

IN THE MATTER OF

THE STOP & SHOP COMPANIES, INC., ET AL.

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

Docket C-3649. Complaint, April 2, 1996--Decision, April 2, 1996

This consent order requires, among other things, the respondents to divest 17 supermarkets, within nine months, to Commission-approved acquirers. If the respondents fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest the supermarkets.

Appearances

For the Commission: *Ronald B. Rowe, James Fishkin and William Baer.*

For the respondents: *Richard Weisberg, Simpson, Thacher & Bartlett, New York, N.Y. and David Beddow, O'Melveny & Myers, Washington, D.C.*

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 respondents, The Stop & Shop Companies, Inc. ("Stop & Shop"), a corporation, and SSC Associates, L.P. ("SSC Associates"), a limited partnership, both subject to the jurisdiction of the Commission, have entered into an agreement to acquire Purity Supreme, Inc. ("Purity") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

Complaint

121 F.T.C.

DEFINITIONS

1. For the purposes of this complaint:

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

THE STOP & SHOP COMPANIES, INC.

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

3. Respondent Stop & Shop is, and at all times relevant herein has been, engaged in the operation of supermarkets in Massachusetts and Connecticut.

4. Respondent Stop & Shop 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.

SSC ASSOCIATES, L.P.

5. Respondent SSC Associates, L.P. ("SSC Associates") is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, NY.

6. Respondent SSC Associates is, and at all times relevant herein has been, controlling the operations of Stop & Shop.

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

ACQUISITION

8. On or about April 21, 1995, Stop & Shop and SSC Associates entered into an agreement with Purity Supreme to acquire all of the supermarkets and other related assets owned and operated by Purity Supreme.

TRADE AND COMMERCE

9. Relevant lines of commerce in which to analyze the acquisition described herein are the retail sale of food and grocery products in supermarkets, and narrower markets contained therein.

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

11. Food stores other than supermarkets, such as convenience stores, "mom & pop" stores, and specialty food stores (*e.g.*, seafood markets, bakeries, etc.), typically offer far fewer items than the average supermarket and charge higher prices for many of the same or similar items. Other types of stores that sell some food and grocery products, such as large drug stores and mass merchandisers, offer only a limited number of items sold in the typical supermarket. The small number of upscale food stores emphasizing organically grown fruits and vegetables, hormone-free meat and poultry products, and other more expensive food products, and club stores that offer

only a limited number of food and grocery products in bulk sizes, do not have a significant effect on market concentration.

12. Relevant sections of the country in which to analyze the acquisition described herein are the following:

a. Barnstable County, Massachusetts (a/k/a Cape Cod), and narrower markets contained therein, including Falmouth, Mashpee, Hyannis, Yarmouth, Harwich, and Orleans;

b. The South Shore area of Massachusetts, which consists of parts of Suffolk and Plymouth counties, and narrower markets contained therein, including Marshfield and Kingston;

c. The Boston, Massachusetts metropolitan area, which consists of the city of Boston and parts of Essex, Middlesex, Norfolk, and Suffolk counties, and narrower markets contained therein, including Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth;

d. Brockton, Massachusetts; and

e. Bedford, Massachusetts.

MARKET STRUCTURE

13. The retail sale of food and grocery products in supermarkets in the relevant sections of the country is concentrated, whether measured by the Herfindahl-Hirschmann Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios.

14. The post-acquisition HHI in Barnstable County, Massachusetts (a/k/a Cape Cod) would increase by approximately 2,778 points, from approximately 3,541 to approximately 6,319. The post-acquisition HHI in Falmouth, Mashpee, and Hyannis would increase to 10,000 or near 10,000 in each of these markets. The post-acquisition HHI in Yarmouth, Harwich, and Orleans would significantly increase already highly concentrated markets.

15. The post-acquisition HHI in the South Shore area of Massachusetts would increase by approximately 3,866 points, from approximately 3,930 to approximately 7,795. The post-acquisition HHI in Marshfield and Kingston would increase to 10,000 or near 10,000 in each of these markets.

