

Complaint

IN THE MATTER OF

SHAW'S SUPERMARKETS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3934; File No. 991 0075
Complaint, April 5, 2000--Decision, April 5, 2000

This consent addresses the \$490 million acquisition by Shaw's Supermarkets, Inc., a wholly owned subsidiary of J Sainsbury plc, of Star Market Holdings, Inc., the second and third largest supermarket chains, respectively, operating in the Greater Boston area. The complaint alleges that the proposed acquisition would substantially lessen competition in the markets for the retail sale of food and grocery items in supermarkets in the relevant geographic market. The consent order requires Shaw's to divest ten supermarkets, which represent all of either the Shaw's or Star supermarkets in the relevant market areas to buyers who do not currently operate supermarkets in these markets.

Participants

For the Commission: *Jessica D. Gray* and *David von Nirschl*

For the Respondents: *Carrie M. Anderson* and *Steven A. Newborn, Rogers & Wells*; and *John Herfort* and *Malcolm Pfunder, Gibson, Dunn & Crutcher*.

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 J Sainsbury plc ("J Sainsbury") and respondent Shaw's Supermarkets, Inc. ("Shaw's"), a wholly-owned subsidiary of respondent J Sainsbury's, have entered into an agreement to acquire all of the outstanding shares of respondent Star Markets Holdings, Inc. ("Star Markets"), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15

Complaint

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.

J Sainsbury plc

2. Respondent J Sainsbury is a corporation organized, existing, and doing business under and by virtue of the laws of England, with its office and principal place of business located at Stamford House, Stamford Street, London SE 19LL, England.
3. Respondent J Sainsbury, through its wholly-owned domestic subsidiary, Shaw's is, and at all times relevant herein has been, engaged in the operation of supermarkets in Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, and Vermont. J Sainsbury and Shaw's operate 126 supermarkets in

Complaint

these states under the "Shaw's" trade name. J Sainsbury had \$2.8 billion in total sales in the United States for fiscal year 1998.

4. Respondent J Sainsbury 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.

Star Markets Holdings, Inc.

5. Respondent Star Markets is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 625 Mt. Auburn Street, Cambridge, Massachusetts 02138.

6. Respondent Star Markets is, and at all times relevant herein has been, engaged in the operation of supermarkets in Massachusetts. Star Markets operates 53 supermarkets under the "Star Markets" and "Wild Harvest" trade names. Star Markets had \$1.034 billion in total sales for the fiscal year ending January 31, 1998.

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

Acquisition

8. On November 25, 1998, J Sainsbury plc and Star Markets entered into a Stock Purchase Agreement. J Sainsbury through its Shaw's subsidiary will acquire all of the outstanding voting securities of Star Markets for approximately \$490 million.

Complaint

Trade and Commerce

9. 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.

10. 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.

11. 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.

12. 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

Complaint

of products and services that enable consumers to one-stop shop for food and grocery products.

13. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the county or counties that include the following incorporated cities and towns in Massachusetts:

- a) Waltham area that includes Waltham, Auburndale, Watertown, Newton, West Newton, Weston, and Lexington;
- b) Quincy-Dorchester area that includes Quincy, N. Quincy, Milton, Dorchester, Boston, S. Boston, Braintree, and Weymouth;
- c) Norwood area that includes Norwood, Walpole, Westwood, Dedham, Wrentham, and Sharon;
- d) Milford area that includes Milford, Hopedale, Mendon, and Upton;
- e) Salem-Lynn area that includes Salem, Lynn, Peabody, Swampscott, Danvers, Nahant, and Marblehead;
- f) Norwell area that includes Norwell, Hanover, Rockland, Pembroke, Hanson, Scituate, Halifax, Hingham, Weymouth, Cohasset, and Hull;
- g) Hudson-Stow area that includes Stow, Hudson, Sudbury, Marlborough, and Bolton; and
- h) Saugus-Melrose-Stoneham area that includes Saugus, Melrose, Stoneham, and Wakefield.

Complaint

Market Structure

14. 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. Shaw's and Star Markets would have a combined market share that ranges from 29 percent to 64 percent in each geographic market. The post-acquisition HHIs in the geographic markets range from 2205 points to 5136 points.

