

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

**The Golub Corporation,
a corporation,**

**Tops Markets Corporation,
a corporation,**

and

**Project P Newco Holdings, Inc.,
a corporation.**

Docket No. C-4753

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent The Golub Corporation (“Price Chopper”), a corporation subject to the jurisdiction of the Commission, agreed to merge with Respondent Tops Markets Corporation (“Tops”), a corporation subject to the jurisdiction of the Commission, becoming wholly-owned subsidiaries of Respondent Project P Newco Holdings, Inc. (“Holdco”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent The Golub Corporation (“Price Chopper”) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 461 Nott Street, Schenectady, New York.

2. Respondent Price Chopper owns and operates supermarkets in Connecticut, Massachusetts, New Hampshire, New York, Pennsylvania, and Vermont under the Price Chopper, Market 32, and Market Bistro banners.

3. Respondent Tops is a corporation organized, existing, and doing business under and by virtue of the laws of State of Delaware, with its executive offices and principal place of business located at 1760 Wehrle Drive, Williamsville, New York 14221.

4. Respondent Tops owns and operates a supermarket chain under the Tops banner in New York, Pennsylvania, and Vermont.

5. Respondents Price Chopper and Tops own and operate supermarkets in each of the geographic markets relevant to this Complaint and compete and promote their businesses in these areas.

6. Respondents Price Chopper and Tops will become wholly-owned subsidiaries of Respondent Holdco after the Merger.

II. JURISDICTION

7. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE MERGER

8. Pursuant to an Agreement and Plan of Merger dated as of February 8, 2021, Price Chopper and Tops intend to combine their businesses through a merger (“the Merger”). The Merger will result in a combined company with nearly 300 supermarkets across six states.

IV. THE RELEVANT PRODUCT MARKET

9. The relevant line of commerce in which to analyze the Merger is the retail sale of food and other grocery products in supermarkets.

10. For purposes of this Complaint, the term “supermarket” means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed, and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea, and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and

beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer, and/or distilled spirits.

11. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, typically referred to as stock-keeping units (SKUs), as well as a deep inventory of those items. In order to accommodate the large number of food and non-food products necessary for one-stop shopping, supermarkets are large stores that typically have approximately 10,000 square feet of selling space or more.

12. Supermarkets compete primarily with other supermarkets that provide one-stop shopping opportunities for food and grocery products. Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at other nearby competing supermarkets. Supermarkets do not regularly conduct price checks of food and grocery products sold at other types of retail stores—including convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores—and do not typically set or change their food or grocery prices in response to prices at these types of stores.

13. Although retail stores other than supermarkets may also sell food and grocery products, these types of stores do not offer a supermarket's distinct set of products and services that provides consumers with the convenience of one-stop shopping for food and grocery products. The vast majority of consumers shopping for food and grocery products at supermarkets are not likely to start shopping at other types of stores, or significantly increase grocery purchases at other types of stores, in response to a small but significant nontransitory price increase by supermarkets. The limited competition from other types of retail stores does not warrant their inclusion in a supermarket product market.

V. THE RELEVANT GEOGRAPHIC MARKETS

14. Customers shopping at supermarkets are motivated 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.

15. Respondents currently operate supermarkets under the Price Chopper / Market 32 and Tops banners within eight miles or less of each other in each of the relevant geographic markets. The primary trade areas of Respondents' banners in each of the relevant geographic markets overlap significantly.

16. The 11 geographic markets in which to assess the competitive effects of the Merger are localized areas in (1) Cooperstown, New York; (2) Cortland, New York; (3) Lake Placid, New York; (4) Norwich, New York; (5) Oneida, New York; (6) Owego, New York; (7) Plattsburgh, New York; (8) Rome, New York; (9) Rutland, Vermont; (10) Warrensburg, New York; and (11) Watertown, New York.

VI. MARKET CONCENTRATION

17. As seen in Exhibit A, the Merger would reduce the number of meaningful supermarket competitors from two to one in three relevant geographic markets, three to two in four relevant geographic markets, four to three in three relevant geographic markets, and five to four in one relevant geographic market. The Merger will result in highly concentrated markets in each of the eleven relevant geographic markets identified in Paragraph 16.

VII. ENTRY CONDITIONS

18. Entry into the relevant markets would not be timely, likely, or sufficient in magnitude to prevent or deter the likely anticompetitive effects of the Merger. Significant entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket, and generating sufficient sales to have a meaningful impact on the market.

VIII. EFFECTS OF THE MERGER

19. The Merger, if consummated, is likely to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the relevant geographic markets identified in Paragraph 16 in the following ways, among others:

- (a) By eliminating direct and substantial competition between Respondents Price Chopper and Tops;
- (b) By increasing the likelihood that Respondents Price Chopper and Tops will unilaterally exercise market power; and
- (c) By increasing the likelihood of, or facilitating, coordinated interaction between the remaining participants.

20. The ultimate effect of the Merger would be to increase the likelihood that the prices of food or groceries will increase, and that the quality and selection of food, groceries, or services will decrease, in the relevant geographic markets.

IX. VIOLATIONS CHARGED

21. The agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifth day of November 2021, issues its complaint against said Respondents.

By the Commission.

April J. Tabor
Secretary

SEAL

EXHIBIT A

City	State	Merger Result
Cooperstown	New York	2 to 1
Cortland	New York	4 to 3
Lake Placid / Saranac Lake	New York	3 to 2
Norwich	New York	3 to 2
Oneida / Sherrill	New York	3 to 2
Owego	New York	2 to 1
Plattsburgh / Peru	New York	5 to 4
Rome	New York	4 to 3
Rutland	Vermont	3 to 2
Warrensburg	New York	2 to 1
Watertown	New York	4 to 3