



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

June 30, 2011

Re: *In the Matter of Tops Markets LLC, Morgan Stanley Capital Partners V U.S. Holdco LLC, and The Penn Traffic Company,*
Docket No. C-4295, File No. 101-0074

The Federal Trade Commission (“FTC”) has received public comments regarding the proposed Decision and Order (“Order”) accepted by the FTC in the above-captioned matter. Many comments indicate support for the proposed Order because it restores supermarket competition in the affected areas. The Commission has reviewed the comments in connection with its decision concerning whether to accord final approval to the proposed Order and would like to thank each commentator. The Commission also has placed these comments on the public record.

As background, Tops Markets LLC (“Tops”) acquired substantially all of the assets of The Penn Traffic Company (“Penn Traffic”), including its 79 supermarkets (the “Acquisition”), through an expedited bankruptcy proceeding. Because the only remaining bidder for the supermarkets was a liquidator, the Acquisition represented the only opportunity to avoid the mass closing of 79 Penn Traffic supermarkets in more than 50 metropolitan areas. Due to the extremely tight deadlines inherent in the bankruptcy proceeding, and in an effort to prevent the mass liquidation of these Penn Traffic supermarkets, Commission staff crafted a remedy that would permit timely consummation of the Acquisition while preserving the Commission’s ability to obtain full relief to cure the anticompetitive harm that the Acquisition would otherwise cause. In light of this extraordinary set of circumstances, the Commission determined that this unique remedy would best serve the interests of consumers.

The Commission’s Order in this matter is designed to ensure that the acquisition of Penn Traffic’s assets by Tops does not result in a substantial lessening of price or non-price competition in the retail sale of food and other grocery products in supermarkets. We recognize that such competition has significant benefits for local communities. To that end, the Order requires the divestiture of seven Penn Traffic supermarkets, together with their related assets, to a Commission-approved buyer. As stated in the Complaint, absent the relief set forth in the Commission’s Order, the ultimate effect of the Acquisition would be to increase the likelihood that prices of food and other grocery products would rise above competitive levels, or that there would be a decrease in the quality or selection of food, other grocery products, or services. We appreciate the comments that the Order is well-suited to address these concerns.

After considering the entire evidentiary record, including all submitted comments, the Commission has determined that the public interest would best be served by issuing the Decision

and Order in final form, as modified. A copy of the final Decision and Order and other relevant material are available from the Commission's website at <http://www.ftc.gov>.

It helps the Commission's analysis to hear from a variety of sources in its work on antitrust and consumer protection issues, and we appreciate the public's interest in this matter.

By direction of the Commission.

Donald S. Clark
Secretary