

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
THE STOP & SHOP COMPANIES, INC.,
a corporation; and
SSC ASSOCIATES, L.P.,
a limited partnership.

File No. 951-0086

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of Purity Supreme, Inc. ("Purity") by The Stop & Shop Companies, Inc. ("Stop & Shop") and SSC Associates, L.P., and it now appearing that Stop & Shop and SSC Associates, L.P., hereinafter sometimes referred to as "proposed respondents," are willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

IT IS HEREBY AGREED by and among proposed respondents, their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent The Stop & Shop Companies, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1385 Hancock Street, Quincy, MA 02169.

2. Proposed respondent SSC Associates, L.P. is a limited partnership organized, existing, and doing business under and by

virtue of the laws of the State of Delaware, with its office and principal place of business located at c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York 10019.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the proposed complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file verified written reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "Stop & Shop" means The Stop & Shop Companies, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by The Stop & Shop Companies, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. "Respondent" or "SSC Associates, L.P." means SSC Associates, L.P., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by SSC Associates, L.P., their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. "Assets to be divested" means the supermarket assets described in Paragraph II.A. of this Order.

D. "Commission" means the Federal Trade Commission.

E. "Supermarket" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

F. The term "Eastern Massachusetts" means the area in Massachusetts consisting of the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall divest, absolutely and in good faith, within nine (9) months from the date this Order becomes final:

1. The following supermarkets located in Barnstable County, Massachusetts (a/k/a Cape Cod) to one acquirer who shall own and operate them:

- a. Purity store no. 67 located at 137 Main St. (Route 28 - Falmouth Mall), Falmouth, MA 02540;
- b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151 - Mashpee Commons Shopping Center), Mashpee, MA 02649;

- c. Purity store no. 63 located at 625 West Main St., Hyannis, MA 02601;
- d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA 02601;
- e. Purity store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA 02664;
- f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA 02671; and
- g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA 02653.

If respondents are unable to divest all of the supermarkets listed to one acquirer who shall own and operate them, respondents may divest all of the supermarkets listed to no more than two acquirers who shall own and operate them.

2. The following supermarkets located in Plymouth County, Massachusetts:

- a. Purity store no. 89 located at 182 Summer St. (Routes 3A and 53 - Kingsbury Square Shopping Center), Kingston, MA 02364;
- b. Purity store no. 74 located at Ocean and Webster Sts. (Routes 139 and 3A -- Webster Square), Marshfield, MA 02050; and
- c. Purity store no. 25 located at 240 East Ashland St. (Cary Hill Shopping Center), Brockton, MA 02402.

3. The following supermarket located in Suffolk County and in the city of Boston, Massachusetts:

- a. Purity store no. 41 located at 630 American Legion Highway, Roslindale, MA 02131.

4. The following supermarkets located in Middlesex County, Massachusetts:

- a. Purity store no. 03 located at 170 Great Road (Routes 4 and 225), Bedford, MA 01730;
- b. Purity store no. 44 located at 2151 Mystic Valley Parkway, Medford, MA 02155; and
- c. Stop & Shop store no. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, MA 02172.

5. The following supermarket located in Essex County, Massachusetts:

- a. Purity store no. 01 located at 400 Lynn Fells Parkway, Saugus, MA 01960.

6. The following supermarkets located in Norfolk County, Massachusetts:

- a. Purity store no. 20 located at 525 Harvard St., Brookline, MA 02146; and
- b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA 02190.

The assets to be divested shall include the supermarket business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the supermarket operations at the locations listed above, but shall not include those assets consisting of or pertaining to Stop & Shop or Purity trade names, trade dress, trade marks, service marks, and such other intangible assets that respondents also utilize in their business at locations other than those listed above.

B. Respondents shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of

the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets to be divested as ongoing viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition alleged in the Commission's complaint.

C. Pending divestiture of the assets to be divested, respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the assets to be divested to comply with Paragraphs II. and III. of this Order and to prevent the destruction, removal, wasting, deterioration, or impairment of the assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

D. Respondents shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as all assets to be divested have been divested as required by this Order.

III.

IT IS FURTHER ORDERED that:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the assets to be divested within nine (9) months from the date this Order becomes final, the Commission may appoint a trustee to divest any of the assets to be divested. In the event that the Commission

or the Attorney General brings an action pursuant to § 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have

consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested.
3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may

extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this Order; provided, however, if the trustee receives bona fide offers

for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in

significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II. of this Order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.
12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any ownership or leasehold interest in any facility that has operated as a supermarket within six (6) months of the date of such proposed acquisition in Eastern Massachusetts.

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any supermarket or owned any interest in or operated any supermarket within six (6) months of such proposed acquisition in Eastern Massachusetts.

Provided, however, that advance written notification shall not apply to the construction of new facilities by respondents or the acquisition of or leasing of a facility that has not operated as a supermarket within six (6) months of respondents' offer to purchase or lease.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondents shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. § 12(a)) that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after July 1, 1995, to operate a supermarket at that site if such supermarket was formerly owned or operated by Purity in Eastern Massachusetts, or was owned or operated by respondents either in Barnstable County, Massachusetts (a/k/a Cape Cod) or not more than two miles from any other supermarket formerly owned or operated by Purity in Eastern Massachusetts. Provided, however, respondents shall not be prevented from entering into or enforcing any agreement (1) requiring their approval of any sublease, assignment, or change in occupancy, which approval shall not be unreasonably withheld; provided further that use of a site for the operation of a supermarket shall not be a basis for withholding such approval; or (2) affecting any existing supermarket owned or operated by respondents and located not more than one mile from a replacement supermarket owned or operated by respondents and opened within six months of the date of such agreement.

B. Respondents shall not remove any equipment from a supermarket owned or operated by respondents in Eastern

Massachusetts prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by respondents in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VI.

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of Paragraphs II. or III. of this Order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the

date this Order becomes final, and at other times as the Commission may require, respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in respondents that may affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, respondents shall permit any duly authorized representative of the Commission:

A. Upon five days' written notice to respondents, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this Order; and

B. Upon five days' written notice to respondents and without restraint or interference from respondents, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

Signed this 18 day of October, 1995.

THE STOP & SHOP COMPANIES, INC., A CORPORATION

By:



Peter M. Phillipps, Esq.
Senior Vice President,
General Counsel and Secretary



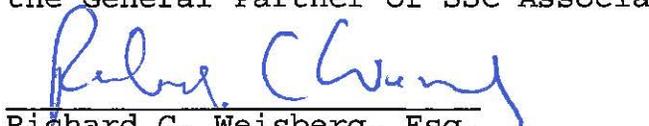
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