

Complaint

127 F.T.C.

IN THE MATTER OF

KONINKLIJKE AHOLD NV, 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-3861. Complaint, April 5, 1999--Decision, April 5, 1999

This consent order, among other things, permits Koninklijke Ahold nv ("Ahold"), a Dutch firm, to acquire Giant Food Inc. ("Giant"), a Maryland-based supermarket chain, and requires Ahold to divest ten supermarkets in eight geographic markets within 20 days after Ahold acquires Giant or four months after the date on which the companies sign the agreement containing consent order, whichever is earlier.

Participants

For the Commission: *James Fishkin, Richard Liebeskind, Phillip Broyles, Kenneth Libby, Daniel Ducore, William Baer, Daniel O'Brien, Malcolm Coate and Daniel Hosken.*

For the respondents: *Mark Gidley, White & Case, and Glenn Mitchell, Stein, Mitchell & Mezines, Washington, D.C.*

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 ("Commission"), having reason to believe that respondent Koninklijke Ahold nv ("Ahold") has entered into an agreement to acquire all of the Class AC voting securities of respondent Giant Food Inc. ("Giant") held by respondent The 1224 Corporation ("1224"), 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:

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.

KONINKLIJKE AHOLD NV

2. Respondent Ahold is a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands.

3. Respondent Ahold, through Ahold USA, Inc., BI-LO, Inc., Giant Food Stores, Inc., The Stop & Shop Companies, Inc., and Top's Market, Inc., its wholly-owned domestic subsidiaries, is, and at all times relevant herein has been, engaged in the operation of supermarkets in Connecticut, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia. Ahold and its wholly-owned domestic subsidiaries operate approximately 880 supermarkets in these states under the BI-LO, Edwards, Finast, Giant, Martin's, Stop & Shop, and Top's trade names. Ahold had \$14.29 billion in total United States sales for the fiscal year that ended on December 28, 1997.

4. Respondent Ahold 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.

GIANT FOOD INC.

5. Respondent Giant 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 6300 Sheriff Road, Landover, Maryland.

6. Respondent Giant is, and at all times relevant herein has been, engaged in the operation of supermarkets in Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and the District of Columbia. Giant operates approximately 179 supermarkets under the Giant and Super G trade names. Giant had \$4.23 billion in total sales for the fiscal year that ended on February 28, 1998.

7. Respondent Giant 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.

THE 1224 CORPORATION

8. Respondent 1224 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 6300 Sheriff Road, Landover, Maryland.

9. Respondent 1224 owns all of the Class AC voting stock of Giant, which elects five of the nine directors of Giant.

10. Respondent 1224 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

11. On or about May 19, 1998, Ahold and 1224 entered into a Stock Purchase Agreement pursuant to which Ahold will acquire all of the Class AC voting stock of Giant from 1224 and all of the Class A non-voting common stock of Giant for \$43.50 per share for cash. The Class AC voting stock elects five of the nine directors of Giant. Separately, Ahold is acquiring from J Sainsbury USA Holdings, Inc., a subsidiary of J Sainsbury, plc, a United Kingdom corporation, all of the Class AL voting stock of Giant, which elects four of the nine directors of Giant. The total value of the proposed acquisition of the Class AC and Class AL voting stock is approximately \$105.4 million. The total value of the proposed acquisition of the Class A non-voting common stock is approximately \$2.6 billion.

TRADE AND COMMERCE

12. 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.

13. 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 non-food products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

14. 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.

15. 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. 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.

16. 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. Bel Air, Maryland; | e. Hilltown, Pennsylvania; |
| b. Eldersburg, Maryland; | f. Norristown, Pennsylvania; |
| c. Frederick, Maryland; | g. Warminster, Pennsylvania; and |
| d. Westminster, Maryland; | h. Yardley, Pennsylvania. |

MARKET STRUCTURE

17. The Bel Air, Maryland, Eldersburg, Maryland, Frederick, Maryland, Westminster, Maryland, Norristown, Pennsylvania, Warminster, Pennsylvania, and Yardley, Pennsylvania, 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. Ahold and Giant would have a combined market share of near or greater than 35% in each geographic market. The post-acquisition HHIs in the geographic markets range from 3,008 to 6,716.

18. The Hilltown, Pennsylvania relevant market is highly concentrated. The market will remain highly concentrated as a result of this acquisition, and will be significantly more concentrated than it would have been but for this acquisition.

ENTRY CONDITIONS

19. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant markets.

ACTUAL COMPETITION

20. Ahold and Giant are actual and direct competitors in and near Bel Air, Maryland, Eldersburg, Maryland, Frederick, Maryland, Westminster, Maryland, Norristown, Pennsylvania, Warminster, Pennsylvania, and Yardley, Pennsylvania.

ACTUAL POTENTIAL COMPETITION

21. Ahold is an actual potential competitor against Giant in and near Hilltown, Pennsylvania. But for the acquisition, Ahold and Giant would have become direct competitors in the Hilltown, Pennsylvania, relevant market. The acquisition will eliminate that competition.

EFFECTS

22. 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 Ahold and supermarkets owned or controlled by Giant;
- b. By eliminating actual potential competition between supermarkets owned or controlled by Ahold and supermarkets owned or controlled by Giant;
- c. By increasing the likelihood that Ahold will unilaterally exercise market power; and
- d. 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 Stock Purchase Agreement between Ahold and 1224, pursuant to which Ahold will acquire all of the Class AC voting stock of Giant from 1224 and the Class A non-voting common stock of Giant, 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 by Koninklijke Ahold nv ("Ahold") of all of the voting securities of Giant Food Inc. ("Giant") held by The 1224 Corporation ("1224") (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, 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 Ahold is a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands.

2. Respondent Giant 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 6300 Sheriff Road, Landover, Maryland.

3. Respondent 1224 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 6300 Sheriff Road, Landover, Maryland.

4. 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. "*Ahold*" means Koninklijke Ahold nv, its directors, officers, employees, agents, representatives, predecessors, successors, and

assigns; its subsidiaries, divisions, groups and affiliates controlled by Ahold, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Ahold, after consummation of the Acquisition, includes Giant.

B. "*Giant*" means Giant Food Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Giant, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. The class AC voting stock, which elects five of the nine directors of Giant, is owned by 1224.

C. "*1224*" means The 1224 Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by 1224, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. 1224 owns the class AC voting stock, which elects five of the nine directors of Giant.

D. "*Respondents*" means Ahold, Giant, and 1224 individually and collectively.

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

F. "*Acquisition*" means Ahold's acquisition of the outstanding voting securities of and merger with Giant pursuant to the Stock Purchase Agreement dated May 19, 1998.

G. "*Assets To Be Divested*" means the Supermarkets identified in Schedule A, Schedule B, Schedule C, Schedule D, and Schedule E 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.

H. "*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.

I. "*Fleming*" means Fleming Companies, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal place of business located at 6301 Waterford Boulevard, Oklahoma City, Oklahoma.

J. "*Fleming Agreement*" means the Purchase Agreement between Fleming and Ahold executed on September 12, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Fleming of the Schedule A Assets To Be Divested.

K. "*Frederick County Foods*" means Frederick County Foods LLC, a limited liability corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal place of business located at 835 West Hillcrest Road, Hagerstown, Maryland.

L. "*Frederick County Foods Agreement*" means the Purchase Agreement between Frederick County Foods and Ahold executed on September 11, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Frederick County Foods of the Schedule B Assets To Be Divested.

M. "*Richfood*" means Richfood Holdings, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business located at 4860 Cox Road, Suite 300, Glen Allen, Virginia.

N. "*Food-A-Rama*" means Food-A-Rama, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business located at 5483 Baltimore National Pike, Baltimore, Maryland. Food-A-Rama is a wholly-owned subsidiary of Richfood. Food-A-Rama operates supermarkets under the Metro Food Markets trade name.

O. "*Richfood Agreement*" means the Purchase Agreement between Food-A-Rama and Ahold executed on September 14, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Richfood of the Schedule C Assets To Be Divested.

P. "*Safeway*" means Safeway 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 5918 Stoneridge Mall Road, Pleasanton, California.

Q. "*Safeway Agreement*" means the Purchase Agreement between Safeway and Giant executed on September 12, 1998, and all

subsequent amendments thereto, for the divestiture by respondents to Safeway of the Schedule D Assets To Be Divested.

R. "*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.

S. "*Supervalu Agreement*" means the Purchase Agreement between Supervalu and Giant executed on September 14, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Supervalu of the Schedule E Assets To Be Divested.

T. "*Acquirer(s)*" means Fleming, Frederick County Foods, Richfood, Safeway, Supervalu and/or any other entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this order, individually and collectively.

U. "*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 To Be Divested.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, the Schedule A Assets To Be Divested to Fleming, in accordance with the Fleming Agreement dated September 12, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule A Assets to Fleming pursuant to the Fleming Agreement prior to the date the order becomes final, and if, at the time the Commission

determines to make the order final, the Commission notifies respondents that Fleming is not an acceptable acquirer or that the Fleming Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Fleming and shall divest the Schedule A Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule A Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Respondents shall obtain all required Third Party Consents prior to the closing of the Fleming 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 Frederick County Foods, in accordance with the Frederick County Foods Agreement dated September 11, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement; provided, however, that pursuant to the Frederick County Foods Agreement, respondents may assign their leasehold interests in the supermarkets to Supervalu, which shall sublease the Supermarkets to Frederick County Foods), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule B Assets to Frederick County Foods pursuant to the Frederick County Foods Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Frederick County Foods is not an acceptable acquirer or that the Frederick County Foods Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Frederick County Foods and shall divest the Schedule B Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule B Assets only to an acquirer that receives the prior approval of the

Commission and only in a manner that receives the prior approval of the Commission.

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

C. Respondents shall divest, absolutely and in good faith, the Schedule C Assets To Be Divested to Richfood, in accordance with the Richfood Agreement dated September 14, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule C Assets to Richfood pursuant to the Richfood Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Richfood is not an acceptable acquirer or that the Richfood Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Richfood and shall divest the Schedule C Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule C Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

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

D. Respondents shall divest, absolutely and in good faith, the Schedule D Assets To Be Divested to Safeway, in accordance with the Safeway Agreement dated September 12, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule D Assets to Safeway pursuant to the Safeway Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Safeway is not an acceptable acquirer or that the Safeway Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Safeway and shall divest the Schedule D Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule D Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

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

E. Respondents shall divest, absolutely and in good faith, the Schedule E Assets To Be Divested to Supervalu, in accordance with the Supervalu Agreement dated September 14, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule E Assets to Supervalu pursuant to the Supervalu Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Supervalu is not an acceptable acquirer or that the Supervalu Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Supervalu

and shall divest the Schedule E Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule E Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

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 E Assets To Be Divested are divested to an Acquirer.

F. 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(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 receipt of 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 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 no more than two (2) additional periods.

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 Ahold 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 Ahold, 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. In the event that any Acquirer is unable to take or keep possession of any Asset To Be Divested, the trustee may divest all other assets of the respondents in that relevant section of the country, as alleged in paragraph 16 of the complaint, to remedy the anticompetitive effects alleged in the complaint.

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, Ahold shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the Commission:

A. Acquire any ownership or leasehold interest in any facility that has operated as a Supermarket within six (6) months prior to the date of such proposed acquisition in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania.

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 prior to such proposed acquisition in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Ahold or the acquisition of or leasing of a facility that has not operated as a Supermarket within six (6) months prior to Ahold'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 Ahold and not of any other party to the transaction. Ahold 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), Ahold shall not consummate the transaction until twenty days after substantially complying with such request. 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. Ahold 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 Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania, to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Ahold.

B. Ahold shall not remove any fixtures or equipment from a property owned or leased by Ahold in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania, that is no longer in operation as a Supermarket, except (1) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; or (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Ahold.

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, Ahold 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 with five (5) days' notice to respondents, 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. 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 1224 under this order shall terminate.

Schedule A

(Supermarket Divested to Fleming)

The following supermarket located in Harford County, Maryland:

1. Ahold store no. 114 operating under the "Martin's Food Market" trade name, which is located at 550 West McPhail Road, Bel Air, Maryland 21014.

Schedule B

(Supermarkets Divested to Frederick County Foods)

The following supermarkets located in Frederick County, Maryland:

1. Ahold store no. 40 operating under the "Martin's Food Market" trade name, which is located at 66 Waverly Drive in the Frederick Towne Mall Shopping Center, Frederick, Maryland 21701; and
2. Ahold store no. 96 operating under the "Martin's Food Market" trade name, which is located at 1305 West 7th Street in the Frederick Shopping Center, Frederick, Maryland 21701.

Schedule C

(Supermarket Divested to Richfood)

The following supermarket located in Carroll County, Maryland:

1. Ahold store no. 36 operating under the "Martin's Food Market" trade name, which is located at 551 Jermor Lane, Westminster, Maryland 21157.

Schedule D

(Supermarket Divested to Safeway)

The following supermarket located in Carroll County, Maryland:

1. Giant store no. 238 operating under the "Giant" trade name, which is located at 1313 Londontowne Boulevard in the Londontowne Square Shopping Center, Eldersburg, Maryland 21784.

Schedule E
(Supermarkets Divested to Supervalu)

The following supermarkets located in Bucks County, Pennsylvania:

1. Giant store no. 242 operating under the "Super G" trade name, which is located at 1601 Big Oak Road in the Oxford Oaks Shopping Center, Lower Makefield Township, Pennsylvania 19067; and
2. Giant store no. 249 operating under the "Super G" trade name, which is located at 942 West Street Road in the Towne Square Shopping Center, Warminster, Pennsylvania 18974.

The following supermarkets located in Montgomery County, Pennsylvania:

1. Giant store no. 237 operating under the "Super G" trade name, which is located at 1591 Bethlehem Pike in the Hilltown Crossings Shopping Center, Hilltown Township, Pennsylvania 19440; and
2. Giant store no. 243 operating under the "Super G" trade name, which is located at 2775 West Main Street in the Park-Ridge Shopping Center, Lower Providence Township, Pennsylvania 19403; and
3. Giant store no. 250 operating under the "Super G" trade name, which is located at 55 Germantown Pike in the Norriton Square Shopping Center, East Norriton Township, Pennsylvania 19401.

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between Koninklijke Ahold nv ("Ahold"), a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands; Giant Food Inc. ("Giant"), 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 6300 Sheriff Road, Landover, Maryland 20785; The 1224 Corporation ("1224"), 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 6300 Sheriff Road, Landover, Maryland 20785 (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, Ahold, pursuant to a Stock Purchase Agreement dated May 19, 1998, agreed to acquire all of the class AC voting securities of Giant held by 1224, which will enable Ahold to elect five of the nine directors of Giant (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 proposed 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. With respect to each Supermarket, the date on which the divestiture of such Supermarket, as required by the Consent Order, has 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 viability, marketability 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 Supermarkets, 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 (*e.g.*, direct mailing, point-of-purchase coupons) 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 proposed 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 1224 under this Agreement shall terminate.

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

IN THE MATTER OF
JOHNSON WORLDWIDE ASSOCIATES, INC.

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

Docket C-3862. Complaint, April 6, 1999--Decision, April 6, 1999

This consent order, among other things, prohibits Johnson Worldwide Associates, Inc., the Wisconsin-based marketer of outdoor recreation products, including fishing line, from misrepresenting the extent to which any fishing product is made in the United States.

Participants

For the Commission: *Kent Howerton, Laura Koss, and Elaine Kolish.*

For the respondent: *Rebecca Fry, Foley & Lardner, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Johnson Worldwide Associates, Inc. ("respondent") has 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 Johnson Worldwide Associates, Inc. is a Wisconsin corporation with its principal office or place of business at 1326 Willow Road, Sturtevant, Wisconsin.

2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to the public, including fishing line.

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

4. Respondent has disseminated or has caused to be disseminated packaging for its Spiderwire Super Mono Super Monofilament ("Super Mono") fishing line, including but not necessarily limited to the attached Exhibit A. The front panel of this packaging contains the following statement:

"MADE IN THE USA of American and Japanese components."

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that its Super Mono fishing