

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

**In the Matter of**

**Cerberus Institutional Partners V, L.P.  
a limited partnership;**

**AB Acquisition LLC,  
a limited liability company;**

**and**

**Safeway Inc.,  
a corporation.**

**File No. 141 0108**

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondents AB Acquisition LLC (“Albertson’s”) and Cerberus Institutional Partners V, L.P. (“Cerberus”), of Respondent Safeway Inc. (“Safeway,” and together with Albertson’s and Cerberus, “Proposed Respondents”), and it now appearing that Proposed Respondents, Associated Food Stores, Inc. (“Associated Food Stores”), Associated Wholesale Grocers, Inc. (“AWG”), and Supervalu Inc. (“Supervalu”) are willing to enter into this Agreement Containing Consent Order (“Consent Agreement”) to divest certain assets and providing for other relief;

**IT IS HEREBY AGREED** by and between Proposed Respondents, by their duly authorized officers and attorneys, Associated Food Stores, AWG, Supervalu, and counsel for the Commission that:

1. Proposed Respondent Cerberus Institutional Partners V, L.P. is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 875 Third Avenue, New York, New York.
2. Proposed Respondent AB Acquisition, LLC is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

3. Proposed Respondent Safeway Inc. is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, California.
4. Associated Food Stores is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its offices and principal place of business located at 1850 West 2100 South, Salt Lake City, Utah.
- 4A. Associated Food Stores enters into this Consent Agreement solely for purposes of agreeing to the requirements of Paragraph V (and related reporting requirements) of the attached Decision and Order.
5. AWG is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its offices and principal place of business located at 5000 Kansas Avenue, Kansas City, Kansas.
- 5A. AWG enters into this Consent Agreement solely for purposes of agreeing to the requirements of Paragraph VI (and related reporting requirements) of the attached Decision and Order.
6. Supervalu is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 7075 Flying Cloud Drive, Eden Prairie, Minnesota.
- 6A. Supervalu enters into this Consent Agreement solely for purposes of agreeing to the requirements of Paragraph VII (and related reporting requirements) of the attached Decision and Order.
7. Proposed Respondents admit all the jurisdictional facts set forth in the draft Complaint here attached.
8. Proposed Respondents, Associated Food Stores, AWG, and Supervalu waive:
  - a. any further procedural steps;
  - b. any requirement that the Commission's Order to Maintain Assets and Decision and Order, both attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order to Maintain Assets or the Decision and Order entered pursuant to this Consent Agreement; and
  - d. any claim under the Equal Access to Justice Act.

9. Because there may be interim competitive harm, the Commission may issue its Complaint and the Order to Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
10. Proposed Respondents shall submit an initial report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, no later than thirty (30) days after they execute this Consent Agreement. The reports shall be signed by the Proposed Respondents and shall set forth in detail the manner in which the Proposed Respondents have to date complied or have prepared to comply, are complying, and will comply with the Order to Maintain Assets and the Decision and Order. Such reports will not become part of the public record unless and until the Consent Agreement and Decision and Order are accepted by the Commission for public comment.
11. In the above-described reports, Proposed Respondents shall provide sufficient information and documentation to enable the Commission to determine independently whether Proposed Respondents are in compliance with this Consent Agreement, the Order to Maintain Assets, and the Decision and Order. The reports shall be verified by a notarized signature or sworn statement, or self-verified in the manner set forth in 28 U.S.C. § 1746. Section 2.41(a) of the Commission's Rules of Practice requires that an original and two copies of all compliance reports be filed with the Commission. Proposed Respondents shall file the original report and one copy with the Secretary of the Commission, and shall send at least one copy directly to the Bureau of Competition's Compliance Division in electronic format.
12. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and issue and serve its Decision and Order, in disposition of the proceeding.
13. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
14. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) issue and serve its Complaint corresponding in form and substance with the draft Complaint here attached, (b) issue and serve its Order to Maintain Assets, and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondents, Associated Food Stores, AWG,

and Supervalu, issue the attached Decision and Order containing an order to divest and providing for other relief in disposition of the proceeding.

15. When final, the Decision and Order and the Order to Maintain Assets shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and the Order to Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondents, Associated Food Stores, AWG, and Supervalu by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service (including, but not limited to, delivery to any of their respective Counsel or corporate representatives as identified on this Consent Agreement). Proposed Respondents, Associated Food Stores, AWG, and Supervalu waive any right they may have to any other manner of service. Proposed Respondents, Associated Food Stores, AWG, and Supervalu also waive any right they may otherwise have to service of any Appendices incorporated by reference into the Decision and Order (where Proposed Respondents, Associated Food Stores, AWG, or Supervalu are already in possession of copies of such Appendices), and agree that they are bound to comply with and will comply with the Decision and Order and the Order to Maintain Assets to the same extent as if it had been served with copies of the Appendices.
16. The Complaint may be used in construing the terms of the Decision and Order and the Order to Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, the Order to Maintain Assets, or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order or the Order to Maintain Assets.
17. Proposed Respondents have read the draft Complaint and the Decision and Order contemplated hereby. By signing this Consent Agreement, Proposed Respondents represent and warrant that:
  - a. they can accomplish the full relief contemplated by the attached Decision and Order (including effectuating all required divestitures, assignments and transfers, and obtaining any necessary approvals from governmental authorities, leaseholders, and other third parties to effectuate the divestitures, assignments, and transfers) and the Order to Maintain Assets;
  - b. all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement and the attached Decision and Order and Order to Maintain Assets are parties to this Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding, the Decision and Order, and the Order to Maintain Assets; and

- c. they shall interpret the Divestiture Agreements under the Decision and Order in a manner that is fully consistent with all of the relevant provisions, and the remedial purposes, of the Decision and Order.
18. Associated Food Stores represents and warrants that it will comply with Paragraph V of the Decision and Order and further represents and warrants that all parents, subsidiaries, affiliates, and successors necessary to effectuate its compliance with Paragraph V of the Decision and Order are within the control of Associated Food Stores.
  19. AWG represents and warrants that it will comply with Paragraph VI of the Decision and Order and further represents and warrants that all parents, subsidiaries, affiliates, and successors necessary to effectuate its compliance with Paragraph VI of the Decision and Order are within the control of AWG.
  20. Supervalu represents and warrants that it will comply with Paragraph VII of the Decision and Order and further represents and warrants that all parents, subsidiaries, affiliates, and successors necessary to effectuate its compliance with Paragraph VII of the Decision and Order are within the control of Supervalu.
  21. Proposed Respondents understand that once the Decision and Order and the Order to Maintain Assets have been issued, they will be required to file one or more compliance reports showing how they have complied and are complying with the Decision and Order and the Order to Maintain Assets.
  22. Proposed Respondents agree to comply with the terms of the proposed Decision and Order and the Order to Maintain Assets from the date they sign this Consent Agreement. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and the Order to Maintain Assets after they become final.

<p><b>CERBERUS INSTITUTIONAL PARTNERS V, L.P.</b></p> <p>By: Cerberus Institutional Associates, II, L.L.C., its General Partner</p> <hr/> <p>Mark A. Neporent Senior Managing Director</p> <p>Dated: _____</p> <p><b>AB ACQUISITION, LLC</b></p> <hr/> <p>Robert G. Miller Chief Executive Officer AB Acquisition, LLC</p> <p>Dated: _____</p> <hr/> <p>Paul T. Denis Dechert LLP Attorney for Cerberus Institutional Partners V, L.P. and AB Acquisition, LLC</p> <p>Dated: _____</p> <hr/> <p>James A. Fishkin Dechert LLP Attorney for Cerberus Institutional Partners V, L.P. and AB Acquisition, LLC</p> <p>Dated: _____</p> <hr/> <p>Michael E. Swartz Schulte Roth &amp; Zabel LLP Attorney for Cerberus Institutional Partners V, L.P. and AB Acquisition, LLC</p> <p>Dated: _____</p>	<p><b>FEDERAL TRADE COMMISSION</b></p> <hr/> <p>Josh Smith Paul Frangie Elisa Kantor Sam Sheinberg Chester Choi Lucas Ballet Attorneys Bureau of Competition</p> <p><b>Approved:</b></p> <hr/> <p>Alexis Gilman Assistant Director, Mergers IV Bureau of Competition</p> <hr/> <p>Kevin Hahm Deputy Assistant Director, Mergers IV Bureau of Competition</p> <hr/> <p>Daniel P. Ducore Assistant Director, Compliance Bureau of Competition</p>
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**SAFEWAY INC.**

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Robert L. Edwards  
President and Chief Executive Officer  
Safeway Inc.

Dated: \_\_\_\_\_

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Richard C. Weisberg  
Law Offices of Richard C. Weisberg  
Attorney for Safeway Inc.

Dated: \_\_\_\_\_

**ASSOCIATED FOOD STORES, INC.**

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Robert D. Obray  
Senior Vice President and Chief Financial  
Officer  
Associated Food Stores, Inc.

Dated: \_\_\_\_\_

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David F. Klomp  
General Counsel  
Associated Food Stores, Inc.

Dated: \_\_\_\_\_

**ASSOCIATED WHOLESALE GROCERS,  
INC.**

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Jerry Garland  
President and Chief Executive Officer  
Associated Wholesale Grocers, Inc.

Dated: \_\_\_\_\_

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Scott Sher  
Wilson Sonsini Goodrich & Rosati  
Attorney for Associated Wholesale Grocers,  
Inc.

Dated: \_\_\_\_\_

**SUPERVALU INC.**

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Bruce Besanko  
Executive Vice President and Chief Financial  
Officer  
Supervalu Inc.

Dated: \_\_\_\_\_

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Elaine Ewing  
Cleary Gottlieb Steen & Hamilton LLP  
Attorney for Supervalu Inc.

Dated: \_\_\_\_\_