16. The post-acquisition HHI in the Boston, Massachusetts metropolitan area would increase by approximately 512 points, from approximately 1,381 to approximately 1,893. The post-acquisition

HHI exceeds 2,000 when club stores and upscale food stores are not included in the market. The post-acquisition HHI in Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth would significantly increase already highly-concentrated markets.

17. The post-acquisition HHI in Bedford, Massachusetts would increase by approximately 4,702 points, from approximately 5,298 to approximately 10,000.

18. The post-acquisition HHI in Brockton, Massachusetts would increase by approximately 497 points, from approximately 5,162 to approximately 5,659.

ENTRY CONDITIONS

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

20. Entry that would prevent the anticompetitive effects in the relevant sections of the country is generally difficult because there are few available sites suitable for supermarkets and the time necessary to receive state and local regulatory approval for a new supermarket is typically quite long.

ACTUAL COMPETITION

21. Stop & Shop and Purity Supreme are actual competitors in the relevant lines of commerce and sections of the country.

EFFECTS

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

a. By eliminating direct competition between supermarkets owned or controlled by Stop & Shop and supermarkets owned or controlled by Purity Supreme;

b. By increasing the likelihood that Stop & Shop will unilaterally exercise market power; or

c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction,

each of which increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country.

VIOLATIONS CHARGED

23. The proposed acquisition by Stop & Shop of assets of Purity Supreme violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Azcuenaga concurring in part and dissenting in part.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Purity Supreme, Inc. by The Stop & Shop Companies, Inc. ("Stop & Shop") and SSC Associates, L.P. ("SSC Associates"), and Stop & Shop and SSC Associates (collectively, "respondents") 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 respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

Respondents, 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 sixty (60) days, and having duly considered the comments received, now in further conformity 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:

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

2. Respondent SSC Associates, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York.

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

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

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

B. "*Respondent*" or "*SSC Associates, L.P.*" means SSC Associates, L.P., its predecessors, subsidiaries, divisions, and groups

and affiliates controlled by SSC Associates, L.P., their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. "*Assets to be divested*" means the supermarket assets described in paragraph II.A. of this order.

D. "*Commission*" means the Federal Trade Commission.

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

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

II.

It is further ordered, That:

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

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

a. Purity store no. 67 located at 137 Main St. (Route 28 - Falmouth Mall), Falmouth, MA;

b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151 - Mashpee Commons Shopping Center), Mashpee, MA;

c. Purity store no. 63 located at 625 West Main St., Hyannis, MA;

d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA;

- e. Purity store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA;
- f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA;
- and
- g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA.

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

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

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

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

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

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

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

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

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

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

a. Purity store no. 20 located at 525 Harvard St., Brookline, MA; and

b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA.

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

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

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

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

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the assets to be divested within nine (9) months from the date this order becomes final, the Commission may appoint a trustee to divest any of the assets to be divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

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

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

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers

necessary to permit the trustee to effect the divestitures required by this order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in paragraph III.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in paragraph II. of this order; provided, however, if the trustee receives *bona fide* offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and

assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy paragraph II. of this order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

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

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

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

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

V.

It is further ordered, That, for a period of ten (10) years commencing on the date this order becomes final:

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

B. Respondents shall not remove any equipment from a supermarket owned or operated by respondents in Eastern Massachusetts prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by respondents in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of paragraphs II. or III. of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II. and III. of this order. Respondents shall include in their compliance

reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II. and III. of the order, including a description of all substantive contacts or negotiations for divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this order.

VII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in respondents that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondents shall permit any duly authorized representative of the Commission:

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

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

Commissioner Azcuenaga concurring in part and dissenting in part.

