
IN THE MATTER OF
THE GRAND UNION COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7
OF THE CLAYTON ACT

Docket 8458. Complaint, Jan. 12, 1962—Decision, June 10, 1965

Consent order requiring an East Patterson, N.J., supermarket grocery chain to divest itself of certain stores acquired in 1958 through its acquisition of two New York grocery chains, and to refrain from acquiring any chain of four or more stores or any store or chain with an annual food sales over \$5,000,000 for a period of 10 years without prior approval of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the amended Clayton Act

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(15 U.S.C., Section 18), hereby issues its complaint, stating its charges in that respect as follows:

PAR. 1. Respondent, The Grand Union Company, is a corporation organized in 1928 and existing under and by virtue of the laws of the State of Delaware with its principal office located at 100 Broadway, East Patterson, New Jersey.

Respondent is engaged primarily in the retail sale and distribution of food and non-food products (hereinafter called grocery products) which are generally available in grocery stores as that term is employed in the 1958 Census of Retail Business. It operates a chain of approximately 472 such grocery stores in various States of the United States and the District of Columbia.

Practically all the stores which respondent operates are self-service stores with separate sections for meat, groceries, frozen food, produce, dairy products and a variety of non-food items. Such stores have gross sales of at least \$375,000 per year and are termed "supermarkets." Approximately twenty of these stores sell household appliances and a variety of other consumer items in addition to grocery products. These twenty stores are known as Grand-Way Discount Centers. Respondent has one Grand-Way Discount Center in each of the cities of Albany and Poughkeepsie, New York where it offers the consumer one stop shopping on a far larger scale than its smaller grocery store competitors.

Respondent, through a subsidiary, Stop & Save Trading Stamp Corporation, distributes trading stamps which are utilized in most of its grocery stores and which are available in other retail outlets than its own. Redemption centers for these stamps are maintained in the areas in which respondent operates. Through the widespread and extensive use of these stamps, respondent was and is able to increase its market power.

Respondent also owns approximately 32% of the stock of Eastern Shopping Centers, Inc., a corporation established in 1956 to develop and operate shopping centers. The Grand Union Company has the initial right to negotiate the lease of any supermarket store site in any shopping center developed by Eastern. The ability of a grocery store to gain entrance into a shopping center is instrumental in maintaining and expanding market power. Through Eastern Shopping Centers, Inc., respondent possesses an advantage in obtaining choice sites for supermarkets over its smaller competitors in the geographical markets in which it operates.

PAR. 2. Respondent operates its grocery stores in various States of the United States and the District of Columbia. It purchases many of the grocery products which it sells in commerce from sup-

pliers situated in various States of the United States other than New York and effects their shipment to its warehouses for subsequent distribution to its retail grocery stores. Respondent is now and was at the time of the acquisitions described below engaged in commerce within the meaning of Section 7 of the Clayton Act.

PAR. 3. Over the past ten years there has been a substantial increase in the market power of the top twenty grocery chains in the United States. In 1948 this group had 28.13 percent of the total grocery store sales in the United States. By 1958 the top twenty grocery store chains had captured 36.16 percent of the grocery store market.

In 1952 grocery stores which were classifiable as supermarkets had 43 percent of the total grocery store sales in the United States. By 1958, their share of the grocery store sales in the United States was 69 percent.

In 1951 respondent operated approximately 290 grocery stores, most of which were concentrated in the States of New York and Vermont. The remaining grocery stores were located in certain sections of the States of Pennsylvania, New Jersey, Connecticut and Massachusetts. With sales of approximately \$179,000,000, it ranked tenth among grocery chains in the United States in the sale of grocery products.

Since 1951, respondent has substantially increased its geographical area of distribution and its sales of grocery products by growth through acquisition. The following thirteen acquisitions of 92 grocery stores were made in various sections of the country in the area along the eastern seaboard from New Hampshire to Virginia and in the State of Florida. In the respective years immediately prior to their acquisition the aggregate sales by the aforesaid acquired companies were approximately \$88,695,062.

(1) In August 1951, respondent acquired the assets of Great Eastern Stores, a corporation which operated thirty-five grocery stores in New Jersey. Great Eastern's sales for the year prior to acquisition were approximately \$8,899,023.

(2) In January 1955, respondent acquired Square Deal Market Co., Inc., which operated five grocery stores in the District of Columbia, three in Maryland and four in Virginia. Square Deal's sales for the year prior to acquisition were approximately \$18,263,665.

(3) In June 1955, respondent acquired for approximately \$531,548 three affiliated corporations, Park and Shop Stores, Inc., Park and Shop Stores of New Haven, Inc., and The Park and Shop Markets, Inc. Each corporation operated one grocery store in Connec-

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ticut. Total sales for the three acquired grocery stores in the year prior to acquisition were approximately \$4,654,000.

(4) In January 1956, respondent acquired Shirlington Supermarket, Inc., which operated five grocery stores in Virginia. Sales of these five stores for the year prior to acquisition were approximately \$6,140,000.

(5) In April 1956, respondent acquired Food Center Supermarkets, Inc., which operated a total of six grocery stores in the towns of Wappingers Falls, Beacon, and Poughkeepsie, New York. Food Center's sales for the year prior to acquisition were approximately \$8,479,639.

(6) In June 1956, respondent acquired Towne Supermarket which operated one grocery store in Toms River, New Jersey, for \$153,400. Towne Supermarket's sales for the year prior to acquisition were approximately \$1,040,000.

(7) In June 1956, respondent acquired B-Thrifty, Inc., and Merchants Grocery Co., Inc., affiliated corporations. B-Thrifty, Inc., which operated four grocery stores in the greater Miami, Florida area, had sales of approximately \$7,113,961 in the ten-month period before acquisition. The Merchants Grocery Co., Inc., a grocery wholesaler, had sales of approximately \$4,756,253 in the year prior to acquisition.

(8) In November 1956, respondent acquired Value Markets, Inc., which operated a grocery store in Opa-Locka, Florida, and Carol Anne Markets, Inc., which operated a grocery store in Miami, Florida. The purchase price for the two grocery stores was approximately \$312,241.

(9) In March 1957, O. I. Tanner & Co., a corporation, Tanner Grocery Co., a corporation, and Tanner & Tanner, Inc., affiliated companies, operating one grocery store each in the Miami area, were acquired by respondent. The three acquired stores had aggregate sales of approximately \$6,055,210 in the year prior to acquisition.

(10) In June 1957, respondent acquired for approximately \$47,834 Harris I.G.A. Food Line, which operated one grocery store in Cazenovia, New York.

(11) In September 1957, respondent acquired for approximately \$834,563 H. L. Mills, Incorporated, which operated three grocery stores in Hagerstown, Maryland. H. L. Mills' sales for the year prior to acquisition were approximately \$7,000,000.

(12) In October 1957, respondent acquired the Champagne Corporations which operated six grocery stores located in various cities in New Hampshire. The sales of the acquired corporations for the year prior to acquisition were approximately \$10,597,031.

(13) In June 1958, respondent acquired for approximately \$845,016 seven grocery stores of Mohican Company of New England, Inc., which operated six grocery stores in Connecticut and one in Rhode Island. The sales of these seven acquired stores in the year prior to acquisition were approximately \$7,250,000.

Practically all the grocery stores which were acquired were supermarkets. By the end of 1958 respondent had substantially increased its purchases and sales of grocery products in this broadened geographical area of operation and it ranked ninth in sales of grocery products among grocery chains, with sales of approximately \$504,000,000. By the end of 1960, respondent ranked eighth among grocery chains in sales of grocery products with sales of approximately \$604,000,000.

PAR. 4. In June 1958, respondent acquired for approximately \$8,005,658 substantially all the assets of Schaffer Stores Company, Inc., a corporation organized under the laws of the State of New York with principal headquarters at 116 Erie Boulevard, Schenectady, New York.

In 1951, Schaffer Stores Company, Inc., operated 28 grocery stores, and had sales of approximately \$21,300,000 and a net profit of approximately \$577,808. For the fiscal year ending February 28, 1958, Schaffer Stores Company, Inc., had sales of approximately \$36,915,000 with a net profit of approximately \$1,275,000.

At the time of its acquisition, Schaffer Stores Company, Inc., owned and operated 41 grocery stores (practically all of which were supermarkets) under the name "Empire Markets" and one liquor store, all of which were acquired by respondent. Forty of these grocery stores were in the State of New York. One was in Pittsfield, Massachusetts. Schaffer Stores Company, Inc., was a leading grocery chain in most of the areas in which it operated.

PAR. 5. Schaffer Stores Company, Inc., purchased many of the grocery products it sold in commerce from supplies situated in various States of the United States other than New York and Massachusetts and effected their shipment to its warehouses for subsequent distribution to its grocery stores in the States of New York and Massachusetts. Schaffer Stores Company, Inc., prior to and at the time of the acquisition was engaged in commerce within the meaning of Section 7 of the Clayton Act.

PAR. 6. Prior to and at the time of the acquisition, both Schaffer Stores Company, Inc., and The Grand Union Company were competitors in the purchase and sale of grocery products in each of the following described geological sections of the country and in subsections thereof:

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(1) The entire section of New York State encompassed by the following nine counties and subsections thereof:

Saratoga	Schenectady	Ulster
Albany	Montgomery	Dutchess
Rensselaer	Columbia	Orange

(2) Each of the aforesaid nine counties, and subsections thereof.

(3) Each of the fifteen following named cities and subsections thereof, located in New York State:

Troy	Poughkeepsie	New Paltz
Schenectady	Beacon	Kingston
Albany	Wappingers Falls	Saugerties
Amsterdam	Newburgh	Hudson
Saratoga Springs	Highland	Red Hook

In 1958 total grocery store sales in the counties listed above in this paragraph amounted to approximately \$342,000,000. In 1958 the total sales of respondent in the named counties amounted to approximately \$76,294,000 or 22 percent of the total grocery store sales in this geographical area. In particular counties the respondent's share of the grocery store sales was even more substantial. For example, in 1958 respondent accounted for grocery store sales of \$21,115,319 or approximately 50 percent of the total grocery store sales of \$42,945,000 in Dutchess County, New York.

PAR. 7. In December 1958, respondent acquired for 187,500 shares of its stock, having a value of approximately \$9,187,500, substantially all of the outstanding voting stock of Sunrise Supermarkets Corp., a corporation organized under the laws of the State of New York with principal headquarters at 35 Engel Street, Hicksville, Long Island, New York.

In 1951, Sunrise Supermarkets Corp. operated 13 grocery stores. For the thirteen-month period ending January 31, 1951 it had sales of approximately \$10,007,650 and a profit of approximately \$204,724. At the time of its acquisition, it was operating 28 grocery stores in Kings, Queens, Nassau and Suffolk Counties in New York State. For the year ending February 1, 1958 its sales were approximately \$42,968,351 and its profit was approximately \$646,042. At the time of its acquisition, Sunrise Supermarkets Corp. was one of the largest operators of grocery stores in Nassau County, and also operated three grocery stores competitive with respondent in Suffolk County.

In 1958 Sunrise Supermarkets Corp. had sales in Nassau and Suffolk Counties of approximately \$28,764,000. This represented approximately 5.1 percent of the total grocery sales of approximately \$564,378,000 in these counties. Practically all of the grocery stores operated by Sunrise Supermarkets Corp. were supermarkets.

PAR. 8. Sunrise Supermarkets Corp. purchased many of the grocery products it sold in commerce from suppliers situated in various States of the United States other than New York and effected their shipment to its warehouses and grocery stores in the State of New York. Sunrise Supermarkets Corp., prior to and at the time of its acquisition, was engaged in commerce, within the meaning of Section 7 of the Clayton Act.

PAR. 9. Prior to and at the time of the acquisition, Sunrise Supermarkets Corp. and The Grand Union Company were competitors in the purchase and sale of grocery products in each of the following described geographical sections of the country and in subsections thereof:

1. The entire section of New York State encompassed by Nassau and Suffolk Counties and subsections thereof.
2. Each of the aforesaid two counties and subsections thereof.
3. Each of the three following named cities and subsections thereof, located in New York State:

Hempstead, Long Island, New York

Bayshore, Long Island, New York

Manhasset, Long Island, New York

In 1958 total grocery store sales in Nassau and Suffolk Counties amounted to approximately \$564,378,000. In 1958 the total sales of respondent in Nassau and Suffolk Counties amounted to approximately \$29,813,000 or 5.1 percent of the total grocery store sales in Nassau and Suffolk Counties. Respondent did not operate the grocery stores of Sunrise Supermarkets Corp. until late in 1958.

By the end of 1959 respondent's sales in Nassau alone were approximately \$47,448,000, far surpassing its combined sales in both counties in 1958 and it had doubled its 1958 sales in Suffolk County.

PAR. 10. The effect of the aforesaid acquisitions by respondent of Schaffer Stores Company, Inc., and Sunrise Supermarkets Corp., individually and collectively, and as the culmination of a series of acquisitions commencing in 1951, may be substantially to lessen competition or to tend to create a monopoly in the aforesaid sections and subsections of the country and in the United States in the purchase, sale and distribution of grocery products within the meaning of Section 7 of the amended Clayton Act.

More specifically the aforesaid effects include the following among others:

- (1) The elimination of existing and potential competition between respondent and Schaffer Stores Company, Inc., and respondent and Sunrise Supermarkets Corp., in the purchase and sale of grocery products.

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(2) The lessening of existing and potential competition between and among respondent and other grocery stores.

(3) The forestalling of planned increases and abandonment of executed increases in competitive activities by suppliers of grocery products.

(4) The lessening or elimination of substantial existing competition between and among manufacturers, and processors of grocery products.

(5) The lessening or elimination of substantial competition between and among wholesalers of grocery products.

(6) The possession by respondent of additional market power as a result of the acquisitions of Schaffer Stores Company, Inc., and Sunrise Supermarkets Corp. Approximately 69 additional grocery stores were acquired which had a combined sales volume of approximately \$76,000,000 in the years immediately preceding their acquisition. Respondent's purchasing power was thereby increased and its capacity to capture a larger share of the retail grocery products market was increased.

(7) The exclusion for ten years of Henry Schaffer and Harry M. Schaffer from the business of operating retail food stores or selling food and grocery products at retail within 25 miles of any of the stores acquired by the respondent, and also the exclusion from said business of any corporations in which either of them hold a substantial interest.

(8) The exclusion as individuals from the selling at retail of grocery products in Kings, Queens, Nassau, or Suffolk County, New York, of Isidor Pols, Morris Rapoport, Philip Kessler and Abner Pols, the principal stockholders of Sunrise Supermarkets Corp., and also the exclusion from said business of any corporations in which any of them hold a substantial interest, for two years from the date of the acquisition of Sunrise Supermarkets Corp. by respondent.

(9) National and local ownership, management and control of grocery stores by a few large corporations has been further concentrated.

(10) National and local ownership, management and control of grocery stores customarily known as supermarkets by a few large corporations has been further concentrated.

PAR. 11. The foregoing acquisitions, acts and practices, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

Mr. Eugene R. Baker, Mr. William J. Boyd, Mr. Joseph P. Dufresne, Mr. Robert A. Goodman, Mr. Raymond L. Hays and Mr. James A. Morgan, for the Commission.

Mr. Howard T. Milman, Mr. Richard Sexton and Mr. Robert B. Hiden, attorneys for the respondent, Sullivan & Cromwell, 48 Wall Street, New York, N.Y.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

OCTOBER 4, 1968

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SUPPORTING REFERENCES

Tr. refers to the official transcript.

CX refers to Commission Exhibits.

RX refers to Respondent's Exhibits.

The Tr. references are placed at the end of each paragraph in the order in which the particular statements which they support are made in the paragraph.

I. THE COMPLAINT

1. The complaint in this proceeding, issued on January 12, 1962, charges that the Grand Union Company, a corporation, hereinafter referred to as Grand Union, or as the respondent, has, between 1951 and June 1958, substantially increased its geographic area of distribution and sale of grocery products by acquiring 13 corporations including 92 grocery stores located along the eastern seaboard from New Hampshire to Virginia and in the State of Florida. The complaint further charges that respondent's market power has also been increased through the extensive use of trading stamps and through a subsidiary, Stop and Save Trading Stamp Corporation. The complaint also charges that the respondent gained advantages over its smaller competitors in the process of choosing sites for supermarkets because of respondent's contract with Eastern Shopping Centers, Inc., whereby respondent had been granted the initial right to lease any supermarket store in any shopping center developed by Eastern Shopping Centers, Inc., a corporation established to develop and operate shopping centers, in which the respondent holds 32% of the stock. As a result of such acquisitions and the growth advantages acquired through its use of trading stamps and the procuring of choice locations for its stores, the complaint avers that by 1960, Grand Union, with annual sales of approximately \$604,000,000, ranked eighth among grocery chains in the sale of grocery products.

2. The complaint then charges in substance that as a culmination of its expansion by acquisition, that Grand Union's additional acquisition in 1958 of Schaffer Stores Company, Inc., and Sunrise Supermarkets Corp., two corporate grocery chains located in the State of New York, were made in violation of the antimerger provision of Section 7 of the Clayton Act, the pertinent provisions of which are as follows:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

II. THE ANSWER

3. Respondent's answer, filed February 27, 1962, denies substantially all of the material allegations of the complaint except the facts of the acquisitions charged and certain other facts relating thereto, denied that either of the two corporations acquired in 1958 were engaged in commerce and specifically denied any violations of Section 7 of the Clayton Act as amended.

III. THE ISSUES

4. The principal issues arising from the pleadings and the provisions of the law invoked in the complaint may be stated as follows:

(1) Was the Schaffer Stores Company, Inc., and Sunrise Supermarkets Corp. at the time of their acquisition by the respondent in 1958 engaged in commerce within the intent and meaning of Section 7 of the Clayton Act?

(2) What product or products constitute the line or lines of commerce herein involved?

(3) What is the relevant "section of the country," or sections of the country, wherein competition in the line or lines of commerce in question may be observed for the purpose of determining the result of the acquisitions herein challenged?

(4) Is there a reasonable probability that respondent's acquisition of the assets of the two corporations acquired in 1958 may have the effect of substantially lessening competition or of tending to create a monopoly in the production and sale of the line or lines of commerce involved in this proceeding, in violation of Section 7 of the Clayton Act?

5. In reviewing the evidence in the light of the issues of this proceeding, we must remember that neither "bigness" nor the "chain store" nor the "supermarket" is on trial. Nor is a merger shown to be unlawful by proof that the dynamics of food retailing have made it more difficult for the less efficient stores to compete successfully with new stores offering the consumer a greater variety of products, more conveniences, lower prices, and a choice of a large number of

places in which to shop. The central issue of this proceeding is competition—whether the effect of the mergers in question “may be substantially to lessen competition, or to tend to create a monopoly.”

IV. HEARINGS

6. Hearings were held in New York City from May 21 through June 15, 1962, and were then recessed during the pendency of two interlocutory appeals by counsel supporting the complaint. Hearings were resumed on April 22 and continued through April 25, 1963 and on May 8, 1963. Counsel supporting the complaint called 84 witnesses during the presentation of the case-in-chief, including three Grand Union officers, a former officer of Schaffer Stores, a former officer of Sunrise Stores, two industrial experts, nine representatives of food supplying companies, and 58 representatives of companies operating stores in the 11 counties in New York State specified by the complaint. Two additional store operators were called by respondent.

V. PROPOSED FINDINGS

7. Opposing counsel submitted proposed findings as to the facts, proposed conclusions and order. All proposals have been considered by the hearing examiner and those not incorporated in this initial decision either verbatim or in substance are hereby rejected.

VI. IDENTITY AND BUSINESS OF THE RESPONDENT

8. The Grand Union Company was organized as a corporation in 1928 under and by virtue of the laws of the State of Delaware with its principal office located at 100 Broadway, East Patterson, New Jersey.

(Admitted, answer, paragraph 1)

9. During the year of its incorporation in 1928, Grand Union operated 610 food stores in four eastern States. In 1952 it operated 323 stores in six eastern States. The decrease in the number of its stores reflected the general trend at that time of replacing numerous small grocery stores with fewer, larger, self-servicing grocery stores. By the end of the 1958 fiscal year, Grand Union operated 472 stores including the stores acquired by the acquisitions challenged in the complaint, and ten so-called Grand-Way discount centers in 11 States, the District of Columbia, and Canada. Grand Union's discount centers, the first of which were operated in 1956,

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are large stores selling groceries, appliances and a wide variety of other items. The grocery department of such stores, however, has generally had a larger sales volume than any of the stores' other departments. At the close of the fiscal year 1962, Grand Union was operating 475 stores and 22 Grand-Way stores. (Tr. 702-3, 1787-8, 2527, 2544, 578-9, CX 5, 8(h)(j), 12, RX 42)

10. In 1958 respondent had sales of \$427,871,082; in 1959 its sales had risen to \$503,712,887; and by the end of fiscal year 1962, respondent's net sales had risen to \$630,524,554 (CX 4, 5 and RX 42).

11. Respondent through Stop and Save Trading Stamp Corporation, a subsidiary formed in 1955, is engaged in the trading stamp business. This company distributes what is known as "Triple-S Blue Stamps." Triple-S stamps are used in the majority of respondent's stores, as well as by establishments of a variety of other retail merchants. In 1956, 2,600 retail establishments, other than Grand Union Stores, used Triple-S stamps. By 1960 the number of the establishments carrying such stamps was 3,600 (CX 14(d), 7).

12. Respondent owns approximately 32% of the stock of Eastern Shopping Center, Inc., an organization which develops and operates shopping centers. Respondent has a contract with Eastern Shopping Centers, Inc., which gives the respondent the initial right to negotiate a lease with Eastern for a supermarket site in any shopping center procured and developed by it.

(Admitted, answer, paragraph 1)

13. In five out of seven shopping centers owned by Eastern Shopping Centers, Inc., in 1962, Grand Union is the tenant identified with the grocery industry. Three of the five shopping centers contain Grand-Way stores and two contain conventional Grand Union Stores.

(Admitted, answer, paragraph 1, Tr. 782-3)

VII. ACQUISITION OF SCHAFER STORES, INC.

14. In June of 1958, respondent acquired for a consideration of approximately \$8,005,658 most of the assets of Schaffer Stores Company, Inc. (hereinafter referred to as Schaffer or Schaffer Stores) and its subsidiaries, including the equipment and inventory of 40 stores and an assignment of the lease held by Schaffer Stores and leases from Schaffer on the stores where such property was owned by Schaffer.

(Answer, paragraph 4, CX 28, Tr. 708)

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15. The Schaffer stores were operated under the name of "Empire" and were classified as supermarkets by Mr. Harry Schaffer, vice president of the Schaffer organization (Tr. 697-8).

16. In addition to the supermarket operations, Schaffer Stores Company, Inc. included a real estate operation and through a subsidiary corporation a poultry business called Hi-Land Stuffed Poultry, Inc. and a trading stamp business operating under the name of Liberty Trading Stamps, Inc. The assets acquired by respondent included most of the assets of the poultry business and of trading stamp organization (CX 26, 28).

17. Schaffer distributed "Liberty" trading stamps in its stores through its wholly owned subsidiary. Liberty stamps were also distributed in other retail establishments in the area in which Schaffer stores were located (CX 33, 28, 10).

18. Only the 37 Schaffer stores in the nine upstate New York counties of Albany, Columbia, Dutchess, Montgomery, Orange, Rensselaer, Saratoga, Schenectady and Ulster are involved in this proceeding. At the time of the acquisition, annual sales of those stores were about \$29,100,000 per year or less than 1/16th of 1% of the 1958 national food store sales of \$49 billion, and a small fraction of the \$5.5 billion of food store sales in New York State in 1958 (CX 79H, 81G, 211F).

19. Based upon annualized fourth quarter sales for the quarter ending February 28, 1958, seven of the 41 Empire stores, including one store in Massachusetts, had sales at the time of the acquisition of less than \$375,000 each, five had sales of between \$375,000 and \$500,000, 18 had sales of between \$500,000 and \$1,000,000, and 11 had sales in excess of \$1,000,000 (CX 36).

20. Mr. Harry Schaffer, vice-president and counsel of the Schaffer Stores, and the brother of Henry Schaffer, president of the corporation, testified that in 1956 or 1957, when Henry Schaffer was 68 years old, he developed ulcer trouble and had several very serious attacks. Since neither of the Schaffer brothers had any children who were interested in continuing the business, the brothers decided to sell it. (Tr. 704-5)

21. Having decided to sell the business, the Schaffer brothers looked for purchasers, and approached Acme, Safeway, First National, and Grand Union. Since Grand Union was the only prospective purchaser willing to pay cash, and since the Schaffers wanted cash, they sold to Grand Union. (Tr. 708-9)

VIII. ACQUISITION OF SUNRISE SUPERMARKETS CORPORATION

22. In December 1958, Grand Union acquired for a consideration of 187,500 shares of its stock, having a value of approximately \$9,187,500, substantially all of the outstanding voting stock of Sunrise Supermarkets Corporation.

(Answer, paragraph 7)

23. At the time of its acquisition, Sunrise operated a chain of 28 supermarkets on Long Island, New York. Of these supermarkets, three were in Suffolk County, 16 were in Nassau County, six were in Queens, and three were in Brooklyn. In the area of its operation, Sunrise was regarded as one of the principal independent food retailers of that area. (CX 9)

24. Mr. Abner Pols, a former vice-president of Sunrise and one of the eight principal stockholders, testified that the decision to sell the Sunrise Stores was due in part to the advanced age of Isidore Pols, president of the corporation, and to dissension among the managing officials of the company (Tr. 1197, 1204-5).

25. At the time of the acquisition, neither Grand Union nor Sunrise regarded themselves as being in substantial competition with the other and this opinion was affirmed by witness Dilbert (CX 10, Tr. 1203-4, 2113-4).

IX. JURISDICTION

26. Respondent concedes that in 1958 and 1959, Grand Union was engaged in commerce within the meaning of Section 7 of the Clayton Act, as amended. It denies, however, that Schaffer or Sunrise was so engaged prior to the acquisitions in question. (Answer, paragraphs 5, 8) Concerning the issue of commerce, counsel entered into the following stipulation:

(a) At and prior to the time of the acquisition by respondent, Grand Union, of the stores operated by Schaffer, Schaffer bought a variety of food and non-food products from various manufacturers and suppliers of such products.

(b) To attract business to its stores, Schaffer engaged in advertising.

(c) At and prior to the time of such acquisition by Grand Union, Schaffer regularly purchased, for resale at retail to customers at its stores in the State of New York, a variety of products which were shipped to it across state lines from various suppliers outside the State of New York.

(d) At and prior to the time of its acquisition by Grand Union, Sunrise bought a variety of food and non-food products from manufacturers and suppliers of such products.

(e) To attract business to the stores operated by its subsidiaries, Sunrise engaged in advertising.

(f) At and prior to the time of its acquisition by Grand Union, Sunrise regularly purchased, for ultimate sale at retail by subsidiaries of Sunrise to

the latter's customers at their stores, a variety of products which were shipped to it in New York across state lines from various suppliers outside the State of New York. (Tr. 2386-7)

27. Mergers are forbidden by Section 7 of the Clayton Act, as amended, only when both the acquiring company and the acquired companies are engaged in "commerce." Since the respondent concedes that Grand Union was engaged in interstate commerce at the time of the acquisition, but denies that the two acquired companies were so engaged, we must determine whether the two acquired corporations were in fact likewise engaged in commerce. Substantially the same issue as is here presented was raised before the Commission in *In the Matter of Foremost Dairies, Inc.*, Docket No. 6495, decided April 30, 1962 [60 F.T.C. 944] by the Federal Trade Commission. Three acquired companies, located in Texas, regularly purchased certain dairy products from suppliers located outside of the State of Texas, which products were shipped to the companies' plants in Texas and then were sold only within the State of Texas. The Commission held, at page 26 [60 F.T.C. 1069] of its opinion, as follows:

We do not find it necessary to rely on the flow of products to the ultimate consumer in Texas, as the hearing examiner apparently did, to establish the requisite element of commerce as to these three concerns. Section 7 requires that the parties be "engaged in commerce" and "commerce" is defined in the Act in part as meaning trade or commerce among the several states. It is well settled that the term comprehends intercourse for the purpose of trade in any form, including both the purchase and sale of commodities. The Supreme Court has cited with approval the language of the court in *Butler Bros Shoe Co. v. United States Rubber Co.*, 156 Fed. 1 (8th Cir. 1907), that "* * * all interstate commerce is not sale of goods. Importation into one state from another is the indispensable element, the test, of interstate commerce, * * * ." We hold [the three acquired companies] were engaged in commerce for the purposes of Section 7 through their purchases of dairy products from outside the State of Texas.

In support of its ruling, the Commission cited the Supreme Court decisions in *Danke-Walker Milling Co. v. Bondurant*, 257 U.S. 282 (1921), and *International Textbook Co. v. Pigg*, 217 U.S. 91 (1910).

28. In the light of the above authority, we must conclude that the two acquired corporations were both engaged in interstate commerce at the time of the acquisition in 1958 and that, therefore, the Federal Trade Commission has jurisdiction over all the parties herein within the intent and meaning of Section 7 of the Clayton Act, as amended.

X. CENSUS CLASSIFICATION AND FIGURES

29. Since the classification of the retail sale of foods by the Bureau of Census and their financial figures concerning the sale of food are cited by both counsel herein, certain facts concerning the 1958 Census of Business "Retail Trade" should be observed. The Bureau of Census distinguishes grocery store retailing from other categories of food store retailing. Thus, other categories of food retailing include, among others, meat markets, fish markets, fruit stores, vegetable markets, candy, nut and confectionery stores, and dairy product stores. In order to be classified in one of the listed categories, an establishment must sell that particular item in excess of 50% of its total sales (Tr. 1040-1, CX 81Z36).

30. A Census Bureau official's testimony, when considered with other evidence, demonstrated that for relatively small areas, such as small cities, towns, and villages, Census data for retail food sales are not reliable for purposes of this proceeding. The Census witness testified that the problem of reporting accurate sales is even greater for larger cities such as Albany. Accordingly, the hearing examiner rejected the several special tabulations prepared by the Bureau of the Census (Tr. 1050-5, 1063-76, 1078-9, 1081-2, 1084-8).

31. In addition, Census data do not purport to provide statistical universes for food retailing because Census figures include non-food sales of "food stores," even though non-food sales might constitute as much as 49% of such "food store sales," but exclude the substantial food sales of stores classified in the Census in the "general merchandise" or "department store" group (Tr. 1040-1, 1090-1, 2482-4, CX 78D, 79F-G).

XI. LINES OF COMMERCE

32. Counsel supporting the complaint request that we find that there are two lines of commerce involved in this proceeding as follows:

(a) The retail sale of both food and non-food products, known as grocery products, in retail grocery stores.

(b) The retail sale of grocery products by supermarkets. (Complaint counsel's proposed findings, p. 51)

33. According to the Standard Industrial Classification Manual, issued by the Bureau of the Budget, a "grocery store" is defined as follows:

Establishments primarily selling (1) a wide variety of canned or frozen foods, such as vegetables, fruits, and soups, (2) dry groceries, either packaged or in bulk, such as tea, coffee, cocoa, dried fruits, spices, sugar, flour, and

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crackers, and (3) other processed food and non-edible grocery items. In addition, these establishments often sell smoked and prepared meats, and fresh fish and poultry, fresh vegetables and fruits, and fresh or frozen meats. (Tr. 1041, CX 81Z36)

34. The record contains no standardized definition of a supermarket. The record does show, however, that large self-service stores selling a major variety of foods with separate sections for meat, groceries, frozen foods, produce, dairy products, and a variety of non-food items are generally referred to as supermarkets. King Kullen was one of the first promoters of this type of supermarket. Some of the witnesses described such markets as supermarkets if their annual sales amounted to \$375,000 a year. Other witnesses placed the minimum sales required before a store should properly be called a supermarket at larger figures, including one million dollars (Tr. 1341, 562-3, 697-8, 993, 231-5, 433-6, 446-7).

35. A line of commerce is not a store or particular method of selling products, but, it is a product or group of products, such as food or grocery products which are offered for sale and sold in the market place. Particular types of sellers, such as "supermarkets" and delicatessens, do not constitute separate lines of commerce (*Brown Shoe Co. v. United States*, 370 U.S. 294, 325-8, 336 (1962); see *In the Matter of National Tea Co.*, Docket No. 7453, pp. 7, 32 (Initial Decision, April 5, 1963)).

36. The Grand Union, Schaffer, and Sunrise grocery stores sold groceries, meat, produce, and dairy products, and as such competed with every other food retailer within their respective trading areas. Thus, they competed with small neighborhood grocery stores, produce stores, meat markets, bakeries and delicatessens, as well as with "supermarkets" and the food departments of general merchandise stores and discount centers (Tr. 757-9, 1182-3, 1185, 1202-4, 1221, 242-3, 259, 1377-9, 445-6).

37. This proceeding involves only one line of commerce: the retail sale of food and those non-food products normally sold in food or grocery stores, whether sold by food stores or the food departments of general merchandise stores and discount centers. See *In the Matter of National Tea Co.*, Docket No. 7453 (Initial Decision, April 5, 1963), where this line of commerce was described as "groceries and related products normally sold by food and grocery stores."

XII. GEOGRAPHIC MARKET-SECTION OF THE COUNTRY

38. The complaint alleges several different and overlapping geographic areas as "sections of the country" within the meaning of

Section 7 of the Clayton Act, as amended, within which the competition in the sale of grocery products was or may be adversely affected by the mergers in question, as follows:

(a) The entire "section" of New York State encompassed by the following nine counties: Saratoga, Albany, Rensselaer, Schenectady, Montgomery, Columbia, Ulster, Dutchess, and Orange.

(b) Each of the aforesaid nine counties and unspecified "subsections" thereof.

(c) The entire "section" of New York State encompassed by Nassau and Suffolk counties.

(d) Each of the aforesaid two counties and unspecified "subsections" thereof.

(e) Each of the 18 following "cities" in New York State and unspecified "subsections" thereof: Troy, Schenectady, Albany, Amsterdam, Saratoga Springs, Poughkeepsie, Beacon, Wappingers Falls, Newburgh, Highland, New Paltz, Kingston, Saugerties, Hudson, Red Hook, Hempstead, Bayshore, and Manhasset.

39. No evidence was offered to support markets consisting of the nine upstate counties in the aggregate, or Nassau and Suffolk counties together. With respect to individual counties, the evidence shows that competition among food stores crosses county lines in many instances, while on the other hand, food stores in one part of a county do not necessarily compete with those in other parts of the same county. Thus, the inappropriateness of using political boundaries to delineate areas of effective competition in the food retailing line of commerce was demonstrated. (Tr. 186-8, 1771-2, 1730-1, 1910-3, 1970, 2189, 2191-2, 2173-4, 1471-83, 1512-3, 2041, 2045-7)

40. Similar evidence was adduced with respect to cities alleged to be "sections of the country." Witnesses testifying about their stores in some of these cities actually referred to their stores as outside the city limits. Some stores outside city limits draw customers from within the cities, while others within cities draw customers from nearby suburban areas and neighboring communities. Finally, other witnesses testified that their stores in one section of a city did not compete with other stores in the same city. The area of effective competition is essentially local in nature (Tr. 523-4, 539-45, CX 209F; Tr. 1126-31, 217, 1970, 1978, 1290, 1295-6, 1305, 158, 1241, 1261-5, 1456-7, 1460-1, 1396-7, 1407, 1667, 1028, 758-9, 259).

XIII. THE FOOD RETAILING BUSINESS

41. Food retailing has been described by merchandising experts and industrial witnesses as the most dynamic business in the United

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States today. (Tr. 242-3, 435, 449-50, 1966-8, 1379-80, 2114-5, 2052-3, 813.)

A. CHANGES IN THE SIZE, LOCATION, AND NATURE OF FOOD
RETAILING OUTLETS

42. Since World War II, there has been a revolution in retailing and merchandising generally, and in food retailing in particular. Social and economic changes have caused changes in food shopping patterns which in turn have affected and been affected by changes in food retailing (Tr. 242-3, 435, 449-50).

43. The effect of the changes in food retailing was first reflected in the rapid post World War II growth in the size of food stores. The small neighborhood grocery store, which gave credit and made deliveries, was to a considerable degree supplanted by large, self-service, cash-and-carry "supermarkets." This trend affected independents and chains alike (Tr. 701-3, 440-1, 1715, 1726-8, 1006-7, 1013).

44. Food stores have continued to become larger and to offer a constantly increasing variety of food and non-food items to the customer. Thousands of new stores have been built, and continue to be built, largely outside the central city areas, in residential and suburban areas (Tr. 242, 1269, 1156-9, 1164, 434-5, 444).

45. These changes were made inevitable by the post-war population shift from the central city areas to the suburbs, the almost universal use of the automobile, the larger disposable income per capita, the technological changes and improvements in the packaging of food, and the constant increase in the cost of doing business (Tr. 240-4, 1456, 434-6, 1416-7, 1156-9, 1203).

46. Consumers, in turn, demand that food stores be accessible, have large parking areas, be attractive and well laid out, carry a large variety of merchandise, permit one-stop shopping, and be competitive in pricing. Those demands were in turn created by the large number of new stores being built, by both existing and new enterprises, offering such advantages. This trend was accelerated by the constantly rising costs of labor and the expensive equipment of a modern food store, such as frozen food cases, all of which made it increasingly necessary to develop large units so that overhead and labor costs could be spread over larger dollar volumes and prices thereby kept at a minimum (Tr. 240-4, 1416-7, 1156-9, CX 4, pp. 2-3, 5, p. 2, 6, pp. 2-3).

47. As new retail outlets were being built, there was naturally a reduction in the number of older service stores, frequently in small

premises with inadequate parking facilities, which sold a limited variety of merchandise at prices often higher than the new retailing techniques permitted (Tr. 1771-3, 1334-6, 2052-3, 2030-1, 2036-7, 1270-3, 1156-9, 1284-5).

48. Accordingly, Census figures show a decrease in the number of food retailing establishments from 461,000 in 1948, to 385,000 in 1954, to 356,000 in 1958. This decline was, however, at least partially attributable to certain Census reclassifications; for example, a store with a leased meat department was considered to be only one store in 1958, whereas formerly it was treated as two stores, and the 1954 and 1958 censuses included only stores with sales in excess of \$2,500 while the 1948 census included all stores with sales over \$500 (CX 81F, 79B-C, 81Z-27, 81Z-33; Tr. 2304-5, 2482-3).

49. The process of building larger and more modern food stores continues, and the older ones are being replaced by more competitive new stores, operated by chains and independents alike. An industry survey indicates that 80% of the supermarkets in operation in 1961 were less than ten years old, and half were less than five years old. The rapid obsolescence of older stores is particularly relevant here since the Schaffer stores are now an average of 16 years old, and the Sunrise stores are now generally overage in comparison with competitive stores (Tr. 242-3, 436-7, 449-50; RX 9, p. 2; Tr. 245-8, 252-3, 740-3, 449-50, 1230-1, 246-8, 2130-2, 2143-5, 2259-64).

50. Inevitably, the development of the large food store has not only increased price competition due to the emphasis on high volume and low price, but also has increased both product competition, by offering the consumer a broader variety of products, and interstore competition, by attracting trade from a broader area than the neighborhood walk-in store (Tr. 260-3, 1366-8, 1375-6, 2187, 2191-2, 2156-7, 1970).

51. Since 1958, another trend has emerged in the retailing field, comparable in scope and revolutionary aspect to the earlier trend toward "supermarkets": the breakdown in traditional distinctions between retailing stores. Thus, a drug store no longer sells only drugs, a food store no longer sells only food, and the new retailing giant, the discount center, sells nearly everything (Tr. 242-4, 1829, 1832-4, 1976-7, 2152-6).

