

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CONAGRA FOODS, INC.,
HORIZON MILLING, LLC,
CARGILL INCORPORATED,
and
CHS INC.,

Defendants.

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order (“Stipulation and Order”):

A. “Acquirer” means Miller Milling, or another entity or entities to which Defendants divest the Los Angeles Mill, the New Prague Mill, the Oakland Mill, and the Saginaw Mill.

B. “Ardent Mills” means the joint venture that will be formed by the Transaction.

C. “Cargill” means Defendant Cargill Incorporated, a privately held company that is incorporated in Delaware and headquartered in Wayzata, Minnesota, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including Ardent Mills, and their directors, officers, managers, agents, and employees.

D. “CHS” means Defendant CHS Inc., a Minnesota corporation headquartered in Inver Grove Heights, Minnesota, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including Ardent Mills, and their directors, officers, managers, agents, and employees.

E. “ConAgra” means Defendant ConAgra Foods, Inc. a Delaware corporation headquartered in Omaha, Nebraska, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including Ardent Mills, and their directors, officers, managers, agents, and employees.

F. “Horizon” means Defendant Horizon Milling, LLC, a joint venture between Cargill and CHS headquartered in Wayzata, Minnesota, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including Ardent Mills, and their directors, officers, managers, agents, and employees.

G. “Divestiture Assets” means the assets listed in Schedule A to the Proposed Final Judgment.

H. “Los Angeles Mill” means Item 2 on Schedule A of the Proposed Final Judgment and the assets associated with Item 2 that are listed in Item 3 on Schedule A of the Final Judgment.

I. “New Prague Mill” means Item 1(a) on Schedule A of the Proposed Final Judgment and the assets associated with Item 1a that are listed in Item 3 on Schedule A of the Proposed Final Judgment.

J. “Oakland Mill” means Item 1(b) on Schedule A of the Proposed Final Judgment and the assets associated with Item 1b that are listed in Item 3 on Schedule A of the Proposed Final Judgment.

K. “Saginaw Mill” means Item 1(c) on Schedule A of the Proposed Final Judgment and the assets associated with Item 1(c) that are listed in Item 3 on Schedule A of the Proposed Final Judgment.

L. “Miller Milling” means Miller Milling Company, LLC, a Minnesota limited liability company headquartered in Minneapolis, Minnesota, its parent, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

M. “Transaction” means the proposed formation of the Ardent Mills Joint Venture pursuant to the March 4, 2013 Master Agreement by and among ConAgra, Cargill, CHS, and HM Luxembourg S.A.R.L., as amended.

II. OBJECTIVES

The Proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of maintaining competition in the production and sale of wheat flour in Northern California, Southern California, Northern Texas, and the Upper Midwest in order to remedy the effects that the United States alleges would otherwise result from the formation of Ardent Mills. This

Stipulation and Order ensures that, prior to such divestiture, the Divestiture Assets will be preserved in at least their current state. This Stipulation and Order also ensures that competition is maintained between ConAgra and Horizon until the divestiture of the Divestiture Assets under the Proposed Final Judgment is accomplished.

III. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the Proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made.

Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

C. Defendants shall abide by and comply with the provisions of the Proposed Final Judgment, pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the Proposed Final Judgment, and shall, from the date of the signing of this Stipulation and Order by the parties, comply with all the terms and provisions of the Proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section XII, as though the same were in full force and effect as an Order of the Court.

D. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and Order.

E. This Stipulation and Order shall apply with equal force and effect to any amended Proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. In the event (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the Proposed Final Judgment is not entered pursuant to this Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the Proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the Proposed Final Judgment, then the parties are released from all further obligations under this Stipulation and Order,

and the making of this Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestiture ordered in the Proposed Final Judgment can and will be made and that Defendants later will raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

**V. HOLD SEPARATE AND PRESERVATION OF
DIVESTITURE ASSETS**

For the duration of the period specified in Section VI

A. Defendants ConAgra and Horizon shall continue to operate as independent, ongoing, economically viable competitive businesses in the production and sale of wheat flour in the United States separate, distinct and apart from each other.

Within twenty (20) days after the filing of this Stipulation and Order, Defendants will inform the United States of the steps they have taken to comply with this Stipulation and Order.

B. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the Proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any asset or assets of the Divestiture Assets.

C. Other than for cause, Defendants shall not transfer or terminate, or alter to the detriment of any employee, any current employment or salary agreements for any employees who, on the date of entry of this Stipulation and Order is subject to the right to hire, as set forth in Section VII to the Proposed Final Judgment.

D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales and shall maintain and adhere to normal repair and maintenance schedules.

E. Defendants ConAgra and Horizon shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income from their respective wheat milling operations.

F. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by the Divestiture Assets, and shall maintain at actual 2012 or 2013 levels, whichever are higher, all promotional, advertising, sales, technical assistance, and marketing support for the products processed by, and the products produced by, the Divestiture Assets. Defendants shall also ensure that all plans and efforts to improve current products produced by the Divestiture Assets are continued.

G. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, consistent with the requirements of Section V(A) and (B).

H. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity, production, and sales and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets. Defendants shall not cause the wasting or deterioration of the Divestiture Assets. Further, Defendants shall make all investments and capital expenditures scheduled as of January 1, 2014.

I. Defendants shall preserve the existing relationships with each Divestiture Mill's suppliers, customers, and others having business relations with the Divestiture Mills, in the ordinary course of the Divestiture Mill's business and in accordance with past practice.

J. Defendants shall take no action that would jeopardize, delay, or impede the sale or use of the Divestiture Assets.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to an Acquirer(s) acceptable to the United States.

**VI. DURATION OF HOLD SEPARATE AND
ASSET PRESERVATION OBLIGATIONS**

Defendants' obligations under Section V of this Stipulation and Order shall remain in effect until the divestiture of the Divestiture Assets in accordance with the Proposed Final Judgment has been completed, unless extended by the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released

from all further obligations under this Stipulation and Order.

Dated: May 20 2014

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF
AMERICA

Mark J. Niefer

MARK J. NIEFER
(D.C. BAR # 470370)
Attorney, Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 8000
Washington, DC 20530
Telephone: (202) 307-6381
Facsimile: (202) 616-2441
E-mail: mark.niefer@usdoj.gov

FOR DEFENDANT CONAGRA

Kathryn M. Fenton

KATHRYN M. FENTON
(D.C. BAR # 250944)
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
Telephone: (202) 879-3746
Facsimile: (202) 626-1700
E-mail: kmfenton@jonesday.com

Kenneth W. Field

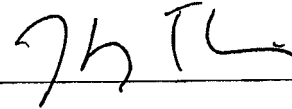
KENNETH W. FIELD
(D.C. BAR # 483267)
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
Telephone: (202) 879-3963
Facsimile: (202) 626-1700
E-mail: kfield@jonesday.com

FOR DEFENDANTS CARGILL, CIIS
and HORIZON

Scott A. Stempel

SCOTT A. STEMPEL
(D.C. BAR # 367284)
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004

Telephone: (202) 739-5211
Facsimile: (202) 739-3001
E-mail: sstempel@morganlewis.com



HARRY T. ROBINS
(NY BAR # 2840833)(NY BAR #
2840833)
Morgan, Lewis & Bockius, LLP
101 Park Avenue
New York, NY 10178
Telephone: (212) 309-6728
Facsimile: (212) 309-6001
E-mail: hrobins@morganlewis.com

ORDER

IT IS SO ORDERED by the Court, this _____ day of _____, 2014.

United States District Judge