Entry Conditions

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

Actual Competition

16. J Sainsbury through its Shaw's subsidiary and Star Markets are actual and direct competitors in the relevant markets.

Effects

17. 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 J Sainsbury and supermarkets owned and controlled by Star Markets;
- b) by increasing the likelihood that J Sainsbury will unilaterally exercise market power; and

Decision and Order

- 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

18. The Stock Purchase Agreement between J Sainsbury and Star Markets to acquire all of the outstanding voting stock of Star Markets 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifth day of April, 2000, issues its complaint against said respondents.

By the Commission, Commissioner Leary not participating.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of Star Markets Holdings, Inc. ("Star Markets") by J Sainsbury plc and its wholly-owned subsidiary Shaw's Supermarkets, Inc. ("Shaw's") (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

Decision and Order

consideration, and which, if issued by the Commission, would charge Respondents with violation 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, and having modified the consent order in certain respects, 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 J Sainsbury is a corporation organized, existing, and doing business under and by virtue of the laws of England, with its office and principal place of business located at Stamford House, Stamford Street, London SE 19LL, England.

2. Respondent Shaw's, a wholly-owned subsidiary of J Sainsbury, is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business

Decision and Order

located at 140 Laurel Street, P.O. Box 600, East Bridgewater, Massachusetts 02333.

3. Respondent Star Markets is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 625 Mt. Auburn Street, Cambridge, Massachusetts 02138.

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. "J Sainsbury" means J Sainsbury plc, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries (including but not limited to Shaw's), divisions, groups, and affiliates controlled by J Sainsbury, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. J Sainsbury, after consummation of the Acquisition, includes Star Markets.

B. "Shaw's" means Shaw's Holdings Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Shaw's, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Star Markets" means Star Markets Holdings, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Star Markets, and the

Decision and Order

respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Respondents" means J Sainsbury, Shaw's, and Star Markets, individually and collectively.

E. "Commission" means the Federal Trade Commission.

F. "Acquirer" means Victory and Foodmaster 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.

G. "Acquisition" means J Sainsbury's proposed acquisition of Star Markets pursuant to the Stock Purchase Agreement dated November 25, 1998.

H. "Assets To Be Divested" means the Schedule A Assets, Schedule B Assets, Schedule C Assets, and Schedule D Assets.

I. "Applicable Consent Decree" means a consent decree in an action commenced by the Commonwealth of Massachusetts, under which decree Respondents will divest all or part of the Schedule A Assets, Schedule B Assets, Schedule C Assets, and Schedule D Assets.

J. "Schedule A Assets" means the Supermarkets identified in Schedule A of this Order and all assets, leases, properties, government 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.

K. "Schedule B Assets" means the Supermarkets identified in Schedule B of this Order and all assets, leases, properties,

Decision and Order

government 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.

L. "Schedule C Assets" means the Supermarkets identified in Schedule C of this Order and all assets, leases, properties, government 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.

M. "Schedule D Assets" means the Supermarket identified in Schedule D of this Order and all assets, leases, properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names.

N. "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; frozen and refrigerated 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.

O. "Victory" means Victory Super Markets, a corporation organized, existing and doing business under and by virtue of the

Decision and Order

laws of the Commonwealth of Massachusetts, with its principal place of business located at 75 North Main Street, Leominster, MA 01453.

P. "Foodmaster" means Foodmaster Super Markets, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal place of business located at 100 Everett Avenue, Unit 12, Chelsea, MA 02150.

Q. "Victory Agreement" means the Purchase Agreement between Shaw's Holdings Inc., Shaw's Supermarkets, Inc. and Victory executed on May 27, 1999, for the divestiture by Respondents to Victory of the Schedule A Assets.

R. "Foodmaster Agreement" means the Agreement of Purchase and Sale of Assets and Assignments of Leases between Shaw's Holdings Inc. and Foodmaster Super Markets, Inc. executed on May 26, 1999, along with amended provisions as set forth in the June 9, 1999, letter from Verne Powell, Shaw's Holdings, Inc. to Lawrence A. Sperber, Attorney for Foodmaster Supermarkets, Inc., and the two letters from Verne Powell to John A. DeJesus, Foodmaster Super Market, Inc., dated June 14, 1999, for the divestiture by Respondents to Foodmaster of the Schedule B Assets.

S. "Relevant Areas" means the county or counties that include the following incorporated cities and towns in Massachusetts:

1. Waltham area that includes Waltham, Auburndale, Watertown, Newton, West Newton, Weston, and Lexington;
2. Quincy-Dorchester that includes Quincy, N. Quincy, Milton, Dorchester, Boston, S. Boston, Braintree, and Weymouth;

Decision and Order

3. Norwood area that includes Norwood, Walpole, Westwood, Dedham, Wrentham, and Sharon;
4. Milford area that includes Milford, Hopedale, Mendon, and Upton;
5. Salem-Lynn area that includes Salem, Lynn, Peabody, Swampscott, Danvers, Nahant, and Marblehead;
6. Norwell area that includes Norwell, Hanover, Rockland, Pembroke, Hanson, Scituate, Halifax, Hingham, Weymouth, Cohasset, and Hull; and
7. Hudson-Stow area that includes Stow, Hudson, Sudbury, Marlborough, and Bolton.

T. "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 Victory, in accordance with the Victory Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), 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 Victory pursuant to the Victory Agreement prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission

Decision and Order

notifies Respondents that Victory is not an acceptable Acquirer or that the Victory Agreement is not an acceptable manner of divestiture, then Respondents shall immediately rescind the transaction with Victory and shall divest the Schedule A Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

B. Respondents shall divest, absolutely and in good faith, the Schedule B Assets to Foodmaster, in accordance with the Foodmaster Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), within ten (10) days of the date on which the Order becomes final.

Provided, however, that if Respondents have divested the Schedule B Assets to Foodmaster pursuant to the Foodmaster 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 Foodmaster is not an acceptable Acquirer or that the Foodmaster Agreement is not an acceptable manner of divestiture, then Respondents shall immediately rescind the transaction with Foodmaster and shall divest the Schedule B Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. Respondents shall obtain all required Third Party Consents prior to the closing of each of the respective divestiture agreements, or any other agreement pursuant to which the Assets To Be Divested are divested to an Acquirer.

Decision and Order

D. The purpose of the divestitures is to ensure the continuation of the Schedule A Assets and Schedule B Assets 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. Respondents shall divest either the Schedule C or Schedule D Assets to an Acquirer, only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price, within three (3) months from the date on which Respondents sign the Agreement Containing Consent Order.

B. The purpose of the divestiture is to ensure the continuation of the divested supermarket(s) 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.

IV.**IT IS FURTHER ORDERED** that:

A. If Respondents have not divested the Assets To Be Divested within the time periods required by Paragraphs II and III of this Order, absolutely and in good faith and with the Commission's prior approval, the Commission may appoint a trustee to divest those assets that Respondents have failed to divest. 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

Decision and Order

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 IV.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.

Decision and Order

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph IV.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 to an Acquirer or Acquirers that receive Commission approval and in a manner approved by the Commission; 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

Decision and Order

such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by J Sainsbury from among those approved by the Commission; provided further, however, that J Sainsbury shall select such entity within five (5) days of receiving notification of the Commission's approval.

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 J Sainsbury, 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

Decision and Order

liability, except to the extent that such losses, claims, damages, liabilities, 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 IV.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. In the event that the trustee determines that he or she is unable to divest the Assets To Be Divested in a manner consistent with the Commission's purpose as described in Paragraphs II and III, the trustee may divest additional ancillary assets of Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
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.

V.

IT IS FURTHER ORDERED that Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested pending their divestiture, and shall not cause the wasting or deterioration of the Assets To Be Divested, nor shall they cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability

Decision and Order

or competitiveness of the Assets To Be Divested. Respondents shall comply with the terms of this Paragraph until such time as Respondents have divested the Assets To Be Divested pursuant to the terms of this Order. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested 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 suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operation of any of the Assets To Be Divested. Respondents shall continue to maintain the inventory of each of the Assets To Be Divested at levels and selections (*e.g.*, stock-keeping units) consistent with those maintained by such Respondent(s) at such Supermarket in the ordinary course of business consistent with past practice. Respondents shall use best efforts to keep the organization and properties of each of the Assets To Be Divested intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with the Supermarket. Included in the above obligations, Respondents shall, without limitation:

