

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of)
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Koninklijke Ahold N.V.,)
a corporation,)
)

and)
)
)

Safeway Inc.,)
a corporation.)
)

Docket No. C-4367

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Koninklijke Ahold N.V. (“Ahold”), a corporation, and Respondent Safeway Inc. (“Safeway”), a corporation, all subject to the jurisdiction of the Commission, entered into an agreement, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, pursuant to which Ahold acquired certain assets of Safeway, in violation of 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, 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. RESPONDENTS

1. Respondent Ahold is a corporation organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located at Piet Heinkade 167-173, Amsterdam 1019-GM.
2. Respondent Safeway 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 5918 Stoneridge Mall Road, Pleasanton, California 94588. Respondent Safeway operates supermarkets under a number of different banners, including Genuardi's.

II. JURISDICTION

3. Respondent Ahold 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.

4. Respondent Safeway 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. THE PROPOSED ACQUISITION

5. On or about January 4, 2012, Respondents Ahold and Safeway entered into an agreement pursuant to which Ahold would acquire 16 Genuardi's supermarkets owned and operated by Respondent Safeway. The purchase price was approximately \$106 million.

6. Prior to its proposed acquisition, Respondent Ahold owned and operated more than 750 supermarkets in 11 states and the District of Columbia. The Giant Carlisle division of Respondent Ahold operates 49 supermarkets in eastern Pennsylvania, which includes the Philadelphia metropolitan area.

7. Prior to the proposed acquisition, Respondent Safeway owned and operated more than 1,775 supermarkets throughout the United States. Respondent Safeway operated 37 supermarkets in the Philadelphia metropolitan area under the Genuardi's banner.

8. The proposed acquisition would combine two of three retail sellers of food and other grocery products in supermarkets in the Newtown, Pennsylvania, area. Respondent Ahold and Respondent Safeway both own and operate supermarkets in this area and compete and promote their businesses in this area.

IV. THE RELEVANT PRODUCT MARKET

9. The relevant line of commerce in which to analyze the Acquisition is the retail sale of food and other grocery products in supermarkets.

10. For purposes of this complaint, the term "supermarket" means a full-line grocery store 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, and other grocery products, including non-food items, household products, and health and beauty aids.

11. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, typically referred to as stock-keeping units or SKUs, as well as a deep inventory of those items. In order to accommodate the large number of food and non-food 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 base their food and grocery prices primarily on the prices of food and grocery products sold at other nearby competing supermarkets. Supermarkets do not regularly conduct price checks of food and grocery products sold at other types of stores and do not typically set or change their food and grocery prices in response to prices at other types of stores.

13. Although retail stores other than supermarkets also sell food and grocery products, including neighborhood “mom & pop” grocery stores, convenience stores, specialty food stores, club stores, limited assortment stores, and mass merchants, these types of stores do not, individually or collectively, provide sufficient competition to effectively constrain prices at supermarkets. Those retail stores do not offer a supermarket’s distinct set of products and services that provide consumers with the convenience of 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 start shopping elsewhere, or significantly increase grocery purchases elsewhere, in response to a small but significant price increase by supermarkets.

V. THE RELEVANT GEOGRAPHIC MARKET

14. Customers shopping at supermarkets are motivated by convenience and, as a result, competition for supermarkets is local in nature. Generally, the overwhelming majority of consumers’ grocery shopping occurs at stores located very close to where they live.

15. Respondents operate supermarkets under the Giant and Genuardi’s banners within approximately two miles of each other in the Newtown, Pennsylvania area. The primary trade areas of the two stores overlap significantly.

16. The relevant geographic market in which to assess the competitive effects of the acquisition is a roughly three to three-and-a half mile area surrounding Newtown, which includes Newtown Township, Newtown Borough, and the portion of Middletown Township north of the line formed by Bridgetown Pike and Langhorne-Yardley Road in Bucks County, Pennsylvania. A hypothetical monopolist controlling all supermarkets in this area could profitably raise prices by a small but significant amount.

VI. MARKET CONCENTRATION

17. The relevant market is already highly concentrated, and the acquisition will substantially increase concentration, whether measured by the Herfindahl Hirschman Index (“HHI”) or the number of competitively significant firms remaining in the market post-acquisition. Post-acquisition HHI in the relevant geographic market is 5,017 when measured by total square footage and 5,000 when measured by revenues. The acquisition would increase HHI levels by 1,373 points for square footage and by 1,221 points for revenues. These market concentration levels give rise to a presumption that the acquisition is unlawful in the Newtown, Pennsylvania, geographic market.

18. The acquisition reduces the number of supermarket competitors in the relevant geographic market from three to two.

VII. ENTRY CONDITIONS

19. Entry into the relevant market would not be timely, likely, or sufficient in magnitude to prevent or deter the likely anticompetitive effects of the acquisition. Significant entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for the supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket, and generating sufficient sales to have a meaningful impact on the market.

VIII. EFFECTS OF THE ACQUISITION

20. The acquisition, if consummated, may substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the relevant geographic market identified in Paragraph 16 in the following ways, among others:

- (a) by eliminating rivalry and competitive initiatives between Respondents Ahold and Safeway;
- (b) by increasing the likelihood that Respondent Ahold will unilaterally exercise market power; or
- (c) by increasing the likelihood of, or facilitating, coordinated interaction between the remaining two participants in the relevant market.

21. The ultimate effect of the acquisition would be to increase the likelihood that prices of food and other grocery products would rise above competitive levels, or that there would be a decrease in the quality or selection of food, other grocery products, or services.

IX. VIOLATIONS CHARGED

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

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this sixteenth day of August, 2012, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary