

Complaint

111 F.T.C.

IN THE MATTER OF

THE VONS COMPANIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION AND SEC. 7 OF THE CLAYTON ACTS

Docket C-3233. Complaint, Aug. 29, 1988—Decision, Aug. 29, 1988

This consent order requires, among other things, that The Vons Companies, an El Monte, Ca. corporation, divest certain Safeway stores in the California area.

Appearances

For the Commission: *Joan S. Greenbaum.*

For the respondents: *Joseph A. DeFrancis, Latham & Watkins,*
Washington, D.C. and *Gregg Stone, Manger, Tolles & Olson,* Los
Angeles, Ca.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the respondents, The Vons Companies, Inc., SSI Associates, L.P., and Safeway Stores, Incorporated, entities subject to the jurisdiction of the Commission, have entered into an agreement, described in paragraph 9 herein, that, if consummated, would violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; that said agreement, and the actions of the respondents to implement that agreement, constitute violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

a. "Retail grocery store" means any full-line retail food store of 10,000 or more square feet, and which sells primarily a wide variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits), and which often sells delicatessen items, bakery items, fresh fish or other specialty items. [2]

b. "Vons" means The Vons Companies, Inc., its subsidiaries, divisions, and groups controlled by Vons and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

c. "Safeway" means SSI Associates, L.P., and Safeway Stores, Incorporated, their respective subsidiaries, divisions, and groups controlled by Safeway and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

THE PARTIES

2. Respondent Vons is a corporation organized and existing under the laws of the State of Michigan with its principal place of business located at 10150 Lower Azusa Road, El Monte, California.

3. In 1987, Vons had sales of \$3.4 billion.

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

5. Respondent SSI Associates, L.P., which owns 96.4 percent of the voting securities of Safeway Stores, Incorporated and controls it, is a limited partnership organized and existing under the laws of the State of Delaware with its executive offices located c/o Kohlberg Kravis Roberts & Company, 101 California Street, San Francisco, California.

6. Respondent Safeway Stores, Incorporated is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 201 Fourth Street, Oakland, California.

7. For the year ending January 3, 1988, Safeway had sales of \$ 18 billion.

8. Safeway is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or

affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44. [3]

THE ACQUISITION

9. On or about December 10, 1987, Vons entered into an agreement with Safeway whereby it proposes to purchase the capital stock of the following subsidiaries of Safeway: Safeway Stores 23, Inc., Safeway Stores 27, Inc., Safeway Stores 29, Inc., and Safeway Stores 30, Inc. The acquisition of these subsidiaries includes 172 retail grocery stores and related assets currently operated as Safeway’s Southern California Division. Both Vons and Safeway operate retail grocery stores in various cities and towns in California and Nevada. In 1986, Safeway’s Southern California Division had grocery sales of \$1.8 billion.

TRADE AND COMMERCE

Relevant Line of Commerce

10. A relevant line of commerce in which to analyze Vons’s acquisition of Safeway is the retail sale and distribution of food and grocery items in retail grocery stores.

Relevant Sections of the Country

11. Relevant sections of the country are the following areas in California:

- a. Barstow;
- b. Yucca Valley;
- c. Camarillo;
- d. South San Diego County (an area including the cities and towns of Imperial Beach, Coronado, Chula Vista, San Diego, Lakeside, La Mesa, Lemon Grove, Pacific Beach, Point Loma, San Ysidro, Santee, Bonita Hills, El Cajon, National City, Spring Valley, Rancho San Diego, La Jolla, Mission Valley, and Tierra Santa);
- e. Santa Clarita Valley (an area including the cities and towns of Canyon Country, Valencia, Newhall and Saugus);
- f. Coachella Valley (an area including the cities and towns of Palm Springs, Palm Desert, Indian Wells, Indio, Cathedral City, Rancho Mirage, La Quinta, and Coachella); and
- g. Santa Barbara, Montecito, and Goleta. [4]

MARKET STRUCTURE

12. Retail sale and distribution of food and grocery items in retail

grocery stores in each of the relevant sections of the country is highly concentrated, whether measured by the Herfindahl-Hirschmann Indices ("HHI") or by two-firm and four-firm concentration ratios.

ENTRY CONDITIONS

13. Entry into the retail sale and distribution of food and grocery items in retail grocery stores in each of the relevant sections of the country is difficult or unlikely.

ACTUAL COMPETITION

14. Vons and Safeway are actual competitors in the relevant sections of the country located in California.

EFFECTS

15. The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant line of commerce in the relevant sections of the country in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. by eliminating direct competition between Vons and Safeway;
- b. by increasing the likelihood that Vons will unilaterally exercise market power; or
- c. by increasing the likelihood of, or facilitating, collusion where the acquisition would significantly increase already high levels of concentration;

all of which increases the likelihood that firms will increase prices and restrict output of food and groceries both in the near future and for a longer period of time.

VIOLATIONS CHARGED

16. The proposed acquisition of Safeway by Vons violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and would, if consummated, violate Section 7 of the Clayton Act, 15 U.S.C. 18 and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisition by The Vons Companies, Inc. (hereinafter "Vons") of certain assets of Safeway Stores, Incorporated, a subsidiary of SSI

Associates, L.P. (hereinafter collectively "Safeway") and Vons and Safeway, having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge Vons and Safeway with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents Vons and Safeway, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of forty-five (45) days, and having duly considered the comments thereafter filed by interested persons pursuant to Section 2.34 of its Rules, now in further conformity [2] with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

Vons is a corporation organized and existing under the laws of the State of Michigan with its principal place of business located at 10150 Lower Azusa Road, El Monte, California.

Safeway Stores, Incorporated is a corporation organized and existing under the laws of the State of Delaware with executive offices located at Fourth and Jackson Streets, Oakland, California.

SSI Associates, L.P., which owns 96.4 percent of the voting securities of Safeway Stores, Incorporated and controls it, is a limited partnership organized and existing under the laws of the State of Delaware with executive offices located c/o Kohlberg Kravis Roberts & Company, 101 California Street, San Francisco, California.

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

ORDER

I.

As used in this order, the following definitions shall apply:

(A) "*Vons*" means The Vons Companies, Inc., its subsidiaries, divisions and groups controlled by Vons, and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(B) "*Safeway*" means Safeway Stores, Incorporated, its subsidiaries, divisions and groups controlled by Safeway, and their respective directors, officers, employees, agents and representatives and their respective successors and assigns. "*Safeway*" also means SSI Associates, L.P., its subsidiaries, divisions and groups controlled by SSI Associates, L.P., and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) "*Acquisition*" means Vons' acquisition of the outstanding shares of the capital stock of certain subsidiaries of Safeway, specifically, Safeway Stores 23, Inc., Safeway Stores 27, Inc., Safeway Stores 29, Inc., and Safeway Stores 30, Inc. (hereinafter referred to collectively as the "*Safeway Subsidiaries*"). [3]

(D) "*Assets to be divested*" means the assets described in Paragraph II(A) of the Order, also known as the "*II(A) properties*."

(E) "*To be acquired store*" means any retail grocery store in the Safeway Subsidiaries.

(F) "*Eligible Person*" means Federated Department Stores, Inc., dba Ralphs Grocery Company ("*Ralphs*"), Albertson's, Inc., Hughes Markets, Inc. ("*Hughes*"), Certified Grocers of California, Ltd., Big Bear Super Markets #3, and Stater Bros. Inc. ("*Stater Bros.*") and their respective successors, assigns, subsidiaries, divisions and groups.

(G) "*Retail grocery store*" means any full-line retail food store of 10,000 or more square feet, and which sells primarily a wide variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits), and which often sells delicatessen items, bakery items, fresh fish or other specialty items.

(H) "*Commission*" means the Federal Trade Commission.

II.

It is ordered, That:

(A) Vons or Safeway, as the case may be, shall divest, absolutely and in good faith, prior to consummating the acquisition, the number of retail grocery stores (either any of the to be acquired stores, retail grocery stores presently operated by Vons, or any combination thereof) set forth below, and the grocery businesses operated therein, in each of the following locations:

- (1) One store in Barstow, California;
- (2) One store in Yucca Valley, California;
- (3) One store in Santa Clarita, California;
- (4) One store in Camarillo, California;
- (5) One store in Palm Springs, California;
- (6) Two stores in Santa Barbara, California (including Goleta and Montecito), but not to include Safeway Store No. 384;
- (7) One store in Clairemont, California;
- (8) One store in Ocean Beach, California; [4]
- (9) One store in the La Presa-Paradise Hills area of San Diego, California;
- (10) One store in Chula Vista, California; and
- (11) One store in the North Park area of San Diego, California.

Such divestitures shall be (i) to an acquirer or acquirers and only in such a manner that receives the prior approval of the Commission, or (ii) to an eligible person.

Notwithstanding the definition of eligible person, Ralphs shall not be considered an eligible person for the store to be divested in Camarillo, Hughes shall not be considered an eligible person for the store to be divested in Santa Clarita and Stater Bros. shall not be considered an eligible person for the stores to be divested in Barstow and Yucca Valley.

(B) The Agreement to Hold Separate is attached hereto as Appendix A and made a part hereof.

(C) In effecting the divestitures, Vons and/or Safeway, as the case may be, shall divest all rights to occupy the premises being divested and to operate a retail grocery business therein and shall retain no control or influence over the retail grocery business to be conducted after the divestiture. The purpose of the divestiture of such stores and this order (including the Agreement To Hold Separate) is to ensure

the continuation of the assets as ongoing, viable enterprises engaged in the retail sale of groceries and to remedy the lessening of competition alleged in the Commission's draft of complaint.

(D) The divestitures required by paragraph II(A) may take place at any time after this order becomes final, but in no event shall Vons consummate the acquisition before such divestitures have been made.

(E) In the event that the Commission brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, for any violation of this order, Vons shall consent to the appointment of a trustee by the Commission to divest the II(A) properties. If the Commission seeks appointment of a trustee by the court in such action, Vons shall consent to the appointment of a trustee by the court. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Vons to comply with paragraphs II(A) through VI of this order.

If a trustee is appointed by the Commission or a court pursuant to paragraph II(E) of this order, Vons consents to the [5] following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to Vons consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest any properties listed in paragraph II(A) and such other properties as are identified in paragraph II(E)(3) below in any location listed therein in which a store has not been divested as required in paragraph II(A). The trustee shall have six (6) months from the date the trust agreement is executed to accomplish the divestiture, which shall be subject to the prior approval of the Commission, and subject also to the prior approval of the court if the trustee is appointed by a court.

(3) If, at the end of the six (6) month period, the trustee has not secured approval of the Commission or of the court of divestiture as required by paragraph II(A), the trustee may, if the Commission determines in order to accomplish the divestiture, add such other assets as are required to effectuate the remedial purposes of this order.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities of any retail grocery store that the trustee has the duty to divest, and Vons shall develop such financial or other

information relevant to the assets to be divested as such trustee may reasonably request. Vons shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

(5) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Vons' absolute and unconditional obligation to divest at no minimum price and the purposes of the divestiture as stated in paragraph II.

(6) The trustee shall serve without bond or other security at the cost and expense of Vons on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to retain at the cost and expense of [6] Vons such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or court, as the case may be, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Vons and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the II(A) properties and any other assets to be divested in accordance with paragraph II(E)(3) of this order.

(7) Within twenty (20) days of the appointment of the trustee, Vons shall, subject to the prior approval of the Commission, and subject to the approval of the court if the trustee was appointed by the court, and consistent with the provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as in paragraph II of this order.

(9) The trustee shall report in writing to the Commission and Vons every sixty (60) days, from the date the trust agreement is executed, concerning the trustee's efforts to accomplish divestiture.

III.

It is further ordered. That, within sixty (60) days after this order

becomes final, and every sixty (60) days thereafter until Vons and Safeway have fully complied with the provisions of paragraph II of this order, Vons and Safeway shall each submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply with, or have complied with paragraph II of the order. Vons and Safeway shall include in their respective compliance reports, among other things that may be required from time to time, a full description of contracts or negotiations for the divestiture of the II(A) properties, including the identity of all parties contacted. Vons and Safeway also shall include in their respective compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning the mandated divestitures. [7]

IV.

It is further ordered, That:

(A) For a period commencing on the date this order becomes final and continuing for ten (10) years thereafter, Vons shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store, including any facility that has been operated as a retail grocery store within six (6) months of the date of the offer by Vons to purchase the facility, or any interest in a retail grocery store, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a retail grocery store, in the following cities or towns:

- Las Vegas, Nevada
- Bakersfield, California
- Santa Clarita, California
- Camarillo, California
- Ventura, California
- Thousand Oaks, California
- Victorville, California
- Barstow, California
- Coachella Valley, California (an area including the cities and town of Palm Springs, Palm Desert, Indian Wells, Indio, Cathedral City, Rancho Mirage, La Quinta, and Coachella)
- Yucca Valley, California

Solana Beach, California
Carlsbad, California
Vista, California
Escondido, California
Poway, California
Rancho Bernardo, California [8]
South San Diego County, California (that portion of San Diego County, California that is south of the Miramar Naval Air Station)
Santa Barbara, Montecito and Goleta, California
Palmdale, California
Lancaster, California
Simi Valley, California
Moreno Valley, California

Provided, however, That this paragraph IV(A) shall not be deemed to require prior approval of the Federal Trade Commission of the construction of new facilities by Vons or the purchase or lease by Vons of a facility that has not been operated as a retail grocery store at any time during the six (6) month period immediately prior to the purchase or lease by Vons in those locations.

(B) For a period commencing on the date this order becomes final and continuing for ten (10) years thereafter, Vons shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store, including any facility that has been operated as a retail grocery store within six (6) months of the date of the offer to purchase the facility, or any interest in a retail grocery store, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates any retail grocery store in: (1) the city of San Bernardino, California; or (2) the city of Riverside, California; or (3) the counties of Los Angeles and Orange, California; *provided, however,* that upon thirty (30) days prior written notice to the Commission, Vons may acquire, directly or indirectly, through subsidiaries or otherwise, any such retail grocery stores, so long as, in any twelve (12) month period, commencing on the date this order becomes final and continuing thereafter for ten (10) years, the number of such retail grocery stores acquired, directly or indirectly, does not exceed: (1) two in the city of San Bernardino, California; (2) two in the city of Riverside, California; and (3) ten in the counties of Los Angeles and Orange, California. *Provided further, however,* That these prohibitions shall not relate to the construction of

new facilities by Vons or the purchase or lease by Vons of a facility that was not operated as a retail grocery store at any time during the six (6) month period immediately prior to the purchase or lease by Vons in those locations.

(C) One year from the date this order becomes final and for each of the nine (9) years thereafter, Vons shall file with the [9] Commission a verified written report of its compliance with this paragraph. Such reports shall include a listing of all acquisitions of retail grocery stores made by Vons without prior approval of the Commission in any area listed in this paragraph IV.

V.

It is further ordered, That, for the purposes of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to Vons or Safeway made to their principal offices, Vons and Safeway shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Vons or Safeway relating to compliance with this order; and

(B) Upon five (5) days' notice to Vons or Safeway and without restraint or interference from them, to interview directors, agents, representatives, officers or employees of Vons or Safeway, who may have counsel present, regarding such matters. [10]

VI.

It is further ordered, That Vons shall notify the Commission at least thirty (30) days prior to any change in its corporate structure that may affect compliance obligations arising out of this order including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

Commissioner Azcuenaga dissenting.

APPENDIX A

AGREEMENT TO HOLD SEPARATE

Agreement dated as of May __, 1988 (the "agreement"), by and among SSI Associates, L.P., a limited partnership organized and existing under the laws of the State of Delaware with executive offices located c/o Kohlberg Kravis Roberts & Company, 101 California Street, San Francisco, California; Safeway Stores, Incorporated, a corporation organized and existing under the laws of the State of Delaware, with executive offices located at 201 Fourth Street, Oakland, California (collectively "Safeway"); The Vons Companies, Inc. ("Vons"), a corporation organized and existing under the laws of the State of Michigan, with executive offices located at 10150 Lower Azusa Road, El Monte, California; and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "parties").

PREMISES

Whereas, Vons, pursuant to an agreement dated December 3, 1987, agreed to purchase all the outstanding capital stock of certain subsidiaries of Safeway, specifically, Safeway Stores 23, Inc., Safeway Stores 27, Inc., Safeway Stores 29, Inc., and Safeway Stores 30, Inc. (hereinafter collectively the "Safeway Subsidiaries"), ("the acquisition"); and

Whereas, the Commission has reason to believe that the acquisition would violate the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("consent order") the Commission must place it on the public record for a period of public comment and may [2] subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commissions Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status quo ante of the Safeway Subsidiaries during the period prior to the divestiture of the properties to be divested pursuant to paragraph II(A) of the consent order ("II(A) properties") divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible or might be a less than effective remedy; and

Whereas, the Commission is concerned that prior to the acquisition being consummated it may be necessary to preserve the Commission's ability to require the divestiture of the II(A) properties and the Commission's ability to preserve the Safeway Subsidiaries as a viable competitor; and

Whereas, the purpose of this agreement and the consent order is to preserve the Safeway Subsidiaries as a viable operation pending the divestiture of the II(A) properties as viable, ongoing enterprises in order to remedy any anticompetitive effects of the acquisition, and to preserve the Safeway Subsidiaries as a viable operation in the event that divestiture of the II(A) properties is not achieved; and

Whereas, Vons' and Safeway's entering into this agreement shall in no way be construed as an admission by Vons or Safeway that the acquisition is illegal; and

Whereas, Vons and Safeway understand that no act or transaction contemplated by this agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this agreement,

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, it will not seek further relief from the parties with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this agreement and the consent order annexed hereto and made a part thereof, the parties agree as follows:

1. Vons and Safeway agree to execute and, upon its issuance, to be bound by the attached consent order.
2. Vons and Safeway agree that they shall not close the acquisition either [3]

(a) until three (3) business days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's rules; or

(b) if the Commission issues the consent order, until such time as all of the II(A) properties have been divested in accordance with the terms and conditions of the consent order.

3. In the event the consent order is not finally approved and issued by the Commission within ninety (90) days of the date on which it first is placed on the public record, Vons and Safeway, or either of them, may, at their sole option, terminate this agreement by delivering written notice of termination to the Commission, which termination

shall be effective ten (10) days after the Commission's receipt of such notices, and this agreement shall thereafter be of no further force and effect. If this agreement is so terminated the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).

4. Until the II(A) properties are divested, neither Safeway nor Vons shall cause or permit the wasting or deterioration of the II(A) properties in any manner that impairs the marketability of any of the II(A) properties or impairs in any manner the viability of such properties or the operation thereof as retail grocery stores.

5. So long as this agreement remains in effect, if the Commission seeks in any proceeding to prevent the acquisition from being consummated, or seeks any other injunctive or equitable relief, neither Vons nor Safeway shall raise an objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting periods. Vons and Safeway also waive all rights to contest the validity of this agreement.

6. For the purpose of determining or securing compliance with this agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Vons or Safeway made to their principal offices, Vons and Safeway shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Vons or Safeway, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the [4] control of Vons or Safeway relating to compliance with this agreement; and

(b) Upon five (5) days' notice to Vons or Safeway and without restraint or interference from them, to interview officers or employees of Vons or Safeway, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I dissent from the decision of the Commission majority to accept this consent order from Vons Companies, Inc. ("Vons") because the order is not sufficiently broad to resolve the potential anticompetitive effects

of Vons' acquisition of the southern California stores of SSI Associates, L.P. ("Safeway"). The levels of concentration, conditions of entry, and other facts that bear on the state of competition in the supermarket industry in discrete southern California markets indicate that the Commission should require the divestiture of a greater number of stores to protect competition in markets in which Vons and Safeway now compete.

CONCURRING STATEMENT OF COMMISSIONER

ANDREW J. STRENIO, JR.

I would prefer to secure additional consumer safeguards in this matter either by renegotiating the proposed consent agreement or by rejecting the consent and pursuing a preliminary injunction. In particular, an increase in the number of stores to be divested would be in the public interest. However, lacking a Commission majority in favor of that approach, the alternative to the proposed consent agreement is not a stronger set of safeguards but rather no safeguards at all. Under these circumstances, and in light of the non-trivial nature of the relief obtained, I have voted to make final the proposed consent agreement.

IN THE MATTER OF
AMERICAN STORES COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT & SEC. 7 OF THE CLAYTON ACT

Docket C-3238. Complaint, Aug. 31, 1988—Decision, Aug. 31, 1988

This consent order allows, among other things, American Stores Company, a Dublin Ca. corporation, to acquire Lucky Stores, Inc. Respondents are required to divest between 31 and 37 grocery stores in California and also required to obtain FTC approval before making certain grocery store acquisitions.

Appearances

For the Commission: *Joan S. Greenbaum* and *Marimichael Skubel*.

For the respondents: *C. Loring Jetton, Wilmer, Cutler & Pickering*, Washington, D.C. and *Steven M. Axinn, Skadden & Arps*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the respondents, American Stores Company and Alpha Beta Acquisition Corporation, corporations subject to the jurisdiction of the Commission, have commenced a tender offer for the shares of Lucky Stores, Inc., that, if completed, would violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; that said offer, and the actions of the respondents to implement that offer, constitute violations of Section 5 of the FTC Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply: