

# KING & SPALDING

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May 20, 2020

**BY ELECTRONIC MAIL**

**Confidential Treatment Requested**

The Honorable Elizabeth Warren  
United States Senate  
309 Hart Senate Office Building  
Washington, DC, 20510

The Honorable Richard Blumenthal  
United States Senate  
706 Hart Senate Office Building  
Washington, DC, 20510

**RE: Henry Schein's Response to April 27, 2020 Letter from Senator Warren and Senator Blumenthal**

Dear Senators Warren and Blumenthal:

On behalf of our client, Henry Schein, Inc. ("Henry Schein or "Company"), I am writing in response to your April 27, 2020 letter regarding the Company's interactions with executive branch entities related to the COVID-19 pandemic. We appreciate the open line of communication with your staff, including in our recent phone briefing on these issues, and hope our further responses are helpful.

The enclosed submission (see Appendix A) provides responses to your requests that were assembled after a reasonable review and with the goal of furthering your offices' understanding of these issues. The responses herein are based on reasonably available information and are not intended to, and do not, provide an exhaustive description of the areas discussed. We also have marked this letter and Appendix A with the legend "Confidential Treatment Requested." Henry Schein respectfully requests advance notice of any contemplated disclosure of this information.

In providing information and documents in response to your requests, Henry Schein does not waive, nor does it intend to waive, any of its rights or privileges with respect to this inquiry,

including any applicable attorney-client, work product, or other evidentiary privilege, or any objections to the assertions or questions in your letter.

If you have any questions regarding this matter or need any additional information, please do not hesitate to call me at 202-626-5575 or email me at [aobrien@kslaw.com](mailto:aobrien@kslaw.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Alicia C. O'Brien', with a long horizontal flourish extending to the right.

Alicia C. O'Brien

Enclosure

## APPENDIX A

### **HENRY SCHEIN'S SUBMISSION IN RESPONSE TO THE LETTER DATED APRIL 27, 2020**

Thank you for your April 27, 2020 letter requesting information related to Henry Schein's interactions with executive branch entities regarding distribution of medical supplies during the COVID-19 pandemic. Henry Schein appreciates your interest in the supply and distribution of medical supplies to areas of need during these challenging times throughout the country, and welcomes the opportunity to provide context and answers to your questions.

Henry Schein is a global distributor of health care products and services, primarily medical and dental supplies that include personal protective equipment (PPE). Its primary customers include office-based medical and dental practitioners, emergency medical services (EMS), urgent care centers, and community health centers. The Company is proud to be playing a role in addressing the COVID-19 public health crisis and supplying much-needed PPE to front line responders and healthcare providers in areas of need throughout the country. Henry Schein hopes that the information provided today and its continuing dialogue going forward will be helpful to your offices.

**Request 1: How was your company selected as a participant in Project Airbridge?**

Response: As discussed with your staff, the opportunity to participate in Project Airbridge grew out of the White House Supply Chain Task Force, of which Henry Schein is a member. As part of the Task Force, in late March, the federal government proposed to Henry Schein and other distributors the opportunity to use government-sponsored flights to expedite the transport of company-owned PPE and medical supplies from Asia to the United States. Henry Schein was pleased to participate due to its limited inventory of PPE and difficulties related to importing sufficient supply from Asia/China quickly enough to meet growing demand in light of the pandemic. Henry Schein was not advised as to why the government included it among the companies participating in Project Airbridge.

**Request 2: What specific contracts or agreements are in place between you and federal government entities regarding Project Air Bridge? With what agencies has your company signed these agreements?**

Response: Henry Schein entered into a written memorandum of agreement (MOA) with the Department of Homeland Security (DHS) and Federal Emergency Management Agency (FEMA) on March 30, 2020.

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**Request 3: How do you receive medical supplies and PPE from Project Air Bridge? What costs do you pay for the federal government’s transport of these items, and how does it compare to your typical costs for obtaining items from suppliers?**

Response: Henry Schein does not “receive medical supplies and PPE from Project Airbridge” or the federal government via Project Airbridge. Rather, it participates in Project Airbridge to transport company-owned PPE—masks, gowns, face shields, and gloves—from Asia to the U.S. by air rather than cargo ship. The government determines how much Henry Schein product is on a particular flight based on the product type, weight, location, and related information.

Pursuant to the MOA, the government pays the cost of air freight to transport company-owned PPE, and Henry Schein agrees to distribute at least 50% of these products to customers in designated areas of pressing need, i.e., hot spots, identified by DHS/FEMA. Henry Schein pays the cost of duties and customs, but it is not aware of how much the government pays for the flights.

**Request 4: How has your company distributed medical supplies and PPE?**

- a. **How is your company or the government determining which half of supplies will be distributed to hotspots, and which half will instead be fed into the “normal supply chain”? For example, are medical supplies being divided into halves by number of units? Cost? Is each category of medical product being divided separately?**
- b. **Have you been provided with instructions to distribute supplies to COVID-19 “hotspots”? Please provide any lists of hotspots that have been provided to you, as well as any relevant dates for which those lists were current.**
- c. **How is your company distributing the supplies that are fed into its “normal supply chain”? Are these supplies going to orders that were placed before the initiation of Project Air Bridge? Are they going to existing customers under renegotiated terms? Are they auctioned to the highest bidder? Please describe your company’s practices in as much detail as possible.**

Response: The MOA requires that Henry Schein distribute at least 50% of its product transported through Airbridge to “hot spots”—areas of need identified by DHS/FEMA. The Company compares the FEMA-identified hot spots to its customer database. Upon receiving the quantities of products on an Airbridge flight, the Company divides in half the quantity of items in each category (e.g., masks, gowns, gloves) and ensures this quantity of product is distributed to customers in the hot spots. Please note that Henry Schein’s goal is to distribute some PPE to many customers rather than more PPE to a few customers. As such,

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the Company is not auctioning PPE to the “highest bidder” nor requiring existing customers renegotiate terms for distribution.

The remaining fifty percent of Henry Schein product transported through Airbridge is sold in the ordinary course using the Company’s standard terms and conditions. Due to limited inventory and increased demand, distributions are primarily to existing customers.

**Request 5: Please provide a full accounting of the distribution of all medical supplies and equipment that you have been provided via Project Air Bridge, including a list of all COVID-19-related supplies and PPE you have received, the quantity of each item, and information on where this quantity has been distributed, including a list of how much each recipient (states, localities, and tribal governments, hospitals or medical systems, or other third-parties) has received.**

Response: As noted above, Henry Schein is not provided any medical supplies or equipment via Project Airbridge. It has participated in Project Airbridge to transport company-owned product to the United States. Please see the response to Request 4 as to distribution.

**Request 6: How do you determine selling prices for medical equipment and PPE that you have obtained via Project Air Bridge? What restrictions, if any, dictate your ability to set prices on medical supplies distributed via Project Air Bridge? One report says that your company is required to charge “reasonable” prices. Please describe any such requirements in detail. How is the government monitoring and enforcing compliance with such requirements?**

Response: Henry Schein agreed to sell items transported through Airbridge at a “reasonable price,” defined in the MOA as “the price that a prudent and competent buyer would be willing to pay given available data on market conditions.” While the Company is not aware of how the government monitors or enforces compliance with the reasonable price requirement, Henry Schein does not differentiate between Airbridge and non-Airbridge product. Most of Henry Schein’s medical division customers have pricing plans in place, which vary from customer to customer.

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**Request 7: Please provide a full accounting of the cost and pricing of all medical supplies and equipment that you have been provided via Project Air Bridge, including a list of (1) average cost to obtain each type of supply or equipment, (2) your average selling prices for each type of supply or equipment, and (3) your average selling price for each pieces of supply or equipment for each major recipient (states, localities, and tribal governments, hospitals or medical systems, or other third-parties).**

Response: As noted above, Henry Schein has not been provided any medical supplies or equipment via Project Airbridge. It has participated in Project Airbridge to transport company-owned product to the United States. Please see the responses to Requests 3 and 6 for further information.

**Request 8: Is your company entrusted with distributing pre-existing orders of supplies that are seized by FEMA? Has it been given any directives on how to distribute these supplies?**

Response: Not to Henry Schein's knowledge. On two occasions, the government requested the Company distribute government-owned product as part of its COVID-19 response, but Henry Schein understood these products came from Strategic National Stockpile (SNS) and Department of Defense (DOD) and has no reason to believe they were seized by FEMA. Henry Schein has not had issues with the U.S. government seizing or redirecting its shipments and is not aware of FEMA seizing or redirecting shipments generally other than reports in the media.

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