

IN THE MATTER OF

ALBERTSON'S, 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-3838. Complaint, Dec. 8, 1998--Decision, Dec. 8, 1998

This consent order, among other things, requires the respondents to divest 15 supermarkets, eight in Montana and seven in Wyoming. In addition, the consent order requires the respondents to provide written notification to the Commission prior to acquiring any facility that has operated as a supermarket in the designated areas.

Participants

For the Commission: *James Fishkin, Joseph Brownman, Phillip Broyles, William Baer, William Layher, and Jonathan Baker.*

For the respondents: *Christopher MacAvoy, Collier, Shannon, Rill & Scott, Washington, D.C. and Henry Thumann, O'Melveny & Myers, 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 respondent Albertson's, Inc. ("Albertson's") and respondent Locomotive Acquisition Corporation ("Locomotive"), a wholly-owned subsidiary of respondent Albertson's, have entered into an agreement to acquire all of the outstanding shares of respondent Buttrey Food and Drug Store Company, Inc. ("Buttrey"), a corporation of which a majority of the voting securities is owned by respondent FS Equity Partners II, L.P. ("FS Equity Partners"), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, that such acquisition, if consummated, would 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, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

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Complaint

DEFINITION

1. For the purposes of this complaint:

"*Supermarket*" means a full-line retail grocery store with annual sales of at least \$2 million 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.

ALBERTSON'S, INC.

2. Respondent Albertson's 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 East Parkcenter Boulevard, Boise, Idaho. Albertson's had \$14.7 billion in total sales for the fiscal year ending January 31, 1998.

3. Respondent Albertson's is, and at all times relevant herein has been, engaged in the operation of supermarkets in 23 Western, Midwestern, and Southern states.

4. Respondent Albertson's 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.

LOCOMOTIVE ACQUISITION CORPORATION

5. Respondent Locomotive 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 c/o Albertson's, Inc., East Parkcenter Boulevard, Boise, Idaho.

6. Respondent Locomotive is, and at all times relevant herein has been, a wholly-owned subsidiary of Albertson's established to acquire the outstanding shares of Buttrey.

7. Respondent Locomotive 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.

BUTTREY FOOD AND DRUG STORES COMPANY

8. Respondent Buttrey 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 601 6th Street, S.W., Great Falls, Montana. Buttrey had \$391.4 million in total sales for the fiscal year ending January 31, 1998.

9. Respondent Buttrey is, and at all times relevant herein has been, engaged in the operation of supermarkets in Montana, Wyoming, and North Dakota.

10. Respondent Buttrey 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.

FS EQUITY PARTNERS II, L.P.

11. Respondent FS Equity Partners is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 11100 Santa Monica Boulevard, Suite 1900, Los Angeles, California.

12. Respondent FS Equity Partners is, and at all times relevant herein has been, the owner of a majority of the voting securities of Buttrey.

13. Respondent FS Equity Partners 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 partnership 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

14. On or about January 19, 1998, Albertson's and Locomotive entered into an Agreement and Plan of Merger with Buttrey to acquire

through a cash tender offer all of the outstanding common stock of Buttrey for \$15.50 per share. The total value of the proposed acquisition is approximately \$174 million.

TRADE AND COMMERCE

15. The relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition described herein is the retail sale of food and grocery products in supermarkets.

16. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")) as well as a deep inventory of those SKUs. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

17. Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices on the prices of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not significantly change their food and grocery prices in response to prices at other types of stores. 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.

18. Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets because they operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

19. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the areas in and near the following cities and towns:

- | | |
|--------------------------|---------------------------|
| a. Billings, Montana; | g. Casper, Wyoming; |
| b. Bozeman, Montana; | h. Cheyenne, Wyoming; |
| c. Butte, Montana; | i. Cody, Wyoming; |
| d. Great Falls, Montana; | j. Gillette, Wyoming; and |
| e. Helena, Montana; | k. Laramie, Wyoming. |
| f. Missoula, Montana; | |

MARKET STRUCTURE

20. The relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios. The acquisition would substantially increase concentration in each market. Albertson's and Buttrely would have a combined market share of more than 35% in each geographic market. The post-acquisition HHIs in the geographic markets range from 2,264 to 10,000.

