ever initiated a general price-cutting program. (Posey 1651; Gooding 1121–23) Industry members in Orlando, such as independents like Fairway, tend to price off these market leaders. (Posey 1651; Gooding 1121–22; Spearman 800–01)

Albertson's entry into Orlando led to a decrease in prices in that market. (Posey 1649; CX 640–41) Prices are high enough in Orlando to attract other new entrants, but entry must be sufficient to overcome existing entry barriers. (Cheek 1597–98) When Fairway, the largest independent in Orlando, cut prices heavily below the market and increased advertising in 1978, neither Publix, Winn-Dixie nor Albertson's reacted. (Posey 1639)

Mr. Gooding's three large stores in Orlando are not listed on the price-checking service used by Orlando's major competitors. (Posey 1651) Mr. Spearman testified that, in his opinion, entry into Orlando by a major firm like Grand Union would lead to a decrease in prices, and a redistribution of market shares, especially affecting the market leaders. (Spearman 803–04)

Respondents argue that complaint counsel's concentration figures overstate the amount of concentration in **[148]** this SMSA because they fail to account for the influence of the local commissary and of convenience stores in Orlando. (RPF 197–207) According to public records, the Orlando Naval Training Station Commissary had sales in fiscal 1978 (including three months of calendar 1977) of $16.7 million, or $321,000 weekly. In terms of CX 2 and CX 3, the commissary would have been the sixth-ranked competitor in 1977, replacing A & P in that position.

Florida is the state with the highest per capita concentration of convenience stores in the country, and the Orlando SMSA has the highest ratio of convenience store sales to all food store sales in the state. (Curhan 2837–38) Two of the top eight competitors are convenience stores, and there are many other convenience stores which are not within the top eight. (CX 665Z377–Z422; *see* F. 161)

The top competitors in Orlando differ in many aspects. Winn-Dixie, the leader in Orlando, has many smaller stores, primarily in neighborhood strip centers. Winn-Dixie generally appeals to "blue collar" shoppers, emphasizes private label products and is price-competitive more on specials rather than everyday low price. (Gooding 1123) Second-ranked Publix operates two types of stores in Orlando: conventional Publix stores and discount stores under the "Food World" banner. (Roehm 2717) The image of the conventional stores is geared toward middle and upper income areas:

Publix stores are very fine, high-quality stores. they really are geared to customer service. They are the nicest chain store in the area, very find decor, high quality customer service, very fine people.

(Gooding 1123)
Food Fair (Pantry Pride), third ranked, is "strictly a price store." (Gooding 1124) Its market share dropped by almost 50% (from 15.1% to 8.6%) between 1972 and 1977. Albertson's, number four, entered Orlando in 1975, built two stores between 1978 and 1980 and by 1980 had five combination stores. (Posey 1647, 1672–73) Albertson's stores are approximately 55,000 square feet, half of which is devoted to drugs and general merchandise, the balance to food. The stores are geared to all segments of the marketplace, are extremely high volume (Gooding 1124), and attract shoppers from large trading areas. (Posey 1646) Southland, number five, had 65 7–11's in Orlando in 1972 and 83 in 1977. (CX 665Z-Z412) Mr. Gooding, of Goodings, the number six firm in the market, estimated that his four stores have the highest dollar-per-square-foot sales in the area. (Gooding 1117) He described his stores as follows: **[149]**

Well, our type of stores are very high-quality, high customer-service-oriented stores, but we also consider ourselves to be very compet—highly competitive on dry grocery products; and they are the lowest average price in the market, . . .

(Gooding 1121–22)
Samuel Posey, President of Middle Florida Supermarkets, a wholly-owned subsidiary of Malone & Hyde, an independent wholesaler, testified about the seven Fairway Markets he operates in Orlando. Mr. Posey began acquiring the Fairway stores from the previous owners in 1976. Between 1977 and 1978 he, in turn, sold the stores to Malone & Hyde, his wholesaler. (Posey, 1639) Mr. Posey testified that when he acquired control of the stores he lowered overall prices, which he believed were too high, and began advertising in order to build volume. (Posey 1639) He estimated his market share at approximately 5%. (Posey 1634) Fairway's new price structure was lower than his competitors which resulted in a volume gain. (Posey 1644, 1670) Mr. Posey described his strategy for making his stores profitable:

Well, it was losing money and volume at a very rapid pace. I elected to drop prices extremely low; campaign our price program; generate volume in the stores; and as my volume began to pick up—which it did—I began to adjust my prices; and it took me approximately three years to get the volume that I needed in order to reach my projection of break even, and then raise prices to achieve it.

