

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

**In the Matter of**

**Tops Markets LLC,**  
a limited liability company,

**Morgan Stanley Capital Partners V U.S.  
Holdco LLC,**  
a limited liability company,

and

**The Penn Traffic Company,**  
a corporation.

**Docket No. C-4295**

**PETITION OF DIVESTITURE TRUSTEE FOR APPROVAL  
OF PROPOSED DIVESTITURE TO MORAN FOODS, INC.**

Pursuant to Section 2.41(f) of the Federal Trade Commission (the "Commission") Rules of Practice and Procedure, 16 C.F.R.2.41(f), and Paragraph II.A. of the Decision and Order in the above-captioned matter (the "Decision and Order"), The Food Partners, LLC ("TFP"), divestiture trustee, hereby petitions the Commission to approve the divestiture to MORAN FOODS, INC. ("Moran Foods") of the grocery store formerly owned by The Penn Traffic Company ("Penn Traffic") situated at 404 West Morris Street in Bath, New York (Tops Store #588) (the "Store").

**I. DECISION AND ORDER AND PROPOSED SALE TO MORAN FOODS, INC.**

On January 25, 2010, Tops executed a Consent Agreement that included an Interim Order and an Order to Hold Separate and Maintain Assets to settle the Commission's charges that Tops' proposed acquisition of Penn Traffic Assets would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended 15 U.S.C. § 18. On June 30, 2011, the Commission issued its order requiring divestiture of seven (7) stores. At the same time, the Commission approved the petition of divestiture for three (3) of the stores to Hometown Markets, LLC and approved the appointment of TFP as divestiture trustee. By letter dated September 26, 2011, the Commission extended the date by which Tops must obtain final approval to divest the Store to December 27, 2011.

This matter arose from Tops' acquisition of Penn Traffic's 79 grocery stores and other assets through a Chapter 11 bankruptcy process. More particularly, on November 18, 2009, Penn Traffic filed for protection under Chapter 11. Accordingly, Penn Traffic's assets were subjected to a bankruptcy court auction that occurred in December 2009. During the auction process there was only one strategic bidder other than Tops. The other bidder, however, offered to buy only 22 stores; while Tops' offer was for all 79 Penn Traffic stores. Tops' offer was accepted and Tops then made a filing pursuant to the Hart-Scott-Rodino Antitrust Improvements Act.

This Petition describes the principal terms of the Agreement (as defined below) by which Tops plans to sell the Store to Moran Foods and explains why the Agreement satisfies the purposes of the Decision and Order.

## **II. THE TRANSACTION DOCUMENTS**

Tops and Moran Foods have executed an Agreement for the divestiture of the Store, subject to the approval of the Commission. The Agreement is embodied in the Asset Purchase Agreement (the "Agreement"). Copies of the Agreement, attachments, exhibits and schedules (the "Transaction Documents") are attached to this Petition as Confidential Appendix A.

In essence, the Agreement provides that Moran Foods will acquire the Store at 404 West Morris Street in Bath, New York ("Bath, New York") by acquiring certain equipment and other tangible assets, together with Tops' interest in the lease for the land and building. Tops will cease its operations at the Store and offer substantially all of the existing employees employment at other Tops' locations.

Tops and Moran Foods request that the Transaction Documents and other information provided in the confidential appendices be treated by the Commission as strictly confidential and not be made available to the public. The terms of the Transaction Documents comply with and satisfy the purposes of the Decision and Order.

## **III. THE PROPOSED ACQUIRER**

### **A. Background and Relevant Experience**

MORAN FOODS, INC., d/b/a Save-A-Lot, Ltd., headquartered in Earth City, Missouri, is a wholly owned subsidiary of SUPERVALU, a publically traded Fortune 100 company headquartered in Eden Prairie, Minnesota. Moran Foods was founded in 1977 in St. Louis, Missouri. Today, Moran Foods has a network of approximately 1,300 Save-A-Lot stores in the United States and the Caribbean, making it the third largest grocery chain under a single banner in the United States. Approximately seventy-five percent (75%) of these stores are owned and operated by independent retailers pursuant to a license and supply agreement. The Save-A-Lot format is that of a limited assortment, hard-discount food retailer with prices that are up to forty percent (40%) less than those at a conventional supermarket. Most products offered are exclusive, private label brands with quality that meets or exceeds national brand equivalents. Moran Foods supplies its stores through its network of approximately fifteen (15) distribution centers.

Moran Foods currently has approximately forty-seven (47) in New York state, and, as of the date of this Petition, has no other stores in Bath, New York.

**B. Financial Capability**

100% of the company's transaction financing and extensive remodeling expenditures will be from Moran Foods' working capital and cash reserves. (Additional information pertaining to Moran Foods is attached to this Petition as Confidential Appendix B.)

**IV. CONCLUSION**

The proposed divestiture to Moran Foods of the Bath, New York store will accomplish the purposes of the Decision and Order and remedy any alleged lessening of competition. Moran Foods has the financial capability and relevant experience to ensure that the Store will be used so as to become a viable and effective competitor to Tops. Accordingly, the Divestiture Trustee requests that the Commission approve the proposed divestiture and acquirer.

Dated: November 7, 2011

Respectfully submitted,



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Matthew S. Morris  
The Food Partners, LLC  
Divestiture Trustee

Appendix A

Redacted

Appendix B

Redacted