

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

In the Matter of Koninklijke Ahold N.V./Safeway Inc., File No. 121-0055, Docket No.

I. Introduction and Background

The Federal Trade Commission (“Commission”) has accepted for public comment, and subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Koninklijke Ahold N.V. (“Ahold”), its subsidiary, Giant Food Stores, LLC (“Giant”), Safeway Inc. (“Safeway”), and its subsidiary (“Genuardi’s”) (collectively “Respondents”), that is designed to remedy the anticompetitive effects that otherwise would result from Ahold’s acquisition of certain Genuardi’s supermarkets owned by Safeway. The proposed Consent Agreement requires divestiture of the Genuardi’s supermarket in Newtown, Pennsylvania, and its related assets to a Commission-approved purchaser. The proposed Consent Agreement also requires Ahold and Safeway to divest all related assets and real property necessary to ensure the buyer of the divested supermarket will be able to quickly and fully replicate the competition that would have been eliminated by the acquisition.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement, modify it, or make it final without modification.

On January 4, 2012, Ahold and Safeway executed an agreement whereby Ahold would acquire 16 of the Genuardi’s supermarkets from Safeway. The Commission’s Complaint alleges that 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, by removing an actual, direct, and substantial supermarket competitor from the Newtown, Pennsylvania, geographic market. The proposed Consent Agreement would remedy the alleged violations by requiring a divestiture that will replace competition that otherwise would be eliminated in this market as a result of the acquisition.

II. The Parties

Ahold owns or has an interest in 2,970 supermarkets and specialty stores in Europe and the United States. Net sales for 2010 were \$36.8 billion, which represents a 5.7% increase over 2009. Ahold USA is organized into four retail divisions: Giant Carlisle, Giant Landover, Stop & Shop New York Metro, and Stop & Shop New England. Peapod, a grocery delivery service, also is included within Ahold USA.

Safeway is one of the largest food-and-drug retailers in the United States. It operates over 1,700 stores across the United States under a variety of banners, including Vons in southern California and Nevada, Randalls and Tom Thumb in Texas, Carrs in Alaska, Genuardi’s in suburban Philadelphia, and Safeway throughout the rest of the country. There were 36 Genuardi’s stores operating in Pennsylvania, New York, and New Jersey when Safeway

purchased the chain in February 2001. Safeway is exiting the Philadelphia metropolitan market by selling or closing all 24 remaining Genuardi's markets in eastern Pennsylvania (Bucks, Montgomery, Delaware, and Chester counties), as well as four stores in New Jersey.

III. Supermarket Competition in Newtown, Pennsylvania

Ahold's proposed acquisition of Genuardi's in Newtown presents antitrust concerns in the retail sale of groceries. Competition in food retailing depends on proximity in both retailing format and in geographic location. Stores with similar formats located nearby each other provide a greater competitive constraint on each other's pricing than do stores of different formats or stores located at a greater distance. Giant and Genuardi's have stores in the Newton area, and they have a very similar format.

Giant and Genuardi's compete as supermarket retailers of grocery products. Supermarkets are full-line retail grocery stores that sell thousands of food and non-food products that typical families regularly consume at home (*e.g.*, fresh meat and seafood, dairy products, frozen goods, beverages, bakery goods, dry groceries, soaps, detergents, and health and beauty aids) and offer these products in a variety of sizes and brands. Supermarkets are large stores with at least 10,000 square feet of selling space and 30,000 to 60,000 different items, typically referred to as stock-keeping units or "SKUs." This broad set of products and services provides a "one-stop shopping" experience for consumers by enabling them to shop in a single store for all of their food and grocery needs. The ability to offer consumers one-stop shopping is a critical differentiating factor between supermarkets and other food retailers.

Other types of retailers that sell food and grocery items compete less strongly with Giant and Genuardi's. These others include "mom & pop" stores, convenience stores, specialty food stores, "premium natural and organic" markets,¹ mass merchants, and club stores. Although these types of retailers provide some level of competition to supermarkets, they do not have a supermarket's full complement of products and services, which means that if customers elect to shop at these retailers, they also must shop at a supermarket in order to satisfy their weekly grocery needs. Because of this, shoppers at one supermarket are more likely to respond to a price increase by switching to another supermarket than to choose a store with a different format, if both are equally convenient.²

To evaluate the effects of the acquisition on market concentration levels, we define the product market to be the retail sale of grocery products in supermarkets, consistent with practice in all but one prior grocery retailing case settled by consent order.³

¹ See *FTC v. Whole Foods Mkt., Inc.*, 533 F.3d 869 (D.C. Cir. 2008).

² Shoppers typically do not view these other food and grocery retailers as adequate substitutes for supermarkets and would be unlikely to switch to one of these retailers in response to a small but significant price increase or "SSNIP" by a hypothetical supermarket monopolist. See U.S. DOJ and FTC Horizontal Merger Guidelines § 4.1.1 (2010).

