. This would give the merged company more than three-quarters of the market by capacity for the manufacture and sale of chicken-based food ingredients, with no other individual competitor having more than a 6% share.

3. Entry

As alleged in the Complaint, entry of additional competitors into the market for the manufacture and sale of chicken-based food ingredients for food manufacturers is unlikely to be timely, likely, or sufficient to prevent the harm to competition that would result if the proposed transaction were consummated.

Any new entrant would need to develop infrastructure and research and development capabilities in order to start manufacturing and selling chicken-based ingredients. This would require significant time and financial resources as Symrise's recent entry experience demonstrates. Symrise, a company with significant chicken-based food ingredient operations in Europe, still needed almost three years and over $54 million dollars to construct the Banks County facility. Any new entrant also would need to work with food manufacturers to develop chicken-based food ingredients that meet the specific flavor, nutritional and other characteristics sought by the customer. This often requires extensive and time-consuming testing between a facility and the food manufacturer customer. Finally, food manufacturers often are reluctant to switch from an established chicken-based food ingredients manufacturer given the close relationships that develop, presenting a further hurdle to any new entrant.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint. The proposed Final Judgment requires Symrise, within forty-five (45) calendar days after the entry of the Hold Separate by the Court, to divest the Divestiture Assets to Kerry or another acquirer approved by the United States. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that they can and will be operated by the acquirer as a viable, ongoing business that can compete effectively in the market for the manufacture and sale of chicken-based food ingredient for food manufacturers. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with prospective acquirers.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition that would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose. Paragraph XIII(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired. This provision, therefore,

makes clear that, for four years after the Final Judgment has expired, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or 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 three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists 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 Defendants.

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 U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Robert Lepore, 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

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Symrise's acquisition of IDF/ADF. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the manufacture and sale of chicken-based food ingredients for food manufacturers in the United States. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a 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 mechanism to enforce the final judgment are clear and manageable'').

As the U.S. 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 specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court is ''not to make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[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.'' *W. Elec. Co.,* 993

F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.''' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added 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); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first 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 Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

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.

Dated: November 18, 2019

Respectfully submitted,

Jeremy Evans, (DC Bar #478097) ,
Barbara W. Cash,
William M. Martin,
United States Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, Liberty Square Building, 450 Fifth Street NW, Suite 8000, Washington, DC 20530, Telephone: (202) 598–8193.

[FR Doc. 2019–25600 Filed 11–25–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 08–19]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Thursday, December 5, 2019, at 10:00 a.m.

PLACE: All meetings are held at the Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Brian Simkin,

Chief Counsel.

[FR Doc. 2019–25713 Filed 11–22–19; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0019]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change of a Currently Approved Collection. Requirement That Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (the Department), Civil Rights Division, Disability Rights Section (DRS), will