

## IN THE MATTER OF

## SCHNUCK MARKETS, INC.

MODIFYING 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-3585. Consent Order, June 8, 1995--Modifying Order, June 2, 1998*

This order reopens a 1995 consent order -- that required the respondent to divest 24 stores to Commission-approved purchasers -- and this order modifies the consent order by permitting Schnuck to donate used equipment from its store in Granite City, Illinois, for use in the St. Louis Community College Culinary Studies Program, and this order also substitutes the prior approval requirement with prior notification and waiting period requirements.

## ORDER REOPENING AND MODIFYING ORDER

On March 6, 1998, Schnuck Markets, Inc. ("Schnuck"), the respondent named in the consent order issued by the Commission on June 8, 1995, in Docket No. C-3585, filed its "Petition to Reopen and Modify Consent Order" ("Petition"), seeking to modify the order to divest and to cease and desist from certain acts and practices. For the reasons stated below, the Commission has determined to grant the Petition.

The order requires respondent to divest 24 supermarkets located in the St. Louis MSA. Schnuck has completed the divestitures required by the order. In addition to the divestiture requirements, the order requires Schnuck to refrain from certain conduct. Paragraph IV of the order requires Schnuck for ten years to obtain the Commission's approval before acquiring any supermarkets, or any stock in any firm owning or operating a supermarket, in the St. Louis MSA. Paragraph V.B of the order prohibits Schnuck from removing any equipment from a supermarket owned by Schnuck prior to a sale, sublease, assignment or change in occupancy, except for replacement or relocation of such equipment in or to another supermarket owned by Schnuck.

Schnuck made its request to modify the order under the public interest standard. It did not assert any change of fact or law. Schnuck has received a request from the St. Louis Community College ("College") for a donation of used equipment for use in its Culinary Studies Program. Schnuck has equipment that would meet the needs of the College at its Granite City store, located in Granite City,

Illinois, which has been closed since the June, 1995 acquisition of assets of National Holdings, Inc. Exhibit 2 to the Petition contains the request. Exhibit 3 contains a list of the equipment to be donated. Schnuck requested that the order be modified to allow it to donate the requested equipment.

Schnuck also requested that the prior approval requirements of paragraph IV of the order be converted to prior notice, pursuant to the Commission's June 21, 1995, Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions ("Prior Approval Policy Statement").<sup>1</sup> Schnuck states that there is nothing to rebut the Prior Approval Policy Statement's presumption that the prior approval provision should be modified.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement.<sup>2</sup> The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements."<sup>3</sup>

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."<sup>4</sup>

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<sup>1</sup> 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

<sup>2</sup> Prior Approval Policy Statement at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order."<sup>5</sup> The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement.<sup>6</sup>

The Commission has determined that it is in the public interest to reopen and modify the order as requested by Schnuck. There does not appear to be any reason to retain paragraph V.B as written to preclude the donation proposed by Schnuck.<sup>7</sup> Paragraph V.B was designed to make it more likely that any supermarket closed by Schnuck would be reopened as a supermarket by someone else. However, nothing in the order requires Schnuck to sell or lease any stores that it closes, and the Granite City store has been closed for almost three years. The possible detrimental impact on Schnuck's positive public image, and the public benefits to the College, outweigh the seemingly slight possibility that someone would want to acquire the Granite City store as a supermarket only if the to-be-donated equipment were still in the store. Further, the State of Illinois, with which Schnuck has agreed to make the Granite City store available to supermarket operators, does not object to the donation. Therefore the reasons to modify the order outweigh the reasons to retain it as written.

Additionally, paragraph IV of the order is modified to replace the prior approval requirement with prior notice. Nothing has been shown to rebut the presumption that the order should be modified.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened; and

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<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

<sup>7</sup> Schnuck has not requested that the order be modified to allow all donations to charity, but only this particular donation.

*It is further ordered*, That paragraph IV of the order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

*It is further ordered*, That, for a period commencing on the date this order becomes final and continuing for ten (10) years thereafter, Schnuck shall cease and desist from acquiring, without Prior Notification to the Commission (as defined below), directly or indirectly, through subsidiaries or otherwise, any supermarket, including any facility that has been operated as a supermarket within six (6) months of the date of the offer by Schnuck to purchase the facility, or any interest in a supermarket, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a supermarket in the St. Louis MSA.

Provided, however, that this paragraph IV shall not be deemed to require Prior Notification to the Commission for the construction of new facilities by Schnuck or the purchase or lease by Schnuck of a facility that has not been operated as a supermarket at any time during the six (6) month period immediately prior to the purchase or lease by Schnuck in those locations.

"Prior Notification to the Commission" required by paragraph IV 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 Form"), 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 Schnuck and not of any other party to the transaction. Schnuck shall provide the Notification Form to the Commission at least thirty (30) days prior to consummating any such transaction (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, Schnuck shall not consummate the transaction until twenty (20) 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. Schnuck shall not be required to provide Prior Notification to the Commission pursuant to this order 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; and

*It is further ordered,* That paragraph V.B of the order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

Respondent shall not remove any equipment from a supermarket owned or operated by respondent in the St. Louis MSA 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 respondent in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket. Provided, however, that nothing in this provision shall prevent respondent from transferring equipment in response to the October 7, 1996, request from St. Louis Community College, including equipment from its store at 34707 Nameoki Street, Granite City, Illinois.

Commissioner Azcuenaga not participating.

Complaint

125 F.T.C.

IN THE MATTER OF

CIVIC DEVELOPMENT GROUP, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3810. Complaint, June 5, 1998--Decision, June 5, 1998*

This consent order prohibits, among other things, the two organizations and the officers of each organization from engaging in deceptive charitable solicitations on behalf of local law enforcement agencies. In addition, the consent order requires both organizations to set up an education and monitoring program for employees.

*Appearances*

For the Commission: *Mona Spivack and Eileen Harrington.*

For the respondents: *Errol Copelivitz, Copelivitz & Canter,*  
Kansas City, MO.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Civic Development Group, Inc. and Community Network, Inc., corporations, and Scott Pasch and David Keezer, individually and as officers of Civic Development Group, Inc., and Richard McDonnell, individually and as an officer of Community Network, Inc. ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Civic Development Group, Inc. ("CDG") is a New Jersey corporation with its principal office or place of business at 655 Florida Grove Road, Hopelawn, New Jersey. By itself or in concert with others, CDG controls the acts or practices of Community Network, Inc., including the acts or practices alleged in this complaint.
2. Respondent Community Network, Inc. ("CNI") is a Delaware corporation with its principal office or place of business at 655 Florida Grove Road, Hopelawn, New Jersey.
3. Respondent Scott Pasch is an officer of CDG. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of CDG and CNI, including the acts or practices alleged in this complaint. His principal office or place of business is 655 Florida Grove Road, Hopelawn, New Jersey.