ENTRY CONDITIONS

21. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country.

ACTUAL COMPETITION

22. Albertson's and Buttrely are actual and direct competitors in the relevant markets.

EFFECTS

23. 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, 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 Albertson's and supermarkets owned or controlled by Buttrely;
- b. By increasing the likelihood that Albertson's will unilaterally exercise market power; and
- 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

24. The Agreement and Plan of Merger between Albertson's and Locomotive to acquire all of the outstanding stock of Buttrey violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the proposed acquisition 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.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of Buttrey Food and Drug Store Company ("Buttrey"), a majority of which is owned by FS Equity Partners II, L.P. ("FS Equity Partners"), by Albertson's, Inc. ("Albertson's") and Locomotive Acquisition Corporation ("Locomotive") (collectively, "respondents"), and 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, 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 Albertson's, 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 250 East Parkcenter Boulevard, Boise, Idaho.

2. Respondent Locomotive Acquisition Corporation 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 c/o Albertson's, Inc., 250 East Parkcenter Boulevard, Boise, Idaho.

3. Respondent Buttrey Food and Drug Store Company 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 601 6th Street, S.W., Great Falls, Montana.

4. Respondent FS Equity Partners II, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 11100 Santa Monica Boulevard, Suite 1900, Los Angeles, California.

5. 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. "*Albertson's*" means Albertson's, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Albertson's, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Albertson's includes Locomotive and, after consummation of the Acquisition, includes Buttrey.

B. "*Locomotive*" means Locomotive Acquisition Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Locomotive, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Locomotive is a wholly-owned subsidiary of Albertson's.

C. "*Buttrey*" means Buttrey Food and Drug Store Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Buttrey, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "*FS Equity Partners*" means FS Equity Partners II, L.P., its predecessors, successors, assigns, subsidiaries, divisions, groups and affiliates controlled by FS Equity Partners and their respective general partners, officers, employees, agents, representatives, and the respective successors and assigns of each. FS Equity Partners owns a majority of the voting securities of Buttrey.

E. "*Respondents*" means Albertson's, Locomotive, Buttrey, and FS Equity Partners, individually and collectively.

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

G. "*Acquisition*" means Albertson's and Locomotive's proposed acquisition of all of the outstanding voting securities of and merger with Buttrey pursuant to the Agreement and Plan of Merger dated January 19, 1998.

H. "*Assets To Be Divested*" means the Supermarkets identified in Schedule A and Schedule B of this order and all assets, leases, properties, permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the respondents' trade marks, trade dress, service marks, or trade names.

I. "*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.

J. "*Smith's*" means Smith's Food & Drug Centers, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1550 South Redwood Road, Salt Lake City, Utah. Smith's is a wholly-owned subsidiary of Fred Meyer, Inc.

K. "*Supervalu*" means Supervalu Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 11840 Valley View Road, Eden Prairie, Minnesota; and Supervalu Holdings, Inc. a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 11840 Valley View Road, Eden Prairie, Minnesota. Supervalu Holdings, Inc. is a wholly-owned subsidiary of Supervalu Inc.

L. "*Smith's Agreement*" means the Purchase Agreement between Smith's and Albertson's executed on August 10, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Smith's of the Schedule A Assets To Be Divested.

M. "*Supervalu Agreement*" means the Purchase Agreement between Supervalu and Albertson's executed on August 12, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Supervalu of the Schedule B Assets To Be Divested.

N. "*Acquirer(s)*" means Smith's and Supervalu, and/or the entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this order, individually and collectively.

O. "*Third Party Consents*" means all consents from any other person, including all landlords, that are necessary to effect the complete transfer to the Acquirer(s) of the assets required to be divested pursuant to this order.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, the Schedule A Assets To Be Divested to:

1. Smith's, in accordance with the Smith's Agreement (which agreement shall not be construed to vary or contradict the terms of

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this order or the Asset Maintenance Agreement) dated August 10, 1998, no later than

a. Ten (10) days after the date on which the Acquisition is consummated, or

b. Four (4) months after the date respondents signed the Agreement Containing Consent Order,

whichever is earlier; or

2. An Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, within three (3) months after the date on which this order becomes final.

