

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Koninklijke Ahold N.V.,
a corporation;

and

Delhaize Group NV/SA,
a public limited company.

Docket No. C-4588



APPLICATION FOR APPROVAL OF PROPOSED SALE OF CERTAIN SUPERVALU ASSETS TO GIANT AND REQUEST FOR EXPEDITED TREATMENT

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R § 2.41(f), and Paragraph VII of the Commission’s Decision and Order in the above-captioned matter, SUPERVALU INC. (“SVU”)¹ hereby petitions the Commission to approve the proposed sale of two supermarkets operating under the Shop ’n Save banner in Virginia and West Virginia (the “Prior Approval SNS East Stores”)² to GIANT FOOD STORES, LLC (“GIANT”), a company of Ahold Delhaize USA, Inc. (“ADUSA”).³ This sale (the “Transaction”) will ensure these stores remain open, benefitting customers and employees, and will promote competition in the relevant local geographies. In the absence of this Transaction, SVU plans to close these Prior Approval SNS

¹ As of October 22, 2018, SUPERVALU INC. is a subsidiary of United Natural Foods, Inc.

² SVU also intends to sell three additional stores, located in Maryland, Pennsylvania, and West Virginia, to GIANT. SVU is not required to seek prior Commission approval for these sales.

³ ADUSA is a U.S. company of Ahold Delhaize, an international grocery retailer headquartered in Zaandam, The Netherlands. Ahold Delhaize Annual Report 2017, at 284, available at https://www.aholddelhaize.com/media/6530/2017_aholddelhaize-annual-report_interactive.pdf.

East Stores, consistent with its recent closure of 13 other stores operating under the Shop 'n Save banner in the mid-Atlantic region.

I. INTRODUCTION

On June 24, 2015, Koninklijke Ahold N.V. (“Ahold”) and Delhaize Group NV/SA (“Delhaize”) entered into an Agreement and Plan of Merger to combine their respective businesses, becoming Koninklijke Ahold Delhaize N.V. (“Ahold Delhaize”). On July 22, 2016, the Commission approved the merger, subject to a proposed Decision and Order and an Order to Maintain Assets. Following a public comment period, the Commission approved the final Decision and Order (“Order”) on October 31, 2016.⁴

The Order required Ahold and Delhaize to divest 81 supermarkets located in Delaware, Massachusetts, Maryland, New York, Pennsylvania, Virginia, and West Virginia to various approved buyers. Paragraph II.A.5 of the Order required the divestiture of the 18 supermarkets identified in Schedule E (collectively, the “Schedule E Assets”) to SVU within 105 days of closing of the Ahold/Delhaize merger. Section VI of the Order further provided that, for three years following the Order’s date of issuance, SVU must obtain the Commission’s prior approval of the sale of any Schedule E Assets, and may only sell such assets to a buyer approved by the Commission and in a manner approved by the Commission. At the same time it acquired the 18 stores identified in Schedule E, SVU acquired four additional stores from Ahold Delhaize (the “Additional Stores”) that are not subject to the obligations set forth in the Order.

On Nov. 6, 2018, SVU entered into a definitive agreement to sell five stores to GIANT (#2866–Hedgesville, WV, #2868–Smithsburg, MD, #2871–Berryville, VA, #2877–

⁴ In the Matter of Koninklijke Ahold N.V., and Delhaize Group NV/SA, 2016 Decision and Order [Redacted Public Version], at Section VI, available at <https://www.fic.gov/system/files/documents/cases/161031delhaizedo.pdf>.

Greencastle, PA, and #2881–Martinsburg, WV (Old Courthouse), collectively the “GIANT SNSE Stores”). Only two of these stores are Schedule E locations requiring prior approval under the Order (#2871–Berryville, VA, and #2881–Martinsburg, WV (Old Courthouse)), i.e., the Prior Approval SNS East Stores.

SVU hereby requests the Commission to approve the Transaction,⁵ and respectfully requests that the Commission consider this petition on an expedited basis. This petition outlines the principal terms of the Transaction, describes SVU’s rationale for the Transaction and its extensive efforts to market these assets to potential buyers, and explains why the proposed Transaction merits Commission approval.

The Commission should approve the Transaction because (a) without a buyer, SVU plans to close the stores in the coming months, just as it has recently closed other SNS East stores in Pennsylvania, Maryland, Virginia, and West Virginia, and Farm Fresh stores in Virginia; and has announced closures for Shop ‘n Save stores in Missouri and Illinois;⁶ (b) the Transaction will not raise competitive issues, and will preserve consumer choice and jobs; (c) the Transaction offers the best available buyer; and (d) GIANT has the financial strength, operational capability, and strategic direction necessary to operate the stores competitively. For these reasons, the Transaction will promote competition and advance the objectives of the Commission’s Order.