52. The discount center, which has revolutionized the retailing of many articles of merchandise, entered the food retailing field, in the mid 1950s with volumes and prices unheard of in traditional food retailing. Thus, E. J. Korvette, in two food stores which were parts

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of much larger discount centers, had food sales of approximately \$14 million in 1961, although the selling space in each of the food stores was only 12,000 square feet. This \$7 million of sales per store compares with \$1 million to \$2 million of sales of traditional food stores of that size. (Tr. 242-4, 1530-1, 1366-8, 1375-6, 2130-2, 2143-5, 2154, 2157-60; compare CX 145 and Rx 41 with CX 29C-G and CX 68A-E).

53. According to one expert, in the five years from 1957 to 1962 about 100 food discount centers have been built with an estimated aggregate volume of \$800 million. Against only five food stores as late as 1961, Korvette will have at least 12 by the end of 1963, and plans to build one contiguous to, or within, nearly all its other discount centers. Similar discount food operations have been built since 1958, in Nassau and Suffolk counties by Mays, S. Klein, Pergament, Times Square, Great Eastern Mills, Billy Blake, White of Massapequa, Bargain Town and Floyd Bennett. (Tr. 2152-3, 2159, 2161, 1208-10, 1215-6, 1218-9, 1376-8, 1380, 1530-1, 1555, 1674, 2160; RX 32, 37B-F, 38A-G.)

54. Mr. Perlmutter, an industry witness, testified that a survey conducted by his company in 1962 disclosed that food sales of discount centers on Long Island were an estimated 10% of the total food sales in that area. Witness Dilbert estimated that any one of the three discount centers recently opened near Levittown has food sales equal to the total sales of all seven Sunrise stores in Levittown "in their heyday" (Tr. 2559-61, 2130-2, 2143-5).

55. Similar developments have occurred in the nine upstate counties. Grand Union has Grand-Way Discount Centers in Albany and Poughkeepsie, where food is sold along with a wide variety of other merchandise. Other discount stores recently built with large food departments include the GEX store in Albany, Pantry Markets near Kingston, Lloyd's in Middletown and outside Newburgh, Bradlee's near Poughkeepsie, Big Scot near Kingston, and Thruway in Walden. The continued growth in the number of discount centers with discount food departments is indicated by Pantry Markets' plan to build another discount center near Poughkeepsie, Lloyd's purchase of 27 acres of land for a similar operation near Poughkeepsie, and Maxam's plans for two discount operations in the Albany and Amsterdam areas (Tr. 578-9, 641-2, 1956-7, 1597, 1976-7, 1982-3, 1827-9, 1832-6, 2526-32, 2538; CX 121B; Tr. 861, 2180-2, 2078-80; CX 145, pp. 2, 4).

B. THE GROWTH OF RETAILER-OWNED COOPERATIVES, WHOLESALER-
SPONSORED RETAILER GROUPS, AND INDEPENDENT FOOD RETAILERS

56. Success in food retailing does not depend upon the type of organization operating the store. Each food store competes on its own merits, and success depends upon the nature of the store itself, the abilities of the store manager, and the local competition it faces. While the latest successful entrant in food retailing is the discount center, equally important as current dynamic factors are independent stores affiliated with cooperatives or with voluntary wholesaler-sponsored retailer groups. These affiliated independents are operating some of the most successful stores (Tr. 242-3, 2045-6, 2054-5 (Long Island Super Markets); 1522, 1544-6, 1554-6; CX 231A-I (Blue Jay); compare, e.g., CX 271A-M (A&P) with CX 255A-H and RX 28 (Governor Clinton) and CX 214A-K (Lou's); 435-43, 447-8, 1850-1, 1859-61, 2045-6, 2054-5, 1352, 2545-9, 2553-9, 691, CX 231A-I (Blue Jay); RX 39-40 (Supermarkets Operating Co.); Tr. 435-43, 447-8, 1850-1, 1859-61).

57. When counsel supporting the complaint asked Commission expert Robert W. Mueller, editor and publisher of *Progressive Grocer*, to explain his reference to the "dynamic" changes occurring in the food retailing industry, he stated (Tr. 435-6):

A. Well, there are so many actually, I hate to go into a lot of that. * * * There has been an upgrading in the size of stores. There has been a general improvement in the appearance of stores. There has been a constant desire to make them more efficient, and perhaps as significant as any has been the increase in the competition within the business, one store versus another. It has become sharply heightened over the years.

Q. What do you mean by the increased competition?

A. Increased competition in terms of a greater number of able people, more competition due to better wholesaler support of the voluntary and the co-operative independent stores, competition generating from the very numerical—the increase in the number of good stores serving almost any community in the country.

Q. You mean there are more supermarkets now than there used to be?

A. Yes.

Q. Would you say that the co-ops and the voluntaries enable their members to compete better?

A. Yes. That is really the essential purpose of the voluntary and the co-operative system of wholesaling. It does many things. Primarily, however, to supply merchandise to the retailer at the lowest possible cost.

58. The evidence shows that many affiliated stores are effective competitors and under no substantial competitive disadvantage with

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the corporate chains (Tr. 447-8, 2545-9, 2553-9, 691, 1552, 1544-6, 242-3, 2045-6, 2054-5, 197-9; see CX 231A-I (Blue Jay); RX 12 (Schenectady Buy-Rite Cooperative); CX 255G; RX 28 (Governor Clinton); RX 15A-C (Associated Food Stores); RX 39-40 (Supermarkets Operating Co.)).

59. The evidence adduced by counsel supporting the complaint from a selected group of "independents" (operators of ten stores or less) demonstrated the ability of independents to enter the market and vigorously compete for the consumer's food dollar in all areas alleged in the complaint, irrespective of affiliations. Since 1958, new stores have been opened by successful independents such as Big V, Blue Jay Markets, Korvette, Lloyd's, Pantry Market, Star Markets, Albany Public Markets, Grand Cash, Save-Way, and Supermarkets Operating Co., Carnevale's, Governor Clinton Market, Lou's Supermarket, Pantry Markets, and Thruway, demonstrate the competitive vigor of well-run single-store operations. (See record references—Paragraph 64.)

C. CHAIN STORE RETAILERS: "TRENDS"

60. During the past several years the evidence shows that of the 165 chains of 11 or more food stores in the United States in 1958, 56 or 57 represented new chains not in existence in 1948. This partly accounts for the fact that chains of 11 or more stores increased their share of total food store sales during the period 1948-1958. Between 1960 and 1961, domestic food store sales by chains and independents each increased by 3%. Since independents have a larger share of the national market than the chains, their dollar gains have been greater. In the Northeast, the census area which includes New York State, independents increased their grocery store sales at a greater rate than chains between 1960 and 1961 (Tr. 2464-75, 2505-7, 448-9; see RX 39).

61. The 20 largest chains in the United States in 1960 included six which were not among the 20 largest in 1948. In the aggregate, their sales increased by \$8 billion between 1948 and 1958. The largest, A&P, increased its sales by \$2 billion; the four largest increased their sales by \$4.3 billion; and the eight largest increased their sales by \$6.1 billion. The remaining 12 (including Grand Union) increased their sales by \$1.9 billion, or less than the increase of A&P alone. The rate of growth of these 20 companies was less than the rate of growth of all chains of 11 or more stores, and less than the rate of growth of independents operating four to ten stores (Tr. 2478-81, 2513-4; CX 81A, D, E, J).

62. Experts Zimmerman and Robert W. Mueller testified that retail food competition is extremely vigorous and constantly increasing in vigor. All of the many industry witnesses questioned on that subject concurred as to their own area of competition, and no witness disagreed. The testimony was unanimous that there was more competition at the time of the hearings in 1962 and 1963, in every area inquired into, than there had been prior to the Schaffer and Sunrise acquisitions. In this connection, it should be observed that the net earnings of Grand Union declined by 31%, from \$7,354,045 in fiscal 1959 to \$5,055,089 in fiscal 1962, despite a growth in sales from \$603+ million to \$630+ million in the same period (Tr. 239-44, 435-6, 447-51; RX 42, p. 8).

XIV. THE EFFECT OF THE ACQUISITIONS ON COMPETITION IN FOOD RETAILING

A. GENERAL

63. Earl Silvers, vice-president of Grand Union and in charge of development, testified in substance, and without contradiction, that the Schaffer and Sunrise acquisitions were substantially market extension acquisitions, and that to the extent some of the acquired stores were in the immediate trading area of existing Grand Union stores, such acquisitions were undesirable for Grand Union from a business standpoint because of the strong likelihood of decreased sales in one or both of the stores affected. Customers who preferred a Schaffer store to a Grand Union store might well shop elsewhere, and Grand Union already had the customers that preferred Grand Union (Tr. 854-5; Tr. 745-6).

64. A number of retailer witnesses who testified to business difficulties attributed their problems to competition generally, and not to the acquisitions. Thus, a witness operating a meat market in Highland testified that his business fell off in 1956 when the Grand Union store nearest him first started carrying fresh meat instead of pre-packaged meat. A retailer operating four stores in Kingston, Poughkeepsie, and Newburgh attributed his difficulties to his own company's poor business judgment in failing to move with the times in providing parking facilities and more modern and better located stores. Still others testified that the entry of new and aggressive competitors, such as Korvette, Lloyd's, Shop-Rite, and Pantry Market, contributed to their business difficulties (Tr. 1176-9; Tr. 1155-8, 1164-5; Tr. 1425-6, 1439-40; Tr. 1771-3; Tr. 1366-9, 1378-9; Tr.

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2024-31, 2036-7; see also Tr. 1476-9, 1503-5; Tr. 985, 1027-32; Tr. 1239, 1264-73; Tr. 1287-8).

65. Counsel supporting the complaint obtained sales data from 52 food retailers in the form of reports made pursuant to Section 6 of the Federal Trade Commission Act (15 U.S.C. § 46 (1958)). In the 11 counties covered by the complaint, sales of these 52 companies surveyed, including Grand Union, Schaffer, Sunrise, and 49 others selected for purposes of comparison, increased by 28%, from \$583 million in 1957 to \$747 million in 1960. The stores other than Grand Union, Schaffer, and Sunrise increased their sales by 36%, from \$448 million in 1957 to \$608 million in 1960. Although Grand Union as a corporation has realized a substantial external growth in sales as a result of the two acquisitions in question, larger, in fact, than the other companies surveyed, it should be pointed out that the combined Grand Union, Schaffer, and Sunrise sales decreased after the acquisitions. Using 1957 sales as the pre-acquisition total for Grand Union and Schaffer in the nine upstate counties, and 1958 sales for Grand Union and Sunrise as their pre-acquisition total in Nassau and Suffolk, the aggregate pre-acquisition sales were \$143 million as against \$125 million in 1962, or a decline of 12% (CX 137, 211F, 270F; RX 41; Appendix A (Section 6 reports)).

66. The following food stores or stores with food departments have been opened in the 11 counties since the Schaffer and Sunrise acquisitions:

(a) In the nine upstate counties, witnesses knew of at least 73 such openings since the Schaffer acquisition. Of these, 44 were opened by national or local chains: A&P, Grand Union, Acme, Central Markets, Food Fair, Victory, Daitch, and Stop & Shop (Bradlee's) (Tr. 749, 752, 1301, 1316, 1437, 1751, 2266, 2267; CX 145, pp. 2, 4, 8-10, 13; RX 41B-D, H-J; Tr. 1610; Tr. 1907-10; Tr. 2205-6; Tr. 1264, 1980-1; Tr. 1702; Tr. 2529). In addition, 29 stores were opened by independents: Grand Cash, Albany Public Markets, Star, George, GEX, Shop 'N Save, Lamanna, South Side, Dinner Bell, Save-Way, Thriftway, Troy Food, Economy, Rosendale, Big Scot, Big V, Lloyd's, Bull Markets, Durkin, Country Dollar, Tornatore, and Ehmer (Tr. 1118-9; Tr. 1585-6, 1594; Tr. 1964-5; Tr. 1739; Tr. 1956-7; Tr. 1597; Tr. 1927-8, 1939-40; Tr. 2189-90; Tr. 2077-8; Tr. 1811-2; Tr. 1024, 1029-30; Tr. 751; Tr. 1978-9; Tr. 861; CX 121B; Tr. 1624-5; Tr. 1834-5; Tr. 1153-4; Tr. 1776; Tr. 1799, 1803; Tr. 1297; Tr. 1302).

(b) In Nassau and Suffolk Counties, witnesses knew of at least 106 such openings since the Sunrise acquisition. Of these, 88 were

opened by national or local chains: King Kullen, Smilen, Hill's Foodtown, Dilbert's, Bohack, A&P, Grand Union, Acme, Food Fair, Daitch, Big Apple, Penn Fruit, Supermarket Operating Co. (Shop-Rite), First National, and Waldbaum (Tr. 1370-2, 2580; Tr. 1555; RX 26; Tr. 1867-9, 1870, 2563; Tr. 2582; RX 31; Tr. 2136-7; Tr. 1504, 1580, 1647; Tr. 1218-9, 1503-4, 1552, 1554, 2050, 2563, 2579; CX 145, pp. 6, 12; RX 41F, L; Tr. 1218, 1614-5; Tr. 2206; Tr. 1504-5, 1694, 1702, 1711; Tr. 1506; Tr. 2090; Tr. 2550; Tr. 1218; Tr. 1660-1).

In addition to the above listed stores, 18, including many of the largest volume stores, were opened by independents: Bromberg, Korvette, Blue Jay, Davega, Floyd Bennett, S. Klein, Mays, Pergament, Times Square, Great Eastern Mills, Billy Blake, White of Massapequa, and Bargain Town (Tr. 1214-5; Tr. 2153; Tr. 1556-7; Tr. 1674; Tr. 689-90, 1377, 1379, 1674; Tr. 658; Tr. 2114-5, 2131; Tr. 1376-7, 2114-5, 2131; Tr. 281-3, 1215, 1376, 1379; Tr. 1377, 1379, 1549, 1555; Tr. 1377, 1379).

67. As demonstrated above, political boundaries do not delineate areas of effective competition in food retailing. Thus, the Census reports—which purport to give county and city totals—do not provide proper universes for share of the market statistics. Furthermore, the dollar sales of the 52 retailers, selected pursuant to Section 6 of the Federal Trade Commission Act, is too small a number of the retailers of food in the relevant areas to be regarded as a trustworthy statistical universe for any purpose under Section 7 of the Clayton Act.

B. RETAIL FOOD COMPETITION IN COUNTIES

68. The evidence shows that the geographic areas of competition do not conform to the political boundaries of counties. On the other hand, there is extensive evidence of retail food competition across county lines. For example, there was testimony that the "Albany area" included the city of Rensselaer in Rensselaer County; that people in Poughkeepsie (Dutchess County) and Catskill (Greene County) shopped for food in the Kingston area (Ulster County); that Big V and Lloyd's outside Newburgh (Orange County) draw retail food customers from Beacon (Dutchess County); that the Shop-Rite store outside Kingston draws shoppers across the river from Red Hook (Dutchess County); that a store near Waterford (Saratoga County) competes with stores in Troy (Rensselaer County) and Cohoes (Albany County); and that food stores in South Glens Falls and elsewhere in Saratoga County compete with food

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stores in Glens Falls (Warren County) and Port Edward (Washington County) (Tr. 1587-8; Tr. 1970; Tr. 186-8; Tr. 1632-3; Tr. 1809, 1811, 1814, 1818-9; Tr. 1910-2).

69. The Audit Bureau of Circulations reports show the circulation of newspapers across many county lines (CX 88, 94, 99, 104, 107, 109, 112, 114, 119, 122, 129, 134). These reports set forth "City Zones" and "Retail Trading Zones" for individual newspapers. A City Zone is defined as "* * * corporate limits of the city in which the newspaper is published plus contiguous areas which may be included in the zone to the extent they have substantially the built-up characteristics of the city and thus cannot readily be distinguished from the city itself." A Retail Trading Zone is defined as "* * * the area beyond the City Zone whose residents regularly trade to an important degree with the retail merchants in the city zone." (Tr. 216-7).

70. Illustrative "City Zones" which embrace areas in more than one county are: Albany—parts of Albany and Rensselaer Counties; Newburgh—parts of Orange and Dutchess Counties; Troy—parts of Rensselaer, Albany, and Saratoga Counties (CX 114, p. 3; 119, p. 4; 107, p. 3; 88, p. 4).

71. Illustrative "Retail Trading Zones" which embrace areas in more than one county are: Albany—Albany, Rensselaer and Schenectady Counties, and parts of Saratoga, Columbia, Greene, and Schoharie Counties; Amsterdam—Montgomery County and part of Fulton County; Hudson—Columbia County and part of Greene County; Kingston—parts of Ulster and Dutchess Counties; Newburgh—parts of Orange, Ulster, Dutchess, and Putnam Counties; Poughkeepsie—Dutchess County and part of Ulster County; Schenectady—Schenectady County and parts of Saratoga, Schoharie, Albany, and Montgomery Counties; Troy—parts of Rensselaer, Washington, Saratoga, and Albany Counties, and part of Bennington County in Vermont; Jamaica (Long Island Press)—Queens and Nassau Counties, and parts of Suffolk and Kings Counties (CX 114, p. 3; 119, p. 4; 109, p. 4; 112, p. 3; 122, p. 3; 107, p. 3; 94, p. 3; 99, p. 3; 104, p. 3; 88, p. 4; 129, p. 4).

72. Growth figures, by county, are available for Grand Union (including the Schaffer and Sunrise stores) for 1957 through 1962. Sales are available for 1957 through 1960 for the stores of the 49 other companies selected by counsel supporting the complaint for comparison purposes. Because different time periods are involved, annual growth rates are given as well as total growth for the periods

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covered: (CX 137, 211F, 270F; RX 41; Appendix A (Section 6 reports))

County	Comparison Stores		Grand Union (including Schaffer and Sunrise)	
	Percent growth 1957-60	Annual percent growth	Percent growth (decline) 1957-62	Annual percent growth (decline)
Albany.....	29	10	¹ 5	¹ 1
Columbia.....	12	4	14	3
Dutchess.....	34	11	¹ 2	¹ . 4
Montgomery.....	14	5	(5)	(1)
Nassau.....	33	11	(22)	(4)
Orange.....	² 58	² 19	(10)	(2)
Rensselaer.....	19	6	42	8
Saratoga.....	9	3	39	8
Schenectady.....	19	6	(20)	(4)
Suffolk.....	54	18	(19)	(4)
Ulster.....	11	4	6	1

¹ Excluding Grand-Way Discount Center sales. These are general merchandise discount stores selling hard and soft goods, as well as food (Tr. 578-9, 791-4). There are no figures in the record to show the growth in Grand-Way food sales. Nor did the Commission obtain reports of the food sales of Korvette and many other competing discount stores in the 11 counties.

² Excluding Lloyd's Shopping Center sales for the same reasons Grand-Way Discount Center sales are excluded for Albany and Dutchess Counties (Tr. 1827-30, 1832-5).

73. Although sales of the comparison stores were not consistently available for 1961 and 1962, there was substantial testimony of continuing sales increases by these and other stores, as well as substantial sales by new stores built subsequent to 1960 (Tr. 1629-30; Tr. 2549-53, 2564-70; Tr. 1909-10; Tr. 1924; Tr. 1387-90; Tr. 1663-4; Tr. 1598-1600; Tr. 1981; RX 23-24, 26, 28, 39-40).

74. The evidence shows that the opening of a store in a new area, or the replacing of an unprofitable store, can create relatively large percentage changes. Thus, between 1957 and 1962, the increase in Grand Union's sales in Saratoga County is attributed entirely to the replacement of stores in South Glens Falls and Schuylerville and the opening of a new store in Mechanicville, where Schaffer never had stores; the majority of the increase in Grand Union's sales in Rensselaer County appears to be the result of replacing stores in Hoosick Falls and Nassau, where Schaffer never had stores; all of the increase in Ulster County appears to be due to the opening of a store in Port Ewen, where Schaffer never had a store; the majority of the increase of grocery store sales in Dutchess County appears

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to be the result of opening a store in Amenia and replacing stores in Fishkill, Millbrook, and Dover Plains, where Schaffer never had stores; and all of the increase in Grand Union's grocery store sales in Albany County was accounted for by opening new stores in Guilderland, Loudonville, and Latham, where Schaffer never had stores. On the other hand, in Schenectady County, where no new Grand Union stores were opened, sales declined 20% in five years (CX 145, pp. 2, 9-11; 211F, 270F; RX 41B, I-K).

75. National Food store sales, according to the census, increased from \$41.6 billion in 1954 to \$47.8 billion in 1957, \$50.3 billion in 1958, \$53.8 billion in 1960 and \$55.4 billion in 1961 (CX 81I; Tr. 2468-74). On a trend basis, total sales would have been approximately \$57 billion in 1962. Thus, an increase of approximately 12.6% between 1957 and 1960, and 19% between 1957 and 1962, would be needed merely to maintain a constant share of national sales.

76. Comparable figures are not available for New York State, but, according to the census, sales increased in New York between 1954 and 1958 from approximately \$4.7 billion to approximately \$5.5 billion, or about 18%. Thus, annual growth of approximately 4.5% would be needed merely to maintain a constant share of food store sales in New York State (CX 78H, 79H).

77. Using comparable Census figures, food sales in the nine upstate counties increased between 1954 and 1958 from approximately \$332 million to \$395 million, and in Nassau and Suffolk Counties from approximately \$473 million to \$668 million. With a four year percentage increase of 19% in the nine upstate counties and 41% in Nassau and Suffolk, average annual increases of 5% and 10%, respectively, would be needed to maintain a constant share of sales in these two areas. (CX 78H-J, 79H-K).

78. For 1958, the Census lists 2,888 "food stores" in the nine upstate counties and 2,857 in Nassau and Suffolk (CX 79H-K). For comparison purposes, Commission counsel selected 25 independent retailers in the nine upstate counties and five independent retailers in Nassau and Suffolk. (An independent, as distinguished from a chain, has fewer than 11 stores.) The data show that the acquisitions did not inhibit the growth of these selected independents; instead, they grew between 1957 and 1960 at a substantially faster rate than the national, New York State, or 11 county average annual growth rates, and at a much faster rate than the aggregate of the combined Grand Union, Schaffer, and Sunrise grocery stores in those counties (CX 137, 211F, 270F; RX 41).

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	1957		1960		Percent increase of sales
	Number of stores	Sales (thousands)	Number of stores	Sales (thousands)	
9 UPSTATE COUNTIES					
25 independents.....	34	25, 260	46	45, 099	79
Grand Union-Schaffer.....	88	77, 653	81	81, 132	4
NASSAU, SUFFOLK					
5 independents.....	12	8, 085	15	11, 764	46
Grand Union-Sunrise.....	38	57, 373	41	57, 545	. 3

79. Continuing the Grand Union, Schaffer, and Sunrise grocery store figures through 1962 is even more informative. Their total five-year growth was only 2% in the nine upstate counties, and there was a decrease of 21% in Nassau and Suffolk (CX 137, 211F, 270F; RX 41).

C. RETAIL FOOD COMPETITION IN CITIES

80. Stores in one part of a city, depending on the number and nature of nearby competitors, accessibility, parking facilities, and density of population, may be outside of the trading area of stores in other parts of the same city (*e.g.* Tr. 260-1; Tr. 843-4; Tr. 1667; Tr. 1028; Tr. 1747).

81. Conversely, for every city named in the complaint, the evidence shows that stores outside the city limits competed with stores inside the city limits and that, in recent years, the stores built outside city limits have become very strong competitors of the downtown food stores, *e.g.*, Shop-Rite, Lloyd's, Big V, Pantry Markets, Albany Public Markets (suburban stores), Save-Way (suburban stores), plus the suburban stores of A&P, First National, Food Fair, Central Markets, and Victory, around many of the cities alleged in the complaint (*e.g.*, Tr. 1264-5, 1269; Tr. 1396-7, 1406-8; Tr. 1150-1, 1156-8, 1164; Tr. 2024-5, 2030-1).

82. The various Audit Bureau of Circulations reports set forth "City Zones" which, for each city covered, include a contiguous area extending beyond the city limits which "cannot readily be distinguished from the city itself" (Tr. 213, 216). Illustrative of the contiguous communities included in "City Zones" are the following: Albany—Menands, Rensselaer, and parts of Colonie, Guilderland, Bethlehem, and East Greenbush; Hudson—Greenport Center; Kingston—East Kingston, Hurley, and Port Ewen; Newburgh—the city of Beacon and part of Newburgh township; Schenectady—

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Scotia, Niskayuna, and parts of Rotterdam and Glenville; Troy—Watervliet, Cohoes, Green Island, Wynantskill, part of Colonie, and unnamed contiguous suburban areas in Saratoga County (CX 114, p. 3; 119, p. 4; 112, p. 3; 122, p. 3; 107, p. 3; 99, p. 3; 104, p. 3; 88, p. 4).

83. The following 18 numbered subsections present a survey of each of the 18 areas designated as cities in the complaint and named as relevant markets within which to observe the effect or potential effect of the mergers in question.

(1) Albany

84. The city of Albany (population 130,000; 383 food stores*) is in Albany County, approximately 15 miles southeast of Schenectady and ten miles southwest of Troy. A bridge across the Hudson River connects Albany and Rensselaer (CX 45). In 1958, the only Grand Union store in Albany was a Grand-Way Discount Center. Schaffer operated five stores within the city of Albany, one of which opened in 1932 and had no checkout counters, and another which opened in 1940. The Grand-Way store was closed in April 1960; a new Grand-Way was opened in February 1961 (Tr. 740; CX 29C; 145, p. 2; RX 41B).

85. In the period from 1959 through fiscal 1962, total Grand Union grocery store sales decreased from \$3 million to \$2.3 million, and three small-to-medium sized Schaffer stores, averaging 19 years old, were closed. A Grand Union store was opened in 1960 only to be closed in fiscal 1962 (Tr. 740; CX 29C; 145, p. 2; RX 41B). The 1960 food sales of an independent, Albany Public Markets, were approximately double Grand Union's grocery store sales in Albany, and its sales increased substantially in 1961 (CX 234H, J; Tr. 1598-1600).

86. A&P was the leader in the Albany area prior to the acquisition in question. By 1962, independents such as Albany Public Markets, Star Markets, Carnevale, Trading Port, and Grand Cash had replaced A&P and the chain stores generally as the leading competitive forces in the Albany area, which includes the city and nearby suburbs in Albany and Rensselaer Counties (Tr. 1582-3; Tr. 1730-1; Tr. 1587-8, 1598).

87. Since 1958, the overall selling space of food stores in the Albany area increased between 30% and 40% since 1958. Grand Cash

*In this and subsequent findings, population figures are from 1960 Census of Population, CX 80B-M, and number of food stores from 1958 Census of Business, CX 79H-Q.

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Markets, Food Fair, Central Markets, Acme, George's Super Market, Albany Public Markets, A&P, Shop 'N Save, and Star Markets opened a total of 14 new stores in the city and the nearby suburbs of Guilderland, Cohoes, Rensselaer, Delmar, Colonie, and Latham, and GEX opened a discount center with a food department. Maxam plans to open a discount center in the Albany area with a food department of 20,000 square feet to be operated by Save-Way, a growing independent originally based in Schenectady, and Albany Public Markets is planning to open a 30,000 square foot store in Latham (Tr. 118-9, 1133-6; Tr. 1910; RX 27; Tr. 1610; CX 235H; Tr. 1739; Tr. 1585-6, 1592-5, 1597-8; Tr. 751-2; Tr. 1955-7, 1961-5; Tr. 2205-6; Tr. 2078-9).

88. Competition in the area where people in Albany shop for food has substantially increased since the Schaffer acquisition (Tr. 1136, 1139-40; Tr. 756; Tr. 813-4, 823-4; Tr. 985, 1026-32; Tr. 1914-5; RX 27).

(2) Amsterdam

89. The city of Amsterdam (population 28,800; 117 food stores) is in Montgomery County, approximately 15 miles northwest of Schenectady. In 1958, Grand Union and Schaffer each operated one food store in Amsterdam, which were then, and are now, the only stores of either company in the whole of Montgomery County. The Schaffer store had been opened in 1943, and had no off-street parking facilities. Sales of the Schaffer store decreased 45% between 1957 and 1962, and sales of the Grand Union store were less in 1962 than in 1959 (Tr. 742; CX 29D; 145, p. 5; 211G; RX 41E).

90. Sales of Lou's Supermarket, on the other hand, nearly doubled between 1957 and 1960. South Side, an independent, opened a new store in 1960, and Maxam plans to open a discount center in the Amsterdam area, with a food department of 20,000 square feet to be operated by Save-Way (CX 214 F-G, I-K; Tr. 1927-8, 1940; Tr. 2078-9).

91. Downtown food stores in the city of Amsterdam compete with food stores located in the suburbs, and the trading area of these suburban stores includes parts of the city (Tr. 2173-4; Tr. 1800, 1804-5).

92. There is no evidence that there has been any lessening of competition in the area where people in Amsterdam shop for food (Tr. 999-1001; Tr. 1808-9).

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(3) Beacon

93. The city of Beacon (population 14,000; 33 food stores) is in Dutchess County approximately 13 miles south of Poughkeepsie and across the Hudson River from Newburgh. A ferry connects Newburgh and Beacon. In 1958, Grand Union and Schaffer each operated one store in Beacon. The stores were across the street from one another. According to the evidence, this fact was a disadvantage to Grand Union because it was competing with itself for the same trade. There appeared to be little likelihood of attracting new customers for Grand Union, and Schaffer customers might be lost. In fact, sales of both the Grand Union and Schaffer stores have decreased since the acquisition, particularly sales of the Grand Union store, which declined nearly 50% between 1957 and 1962 (Tr. 158; CX 145, p. 4; Tr. 745-6, 854-5; RX 41D).

94. A&P was in 1958, and remains, the leading food retailer in the Beacon area. Since the acquisition, A&P renovated one store and has opened another in Fishkill, which draws shoppers from Beacon and has become the principal food store in the Beacon area. The sales volume of that store was estimated at four times that of either the Schaffer or Grand Union store in Beacon. A new store was opened by one independent, and another increased its profits. Very large new stores have been opened since 1958 near Newburgh and Poughkeepsie, which draw customers from Beacon (Tr. 1757, 1770-1, 1328, 1775; CX 157-60; Tr. 1439, 749-50, 752-3, 2529-31, 186-7; CX 94, p. 3).

95. Competition in the area where people in Beacon shop for food has substantially increased since the Schaffer acquisition (Tr. 1331-2).

(4) Highland

96. Highland is not a city but a small village in Ulster County directly across the Hudson River, by bridge, from Poughkeepsie, and approximately 18 miles south of Kingston. Highland is too small for any Census food store or population data. People from Highland shop in the Kingston and Poughkeepsie areas, and people from Ohioville, Clintonville, and Milton and other surrounding places shop in food stores in Highland (CX 54, 94, p. 3; Tr. 1970-1, 1305, 1173-4).

97. In 1958, Schaffer operated a small store in Highland with no check-out counters and off-street parking for only ten cars; it was closed in 1958. Grand Union also operated a store in Highland which has increased its sales. Since the acquisition, many new food stores

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have been opened in the general area in which people in Highland shop for food (CX 29F; RX 41M; see discussion of Kingston and Poughkeepsie).

98. Competition was more vigorous at the time of the hearings than in 1958 in the area where people in Highland shop for food (see Tr. 1970-1, 1305; CX 94, p. 3; see also Tr. 867, 874-6; 2026, 2030, 1147, 1155-7, 1163-5, 1297, 1308-9, 749-50, 752-3, 756, 813-4, 823-4, 2529-31).

(5) Hudson

99. The city of Hudson (population 11,000; 42 food stores) is in Columbia County, 28 miles south of Albany. A ferry at Hudson crosses the river to Athens in Greene County. In 1958, Schaffer and Grand Union each operated a food store in Hudson. The Schaffer store was small, 16 years old, and had no off-street parking. The combined sales of the Grand Union and Schaffer stores in Hudson were less in 1962 than in 1959; they fell off sharply when Victory Markets opened a store near Hudson in 1962 (CX 51, CX 112, p. 3; Tr. 740; CX 29G; RX 18; CX 145, p. 3; RX 41C; see Tr. 1264-5; CX 110C).

100. A&P was the price leader in Hudson in both 1958 and 1962. The downtown area of Hudson is old and stores are moving to the suburban and residential areas. First National has the prime store location in Hudson, and opened a new supermarket in Chatham about 15 miles from Hudson, which advertises in the Hudson newspaper. Victory Markets opened a large, new supermarket in 1962 about one mile outside the Hudson city limits, and has taken away business from the downtown Hudson stores. The only independent store witness from Hudson had a small increase in sales since the acquisition (Tr. 1250, 1252, 1255-6, 1264-5, 1266-9; CX 110C).

101. Competition in the area where people in Hudson shop for food has increased since the Schaffer acquisition (Tr. 1265-7).

(6) Kingston

102. The city of Kingston (population 29,000; 116 food stores) is in Ulster County where a bridge crosses the Hudson River to Rhinebeck in Dutchess County. People from Kingston shop in food stores in Port Ewen and other nearby areas, and people from surrounding communities, such as Saugerties, Highland, and Red Hook, shop in Kingston (CX 49; Tr. 2016, 873-4, 1150, 1160-1, 1970-1, 1632-3).

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103. In 1958, Grand Union operated two food stores in Kingston and Schaffer operated one, which was then ten years old. Since the acquisition, sales of each of the three stores have decreased substantially and one Grand Union store was closed in 1962 (Tr. 743; CX 145, p. 13; RX 41M). The former Schaffer store is across the street from an independent, Governor Clinton Market, which since 1957 has steadily increased its sales, more than doubled its profits, and was recently enlarged (Tr. 743; CX 145, p. 13; RX 41M; Tr. 1923; CX 255G; RX 28).

104. The downtown shopping area of Kingston has declined in importance and most of the successful stores in the Kingston area are now in the suburban areas. The independent Shop-Rite market (Big V) opened in 1962 on the outskirts of Kingston, had initial sales at an annual rate of over \$4,000,000 and has replaced A&P as the price leader, even though A&P has opened new stores. Pantry Markets opened in 1960 in Port Ewen, just south of Kingston, and sales for its first three months of operation were at a similar rate and have grown since. In addition, the Rosendale Food Center, an independent, opened in 1961 near Kingston; Food Fair, entering the area for the first time, opened a large store in 1962 between Kingston and Saugerties; and Big Scot, a discount store near Kingston, has recently added a food department (Tr. 1148, 1150-1, 1156-7, 1164-5, 1151, 1160-1, 867, 2022-5, 1978, 1980-1; CX 258F-G; RX 29; Tr. 895, 900-1, 1408, 753; CX 121B; Tr. 861).

105. Competition in the area where people in Kingston shop for food has substantially increased since the Shaffer acquisition (Tr. 867, 874-6, 2026, 2030, 1147, 1155-7, 1163-5, 855-61; see RX 29-30).

(7) Newburgh

106. The city of Newburgh (population 31,000; 130 food stores) is in Orange County across the Hudson River from Beacon. There is a ferry between Newburgh and Beacon. At the time of the acquisition, Grand Union operated one store in Newburgh and Schaffer operated two, one of which was 15 years old and had no check-out counters or parking lot; it was closed in August 1958. Aggregate Grand Union and Empire store sales had declined 37% by 1962 (Tr. 743; CX 29E; 145, p. 8; RX 41H).

107. A&P was the leading food retailer in the Newburgh area in 1958, but by 1962 the leading companies were Lloyd's, Big V and A&P. Big V opened just south of Newburgh in March 1960, and sales for the first ten months of operation were almost equal to the total sales of both Grand Union stores for the full year 1960. Lloyd's huge discount center (232,000 sq. ft.) opened outside Newburgh in

November 1961, and A&P has also opened a new supermarket outside Newburgh since the acquisition. Moreover, Big V is planning to open another store in Orange County near Middletown, where Lloyd's has another discount center. The downtown shopping area of Newburgh is declining with this trend to suburban stores, and people from Newburgh and surrounding communities shop for food in these new stores (Tr. 1148, 1151, 1439-40; see RX 3, 4, 6, 8; Tr. 1630; compare CX 236F-G with CX 145, p. 8; Tr. 1156-7, 1825-6, 1832-5, 1437-40, 2556-9, 161; RX 4, 6, 8).

108. Competition in the area where people in Newburgh shop for food has substantially increased since the Schaffer acquisition (Tr. 1429-40, 1147, 1155-7, 1163-5; see RX 3-4, 6, 8).

(8) New Paltz

109. New Paltz is not a city but a small village in Ulster County (population 3,000; 6 food stores). It is about 16 miles south of Kingston and eight miles west of Highland, where a bridge crosses the Hudson River to Poughkeepsie. It is within the circulation areas of the Newsburgh-Beacon, Poughkeepsie, and Kingston newspapers, and people from New Paltz shop for food in Walden in Orange County and other nearby places such as Port Ewen near Kingston and Poughkeepsie (Tr. 2187, 1970, 1978; CX 107, p. 8; 94, pp. 3, 7; 122, pp. 3, 5).

110. At the time of the acquisition, Grand Union operated a small store and Schaffer had one store in New Paltz. Grand Union had leased a new store, not yet under construction; it tried but could not cancel the lease, and its old store was closed in December 1958 upon the opening of the new store. A&P has acquired a location in New Paltz since the acquisition, and a number of new stores have opened in the general area where people in New Paltz shop for food (Tr. 845-7, 854-5; CX 38-40; 94, p. 3; 122, p. 3; 145, p. 13; see discussion of Kingston and Poughkeepsie).

111. No witness was called from New Paltz. However, competition was more vigorous at the time of the hearings than in 1958 in the area where people in New Paltz shop for food (see Tr. 1970-1, 2187; CX 94, p. 3; 122, p. 3; see also Tr. 867, 874-6; 2026, 2030, 1147, 1155-7, 1163-5, 1439-40, 1297, 1308-9, 749-50, 752-3, 756, 2529-31, 813-4, 823-4; RX 29).

(9) Poughkeepsie

112. The city of Poughkeepsie (population 38,000; 149 food stores) is in Dutchess County, 13 miles north of Beacon and seven miles

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north of the village of Wappingers Falls (CX 54). A bridge connects Poughkeepsie and Highland. In 1958, Grand Union and Schaffer each operated one grocery store in Poughkeepsie, and Grand Union also operated a Grand-Way Discount Center in the city. The Schaffer store was opened in 1937 and has parking for only twenty cars. Grand Union and Schaffer also operated one store each at the time of the acquisition in that part of the town of Poughkeepsie which is outside the city limits, and Grand Union opened another store in that area in November 1958. Sales of the Grand Union grocery store in Poughkeepsie declined about 20% between 1958 and 1962, and sales of the Schaffer store also declined (Tr. 741; CX 29D; 145, p. 4; RX 41D).

113. New entries in the Poughkeepsie area since the acquisition include two A&P stores (one a block and a half from the Schaffer Main Street store and the other in the trading area of the Schaffer Market Street store), Food Fair (between Poughkeepsie and Wappingers Falls) and Stop & Shop (a new Bradlee's discount center across the street from the new Food Fair). Stop & Shop expects sales of over \$2,000,000 in the food section of the Bradlee's store. Pantry Markets, Lloyd's, and Shop-Rite (Big V) have plans to open new markets in the Poughkeepsie area (Tr. 749-50, 752-3, 1301-2, 2206, 2529-31, 1836, 1982, 2556-9).

114. People from Poughkeepsie and Wappingers Falls shop for food in the new suburban stores described above and people from Highland, Hyde Park, and the town of Poughkeepsie shop in the city of Poughkeepsie (Tr. 1456-8, 1462-3, 1286, 1305, 749-50; CX 94, p. 3). Competition was more vigorous at the time of the hearings than in 1958 in the area where people in Poughkeepsie shop for food (Tr. 1147, 1155-7, 1163-5, 1297, 1308-9, 813-4, 823-4, 749-50, 752-3, 756, 2529-31).

(10) Red Hook

115. Red Hook is not a city but a small village (population 1,700; too small for Census food store data) in Dutchess County approximately 20 miles north of Poughkeepsie and five miles north of the Kingston-Rhinecliff Bridge. People from Red Hook shop for food at the new Shop-Rite store near Kingston, in Rhinebeck, and in Poughkeepsie. In 1958, Grand Union and Schaffer each operated one store in Red Hook. The Schaffer store was opened in 1937 and was closed in January 1960; Red Hook is trying to condemn the premises as unsightly. Sales of the Grand Union store in 1962 were slightly less than in 1960 (CX 49, 54; Tr. 1632-3, 1950, 1952-3; CX 94, p. 3; 122, p. 3; Tr. 741, 862; CX 145, p. 4; RX 41D).

116. No witness from Red Hook testified at the hearings. There are, however, sales and profit figures for one independent store in Red Hook. The figures show that sales and profits of that store have increased since the acquisition. Since the acquisition, a number of new food stores have been opened in the general area in which people in Red Hook shop for food (CX 175-6, 224B, F; see discussion of Kingston and Poughkeepsie).

117. Competition was more vigorous at the time of the hearings than in 1958 in the area where people in Red Hook shop for food (see Tr. 1632-3; CX 94, p. 3; 122, p. 3; see also Tr. 867, 874-6, 2026, 2030, 1147, 1155-7, 1163-5, 1297, 1308-9, 749-50, 752-3, 756, 2529-31, 813-4, 823-4; RX 29-30).

(11) Saratoga Springs

118. The city of Saratoga Springs (population 16,600; 41 food stores) is in Saratoga County, about 21 miles north of Schenectady and 33 miles from Albany. In 1958, Grand Union and Schaffer each operated one grocery store in Saratoga Springs. Aggregate sales declined slightly between 1959 and 1962 (CX 119, p. 2; 145, p. 10; RX 41J).

119. The only local witness, who had a store just outside the city limits, testified that there is a food store on "nearly every corner" and that the price leader is A&P. In 1961, Central Markets opened a new store within a half-block of the former Schaffer store several times the size of that store. The residential area outside the city limits is growing and people from Saratoga Springs shop for food in suburban stores which compete with downtown food stores. People from Ballston Spa and surrounding areas shop for food in Saratoga Springs (Tr. 523, 525, 570; CX 46; Tr. 1908; RX 27; compare Tr. 753 & 525 with CX 29D; Tr. 524, 561, 571, 843-4).

120. Competition in the area where people in Saratoga Springs shop for food has substantially increased since the Schaffer acquisition (Tr. 1914-5; see Tr. 559-62).

(12) Saugerties

121. Saugerties is not a city but a village (population 4,300; 27 food stores) in Ulster County, about 13 miles north of Kingston. Food stores in Saugerties advertise in the Kingston newspaper, and people from Saugerties shop for food in the Kingston and Port Ewen areas and people from surrounding areas shop for food in Saugerties. In 1958, Grand Union and Schaffer each operated one

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grocery store in Saugerties; sales of both stores declined between 1959 and 1962, demonstrating perhaps the disadvantage of acquiring a store in a small village near an existing store (Tr. 1393-4, 1396-7, 1406-8, 1970, 1632-3; CX 121B; 122, p. 3; RX 30; Tr. 854-5; CX 145, p. 13; RX 41M).

122. Victory, entering the Hudson Valley for the first time, built a store near Saugerties in 1961 and Shop-Rite and Food Fair opened new stores in 1962 on the main highway between Kingston and Saugerties. These new stores attract shoppers from the Saugerties and Kingston areas, and compete with the food stores in Saugerties (Tr. 755, 1632-3, 1970, 854-5, 1396-7, 1406-8, 1163; CX 121B; RX 30).

123. Competition was more vigorous at the time of the hearings than in 1958 in the area where people in Saugerties shop for food (see Tr. 1147, 1150, 1155-7, 1163-5, 1970, 1632-3; CX 122, p. 3; see also Tr. 867, 874-6, 2026, 2030, 1396-7, 1406-8, 854-5; see RX 29-30).

(13) Schenectady

124. The city of Schenectady (population 82,000; 270 food stores) is in Schenectady County about 14 miles northwest of Albany. The Schenectady "City Zone" includes Scotia, Niskayuna, and parts of Rotterdam and Glenville. In 1958, Schaffer operated five stores in Schenectady, two of which had been opened in 1940 and 1941, respectively. Grand Union operated one store in Schenectady in 1958; its sales had been decreasing since 1956, and it was closed in October 1958. Total sales of the Schaffer stores declined over 10% between 1959 and 1962 (CX 99, p. 3; 104, p. 3; 119, p. 2; Tr. 742-3; CX 145, p. 11; RX 41K).

125. Other food stores in the Schenectady area in 1958 were operated by A&P (six stores), Loblaw (four stores), Original Supermarkets (three stores), Central Markets (three stores), and Gabriel's Supermarkets (two stores), among others (CX 271J; 253E; 254G; RX 27; Tr. 712-4, 2072, 2076-8, 2082-3).

126. Since the acquisition, new stores have been opened in the area where people in Schenectady shop for food by Thrift-Way (in Scotia across the street from a former Schaffer store), Save-Way (in Schenectady and in Niskayuna near a former Schaffer store), Country Dollar (Rotterdam), and Economy Market (Schenectady). People from Schenectady shop in these and other suburban stores, which compete with downtown stores (Tr. 746-7, 750-1, 2077, 1799, 1803; CX 145, p. 11).

127. Competition in the area where people in Schenectady shop for food has substantially increased since the acquisition. In 1958,

A&P was the leading food retailer in the area, but now leadership is shared by A&P with Loblaw, Central Markets, Save-Way, and Grand Union (Tr. 1914-5, 756, 2069, 2082).

(14) Troy

128. The city of Troy (population 67,500; 236 food stores) is in Rensselaer County about six miles north and across the Hudson River from Albany. Two bridges cross the river at Troy to the Albany side. The Troy "City Zone" includes Cohoes, Green Island, Watervliet, Wynantskill, part of Colonie and unnamed contiguous suburban areas in Saratoga County. In 1958, Grand Union operated one store in Troy and Schaffer operated three. Two of the Schaffer stores were small, 18-year-old stores with limited parking, and one has since been closed. Grand Union opened a new store in 1962. Sales of the original Grand Union store and one of the remaining Schaffer stores declined between 1959 and 1962; sales of the other Schaffer store increased (CX 88, p. 4; Tr. 742; CX 29G; 145, p. 9; RX 41I).

129. New stores in the Troy area were opened since the acquisition by Central Markets (in Cohoes near a former Schaffer store), Food Fair (in Menands between Albany and Troy, and in Troy across the street from the former Schaffer store which has since closed) and Save-Way (in Wynantskill and in Troy near the Pawling Avenue Schaffer store). At the time of the hearings, other stores were under construction in the Troy area, including ones by Acme in a shopping center next to another former Schaffer store in Troy, and an A&P near the Pawling Avenue Schaffer store (Tr. 747-8, 752-5, 1907, 2205-6, 2078; RX 41I).

130. Competition in the area where people in Troy shop for food has substantially increased since the Schaffer acquisition (Tr. 1914-5).

(15) Wappingers Falls

131. Wappingers Falls is not a city but a small village in Dutchess County (population 3,400; 23 food stores), approximately six miles south of Poughkeepsie and six miles north of Beacon (CX 54). People from Wappingers Falls shop for food in the new stores in the Poughkeepsie area. In 1958, there was no Grand Union store in the village of Wappingers Falls, although there was one a short distance outside the village limits in the town of Poughkeepsie; Schaffer operated one store in Wappingers Falls. While sales of the former Schaffer store increased, aggregate sales of these two stores declined more than 20% between 1957 and 1962 (Tr. 749-50, 1456-8,

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1462-3; see Tr. 2529-31; CX 94, p. 3; RX 8; CX 145, p. 4; RX 41D).

132. The only grocery store witness from Wappingers Falls had experienced decreasing sales between 1957 and 1960, but he had increased his net worth and in 1962 enlarged his store. Since the acquisition, a number of new stores have been opened in the area in which people in Wappingers Falls shop for food (Tr. 1443-4; CX 182B; see also discussion of Poughkeepsie; RX 8).

133. Competition was more vigorous at the time of the hearings than in 1958 in the area where people in Wappingers Falls shop for food (see Tr. 1456-8, 1462-3, 749-50, 752-3, 756; CX 94, p. 3; see also Tr. 1147, 1155-7, 1163-5, 1297, 1308-9, 813-4, 823-4, 2529-31).

(16) Hempstead

134. The town of Hempstead (Nassau County), like Bayshore (Suffolk County) and Manhasset (Nassau County), is on Long Island, which is part of the New York City metropolitan area. Between 1950 and 1960, the population of Nassau and Suffolk Counties grew by 93% and 141%, respectively, and food store sales, based upon 1954 and 1958 Census data, have grown at an annual rate of 9% for Nassau County and 15% for Suffolk County. From 1957 to 1960, sales of local chains, such as Daitch, Dilbert's, Hill's, King Kullen, and Waldbaum's have increased substantially in Nassau and/or Suffolk Counties, as have the sales of independents such as Car-Riv, Whitney, and Blue Jay. Since 1958, local chains and independents have opened many new stores in Nassau and Suffolk Counties, as have Acme, Food Fair, A&P, Penn Fruit, and First National. Within the past year Shop-Rite has taken over the operation of two stores in Suffolk County and one in Nassau County and had weekly sales in each store comparable to the food sales of the discount centers on Long Island. The vigor of competition in Nassau and Suffolk Counties has substantially increased since the Sunrise acquisition (CX 129, p. 4; Stipulation, Tr. 2595-6, 266, 285; RX 16; Tr. 1533, 1545, 1558; CX 80G; CX 78H, J; 79H, J; Tr. 661, 677-8, 682, 689-90; CX 243F; 266F, 251F, 221F, 239F, 233F, 232F, 231D, I; PF 72, *supra*; Tr. 2550-3, 2559-63, 2574-80; RX 40; Tr. 2114, 2125-6, 2130-2, 2143-5, 2153-5, 2157-60, 1344, 1366-8, 1379-80, 2039-46, 2054-5, 1207-8, 1216, 1222-3, 1649, 1505).

135. The town of Hempstead is one of the five political subdivisions of Nassau County (the other four are the town of North Hempstead, the town of Oyster Bay, the city of Long Beach, and the city of Glen Cove). The town of Hempstead is a large, sprawling, urban

area with a rapidly increasing population (1960 population was 741,000, an increase of 71% over 1950). There are 21 incorporated villages within the town of Hempstead, with populations ranging from 507 to 38,629. In none of these incorporated villages in Nassau County did both Sunrise and Grand Union have a store at the time of the acquisition (CX 73, 79H-I, 80H; see United States Census of Population, 1960, New York, p. 34-17).

136. Food store competition is not town-wide, but is limited to trading areas which vary with the size and attractiveness of the store, parking facilities, shopper convenience, variety of merchandise, and the number and attractiveness of competing stores in the area. In 1958, Grand Union had eight food stores in the town of Hempstead and Sunrise nine; since 1958 Grand Union has opened two. The aggregate sales of the Grand Union and Sunrise stores in the town of Hempstead, including the two new stores, declined by 30% between 1959 and 1962 (Tr. 843-4, 260-1, 2118, 2129-30, 1667; CX 138, 145, pp. 6-7; RX 41F-G).

137. A&P is generally acknowledged as the leading food retailer on Long Island. Nevertheless, many local chains and independents substantially increased their sales between 1957 and 1960 in the town of Hempstead; the increases include Car-Riv (\$64,000); Daitch (\$1,112,000); Dilbert's (\$7,360,000); Hill's (\$8,007,000); King Kul-len (\$1,081,000); Waldbaum's (\$10,414,000); Whitney (\$532,000) (Tr. 1494-5, 1513-4, 1570, 1344-5, 2125-6; CX 233G, 243G, 266G, 251G, 221G, 239H, 232G).

138. Many new stores have been opened in the town of Hempstead since the Sunrise acquisition. For example, in the Levittown area alone, where Sunrise operated seven stores built around 1948, new stores have been built by Acme, First National, A&P, Bohack, Penn Fruit, and three discount centers with food departments. Any one of the three discount centers was estimated to have annual food sales in excess of the total sales of these seven small neighborhood Sunrise stores "in their heyday" (Tr. 1218-9, 1222, 2131, 2130-2, 2143-5; CX 70C).

(17) Bayshore

139. Bayshore is not a city, but a generalized geographical description of an unincorporated area in Suffolk County. There are no Census data for either the population or the number of food stores in Bayshore, and the Section 6 reports do not give information for Bayshore (see CX 73, 79J-K, 80I; United States Census of Population, 1960, New York, p. 34-19).

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140. In 1958, Grand Union had no store in Bayshore. Sales of the Sunrise store in Bayshore declined about 40% from 1959 to 1962, and sales of Grand Union's nearest store, in Islip, declined 19% in the same period. Korvette, A&P, Blue Jay, Dilbert, King Kullen, Billy Blake, and Bohack have stores in the Islip area, and Hill's Smilen, and A&P have recently opened new stores. An independent operator testified that Sunrise had not been a very strong competitor in Bayshore (CX 145, p. 12; RX 41L; Tr. 1201, 1554-6, 1844, 1846-8, 1858).

