

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

In the Matter of

**Dollar Tree, Inc.,
a corporation;**

and

**Family Dollar Stores, Inc.,
a corporation.**

Docket No. C-4530

**ORDER TO MAINTAIN ASSETS
[Public Record Version]**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Dollar Tree, Inc. (“Dollar Tree”) of Respondent Family Dollar Stores, Inc. (“Family Dollar”), collectively “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of 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 to accept the executed Consent Agreement and to place 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 in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent Dollar Tree is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its headquarters and principal place of business located at 500 Volvo Parkway, Chesapeake, Virginia 23320.
2. Respondent Family Dollar is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 10401 Monroe Road, Matthews, North Carolina 28105.
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.

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Confidential Business Information” means information not in the public domain that is related to or used in connection with the Assets To Be Divested, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents, and includes, but is not limited to, marketing, promotional, and sales information.
- B. “Control Dollar Stores” means the Dollar Stores identified on Confidential Appendix A of this Order.
- C. “Decision and Order” means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- D. “Orders” means the Decision and Order in this matter and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of any of the Assets To Be Divested. Respondents shall not cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Assets To Be Divested.
- B. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice (including regular repair and maintenance efforts) and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice.
- C. Respondents shall not terminate the operation of any of the Assets To Be Divested.
- D. Respondents shall continue to maintain the inventory of each of the Assets To Be Divested at levels and selections in the regular and ordinary course of business, in accordance with past practice.
- E. Respondents shall maintain the organization and properties of each of the Assets To Be Divested, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each of the Assets To Be Divested.
- F. Included in the above obligations, Respondents shall, without limitation:
 - 1. Maintain all operations at each of the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice, including maintaining customary hours of operation and departments;
 - 2. Use best efforts to retain employees at each of the Assets To Be Divested; when vacancies occur, replace the employees in the regular and ordinary course of business, in accordance with past practice; and not transfer any employees from any of the Assets To Be Divested;
 - 3. Provide each employee of the Assets To Be Divested with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Assets To Be Divested;

4. Not transfer inventory from any Asset To Be Divested, other than in the ordinary course of business, in accordance with past practice;
5. Make all payments required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with each of the Assets To Be Divested, in each case in a manner in accordance with past practice;
6. Maintain the books and records of each of the Assets To Be Divested;
7. Not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations at any Asset To Be Divested to another location, or that indicates an Asset To Be Divested will close;
8. Not conduct any “going out of business,” “close-out,” “liquidation,” or similar sales or promotions at or relating to any Asset To Be Divested;
9. Not materially change or modify the existing pricing or advertising practices, marketing, or merchandising programs and policies, or price zones for or applicable to any of the Assets To Be Divested, other than changes or modifications in the regular and ordinary course of business, in accordance with past practices and business strategy, and consistent with the changes or modifications applicable to Family Dollar Dollar Stores retained by Respondents;
10. Provide each of the Assets To Be Divested with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such businesses, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for each of the Assets To Be Divested;
11. Continue, at least at their scheduled pace, any additional expenditures for each of the Assets To Be Divested authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all repairs, renovations, distribution, marketing, and sales expenditures;
12. Provide such resources as may be necessary to respond to competition and to prevent any diminution in sales at each of the Assets To Be Divested;
13. Make available for use by each of the Assets To Be Divested funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, any assets related to the operation of the Dollar Stores at each of the Assets To Be Divested; and
14. Provide support services to each of the Assets To Be Divested at least at the level as were being provided to such Assets To Be Divested by Respondents as of the date the Consent Agreement was signed by Respondents.

- G. The purpose of this Order to Maintain Assets is to: (1) maintain and preserve the Assets To Be Divested as viable, marketable, competitive, and ongoing businesses until the divestiture required by the Decision and Order is achieved; (2) ensure that no Confidential Business Information is exchanged between Respondents and the Assets To Be Divested, except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) remedy any anticompetitive effects of the Acquisition.

III.

IT IS FURTHER ORDERED that, pending divestiture of the Assets To Be Divested,

- A. Respondents shall:
1. Not use, directly or indirectly, any Confidential Business Information other than as necessary to comply with the following:
 - a. The requirements of these Orders;
 - b. Respondents' obligations to the Acquirer under the terms of any related Remedial Agreement; or
 - c. applicable law;
 2. Not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by such Acquirer to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed);
 3. Not disclose or convey, directly or indirectly, any such Confidential Business Information that is exclusively related to the marketing, promotional activities, or sales of the Assets To Be Divested to employees with responsibilities relating to the marketing, promotional activities, or sales of those Dollar Stores that were owned or operated by Dollar Tree at the time the Consent Agreement was signed by the parties; and
 4. Institute procedures and requirements to ensure that the above-described employees:
 - a. Do not disclose or convey, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. Do not solicit, access, or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- B. Not later than thirty (30) days from the earlier of (i) the Divestiture Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.

- C. Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Divestiture Date. Respondents shall maintain complete records of all such notifications at Respondents' registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. At the request of the Acquirer, Respondents shall provide the Acquirer with copies of all certifications sent to the Commission and all notifications and reminders sent to Respondents' personnel related to restrictions on the use and disclosure of the Confidential Business Information.
- D. Respondents shall monitor the implementation by its employees, and other personnel, of all applicable restrictions with respect to Confidential Business Information, and take corrective actions, for the failure of such employees and personnel to comply with such restrictions, or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

IV.