⁵ SVU, Press Release, SUPERVALU to Close Remaining Shop ‘n Save Stores (October 2018 announcement that SVU will close the remaining 16 Shop ‘n Save stores in St. Louis and Illinois that did not find buyers), included as Exhibit A.

II. REQUEST FOR EXPEDITED TREATMENT

SVU desires to complete the proposed Transaction as soon as possible following Commission approval. On August 9, 2018, SVU issued a press release to local media and informed employees that it would close 13 of the 21 remaining SNS East locations in September. All 13 of these stores are now closed. The eight stores that remain open are the ones in which SVU had received interest from potential acquirers, [REDACTED]

[REDACTED] SVU plans to close the remaining stores in the coming months if they are not sold. Expedited review and consummation of the Transaction would allow GIANT to convert and reopen the stores as quickly as possible and operate the stores competitively. Expedited treatment would also enable SVU to reduce its continuing losses from holding these stores. In light of these circumstances and the clear bases for approval set forth below, SVU requests that the Commission shorten the customary 30-day public comment period as permitted under Section 2.41(f)(2) of the Commission Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2), and approve the proposed Transaction by November 30, 2018.

III. TRANSACTION DESCRIPTION

On November 6, 2018, an Asset Purchase Agreement (“APA”), attached as Exhibit B to this Application, was executed by and between SVU; Shop ’N Save East Prop, LLC; Shop ’N Save East, LLC; GIANT FOOD STORES, LLC; and Ahold Delhaize USA, INC. Pursuant to the APA, SVU will sell to GIANT the GIANT SNSE Stores, including all assets identified in the agreement (*e.g.*, all fixtures and equipment, assigned leases or real property) and assumed liabilities.

IV. TRANSACTION RATIONALE

A. Without This Transaction, SVU Plans to Close The Stores

SVU announced its acquisition of the Schedule E Assets and Additional Stores in October 2016. As disclosed to the FTC at the time of the acquisition, SVU originally planned to acquire these stores on behalf of its wholesale customers and then divest the stores to a joint venture partner, Donstekim Enterprises, LLC (“Donstekim”). However, shortly after SVU acquired the stores, they experienced a steep decline in sales, and despite significant efforts, SVU was unable to recover the lost sales. Faced with this poor initial performance, Donstekim declined to take over the stores, leaving SVU to operate the stores and attempt a turnaround. By way of background, before the Order, these stores had operated with an “Everyday Low Price” strategy, offering low prices throughout the store instead of using promotions or advertising. Following the acquisition, SVU initially attempted to introduce a “High/Low” pricing strategy, which focused on selling some products at steep discounts and using advertising to bring in customers. SVU expected it could operate these stores at a profit, similar to its Pittsburgh-based SNS stores, which were similarly sized locations and competed successfully against larger chains.⁷ SVU also planned to expand local and fresh offerings, offer a larger variety of private brands, and introduce successful programming from its other SNS locations, such as loyalty cards, fuel discounts, and digital marketing.⁸ However, even though SVU implemented these strategies, the stores’ sales declined by about 30 percent. SVU changed its strategy in response, offering steep discounts on some products and keeping prices at “Everyday Low Price” levels for others, while also expanding

■

[REDACTED]

■

[REDACTED]

advertising and couponing efforts. In parallel, SVU maintained the quality level of the stores, including staffing levels. Despite these major investments, sales never recovered from the initial decline.

The struggles at SNS East also reflect an increasingly competitive environment for grocery retailers like Shop 'n Save to compete. Vertically integrated competitors like Walmart, Target, Kroger, and Albertsons are hyper-efficient, and high-end (e.g., Whole Foods, Wegmans) and discount (e.g., Aldi, Lidl, Save-A-Lot) retailers also are fierce competitors to traditional grocery.

With these sales declines, continued operation of the SNS East banner by SVU has become unsustainable. [REDACTED]

[REDACTED]

[REDACTED] In April 2018, SVU publicly announced that it had moved its SNS East stores into “discontinued operations” meaning that SVU intended to sell the stores within a year.¹¹ SVU also announced that it had moved its Farm Fresh stores in the Hampton Roads area of Virginia and its St. Louis-area Shop 'n Save stores into “discontinued

[REDACTED]

¹¹ See, e.g., SUPERVALU Fourth Quarter Fiscal 2018 Earnings Call Presentation, April 24, 2018, at 8, available at <http://www.supervaluinvestors.com/phoenix.zhtml?c=93272&p=irol-presentations>.

operations.” In each of these situations, upon determining that not all stores in a particular banner or geography would be sold, SVU made the decision to close any stores that could not be sold.