Respondents shall obtain all required Third Party Consents prior to the closing of the Smith's Agreement or any other agreement pursuant to which the Schedule A Assets To Be Divested are divested to an Acquirer.

B. Respondents shall divest, absolutely and in good faith, the Schedule B Assets To Be Divested to:

1. Supervalu, in accordance with the Supervalu Agreement (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement) dated August 12, 1998, no later than

a. Ten (10) days after the date on which the Acquisition is consummated, or

b. Four (4) months after the date respondents signed the Agreement Containing Consent Order,

whichever is earlier; or

2. An Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, within three (3) months after the date on which this order becomes final.

Respondents shall obtain all required Third Party Consents prior to the closing of the Supervalu Agreement or any other agreement pursuant to which the Schedule B Assets To Be Divested are divested to an Acquirer.

C. A condition of approval by the Commission of the divestiture transaction described in paragraph II.B shall be a written agreement by Supervalu that it will not sell or lease the Schedule B Assets To Be Divested, for a period of three (3) years from the date on which this order becomes final, directly or indirectly, through subsidiaries, partnerships or otherwise, without the prior approval of the Commission.

D. The purpose of the divestitures 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.

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 the time required by paragraph II of this order, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(I) of the Federal Trade Commission Act, 15 U.S.C. 45(I), 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(I) 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 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 each divestiture 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 the period for each divestiture only two (2) times.

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 expeditiously 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 Albertson's 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 divestitures 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 Albertson's, 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.

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 each divestiture required by this order.

11. The trustee may also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Assets To Be Divested.

12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

13. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish each divestiture required by this order.

IV.

It is further ordered, That:

A. Pending divestiture of the Assets To Be Divested pursuant to this order, respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of Assets To Be Divested except for ordinary wear and tear.

B. 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.

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Albertson's 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 Cascade, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone counties in Montana, and Albany, Campbell, Laramie, Natrona, and Park counties in Wyoming.

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 Cascade, Gallatin, Lewis and

Clark, Missoula, Silver Bow, and Yellowstone counties in Montana, and Albany, Campbell, Laramie, Natrona, and Park counties in Wyoming.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Albertson's or the acquisition of or leasing of a facility that has not operated as a supermarket within six (6) months of Albertson's 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 Albertson's and not of any other party to the transaction. Albertson's shall provide the Notification to the Commission at least thirty 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 or documentary material (within the meaning of 16 CFR 803.20), Albertson's shall not consummate the transaction until twenty days after submitting such additional information or documentary material. 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.

VI.

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

A. Albertson's 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 January 1, 1998, in

Cascade, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone counties in Montana, and Albany, Campbell, Laramie, Natrona, and Park counties in Wyoming to operate a supermarket at that site if such supermarket was formerly owned or operated by Albertson's.

B. Albertson's shall not remove any equipment from a supermarket owned or operated by Albertson's in Cascade, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone counties in Montana, and Albany, Campbell, Laramie, Natrona, and Park counties in Wyoming, 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 Albertson's in the ordinary course of business, or except as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VII.

It is further ordered, That:

A. Within thirty (30) days after the date respondents signed the Agreement Containing Consent Order and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II, III, and IV 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, III, and IV 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, III, and IV 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 (1) year 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, Albertson's shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VIII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate 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.

IX.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondents shall permit any duly authorized representative 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 respondents relating to any matters contained in this order; and

B. Upon five (5) days' 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.

X.

It is further ordered, That, upon consummation of the Acquisition, the obligations of respondent FS Equity Partners under this order shall terminate.

