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

**COMMISSIONERS:** **Edith Ramirez, Chairwoman**
**Julie Brill**
**Maureen K. Ohlhausen**
**Joshua D. Wright**

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| **In the Matter of** <br><br> **AB Acquisition, LLC,** <br> **a limited liability company,** | **Docket No. C-4424** |

# COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that AB Acquisition, LLC, a limited liability company, subject to the jurisdiction of the Commission, entered into a merger agreement with United Supermarkets, L.L.C. ("United"), a limited liability company, subject to the jurisdiction of the Commission, in violation of 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, 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. RESPONDENT

1. Respondent AB Acquisition, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

2. Respondent, through its wholly owned indirect subsidiary, Albertson's LLC ("Albertson's"), owns and operates 606 supermarkets in the Western and Southern United States. In Texas, Respondent owns and operates 72 supermarkets under the Albertsons banner—ten of which are located in the West Texas zone, which consists of North and West Texas.

## II. THE ACQUIRED COMPANY

3. United is a limited liability company organized, existing, and doing business under and by virtue of the laws of Texas, with its office and principal place of business located at 7830 Orlando Avenue, Lubbock, Texas 79423.

4. United owns and operates 51 supermarkets in North and West Texas. United operates these supermarkets under three banners—United Supermarkets, Market Street, and Amigos. United Supermarkets is a traditional supermarket banner. Market Street offers everyday grocery needs, as well as gourmet and specialty items, whole health products, and prepared food. Amigos is operated as a specialty store with a focus on traditional and authentic items targeted to Hispanic shoppers.

## III. JURISDICTION

5. Respondent 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 FTC Act, 15 U.S.C. § 44.

6. United 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 FTC Act, 15 U.S.C. § 44.

## IV. THE PROPOSED MERGER

7. On September 9, 2013, Respondent and United entered into a merger agreement pursuant to which Respondent would acquire 100% of United's equity for a purchase price of approximately $385 million ("the Proposed Merger").

8. The Proposed Merger would combine two of the only three retail sellers of food and other grocery products in full-line supermarkets in Amarillo and Wichita Falls, Texas. Respondent and United both own and operate supermarkets in these areas and compete and promote their businesses in these areas.

## V. 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 any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed and other types of packaged products; staple foodstuffs, which may include salt,

sugar, flour, sauces, spices, coffee, tea and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer and/or distilled spirits.

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 convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores—these types of stores do not, individually or collectively, provide sufficient competition to effectively constrain prices at supermarkets. These 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.

## VI. 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. Respondent and United operate supermarkets under the Albertsons, United Supermarkets, and Market Street banners within approximately two to five miles of each other in both the western half of Amarillo, Texas and the southwest region of Wichita Falls, Texas. The primary trade area of Respondent's and United's banners in both Amarillo and Wichita Falls overlap significantly.

16. The relevant geographic markets in which to assess the competitive effects of the acquisition are localized areas within Amarillo and Wichita Falls. Specifically, in Amarillo, the relevant geographic market is the area encompassing the area from the western city limit to the railroad tracks that run parallel to, and are located to the east of, the Interstate 40 and the U.S. Route 87/287 corridor ("West Amarillo"). In Wichita Falls, the relevant geographic market is

the area within the city limits that runs south of U.S. Route 277 and west of U.S. Route 281 ("Southwest Wichita Falls"). A hypothetical monopolist controlling all supermarkets in these areas could profitably raise prices by a small but significant amount.

## VII. MARKET CONCENTRATION

17. The relevant markets of West Amarillo and Southwest Wichita Falls, Texas already are highly concentrated, and the Proposed Merger will substantially increase concentration, whether measured by the Herfindahl Hirschman Index ("HHI") or by the number of competitively significant firms remaining in the markets post-acquisition.

18. In West Amarillo, the post-merger HHI in the relevant geographic market would increase 503 points from 4501 to 5004, when measured by revenues. This market concentration level gives rise to a presumption that the Proposed Merger is unlawful in the West Amarillo geographic market.

19. In Southwest Wichita Falls, the post-merger HHI in the relevant geographic market would increase 811 points from 4193 to 5004. This market concentration level, once again, gives rise to a presumption that the acquisition is unlawful in the Southwest Wichita Falls geographic market.

20. The Proposed Merger reduces the number of supermarket competitors in the relevant geographic markets from three to two in both West Amarillo and Southwest Wichita Falls.

## VIII. ENTRY CONDITIONS

21. Entry into the relevant markets would not be timely, likely, or sufficient in magnitude to prevent or deter the likely anticompetitive effects of the Proposed Merger. Significant entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a 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.

## IX. EFFECTS OF THE ACQUISITION

22. The Proposed Merger, if consummated, is likely to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the relevant geographic markets identified in Paragraph 16 in the following ways, among others:

(a) by eliminating direct and substantial competition between Respondent and United; and

(b) by increasing the likelihood that Respondent will unilaterally exercise market power.

23. The ultimate effect of the Proposed Merger would be to increase the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries, or services will decrease, in the relevant sections of the country.

## X. VIOLATIONS CHARGED

24. The agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC 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 FTC Act, as amended, 15 U.S.C. § 45.

**WHEREFORE, THE PREMISES CONSIDERED,** Federal Trade Commission on this twenty-third day of December 2013, issues its complaint against said Respondent.

By the Commission.

April J. Tabor
Acting Secretary

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