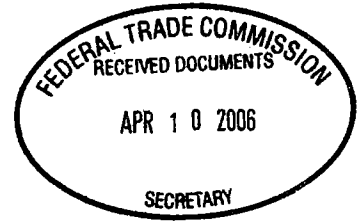


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
)
)
KONINKLIJKE AHOLD N.V.,)
a corporation,)
)
and)
)
BRUNO'S SUPERMARKETS, INC.,)
a corporation.)

Docket No. C-4027
PUBLIC VERSION

FEDERAL TRADE COMMISSION
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DOCUMENT PROCESSING

**PETITION OF RESPONDENT KONINKLIJKE AHOLD N.V. TO
REOPEN AND MODIFY DECISION AND ORDER**

Koninklijke Ahold N.V. ("Ahold"), a Respondent *In the Matter of* Koninklijke Ahold, N.V. and Bruno's Supermarkets, Inc., FTC File No. 011-0247, FTC Docket No. C-4027, respectfully requests the Federal Trade Commission (the "Commission") to reopen and modify the Commission's Decision and Order ("Order"), dated January 16, 2002. (Attached as Exhibit 1). Ahold makes this request pursuant to § 5(b) of the Federal Trade Commission Act, 15 U.S.C. §45(b), and §2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. §2.51, because of changed conditions of fact and because this request is in the public interest.

A satisfactory showing sufficient to require reopening is furnished when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. *See* S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979). Ahold's reasons for filing the foregoing

Petition to Reopen and Modify the Order (“Petition”) are set forth in the attached affidavit of Brian W. Hotarek, Executive Vice President, Ahold U.S.A., Inc. (Attached as Exhibit 2).

Briefly, in January 2005, Ahold sold all of its Supermarket assets in the areas covered by the Order and therefore does not own or operate any Supermarket assets in the areas. The party that acquired the assets from Ahold was identified to the Commission

Redacted

Therefore, the Order as it relates to Ahold is no longer needed and should be vacated as to Ahold.

I. Procedural History

A. The Transaction

Pursuant to an Agreement and Plan of Merger dated as of September 4, 2001, by and among Ahold; New Bronco Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Ahold U.S.A., Inc.;¹ Bruno’s Supermarkets, Inc., a Delaware corporation (“Bruno’s Supermarkets”); and Elway Advisors, LLC, as stockholders’ representative, Ahold acquired 100% of the outstanding voting securities of Bruno’s Supermarkets for approximately \$500 million in cash by merger of New Bronco with and into Bruno’s Supermarkets, with Bruno’s Supermarkets continuing as the surviving corporation. (See FTC Press Release, attached as Exhibit 3). As a result of this merger, until December 2004, Ahold held 100% of the outstanding voting securities of Bruno’s Supermarkets.

The proposed transaction was investigated by the Commission. On December 7, 2001, the Commission issued a complaint (Attached as Exhibit 4), which culminated in an Agreement Containing Consent Orders signed by the parties. (Attached as Exhibit 5). The Commission

¹ On December 5, 2005, Ahold U.S.A., Inc., a Delaware corporation, merged with and into Ahold U.S.A. Holdings, Inc., a Maryland corporation. On December 5, 2005, Ahold U.S.A. Holdings, Inc. changed its name to Ahold U.S.A., Inc.

voted 5-0 to accept the consent order and place a copy on the public record. (See FTC Press Release, attached as Exhibit 3). After the 30-day public comment period expired, the Commission voted 5-0 to issue the Order on January 16, 2002. (See FTC Press Release, attached as Exhibit 6). Ahold has complied, and continues to comply, with all provisions of the Order.

B. The Order

Specifically, the terms of the Order required the following. Ahold was required to divest two of its BI-LO Supermarkets in Georgia, one in Baldwin County and one in Washington County. The store in Baldwin County was sold to The Kroger Co. and the store in Washington County was sold to Winn-Dixie Stores, Inc. Pursuant to Paragraphs II.A. and II.B. of the Order, and as reported in Ahold's 30-day Report filed with the Commission and dated February 15, 2002, Ahold divested all assets as required by the Order. (Attached as Exhibit 7).

Pursuant to Paragraph IV.A. of the Order, for a period of ten (10) years from the date the Order became final (January 16, 2002), Ahold is required to provide advance written notice to the Commission prior to acquiring any ownership or leasehold interest in any facility that has operated as a Supermarket within six months of the date of such proposed acquisition in Baldwin County or Washington County, Georgia. Ahold has made no such acquisition.

Pursuant to Paragraph IV.B. of the Order, for a period of ten (10) years from the date the Order became final (January 16, 2002), Ahold is required to provide advance written notice to the Commission prior to acquiring any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any Supermarket, or owned a Supermarket within six months prior to such proposed acquisition in Baldwin County or Washington County, Georgia. Ahold has made no such acquisition.

Pursuant to Paragraph V.A. of the Order, Ahold may neither enter into nor enforce any agreement that restricts the ability of any person that acquires any Supermarket, any leasehold

interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after January 1, 2001 in Baldwin County or Washington County, Georgia to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Ahold. Ahold has neither entered into nor enforced any such agreements.

Pursuant to Paragraph V.B. of the Order, Ahold shall not remove any fixtures or equipment from a property owned or leased by Ahold in Baldwin County or Washington County, Georgia, that is no longer in operation as a Supermarket, except (1) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; or (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Ahold. Ahold is in full compliance with Paragraph V.B. of the Order.

Pursuant to Paragraph VI.B. of the Order, Ahold is required to submit a verified written annual report. The most recent verified written annual report was submitted to the Commission by Ahold on January 13, 2006. (Attached as Exhibit 8). The reporting requirement under the Order continues until 2012. Ahold is in full compliance with Paragraph VI.B. of the Order.

Finally, pursuant to Paragraph VII. of the Order, Ahold is required to notify the Commission thirty days in advance of certain proposed changes to Ahold's business organization. ^{Redacted}, Ahold filed notice pursuant to Paragraph VII. of the Order, for the reasons stated below. (Attached as Exhibit 9).

C. Sale of Assets: Ahold Exits the Relevant Areas

^{Redacted}, Ahold entered into a Limited Liability Company Interest Purchase Agreement ("the Agreement") with Lone Star U.S. Acquisitions, LLC, a Delaware limited partnership ("Lone Star"), whereby Ahold, through Ahold U.S.A. Holdings, Inc., a Maryland corporation, n/k/a Ahold U.S.A., Inc., agreed to sell all of the outstanding limited

liability company interests in BI-LO Holding, LLC, a Delaware limited liability company. (Attached as Exhibit 10).

At the time of the Agreement, the operating companies for all of Ahold's Supermarkets throughout the Southeastern United States were included within BI-LO Holding, LLC: BI-LO, LLC; Bruno's Supermarkets Inc.; and Bruno's Inc. (See December 23, 2004 Ahold Press Release, attached as Exhibit 11). ^{Redacted}, Ahold submitted its Hart-Scott-Rodino filing in connection with this transaction, and received early termination of the waiting period on January 11, 2005. (Attached as Exhibit 12). The parties to the Agreement closed the transaction on January 31, 2005. (See January 31, 2005 Ahold Press Release, attached as Exhibit 13). As a result, after the closing, Ahold no longer owns or operates Supermarkets in the relevant areas subject to the compliance obligations of the Order, namely Baldwin County, or Washington County, Georgia (the "Relevant Areas").

II. The Requested Modification is Based Upon Changed Conditions of Fact and is in the Public Interest

A. Changed Conditions of Fact

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. §45(b), provides that the Commission may reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" or public interest so require. Furthermore, Section 2.51(b) of the Commission's Rules of Practice, 16 C.F.R. § 2.51(b) provides that, "[a] request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified, or set aside, in whole or in part, or that the public interest so requires."

As detailed above, the changed conditions of fact are based on Ahold's Agreement with Lone Star, whereby Ahold sold its Supermarkets in Baldwin County and Washington County,

Georgia, the areas subject to the compliance obligations of the Order. Although Ahold has continued to comply with the reporting obligations of the Order since the January 2005 sale of all of its outstanding interests in the Relevant Areas, the changed conditions of fact have eliminated the need for the Order as it relates to Ahold.

Ahold's requested modification is consistent with the goals of the Order and would eliminate unnecessary costs and burdens to Ahold and the Commission during the remaining term of the Order. The continuation of the reporting requirement for the remaining 6 years of the Order (until January 2012) would impose needless costs and burdens on Ahold and the Commission, in light of the changed conditions of fact. Furthermore,

Redacted

(See Exhibit 10).

B. Public Interest

In addition to changed conditions of fact, Ahold meets the public interest requirement of Section 2.51(b) because "the order in whole or in part is no longer needed." To meet the public interest requirement of Section 2.51(b), the requester must:

make a *prima facie* showing of a legitimate "public interest" reason or reasons justifying relief. [T]his showing requires the requester to demonstrate, for example, that there is a more

effective or efficient way of achieving the purposes of the order, that the order in whole or in part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief.

