

DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII

CHARLES E. GRASSLEY, IOWA
ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA

KRISTINE J. LUCIUS, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 17, 2014

The Honorable Edith Ramirez
Chairwoman, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chairwoman Ramirez:

We are writing to you regarding the proposed acquisition of US Foods by Sysco currently being reviewed by the Federal Trade Commission. While we take no position about the legality of the merger under the antitrust laws, we do think it raises important competition issues the Commission should carefully review and closely scrutinize.

The \$231 billion foodservice distribution industry touches every single American consumer who eats meals away from home. Large and small chain restaurants, mom and pop cafés, schools, hospitals, corporate cafeterias, and stadiums all rely on companies like Sysco and US Foods for food and dining supplies. A competitive market for distribution services is essential to ensuring consumers receive the highest quality products and services at the best prices.

If consummated, this merger would combine Sysco and US Foods, the largest and second-largest foodservice companies in the country. The combined entity would control approximately 27 percent of the market by revenue. The next largest competitor would be about one-fifth its size with a five percent market share. According to the American Antitrust Institute, the combined entity would have an estimated 54 percent market share of “broadline service,” *i.e.*, providing food and dining supplies for customers ranging from independent mom and pop restaurants to large and small chain restaurants, schools, hospitals, corporate cafeterias, and stadiums. Critics of this transaction worry that by consolidating the market through a merger of the top two competitors, consumers will face higher prices and reduced quality of service. They also worry that some customers will not consider regional foodservice competitors as adequate substitutes for a national broadline company—leading, perhaps, to a discrete market for national broadline service over which the combined entity would enjoy a monopoly.

Sysco and US Foods, however, contend that the merger will have a number of competitive benefits. Most importantly, they believe they can combine their complementary strengths and achieve \$600 million in cost savings, while their increased size will give them the ability to negotiate lower prices for their customers. The companies also claim that the foodservice industry is and would remain highly competitive after a merger. It is their view that they face intense competition from local and regional foodservice companies and expanding self-service wholesale food stores, and that that competition will prevent them from raising prices or diminishing the quality of their products. They believe, moreover, that as a practical matter a

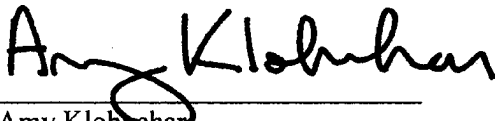
combined entity would not be able to raise prices to an anticompetitive level because, in the low-margin foodservice distribution business, customers have the bargaining power and ability to shift portions of their business to regional and local competitors in response to price increases.

We urge you to closely look at whether regional competitors can be relied upon to counter any market power that Sysco and US Foods may achieve through the merger. Critics contend that regional broadline foodservice providers lack the scale to be able to competitively price against Sysco and US Foods, that switching costs for customers could be high, and that piecing together regional companies is inefficient and would not outweigh the benefits. In particular, we hope you will examine: (1) whether there is a distinct market for national broadline service; (2) the overlap between local and regional markets; and (3) whether adequate competition depends on the willingness of regional foodservice companies to combine or expand their activities and, if so, how likely they are to take those steps successfully. We also hope you will consider the companies' central contention that the proposed merger will result in significant cost savings and price competition that will benefit the many small businesses that use broadline companies.

This is a critically important merger because it has the potential to impact so many food establishments, both large and small, and ultimately affect the prices consumers pay every time they go out to eat. Without reaching any conclusion about whether the Sysco/US Foods transaction would create market dominance or substantial harm to competition, we believe it is essential that the FTC scrutinize the proposed transaction and give careful attention to these concerns.

Thank you for your attention to this matter.

Sincerely,



Amy Klobuchar
Chairman, Subcommittee on
Antitrust, Competition Policy
and Consumer Rights



Mike Lee
Ranking Member, Subcommittee on
Antitrust, Competition Policy
and Consumer Rights