(Posey 1669)

He stated that his prices are as low as they can be while still remaining profitable. (Posey 1668)

Jewel-T entered the Orlando area in 1976 and by 1977 had three stores. (CX 665Z393) Jewel's prices are approximately 5–6% lower than Fairway's prices. (Posey 1635–36) Neither Mr. Posey nor Mr. Gooding has lowered his prices in reaction to Jewel-T's prices. (Posey 1637; Gooding 1131) However, Mr. Gooding testified to other competitive steps he has taken in response to Jewel-T:

> We have looked to try to find some similar products to bring in for mass displaying to meet; but it is not lowering existing product, getting our warehouse to buy some of the same things that they [Jewel-T] are buying on some of the key items.

(Gooding 1131) **[150]**

5. Grand Union as a Perceived Potential Entrant

165. Some competitors viewed Grand Union in 1978 as a likely potential entrant into Orlando. (Posey 1652–53; Gooding 1145–46, 1150; Spearman 801; Stewart 597–98, 661; CX 607 [Rowe] at 42) One reason for expecting Grand Union to enter was that the high-growth Orlando market was much closer in time and distance than the West Coast of Florida market. Mr. Gooding explained:

> A logical place for them to go. Orlando is one of the number one growth areas in the country. In spite of the proposed recession, Orlando is certainly an easier market to serve from their warehouse in Hialeah. They are over on the west coast of Tampa, St. Petersburg. When they are servicing those stores on the west coast, the cost of servicing those—and I know that from being on the board of directors of our co-op warehouse—the highway situation is just atrocious getting into that area. Where they come to Orlando, they can come right up on the turnpike. We used to be supplied from Miami by Associated Grocers. I was on the board of that co-op, too. I understand some of the problems in supplying stores at that distance; much easier in my estimate to supply stores in Orlando than it is to go to St. Petersburg. The traffic, the stop and go has to cost a fortune to run trucks on those highways. There's no major throughway servicing the west coast yet.

(Gooding 1146–47; *see also* Posey 1661.)

The President of Winn-Dixie, the market leader in Orlando, did not perceive Grand Union as likely to enter Orlando or any of the other alleged Florida markets, *de novo.* (B. Thomas 1513)

Similarly, Mr. Roehm, Vice President for Colonial's Orlando stores, did not perceive Grand Union as likely to enter Orlando. (Roehm 2718) Based on his observations of Grand Union's operations in Southern Florida, he thought that rather than enter Orlando, Grand Union "had a lot of filling in to do in the high-growth areas, both on the East

Coast [below West Palm Beach] and West Coast of Florida." (Roehm 2744)

Respondents' review of the testimony of trade witnesses who stated that they perceived Grand Union as a likely entrant into this market led to the following observations: [151]

(a) Despite Mr. Posey's belief that Grand Union would enter Orlando, he believes this SMSA is overstored "too many units for the population." (Posey 1652–53)

(b) Mr. Posey conceded that Grand Union had opportunities to expand its West Coast operations which it would be likely to exploit before entering Orlando. (Posey 1665–66)

(c) Mr. Posey and Mr. Gooding did not provide any evidence that they acted on their perception of Grand Union as a likely entrant. (RPF 237–38)

6. Grand Union as a Potential Entrant

166. Roger Kennedy, Grand Union's Treasurer, did not discount the possibility that Grand Union would edge its way into the Orlando market and Central Florida. (CX 576 [Kennedy] at 129–30) Mr. Goulding also expected that Grand Union would enter Orlando after moving up the East Coast of Florida. (CX 576 [Goulding] at 83) Moreover, Grand Union officials prior to the merger indicated to Colonial's management that they might want to purchase Colonial's Orlando stores at some time in the future. (Stewart 599)

According to respondents, Grand Union had no interest in Orlando in 1978 or in the reasonably foreseeable future because of the company's situation in Florida, particularly the West Coast. (Curhan 2931–34) Respondents' claim that the history of Grand Union's Florida operations demonstrates that the likelihood of its making *de novo* entry into Orlando within any reasonable period of time was extremely small. (RPF 244–261) Respondents argue that, although Grand Union management prior to the Cavenham acquisition had decided to return to the West Coast of Florida for the third time, there was no plan to re-enter Orlando. (RPF 252)

When James Wood became President of Grand Union in 1974, he continued with prior management's West Coast plans. (CX 589 [Wood] at 89) A report designed to project the company's growth in Florida through 1980, prepared in November 1976, entitled "Study Florida West Coast Development Plan, 1976–1980" (CX 71) demonstrates, according to respondents, that Grand Union was not an actual potential entrant into the three Florida SMSAs. (RPF 254) At the time the Study was prepared Grand Union had three existing West Coast stores: Naples, Bradenton and Venice. Nineteen more stores were planned for the West Coast by 1980: North Fort Myers, Port Charlotte, West Bradenton, Tarpon Springs, New Port Richey, Dunedin, Fort Myers, [152] Sarasota (2), St. Petersburg (3), South Naples, Port Richey, Clearwater (2), East Fort Myers, Tampa and Hudson. (CX 71H)[16]

The Business Plan and Budget for 1978/79 described the West Coast competitors as more aggressive than in the East, and stated that although the Naples store produced excellent returns, the remaining West Coast stores "failed to achieve satisfactory market shares in the intensive competitive environment of the northern west coast markets." (CX 6Z–54)

Respondents note that the West Coast stores have not lived up to Grand Union expectations. (RPF 258) Only half the number planned were actually built. (CX 71; CX 589 [Wood] at 94) Grand Union's 1977/78 market share on the West Coast was estimated at 2.9% (CX 6Z120); the five stores opened in 1977 made a negative contribution of 3.6% of sales [representing start up costs] (CX 7Z252), and 1.2 million was forecast for 1978 (CX 6Z50), although they had the highest average weekly sales per store of all Grand Union's divisions. (CX 6Z27) Respondents state that Grand Union still has plans for this area, should it become profitable in the future (RPF 260; Curhan 2931), and it continues to look for sites, although it has no projected number of sites planned. (CX 589 [Wood] at 93–94, 96, 154)

Respondents also claim that Grand Union's closing of [153] all Colonial Orlando stores is evidence that the company had no intention of entering this market. (RPF 261) Grand Union plans, they state, were specifically to expand along the West Coast, but did not include inland areas which were viewed as having a lower growth rate [Orlando had a growth rate of 4.5 times the national average in the 1970's—F. 160]. (RPF 262; CX 589 [Wood] at 97)

Mr. Goulding testified that Grand Union had no plans to operate in Orlando, Gainesville, or Panama City. (CX 574 [Goulding] at 64–65) Mr. Kennedy stated, with regard to Central Florida:

It is a matter of growth potential as opposed to any long-term or any time frame, you

[16] The Five Year Development Plan prepared one year earlier in November 1975 also projected building stores only on both Florida coasts through the plan period. (CX 79Z55–Z56) Even in the category "additional possibilities for new store development" no stores were listed for Central Florida, and the most northeasterly store listed as a possibility, in Stuart (CX 79Z–57), is in excess of 200 miles south of Jacksonville. Similarly, the next Five Year Development Plan for 1976–1981 states:

> *Expansion into New Marketing Areas*
>
> In regard to a new market entry, present plans focus upon the West Coast of Florida, the Baltimore area, and the South Jersey (Trenton) area, as well as such areas as Bucks County, Pennsylvania; Hunterton County, New Jersey; Grafton County, New Hampshire and Steuben County, New York (Central Division).

(CX 80Z21) The 1976–1981 Plan projected the identical West Coast developments and "additional possibilities" as the previous year's Plan. (CX 80Z57–Z58) know, it could be years and years before we would reach that are . . . I said we were on the West Coast, and how we will move from there and what the opportunity is, . . . I don't have the expertise to say that.

(CX 576 [Kennedy] at 132)

Grand Union's 1978/79 Business Plan, prepared prior to the decision to acquire Colonial, made no mention of store construction in any Central Florida area. (6Z266) Grand Union's purchase of eight West Coast stores from Colonial (F. 9), was made because "they needed stores very badly on the West Coast of Florida . . . to try to get near the break-even point at that stage." (CX 589 [Wood] at 37) Colonial also offered to sell Grand Union its Orlando stores. Grand Union had no interest in the Orlando stores. (Stewart 599; CX 607 [Rowe] at 75) The West Coast acquisition gave Grand Union two stores each in Tampa and St. Petersburg, one in Brandon, one in Bradenton and one store in Largo. (CX 82Q) All except Bradenton were within the Tampa/St. Petersburg SMSA. (CX 645B)

The acquisition had involved an eighth store in Clearwater, where Grand Union already had a store. Pursuant to agreement with the FTC, Grand Union never opened that store. (CX 589 [Wood] at 46) Of the seven stores, only two remain open. Even those are not profitable, although Grand Union believes they have the potential to become profitable. (CX 589 [Wood] at 49) In the other stores, although Grand Union was able to increase volume to $50,000 weekly from Colonial's $35,000 volume, it was still inadequate. (Curhan 2930) In the month of April 1979, those stores lost $63,000. (CX 589 [Wood] at 47) The stores remained unprofitable and have since been closed. (Curhan 2930)

Other factors noted by respondents in their argument that Grand Union was unlikely to enter Orlando are: Grand [154] Union's scarcity of stores on the West Coast as compared with its competitors there, which makes filling in that area a priority (Curhan 2933–34); Grand Union's 1979 new store constructions and planned future construction are not in the direction of Orlando (CX 574 [Goulding] at 95; Curhan 2934); and expansion opportunities open to Grand Union on the East Coast in areas like Fort Lauderdale, West Palm Beach, etc. (Curhan 2935)

7. Colonial as a Toehold Acquisition in Orlando

167. Respondents claim that Colonial's market share in Orlando was so small, under 2% in 1977 (F. 161), that it was "barely a toehold acquisition" (RPF 302), and because Grand Union closed Colonial's Orlando stores (RPF 261), Grand Union is as likely, "or as unlikely," a potential entrant today as it was prior to the acquisition.

Mr. Rowe, who was Vice President and Secretary of Colonial at the time of the tender offer, was Vice President for the Orlando area in 1972 when the stores were acquired. (CX 607 [Rowe] at 11) Mr. Rowe testified: "[W]e were never a factor at all in [Orlando]." He referred to the fact that Colonial had too few stores and had problems servicing them from Thomasville, and that, administratively, it took as much time to monitor the two stores as it would have taken to supervise fifty stores. (CX 607 [Rowe] at 30–31)

Mr. Roehm, Colonial Vice President in charge of Orlando in 1978, described the situation in the two stores prior to the tender offer:

> Sales were very low, approximately $50,000 to $60,000 between the two stores. The losses were tremendous. My challenge was to pretty much minimize the losses until we could dispose of and close the stores.

(Roehm 2714–15)

Mr. Gooding concurred with the opinions of Colonial's management. He testified:

> They are not successful stores. Our estimate . . . was they were probably doing $25,000 a week in 20,000 square-foot stores and quite obviously losing substantial amounts of money.

(Gooding 1163)

Colonial's Southern Division Five Year Stores Development Plan for 1979 projected selling or, in the alternative, closing both stores in 1983 when the first of the **[155]** two leases expired. (CX 358Z–4, Z5) By July of 1978, Colonial had even stopped price-checking in Orlando. (Roehm 2717) Mr. Roehm "doubt[ed] it very seriously" that Colonial would still have stores in Orlando even if there had been no acquisition. (Roehm 2717)

8. Expanders and Potential Entrants

168. Respondents cite several companies which, they believe, have evidenced an intention to enter or expand into the Orlando market. Mr. Posey, who now operates seven Fairway Markets, testified that he has committed to his company's corporate parent, Malone & Hyde, that Fairway will build five stores a year within the Orlando area for the next several years. (Posey 1663–64) At the time he testified, one store was under construction, he had a lease on four more and had additional locations under negotiation. However, Fairway has historically been an unprofitable firm. Its market share fell between 1972 and 1978. (Posey 1672–73, 1634, 1639)

Albertson's, a new entrant with five stores in Orlando, has publicly announced plans for 50 or 60 new stores in Florida. (Posey 1673)

Jewel-T is another recent entrant into Orlando (Posey 1635), and may further penetrate that market. Mr. Gooding testified he was interested in expanding in Orlando and had attempted to purchase the Colonial stores. (Gooding 1138) He also detailed the difficulties he had experienced in attempting to expand. (Gooding 1139, 1168)

Mr. Roehm testified: "[w]ith the growth factor in the State of Florida, particularly central and south Florida, anybody could enter at any time." (Roehm 2718–19) Mr. Foy, of Certified Grocers of Florida, testified that he foresees a great deal of new entry into Orlando (Foy 1800–01), although he did not specify any potential entrants. Mr. Cheek testified that he has considered expanding into Orlando. (Cheek 1589). He had a contract to purchase three A & P stores in Orlando, which was subsequently breached by A & P. Mr. Cheek also mentioned advertising costs as being an entry barrier. (Cheek 1596–97) In response to the question: "Mr. Cheek, are you a potential entrant into Orlando at this point," he answered "Yes." (Cheek 1614)

There was testimony regarding the likelihood of entry by Kash 'N Karry (formerly Tampa Wholesale Company), both prior and subsequent to its recent acquisition by Lucky Stores of California. Kash 'N Karry had been a family-run company with a warehouse in Tampa and approximately 50 stores in Tampa and the surrounding areas. In the 1960's, it had stores in Orlando, but withdrew from the area. (Posey 1629) A Grand Union Business Plan and Budget described Kash 'N Karry's shelf pricing as "one of the lowest on the West Coast of Florida." (CX 7Z–203) **[156]** Mr. Roehm perceived Kash 'N Karry as likely to enter Orlando even before it was acquired by Lucky because of its large warehouse relatively nearby and because it had a store in Ocala, only 50 miles from Orlando. (Roehm 2718) Since the acquisition, the trade press has reported that Lucky has announced plans to expand Kash 'N Karry throughout Florida. Therefore, Mr. Roehm still believes Kash 'N Karry is a likely entrant into Orlando. (Roehm 2721)

Mr. Gooding did not perceive Kash 'N Karry as likely to enter Orlando when it was "a family situation" because "they felt that their strong base was on the west coast." (Gooding 1146) Since its acquisition by Lucky, Mr. Gooding perceives Kash 'N Karry as likely to enter Orlando, citing as the basis of his perception an interview in *Supermarket News* with Lucky personnel stating they were looking extensively for sites in Orlando. (Gooding 1144) Similarly, based on Lucky's announcements, Messrs. Posey, Stewart and Goulding all perceived Kash 'N Karry as likely to enter Orlando. (Posey 1659–60; Stewart 661; CX 574 [Goulding] at 105)

Safeway was also identified as a potential entrant into Orlando. Mr. Roehm testified that "there have always been rumors of Safeway wanting to enter the Florida market." (Roehm 2719) When questioned about Safeway as a potential entrant into Orlando, Mr. Posey, however, commented, "I wouldn't think so any time soon. Anything is possible." (Posey 1660)

Thriftway stores are operated by individuals who own one or more stores and are affiliated with Certified Grocers, an independent wholesaler. Thriftway operates under a cooperative advertising program. Mr. Posey thought Thriftway stores might enter Orlando, although he did not expect them to be a big factor. (Posey 1657–58)

B & B Cash Grocery Stores, operating as U-Save Wholesale Supermarkets, was also identified as a potential entrant into Orlando. (Curhan 3153) B & B is headquartered in Tampa and has its own warehouse in Tampa from which it serves 51 stores. (Curhan 3155)

Respondents point out that there are seven companies presently within "striking distance" of Orlando. Food Fair (Pantry Pride) serves its Orlando stores from Jacksonville, 139 miles from Orlando. Three companies which do not serve Orlando from any facility, also have distribution centers in Jacksonville:

Bacon Grocery Co., Inc.
Daylight Grocery Co.
United Food Stores, Inc.

(RX 30Z3) [157]

Malone & Hyde serves Orlando from Miami, 227 miles away. Both Grand Union and Associated Grocers are located in Miami, but neither serves the Orlando area. (RX 30Z3)[17] Affiliated of Florida, Inc., E. J. Keefe Co., Inc. (subsidiary Fleming Co.'s, Inc.), both independent wholesalers, and Publix serve Orlando from distribution centers in Tampa. In addition to these three and Winn-Dixie, which has warehouses in both Tampa and Orlando, the following companies have distribution centers in Tampa but do not serve stores in Orlando:

B & B Cash Grocery Stores (U-Save)
Kash'N Karry (Lucky)[18]

(RX 30Z3)

Although these companies are within striking distance of Orlando, and any one of them could enter, each or all of them could choose not to enter the area. As one trade witness testified:

> I think we are much better off . . . using our assets, both capital and personnel, in the markets that we are now in rather than spreading ourselves thin in a series of one or more new markets. I don't believe it is prudent business to do that.

[17] Food Fair, Publix and Winn-Dixie also have warehouses in Miami. All three serve their Orlando stores from other warehouses in or closer to Orlando.

[18] Kash'N Karry is shown as having stores in the "Orlando Market Area" as defined by *Progressive Grocer*. However, it does not yet have stores in the Orlando SMSA.

(Walters 1436–37)

9. Alternative Means of Entry

169. Grand Union could have entered the Orlando market through shipments from its Hialeah warehouse, closer to Orlando than some of the West Coast stores it presently serves from a distance of 250–305 miles. (Rand McNally; *see* F. 148) Use of distributors and wholesalers are also mentioned by complaint counsel as an alternative means of entry into Orlando by Grand Union. (*See* F. 149.) **[158]**

10. Changes in Colonial's Orlando Operations Since the Acquisition

170. According to Dr. Parker, Grand Union was the most likely potential entrant into Orlando (Parker 2659–60), and would have entered on a significant scale to become a factor in this market. (Parker 2271) Therefore, Grand Union's acquisition of Colonial substantially lessened competition in Orlando, because entry by alternative means would have made Grand Union a factor in this market and would have had a deconcentrating effect. (Parker 2361–69)

L. *The Gainesville, Florida SMSA*

1. Demographics and Location

171. On July 1, 1978, the Gainesville SMSA (F. 41) had a population of 129,700, up 24,900 or 23.8%, from the population of 104,764 of April 1, 1970. This rate of growth was three times higher than the national average. (Bureau of the Census, *Population*)

Gainesville is located in North-Central Florida. The distance between Gainesville and other Florida and Georgia cities are the following:

145 miles from	Thomasville, Georgia
72 miles from	Jacksonville, Georgia
335 miles from	Miami, Florida
37 miles from	Ocala, Florida
148 miles from	St. Petersburg, Florida
183 miles from	Sarasota, Florida
131 miles from	Tampa, Florida

(Rand McNally)

172. According to complaint counsel's survey, the shares of food and grocery store sales of the top eight competitors in Gainesville in 1972 and 1977 were as follows:

1972			1977		
Competitor	Food Store Sales (%)	Grocery Store Sales (%)	Competitor	Food Store Sales (%)	Grocery Store Sales (%)
Publix	25.4	26.8	Publix	31.6	33.2
Winn-Dixie	17.9	18.9	Winn-Dixie	14.5	15.2
Food Fair	12.7	13.3	Albertson's	10.8	11.3
Colonial	5.4	5.7	Food Fair	7.7	8.1
Munford	5.3	5.6	Munford	3.2	3.4
A & P	2.5	2.7	Hitchcock's	3.1	3.3
Hitchcock's	2.5	2.7	Colonial	2.6	2.7
Shelton	2.5	2.6	Southland	2.6	2.7

(CX 2G) **[159]**

Between 1972 and 1977, Publix increased its presence from three to five stores (CX 665Z161) and its market share increased substantially. Winn-Dixie closed one of its six stores during that period (CX 665Z179), and its market share decreased. Food Fair (Pantry Pride), which was third ranked in 1972, was replaced by Albertson's in 1977 and dropped to fourth. Albertson's entered Gainesville in approximately 1975 and was third-ranked with one store two years later. Colonial, number four in 1972, was seventh in 1977 and its market share dropped in half. Munford, which runs Majik convenience stores, remained number five. A & P, number six in 1972, was no longer in the top eight by 1977, although its one Gainesville store was still open that year. (CX 665Z161) Hitchcock's Foodway, with two stores (CX 665Z164), rose from number seven to six, replacing A & P. Shelton Thriftway, with one store, was no longer in the top eight in 1977 and was replaced by Southland, which operated nine 7–11's in the county. (CX 665Z171)

Four-firm concentration ratios for grocery stores, (SIC 541), were:

1972	1977
61.8%	65.5%

Four-firm concentration ratios for supermarkets were:

1972	1977
85.4%	91.5%

2. Colonial in the SMSA

173. In 1977, Colonial was ranked sixth in supermarket sales and seventh in grocery store sales in the Gainesville market, with market shares of 3.8% and 2.7%, respectively. (CX 664A; CX 2G; Admissions 37)

