

Complaint

IN THE MATTER OF

KONINKLIJKE AHOLD NV, 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-4027; File No. 0110247

Complaint, December 7, 2001--Decision, January 16, 2002

This consent order addresses the acquisition by Respondent Koninklijke Ahold NV ("Ahold"), a global food service and food retailer headquartered in The Netherlands, with more than 1,300 supermarkets and other retail food stores in the United States – of Respondent Bruno's Supermarkets Inc., the largest supermarket chain in the State of Alabama. The order, among other things, requires the respondents to divest a supermarket in Milledgeville, Georgia to The Kroger Company, and to divest a supermarket in Sandersville, Georgia to Winn-Dixie Stores, Inc. The order also requires the respondents to maintain the viability, marketability and competitiveness of the supermarkets identified for divestitures. In addition, the order requires Respondent Ahold, for ten years, to give the Commission prior notice before acquiring any supermarkets, or any interest in any supermarkets, located in the counties that include Milledgeville and Sandersville, Georgia.

Participants

For the Commission: *Susan Huber, David Von Nirschl, Ramon Gras, Morris Morkre, Sara Harkavy, Richard Liebeskind, Elizabeth A. Piotrowski, Mary T. Coleman and Charissa P. Wellford.*

For the Respondents: *J. Mark Gidley, George Paul, and Doug Jasinski, White & Case, and Michael Byowitz, Wachtell, Lipton, Rosen & Katz.*

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

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("Ahold") has entered into an agreement to acquire 100% of the outstanding voting securities of respondent Bruno's Supermarket, Inc. ("Bruno's"), 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

PARAGRAPH ONE: For the purposes of this complaint "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 non-food items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

Koninklijke Ahold NV

PARAGRAPH TWO: 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.

PARAGRAPH THREE: Respondent Ahold, through Ahold USA, Inc., BI-LO Holdings, LLC Inc.; Giant-Carlisle Holding, LLC Entities; Giant Food, Inc. n/k/a Ahold U.S.A. Holdings, Inc.; The Stop & Shop Supermarket Company; and Tops Markets, LLC; its wholly-owned domestic subsidiaries, is, and at all times relevant

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herein has been, engaged in the operation of supermarkets in Alabama, Connecticut, the District of Columbia, Delaware, 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 over 1,000 supermarkets, including 294 BI-LO stores, in these states under the BI-LO, Giant, MARTIN'S, Stop & Shop, and Tops Friendly Market trade names. Ahold had \$27.8 billion in total United States sales in fiscal year 2000.

PARAGRAPH FOUR: 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.

Bruno's Supermarkets, Inc.

PARAGRAPH FIVE: Respondent Bruno's is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 800 Lakeshore Parkway, Birmingham, Alabama.

PARAGRAPH SIX: Respondent Bruno's is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Georgia, Florida and Mississippi. Bruno's operates approximately 169 supermarkets under the Bruno's, Food World, FoodMax, Food Fair and Fresh Value trade names. Bruno's had \$1.6 billion in total sales for the fiscal year ending January 27, 2001.

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

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Acquisition

PARAGRAPH EIGHT: On or about September 4, 2001, Ahold, New Bronco Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of Ahold, Bruno's, and Elway Advisors, LLC, as stockholder's representative, entered into an Agreement and Plan of Merger. Pursuant to this Agreement, Ahold will acquire all of the outstanding voting securities of Bruno's for approximately \$500 million in cash by merger of New Bronco with and into Bruno's Supermarkets, with Bruno's Supermarkets continuing as the surviving corporation. As a result of the merger, Ahold will hold 100% of the voting securities of Bruno's.

Trade and Commerce

PARAGRAPH NINE: 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.

PARAGRAPH TEN: Supermarkets provide a distinct set of products and services for consumers who desire one-stop shopping 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 a variety of brand names and sizes. 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.

PARAGRAPH ELEVEN: 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. 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

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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.

PARAGRAPH TWELVE: 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. These stores operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enables one-stop shopping for food and grocery products.

PARAGRAPH THIRTEEN: 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 Sandersville, Georgia and Milledgeville, Georgia.

Market Structure

PARAGRAPH FOURTEEN: The Sandersville, Georgia and Milledgeville, Georgia 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 Bruno's would have a combined market share of greater than 50% in each geographic market. The post-acquisition HHI in Milledgeville would exceed 5400 and, in Sandersville, would exceed 5500.

Entry Conditions

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

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Actual Competition

PARAGRAPH SIXTEEN: Ahold and Bruno's are actual and direct competitors in Sandersville, Georgia and Milledgeville, Georgia.

Effects

PARAGRAPH SEVENTEEN: 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 Bruno's;
- b. by increasing the likelihood that Ahold will unilaterally exercise market power; and
- c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction,

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

Violations Charged

PARAGRAPH EIGHTEEN: The Agreement and Plan of Merger between and among Ahold, New Bronco Acquisition Corp., Bruno's, and Elway Advisors, LLC, 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.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this Seventh day of December, 2001, issues its complaint against said respondents.

By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of 100% of the outstanding voting securities of Respondent Bruno’s Supermarkets, Inc. (“Bruno’s”) by Respondent Koninklijke Ahold N.V. (“Ahold”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter 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 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, 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 has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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

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Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands.

2. Respondent Bruno's is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 800 Lakeshore Parkway, Birmingham, AL.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Ahold" means Koninklijke Ahold N.V., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Koninklijke Ahold N.V. (including, but not limited to, BI-LO, LLC, and New Bronco Acquisition Corp.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Bruno's" means Bruno's Supermarkets, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Bruno's Supermarkets, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Respondents" means Ahold and Bruno's, individually and collectively.

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- D. “Acquisition” means Ahold’s proposed acquisition of the outstanding voting securities of Bruno’s pursuant to the “Agreement and Plan of Merger Dated as of September 4, 2001 By and Among Koninklijke Ahold N.V., New Bronco Acquisition Corp., Bruno’s Supermarkets, Inc. and Elway Advisors, LLC, as Stockholder’s Representatives.”
- E. “Commission” means the Federal Trade Commission.
- F. “Assets To Be Divested” means the Milledgeville Assets and the Sandersville Assets.
- G. “Business Day” means any day excluding Saturday, Sunday and any United States Federal holiday.
- H. “Commission-approved Acquirer” means any entity approved by the Commission to acquire either or both of the Assets To Be Divested pursuant to this Order.
- I. “Divestiture Agreement” means any agreement between the Respondents and a Commission-approved Acquirer (or a trustee appointed pursuant to Paragraph III of this Order and a Commission-approved Acquirer) and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested that have been approved by the Commission to accomplish the requirements of this Order. The term Divestiture Agreement includes, as appropriate, the Kroger Agreement, and/or the Winn-Dixie Agreement.
- J. “Divestiture Trustee(s)” means any person or entity appointed by the Commission pursuant to Paragraph III of the Decision and Order to act as a trustee in this matter.
- K. “Kroger” means The Kroger Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202-1100.

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- L. “Kroger Agreement” means the “Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease” by and between BI-LO, LLC and The Kroger Co. made and entered into on November 14, 2001, and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- M. “Milledgeville Assets” means the Supermarket currently operated by Respondent Ahold under the BI-LO trade name located at 1692 North Columbia Street, Milledgeville, Georgia, 31061, and all assets, leases, properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or used 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. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.
- N. “Sandersville Assets” means the Supermarket currently operated by Respondent Ahold under the BI-LO trade name located at 648 Harris Street, Sandersville, Georgia, 31082, and all assets, leases, properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or used 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. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.
- O. “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

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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.

- P. “Third Party Consents” means all consents from any person other than the Respondents, including all landlords, that are necessary to effect the complete transfer to the Commission-approved Acquirer(s) of the Assets To Be Divested.
- Q. “Winn-Dixie” means Winn-Dixie Stores, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at 5050 Edgewood Court, Jacksonville, Florida 32254.
- R. “Winn-Dixie Agreement” means “Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease” by and between BI-LO, LLC and Winn-Dixie Stores, Inc. made and entered into on November 13, 2001, and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.

