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

In the Matter of

JITNEY-JUNGLE STORES OF AMERICA, INC., a corporation;
BRUCKMANN, ROSSER, SHERRILL & CO., L.P., a limited partnership;
DELTA ACQUISITION CORPORATION, a corporation; and
DELCHAMPS, INC., a corporation.

Docket No. C-3784

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), a corporation of which a majority of the voting securities are owned by respondent Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckmann"), a limited partnership, and respondent Delta Acquisition Corporation ("Delta"), a wholly-owned subsidiary of respondent Jitney-Jungle, have entered into an agreement to acquire the outstanding shares of respondent Delchamps, Inc. ("Delchamps"), a corporation, all 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 Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

Definition

1. For the purposes of this complaint:

"Supermarket" means a full-line retail grocery store with annual sales of at least two million dollars 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.

Jitney-Jungle Stores of America, Inc.

2. Respondent Jitney-Jungle Stores of America, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204. Jitney-Jungle had sales of approximately \$1.13 billion at its supermarkets, and total sales of \$1.28 billion, in its 1997 fiscal year.

3. Respondent Jitney-Jungle is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Arkansas, Florida, Louisiana, Mississippi, and Tennessee.

4. Respondent Jitney-Jungle is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Bruckmann, Rosser, Sherrill & Co., L.P.

5. Respondent Bruckmann, Rosser, Sherrill & Co., 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 126 East 56th Street, 29th Floor, New York, New York 10022.

6. Respondent Bruckmann is, and at all times relevant herein has been, the owner of a majority of the voting securities of Jitney-Jungle.

7. Respondent Bruckmann is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Delta Acquisition Corporation

8. Respondent Delta Acquisition Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at c/o Jitney-Jungle Stores of America, Inc., 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204.

9. Respondent Delta is, and at all times relevant herein has been, a wholly-owned subsidiary of Jitney-Jungle established to acquire the outstanding shares of Delchamps.

10. Respondent Delta is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Delchamps, Inc.

11. Respondent Delchamps, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 305 Delchamps Drive, Mobile, Alabama 36602. Delchamps had sales of approximately \$1.08 billion at its supermarkets, and total sales of \$1.1 billion, in its 1997 fiscal year.

12. Respondent Delchamps is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Florida, Louisiana, and Mississippi.

13. Respondent Delchamps is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C.

§ 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Acquisition

14. On or about July 8, 1997, Jitney-Jungle and Delta entered into a cash tender offer agreement with Delchamps to acquire all of the outstanding common stock of Delchamps for \$30 per share. The total value of the proposed acquisition is approximately \$228 million.

Trade and Commerce

15. The relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition described herein is the retail sale of food and grocery products in supermarkets.

16. Stores other than supermarkets do not have a significant price-constraining effect on food and grocery products sold at supermarkets. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets. In addition, supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not typically change their food and grocery prices in response to prices at other types of stores.

17. Food stores other than supermarkets, such as convenience stores, "mom & pop" stores, and specialty food stores (*e.g.*, seafood markets, bakeries, etc.), are not in the relevant market because they typically offer far fewer items than the average supermarket and charge higher prices for many of the same or similar items. Other types of stores that sell some food and grocery products, such as large drug stores and mass merchandisers, offer only a limited number of items sold in the typical supermarket. The small number of membership club stores, which offer only a limited number of food and grocery products primarily in bulk sizes, do not have a significant effect on market concentration.

18. Military commissaries are also not in the relevant product market. Military commissaries, which are not open to the public, operate as supermarkets for eligible military personnel and their families with retail prices substantially below the average retail prices at supermarkets for the same or similar items. Retail prices at military commissaries are not advertised and are uniform throughout the country based on the actual cost of the item plus a nationwide uniform surcharge determined by rules established by the Secretary of Defense. Retail prices at military commissaries are not based on local market conditions. Supermarkets do not price-check food and grocery products sold at military commissaries and do not base their prices on the retail prices at the military commissaries.

19. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the following:

a. the Gulfport-Biloxi area of Mississippi, which consists of the parts of Hancock, Harrison, and Jackson counties that include Waveland, Bay Saint Louis, Pass Christian, Long Beach, Gulfport, Biloxi, D'Iberville, and Ocean Springs, and narrower markets contained therein, including Waveland/Bay Saint Louis, Gulfport, north Gulfport, and Biloxi/D'Iberville;

b. Pensacola, Florida, and narrower markets contained therein;

c. Hattiesburg, Mississippi and the area immediately west of Hattiesburg; and

d. Vicksburg, Mississippi.

Market Structure

20. The retail sale of food and grocery products in supermarkets in each of the relevant sections of the country is concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios. The acquisition would significantly increase the HHIs in each of the already highly concentrated markets.

Entry Conditions

21. Entry into the retail sale of food and grocery products in supermarkets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country.

Actual Competition

22. Jitney-Jungle and Delchamps are actual competitors in the relevant line of commerce and sections of the country.

Effects

23. The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant lines of commerce in the relevant sections of the country in violation 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, in the following ways, among others:

- a. by eliminating direct competition between supermarkets owned or controlled by Jitney-Jungle and supermarkets owned or controlled by Delchamps;
- b. by increasing the likelihood that Jitney-Jungle will unilaterally exercise market power; or
- c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction, each of which increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country.

Violations Charged

24. The proposed acquisition by Jitney-Jungle, Bruckmann, and Delta of all of the outstanding stock of Delchamps violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-eighth day of January, 1998, issues its complaint against said respondents.

By the Commission, Commissioner Azcuenaga not participating.

SEAL:

Donald S. Clark

Secretary