

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

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In the Matter of)
)
The Great Atlantic & Pacific Tea Company, Inc.,)
 a corporation,)
)
 and	Docket No. C-4209)
)
Pathmark Stores Inc.)
 a corporation)
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that The Great Atlantic and Pacific Tea Company, Inc. (“A&P”), a corporation, and Pathmark Stores Inc. (“Pathmark”), a corporation, have entered into an agreement for A&P to acquire all of the voting securities of Pathmark, all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that the terms of such agreement, were they to be satisfied, would result in a violation of Section 5 of the Federal Trade Commission Act, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. Definition

1. For purposes of this complaint, the term “supermarket” means a full-line retail grocery store with annual sales of at least \$2 million that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products, refrigerated and frozen food and beverage products, fresh and prepared meats and poultry, produce, including fresh fruits and vegetables, shelf-stable food and beverage products, including canned and other types of packaged products, staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee,

and tea, and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

II. Respondent The Great Atlantic & Pacific Tea Company, Inc.

2. Respondent A&P is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2 Paragon Drive, Montvale, New Jersey 07645. A&P had revenues from all operations in 2006 of \$6.9 billion.

3. A&P is, and at all times relevant herein has been, engaged in the operation of supermarkets in the states of Connecticut, Delaware, Maryland, New Jersey, New York, and in the District of Columbia. A&P operates supermarkets under the A&P, A&P Super Foodmart, Food Basics, Food Emporium, Super Fresh, and Waldbaum's banners.

4. A&P owns and operates about 316 supermarkets in the United States.

5. A&P is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

III. Respondent Pathmark Stores, Inc.

6. Respondent Pathmark is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 200 Milik Street, Carteret, New Jersey 07008. Pathmark had revenues in 2006 of about \$4.1 billion.

7. Pathmark is, and at all times relevant herein has been, engaged in the operation of supermarkets in the states of Delaware, New York, New Jersey, and Pennsylvania.

8. Pathmark owns and operates about 141 supermarkets in the United States.

9. Pathmark is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

IV. The Proposed Acquisition

10. On or about March 4, 2007, Respondents A&P and Pathmark entered into an agreement for A&P to acquire all of the voting securities of Pathmark. The purchase price is approximately \$1.3 billion in cash and stock, a figure that includes the assumption of Pathmark's debt.

V. Nature of Trade and Commerce

11. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units) as well as a deep inventory of those items. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

12. Supermarkets compete primarily with other supermarkets that provide one-stop shopping opportunities for food and grocery products. Supermarkets primarily base their food and grocery prices on the prices of food and grocery products sold at other supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not significantly change their food and grocery prices in response to prices at other types of stores.

13. Retail stores other than supermarkets that sell food and grocery products, including neighborhood “mom & pop” grocery stores, convenience stores, specialty food stores, club stores, military commissaries, and mass merchants, do not, individually or collectively, effectively constrain prices at supermarkets. Those retail stores do not offer a supermarket’s distinct set of products and services that enable consumers to do their one-stop shopping for food and grocery products. The vast majority of consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

VI. Relevant Product Markets

14. The relevant lines of commerce in which to analyze the proposed acquisition is the retail sale of food and other grocery products in supermarkets.

VII. Relevant Geographic Markets

15. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition are:

- (a) Staten Island (Richmond County), New York, and
- (b) Shirley, Long Island, New York.

VIII. Concentration

16. The relevant markets are highly concentrated, and the proposed acquisition will substantially increase concentration, whether concentration is measured by the Herfindahl Hirschman Index (“HHI”) or the number of competitively significant firms remaining in the market.

IX. Entry Conditions

17. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects.

X. Effects of the Acquisition

18. The acquisition may substantially lessen competition in the relevant markets in the following ways, among others:

- (a) by eliminating direct competition between Respondents Great A&P and Pathmark;
- (b) by increasing the likelihood of, or facilitating, coordinated interaction among the remaining competitively significant firms; or
- (c) by increasing the likelihood that A&P will unilaterally exercise market power;

each of which increases the likelihood of an increase in the price of food and other grocery products, or a decrease in the quality or selection of food, other grocery products, or services.

XI. Violations Charged

19. The agreement described in Paragraph 10 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of November, 2007, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

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