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## Teamsters: Sysco/US Foods may have 70 per cent market share

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The Teamsters provide union representation to US Foods drivers.

A labour organisation with thousands of members working at the two largest food service distributors in the US said yesterday that the companies' merger would result in a much higher market share than had previously been acknowledged.

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The Teamsters Union hosted a conference call to present its own research on the market share that Sysco and US Foods would have after a proposed merger, with attorney Donald Baker providing antitrust law commentary.

The companies have estimated their likely post-merger share at 25 per cent, but critics of the tie-up such as the American Antitrust Institute and Food & Water Watch put it at 55 per cent. Alan Meyers, a mergers specialist in the Teamsters' capital strategies department, said the union had performed an extensive field study to produce its own estimate.

The union claims 11,500 Sysco and US Foods warehouse workers and truck drivers, who helped the Teamsters survey the number of employees at and the amount of available floor space in those facilities, which determines how much product can be moved through for distribution. Meyers said 70 per cent is an unweighted average of the markets the union has been able to verify, accounting for all types of customers for which Sysco and US Foods currently compete.

In response to a question from *GCR*, Baker acknowledged that the data are

proxies in calculating market share, whereas the Federal Trade Commission's review of the deal allows it to obtain each location's revenue, which will lead to some divergence between the figures.

"Market shares in the merger area are really a triggering device. They are what cause the agency to take a hard look at how the market is working, what the facts are and so forth," he said. But even if the FTC's estimate of the market share were at 60 or 65 per cent, Baker added, the commission would be scrutinising the deal.

A former chief of the Department of Justice's antitrust division, Baker said that the FTC staff are treating this as a very serious investigation, with at least six staff lawyers and economists committed to the review. The agency issued a second request earlier this year.

"Given the number of competitive problems there are, I see no way the staff would recommend" closing the investigation without further action, he said. "This case presents some exceptional difficulties," due to the nature of Sysco's and US Foods' customer accounts, which are based on contracts that allow customers to leave easily. A divestiture buyer therefore could not count on retaining customers.

Baker said there is also a shortage in many local markets of divestiture buyers that are capable of competing effectively with Sysco/US Foods yet are not already so large that the merger still would be three-to-two for that market. He said the FTC will want advance assurance of a proven divestiture buyer.

Even if smaller players successfully drew customers that used to be served by the US Foods facility, "that would mean the effect of the basic merger wasn't as bad as it might be, but it doesn't help you provide reasonable assurance in advance that the divestiture is going to work," Baker said.

Steve P Vairma, Teamsters vice president and director of the warehouse division, said that the merger would lead to a "virtual market monopoly in nearly every market in the US." Even with divestitures of physical assets, he said, a smaller competitor could not easily become a check on a combined Sysco and US Foods.

"Nobody has bought a facility, loaded it with product and taken significant share overnight," he said.

New Mexico attorney general Gary King asked about the impact on institutional food service. The Teamsters [previously](#) have raised this as a problem, noting potential costs not only to restaurant goers but to taxpayers who fund large food buyers such as the military, schools, universities, prisons, airports and hospitals.

Baker urged King to convey the states' concern to the FTC. "I think they will understand it, but there are some messages that are always useful to repeat," he said.

Meyers added that for institutional customers, Sysco's and US Foods' combined market share was "north of the 70 per cent, closer to 80 per cent in most markets".

Baker said Sysco's "very experienced counsel" would have begun bargaining for a small package of divestitures early on, while the agency staff need the threat of a preliminary injunction as a bargaining tool.

"They will be looking for potential witnesses" should the FTC resort to a fast-track federal court proceeding to block the deal, but Baker said Sysco was unlikely to force the issue even if the formal HSR time ran out. "Normally a preliminary injunction blocking the merger is the end of a deal."

Nonetheless, Baker said he doubted whether Sysco could propose any package of divestitures, however large, that would convince the FTC that a reasonable level of competition could be sustained across the country. With this impediment to a settlement, the chance of litigation is much higher than typically the case, he said, and the matter is unlikely to be resolved before December.

Sysco Corporation announced in its fiscal 2014 earnings call earlier this month that it continues to work closely with the FTC and expects the deal to close late in the third quarter or some time in the fourth quarter this year.