Colonial operated only two supermarkets in Gainesville in 1977 (Admissions 38); however, these were price-checked by their Gainesville competitors. (Roehm 2792) Colonial's five-year plan for Gainesville projected two additional stores in this SMSA. (CX 358C) After the acquisition, Grand Union closed Colonial's two Gainesville stores. (Roehm 2722; Spearman 837) Mr. Roehm testified that it "made sense" for Grand Union to re-enter Gainesville at some future time, based on its growth and proximity to Colonial's Thomasville warehouse (145 miles). (Roehm 2793) **[160]**

Respondents dispute complaint counsel's claim that the fact that Colonial's stores were price-checked in Gainesville indicates that these stores were a competitive factor in this market. (RPF 333) Colonial, according to Mr. Rowe, was never a factor in Gainesville. (CX 697 [Rowe] at 31) Colonial's market share of grocery store sales in Gainesville was below 3% in 1977 (CX 2G), and these stores were never profitable for Colonial. According to Colonial's own records, the stores' net losses were as follows:

Year ended Dec. 30 for the 2 Gainesville stores		
1971		$(169,420)
1972		(128,719)
1973		(174,435)
1974		(201,118)
1975		(253,577)
1976		(396,759)
1977		(466,449)
	Total:	$(1,790,477)

(CX 333B, D, F, K, M)

The two stores together did less than $50,000 volume per week prior to the tender offer. (Roehm 2722; Spearman 795; Curhan 2940) Mr. Spearman had recommended that Colonial withdraw from Gainesville prior to the acquisition because its volume was so low (Spearman 794), and because "We didn't have the dedication to the marketplace." (Spearman 795) When Mr. Roehm came to the Thomasville Division prior to the tender offer he was unable to turn these stores around and recommended that Colonial close the stores. (Roehm 2823)

3. Barriers to Entry

174. Dr. Parker testified that, in his opinion, barriers to entry into the Gainesville market are significant. (Parker 2362) Mr. Stewart stated that the minimum effective level of entry into Gainesville is two or three large stores. (Stewart 587–88)

4. Performance of the SMSA

175. Based on an analysis of the structure of the Gainesville market, Dr. Parker testified that it is very likely this market is behaving less than competitively. (Parker 2362) Respondents counter that

there has been significant recent competitive activity in Gainesville (not included on CX 2G), particularly in light of the small size of this SMSA.

A & P closed its one store subsequent to 1977. (Roehm 2725) Albertson's, which has been expanding within the state, entered Gainesville in approximately 1975. By 1977, with only **[161]** one store, it was number three behind Publix and Winn-Dixie, the market leaders. (CX 2G) Jewel began operating Jewel-T box stores in Gainesville in 1979. (Roehm 2724) Food Fair (Pantry Pride), which lost market share between 1972 and 1977, reacted to Jewel's entry by converting one of its two stores to a box store format. (Roehm 2724)

5. Grand Union as a Potential Entrant

176. Complaint counsel posits that Grand Union, once it entered Orlando by building a new warehouse (*see* F. 148), would proceed to Gainesville, which is within "striking distance", to support this warehouse. (CPF 682; Parker 2363; Gooding 1158–59) Dr. Parker testified that Grand Union was a likely potential entrant into Gainesville (Parker 2362), and the "scenario" for this entry would be:

> Yes, I think that the scenario of Grand Union going into Gainesville would be tied up with its going into Jacksonville. And I think that there [are] some toe-holds in Jacksonville. I think, however, that the most likely way it would have gone into both of the markets would have been to either build a warehouse or to use a wholesaler and with the idea of building up numbers of stores to support a warehouse. So, I would say de novo is the most likely way it would go in.

(Parker 2363)

As further support for this theory, complaint counsel notes that the top four firms in Orlando are also the top four firms in Gainesville. (CX 3G,O) Publix has also entered all the markets in north and central Florida by edge expansion. (CX 611A-D; Parker 2245)

Respondents deny that Grand Union would have entered Gainesville in accordance with any of the scenarios offered by complaint counsel. (RPF 329–332) Respondents note that there is no document or testimony that in any way suggests Grand Union was interested in the Gainesville market. In addition, respondents cite Grand Union's closing of Colonial's Gainesville stores (F. 173), as further evidence of Grand Union's lack of interest in Gainesville. (RPF 332)

6. Grand Union as a Perceived Entrant

177. Complaint counsel concede Grand Union was not perceived as a potential entrant into Gainesville. No witness who testified about Gainesville perceived Grand Union as a likely entrant. Mr. Spearman, who perceived Grand Union as an entrant into both Orlando and Jacksonville, did not think Grand Union would enter Gainesville