IT IS FURTHER ORDERED that:

- A. Gary Smith shall serve as Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements, including any Transition Services Agreement approved by the Commission.
- B. Respondents shall enter into the Monitor Agreement with the Monitor that is attached as Appendix B. The Monitor Agreement shall become effective on the date this Order To Maintain Assets is issued. Respondents shall transfer to, and confer upon, the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities pursuant to this Order to Maintain Assets in a manner consistent with the purposes of the Orders, and in consultation with Commission staff, and shall require that the Monitor act in a fiduciary capacity for the benefit of the Commission. Respondents shall assure that, and the Monitor Agreement shall provide that:
 - 1. The Monitor shall have the responsibility for monitoring the operations and transfer of the Assets To Be Divested; overseeing the maintenance of the Assets To Be Divested; overseeing the provision of support services; ensuring that the Assets To Be Divested receive continued and adequate funding by Respondents, as provided for in this Order; and monitoring Respondents' compliance with their obligations pursuant to the Orders and the Remedial Agreements.
 - 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - 3. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Remedial Agreements.

4. The Monitor shall have full and complete access to all of Respondents' facilities, personnel, books, documents, and records relating to the Assets To Be Divested, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders and the Remedial Agreements.
5. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set.
6. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
7. Respondents shall indemnify the Monitor, and hold the Monitor harmless, against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel, and other reasonable expenses incurred, in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith of the Monitor.
8. Respondents shall report to the Monitor in accordance with the requirements of the Orders, and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders.
9. The Commission may, among other things, require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
10. Respondents may require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
11. Respondents shall comply with all terms of the Monitor Agreement, and any breach by Respondents of any term of the Monitor Agreement shall constitute a violation of this Order to Maintain Assets. Notwithstanding any paragraph, section, or other provision of the Monitor Agreement, any modification of the

Monitor Agreement, without the prior approval of the Commission, shall constitute a failure to comply with the Orders.

- C. If the Commission determines that the Monitor has ceased to act, or failed to act diligently, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:
1. If Respondents has not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within five (5) business days after notice by the staff of the Commission to Respondents of the identity of the proposed substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondents shall, no later than five (5) business days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the prior approval of the Commission, confers on the substitute Monitor all of the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities on the same terms and conditions as provided in this Paragraph IV. of the Order to Maintain Assets.
- D. The Monitor shall serve as long as Respondents are providing Transition Services to the Acquirer pursuant to the Transition Services Agreement; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
- E. The Commission may, on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of these Orders or the Remedial Agreement.
- F. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after this Order to Maintain Assets is issued, and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II, III., and IV. of the Decision and Order, and until Respondents are no longer required to provide Transition Services to the Acquirer pursuant to the Transition Services Agreement, Respondents shall submit to the Commission and to the Monitor, if one is appointed, verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with these Orders. 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 these Orders, including, but not limited to, documents sufficient to show that Respondents have not

changed or modified pricing at, or price zones applicable to, each of the Dollar Stores included in the Assets To Be Divested, other than in the regular and ordinary course of business, consistent with the changes or modifications applicable to Dollar Stores retained by Respondents, and in accordance with past practices and business strategy; and

- B. Within thirty (30) days after this Order to Maintain Assets is issued, and every thirty (30) days thereafter until Respondents have divested the Assets To Be Divested, Respondents shall submit to the Monitor, in such form as required by the Monitor after consultation with Commission staff:
1. For each Dollar Store included in the Assets To Be Divested, and for each of the Control Dollar Stores, on a weekly basis, total sales and total number of transactions; and
 2. For each Dollar Store included in the Assets To Be Divested, the price zone applicable to the Dollar Store at the time Respondents executed the Consent Agreement; the price zone applicable to the Dollar Store at the time of filing the report; all details regarding any changes to the price zone for the Dollar Store, including how the price zone is defined; all details regarding any plans to change the price zone of the Dollar Store; the number of Dollar Stores to be retained by Respondents in the price zone; and confirmation that the retail pricing with respect to each Dollar Store included in the Assets To Be Divested is, at the time of filing the report, the same as that of the Dollar Stores that will be retained by Respondents in that price zone;

Provided, however, that Respondents shall submit any additional information or documentation that the Commission or the Monitor requires.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of any Respondent;
- B. Any proposed acquisition, merger, or consolidation of any Respondent; or
- C. Any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities, and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of Respondents, related to compliance with the Consent Agreement and/or the Orders, for which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. Upon five (5) days' notice to Respondents, and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

VIII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The business day after Respondents are no longer required to provide Transition Services to the Acquirer pursuant to the Transition Services Agreement approved by the Commission.

Provided, however, that if the Commission, pursuant to Paragraph II.B. of the Decision and Order, requires the Respondents to rescind any Divestiture Agreement, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect with respect to the relevant Assets To Be Divested until the day after Respondents are no longer required to provide Transition Services to the Acquirer, as described in and required by the Decision and Order.

By the Commission, Commissioner Wright dissenting.

Donald S. Clark
Secretary

SEAL:
ISSUED: July 2, 2015

CONFIDENTIAL APPENDIX A

CONTROL GROUP STORES

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX B
MONITOR AGREEMENT
[Redacted Public Version]