Requests to Reopen, 65 Fed. Reg. 50,636, 50,637 (Aug. 21, 2000), amending 16 C.F.R. 2.51(b).

When the Order was issued on January 16, 2002, the Commission was concerned that the transaction might substantially lessen competition in Baldwin County and Washington County, Georgia. As a result of the sale of Ahold's outstanding interests in the Relevant Areas, Ahold is no longer a competitor in the Relevant Areas.

The Redacted Agreement with Lone Star resulted in the sale of any remaining assets held or operated by Ahold in the Relevant Areas. Today, Ahold no longer owns or operates Supermarkets in the Relevant Areas, nor does Ahold own or operate supermarkets in any part of the Southeastern United States. Now that Ahold has sold its assets in the Relevant Areas, the Order is no longer needed as to Ahold. *In re Bendix Corp.*, 107 F.T.C. 60 (1986) (reopening and terminating provisions of order requiring prior approval because respondent divested or sold off all product lines that gave rise to the order, and the Commission's concerns leading to the order were no longer applicable).

Finally, continuation of the Order's notice and reporting provisions are not needed to protect the public interest. *See Notice and Request for Comment Regarding Statement of Policy Concerning Prior Approval and Prior Notice Provisions in Merger Cases*, 60 Fed. Reg. 39,745, 39,746 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241 (limiting prior approval and notice provisions to narrow circumstances). Since Ahold has exited the Relevant Areas and is no longer a competitor, there is no credible risk that, but for the Order, Ahold would engage in an otherwise unreportable anticompetitive merger. *Id.* at 39,746. Here, there is nothing to suggest

that Ahold would attempt the same or essentially the same merger that gave rise to the original complaint.

III. Requested Modification to Decision and Order

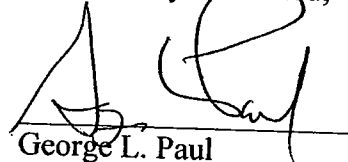
Ahold has filed this Petition because of changed conditions of fact and the public interest so requires. Ahold respectfully requests that the Commission vacate the Order as to Respondent Ahold.

IV. Conclusion

For the foregoing reasons, modifying the Order by vacating it as to Respondent Ahold is consistent with the purposes of the Order. The Order is unnecessary due to the changed conditions of fact and because the public interest no longer requires it. Therefore, Ahold's Petition should be granted.

Dated: April 10, 2006

Respectfully submitted,



George L. Paul
Douglas M. Jasinski
Anna Kertesz

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701 13th Street, N.W.
Washington, DC 20005
(202) 626-3600

Attorneys for Koninklijke Ahold N.V.

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

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of)

KONINKLIJKE AHOLD N.V.,)
 a corporation;)

and)

BRUNO'S SUPERMARKETS, INC.,)
 a corporation.)

Docket No. C-4027

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of 100% of the outstanding voting securities of Respondent Bruno's Supermarkets, Inc. ("Bruno's") by Respondent Koninklijke Ahold N.V. ("Ahold"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

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 Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands.
2. Respondent Bruno's 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 800 Lakeshore Parkway, Birmingham, AL.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Ahold" means Koninklijke Ahold N.V., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Koninklijke Ahold N.V. (including, but not limited to, BI-LO, LLC, and New Bronco Acquisition Corp.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Bruno's" means Bruno's Supermarkets, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Bruno's Supermarkets, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Respondents" means Ahold and Bruno's, individually and collectively.
- D. "Acquisition" means Ahold's proposed acquisition of the outstanding voting securities of Bruno's pursuant to the "Agreement and Plan of Merger Dated as of September 4, 2001 By and Among Koninklijke Ahold N.V., New Bronco Acquisition Corp., Bruno's Supermarkets, Inc. and Elway

Advisors, LLC, as Stockholder's Representatives."

- E. "Commission" means the Federal Trade Commission.
- F. "Assets To Be Divested" means the Milledgeville Assets and the Sandersville Assets.
- G. "Business Day" means any day excluding Saturday, Sunday and any United States Federal holiday.
- H. "Commission-approved Acquirer" means any entity approved by the Commission to acquire either or both of the Assets To Be Divested pursuant to this Order.
- I. "Divestiture Agreement" means any agreement between the Respondents and a Commission-approved Acquirer (or a trustee appointed pursuant to Paragraph III of this Order and a Commission-approved Acquirer) and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested that have been approved by the Commission to accomplish the requirements of this Order. The term Divestiture Agreement includes, as appropriate, the Kroger Agreement, and/or the Winn-Dixie Agreement.
- J. "Divestiture Trustee(s)" means any person or entity appointed by the Commission pursuant to Paragraph III of the Decision and Order to act as a trustee in this matter.
- K. "Kroger" means The Kroger Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202-1100.
- L. "Kroger Agreement" means the "Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease" by and between BI-LO, LLC and The Kroger Co. made and entered into on November 14, 2001, and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- M. "Milledgeville Assets" means the Supermarket currently operated by Respondent Ahold under the BI-LO trade name located at 1692 North Columbia Street, Milledgeville, Georgia, 31061, and all assets, leases, properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or used in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.
- N. "Sandersville Assets" means the Supermarket currently operated by Respondent Ahold under the BI-LO trade name located at 648 Harris Street, Sandersville, Georgia, 31082, and all assets, leases,

properties; government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or used in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.

- O. "Supermarket" means a full-line retail 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, 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.
- P. "Third Party Consents" means all consents from any person other than the Respondents, including all landlords, that are necessary to effect the complete transfer to the Commission-approved Acquirer(s) of the Assets To Be Divested.
- Q. "Winn-Dixie" means Winn-Dixie Stores, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at 5050 Edgewood Court, Jacksonville, Florida 32254.
- R. "Winn-Dixie Agreement" means "Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease" by and between BI-LO, LLC and Winn-Dixie Stores, Inc. made and entered into on November 13, 2001, and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.

II.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Milledgeville Assets as an ongoing business to Kroger pursuant to and in accordance with the Kroger Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix I. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Milledgeville Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Milledgeville Assets to Kroger pursuant to the Kroger Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Kroger is not an acceptable purchaser of the Milledgeville Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Kroger and shall divest the Milledgeville Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

- B. Not later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Sandersville Assets as an ongoing business to Winn-Dixie pursuant to and in accordance with the Winn-Dixie Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix II. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Sandersville Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Sandersville Assets to Winn-Dixie pursuant to the Winn-Dixie Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Winn-Dixie is not an acceptable purchaser of the Sandersville Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Winn-Dixie and shall divest the Sandersville Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

- C. Respondents shall obtain all required Third Party Consents prior to the closing of each Divestiture Agreement pursuant to which the Assets To Be Divested are divested to a Commission-approved Acquirer.
- D. Any Divestiture Agreement between Respondents (or a trustee appointed pursuant to Paragraph III. of this Order) and a Commission-approved Acquirer of the Assets To Be Divested that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.
- E. The purpose of the divestitures is to ensure the continuation of the Milledgeville Assets and the Sandersville Assets as ongoing viable enterprises engaged in the Supermarket business and to remedy

the lessening of competition resulting from the Acquisition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations specified in Paragraph II of this Order, the Commission may appoint a trustee or trustees to divest the relevant Assets To Be Divested pursuant to Paragraph II in a manner that satisfies the requirements of Paragraph II. The Commission may appoint a different Divestiture Trustee to accomplish each of the divestitures required in Paragraph II. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
 2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the relevant assets that are required by this Order to be divested.
 3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture(s) required by the Order.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; provided, however, the Commission may extend the divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the relevant assets that are required to be divested by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to a Commission-approved Acquirer as required by this Order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) Business Days of receiving notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement

contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute Divestiture Trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.
11. In the event that the Divestiture Trustee determines that he or she is unable to divest the relevant Assets To Be Divested pursuant to the relevant Paragraph(s) in a manner that preserves their marketability, viability and competitiveness and ensures their continued use as Supermarket businesses, the Divestiture Trustee may divest such additional assets related to the relevant Supermarket businesses of the Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
13. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).
14. Respondents may require the Divestiture Trustee to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final, Respondents shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission:

- A. Acquire any ownership or leasehold interest in any facility that has operated as a Supermarket within six (6) months prior to the date of such proposed acquisition in Baldwin County or Washington County, Georgia.
- B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any Supermarket, or owned any interest in or operated any Supermarket within six (6) months prior to such proposed acquisition in Baldwin County or Washington County, Georgia.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Respondents or the acquisition of or leasing a facility that has not operated as a Supermarket within six (6) months prior to Respondent's offer to purchase or lease such facility.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final:

- A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. § 12(a)) that acquires any Supermarket, any leasehold interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after January 1, 2001, in Baldwin County or Washington County, Georgia to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Respondents.

- B. Respondents shall not remove any fixtures or equipment from a property owned or leased by Respondents in Baldwin County or Washington County, Georgia that is no longer in operation as a Supermarket, except (1) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Respondents.

VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and
- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

By the Commission.

Donald S. Clark
Secretary

ISSUED: January 16, 2002

APPENDIX I

[Non-Public]

APPENDIX II

[Non-Public]

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