SVU’s efforts to exit these three banners are nearly complete. Regarding SNS East, on August 9, 2018, SVU issued a press release to local media and informed employees that it would close 13 of the 21 remaining SNS East locations in September 2018.¹² SVU has since closed all 13 stores. The eight stores that remain open are the ones as to which SVU had received some interest from potential acquirers, [REDACTED]

[REDACTED] SVU expects to close any stores that cannot be sold within the calendar year. Regarding Farm Fresh, SVU sold 18 of 38 locations to The Kroger Company (“Kroger”), sold three stores to Food Lion, LLC, a company of ADUSA, and sold an additional five stores to independent operators.¹³ It has now shut down the remaining 13 Farm Fresh stores. SVU also sold 19 of its 36 remaining Shop ‘n Save stores in Missouri and Illinois to a regional chain, Schnucks, in August 2018, sold one store to an independent buyer, and will close the remaining stores.¹⁴

¹² Herald Mail, Eight Tri-State Shop ‘N Save stores to close by Sept. 8 (Aug. 9, 2018), available at https://www.heraldmillmedia.com/news/tri_state/update-eight-tri-state-shop-n-save-stores-to-close/article_fc26968e-9c13-11e8-bd03-032a453e9190.html (noting that SVU is closing 13 stores in the SNS East banner).

¹³ SVU, Press Release, SUPERVALU Completes Sale of 21 Farm Fresh Stores (May 3, 2018), available at <https://www.businesswire.com/news/home/20180503006799/en/SUPERVALU-Completes-Sale-21-Farm-Fresh-Stores> (press release noting sale of 21 Farm Fresh stores, 18 to Kroger/Harris Teeter and three to Food Lion).

¹⁴ SVU, Press Release, SUPERVALU to Close Remaining Shop ‘n Save Stores (October 2018 announcement that SVU will close the remaining 16 Shop ‘n Save stores in St. Louis and Illinois that did not find buyers), included as Exhibit A; SVU, Press Release, SUPERVALU Announced Plans to Sell 19 of its 36 St. Louis-Based Shop ‘n Save Stores to Schnuck Markets (Sept. 17, 2018), available at <https://www.businesswire.com/news/home/20180917005814/en/SUPERVALU-Announces-Plans-Sell-19-36-St>. (noting sale of 19 stores, plus pharmacies and fuel centers).

SVU's recent acquisition by United Natural Foods, Inc. ("UNFI") does not change SVU's plans to exit these stores. Indeed, UNFI publicly announced that it intends to divest all of SVU's retail stores.¹⁵

B. Sale to GIANT Does Not Raise Competitive Issues

Three of the stores SVU has agreed to sell to GIANT, Hedgesville, WV (#2866), Smithsburg, MD (#2868), and Greencastle, PA (#2877), were not required divestitures in the Order and their acquisition does not require prior approval by the Commission. The other two stores have seen changed circumstances since 2016 and are not close to any overlapping grocery stores operated by ADUSA companies:

- **Berryville, VA (#2871)** – This store is in a rural area with no nearby competitors. The closest location operated by an ADUSA company is 9.2 miles away, a Martin's in Winchester, VA. Closer options include Family Dollar (0.6 miles) and Dollar General (0.7 miles), and other grocery stores located a comparable distance from this location include Food Maxx (9.8 miles), Sharp Shopper (10 miles), a second Martin's (12.4 miles), and a Walmart Supercenter (12.8 miles).
- **Martinsburg, WV (#2881)** – This is a highly competitive area that has seen increased competition since the Ahold/Delhaize merger closed in 2016. Local competitors include Aldi (0.5 miles away), Weis (0.8 miles away) Save-A-Lot (0.8

¹⁵ July 26, 2018 UNFI Investor Presentation, at 13 ("Over time, divest SVU retail business in a thoughtful and economic manner"), available at https://s22.q4cdn.com/589001886/files/doc_presentations/Investor-Presentation-7-26-18-Final-vF.pdf.

miles away, opened in 2016¹⁶), and a Walmart Supercenter (3 miles away), all closer than the nearest location operated by an ADUSA company (a Martin's 3.2 miles away). Additionally, a new Weis is opening in 2019 within 3 miles of the Martinsburg store's location.

C. The Transaction Offers the Best Available Buyer for These Stores

SVU marketed the Prior Approval SNS East Stores to over 60 potential buyers, including large national chains, SVU-supplied independent retailers, non-SVU-supplied retailers, and third-party real estate developers.

