

Complaint

IN THE MATTER OF

AB ACQUISITION, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket No. C-4424; File No. 131 0227**Complaint, December 23, 2013 – Decision, January 28, 2014*

This consent order addresses the acquisition by AB Acquisition, LLC of United Supermarkets, L.L.C. The complaint alleges that the proposed merger, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by removing an actual, direct, and substantial supermarket competitor in Amarillo and Wichita Falls, Texas. The consent order requires Respondent to divest its supermarkets in the two affected markets.

Participants

For the *Commission*: Chester Choi and Jeremy Morrison.

For the *Respondents*: Michael Cutini and Michael E. Swartz,
Schulte Roth & Zabel LLP; John Goheen and Matthew J. Reilly,
Simpson Thacher & Bartlett LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that AB Acquisition, LLC, a limited liability company, subject to the jurisdiction of the Commission, entered into a merger agreement with United Supermarkets, L.L.C. (“United”), a limited liability company, subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

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I. RESPONDENT

1. Respondent AB Acquisition, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.

2. Respondent, through its wholly owned indirect subsidiary, Albertson's LLC ("Albertson's"), owns and operates 606 supermarkets in the Western and Southern United States. In Texas, Respondent owns and operates 72 supermarkets under the Albertsons banner--ten of which are located in the West Texas zone, which consists of North and West Texas.

II. THE ACQUIRED COMPANY

3. United is a limited liability company organized, existing, and doing business under and by virtue of the laws of Texas, with its office and principal place of business located at 7830 Orlando Avenue, Lubbock, Texas 79423.

4. United owns and operates 51 supermarkets in North and West Texas. United operates these supermarkets under three banners--United Supermarkets, Market Street, and Amigos. United Supermarkets is a traditional supermarket banner. Market Street offers everyday grocery needs, as well as gourmet and specialty items, whole health products, and prepared food. Amigos is operated as a specialty store with a focus on traditional and authentic items targeted to Hispanic shoppers.

III. JURISDICTION

5. Respondent is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

6. United is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

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IV. THE PROPOSED MERGER

7. On September 9, 2013, Respondent and United entered into a merger agreement pursuant to which Respondent would acquire 100% of United's equity for a purchase price of approximately \$385 million ("the Proposed Merger").

8. The Proposed Merger would combine two of the only three retail sellers of food and other grocery products in full-line supermarkets in Amarillo and Wichita Falls, Texas. Respondent and United both own and operate supermarkets in these areas and compete and promote their businesses in these areas.

V. THE RELEVANT PRODUCT MARKET

9. The relevant line of commerce in which to analyze the acquisition is the retail sale of food and other grocery products in supermarkets.

10. For purposes of this complaint, the term "supermarket" means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer and/or distilled spirits.

11. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, typically referred to as stock-keeping units or SKUs, as well as a deep inventory of those items. In order to accommodate the large number of food and non-food

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

12. Supermarkets compete primarily with other supermarkets that provide one-stop shopping opportunities for food and grocery products. Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at other nearby competing supermarkets. Supermarkets do not regularly conduct price checks of food and grocery products sold at other types of stores and do not typically set or change their food and grocery prices in response to prices at other types of stores.

13. Although retail stores other than supermarkets also sell food and grocery products--including convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores--these types of stores do not, individually or collectively, provide sufficient competition to effectively constrain prices at supermarkets. These retail stores do not offer a supermarket's distinct set of products and services that provide consumers with the convenience of one-stop shopping for food and grocery products. The vast majority of consumers shopping for food and grocery products at supermarkets are not likely to start shopping elsewhere, or significantly increase grocery purchases elsewhere, in response to a small but significant price increase by supermarkets.

VI. THE RELEVANT GEOGRAPHIC MARKET

14. Customers shopping at supermarkets are motivated by convenience and, as a result, competition for supermarkets is local in nature. Generally, the overwhelming majority of consumers' grocery shopping occurs at stores located very close to where they live.