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

- A. Not later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Milledgeville Assets as an ongoing business to Kroger pursuant to and in accordance with the Kroger Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the

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Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix I. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Milledgeville Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Milledgeville Assets to Kroger pursuant to the Kroger Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Kroger is not an acceptable purchaser of the Milledgeville Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Kroger and shall divest the Milledgeville 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. Not later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Sandersville Assets as an ongoing business to Winn-Dixie pursuant to and in accordance with the Winn-Dixie Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix II. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Sandersville Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Sandersville Assets to Winn-Dixie pursuant to the Winn-Dixie Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Winn-Dixie is not an acceptable purchaser of the Sandersville Assets or that the

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manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Winn-Dixie and shall divest the Sandersville 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 Divestiture Agreement pursuant to which the Assets To Be Divested are divested to a Commission-approved Acquirer.
- D. Any Divestiture Agreement between Respondents (or a trustee appointed pursuant to Paragraph III. of this Order) and a Commission-approved Acquirer of the Assets To Be Divested that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.
- E. The purpose of the divestitures is to ensure the continuation of the Milledgeville Assets and the Sandersville 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. If Respondents have not fully complied with the obligations specified in Paragraph II of this Order, the Commission may appoint a trustee or trustees to divest the relevant Assets To Be Divested pursuant to Paragraph II in a manner that satisfies the requirements of Paragraph II. The Commission may appoint a different Divestiture Trustee to accomplish each of the divestitures required in Paragraph II. In the event that the

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Commission or the Attorney General brings an action pursuant to § 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, pursuant to § 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 Divestiture 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 Divestiture Trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture 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 Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
 2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the relevant assets that are required by this Order to be divested.
 3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the

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case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture(s) required by the Order.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; provided, however, the Commission may extend the divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the relevant assets that are required to be divested by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). 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 Divestiture Trustee, by the court.
6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to a Commission-approved

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Acquirer as required by this Order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) Business Days of receiving notification of the Commission's approval.

7. The Divestiture 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 Divestiture 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 Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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

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resulting in any 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 Divestiture Trustee.

9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute Divestiture 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 Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.
11. In the event that the Divestiture Trustee determines that he or she is unable to divest the relevant Assets To Be Divested pursuant to the relevant Paragraph(s) in a manner that preserves their marketability, viability and competitiveness and ensures their continued use as Supermarket businesses, the Divestiture Trustee may divest such additional assets related to the relevant Supermarket businesses of the Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
13. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).
14. Respondents may require the Divestiture Trustee to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

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IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final, Respondents 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 Baldwin County or Washington County, Georgia.
- 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 Baldwin County or Washington County, Georgia.

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

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of

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the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) 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.

V.

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

- A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. § 12(a)) that acquires any Supermarket, any leasehold interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after January 1, 2001, in Baldwin County or Washington County, Georgia to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Respondents.
- B. Respondents shall not remove any fixtures or equipment from a property owned or leased by Respondents in Baldwin County or Washington County, Georgia 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; (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Respondents.

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VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and
- 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, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in 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 the corporation that may affect compliance obligations arising out of this Order.

Decision and Order

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

By the Commission.

FEDERAL TRADE COMMISSION DECISIONS
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Decision and Order

APPENDIX I

[Non-Public]

Decision and Order

APPENDIX II

[Non-Public]

Order

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of 100% of the outstanding voting securities of Respondent Bruno’s Supermarkets, Inc. (“Bruno’s”) by Respondent Koninklijke Ahold N.V. (“Ahold”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing the proposed Decision and Order, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place the Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

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

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located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands.

2. Respondent Bruno's is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 800 Lakeshore Parkway, Birmingham, AL.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order to Maintain Assets, the definitions used in the Consent Agreement and the attached Decision and Order shall apply. In addition, "Supermarket to Be Maintained" means any Supermarket business identified as a part of the Assets To Be Divested.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, 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 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 the attached Decision and Order. Respondents shall conduct or cause to be conducted the business of the Assets To Be

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Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use reasonable 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.

- B. Respondents shall not terminate the operation of any Supermarket To Be Maintained. Respondents shall continue to maintain the inventory of each Supermarket To Be Maintained 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 Supermarket To Be Maintained 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 Supermarket To Be Maintained;
 2. not transfer inventory from any Supermarket To Be Maintained, 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 associated with any Supermarket To Be Maintained, in each case in a manner consistent with past practice;
 4. maintain the books and records of each Supermarket To Be Maintained;
 5. not display any signs or conduct any advertising (*e.g.*,

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direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations at a Supermarket To Be Maintained to another location, or that indicates a Supermarket To Be Maintained will close;

6. not conduct any "going out of business," "close-out," "liquidation" or similar sales or promotions at or relating to any Supermarket To Be Maintained; and
7. not change or modify in any material respect the existing advertising practices, programs and policies for any Supermarket To Be Maintained, other than changes in the ordinary course of business consistent with past practice for Supermarkets of the Respondents not being closed or relocated.

III.

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 the corporation that may affect compliance obligations arising out of this Order to Maintain Assets.

IV.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the

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control of Respondents relating to compliance with this Order to Maintain Assets; and

- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

V.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. With respect to each Supermarket To Be Maintained, the day after the divestiture of Assets to Be Divested related to such Supermarket, as described in and required by the attached Decision and Order, is completed.

Provided, however, that if the Commission, pursuant to Paragraph II.A. or II.B. of the Decision and Order, requires the Respondents to rescind either or both of the divestitures contemplated by the Kroger Agreement or the Winn-Dixie Agreement, then, upon rescission, the requirements of this Order shall again be in effect with respect to the relevant Assets To Be Divested until the day after the divestiture(s) of the relevant Assets To Be Divested, as described in and required by the attached Decision and Order, are completed by the Respondents.

By the Commission.

Analysis

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

The Federal Trade Commission ("Commission") has accepted for public comment from Koninklijke Ahold NV, ("Ahold"), and Bruno's Supermarkets Inc., ("Bruno's") (collectively "the Proposed Respondents") an Agreement Containing Consent Orders ("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 Ahold's proposed acquisition of all of the outstanding voting stock of Bruno's.

II. Description of the Parties and the Proposed Acquisition

Ahold is a global food service and food retailer headquartered in the Netherlands. The company operates or services approximately 8,500 stores in the United States, Europe, Latin America and Asia and had sales of over \$49 billion in 2000. In the United States, Ahold, through its U.S. subsidiary Ahold U.S.A., Inc., operates over 1,300 retail food stores, including supermarkets under the Giant, Stop & Shop, Tops and BI-LO trade names. In the southeastern United States, Ahold owns and operates 294 BI-LO supermarkets as well as a number of Golden Gallon convenience stores.

Bruno's, headquartered in Birmingham, is the largest supermarket chain in the state of Alabama. With annual sales in 2000 of over \$1.5 billion, Bruno's operates 169 supermarkets in Alabama (123), Georgia (25), Florida (16) and Mississippi (2) as well as 13 liquor stores and two gas stations. Bruno's operates supermarkets under the trade names Bruno's Fine Foods, Food World, FoodMax, Food Fair and Fresh Value.

On September 4, 2001, Ahold and Bruno's signed an agreement whereby Ahold will purchase all of the outstanding voting securities of Bruno's through the merger of New Bronco Acquisition Corp., an indirect wholly owned subsidiary of Ahold, with and into Bruno's

Analysis

Supermarkets. Bruno's Supermarkets will continue as the surviving corporation. The value of the transaction is approximately \$500 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 one-stop shopping 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 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 from 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

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acquisition are the areas in or near the towns of Milledgeville and Sandersville, Georgia. Ahold and Bruno's are direct competitors in both of the relevant markets. The draft complaint alleges that the post-merger markets would each 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 HHI in each of the geographic markets would be above 5400.

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

The draft complaint also alleges that Ahold's acquisition of all of the outstanding voting securities of Bruno's, 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 Ahold and supermarkets owned and controlled by Bruno's; by increasing the likelihood that Ahold 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 that 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 Orders

The Agreement Containing Consent Orders ("proposed consent order") will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Ahold must divest two BI-LO supermarkets, one in Milledgeville and one in Sandersville, Georgia. In each community, Ahold owns only one supermarket. Both of the divestitures are to experienced up-front buyers who would be new entrants in the

Analysis

relevant geographic markets and who the Commission has pre-evaluated for 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 and to determine that these purchasers are well qualified to operate the divested stores.

In Milledgeville, Ahold will sell its BI-LO to The Kroger Co. ("Kroger"), which is headquartered in Cincinnati, Ohio. Kroger operates supermarkets in southeastern Georgia and throughout the United States. Ahold will sell its BI-LO in Sandersville to Winn-Dixie Stores, Inc. ("Winn-Dixie"), headquartered in Jacksonville, Florida. Winn-Dixie also operates supermarkets in southeastern Georgia and throughout the U.S.

Paragraph II.A. of the proposed consent order requires that the divestitures must occur no later than 10 business days after the merger is consummated. However, if Ahold consummates the divestitures to Kroger and Winn-Dixie during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Ahold that Kroger or Winn-Dixie is not an acceptable acquirer or that the asset purchase agreement with Kroger or Winn-Dixie is not an acceptable manner of divestiture, then Ahold 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, Ahold 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 the Commission may appoint a trustee with 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 Ahold has not divested to satisfy the requirements of the

Analysis

proposed consent order. In addition, the proposed order enables the Commission to seek civil penalties against Ahold for non-compliance with the proposed consent order.

The proposed consent also requires Proposed Respondents to maintain the viability, marketability and competitiveness of the supermarkets identified for divestitures. Among other requirements related to maintaining operations at these supermarkets, the proposed consent 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 Ahold from acquiring, without providing the Commission with prior notice, any supermarkets, or any interest in any supermarkets, located in the counties that include Milledgeville and Sandersville, Georgia for ten years. These are the areas from 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 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 Ahold, 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, 2001, to operate a supermarket at that site if that site was formerly owned or operated by Ahold or Bruno's in any of the above areas. In addition, the Proposed Respondents are prohibited from removing fixtures or equipment from a store or property owned or leased by Ahold or Bruno's in Sandersville or Milledgeville,

Analysis

Georgia, 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.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 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 Kroger and Winn-Dixie, 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.

Complaint

IN THE MATTER OF

DIAGEO PLC, 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-4032; File No. 0110057**Complaint, December 19, 2001--Decision, February 4, 2002*

This consent order addresses the acquisition by Respondent Diageo plc ("Diageo"), a United Kingdom public limited company that operates a distilled spirits business in the United States through GuinnessUDV North America, Inc., and Pernod Ricard S.A. of the Seagram Wine and Spirits business – with Diageo to acquire, among other distilled spirits brands, Captain Morgan Original Spiced Rum and Captain Morgan's Parrot Bay Rum, and with Pernod Ricard to acquire Seagram's Gin, Chivas Regal Scotch, The Glenlivet Scotch, and Martell Cognac – from Respondent Vivendi S.A. ("Vivendi"), a French societe anonyme that operates a distilled spirits business in the United States through Joseph E. Seagram & Sons, Inc. The order, among other things, requires Respondent Diageo to divest its Malibu rum business, worldwide, to an acquirer approved by the Commission. The order also prohibits Diageo from obtaining or using any commercially sensitive business information relating to Seagram's Gin, Chivas Regal Scotch, The Glenlivet Scotch, or Martell Cognac. An accompanying Order to Hold Separate and Maintain Assets requires Respondent Diageo to preserve and maintain the Seagram Captain Morgan rum assets as a separate competitive entity pending the divestiture of the Malibu assets, and to preserve and maintain the competitive viability of the Malibu assets, pending their divestiture.

Participants

For the Commission: *Joseph S. Brownman, Stephen Y. Wu, Barbara K. Shapiro, W. Stephen Sockwell, Jr., Karen Mainor-Harris, Elizabeth B. Pelkofski, Anthony Low Joseph, Erika Brown-Lee, Gabe Dagen, Amy Swift, Clifton Smith, David Von Nirschl, Jennifer Lee, Catharine M. Moscatelli, Elizabeth A. Piotrowski, Phillip L. Broyles, Malcolm B. Coate, Elizabeth Callison and Mary T. Coleman.*

For the Respondents: *Ken Logan, David E. Vann, Jr., and Ann Rappeley, Simpson Thacher & Bartlett, Raymond E. Jacobsen,*