[REDACTED]

Throughout this process, [REDACTED] SVU put no conditions on asking price, supply arrangements, or number of stores purchased, and instead focused on trying to find any possible buyers for any stores. It received interest from four companies for a total of eight stores

¹⁶ Brittany Marshall, *Save-A-Lot to open in Martinsburg on Sunday*, Local DVM.com (Oct. 27, 2016), <https://www.localdvm.com/news/west-virginia/save-a-lot-to-open-in-martinsburg-on-sunday/602376132>.

- GIANT, [REDACTED]

Consequently, SVU closed 13 stores that had no buyer interest and kept the remaining eight stores open. In the next round, these four buyers put in bids on seven of the eight remaining stores. Buyer interest in the eight stores that remained open is shown below.

Store	Initial Interest (8 Stores)	Initial Bid (7 Stores)	Final Agreement (5 Stores)
#2865 - Purcellville (Consent Decree Sched. E store)	[REDACTED]	[REDACTED]	No
#2866 - Hedgesville	GIANT [REDACTED]	GIANT: [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Yes (GIANT)
#2868 - Smithsburg	GIANT	GIANT: [REDACTED] [REDACTED]	Yes
#2869 - Front Royal (Consent Decree Sched. E store)	[REDACTED]	[REDACTED] [REDACTED]	No
#2871 - Berryville (Consent Decree Sched. E store)	GIANT	GIANT: [REDACTED] [REDACTED]	Yes
#2873 - Martinsburg (Winchester Ave.) (Consent Decree Sched. E store)	[REDACTED]	[REDACTED]	No
#2877 - Greencastle	GIANT	GIANT: [REDACTED] [REDACTED]	Yes
#2881 - Martinsburg (Old Courthouse) (Consent Decree Sched. E store)	GIANT [REDACTED]	GIANT: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Yes (GIANT)

Since receiving bids from these buyers, only GIANT has negotiated and entered into a final agreement to purchase any stores. [REDACTED] expressed interest in two of the same stores as GIANT – the Hedgesville, WV (#2866) and Martinsburg, WV (Old Courthouse) (#2881) store. GIANT expressed its willingness to operate more stores than [REDACTED], and in any case, GIANT is a superior buyer from a competitive perspective. [REDACTED]

[REDACTED]

[REDACTED]

SVU understands that GIANT has confirmed its intent to operate these stores, to continue operation of its other stores in the area, and to make significant investments in the acquired stores going forward.¹⁷ SVU understands that GIANT will [REDACTED] [REDACTED] make capital investments in décor, facilities, and store equipment.

D. GIANT Is A Successful Supermarket Operator

GIANT is an ADUSA company, and ADUSA is a U.S. company of Ahold Delhaize, the international grocery retailer headquartered in Zaandam, The Netherlands. ADUSA companies operate supermarkets under the Food Lion, Giant, Martin's, Hannaford, and Stop & Shop brands in the U.S, with 1,950 stores in 23 states, largely on the East Coast.¹⁸ ADUSA also includes the online grocer, Peapod.¹⁹ As discussed above, Ahold Delhaize formed from

[REDACTED]

[REDACTED]

¹⁸ Ahold Delhaize United States, <https://www.aholddelhaize.com/en/about-us/where-we-operate/united-states/> (last visited Oct. 16, 2018).

¹⁹ *Id.*

the merger of Ahold and Delhaize in 2016. Globally, Ahold Delhaize had \$62.7 billion in revenues in 2017.²⁰

V. CONCLUSION

For the foregoing reasons, SVU respectfully requests that the Commission shorten the public comment period as permitted under Section 2.41(f)(2) of the Commission Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2), expeditiously approve the proposed Transaction as soon as practicable following the public comment period, and in any event before November 30, 2018.

VI. REQUEST FOR CONFIDENTIAL TREATMENT

This application contains confidential, competitively sensitive information regarding the transaction, the SNS East stores, and the business activities of SVU, GIANT, and ADUSA. Disclosure of this information would prejudice SVU, GIANT, and ADUSA and harm the ability of each company to compete effectively. Accordingly, pursuant to Sections 2.41(f)(4), 4.9(c), and 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4), 4.9(c), 4.10(a)(2), and Sections 6(f) and 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f), 57b-2(c), SVU requests that this information be treated as strictly confidential. In accordance with Section 4.2(d) of the Commission's Rules of Practice and Procedure, SVU is submitting a public version of the application with confidential information redacted, as well as a confidential version including such information.

²⁰ Ahold Delhaize Annual Report 2017, at 6, available at https://www.aholddelhaize.com/media/6530/2017_aholddelhaize-annual-report_interactive.pdf.

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Washington, D.C.

Respectfully submitted,

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