15. Respondent and United operate supermarkets under the Albertsons, United Supermarkets, and Market Street banners within approximately two to five miles of each other in both the western half of Amarillo, Texas and the southwest region of Wichita Falls, Texas. The primary trade area of Respondent's and United's banners in both Amarillo and Wichita Falls overlap significantly.

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16. The relevant geographic markets in which to assess the competitive effects of the acquisition are localized areas within Amarillo and Wichita Falls. Specifically, in Amarillo, the relevant geographic market is the area encompassing the area from the western city limit to the railroad tracks that run parallel to, and are located to the east of, the Interstate 40 and the U.S. Route 87/287 corridor (“West Amarillo”). In Wichita Falls, the relevant geographic market is the area within the city limits that runs south of U.S. Route 277 and west of U.S. Route 281 (“Southwest Wichita Falls”). A hypothetical monopolist controlling all supermarkets in these areas could profitably raise prices by a small but significant amount.

VII. MARKET CONCENTRATION

17. The relevant markets of West Amarillo and Southwest Wichita Falls, Texas already are highly concentrated, and the Proposed Merger will substantially increase concentration, whether measured by the Herfindahl Hirschman Index (“HHI”) or by the number of competitively significant firms remaining in the markets post-acquisition.

18. In West Amarillo, the post-merger HHI in the relevant geographic market would increase 503 points from 4501 to 5004, when measured by revenues. This market concentration level gives rise to a presumption that the Proposed Merger is unlawful in the West Amarillo geographic market.

19. In Southwest Wichita Falls, the post-merger HHI in the relevant geographic market would increase 811 points from 4193 to 5004. This market concentration level, once again, gives rise to a presumption that the acquisition is unlawful in the Southwest Wichita Falls geographic market.

20. The Proposed Merger reduces the number of supermarket competitors in the relevant geographic markets from three to two in both West Amarillo and Southwest Wichita Falls.

VIII. ENTRY CONDITIONS

21. Entry into the relevant markets would not be timely, likely, or sufficient in magnitude to prevent or deter the likely

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anticompetitive effects of the Proposed Merger. Significant entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket, and generating sufficient sales to have a meaningful impact on the market.

IX. EFFECTS OF THE ACQUISITION

22. The Proposed Merger, if consummated, is likely to substantially lessen competition for the retail sale of food and other grocery products in supermarkets in the relevant geographic markets identified in Paragraph 16 in the following ways, among others:

- a. by eliminating direct and substantial competition between Respondent and United; and
- b. by increasing the likelihood that Respondent will unilaterally exercise market power.

23. The ultimate effect of the Proposed Merger would be to increase 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 relevant sections of the country.

X. VIOLATIONS CHARGED

24. The agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, Federal Trade Commission on this twenty-third day of December 2013, issues its complaint against said Respondent.

By the Commission.

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by AB Acquisition, LLC (“Albertson’s” or “Respondent”) of United Supermarkets L.L.C. (“United”), and Respondent 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 Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts as 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 Respondent 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 had reason to believe that the Respondent has 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 for the receipt and consideration of public comments, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent AB Acquisition, LLC is a company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its company headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho;

Order to Maintain Assets

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

I.

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

II.

IT IS FURTHER ORDERED that:

- A. Respondent 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 it cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall it sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Assets To Be Divested. Respondent 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 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. Respondent shall not terminate the operation of any Supermarket To Be Maintained. Respondent shall continue to maintain the inventory of each Supermarket To Be Maintained at levels and selections consistent with those maintained by Respondent at such Supermarket in the ordinary course of business consistent with past practice. Respondent shall use best

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efforts to keep the organization and properties of each Supermarket To Be Maintained intact, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Supermarket To Be Maintained. Included in the above obligations, Respondent shall, without limitation:

1. Maintain all 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 each 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., direct mailing, point-of-purchase coupons) that indicates that 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 each Supermarket To Be Maintained, other than changes in the ordinary course of

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business consistent with past practice for Supermarkets of the Respondent not being closed or relocated.

III.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger or consolidation of Respondent; or
- C. Any other change in the Respondent, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

IV.

IT IS FURTHER ORDERED that, for the purpose 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 Respondent made to its principal United States offices, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent 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 Respondent relating to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview

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officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

V.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at 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 Respondent's (or a Divestiture Trustee's) completion of the divestiture of Assets To Be Divested related to such Supermarket, as described in and required by the Decision and Order.

Provided, however, that if the Commission, pursuant to Paragraph II.A. of the Decision and Order, requires the Respondent to rescind any or all of the divestitures contemplated by any Purchaser Agreement, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect with respect to the relevant Assets To Be Divested until the day after Respondent's (or a Divestiture Trustee's) completion of the divestiture(s) of the relevant Assets To Be Divested, as described in and required by the Decision and Order.

By the Commission.

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by AB Acquisition, LLC ("Albertson's" or "Respondent") of United

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Supermarkets L.L.C. (“United”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent 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 Respondent 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 Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and 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 in 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 AB Acquisition, LLC is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

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ORDER**I.**

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

- A. “Albertson’s” or “Respondent” means Respondent AB Acquisition, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by AB Acquisition, LLC (including Albertson’s LLC and New Albertson’s, Inc.) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Following the Acquisition, “Albertson’s” or “Respondent” also includes United.
- B. “United” means United Supermarkets, L.L.C., a company organized, existing and doing business under and by virtue of the laws of the State of Texas, with its headquarters and principal place of business located at 7830 Orlando Avenue, Lubbock, Texas, 79423.
- C. “Acquisition” means Albertson’s proposed acquisition of United pursuant to the Agreement and Plan of Merger dated as of September 9, 2013.
- D. “Assets To Be Divested” means the Amarillo Supermarket Assets and the Wichita Falls Supermarket Assets.
- E. “Amarillo Supermarket Assets” means the Albertson’s Supermarket No. 4203, located at 2200 South Bell Street in Amarillo, Texas, and all rights, title, and interest in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Supermarket business conducted at that location, including but not limited to all properties, leases, leasehold interests, equipment and fixtures, books and records, government approvals and permits (to the extent transferable), telephone and fax numbers, and

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goodwill. At the Acquirer's option, the Amarillo Supermarket Assets shall also include any or all inventory as of the Divestiture Date.

Provided, however, that Amarillo Supermarket Assets shall not include those assets consisting of or pertaining to any of the Respondent's trademarks, trade dress, service marks or trade names, *except* with respect to any purchased inventory (including private label inventory) or as may be allowed pursuant to any Transition Services Agreement.

- F. "Wichita Falls Supermarket Assets" means the Albertson's Supermarket No. 4235, located at 2720 Southwest Parkway, Wichita Falls, Texas, and all rights, title, and interest in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Supermarket business conducted at that location, including but not limited to all properties, leases, leasehold interests, equipment and fixtures, books and records, government approvals and permits (to the extent transferable), telephone and fax numbers, and goodwill. At the Acquirer's option, the Wichita Falls Supermarket Assets shall also include any or all inventory as of the Divestiture Date.

Provided, however, that Wichita Falls Supermarket Assets shall not include those assets consisting of or pertaining to any of the Respondent's trademarks, trade dress, service marks or trade names, *except* with respect to any purchased inventory (including private label inventory) or as may be allowed pursuant to any Transition Services Agreement.

- G. "Acquirer" means any entity approved by the Commission to acquire any or all of the Assets To Be Divested pursuant to this Order.
- H. "Divestiture Agreement" means any agreement between the Respondent and an Acquirer (or a Divestiture Trustee appointed pursuant to Paragraph III of this Order and an Acquirer) and all amendments,

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exhibits, attachments, agreements, and schedules thereto, related to any of 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 Lawrence Brothers Divestiture Agreement.