(18) Manhasset

141. Manhasset is not a city, but a generalized geographic description of unincorporated areas between certain incorporated villages in Nassau County. There are no Census data for either the population or the number of food stores in Manhasset (see CX 73, 79H-I, 80H, 225; United States Census of Population, 1960, New York, p. 34-17).

142. In 1958, Grand Union and Sunrise each operated one store in the Manhasset area, which were a mile or two apart in different parts of Manhasset. The Grand Union store was on the old downtown shopping street, while the Sunrise store was on Northern Boulevard in an area called the "Miracle Mile." Food Fair and Penn Fruit had new stores on Northern Boulevard and Waldbaum's has built a new store since the acquisition. A&P, Bohack and other grocery and food stores were on the same street as the Grand Union store. Sales of the Sunrise store decreased between 1959 and 1962, while sales of the Grand Union store increased (CX 145, p. 6; Tr. 1202-3, 1220-1, 1484-5; CX 225; RX 22; CX 145, p. 6; RX 41F).

XV. THE EFFECT OF THE ACQUISITIONS ON COMPETITION
IN THE SUPPLYING OF FOOD RETAILERS

143. Counsel supporting the complaint contended that the acquisitions caused a substantial lessening of competition in the supplying of retail grocery stores generally and in "separate and distinct lines of commerce involving particular product lines." In support of this contention, they called nine supplier witnesses, a produce broker and a truck driver.

144. Three suppliers had formerly supplied particular products to Schaffer; Grand Union has increased its purchases from one, reduced purchases from another, and stopped buying from the third. Six suppliers had formerly supplied particular products to Sunrise;

Grand Union has stopped buying from five, and the sixth had been discontinued by Sunrise over eight months before the acquisition.

145. There is nothing anti-competitive in changing from one supplier to another. As a matter of good business, retailers normally review their existing suppliers in seeking the best products for their customers at the best prices, or in seeking better service. Grand Union, in the normal and customary conduct of its business, reviews at regular intervals the performance, products, and facilities of all its suppliers, and is always receptive to potential new suppliers (Tr. 977-78; see also Tr. 347-48, 353, 356, 360-61; Tr. 312-13, 318).

146. The three supplier witnesses, one produce broker and one truck driver represented only five of an indeterminate number of "suppliers" of Schaffer at the time of the acquisition. Their total sales to, or income from, Schaffer in the year prior to the acquisition were approximately \$187,230, as against total purchases by Schaffer during the same period of approximately \$29,440,000 (Tr. 468-69, 476-77, 483-84, 486, 919-22, 1095; RX 17; CX 26K).

147. The supplier witnesses represented only six of over 270 direct suppliers of Sunrise at the time of the acquisition. Their total sales to Sunrise in the year prior to the acquisition were approximately \$338,265, as against total purchases by Sunrise from direct suppliers during the same period of over \$18,812,000 (Tr. 301, 345, 378, 1574; CX 66B-T).

148. The supplier witnesses did not represent a substantial portion of the suppliers of either Schaffer or Sunrise, nor did their sales to either Schaffer or Sunrise represent a substantial portion of the wholesale food trade in any section of the country.

149. There is no evidence that the effect of the Schaffer or Sunrise acquisitions may be substantially to lessen competition or tend to create a monopoly in the supplying of eggs, bananas, coffee, produce brokerage, trucking services, mayonnaise, salad dressing, dairy products, prune juice, bread or Italian bread, in any section of the country.

XVI. SUMMARY, CONCLUSIONS AND ORDER

150. In the more than four years which have elapsed since the acquisition by the respondent of the Schaffer and Sunrise stores events have occurred in the marketplace which have become history and that history has become evidence in this proceeding. Such evidence of actual happenings in the relevant competitive markets in the State of New York provide us with a realistic basis from which

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to judge both what has occurred since the acquisition and what is likely to occur in what may be called the foreseeable future.

151. Such post-acquisition evidence requires the following conclusions relevant to the principal economic realities of this case.

(1) The two acquired corporations as well as Grand Union were both engaged in interstate commerce at the time of their acquisition in 1958 and the Federal Trade Commission has jurisdiction over all of the parties herein within the intent and meaning of Section 7 of the Clayton Act, as amended.

There is no evidence, however, that the mergers in question had any substantial effect on interstate commerce; that the sales originating in States other than New York were fewer or less in quantity or that there was any adverse effect on the interstate shipments of food or grocery products.

(2) This proceeding involves only one line of commerce; the retail sale of food and those non-food products normally sold in food or grocery stores.

(3) The geographical areas of effective competition in this proceeding are local in nature and are those areas surrounding respondent's stores in the various counties and cities named herein.

(4) The evidence of record presents no reliable basis upon which to determine Grand Union's share of the market in the various relevant markets with which we are concerned.

(5) New entry into every relevant market by both independents and chain stores is relatively frequent and the new entrants have become the leading food retailers in a number of cases.

(6) Each individual store, irrespective of whether it is an independent or chain store, in order to be successful must compete on its own merit. Existing retailers regardless of whether they are independents such as Albany Public Markets, Korvette, Governor Clinton, Lou's; middle size chains such as Hill's; or large chains such as Food Fair have been able to expand and increase their sales.

(7) The Schaffer stores were on an average 11 years old at the time of the acquisition five years ago, and many of the Sunrise stores are now obsolete.

(8) The evidence shows that the so-called independent grocery store has in many instances grown and acquired 11 or more stores and has, as a consequence, lost its identity as an independent and has become known as a chain.

(9) There is no substantial evidence that the mergers in question have contributed in any way to the difficulties of any competitors.

In this connection it must be remembered that our anti-merger statute is not concerned with injury to competitors resulting from increased competition, but as stated by the court in the Brown Shoe case the statute is concerned "with the protection of *competition*, not *competitors*." (*Brown Shoe Company v. United States*, 370 U.S. at 294; emphases are the Court's.)

(10) Too much competition was the theme of a number of witnesses called in support of the complaint who testified in substance that they might be forced out of business by the growth and continual new entry into their markets of large and more efficient stores. Although such evidence does not prove a violation of Section 7, it should be observed that the complaining witnesses did not attribute their difficulties to the mergers in question.

For example, Commission witness S. Akullian testified that he had a fairly good business and profits in the years previous to the Schaffer acquisition, but that by the time of the hearing he was finding himself unable to cope with competition. However, further examination showed that his problems arose when A&P started to give trading stamps. His stores were very old and poorly located and his troubles had no relation to the Schaffer acquisition because he was not in competition with the Empire stores—his main competitors were A&P, Grand Cash, and Central Markets (Tr. 985, 1032, 1020-23, 1028-29).

Mr. DeZort was another Commission witness who complained that he was having trouble competing. The evidence shows, however, that his trouble started before the Schaffer acquisition and was unrelated to it; he had a meat market, and found difficulty in competing with the new fresh meat department opened in a Grand Union store in 1956 (Tr. 1176-78).

Mr. Matthews was another Commission witness called to testify that he was having trouble staying in business. His testimony showed, however, that none of his troubles was related to the Schaffer acquisition; he attributed all of his company's problems to its failure to move with the times by providing the parking space, convenience and location which customers demanded (Tr. 1157-59, 1164-65).

(11) Counsel supporting the complaint has pointed out that Grand Union's total sales has increased since the acquisitions because it now has the sales of Schaffer and Sunrise stores to add to those of Grand Union's. They further point out that Grand Union has gained advantages through a wider use of trading stamps, advertising and the procuring of good locations for their stores. All this may be

correct, but it does not prove a violation of Section 7. As stated by the Court in *United States v. Continental Can Company*:

The test is not whether, as a result of a merger, either the acquired or acquiring company obtains advantages which help it to compete more effectively. Obviously were this so, any merger permitted under the Act could have no sound business justification. The object of the Clayton Act is not to discourage businesses from taking steps to compete more effectively but to keep competition vigorous and effective. Opportunities to offer improved products, to make cost reductions or to give better service to customers are not in themselves indications of anti-competitive effects. These are all legitimate business objectives. "It may well be that by effecting a better arrangement for a more profitable undertaking * * * competition would be stimulated rather than lessened."

Thus, the Government could not have succeeded here merely by showing that there were competitive advantages accruing to the acquiring or acquired companies or both from the merger. It is the *anti-competitive* effects of the merger with which the statute is concerned—that is to say, the lessening of the vigor of competition, rather than the converse. Competitive advantages are not proscribed unless there is a reasonable probability that anti-competitive effects of some significance in the relevant product markets will result. No such showing was made. (Trade Reg. Rep. Par. 70759, at 78036-37)

(12) The evidence clearly demonstrates that there is more competition today in the relevant geographical areas with which we are concerned than there was prior to the acquisitions in question. This is true both in the number of able competitors and in the vigor of the competition.

152. In the light of all the evidence of record, we must conclude that neither the Schaffer, nor the Sunrise acquisition, either separately or together, or as the culmination of prior acquisitions, has had any substantial adverse effect upon competition; nor have those acquisitions tended to create a monopoly. Moreover, the growth and vigor of competition during the past four years in all the markets considered tend substantially to negate the probability that the mergers in issue may have such an adverse effect in the future. The logical conclusion follows—Section 7 of the Clayton Act, as amended, has not been violated.

Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

DECISION AND ORDER

The complaint in this proceeding which issued on January 12, 1962, having charged respondent with violation of Section 7 of the Clayton Act, as amended, and an agreement having been entered into, which agreement contains, *inter alia*, an order to cease and desist and to divest, an admission by the respondent of all jurisdic-

tional facts set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having determined that it should waive and hereby having waived the provisions of Section 2.4(d) of its rules with respect to Consent Order Procedure; and

The Commission, having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent, The Grand Union Company is a corporation organized, existing and doing business under the laws of the State of Delaware with its office and principal place of business located at 100 Broadway, East Paterson, New Jersey.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That with respect to the acquisition by respondent, The Grand Union Company, of nineteen (19) grocery stores in Nassau and Suffolk Counties, New York, from Sunrise Supermarkets Corp., and forty (40) grocery stores in twelve (12) upstate New York counties from Schaffer Stores Company, Inc., respondent divest, absolutely and in good faith, and to a responsible purchaser or purchasers approved by the Federal Trade Commission, the following stores acquired by respondent from Sunrise Supermarkets Corp., and Schaffer Stores Company, Inc.: Stores No. 010, 012, 015, 017 and 018 in Levittown; No. 1831 in Schenectady; No. 1848 in Cohoes; No. 1849 in Poughkeepsie; and No. 1857 in Troy, as well as Grand Union Store No. 888 in Beacon, all in the State of New York: *It is further ordered*, That respondent, within thirty (30) days after the effective date of this Order, begin to offer, and to continue to make good faith efforts to divest, such stores at a price reasonably related to respondent's depreciated book value of the leasehold, leasehold improvements and the furniture, fixtures and equipment in such stores; the sale shall not include merchandise inventories or trade names. If divestiture of any store is not accomplished prior to the expiration of the existing lease term on said store, respondent shall not renew the lease or exercise any option to extend the existing term of the lease on such store without prior

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approval of the Federal Trade Commission: *It is further ordered*, That respondent not reacquire, or reopen as grocery stores, any of the twenty-three (23) stores acquired as aforesaid which it has already closed.

II

It is further ordered, That, in said divestiture, respondent not sell or transfer, directly or indirectly, any of said assets to anyone who is, at the time of divestiture, an officer or director of, or under the control or direction of, The Grand Union Company or any of its subsidiaries or affiliates, or to any person who owns or controls more than one (1) percent of the outstanding shares of common stock of The Grand Union Company or any of its subsidiaries or affiliates.

III

It is further ordered, That, pending divestiture, respondent not make any changes in any of the aforesaid assets which would impair their capacity for the retail sale of food or grocery products, or their market value. Respondent may remove existing names and signs from the divested premises.

IV

It is further ordered, That, for ten (10) years from the effective date of this Order, respondent shall not, without the prior approval of the Federal Trade Commission, in any county (or city or town which is not in a county) in the United States in which respondent then operates a retail store substantially engaged in the sale of food or grocery products, directly or indirectly, make any acquisition of:

(1) any chain of four (4) or more retail stores in any city or town in such county (or in any such city or town which is not in a county), which are substantially engaged in the sale of food or grocery products, or,

(2) any store or chain of stores, located in any such city or town, having total food or grocery products sales in such city or town, in the last fiscal year ended prior to such acquisition, in excess of five million dollars (\$5,000,000),

where the aggregate food and grocery products sales of the stores of respondent and of the store or stores included in such acquisition, in such city, town or county, in the year preceding such acquisition, amount to more than five percent (5%) of total food store sales in such city, town or county, using the appropriate estimated retail food sales data, if any, published in the Sales Management Survey

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of Buying Power; where no such city or town data is available, this provision shall be applied on a county basis.

V

Paragraph IV shall terminate should the Federal Trade Commission, through a Trade Regulation Rule or other like, non-adjudicative, industry-wide proceeding, issue rules or guidelines covering the subject matter of that Paragraph. In the event that the Federal Trade Commission issues any order which is less restrictive than the provisions of Paragraph IV of this Order, in any adjudicative proceeding involving a horizontal merger or acquisition by a grocery store chain, then the Commission shall, upon the application of respondent, pursuant to Rule 3.28 of the Commission's Rules of Practice, reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the restrictions imposed upon respondent herein into conformity with those imposed upon its competitors.

VI

It is further ordered, That, within sixty (60) days after the effective date of this Order, and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I, II and III of this Order respondent submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this Order. All compliance reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the assets to be divested under this Order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

IN THE MATTER OF

NAT J. DUMBROW COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE