

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

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In the Matter of )  
WAL-MART STORES, INC., )  
a corporation; )      **Docket No. C-4066**  
and )  
SUPERMERCADOS AMIGO, INC., )  
a corporation. )  
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)

**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 Wal-Mart Stores, Inc. (“Wal-Mart”) has entered into an agreement to acquire 100% of the outstanding voting securities of respondent Supermercados Amigo, Inc. (“Amigo”), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, that such 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, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

**Wal-Mart Stores, Inc.**

**PARAGRAPH ONE:** Respondent Wal-Mart 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 702 Southwest 8<sup>th</sup> Street, Bentonville, Arkansas 72716.

**PARAGRAPH TWO:** Respondent Wal-Mart, through Wal-Mart Puerto Rico, Inc., its wholly-owned subsidiary, is, and at all times relevant hereto has been, engaged in the sale of general merchandise and food and grocery items in Puerto Rico. Wal-Mart and its wholly-owned subsidiary operate eighteen stores in Puerto Rico under the Wal-Mart and SAM’s Clubs trade names, including nine

traditional Wal-Mart discount stores, eight Club Stores, and one Supercenter. Wal-Mart had substantial sales in Puerto Rico in the fiscal year ending January 31, 2001.

PARAGRAPH THREE: Respondent Wal-Mart is, and at all times relevant hereto has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Supermercados Amigo, Inc.

PARAGRAPH FOUR: Respondent Amigo is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its office and principal place of business located at Mercado Central Zona Portuaria, Edificio A-1, Puerto Nuevo, San Juan, Puerto Rico 00920.

PARAGRAPH FIVE: Respondent Amigo is, and at all times relevant hereto has been, engaged in the operation of supermarkets in Puerto Rico. Amigo operates thirty-six supermarkets under the Amigo trade name. Amigo had substantial sales in Puerto Rico in the fiscal year ending September 30, 2001.

PARAGRAPH SIX: Respondent Amigo is, and at all times relevant hereto has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

The Acquisition

PARAGRAPH SEVEN: On or about February 5, 2002, Wal-Mart Puerto Rico, Inc., W-M Puerto Rico Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Wal-Mart, Amigo, and Steven C. Lausell, as stockholders' representative, entered into a Merger Agreement. Pursuant to this Merger Agreement, Wal-Mart will acquire all of the outstanding voting securities of Amigo by merger of W-M Puerto Rico Acquisition with and into Amigo, with Amigo continuing as the surviving corporation. As a result of the merger, Wal-Mart will hold 100% of the voting securities of Amigo.

Trade and Commerce

PARAGRAPH EIGHT: The relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition described herein is the retail sale of food and grocery products in stores that carry a wide selection and deep inventory of food and grocery products in a variety of brands and sizes, enabling consumers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit. Thus, stores in the relevant line of commerce have substantial offerings in each of the following product categories: 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, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

**PARAGRAPH NINE:** In Puerto Rico, full-service supermarkets, “supercenters” (which are co-located full-service supermarkets and mass merchandise outlets), and “club stores” (which are stores that offer a wide selection and deep inventory of food and grocery products and general merchandise—often in large-sized packages or in packages of two or more conventional-sized items—to businesses and individuals that have purchased club memberships) offer a distinctive set of products and services that enables them to compete in the relevant line of commerce described in Paragraph Eight above.

**PARAGRAPH TEN:** In Puerto Rico, a substantial portion of retail purchasers regard full-service supermarkets, supercenters, and club stores as reasonably interchangeable for the purpose of purchasing substantially all of their weekly food and grocery shopping requirements in a single shopping visit.

**PARAGRAPH ELEVEN:** In Puerto Rico, full-service supermarkets, supercenters, and club stores compete primarily with each other. Operators of full-service supermarkets, supercenters, and club stores in Puerto Rico often price-check and modify the prices of their food and grocery products based on the prices of food and grocery products at nearby full-service supermarkets, supercenters, and club stores. They do not often price-check and modify the prices of food and grocery products based on the prices at other types of stores. In Puerto Rico, most consumers shopping for food and grocery products at full-service supermarkets, supercenters, and club stores are not likely to shop at other types of stores in response to a small price increase by full-service supermarkets, supercenters, and club stores.

**PARAGRAPH TWELVE:** In Puerto Rico, retail stores other than full-service supermarkets, supercenters, and club stores, such as limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), military commissaries, and mass merchandise outlets (including those with pantries not offering a wide selection and deep inventory of food and grocery products), do not effectively constrain prices in the relevant line of commerce described in Paragraph Eight above. In Puerto Rico, none of these stores offers a full-service supermarket’s, supercenter’s, or club store’s distinct set of products and services that enables a retail customer to engage in one-stop shopping for food and grocery products.

**PARAGRAPH THIRTEEN:** The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the areas of Puerto Rico in and near Cayey and Cidra (the “Cayey” market), Ponce and Juana Diaz (the “Ponce” market), and Barceloneta, Manati, and Vega Baja (the “Manati” market).

### Market Structure

PARAGRAPH FOURTEEN: The Cayey, Ponce, and Manati markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as the “HHI”) or by two-firm and four-firm concentration ratios. The acquisition would substantially increase concentration in each such market. The post-acquisition HHI in the Cayey market would increase 1,056 points, from 2,500 to 3,556; in the Ponce market it would increase 603 points, from 1,912 to 2,515; and in the Manati market it would increase 1,782 points, from 2,173 to 3,955. In the Cayey market, Wal-Mart and Amigo would have a combined market share greater than 47%; in the Ponce market, the parties’ combined market share would exceed 38%; and in the Manati market, the combined market share would be greater than 59%.

### Entry Conditions

PARAGRAPH FIFTEEN: Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant markets.

### Actual Competition

PARAGRAPH SIXTEEN: Wal-Mart Supercenters and/or SAM’s Clubs are, or are about to become, actual and direct competitors of Amigo Supermarkets in the Cayey, Ponce, and Manati markets.

### Effects

PARAGRAPH SEVENTEEN: The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant line of commerce in the relevant sections of the United States 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, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating direct competition between the Wal-Mart Supercenters and SAM’s Clubs owned or controlled by Wal-Mart and supermarkets owned or controlled by Amigo;
- b. by increasing the likelihood that the combined Wal-Mart/Amigo will unilaterally exercise market power; and
- c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction,

each of which increases the likelihood that the prices of food, groceries, or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the United States.

Violations Charged

PARAGRAPH EIGHTEEN: The Merger Agreement dated as of February 5, 2002 among Wal-Mart Puerto Rico, Inc., W-M Puerto Rico Acquisition Corp., Supermercados Amigo, Inc., and Steven C. Lausell, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the proposed 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 twentieth day of November, 2002, issues its complaint against said respondents.

By the Commission, Commissioner Anthony recused.

Donald S. Clark  
Secretary

SEAL: