

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

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In the Matter of )  
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**J.C. PENNEY COMPANY, INC. ,** )  
 a corporation; and ) **Docket Nos. C-3721**  
 ) **C-3722**  
**THRIFT DRUG, INC. ,** )  
 a corporation. )  

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**COMPLAINT**

The Federal Trade Commission ("Commission"), having reason to believe that J.C. Penney Company, Inc., through two wholly-owned subsidiaries, Omega Acquisition Corporation and Thrift Drug, Inc., all subject to the jurisdiction of the Commission, has agreed to acquire Eckerd Corporation and certain assets of Rite Aid Corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 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. DEFINITION**

1. For the purposes of this complaint, "MSA" means Metropolitan Statistical Area as defined by the United States Department of Commerce, Bureau of the Census.

**II. RESPONDENTS**

2. Respondent J.C. Penney Company, Inc. ("J.C. Penney") 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 6501 Legacy Drive, Plano, Texas 75024-3698.

3. Respondent Thrift Drug, Inc. ("Thrift Drug") 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 615 Alpha Drive, Pittsburgh, Pennsylvania 15238.

4. For purposes of this proceeding, Respondents are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

### **III. THE ACQUIRED COMPANIES**

5. Eckerd Corporation ("Eckerd") 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 8333 Bryan Dairy Road, Largo, Florida 34647.

6. Rite Aid Corporation ("Rite Aid") 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 30 Hunter Lane, Camp Hill, Pennsylvania 17011.

7. For purposes of this proceeding, Eckerd and Rite Aid are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

### **IV. THE ACQUISITIONS**

8. On October 11, 1996, J.C. Penney's wholly-owned subsidiary, Thrift Drug, entered into an Asset Purchase Agreement to acquire certain assets of Rite Aid, and on November 2, 1996, J.C. Penney's wholly-owned subsidiary, Omega Acquisition Corporation, entered into an Amended and Restated Agreement and Plan of Merger to acquire Eckerd (collectively "the Acquisitions").

### **V. THE RELEVANT MARKETS**

9. For purposes of this Complaint, the relevant line of commerce in which to analyze the effect of the Acquisitions is the retail sale of pharmacy services to third-party payors.

10. For purposes of this Complaint, the relevant sections of the country in which to analyze the effect of the Acquisitions are:

- a. the state of North Carolina;

- b. the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA;
- c. the Greensboro-Winston Salem-High Point, North Carolina MSA;
- d. the Raleigh-Durham-Chapel Hill, North Carolina MSA; and
- e. the Charleston-North Charleston, South Carolina MSA.

11. The relevant markets set forth in Paragraphs 9 and 10 are highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

12. Entry into the relevant markets is difficult or unlikely to occur at a sufficient scale to deter or counteract the effect of the Acquisitions described in Paragraph 14.

13. Thrift Drug, Eckerd and Rite Aid are actual competitors in the relevant markets.

#### **VI. EFFECT OF THE ACQUISITIONS**

14. The effect of the Acquisitions may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating direct actual competition between Thrift Drug, Eckerd and Rite Aid;
- b. by increasing the likelihood that Thrift Drug will unilaterally exercise market power; and
- c. by increasing the likelihood of collusion in the relevant markets.

15. All of the above increase the likelihood that firms in the relevant markets will increase prices and restrict output both in the near future and in the long term.

#### **VII. VIOLATIONS CHARGED**

16. The acquisition agreements described in Paragraph 8 constitute violations of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

17. The Acquisitions described in paragraph 8, if consummated, would constitute violations 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.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this Complaint to be signed by the Secretary and its official seal to be affixed, at Washington, D.C. this twenty-eighth day of February, 1997.

By the Commission.

Donald S. Clark  
Secretary

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