1. maintain operations and departments and not reduce hours at each of the Assets To Be Divested;
2. not transfer inventory from any of the Assets To Be Divested other than in the ordinary course of business consistent with past practice;
3. 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;

Decision and Order

4. maintain the books and records of each of the Assets To Be Divested;
5. not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations to another location, or that indicates any of the Assets To Be Divested will close;
6. not remove the trade marks, trade dress, service marks, or trade names of Respondents at any of the Assets To Be Divested;
7. not conduct any “going out of business,” “close-out,” “liquidation” or similar sales or promotions at or relating to any of the Assets To Be Divested; and
8. not change or modify in any material respect the existing advertising practices, programs and policies for any of the Assets To Be Divested, other than changes in the ordinary course of business consistent with past practice for Supermarkets of the Respondents not being closed or relocated.

VI.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, J Sainsbury 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 the county or counties that include the Relevant Areas.

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

Decision and Order

Supermarket within six (6) months prior to such proposed acquisition, in the county or counties that include the Relevant Areas.

Provided, however, that advance written notification shall not apply to the construction of new facilities by J Sainsbury or the acquisition of or leasing of a facility that has not operated as a Supermarket within six (6) months prior to J Sainsbury'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 J Sainsbury and not of any other party to the transaction. J Sainsbury shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), J Sainsbury shall not consummate the transaction until twenty (20) 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.

Decision and Order

VII.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final:

A. J Sainsbury 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 the county or counties that include the Relevant Areas to operate a Supermarket at that site if such Supermarket was formerly owned or operated by J Sainsbury.

B. J Sainsbury shall not remove any fixtures or equipment from a property owned or leased by J Sainsbury in the county or counties that include the Relevant Areas 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 J Sainsbury.

VIII.

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

Decision and Order

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, J Sainsbury 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.

IX.

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.

X.

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 the facilities and 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

Decision and Order

B. Without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents in the presence of counsel.

XI.

IT IS FURTHER ORDERED, that if (i) Respondents have fully complied with all terms of Paragraphs VI through X of this Order; (ii) Respondents within forty-five (45) days after final issuance of this Order by the Commission have submitted a complete application in support of the divestiture of the Assets To Be Divested pursuant to Paragraphs II and III of this Order, as the case may be (including the buyer, manner of divestiture and all other matters subject to Commission approval); and (iii) the Commission has approved the divestiture and has not withdrawn its acceptance; but (iv) Respondents have certified to the Commission within ten (10) days after the Commission's approval of the divestiture that the Commonwealth of Massachusetts, notwithstanding timely and complete application by Respondents to the Commonwealth of Massachusetts, has failed to approve the divestiture under an Applicable Consent Decree of the particular assets or businesses whose divestiture is also required under this Order, then with respect to the particular divestiture that remains unconsummated, the time in which the divestiture is required under this Order to be completed shall be extended for sixty (60) days. During such sixty (60) day period, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the Commonwealth of Massachusetts.

By the Commission, Commissioner Leary not participating.

Decision and Order

Schedule A

The Schedule A Assets consist of all assets, leases, properties, government permits, customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at the following locations in eastern Massachusetts, excluding the trade marks, trade dress, service marks, or trade names of Respondents:

J Sainsbury store No. 193, operating under the "Shaw's Supermarket" trade name, located at 836 Main Street, Waltham, MA 02154;

J Sainsbury store No. 196, operating under the "Shaw's Supermarket" trade name, located at 475 Hancock Street, North Quincy, MA 02171;

J Sainsbury store No. 122, operating under the "Shaw's Supermarket" trade name, located at 435 Walpole Street, Route 1A, Norwood, MA 02062;

Star Markets store No. 169, operating under the "Star Markets" trade name, located at 7 Medway Road, Milford, MA 01757; and

Star Markets store No. 128, operating under the "Star Markets" trade name, located at 4 Washington Street and Pond Road, Norwell, MA 02106.

Schedule B

The Schedule B Assets consist of all assets, leases, properties, government permits, customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at the following locations in eastern Massachusetts, excluding the trade marks, trade dress, service marks, or trade names of Respondents:

Star Markets store No. 144, operating under the “Star Markets” trade name, located at 50 Boston Street, Lynn, MA 01904 and

Star Markets store No. 129, operating under the “Star Markets” trade name, located at 38 Paradise Road, Swampscott, MA 01907.