SCHEDULE A

1. The following supermarket located in Cascade County, Montana:
 - a. Buttrey store no. 3925 operating under the "Buttrey Big Fresh" trade name, which is located at 1601 Marketplace Drive, Great Falls, MT 59404.
2. The following supermarket located in Gallatin County, Montana:
 - a. Buttrey store no. 3934 operating under the "Buttrey Big Fresh" trade name, which is located at 2825 West Main Street, Bozeman, MT 59715.
3. The following supermarket located in Lewis and Clark County, Montana:

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- a. Buttrey store no. 3824 operating under the "Buttrey Fresh Foods" trade name, which is located at 1000 Boulder Avenue, Helena, MT 59601.
4. The following supermarket located in Missoula County, Montana:
 - a. Albertson's store no. 226 operating under the "Albertson's" trade name, which is located at 1906 Brooks Street, Missoula, MT 59801.
5. The following supermarkets located in Silver Bow County, Montana:
 - a. Buttrey store no. 3930 operating under the "Buttrey Fresh Foods" trade name, which is located at 3745 Harrison Avenue, Butte, MT 59701; and
 - b. Buttrey store no. 3985 operating under the "Buttrey Fresh Foods" trade name, which is located at 600 South Excelsior Street, Butte, MT 59701.
6. The following supermarkets located in Yellowstone County, Montana:
 - a. Albertson's store no. 209 operating under the "Albertson's" trade name, which is located at 1633 Grand Avenue, Billings, MT 59102; and
 - b. Albertson's store no. 232 operating under the "Albertson's" trade name, which is located at 1531 Main Street, Billings, MT 59101.
7. The following supermarket located in Albany County, Wyoming:
 - a. Albertson's store no. 805 operating under the "Albertson's" trade name, which is located at 1209 15th Street, Laramie, WY 82070.
8. The following supermarket located in Campbell County, Wyoming:
 - a. Buttrey store no. 3855 operating under the "Buttrey Fresh Foods" trade name, which is located at 906 Camel Drive, Gillette, WY 82716.
9. The following supermarkets located in Laramie County, Wyoming:
 - a. Albertson's store no. 863 operating under the "Albertson's" trade name, which is located at 3745 E. Lincoln Way, Cheyenne, WY 82001; and
 - b. Albertson's store no. 1804 operating under the "Max" trade name, which is located at 1600 E. Pershing Blvd., Cheyenne, WY 82001.
10. The following supermarket located in Park County, Wyoming:
 - a. Buttrey store no. 3941 operating under the "Buttrey Fresh Foods" trade name, which is located at 1526 Rumsey Avenue, Cody, WY 82414.

SCHEDULE B

1. The following supermarkets located in Natrona County, Wyoming:
 - a. Buttrey store no. 3872 operating under the "Buttrey Fresh Foods" trade name, which is located at 2101 East 12th Street, Casper WY 82601; and
 - b. Buttrey store no. 3878 operating under the "Buttrey Fresh Foods" trade name, which is located at 4075 Cy Avenue, Casper WY 82601.

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between Albertson's, Inc. ("Albertson's"), 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 250 East Parkcenter Boulevard, Boise, Idaho; Locomotive Acquisition Corporation ("Locomotive"), 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 c/o Albertson's, Inc., 250 East Parkcenter Boulevard, Boise, Idaho; Buttrey Food and Drug Store Company ("Buttrey"), 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 601 6th Street, S.W., Great Falls, Montana; FS Equity Partners II, L.P. ("FS Equity Partners"), a limited partnership organized, existing, and doing business under and by the virtue of the laws of the State of California, with its office and principal place of business located at 11100 Santa Monica Boulevard, Suite 1900, Los Angeles, California (collectively "Proposed Respondents"); 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, Albertson's and Locomotive, a wholly-owned subsidiary of Albertson's, pursuant to an Agreement and Plan of Merger dated January 19, 1998, agreed to acquire all of the outstanding stock of Buttrey, of which a majority of the voting securities are owned by FS Equity Partners (hereinafter "the proposed Acquisition"); and

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

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("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 either withdraw such acceptance or issue and serve its Complaint and its Decision and final Order in disposition of the proceeding 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 defined in the attached Consent Order (hereinafter referred to as "Assets" or "Supermarket(s)") during the period prior to their divestiture, any divestiture resulting from the Consent Order or from any other administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending their divestiture pursuant to the terms of the Consent Order, in order to remedy any anticompetitive effects of the proposed Acquisition; and

Whereas, Proposed Respondents' entering into this Agreement shall in no way be construed as an admission by Proposed Respondents that the proposed Acquisition is illegal; and

Whereas, Proposed Respondents 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 at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, the Parties agree as follows:

TERMS OF AGREEMENT

1. Proposed Respondents 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. Proposed Respondents agree that from the date Proposed Respondents sign this Agreement until the earlier of the dates listed

in subparagraphs 2.a and 2.b, Proposed Respondents will comply with the provisions of this Agreement:

a. 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. The date all of the divestitures required by the Consent Order have been completed.

3. Proposed Respondents shall maintain the viability, marketability, and competitiveness of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall they cause the Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the marketability, viability, or competitiveness of the Assets. Proposed Respondents shall conduct or cause to be conducted the business of the Supermarkets in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with each Supermarket's suppliers, customers, employees and others having business relations with the Supermarket, in the ordinary course of the Supermarkets' business and in accordance with past practice. Proposed Respondents shall not terminate the operation of any Supermarket. Proposed Respondents shall continue to maintain the inventory of each Supermarket at levels and selections (*e.g.*, stock-keeping units) consistent with those maintained by such Proposed Respondent(s) at such Supermarket in the ordinary course of business consistent with past practice. Proposed Respondents shall use best efforts to keep the organization and properties of each of the Supermarkets intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with each Supermarket. Included in the above obligations, Proposed Respondents shall, without limitation:

a. Maintain operations and departments and not reduce hours at each Supermarket;

b. Not transfer inventory from any Supermarket other than in the ordinary course of business consistent with past practice;

c. Make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations, in each case in a manner consistent with past practice;

- d. Maintain each Supermarket's books and records;
 - e. Not display any signs or conduct any advertising (including direct mailing, point-of-purchase coupons, etc.) that indicates that any Proposed Respondent is moving its operations to another location, or that indicates a Supermarket will close;
 - f. Not conduct any "going out of business," "close-out," "liquidation" or similar sales or promotions at or relating to any Supermarket; and
 - g. Not change or modify in any material respect the existing advertising practices, programs and policies for any Supermarket, other than changes in the ordinary course of business consistent with past practice for supermarkets of the Proposed Respondents not being closed or relocated.
4. Should the Commission seek in any proceeding to compel Proposed Respondents to divest themselves of the Assets or to seek any other injunctive or equitable relief, Proposed Respondents 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. Proposed Respondents also waive all rights to contest the validity of this Agreement.
5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with five (5) days' notice to Proposed Respondents and to their principal office(s), Proposed Respondents shall permit any duly authorized representative or representatives of the Commission:
- a. Access during the office hours of Proposed Respondents, 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 Proposed Respondents relating to compliance with this Agreement; and
 - b. To interview officers or employees of Proposed Respondents, who may have counsel present, regarding any such matters.
6. Upon consummation of the Acquisition, the obligations of Proposed Respondent FS Equity Partners under this Agreement shall terminate.
7. This Agreement shall not be binding on the Commission until approved by the Commission.

Complaint

126 F.T.C.

IN THE MATTER OF

MONTGOMERY WARD CREDIT CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3839. Complaint, Dec. 11, 1998--Decision, Dec. 11, 1998*

This consent order prohibits, among other things, two corporations, that extend credit to consumers, from misrepresenting that any reaffirmation agreement has been or will be filed with the bankruptcy court, or that any reaffirmation agreement is binding.

Participants

For the Commission: *John C. Hallerud and C. Steven Baker.*

For the respondents: *Max Shulman and Elizabeth Grayer,*
Cravath, Swaine & Moore, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Montgomery Ward Credit Corporation, a corporation, and General Electric Capital Corporation, a corporation ("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 Montgomery Ward Credit Corporation is a Delaware corporation with its principal office or place of business at 4246 South Riverboat Road, Taylorsville, Utah.

2. Respondent General Electric Capital Corporation is a New York corporation with its principal executive office or place of business at 260 Long Ridge Road, Stamford, Connecticut.

3. Respondents are engaged in, among other things, the offering and servicing of credit cards, including private label credit cards. In the course and conduct of their businesses, respondents have regularly extended credit (hereinafter referred to as "consumer credit accounts").

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.