

Complaint

IN THE MATTER OF

**LONE STAR FUND V (U.S.), L.P.,
BI-LO HOLDINGS, LLC,
ETABLISSEMENTS DELHAIZE FRÈRES ET CIE
“LE LION” (GROUP DELHAIZE) SA/NV,
AND DELHAIZE AMERICA, LLC**

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 No. C-4440; File No. 131 0162
Complaint, February 24, 2014 – Decision, January 13, 2015*

This consent order addresses the anticompetitive effects that otherwise would result from Bi-Lo Holdings LLC’s (“Bi-Lo”) \$265 million acquisition of Delhaize America LLC’s (“Delhaize”) Sweetbay, Harvey’s, and Reid supermarkets in the retail sale of food and other grocery products in Florida, Georgia, and South Carolina. The complaint alleges that Bi-Lo’s acquisition of 154 stores from Delhaize, if consummated, would likely harm consumers through higher prices, diminished quality and reduced service levels. The consent order requires the merged Bi-Lo/Delhaize to sell 12 stores to Rowes IGA Supermarkets, HAC, Inc., W. Lee Flowers & Co., Inc. and Food Giant.

Participants

For the *Commission*: *Amanda Lewis, Anthony Saunders, Sam Sheinberg, and Joshua Smith.*

For the *Respondents*: *Joshua Soven, Gibson, Dunn & Crutcher LLP; and Bruce Hoffman and Amanda Wait, Hunton & Williams 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 Respondent Bi-Lo Holdings, LLC (“Bi-Lo”), of which Respondent Lone Star Fund V (U.S.), L.P. (“Lone Star”) is the majority owner, and Respondent Delhaize America, LLC (“Delhaize America”), of

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which Respondent Etablissements Delhaize Frères et Cie “Le Lion” (Group Delhaize) SA/NV (“Delhaize”) is the majority owner, all subject to the jurisdiction of the Commission, entered into an agreement and plan of merger pursuant to which Bi-Lo will acquire certain assets of Delhaize America, 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:

I. RESPONDENTS

1. Respondent Lone Star is a limited partnership 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 at 2711 North Haskell Avenue, Suite 1700, Dallas, Texas 75204.

2. Respondent Bi-Lo is a limited liability company 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 at 5050 Edgewood Court, Jacksonville, Florida 32254.

3. Respondent Lone Star, through Bi-Lo, of which Lone Star is the majority owner, owns and operates the BI-LO and Winn-Dixie supermarket chains in the southeastern United States, including Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

4. Respondent Delhaize is a public limited company (société anonyme/naamloze vennootschap) organized, existing, and doing business under and by virtue of the laws of Belgium, with its office and principal place of business located at Square Marie Curie 40, 1070 Brussels, Belgium.

5. Respondent Delhaize America is a limited liability corporation organized, existing, and doing business under and by virtue of the laws of the state of North Carolina, with its office and principal place of business at 2110 Executive Drive, Salisbury, North Carolina 28145.

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6. Respondent Delhaize, through Delhaize America, of which Delhaize is the majority owner, operates a number of supermarket chains throughout the United States, including Sweetbay, Harveys, Reid's, Food Lion, and Hannaford.

7. Lone Star, Bi-Lo, Delhaize, and Delhaize America ("Respondents") own and operate supermarkets in each of the geographic markets relevant to this Complaint and compete and promote their businesses in these areas.

II. JURISDICTION

8. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have 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.

III. THE PROPOSED ACQUISITION

9. On January 31, 2014, Respondents entered into an agreement pursuant to which Bi-Lo would acquire from Delhaize America 73 Sweetbay stores (including one to-be-opened store), 71 Harveys stores, 10 Reid's stores, and leases to 10 closed Sweetbay locations for a purchase price of approximately \$266.5 million (the "Proposed Acquisition").

IV. THE RELEVANT PRODUCT MARKET

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

11. 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

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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.

12. 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 (“SKUs”), as well as a deep inventory of those items. In order to accommodate the large number of food and non-food products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

13. 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 or grocery prices in response to prices at other types of stores.

14. Although retail stores other than supermarkets may also sell food and grocery products, these types of stores—including convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club 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 at other types of stores, or significantly increase grocery purchases at other types of stores, in response to a small but significant price increase by supermarkets.

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V. THE RELEVANT GEOGRAPHIC MARKETS

15. 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.

16. Respondents currently operate supermarkets under the BI-LO, Winn-Dixie, Sweetbay, Harveys, and Reid's banners within approximately two-tenths of a mile to three miles of each other in each of the relevant geographic markets. The primary trade areas of Respondents' banners in each of the relevant geographic markets overlap significantly.

17. The relevant geographic markets in which to assess the competitive effects of the Proposed Acquisition are localized areas in Arcadia, Dunnellon, Lake Placid, Madison, and Wauchula, Florida; Bainbridge, Statesboro, Sylvania, Vidalia, and Waynesboro, Georgia; and Batesburg, South Carolina. A hypothetical monopolist controlling all supermarkets in each of these areas could profitably raise prices by a small but significant amount.

VI. MARKET CONCENTRATION

18. The relevant geographic markets are already highly concentrated, and the Proposed Acquisition will substantially increase concentration in each market, whether measured by the Herfindahl-Hirschman Index ("HHI") or by the number of competitively significant firms remaining in each market post-acquisition.

19. The market concentration levels in each of the relevant geographic markets give rise to a presumption that the Proposed Acquisition, if consummated, would be unlawful. Post-acquisition HHI levels in the relevant geographic markets would range from 5,005 to 10,000, and the Proposed Acquisition would result in HHI increases ranging from 540 to 4,978. Exhibit A

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presents market concentration levels for each of the relevant geographic markets.

20. The Proposed Acquisition will reduce the number of meaningful competitors from two to one in the Madison, Florida and Sylvania, Georgia markets and from three to two in the remaining nine relevant geographic markets.

VII. ENTRY CONDITIONS

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

VIII. EFFECTS OF THE ACQUISITION

22. The Proposed Acquisition, 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 17 in the following ways, among others:

- a. by eliminating direct and substantial competition between Respondents Bi-Lo and Delhaize;
- b. by increasing the likelihood that Respondent Bi-Lo will unilaterally exercise market power; and
- c. by increasing the likelihood of, or facilitating, coordinated interaction between the remaining participants in each of the relevant markets.

23. The ultimate effect of the Proposed Acquisition would be to increase the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food,

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groceries, or services will decrease, in the relevant sections of the country.

IX. VIOLATIONS CHARGED

24. The agreement described in Paragraph 9 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, the Federal Trade Commission on this twenty-fourth day of February, 2014, issues its complaint against said Respondents.

By the Commission.

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EXHIBIT A

City	State	Merger Result	HHI (pre)	HHI (post)	Delta
Arcadia	FL	3 to 2	4645	5331	686
Bainbridge	GA	3 to 2	5016	5556	540
Batesburg	SC	3 to 2	4074	5062	988
Dunnellon	FL	3 to 2	4294	5081	787
Lake Placid	FL	3 to 2	3881	5005	1124
Madison	FL	2 to 1	5556	10000	4444
Statesboro	GA	3 to 2	4798	5423	625
Sylvania	GA	2 to 1	5022	10000	4978
Vidalia	GA	3 to 2	5002	5556	554
Wauchula	FL	3 to 2	4215	5115	900
Waynesboro	GA	3 to 2	4316	5149	833

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Bi-Lo Holdings, LLC (“Bi-Lo”), a subsidiary of Respondent Lone Star Fund V (U.S.), L.P. (“Lone Star”), of certain assets of Respondent Delhaize America, LLC (“Delhaize America”), a subsidiary of Respondent Etablissements Delhaize Frères et Cie “Le Lion” (Group Delhaize) SA/NV (“Delhaize”), and Respondents 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 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 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, and having modified the Decision and Order in certain respects, 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”):

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1. Respondent Lone Star is a limited partnership 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 at 2711 North Haskell Avenue, Suite 1700, Dallas, Texas 75204.
2. Respondent Bi-Lo is a limited liability company 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 at 5050 Edgewood Court, Jacksonville, Florida 32254.
3. Respondent Delhaize is a public limited company (société anonyme/naamloze vennootschap) organized, existing, and doing business under and by virtue of the laws of Belgium, with its office and principal place of business located at Square Marie Curie 40, 1070 Brussels, Belgium.
4. Respondent Delhaize America is a limited liability company organized, existing, and doing business under and by virtue of the laws of the state of North Carolina, with its office and principal place of business at 2110 Executive Drive, Salisbury, North Carolina 28145.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. “Lone Star” means Respondent Lone Star Fund V (U.S.), L.P., its directors, officers, employees, agents, representatives, successors, and assigns; its joint

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ventures, subsidiaries, divisions, groups, and affiliates controlled by Lone Star Fund V (U.S.), L.P. (including Respondent Bi-Lo), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. “Bi-Lo” means Respondent Bi-Lo Holdings, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Bi-Lo Holdings, LLC (including, after the Acquisition is consummated, the Harveys, Reid’s and Sweetbay Supermarket assets acquired from Respondent Delhaize America), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Delhaize” means Respondent Etablissements Delhaize Frères et Cie “Le Lion” (Group Delhaize), its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Delhaize (including Respondent Delhaize America), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Delhaize America” means Respondent Delhaize America, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled Delhaize America, LLC (including, prior to the Acquisition, the Harveys, Reid’s and Sweetbay Supermarket assets proposed for sale to Bi-Lo), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Respondents” means Lone Star, Bi-Lo, Delhaize and Delhaize America, individually and collectively.

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- F. “Acquirer” means any entity approved by the Commission to acquire any or all of the Assets To Be Divested pursuant to this Order.
- G. “Acquisition” means Bi-Lo’s proposed acquisition of Harveys, Reid’s and Sweetbay Supermarket assets from Delhaize America, to be effectuated through eight separate closings, pursuant to the Acquisition Agreement.
- H. “Acquisition Agreement” means the Agreement and Plan of Merger by and among Delhaize America, LLC, Kash N’ Karry Food Stores, Inc., J.H. Harvey, Co., LLC, Food Lion, LLC, Retained Subsidiary One, LLC, Bi-Lo, LLC and Samson Merger Sub, LLC, dated as of May 27, 2013, as amended and restated on January 31, 2014.
- I. “Assets To Be Divested” means the Harveys Supermarkets (Store Nos. 2336, 2349, 2370, 2374, 2375, 2378, and 2379), the Reid’s Supermarket (Store No. 442), and the Sweetbay Supermarket (Store No. 1791) identified on Schedule A of this Order, 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 operated at each of those locations, 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 each Acquirer’s option, the Assets To Be Divested shall also include any or all inventory as of the Divestiture Date.

Provided, however, that Assets To Be Divested shall not include those assets consisting of or pertaining to any of the Respondents’ 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.

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- J. “Divestiture Agreement” means any agreement between Respondents and an Acquirer (or a Divestiture Trustee appointed pursuant to Paragraph III of this Order and an Acquirer) and all amendments, 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 Food Giant Divestiture Agreement, the Homeland Divestiture Agreement, the Sunripe Market Divestiture Agreement, and the W. Lee Flowers Divestiture Agreement.
- K. “Divestiture Date” means a closing date of the respective divestitures required by this Order.
- L. “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.
- M. “Fifth Closing” means the fifth scheduled closing pursuant to Article II of the Acquisition Agreement.
- N. “Sixth Closing” means the sixth scheduled closing pursuant to Article II of the Acquisition Agreement.
- O. “Seventh Closing” means the seventh scheduled closing pursuant to Article II of the Acquisition Agreement.
- P. “Eighth Closing” means the eighth and final scheduled closing pursuant to Article II of the Acquisition Agreement.
- Q. “Food Giant” means Food Giant Supermarkets, Inc., a Supermarket operator organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its offices and principle place of

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business located at 120 Industrial Drive, Sikeston, Missouri.

- R. “Food Giant Divestiture Agreement” means the Divestiture Agreement dated as of January 24, 2014, by and between Respondent Bi-Lo and Food Giant, attached as non-public Appendix I, for the divestiture of Harveys Store Nos. 2378 (Bainbridge, Georgia) and 2379 (Madison, Florida).
- S. “Homeland” means HAC, Inc., a Supermarket operator organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its offices and principle place of business located at 390 N.E. 36th Street, Oklahoma City, Oklahoma.
- T. “Homeland Divestiture Agreement” means the Divestiture Agreement dated as of January 28, 2014, by and between Respondent Bi-Lo and Homeland, attached as non-public Appendix II, for the divestiture of Harveys Store Nos. 2336 (Vidalia, Georgia), 2374 (Statesboro, Georgia) and 2375 (Statesboro, Georgia).
- U. “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, Food Giant, Homeland, Sunripe Market and W. Lee Flowers.
- V. “Relevant Areas” means the county or counties that include the following cities and towns in Florida, Georgia and South Carolina:
 - 1. Arcadia, Florida;
 - 2. Dunnellon, Florida;
 - 3. Lake Placid, Florida;
 - 4. Madison, Florida;

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5. Wauchula, Florida;
 6. Americus, Georgia;
 7. Bainbridge, Georgia;
 8. Statesboro, Georgia;
 9. Sylvania, Georgia;
 10. Vidalia, Georgia;
 11. Waynesboro, Georgia;
 12. Batesburg, South Carolina; and
 13. Hampton, South Carolina.
- W. “Sunripe Market” means Sunripe Market, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with a mailing address of 1226 N. Tamiami Trail, Sarasota, Florida.
- X. “Sunripe Market Divestiture Agreement” means the Divestiture Agreement dated as of November 4, 2014, by and between Respondent Bi-Lo and Sunripe Market, attached as non-public Appendix III, for the divestiture of Sweetbay Store No. 1791 (Wauchula, Florida).
- Y. “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,

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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.

- Z. “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 Acquirer(s) of the Assets To Be Divested.
- AA. “Transition Services Agreement” means an agreement that receives the prior approval of the Commission between one or more Respondents 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.
- BB. “W. Lee Flowers” means W. Lee Flowers & Company, Inc., a Supermarket operator organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its offices and principle place of business located at 127 East W. Lee Flowers Road, Scranton, South Carolina.
- CC. “W. Lee Flowers Divestiture Agreement” means the three Divestiture Agreements dated as of January 24, 2014, by and between Respondent Bi-Lo and W. Lee Flowers, attached as non-public Appendix IV, for the divestiture of Harveys Store Nos. 2349 (Waynesboro, Georgia) and 2370 (Sylvania, Georgia), and Reid’s Store No. 442 (Batesburg, South Carolina).

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

- A. Lone Star and Bi-Lo shall divest the Assets To Be Divested, absolutely and in good faith, as ongoing Supermarket businesses, as follows:
1. Within 10 days of the Fifth Closing pursuant to the Acquisition Agreement, Harveys Store Nos. 2336 (Vidalia, Georgia), 2374 (Statesboro, Georgia) and 2375 (Statesboro, Georgia) shall be divested to Homeland pursuant to and in accordance with the Homeland Divestiture Agreement;
 2. Within 10 days of the Sixth Closing pursuant to the Acquisition Agreement, Harveys Store No. 2370 (Sylvania, Georgia) shall be divested to W. Lee Flowers pursuant to and in accordance with the W. Lee Flowers Divestiture Agreement;
 3. Within 10 days of the Seventh Closing pursuant to the Acquisition Agreement, Harveys Store No. 2349 (Waynesboro, Georgia) shall be divested to W. Lee Flowers pursuant to and in accordance with the W. Lee Flowers Divestiture Agreement;
 4. Within 10 days of the Eighth Closing pursuant to the Acquisition Agreement, Harveys Store Nos. 2378 (Bainbridge, Georgia) and 2379 (Madison, Florida) shall be divested to Food Giant pursuant to and in accordance with the Food Giant Divestiture Agreement, and Reid's Store No. 442 (Batesburg, South Carolina) shall be divested to W. Lee Flowers pursuant to and in accordance with the W. Lee Flowers Divestiture Agreement;
 5. Within 30 days of the date this Order becomes final, Sweetbay Store No. 1791 (Wauchula, Florida) shall be divested to Sunripe Market

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pursuant to and in accordance with the Sunripe Market Divestiture Agreement.

Provided, however, that in cases in which books or records included in the Assets To Be Divested contain information (a) that relates both to the Assets To Be Divested and to other retained businesses of Respondents or (b) such that Respondents have a legal obligation to retain the original copies, then Respondents shall be required to provide only copies or relevant excerpts of the materials containing such information. In instances where such copies are provided to an Acquirer, the Respondents shall provide to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes.

- B. *Provided, further,* that if, prior to the date this Order becomes final, Lone Star and Bi-Lo have divested the Assets To Be Divested pursuant to Paragraph II.A and if, at the time the Commission determines to make this Order final, the Commission notifies Lone Star and Bi-Lo that:
1. Any Proposed Acquirer identified in Paragraph II.A is not an acceptable Acquirer, then Lone Star and Bi-Lo shall, within five days of notification by the Commission, rescind such transaction with that Proposed Acquirer, 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 notifies Lone Star and Bi-Lo that such Proposed Acquirer is not an acceptable Acquirer; or
 2. The manner in which any divestiture identified in Paragraph II.A was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee

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pursuant to Paragraph III of this Order, to effect such modifications to the manner of divesting those assets to such Acquirer (including, but not limited to, entering into additional agreements or arrangements, or modifying the relevant Divestiture Agreement) as may be necessary to satisfy the requirements of this Order.

- C. Respondents 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.
- D. All Divestiture Agreements approved by the Commission:
 - 1. Shall be deemed incorporated by reference into this Order, and any failure by Respondents 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 Respondents under such agreement. If any term of any Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order.
- E. At the option of each Acquirer of any Assets To Be Divested, and subject to the prior approval of the Commission, Respondents 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 Respondents' direct costs and may include, but are not limited to, payroll,

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employee benefits, accounting, IT systems, distribution, warehousing, use of trademarks or trade names for transitional purposes, and other logistical and administrative support.

F. Pending divestiture of any of the Assets To Be Divested, Respondents shall:

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.

G. With respect to each Divestiture Agreement:

1. No later than fifteen (15) days after signing each Divestiture Agreement, Respondents 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 any Respondents, with any one or more of the employees of the Supermarket 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 Supermarket assets to be divested pursuant to the Divestiture Agreement; and

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2. Respondents shall: not interfere with the hiring or employing by the Acquirer of employees of the divested Supermarkets; remove any impediments within the control of Respondents 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 Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer); and 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.
- H. 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 Lone Star and Bi-Lo have not divested all of the Assets To Be Divested in the time and manner 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, Lone Star and Bi-Lo shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a

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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 the Respondents to comply with this Order.

- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Lone Star and Bi-Lo 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 Lone Star and Bi-Lo, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Lone Star and Bi-Lo 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 Lone Star and Bi-Lo of the identity of any proposed Divestiture Trustee, Lone Star and Bi-Lo 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 assign, grant, license, divest, transfer, contract, deliver, or otherwise convey the relevant assets or rights that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order.

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3. Within ten (10) days after appointment of the Divestiture Trustee, Lone Star and Bi-Lo 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 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. 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.

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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 Lone Star's and Bi-Lo'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 any of the relevant Assets To Be Divested, and if the Commission determines to approve more than one such acquiring entity for such assets, the Divestiture Trustee shall divest such assets to the acquiring entity selected by Lone Star and Bi-Lo from among those approved by the Commission; *provided further, however*, that Lone Star and Bi-Lo 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 Lone Star and Bi-Lo, 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 Lone Star and Bi-Lo, 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 Lone Star and Bi-

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Lo, 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. Lone Star and Bi-Lo 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 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 the Commission every thirty (30) days concerning

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the Divestiture Trustee's efforts to accomplish the divestiture(s).

13. Respondents 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.

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

- A. For a period of ten (10) years commencing on the date this Order is issued, Lone Star and Bi-Lo shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission:
 1. 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.
 2. 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.

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

- B. Said notification under this Paragraph 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 Lone Star and Bi-Lo and not of any other party to the transaction. Lone Star and Bi-Lo shall provide the notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Lone Star and Bi-Lo 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:

Decision and Order

- 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 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, Lone Star and Bi-Lo shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VI.

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

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger or consolidation of Respondents; or
- C. Any other change in the Respondents, including but not limited to, assignment and the creation or

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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 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, 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 Respondents, who may have counsel present, regarding any such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on January 13, 2025.

By the Commission, Commission McSweeney not participating.

Decision and Order

SCHEDULE A
Assets to be Divested

Harvey's Store No. 2336, located 300 W 1st St., Vidalia, Georgia

Harvey's Store No. 2349, located at 208 W 6th St., Waynesboro,
Georgia

Harvey's Store No. 2370, located at 101 Mims Rd, Sylvania,
Georgia

Harvey's Store No. 2374, located at 603 Northside Dr. W, Suite 2,
Statesboro, Georgia

Harvey's Store No. 2375, located at 620 Fair Rd, Statesboro,
Georgia

Harvey's Store No. 2378, located at 1615 E. Shotwell St.,
Bainbridge, Georgia

Harvey's Store No. 2379, located at 819 E. Base St., Madison,
Florida

Reid's Store No. 442, located at 217 W. Columbia Ave.,
Batesburg, South Carolina

Sweetbay Store No. 1791, located at 1133 US Highway 17 South,
Wauchula, Florida

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APPENDIX I
Food Giant Divestiture Agreement

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

Decision and Order

APPENDIX II
Homeland Divestiture Agreement
[Redacted From the Public Record,
But Incorporated By Reference]

Decision and Order

APPENDIX III
Sunripe Market Divestiture Agreement

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

Decision and Order

APPENDIX IV
W. Lee Flowers Divestiture Agreement

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

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Bi-Lo Holdings, LLC (“Bi-Lo”), a subsidiary of Respondent Lone Star Fund V (U.S.), L.P. (“Lone Star”), of certain assets of Respondent Delhaize America, LLC (“Delhaize America”), a subsidiary of Respondent Etablissements Delhaize Frères et Cie “Le Lion” (Group Delhaize) SA/NV (“Delhaize”), and Respondents 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 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 as 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 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 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 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:

Order to Maintain Assets

1. Respondent Lone Star 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 principle place of business located at 2711 North Haskell Avenue, Suite 1700, Dallas, Texas 75204.
2. Respondent Bi-Lo is a limited liability company 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 at 5050 Edgewood Court, Jacksonville, Florida 32254.
3. Respondent Delhaize is a public limited company (société anonyme/naamloze vennootschap) organized, existing, and doing business under and by virtue of the laws of Belgium, with its office and principal place of business located at Square Marie Curie 40, 1070 Brussels, Belgium.
4. Respondent Delhaize America is a limited liability company organized, existing, and doing business under and by virtue of the laws of the state of North Carolina, with its office and principal place of business at 2110 Executive Drive, Salisbury, North Carolina 28145
5. 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.

Order to Maintain Assets

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 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. 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 consistent with those maintained by Respondents 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, staffing levels, and a work force of equivalent size, training, and expertise associated with the Supermarket To Be Maintained. Included in the above obligations, Respondents shall, without limitation:

Order to Maintain Assets

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 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 each 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:

Order to Maintain Assets

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger or consolidation of Respondents; or
- C. Any other change in the Respondents, 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 within thirty (30) days after this Order to Maintain Assets is issued, and every thirty (30) days thereafter until this Order to Maintain Assets terminates, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets. 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 this Order to Maintain Assets.

V.

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 Respondents made to their principal United States offices, 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 to Maintain Assets, which copying services shall be

Order to Maintain Assets

provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of Respondents; 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 any such matters.

VI.

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 Respondents' (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.B. of the Decision and Order, requires the Respondents 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 Respondents' (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.

Analysis to Aid Public Comment

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 Orders (“Consent Order”) from Lone Star Fund V (U.S.), L.P. (“Lone Star”), Bi-Lo Holdings, LLC (“Bi-Lo”), *Etablissements Delhaize Frères et Cie “Le Lion”* (Group Delhaize) SA/NV (“Delhaize”), and Delhaize America, LLC (“Delhaize America”) (collectively “Respondents”). The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from Bi-Lo’s acquisition of certain supermarkets owned by Delhaize America (the “Acquisition”). Under the terms of the proposed Consent Order, Bi-Lo is required to divest its supermarkets and related assets in eleven local geographic markets to Commission-approved buyers. The divestitures must be completed no later than 10 days following the Acquisition.

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 comments received, and decide whether it should withdraw the Consent Order, modify the Consent Order, or make it final.

On May 27, 2013, Bi-Lo and Delhaize America executed an agreement whereby Bi-Lo agreed to acquire from Delhaize America 73 Sweetbay stores (and leases to 10 closed stores), 72 Harveys stores, and 11 Reid’s stores for \$265 million. Respondents amended their agreement on January 31, 2014 to exclude one Reid’s and one Harveys store from the original acquisition agreement, and adjusted the purchase price accordingly.¹ The Commission’s Complaint alleges that the

¹ Respondents amended the acquisition agreement to exclude one Harveys in Americus, Georgia and one Reid’s in Hampton, South Carolina, from the Acquisition. Accordingly, the proposed Consent Order does not require a divestiture in Americus, Georgia and Hampton, South Carolina. By amending

Analysis to Aid Public Comment

Acquisition as amended, 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 from eleven local geographic markets (“relevant geographic markets”): Arcadia, Dunnellon, Lake Placid, Madison, and Wauchula, Florida; Bainbridge, Statesboro, Sylvania, Vidalia, and Waynesboro, Georgia; and Batesburg, South Carolina. The elimination of this competition would result in significant competitive harm, specifically higher prices and diminished quality and service levels in these markets. The proposed Consent Order would remedy the alleged violations by requiring Respondent Bi-Lo to divest the acquired Delhaize America supermarkets in the relevant geographic markets. The divestitures will establish a new independent competitor to Respondent Bi-Lo in the relevant geographic markets, replacing competition that otherwise would be eliminated as a result of the Acquisition.

II. The Respondents

Bi-Lo is the parent company of the BI-LO and Winn-Dixie grocery store chains, which are located in the Southeastern United States. As of July 10, 2013, Bi-Lo operated 685 supermarkets throughout Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee under its Winn-Dixie and BI-LO banners. Lone Star Funds, a private equity firm specializing in distressed assets, through Respondent Lone Star, is the majority owner of Bi-Lo.

Delhaize America is a wholly owned subsidiary of Delhaize. Delhaize owns supermarket chains in North America, Europe, and Indonesia. In the Northeast and Southeast of the

the acquisition agreement so that Delhaize retains these two stores (which will be operated as part of its Food Lion division), the Acquisition does not increase market concentration and the competitive status quo is maintained in Americus and Hampton. Resolving the Commission’s concerns through an amendment to the acquisition agreement is suitable under the specific circumstances of this case. In particular, the selling company is selling only a small fraction of its assets, has substantial and similar operations remaining post-transaction that will absorb easily and maintain profitably the retained stores, and where the Commission has concluded that Delhaize will be an effective operator of those stores post-transaction.

Analysis to Aid Public Comment

United States, Delhaize America operates six supermarket chains: Sweetbay, Harveys, Reid's, Hannaford, Bottom Dollar Food, and Food Lion. Food Lion is Delhaize America's primary banner, and it accounts for 73% (1,127 stores) of its total 1,553 U.S. stores.

III. Supermarket Competition In The Relevant Areas In Florida, Georgia, And South Carolina

Bi-Lo's proposed acquisition of Delhaize's Sweetbay, Harvey's, and Reid's supermarkets poses substantial antitrust concerns in the retail sale of food and other grocery products in supermarkets in the relevant geographic markets.² 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 non-food 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 convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores – also sell certain food and non-food grocery items. However, these types of retailers do not compete in the relevant product market because they do not have a supermarket's full complement of products and services. Shoppers typically do

² The Acquisition raises competitive concern in five markets in Florida, five markets in Georgia, and one market in South Carolina.

Analysis to Aid Public Comment

not view these food and other grocery retailers as adequate substitutes for supermarkets.³ Further, although these other types of retailers offer some competition to supermarkets, supermarkets do not view them as providing as significant or close competition as traditional supermarkets. Thus, consistent with prior Commission precedent, these other types of retailers are not considered as competitors in the relevant product market.⁴

The relevant geographic markets in which to analyze the Acquisition's effects are the areas within an approximate three- to ten-mile radius of the parties' supermarkets in each of the following eleven localized areas: Arcadia, Dunnellon, Lake Placid, Madison, and Wauchula, Florida; Bainbridge, Statesboro, Sylvania, Vidalia, and Waynesboro, Georgia; and Batesburg, South Carolina. Where the Respondents' supermarkets are located in rural, isolated areas, the relevant geographic areas are larger than areas where the Respondents' supermarkets are located in more densely populated suburban areas. A hypothetical monopolist of the retail sale of food and non-food grocery products in supermarkets in each relevant geographic market could profitably impose a small but significant non-transitory increase in price.

The evidence gathered during the course of staff's investigation demonstrates that Respondents are close and vigorous competitors in terms of format, service, product

³ Shoppers 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).

⁴ See, e.g., AB Acquisition, LLC, Docket C-4424 (Dec. 23, 2013); *Koninklijke Ahold N.V./Safeway Inc.*, Docket C-4367 (Aug. 17, 2012); *Shaw's/Star Markets*, Docket C-3934 (June 28, 1999); *Kroger/Fred Meyer*, Docket C-3917 (Jan. 10, 2000); *Albertson's/American Stores*, Docket C-3986 (June 22, 1999); *Ahold/Giant*, Docket C-3861 (Apr. 5, 1999); *Albertson's/Buttrey*, Docket C-3838 (Dec. 8, 1998); *Jitney-Jungle Stores of America, Inc.*, Docket C-3784 (Jan. 30, 1998). But see *Wal-Mart/Supermercados Amigo*, Docket C-4066 (Nov. 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

offerings, promotional activity, and location in the relevant geographic markets. Bi-Lo and Delhaize America have the only supermarkets in Madison, Florida and Sylvania, Georgia. Additionally, Bi-Lo and Delhaize America have the only traditional supermarkets in eight of the relevant geographic markets; the remaining competitor in each of these eight markets is a hypermarket, Wal-Mart Supercenter. Moreover, the Bi-Lo and Delhaize stores are located near each other—less than 1 mile apart in three markets, 1 to 2 miles apart in six markets, and 2 to 3 miles apart in two markets. Competition in food retailing is primarily a function of similarity of format and proximity between competing stores. Stores with similar formats located nearby each other provide a greater competitive constraint on each other's pricing than do stores of different formats or stores located farther apart from each other. Absent the relief, the Acquisition would eliminate significant head-to-head competition between Respondents and would increase Respondent Bi-Lo's ability and incentive to raise prices unilaterally post-Acquisition. The Acquisition also would decrease incentives to compete on non-price factors, such as service levels, convenience, and quality. Finally, absent the relief, the Acquisition may also facilitate coordination in markets where only the parties' stores and one other traditional supermarket competitor remains post-Acquisition. Given the transparency of pricing and promotional practices between supermarkets and the fact that supermarkets "price check" competitors in the ordinary course of business, reducing the number of nearby competitors from three to two may facilitate collusion between the remaining supermarket competitors by making coordination easier to establish and monitor.

The relevant geographic markets are highly concentrated already, and would become significantly more so post-Acquisition. The Acquisition would result in an effective merger-to-monopoly in two relevant areas, Madison, Florida and Sylvania, Georgia, and an effective merger-to-duopoly in nine relevant areas.⁵ The Acquisition would increase the Herfindahl-Hirschman Index ("HHI"), which is the standard measure of market concentration under the 2010 Department of Justice and

⁵ See Appendix A.

Analysis to Aid Public Comment

Federal Trade Commission Horizontal Merger Guidelines (“HMG”), in the relevant geographic markets by a range of 540 to 4,978 points, with post-Acquisition HHI total levels ranging from 5,005 to 10,000 points. These concentration levels far exceed the levels required to trigger the presumption that the Acquisition likely enhances Respondent Bi-Lo’s market power in each of the relevant geographic markets.

New entry or expansion in the relevant geographic markets is unlikely to deter or counteract the anticompetitive effects of the Acquisition. 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.

IV. The Proposed Consent Order

The proposed remedy, which requires divestiture of the Delhaize America stores in the relevant geographic markets to a Commission-approved purchaser, will restore the competition that otherwise would be eliminated in these markets as a result of the Acquisition.

Respondents Lone Star and Bi-Lo have agreed to divest the Delhaize America stores to four separate buyers. These purchasers are well suited and well positioned to enter the relevant geographic markets and prevent the increase in market concentration and likely competitive harm that otherwise would result from the Acquisition. The supermarkets currently owned by the purchasers are all located outside the relevant geographic markets.

Respondents have agreed to divest the Sweetbays located in Arcadia (#1883), Dunnellon (#1795), Lake Placid (#1879), and Wauchula (#1791), Florida to Rowe’s IGA Supermarkets (“Rowe’s”). Rowe’s currently operates five supermarkets in the

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greater Jacksonville, Florida area under the “Rowe’s IGA” banner.

Respondents have agreed to divest Harveys #2336 in Vidalia, Georgia, and Harveys #2374 and #2375 in Statesboro, Georgia, to HAC Inc. (“HAC”). HAC is an employee-owned supermarket company based in Oklahoma City, Oklahoma. HAC operates approximately 80 stores consisting of Homeland and United Supermarkets in Oklahoma, Country Mart Stores in Lawton, Kansas, Super Save Stores in North Central Texas, and Piggly Wiggly and Food World stores in Georgia. HAC will operate the stores in Statesboro under the Food World banner and the store in Vidalia under the Piggly Wiggly banner.

Respondents have agreed to divest Reid’s #442 in Batesburg, South Carolina, Harveys #2349 in Waynesboro, Georgia, and Harveys #2370 in Sylvania, Georgia, to W. Lee Flowers & Co., Inc. (“Flowers”). Currently, Flowers operates 35 supermarkets under its Floco Foods subsidiary in South Carolina and Georgia. Flowers is also a wholesale grocery distributor, and the company supplies many IGA supermarkets in South Carolina.

Finally, Respondents have agreed to divest Harveys #2379 in Madison, Florida, and Harveys #2378 in Bainbridge, Georgia, to Food Giant. Food Giant operates 108 stores under several different banner names, including Food Giant and Piggly Wiggly, throughout eight states, including Tennessee, Kentucky, Arkansas, Mississippi, Alabama, and Missouri. Food Giant will re-banner both stores to the Food Giant name. Food Giant already operates four stores in Florida and two in Georgia.

The proposed Order requires Respondents Lone Star and Bi-Lo to divest the Delhaize America supermarkets and related assets in the eleven relevant geographic markets to the four buyers no later than 10 days following the respective closing date under the Respondents’ agreement. Pursuant to the Respondents’ acquisition agreement, the Acquisition will be effectuated through eight separate closings over a period of approximately 10 weeks. This staged closing will allow both Bi-Lo and the buyers of the divested stores to re-banner the acquired stores in a timely and orderly manner. The divestitures will take place no later than 10

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days after the closing involving the relevant divestiture store. If any of the buyers are not approved by the Commission to purchase the assets, Lone Star and Bi-Lo must immediately rescind the divestiture agreement and divest the Delhaize America store and related assets to a buyer that receives the Commission's prior approval. Further, for a period of one year, the Order prohibits Respondents from interfering with the hiring of or employment of any employees currently working at the Delhaize America stores in the divestiture markets. Additionally, for a period of 10 years, Lone Star and Bi-Lo are required to provide the Commission with prior notice of plans to acquire a supermarket, or an interest in a supermarket, that has operated or is operating in the counties that include the relevant geographic markets.

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.

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APPENDIX A

City	State	Merger Result	HHI (pre)	HHI (post)	Delta
Arcadia	FL	3 to 2	4645	5331	686
Bainbridge	GA	3 to 2	5016	5556	540
Batesburg	SC	3 to 2	4074	5062	988
Dunnellon	FL	3 to 2	4294	5081	787
Lake Placid	FL	3 to 2	3881	5005	1124
Madison	FL	2 to 1	5556	10000	4444
Statesboro	GA	3 to 2	4798	5423	625
Sylvania	GA	2 to 1	5022	10000	4978
Vidalia	GA	3 to 2	5002	5556	554
Wauchula	FL	3 to 2	4215	5115	900
Waynesboro	GA	3 to 2	4316	5149	833

Complaint

IN THE MATTER OF

**GLAXOSMITHKLINE, PLC
AND NOVARTIS AG****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 No. C-4498; File No. 141 0141**Complaint, November 26, 2014 – Decision, January 13, 2015*

This consent order addresses Novartis's consumer health care products joint venture with GlaxoSmithKline (GSK). The complaint alleges that Novartis and GSK are the only companies that market branded nicotine patches in the United States, and two of only three companies that supply private label patches to retailers. Novartis's ownership of both Habitrol (its branded nicotine replacement therapy patch) and a substantial interest in the joint venture that sells GSK's nicotine patches would substantially reduce competition in the market for the manufacture, marketing, distribution, and sale of NRT transdermal patches. To preserve competition in the market for nicotine patches, the consent order requires Novartis to divest Habitrol, as well as its private-label patch business, to India-based Dr. Reddy's, one of the largest sellers of private-label over-the-counter health products in the U.S. market.

Participants

For the *Commission*: *Stephanie Bovee, Peter Colwell, Ben Lorigo, Amy Posner, Mark Silvia, and David Von Nirschl.*

For the *Respondents*: *Kathleen Bradish, George Cary, and Fareel Malone, Cleary Gottlieb Steen & Hamilton LLP; Justin Stewart-Teitelbaum and Paul Yde, Freshfields Bruckhaus Deringer, LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondents GlaxoSmithKline, PLC ("GSK"), a corporation subject to the jurisdiction of the Commission, and Novartis AG ("Novartis"), a corporation subject to the jurisdiction of the Commission, have agreed to enter into a joint venture in violation