Schedule C

The Schedule C Assets consist of all assets, leases, properties, government permits, customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at the following locations in eastern Massachusetts, excluding the trade marks, trade dress, service marks, or trade names of Respondents:

Star Markets store No. 152, operating under the “Star Markets” trade name, located at 155 Great Road, Route 117, Stow, MA 01775 and

Star Markets store No. 118, operating under the “Star Markets” trade name, located at 3509 Boston Post Road, Route 20, Sudbury, MA 01776.

Analysis to Aid Public Comment

Schedule D

The Schedule D Assets consist of all assets, leases, properties, government permits, customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at the following location in eastern Massachusetts, excluding the trade marks, trade dress, service marks, or trade names of Respondents:

J Sainsbury store No. 338, operating under the "Shaw's Supermarket" trade name, located at 10 Technology Drive, Route 85, Hudson, MA 01749.

Analysis of the Draft Complaint and Proposed Consent Order to Aid Public Comment**I. Introduction**

The Federal Trade Commission ("Commission") has accepted for public comment from J Sainsbury plc, owner of Shaw's Supermarkets, Inc. ("Shaw's") and Star Markets Holdings, owner of Star Markets Company ("Star") (collectively "the Proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). The Proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from Shaw's proposed acquisition of all of the outstanding voting stock of Star.

II. Description of the Parties and the Proposed Acquisition

Shaw's Supermarkets, Inc., a Massachusetts corporation headquartered in Bridgewater, Massachusetts, is a wholly owned subsidiary of J Sainsbury plc, a United Kingdom company. Shaw's operates 126 supermarkets in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. All of Shaw's supermarkets operate under the "Shaw's" trade name. Shaw's total sales for its 1998 fiscal year were approximately \$2.8 billion. Shaw's is the second largest supermarket chain operating in Greater Boston. After the merger, Shaw's will become the number one supermarket chain in Greater Boston, controlling almost 40% of all supermarket sales.

Star is a Massachusetts corporation headquartered in Cambridge, Massachusetts. Star operates 53 supermarkets in Massachusetts, forty-nine under the "Star" trade name and four under the "Wild Harvest" trade name. Star also operates a wholesale food business that serves mostly small independent supermarket customers throughout New England and New York State. Star's wholesale customer base includes 11 supermarkets that contractually use the "Star Markets" trade name though Star has no ownership interest in them. Star's revenues for fiscal year 1998 are more than \$1 billion, \$966 million of which are from its retail operations. With its 53 supermarkets, Star is the third largest supermarket chains operating in Greater Boston. On November 25, 1998, J Sainsbury plc, Star Markets Holdings, Inc., Star Markets Company, Inc. and certain stockholders of Star Markets Holdings Inc., entered into a Stock Purchase Agreement for J Sainsbury plc to acquire all of the outstanding voting securities of Star Markets Holdings, Inc. The value of the transaction is approximately \$490 million.

III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets. 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 an

Analysis to Aid Public Comment

extensive inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products.

Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at nearby supermarkets.

Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, limited assortment 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. The retail format and variety of items sold at these other stores are significantly different than that of supermarkets. None of these other retailers offer a sufficient quantity and variety of products to enable consumers to one-stop shop for food and grocery products.

The draft complaint alleges that the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition are the areas in or near the following incorporated cities or towns in Massachusetts: a) Waltham area that includes Waltham, Auburndale, Watertown, Newton, West Newton, Weston, and Lexington; b) Quincy-Dorchester area that includes Quincy, N. Quincy, Milton, Dorchester, Boston, S. Boston, Braintree, and Weymouth; c) Norwood area that includes Norwood, Walpole, Westwood, Dedham, Wrentham, and Sharon; d) Milford area that includes Milford, Hopedale, Mendon, and Upton; e) Salem-Lynn area that includes Salem, Lynn, Peabody, Swampscott, Danvers, Nahant, and Marblehead; f) Norwell area that includes Norwell, Hanover, Rockland, Pembroke, Hanson,

Analysis to Aid Public Comment

Scituate, Halifax, Hingham, Weymouth, Cohasset, and Hull; g) Hudson-Stow area that includes Stow, Hudson, Sudbury, Marlborough, and Bolton; and h) Saugus-Melrose-Stoneham area that includes Saugus, Melrose, Stoneham, and Wakefield.