³ See, *e.g.*, *Shaw's/Star Markets*, Docket C- 3934 (June 28, 1999); *Kroger/Fred Meyer*, Docket C - 3917 (January 10, 2000); *Albertson's/American Stores*, Docket C - 3986 (June 22, 1999); *Ahold/Giant*, Docket C - 3861 (April 5, 1999); *Albertson's/Buttrey*, Docket C - 3838 (December 8, 1998); *Jitney-Jungle Stores of America, Inc.*, Docket C - 3784 (January 30, 1998). But see *Wal-Mart/Supermercados Amigo*, Docket C - 4066 (November 21, 2002) (the Commission's complaint alleged that in Puerto Rico, club stores should be included in a product market that

Customers shopping at supermarkets are motivated primarily 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. Location is a critical component for closeness of competition between supermarkets. Supermarkets are a differentiated products industry with location serving as one of the primary drivers of differentiation and competition. A supermarket tends to be in most direct competition with those supermarkets located closest to it. Giant and Genuardi's are located approximately two miles from each other in the Newtown area, and the supermarkets' primary trade areas overlap significantly with each other. Acme is the only other supermarket operating in this area. The next-closest supermarket is located at least twice as far away as the Newtown supermarkets are to each other.

The relevant geographic market in which to measure concentration and analyze the competitive implications of Ahold's proposed acquisition of the Newtown Genuardi's is a roughly three to three-and-a-half mile circle measured from the center of Newtown and made up of the U.S. census tracts surrounding this area. Specifically, it consists of Newtown Township, Newtown Borough, and the portion of Middletown Township north of the line formed by Bridgetown Pike and Langhorne Yardley Road in Bucks County, Pennsylvania.

The Newtown, Pennsylvania, market for the sale of retail food and groceries in supermarkets is already highly concentrated, and would become significantly more so post-acquisition. The acquisition would reduce the number of supermarket competitors from three to two, creating a duopoly between Giant and Acme Markets. Under the Herfindal-Hirschman Index ("HHI"), which is the standard measure of market concentration under the 2010 Department of Justice and Federal Trade Commission Merger Guidelines, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. Giant's proposed acquisition of the Newtown Genuardi's creates market concentration levels well in excess of these thresholds. The post-acquisition HHI is 5000-5017, representing an increase of between 1221-1373 from pre-acquisition levels.

Staff's investigation and analysis demonstrate that Giant and Genuardi's are close competitors that compete directly for grocery shoppers in Newtown. Because a substantial number of consumers in Newtown consider Giant's and Genuardi's stores to be close substitutes, a post-acquisition price increase at one (or both) of Giant's stores would be profitable because the other Giant-owned supermarket would likely recoup enough of the otherwise lost volume for the price increase to be profitable. Absent relief, the transaction may also facilitate tacit or express coordination since Acme would be Giant's only remaining competitor in Newtown post-acquisition. Given the transparency of pricing and promotional practices between supermarkets and the fact that supermarkets "price check" competitors in the ordinary course of business, reducing the number of nearby competitors from three to two may facilitate collusion between the remaining supermarket competitors by making coordination easier to establish and monitor.

included supermarkets because club stores in Puerto Rico enabled consumers to purchase substantially all of their weekly food and grocery requirements in a single shopping visit).

New entry is unlikely to deter or counteract the likely anticompetitive effects of the proposed acquisition. Normally, as here, it takes two or more years for an entrant to secure a viable location, obtain the necessary permits and governmental approvals, build its retail establishment, and open to customers. Moreover, incumbent supermarkets often oppose entry efforts by competitor supermarkets, delaying further any potential entry into the relevant market. It is unlikely that entry sufficient to achieve a significant market impact would occur in a timely manner.

IV. The Proposed Consent Agreement

The proposed remedy, which requires the divestiture of the Genuardi's store in Newtown to a Commission-approved purchaser, will be sufficient to restore fully the competition that otherwise would be eliminated in the market as a result of the acquisition.

Respondents Ahold and Genuardi's have agreed to divest the Newtown Genuardi's supermarket to McCaffrey's. McCaffrey's appears to be a highly suitable purchaser, and is well-positioned to enter the relevant market and prevent the increase in market concentration and likely competitive harm that otherwise would have been caused by the acquisition.

All of the current McCaffrey's supermarkets are located outside the relevant geographic area. Its Yardley, Pennsylvania, store is approximately six miles, and approximately 15 minutes driving time, from the Genuardi's in Newtown. The Newtown Genuardi's is outside McCaffrey's primary service area and vice versa.

The proposed Order requires Respondents Ahold and Safeway to divest the assets of the Genuardi's to McCaffrey's no later than ten days following Ahold's acquisition of the 16 Genuardi's stores that are subject to the Asset Purchase Agreement. If McCaffrey's ultimately is not approved by the Commission to purchase the assets, Respondents must immediately rescind the divestiture and divest the Newtown Genuardi's assets to a buyer that receives the Commission's prior approval. The proposed Order contains additional provisions designed to ensure the adequacy of the proposed relief. For example, for a period of one year, the Order prohibits Respondents from interfering with the hiring of or employment of any employees currently working at the Newtown Genuardi's. Additionally, for a period of ten years, Ahold is required to give the Commission prior notice of plans to acquire a supermarket, or an interest in a supermarket, that has operated or is operating in Newtown, Pennsylvania.

V. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement, as well as the comments received, and will decide whether to modify the proposed Consent Agreement, withdraw its acceptance of the proposed Consent Agreement, or issue its final Consent Orders.

The sole purpose of this Analysis is to facilitate public comment on the proposed Consent Agreement. This Analysis does not constitute an official interpretation of the proposed Consent Agreement, nor does it modify its terms in any way.