- I. “Divestiture Date” means the closing date of the respective divestitures required by this Order.
- J. “Divestiture Trustee” means any person or entity appointed by the Commission pursuant to Paragraph III of the Order to act as a trustee in this matter.
- K. “Proposed Acquirer” means any proposed acquirer of any of the Assets To Be Divested submitted to the Commission for its approval under this Order; “Proposed Acquirer” includes, as appropriate, Lawrence Brothers.
- L. “Lawrence Brothers” means MAL Enterprises, Inc., a Supermarket operator organized, existing and doing business under and by virtue of the laws of the State of Texas, with its offices and principle place of business located at 300 Hailey Street, Sweetwater, Texas.
- M. “Lawrence Brothers Divestiture Agreement” means the asset purchase agreement entered into on December 12, 2013, by and between Albertson’s and Lawrence Brothers, attached as non-public Appendix I, for the divestiture by Respondent of the Assets To Be Divested.
- N. “Relevant Areas” means Randall, Potter and Wichita Counties in Texas.
- O. “Supermarket” means any full-line retail grocery store that enables customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit with substantial offerings in each of the following product categories: bread and baked goods; dairy products; refrigerated food and

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beverage products; frozen food and beverage products; fresh and prepared meats and poultry; fresh fruits and vegetables; shelf-stable food and beverage products, including canned, jarred, bottled, boxed and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, tea and other staples; other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids; pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer and/or distilled spirits.

- P. “Third Party Consents” means all consents from any person other than the Respondent, including all landlords, that are necessary to effect the complete transfer to the Acquirer(s) of the Assets To Be Divested.
- Q. “Transition Services Agreement” means an agreement that receives the prior approval of the Commission between Respondent and an Acquirer of any of the assets divested under this Order to provide, at the option of each Acquirer, any services (or training for an Acquirer to provide services for itself) necessary to transfer the divested assets to the Acquirer in a manner consistent with the purposes of this Order.

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

- A. Respondent shall divest, by (a) 10 days after the date on which the Acquisition is consummated, or (b) January 13, 2014, whichever is later, absolutely and in good faith, the Assets To Be Divested as ongoing Supermarket businesses to Lawrence Brothers, pursuant to and in accordance with the Lawrence Brothers Divestiture Agreement;

Provided, however, that in cases in which books or records included in the Assets To Be Divested contain

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information (a) that relates both to the Assets To Be Divested and to other retained business of Respondent or (b) such that Respondent has a legal obligation to retain the original copies, then Respondent shall be required to provide only copies or relevant excerpts of the materials containing such information. In instances where such copies are provided, the Respondent shall provide access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes.

Provided, further, that if, prior to the date this Order becomes final, Respondent has divested the Assets To Be Divested to Lawrence Brothers pursuant to the Lawrence Brothers Divestiture Agreement and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:

1. Lawrence Brothers is not an acceptable Acquirer, then Respondent shall, within five days of notification by the Commission, rescind such transaction with Lawrence Brothers, and shall divest such assets as ongoing Supermarket businesses, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission, within 90 days of the date the Commission notified Respondent that Lawrence Brothers is not an acceptable Acquirer; or
2. The manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondent, or appoint a Divestiture Trustee pursuant to Paragraph III of this Order, to effect such modifications to the manner of divesting those assets to Lawrence Brothers (including, but not limited to, entering into additional agreements or arrangements, or modifying the Lawrence Brothers Divestiture Agreement) as may be necessary to satisfy the requirements of this Order.

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- B. Respondent shall obtain at their sole expense all required Third Party Consents relating to the divestiture of all Assets To Be Divested prior to the applicable Divestiture Date.
- C. All Divestiture Agreements approved by the Commission:
 - 1. Shall be deemed incorporated by reference into this Order, and any failure by Respondent to comply with the terms of any such Divestiture Agreement shall constitute a violation of this Order.
 - 2. Shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligation of Respondent under such agreement. If any term of any Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order.
- D. At the option of the Acquirer of any Assets To Be Divested, and subject to the prior approval of the Commission, Respondent shall enter into a Transition Services Agreement for a term extending up to 180 days following the relevant Divestiture Date. The services subject to the Transition Services Agreement shall be provided at no more than Respondent's direct costs and may include, but are not limited to, payroll, employee benefits, accounting, IT systems, distribution, warehousing, use of trademarks or trade names for transitional purposes, and other logistical and administrative support.
- E. Pending divestiture of any of the Assets To Be Divested, Respondent shall:

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1. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Assets To Be Divested, to minimize any risk of loss of competitive potential for the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested, except for ordinary wear and tear; and
2. Not sell, transfer, encumber, or otherwise impair the Assets To Be Divested (other than in the manner prescribed in this Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Assets To Be Divested.

F. With respect to each Divestiture Agreement:

1. No later than fifteen (15) days after signing each Divestiture Agreement, Respondent shall provide an opportunity for the Proposed Acquirer to:
 - a. Meet personally, and outside of the presence or hearing of any employee or agent of Respondent, with any one or more of the employees of the Assets To Be Divested pursuant to the Divestiture Agreement; and
 - b. Make offers of employment to any one or more of the employees of the Assets To Be Divested pursuant to the Divestiture Agreement; and
2. Respondent shall: not interfere with the hiring or employing by the Acquirer of employees of the divested Supermarkets; remove any impediments within the control of Respondent that may deter those employees from accepting employment with such Acquirer (including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by such Acquirer); and

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not make any counteroffer to any employee who has an outstanding offer of employment from such Acquirer. This obligation shall continue for a period of one (1) year from the date of the divestiture of any of the Assets To Be Divested to an Acquirer.

- G. The purpose of the divestitures is to ensure the continuation of the Assets To Be Divested as ongoing, viable enterprises engaged in the Supermarket business and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

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

- A. If Respondent has not divested all of the Assets To Be Divested as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the remaining Assets To Be Divested in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent 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(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and

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conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has 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 Respondent of the identity of any proposed Divestiture Trustee, Respondent 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 sell, assign, grant, license, divest, transfer, contract, deliver, or otherwise convey the relevant assets or rights that are required to be sold, assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order.
3. Within ten (10) days after appointment of the Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestitures or transfers 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

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achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

5. Subject to any demonstrated legally recognized privilege, 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 assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondent 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 commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for the Amarillo Supermarket Assets or for the Wichita Falls Supermarket Assets, and if the Commission determines to approve more than one such acquiring entity for either Supermarket, the Divestiture Trustee shall divest such Supermarket to the acquiring entity selected by Respondent from among those approved by the Commission;

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provided further, however, that Respondent shall select such entity within five (5) 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 Respondent, 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 Respondent, 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 Respondent, 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 required to be divested by this Order.
8. Respondent 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 resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross

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negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph III.
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. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
12. The Divestiture Trustee shall report in writing to Respondent and the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).
13. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
14. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

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IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order is issued, Respondent 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 any of 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 Supermarket within six (6) months prior to such proposed acquisition, in any of the Relevant Areas.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Respondent or the acquisition or leasing of 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, 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 Respondent and not of any other party to the transaction. Respondent 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,

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representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent 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:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondent has fully complied with the provisions of Paragraphs II and III of this Order, Respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Respondent shall include in its 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. Respondent shall include in its reports copies of all material written communications to and from such parties, all non-privileged internal memoranda, 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, Respondent shall file

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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.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in the Respondent, including but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

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 and upon five (5) days' notice to Respondent made to its principal United States office, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent 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 Respondent relating to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

Analysis to Aid Public Comment

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on January 28, 2024.

By the Commission.

APPENDIX I**Lawrence Brothers Divestiture Agreement**

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. INTRODUCTION AND BACKGROUND**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Order”) from AB Acquisition, LLC (“Respondent”). The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from the merger of Respondent with United Supermarkets, L.L.C. (“United”). Under the terms of the proposed Consent Order, Respondent is required to divest its supermarkets and related assets in Amarillo and Wichita Falls, Texas to a Commission-approved purchaser. The divestitures must be completed no later than 10 days following the date of Respondent’s merger with United.

Analysis to Aid Public Comment

The proposed Consent Order has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission again will review the proposed Consent Order and any comments received, and decide whether it should withdraw the Consent Order, modify the Consent Order, or make it final.

On September 9, 2013, Respondent and United entered into a merger agreement whereby Respondent agreed to purchase 100% of United's equity. The Commission's Complaint alleges that the proposed merger, 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, by removing an actual, direct, and substantial supermarket competitor in Amarillo and Wichita Falls, Texas. The elimination of this competition would result in significant competitive harm, specifically higher prices and diminished quality and service levels in both markets. The proposed Consent Order would remedy the alleged violations by requiring Respondent to divest its supermarkets in the two affected markets. The divestitures will establish a new independent competitor to Respondent in both relevant areas, replacing the competition that otherwise would be lost as a result of the proposed merger.

THE PARTIES

Respondent, through its wholly owned indirect subsidiary, Albertson's LLC ("Albertson's"), owns and operates 606 supermarkets in the western and southern United States under the Albertsons banner. In Texas, Albertson's operates 72 supermarkets under the Albertsons banner, the majority of which are in the Dallas-Fort Worth Metroplex. Albertson's operates 10 Albertsons banner stores in North and West Texas.

United is a privately held regional grocery retailer that owns and operates 51 traditional and specialty supermarkets and 7 convenience stores across North and West Texas. United operates its supermarkets under three different banners: United Supermarkets, Market Street, and Amigos. United Supermarkets is a traditional supermarket banner. Market Street offers everyday grocery needs, as well as gourmet and specialty items, whole

Analysis to Aid Public Comment

health products, and prepared food. Amigos is operated as a specialty store with a focus on traditional and authentic items targeted to Hispanic shoppers. United also owns three distribution centers, an ice manufacturing plant, and a food manufacturing plant.

SUPERMARKET COMPETITION IN AMARILLO AND WICHITA FALLS, TEXAS

Respondent's proposed merger with United poses substantial antitrust concerns for the retail sale of food and other grocery products in supermarkets. Supermarkets are defined as traditional full-line retail grocery stores that sell, on a large-scale basis, food and non-food products that customers regularly consume at home—including, but not limited to, fresh meat, dairy products, frozen foods, beverages, bakery goods, dry groceries, detergents, and health and beauty products. This broad set of products and services provides a “one-stop shopping” experience for consumers by enabling them to shop in a single store for all of their food and grocery needs. The ability to offer consumers one-stop shopping is a critical differentiating factor between supermarkets and other food retailers.

The relevant product market includes supermarkets within “hypermarkets,” such as Wal-Mart Supercenters. Hypermarkets also sell an array of products that would not be found in traditional supermarkets. However, hypermarkets, like conventional supermarkets, contain bakeries, delis, dairy, produce, fresh meat, and sufficient product offerings to enable customers to purchase all of their weekly grocery requirements in a single shopping visit.

Other types of retailers – such as hard discounters, convenience stores, specialty food stores and club stores – also sell food and grocery items. However, these types of retailers are not in the relevant product market because they do not have a supermarket's full complement of products and services. Shoppers typically do not view these other food and grocery retailers as adequate substitutes for supermarkets. Further, although these other types of retailers offer some competition, supermarkets do not view them as providing as close competition

Analysis to Aid Public Comment

as traditional supermarkets.¹ Thus, consistent with prior Commission precedent, grocery items sold in stores other than supermarkets are excluded from the relevant product market.²

There are two relevant geographic markets in which to analyze the merger's effects: (1) the western half of Amarillo, Texas ("West Amarillo"), and (2) the southwest area of Wichita Falls, Texas ("Southwest Wichita Falls"). Specifically, West Amarillo includes the area from the western city limit to the railroad tracks that run parallel to, and are located to the east of, the Interstate 40 and U.S. Route 87/287 corridor. Southwest Wichita Falls is the area within the city limits that runs south of U.S. Route 277 and west of U.S. Route 281. A hypothetical monopolist of the retail sale of food and other grocery products in supermarkets in each relevant area could profitably impose a small but significant non-transitory increase in price.

Interviews with the merging parties' executives and market participants, as well as a review of party documents, demonstrate that Albertson's and United are close and vigorous competitors in terms of format, service, product offerings, promotional activity, and location in the West Amarillo and Southwest Wichita Falls markets. For example, Albertson's and United are the only supermarkets in Amarillo and Wichita Falls that retain a traditional supermarket format, with both emphasizing specialty departments like meat and fresh seafood. Both are also the only traditional supermarket operators in Amarillo and Wichita Falls

¹ Shoppers typically do not view these other food and grocery retailers as adequate substitutes for supermarkets and would be unlikely to switch to one of these retailers in response to a small but significant price increase or "SSNIP" by a hypothetical supermarket monopolist. See U.S. DOJ and FTC Horizontal Merger Guidelines § 4.1.1 (2010).

² See, e.g., *Konkinlijke Ahold N.V./Safeway Inc.*, Docket C-4367 (August 17, 2012); *Shaw's/Star Markets*, Docket C- 3934 (June 28, 1999); *Kroger/Fred Meyer*, Docket C-3917 (January 10, 2000); *Albertson's/American Stores*, Docket C-3986 (June 22, 1999); *Ahold/Giant*, Docket C-3861 (April 5, 1999); *Albertson's/Buttrey*, Docket C-3838 (December 8, 1998); *Jitney-Jungle Stores of America, Inc.*, Docket C-3784 (January 30, 1998). But see *Wal-Mart/Supermercados Amigo*, Docket C-4066 (November 21, 2002) (the Commission's complaint alleged that in Puerto Rico, club stores should be included in a product market that included supermarkets because club stores in Puerto Rico enabled consumers to purchase substantially all of their weekly food and grocery requirements in a single shopping visit).

Analysis to Aid Public Comment

that carry a broad range of products catering to the entire community. Additionally, Albertson's and United's stores have the most similar store formats and size among supermarket operators in Amarillo and Wichita Falls, including the amount of floor space devoted to food and other grocery products. Absent relief, the proposed merger would eliminate significant head-to-head competition between Respondent and United and would increase Respondent's ability and incentive to raise prices unilaterally post-merger. The proposed merger would also decrease incentives to compete on non-price factors, such as service levels, convenience, and quality.

The West Amarillo and Southwest Wichita Falls markets already are highly concentrated, and would become significantly more so post-merger. The merger would reduce the number of supermarket competitors from three to two; Wal-Mart Supercenter would be the only remaining competitor in each of the two relevant areas. In West Amarillo, the proposed merger would increase the Herfindahl-Hirschman Index ("HHI"), which is the standard measure of market concentration under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("HMG"), 503 points, from 4501 to 5004. In Southwest Wichita Falls, the proposed merger would increase the HHI 811 points, from 4193 to 5004. Under the HMG, these concentration levels trigger the presumption that the merger likely enhances Respondent's market power in West Amarillo and Southwest Wichita Falls.

New entry or expansion in the relevant markets is unlikely to deter or counteract the anticompetitive effects of the proposed merger. Moreover, even if a prospective entrant existed, the entrant must secure a viable location, obtain the necessary permits and governmental approvals, build its retail establishment or renovate an existing building, and open to customers before it could begin operating and serve as a relevant competitive constraint. It is unlikely that entry sufficient to achieve a significant market impact and act as a competitive constraint would occur in a timely manner.

Analysis to Aid Public Comment

THE PROPOSED CONSENT ORDER

The proposed remedy, which requires the divestiture of the Albertson's supermarkets in Amarillo and Wichita Falls to a Commission-approved purchaser, will restore fully the competition that otherwise would be eliminated in these markets as a result of the merger. Respondent has agreed to divest the Albertson's supermarkets in Amarillo and Wichita Falls to MAL Enterprises, Inc., which operates as Lawrence Brothers IGA ("Lawrence Brothers"). Lawrence Brothers is a family owned and operated supermarket chain based in Sweetwater, Texas, with 18 supermarkets located throughout West Texas and two in New Mexico, all of which are located outside the two relevant geographic markets.³ Lawrence Brothers appears to be a highly suitable purchaser, and it is well positioned to enter the relevant markets and prevent the increase in market concentration and likely competitive harm that otherwise would have resulted from the merger.

The proposed Order requires Respondent to divest Albertson's Amarillo and Wichita Falls stores and related assets to Lawrence by the later of: (a) January 13, 2014, or (b) 10 days following Albertson's merger with United. If Lawrence Brothers is not approved by the Commission to purchase the assets, Albertson's must immediately rescind the divestiture agreement and divest the Albertson's stores and related assets to a buyer that receives the Commission's prior approval. The proposed Consent Order contains additional provisions designed to ensure the adequacy of the proposed relief. For example, for a period of one year, the Consent Order prohibits Albertson's from interfering with Lawrence Brothers' hiring or employment of any employees currently working at the Albertson's stores in Amarillo and Wichita Falls. Additionally, for a period of 10 years, Respondent is required to give the Commission prior notice of plans to acquire

³ Lawrence Brothers operates 14 stores under the "Lawrence Brothers" banner, four stores under the "Cash Saver" banner, and two stores under the "Save-A-Lot" banner. Lawrence Brothers plans to convert the two Albertson's stores in Amarillo and Wichita Falls to Cash Saver stores. Cash Saver stores are traditional supermarkets with specialty departments such as pharmacies, delis, and bakeries. Cash Saver prices all grocery products in its stores at 10% above cost.

Analysis to Aid Public Comment

any interest in a supermarket, or an interest in a supermarket, that has operated or is operating in Amarillo and Wichita Falls.

* * *

The sole purpose of this Analysis is to facilitate public comment on the proposed Consent Order. This Analysis does not constitute an official interpretation of the proposed Consent Order, nor does it modify its terms in any way.

Complaint

IN THE MATTER OF

GANLEY FORD WEST, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4428; File No. 122 3269**Complaint, January 28, 2014 – Decision, January 28, 2014*

This consent order addresses Ganley Ford West, Inc.'s failure to disclose material information to consumers wishing to purchase motor vehicles. The complaint alleges that respondent has advertised that particular Ford models are available at a specific dealer discount however, once consumers reach the dealership, they find out that respondent has failed to disclose that the specific discounts are only available for some, but not all, of the Ford models advertised. The consent order prohibits respondent from misrepresenting any material fact about the price, sale, financing, or leasing of motor vehicles; and from representing that a discount, rebate, bonus, incentive or price is available to consumers unless the representation clearly and conspicuously discloses all material qualifications or restrictions, if any, including but not limited to qualifications or restrictions on: (a) a consumer's ability to obtain the discount, rebate, bonus, incentive or price or (b) the vehicles available at the discount, rebate, bonus, incentive or price.

Participants

For the *Commission*: Teresa N. Kosmidis and Peter Lamberton.

For the *Respondent*: A. Steven Dever, A. Steven Dever, LPA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ganley Ford West, Inc., a corporation ("respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Ganley Ford West, Inc. is an Ohio corporation with its principal office or place of business at 16100 Lorain Avenue, Cleveland, OH 44111. Respondent offers motor vehicles for sale or lease.