J Sainsbury through its Shaw's subsidiary and Star Markets are actual and direct competitors in the all of the relevant markets. The draft complaint alleges that the post-merger markets would all be highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or four-firm concentration ratios. The acquisition would substantially increase concentration in each market. The post-acquisition HHIs in the geographic markets range from 2205 points to 5136 points.

The draft complaint further alleges that entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

The draft complaint also alleges that Shaw's acquisition of all of the outstanding voting securities of Star, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant markets 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, by eliminating direct competition between supermarkets owned or controlled by Shaw's and supermarkets owned and controlled by Star; by increasing the likelihood that Shaw's will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects 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 geographic markets alleged in the complaint.

IV. The terms of the Agreement Containing Consent Order ("the proposed consent order")

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order Shaw's and Star must divest ten supermarkets, seven stores operating under the "Star Markets" trade name and three under the "Shaw's" trade name.

Analysis to Aid Public Comment

In the eight relevant markets, the Proposed Respondents will divest either all of the Shaw's or Star supermarkets to buyers who do not currently operate supermarkets in these markets. Divesting all of one party's assets in a particular market achieves the goals that the proposed consent order is designed to achieve -- ensuring that the merger will not increase concentration in any relevant market and maintaining the number of firms in the market that existed before the merger.

Seven of the supermarkets to be divested are being sold to two experienced up-front buyers, firms that the Commission has pre-evaluated for their competitive and financial viability. The Commission's evaluation process consisted of analyzing the financial condition of the proposed acquirers and the locations of their current supermarkets to ensure that divestitures to them would not increase concentration or decrease competition in the relevant markets, as well as, determining that these purchasers are well qualified to operate the divested stores. The remaining three supermarkets are to be divested by the Proposed Respondents within three months of the date on which they signed the proposed consent agreement, to an acquirer approved by the Commission and in a manner approved by the Commission. Public comments may address the suitability of the designated up-front buyers to acquire supermarkets under the proposed consent order.

The following is a discussion of the two up-front buyers, Victory Super Markets ("Victory") and Foodmaster Super Markets, Inc. ("Foodmaster"). Victory, headquartered in Massachusetts and founded by the DiGeronimo family in 1923, will acquire five supermarkets from Shaw' -- Shaw's Supermarket stores No. 193 in Waltham, No. 196 in North Quincy, and No. 122 in Norwood; and Star Markets stores No. 169 in Milford, and No. 128 in Norwell, MA. Foodmaster, headquartered in Chelsea, Massachusetts, will acquire two supermarkets from Shaw's -- Star Markets No. 144 in Lynn and No. 129 in Swampscott.

The proposed consent order further requires Shaw's and Star to divest three additional supermarkets, Star Markets No. 152 in

Analysis to Aid Public Comment

Stow, Star markets No. 118 in Sudbury, and Star Markets No. 173 in Saugus to a proposed buyer that will be selected by Shaw's and approved by the Commission within three months of the date on which the Proposed Respondents sign the proposed consent agreement.

Paragraph II.A. of the proposed consent order requires that the divestiture to Victory must occur no later than the earlier of (1) 20 days from when the merger is consummated, or (2) four months after the Commission accepts the agreement for public comment.⁽¹⁾ Paragraph II. B. of the proposed consent agreement requires that Shaw's divest the two supermarkets to Foodmaster within ten days of the date on which the proposed consent order becomes final. If Shaw's consummates the divestitures to Victory and Foodmaster during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Shaw's that Victory or Foodmaster is not an acceptable acquirer or that the asset purchase agreement with Victory or Foodmaster is not an acceptable manner of divestiture, then Shaw's must immediately rescind the transaction in question and divest those assets to another buyer within three months of the date the order becomes final. At that time, Shaw's must divest those 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. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture, a trustee that the Commission may appoint has the power to divest any assets that have not been divested to satisfy the requirements of the proposed consent order.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or sites identified in the order that Shaw's and Star have not divested to satisfy the requirements of the proposed consent order. In addition, the proposed order enables the Commission to seek civil penalties against Shaw's for non-compliance with the proposed consent order.