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between The Stop & Shop Companies, Inc. ("Stop & Shop"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1385 Hancock Street, Quincy, MA; SSC Associates, L.P. ("SSC Associates"), a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York; and the Federal Trade Commission ("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, Stop & Shop and SSC Associates, pursuant to an agreement dated April 21, 1995, agreed to acquire all of Purity Supreme, Inc. (hereinafter "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested as described in II.A. of the attached Agreement Containing Consent Order ("Assets") during the period prior to their divestitures, when those Assets will be in the hands of Stop & Shop and SSC Associates, that any divestiture resulting from any administrative

proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the consent order is to preserve the Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Stop & Shop and SSC Associates entering into this Agreement shall in no way be construed as an admission by Stop Shop and SSC Associates that the Acquisition is illegal; and

Whereas, Stop & Shop and SSC Associates 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, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets, the Parties agree as follows:

TERMS OF AGREEMENT

1. Stop & Shop and SSC Associates agree to execute, and upon its issuance to be bound by, the attached consent order. The Parties further agree that each term defined in the attached consent order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15. U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Stop & Shop and SSC Associates will be free to close the Acquisition after 3:00 p.m., October 31, 1995.

3. Stop & Shop and SSC Associates agree that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 3.a - 3.b, they will comply with the provisions of this Agreement:

a. Three 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. On the day the divestiture set out in the consent order has been completed.

4. From the time Stop & Shop and SSC Associates acquire the Assets until the divestiture set out in the consent order has been completed, Stop & Shop and SSC Associates shall maintain the viability, competitiveness and marketability of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall they sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Commission seek in any proceeding to compel Stop & Shop and SSC Associates to divest themselves of the Assets or to seek any other injunctive or equitable relief, Stop & Shop and SSC Associates shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Stop & Shop and SSC Associates 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 Stop & Shop and SSC Associates and to their principal offices, Stop & Shop and SSC Associates shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Stop & Shop and SSC Associates, 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 Stop & Shop and SSC Associates relating to compliance with this Agreement; and

b. Upon five (5) days' notice to Stop & Shop and SSC Associates and without restraint or interference from them, to interview officers

or employees of Stop & Shop and SSC Associates, who may have counsel present, regarding any such matters.

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

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

I concur in the Commission's decision to approve and issue its final decision and order to the extent that the order requires divestiture of supermarkets on Cape Cod and the South Shore but dissent to the extent that the order requires divestiture of stores in the Boston metropolitan area. Although serious questions may be raised about some of the allegations in the complaint that relate to the product market, I find reason to believe that the law has been violated even if the product market includes sales of food and groceries in stores other than traditional supermarkets. Assuming either the product market alleged in the complaint or a broader product market, I concur in the decision to accept the order as to Cape Cod and the South Shore. I dissent from the decision to require divestiture of stores in the Boston metropolitan area. Although a small geographic market theoretically may exist within a broad metropolitan area, at this time, the information before the Commission is not sufficient to support a finding of reason to believe that the communities of Saugus, Medford, Brookline, Rosindale, Watertown, Weymouth, Brockton and Bedford, Massachusetts, are relevant antitrust markets.

IN THE MATTER OF

DEVRO INTERNATIONAL PLC, ET AL.

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

Docket C-3650. Complaint, April 3, 1996--Decision, April 3, 1996

This consent order requires, among other things, the respondents to divest, within three months to a Commission-approved acquirer, the assets they use to produce collagen sausage casings in the United States and Canada. If the transaction is not completed in the prescribed time, the Commission may appoint a trustee to divest the assets.

Appearances

For the Commission: *Ronald B. Rowe* and *Joseph S. Brownman*.

For the respondents: *Bertram M. Kantor, Wachtell, Lipton, Rosen & Katz*, New York, N.Y. and *James A. Rhodes, ICA International*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Devro International plc ("Devro International") and Teepak International, Inc. ("Teepak") have entered into an agreement in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that the terms of such agreement, were they to be satisfied, would result in a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT DEVRO INTERNATIONAL PLC

1. Respondent Devro International is a corporation organized, existing, and doing business under and by virtue of the laws of