

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

In the Matter of)	
)	
)	
Tractor Supply Company,)	ORDER TO MAINTAIN ASSETS
a corporation, and)	Docket No. C-4776
)	
Orscheln Farm and Home LLC,)	
a limited liability company.)	
)	

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed merger of Respondent Tractor Supply Company with Respondent Orscheln Farm and Home LLC. The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of 30 days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent Tractor Supply Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 5401 Virginia Way, Brentwood, Tennessee 37027.
2. Respondent Orscheln Farm and Home LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its executive offices and principal place of business located at 1800 Overcenter Drive, Moberly, Missouri 65270.
3. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that the definitions used in the Consent Agreement and the Decision and Order shall be incorporated in this Order to Maintain Assets by reference and made a part hereof and, further, that the following definitions shall apply:

- A. “Decision and Order” means the proposed Decision and Order contained in the Consent Agreement or the Decision and Order issued in this matter.
- B. “Orders” means this Order to Maintain Assets and the Decision and Order.

II. Asset Maintenance

IT IS FURTHER ORDERED that Respondents shall ensure that the Farm Store Assets relating to each Farm Store identified on Appendix E and Appendix F of the Decision and Order and the Moberly Distribution Center are operated and maintained in the ordinary course of business consistent with past practices until such assets are fully transferred to the relevant Acquirer, and during such period shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Farm Store Business and related Farm Store Assets, to minimize the risk of any loss of their competitive potential, to operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear);
- B. Not sell, transfer, encumber, or otherwise impair the Farm Store Business and related Farm Store Assets (other than in the manner prescribed in the Orders) or take any action that lessens their full economic viability, marketability, or competitiveness;
- C. Not terminate the operations of any part of the Farm Store Business and related Farm Store Assets, and shall conduct or cause to be conducted the operations of the Farm Store

Business and related Farm Store Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, ongoing operations, marketability, and competitiveness of the Farm Store Business and related Farm Store Assets; and

- D. Use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Farm Store Business and related Farm Store Assets.

Provided, however, that Respondents may take actions that an Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the applicable Farm Store Assets and consistent with the purposes of the Orders.

III. Transitional Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information included in the Farm Store Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide an Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. Respondents shall appoint a Transition Manager who is responsible for directing the provision of Transitional Assistance to each Acquirer and a Transition Manager who is responsible for directing Respondents' compliance with Paragraph II.C of the Decision and Order. Respondents shall provide each Transition Manager with the authority necessary to carry out their duties under this Paragraph III.B.
- C. At the option of an Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the relevant Farm Store Assets to the Acquirer and (2) enable the Acquirer to operate the applicable Farm Store Business and Farm Store Assets in a manner that is equivalent in all material respects to the manner in which Respondents did so prior to the Merger.
- D. Respondents shall provide Transitional Assistance:
 - 1. As set forth in the relevant Divestiture Agreement, or as otherwise reasonably requested by an Acquirer (whether before or after the applicable Divestiture Date);
 - 2. At the price set forth in the relevant Divestiture Agreement, or if no price is set forth, at no more than Direct Cost; and

3. For a time period sufficient to meet the requirements of this Section III, which shall be with respect to:
 - (a) Bomgaars, for up to 15 months after the date that Respondents divest the Farm Store Assets relating to the Farm Stores identified on Appendix E of the Decision and Order to Bomgaars; and
 - (b) Buchheit, for up to 6 months after the date that Respondents divest the Farm Store Assets relating to the Farm Stores identified on Appendix F of the Decision and Order to Buchheit;

Provided, however, that within 15 days after a request by an Acquirer, Respondents shall file with the Commission a request for prior approval to extend the term for providing Transitional Assistance as the Acquirer requests in order to achieve the purposes of the Orders.

- E. Respondents shall allow an Acquirer to terminate, in whole or part, any Transitional Assistance provisions of the relevant Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
- F. Respondents shall not cease providing Transitional Assistance due to a breach by an Acquirer of the relevant Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that an Acquirer would be entitled to receive in the event of Respondents' breach of the relevant Divestiture Agreement.

IV. Employees

IT IS FURTHER ORDERED that:

- A. Until 6 months after a Divestiture Date, Respondents shall cooperate with and assist an Acquirer to evaluate independently and offer employment to each Farm Store Employee relating to the Farm Store Assets divested to the Acquirer on that Divestiture Date.
- B. Until 6 months after the applicable Divestiture Date, Respondents shall:
 1. No later than 10 days after a request from an Acquirer, provide a list of all applicable Farm Store Employees and provide Employee Information for each;
 2. No later than 10 days after a request from an Acquirer, provide the Acquirer an opportunity to privately interview any applicable Farm Store Employee outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any applicable Farm Store Employee;
 3. Remove any impediments within the control of Respondents that may deter any applicable Farm Store Employee from accepting employment with an Acquirer,

including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the applicable Acquirer, and shall not make any counteroffer to a Farm Store Employee who receives an offer of employment from the applicable Acquirer;

Provided, however, that nothing in the Orders shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

4. Continue to provide Farm Store Employees employed by Respondents with compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 5. Provide reasonable financial incentives for Farm Store Employees to continue in their positions, as may be necessary, to facilitate the employment of such Farm Store Employees by an Acquirer; and
 6. Not interfere, directly or indirectly, with the hiring or employing by an Acquirer of any applicable Farm Store Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any applicable Farm Store Employee by the Acquirer.
- C. Respondents shall not, for a period of one year after divesting any of the Farm Store Assets pursuant to Paragraph II.A of the Decision and Order, directly or indirectly, solicit or otherwise attempt to induce any Farm Store Employee who has accepted an offer of employment with an applicable Acquirer in connection with such divestiture to terminate his or her employment with the Acquirer; *provided, however,* Respondents may:
1. Hire any such Farm Store Employee whose employment has been terminated by the Acquirer;
 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Farm Store Employee employed by the Acquirer; or
 3. Hire a Farm Store Employee who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section V.
- D. Respondent shall not enforce any non-compete provision or non-compete agreement against any individual who seeks or obtains a position with the Farm Store Business or does business with the Farm Store Business.

V. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not (1) disclose (including to Respondents' employees) or (2) use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Farm Store Assets, Farm Store Business, or post-divestiture Farm Store Business; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
 - (a) Performing their obligations or as permitted under this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement; or
 - (b) Complying with financial reporting requirements, obtaining legal advice, prosecuting, or defending legal claims, investigations, or enforcing actions threatened or brought against the Farm Store Assets or Farm Store Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph V.A of this Order to Maintain Assets, Respondents shall limit such disclosure or use (1) only to the extent such information is required, (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A, and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Section V and take necessary actions to ensure that their employees and other Persons comply with the terms of this Section V, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.
- D. Respondents shall ensure that employees providing Transition Services to an Acquirer are physically separated from other employees at the Moberly Distribution Center in the manner described in Confidential Appendix H to the Decision and Order, and that data regarding the Acquirer is segregated and protected in the information systems at the Moberly Distribution Center in a manner that prevents access by anyone other than an employee providing Transition Services to the Acquirer.

VI. Consents and Authorizations and Acquirer Due Diligence

IT IS FURTHER ORDERED that Respondents shall:

- A. Respondents shall obtain, no later than the applicable Divestiture Date and at their sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to effect the complete transfer and divestiture of the relevant Farm Store Assets

to the Acquirer and for the Acquirer to operate any aspect of the relevant Farm Store Business;

Provided, however:

1. Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant third party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and
 2. With respect to any Governmental Authorization relating to any Farm Store Assets that are not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate the relevant Farm Store Assets under Respondents' Governmental Authorization pending the Acquirer's receipt of its own Governmental Authorization, and Respondents shall provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorization.
- B. Respondents shall assist each potential Acquirer to conduct a due diligence investigation of the applicable Farm Store Assets and Farm Store Business, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, and other documents and data relating to the applicable Supermarket Business, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents.

VII. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints Larry Appel to serve as Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
 1. Shall be subject to the approval of the Commission;
 2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VII or Section VIII of the Decision and Order ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and

3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.

C. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
2. Act in consultation with the Commission or its staff and communicate with staff weekly or as otherwise requested by Commission staff regarding Respondents' compliance with the obligations set forth in this Order;
3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional, or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with the Orders on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, and VI of the Decision and Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under the Orders, including ensuring at least weekly communications by the Transition Manager(s) to the Monitor and as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information, and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Orders;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.

E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Orders.

F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of the Orders. The Commission shall select the substitute Monitor, subject to the consent of the Respondents.

Respondents:

1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;

2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VIII.B; or (b) receives Commission approval.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

VIII. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Farm Store Assets as required by the Decision and Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of the Decision and Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Section IX shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with the Orders.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by the Decision and Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of the Orders.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section VIII, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by the Decision and Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
 2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one-year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission,

Provided, however, the Commission may extend the divestiture period only 2 times;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by the Decision and Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Section VIII in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
 4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall

be made in the manner and to an Acquirer that receives the prior approval of the Commission as required by the Decision and Order,

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission,

Provided further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by the Decision and Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by the Decision and Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

Provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section VIII.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by the Decision and Order.

IX. Prior Approval

IT IS FURTHER ORDERED that Respondents shall not, without the prior approval of the Commission, acquire, directly or indirectly, through subsidiaries, partnerships, or otherwise:

- A. Any ownership or leasehold interest in any facility that has operated as a Farm Store in a Relevant Area within 6 months prior to the date of such proposed acquisition; or
- B. Any stock, share capital, equity, or other interest in any entity that owns any interest in or operates a Farm Store, or owned any interest in or operated a Farm Store in a Relevant Area within 6 months prior to such proposed acquisition.

Provided however, that Respondents are not required to obtain the prior approval of the Commission for the Respondents' construction or opening of new facilities.

X. Additional Obligations

IT IS FURTHER ORDERED that Respondents shall neither enter into nor enforce any agreement that restricts the ability of any Person to operate a Farm Store at any location formerly owned or operated by Respondents in a Relevant Area.

XI. Bomgaars

IT IS FURTHER ORDERED that Bomgaars shall not:

- A. For a period of 3 years after the applicable Divestiture Date, sell, license, or otherwise convey, through subsidiaries or otherwise, without the prior approval of the Commission,

any Farm Store that was divested to Bomgaars pursuant to Section II of the Decision and Order to any Person; and

- B. For a period of 7 years after the term of Paragraph XI.A ends, sell, license, or convey, through subsidiaries or otherwise, without the prior approval of the Commission, any Farm Store that was divested to Bomgaars pursuant to Section II of the Decision and Order to any Person who owns, or within 6 months prior to such sale date, owned, directly, or indirectly, through subsidiaries or otherwise, a leasehold, ownership interest, or any other interest in whole or in part, in a Farm Store located within a 60-mile radius of the divested Farm Store;

Provided, however, that Bomgaars is not required to obtain prior approval of the Commission under this Section XI for a change of control, merger, reorganization, or sale of all or substantially all of its business.

XII. Buchheit

IT IS FURTHER ORDERED that Buchheit shall not:

- A. For a period of 3 years after the applicable Divestiture Date, sell, license, or otherwise convey, through subsidiaries or otherwise, without the prior approval of the Commission, any Farm Store that was divested to Buchheit pursuant to Section II of the Decision and Order to any Person; and
- B. For a period of 7 years after the term of Paragraph XII.A ends, sell, license, or convey, through subsidiaries or otherwise, without the prior approval of the Commission, any Farm Store that was divested to Buchheit pursuant to Section II of the Decision and Order to any Person who owns, or within 6 months prior to such sale date, owned, directly, or indirectly, through subsidiaries or otherwise, a leasehold, ownership interest, or any other interest in whole or in part, in a Farm Store located within a 60-mile radius of the divested Farm Store;

Provided, however, that Buchheit is not required to obtain prior approval of the Commission under this Section XII for a change of control, merger, reorganization, or sale of all or substantially all of its business.

XIII. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall file verified written reports (“Compliance Reports”) in accordance with the following:
 - 1. Respondents shall submit Compliance Reports 30 days after this Order to Maintain Assets is issued and every 30 days thereafter until the Commission

issues a Decision and Order in this matter, and additional compliance reports as the Commission or its staff may request.

2. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order, including the total number of Orscheln stores separated from the operations of the Moberly Distribution Center as of the date the compliance report is filed. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of this Order.
 3. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under this Order to Maintain Assets during the period covered by such Compliance Report. Respondents shall provide copies of these documents to Commission staff upon request.
- C. Respondents shall have each compliance report verified under penalty of perjury in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. If the compliance report is verified by someone other than the Chief Executive Officer, Respondents shall include documentation in the compliance report establishing that the verifier is authorized to verify the compliance report on behalf of the submitting Respondent. Respondents shall file their compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XIV. Change in Respondents

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of Tractor Supply Company or Orscheln Farm and Home LLC;
- B. The proposed acquisition, merger, or consolidation of Tractor Supply Company or Orscheln Farm and Home LLC; or

- C. Any other changes in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such changes may affect compliance obligations arising out of the Orders.

XV. Access

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with the Orders, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in the Orders, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with the Orders, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XVI. Purpose

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Farm Store Business through its full transfer and delivery to an Acquirer; to minimize any risk of loss of competitive potential for the Farm Store Business; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Farm Store Assets except for ordinary wear and tear.

XVII. Term

IT IS FURTHER ORDERED that this Order shall terminate the day after the Decision and Order in this matter becomes final or the Commission withdraws acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34.

By the Commission.

April J. Tabor
Secretary