Among other requirements related to maintaining operations at the supermarkets identified for divestiture, the proposed consent

Analysis to Aid Public Comment

order also specifically requires the Proposed Respondents to: (1) maintain the viability, competitiveness and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair their marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve existing relationships with suppliers, customers, and employees; and (6) keep the supermarkets open for business and maintain the inventory at levels consistent with past practices.

The proposed consent order also prohibits Shaw's from acquiring, without providing the Commission with prior notice, any supermarkets, or any interest in any supermarkets, located in the county or counties that include the incorporated cities and towns in Massachusetts: Waltham, Auburndale, Watertown, Newton, West Newton, Weston, Lexington, Quincy, N. Quincy, Milton, Dorchester, Boston, S. Boston, Braintree, Hopedale, Mendon, Upton, Salem, Lynn, Peabody, Swampscott, Danvers, Nahant, Marblehead, Norwell, Hanover, Rockland, Pembroke, Hanson, Scituate, Halifax, Hingham, Cohasset, Hull, Stow, Hudson, Sudbury, Marlborough, Bolton, Saugus, Melrose, Wakefield, and Stoneham for ten years. These are the areas for which the supermarkets to be divested draw customers. The provisions regarding prior notice are consistent with the terms used in prior Orders. The proposed consent order does not, however, restrict the Proposed Respondents from constructing new supermarkets in the above listed areas; nor does it restrict the Proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

The proposed consent also prohibits Shaw's, for a period of ten years, from entering into or enforcing any agreement that restricts the ability of any person acquiring any location used as a supermarket, or interest in any location used as a supermarket on or after January 1, 1998, to operate a supermarket at that site if that site was a formerly owned or operated by Shaw's or Star Markets in any of the areas listed in the paragraph above. In

Analysis to Aid Public Comment

addition, the Proposed Respondents are prohibited from removing fixtures or equipment from a store or property owned or leased by Shaw's in any of the cities or town listed above that is no longer operated as a supermarket, except (1) prior to a sale, sublease, assignment, or change in occupancy or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by the Proposed Respondents.

The Proposed Respondents are required to file compliance reports with the Commission, the first of which is due within thirty days of the date on which Proposed Respondents signed the proposed consent, and every thirty days thereafter until the divestitures are completed, and annually for ten years.

Analysis to Aid Public Comment

The proposed consent order also has a provision relating to the settlement agreement negotiated by the State of Massachusetts. If the State of Massachusetts fails to approve any divestiture that has not been completed, even though the parties are in compliance with the other provisions of the proposed consent agreement, the time period in which the divestiture must be completed will be extended 60 days during which the parties must exercise utmost good faith and best efforts to resolves the concerns of that particular state.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 60 days for receipt of comments by interested persons.

Comments received during this period will become part of the public record. After 60 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Victory and Foodmaster, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

1. Acceptance of the proposed consent agreement for public comment terminates the HSR waiting period and enables Shaw's to immediately acquire all of the outstanding voting securities of Star Markets.

Complaint

IN THE MATTER OF

NINE WEST GROUP INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3937; File No. 9810386
Complaint, April 11, 2000--Decision, April 11, 2000*

This consent order prohibits Respondent Nine West Group Inc. from fixing controlling or maintaining the retail price of women's footwear. It also prohibits Respondent from pressuring, or coercing any dealer to adhere, adopt, or maintain any set retail price. Respondent is also prohibited from securing any commitments or assurances regarding the resale price. For a period of ten years, Respondent is also prohibited from notifying a dealer in advance that they are subject to a temporary or partial suspension of supply if the dealer sells Nine West shoes below a designated price. Respondent must also, for a period of five years, display conspicuously on any list, book, catalogue, advertising, or promotional material where it has suggested a retail price to a dealer a required statement explaining that while it may suggest a price, dealers remain free to determine at which price to advertise and sell Nine West products. Respondent must also send a letter to dealers with a similar explanation.

Participants

For the Commission: *Alan B. Loughnan, Theodore Zang, Ann Weintraub, Barbara Anthony, Daniel P. Ducore, Kenneth Kelly, and Gregory Vistnes.*

For the Respondents: *Ron Rolfe, Cravath, Swaine & Moore, and Kevin Arquit, Rogers & Wells.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Nine West Group Inc. (hereinafter "Respondent" or "Nine West"), has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing