

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE BROILER CHICKEN ANTITRUST  
LITIGATION

Case No. 1:16-cv-08637

This Document Relates To:

The Honorable Thomas M. Durkin  
The Honorable Jeffrey T. Gilbert

*Sysco Corp. v. Tyson Foods, Inc. et al.*, No.  
1:18-cv-00700

*US Foods, Inc. v. Tyson Foods, Inc. et al.*, No.  
1:18-cv-00702

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL SYSCO  
AND US FOODS TO PROVIDE WITNESSES ON CERTAIN RULE 30(b)(6) TOPICS**

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It has been nearly nine months since Defendants<sup>1</sup> served their Rule 30(b)(6) Topics on Sysco and US Foods (collectively, “Plaintiffs”). Despite good-faith attempts by Defendants to obtain responses from Plaintiffs and to reach an appropriate compromise, Defendants remain at an impasse with Plaintiffs regarding several Topics, namely:

- **Category 1:** Plaintiffs’ knowledge and analysis of various Broiler products;<sup>2</sup>
- **Category 2:** Plaintiffs’ monitoring of competitors’ purchases and use of that competitive intelligence;<sup>3</sup>
- **Category 3:** Plaintiffs’ monitoring and projections of market factors and prices for Broiler products;<sup>4</sup> and
- **Category 4:** Plaintiffs’ pre-complaint investigation.<sup>5</sup>

These Topics are central to the claims that Plaintiffs brought against the Defendants here. Sysco and US Foods are the two largest broadline distributors in the United States. The documents they produced in this case demonstrate that they monitored various market factors impacting the price of Broilers – the cost of feed, production levels, and consumer demand – and then used that information to make their Broiler procurement decisions and negotiate Broiler prices. Evidence that Plaintiffs themselves successfully forecasted Broiler prices based on market factors will prove that those factors – not any alleged collusion – actually determined prices. Plaintiffs’ collection

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<sup>1</sup> For purposes of this Motion, “Defendants” includes all undersigned Defendants. Amick Farms and Case Foods were not named in Plaintiffs’ complaints. Sysco Corporation has resolved its claims against Fieldale Farms; accordingly, Fieldale is not a party to this Motion. *See* Dkt. 3552.

<sup>2</sup> *See* Exhibit A (e-mail attaching Rule 30(b)(6) Notice to Sysco and US Foods), Topic 23. The Rule 30(b)(6) Topics for Sysco Corporation are the same as those for US Foods.

<sup>3</sup> *Id.*, Topic 15.

<sup>4</sup> *Id.*, Topics 8, 9, 13, and 18-20.

<sup>5</sup> *Id.*, Topic 26.

and use of competitive intelligence similarly impacted their negotiations of Broiler pricing and will show both the procompetitive motives and effect of such intelligence, and thus is central to this case. Finally, Plaintiffs' pre-complaint investigation, and the extent to which they were aware of any of the alleged conduct, impacts issues such as whether an unlawful understanding can be inferred from Defendants' conduct and whether Plaintiffs' claims are barred by the statute of limitations.

Without providing any real basis, Plaintiffs have refused to testify concerning Categories 1 and 2, despite several attempts by Defendants to compromise and at least five telephonic meet and confers. With respect to Categories 3 and 4, Plaintiffs have agreed to provide testimony only on documents that Defendants have pre-identified: a "compromise" that is unjustified, too narrow, and seeks to flip their burden of adequately preparing a witness (in lawsuits Plaintiffs have chosen to bring) to Defendants. They have dragged their feet in providing Defendants with highly relevant information (and which other DAPs have agreed to provide). With the 30(b)(6) depositions of these Plaintiffs scheduled for December 3 and December 10, Defendants respectfully ask this Court to compel Plaintiffs to produce witnesses on these Topics.<sup>6</sup>

### **BACKGROUND**

Defendants have been trying to complete negotiations regarding their 30(b)(6) Topics to Plaintiffs for over eight months. After months of delay by Plaintiffs, and with the depositions fast

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<sup>6</sup> Pursuant to N.D. Ill. Local Rule 37.2, Defendants certify that the parties have engaged in several meet and confers, including at least five telephone conferences between counsel for Defendants and Plaintiffs' counsel, as evidenced by the exhibits attached to this motion. Although these meet and confers resulted in the agreement on many Topics, the Topics that are subject to this motion remain disputed. The last telephonic meet and confer regarding the Topics subject to this motion occurred on September 21, 2020. *See* Ex. H. Defendants sent a follow up e-mail on September 22 and received a response from Plaintiffs on October 13. *See id.*

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