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Miller, State Attorneys General Join FTC in Challenging Proposed Sysco-US Foods Merger

Miller: merger would enable Sysco to control up to 90 percent of Omaha-Council Bluffs food distribution market

(DES MOINES, Iowa) Attorney General Tom Miller and a bipartisan group of state attorneys general today joined the Federal Trade Commission’s administrative complaint challenging a proposed merger between food distribution giants Sysco and US Foods.

“We allege this merger would violate antitrust laws by significantly reducing food distribution competition across the country, and particularly in western Iowa,” Miller said. “The result would be higher prices for Iowa consumers who eat away from home, and higher costs for Iowa restaurants, school districts, hospitals and hotels.”

Attorneys general from nine states including Iowa, plus the District of Columbia, signed onto the complaint.

The complaint alleges that if the merger goes forward as proposed, foodservice customers, including restaurants, hospitals, hotels, and schools, would likely face higher prices and diminished service than would be the case but for the merger. The merger would affect the broadline food distribution industry nationwide, and would significantly reduce competition in 32 local markets, including the Omaha-Council Bluffs market.

The FTC also authorized staff to seek in federal court a temporary restraining order and a preliminary injunction to prevent the parties from consummating the merger, and to maintain the status quo pending the administrative proceeding.

Sysco and US Foods are – by far – the largest broadline foodservice
distributors in the United States. Broadline distributors offer extensive product lines, including national-brand and private-label food products, and provide frequent and flexible delivery, high levels of customer service, and other value-added services such as order tracking, menu planning, and nutritional information.

According to the FTC complaint, a combined Sysco/US Foods would account for 75% of the national market for broadline distribution services. In addition, the parties would also hold high shares in a number of local markets, including western Iowa.

As detailed in the complaint, the merger presents a significant risk of competitive harm for two sets of customers who rely on broadline foodservice distribution:

National customers: Sysco and US Foods are the only broadline distributors with a truly national footprint, and compete vigorously with each other to meet the needs of customers with foodservice locations dispersed nationwide or across multiple regions of the country. For example, Sysco and US Foods are the only broadline distributors with numerous distribution centers spread throughout the country. Many hotel chains, foodservice management companies, and group purchasing organizations, for example, consider Sysco and US Foods to be each other’s closest competitor, and in some cases their only meaningful alternatives, for national broadline distribution services.

Local customers: Sysco and US Foods also compete aggressively for the broadline business of independent restaurants and other local customers that operate in a local area or region. The merger is likely to harm competition in 32 local markets, according to the agency’s complaint.

The Commission also charged that the proposed sale of 11 US Foods distribution centers to Performance Food Group would neither enable PFG to replace US Foods as a competitor nor counteract the significant competitive harm caused by the merger. According to the FTC, even with the addition of 11 distribution centers, PFG would not approach the scale or competitiveness of US Foods today, and therefore would not restore the competition eliminated by this merger.

In addition to Iowa, the following state attorneys general joined the FTC’s complaint for a preliminary injunction: California, Illinois, Maryland, Minnesota, Nebraska, Ohio, Tennessee, Virginia, and the District of Columbia.

Today’s Commission vote to issue the administrative complaint and to authorize staff to seek a temporary restraining order and preliminary injunction in federal court was 3-2. The administrative trial is scheduled to begin on July 21.