

Complaint

IN THE MATTER OF

ON SEMICONDUCTOR CORPORATIONCONSENT 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-4593; File No. 161 0061**Complaint, September 30, 2016 – Decision, September 30, 2016*

This consent order addresses the \$2.4 billion acquisition by ON Semiconductor Corporation of certain assets of Fairchild Semiconductor International, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition in the worldwide market for insulated-gate bipolar transistors (“IGBTs”) used in automotive ignition systems (“Ignition IGBTs”). The consent order requires ON to divest its Ignition IGBT business to Littelfuse, Inc.

Participants

For the *Commission*: *Llewellyn Davis*, and *Joonsuk Lee*.

For the *Respondent*: *Jeff Jaeckel*, *Morrison and Foerster*.

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 Respondent ON Semiconductor Corporation (“ON”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Fairchild Semiconductor International, Inc. (“Fairchild”), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), 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 ON is a publicly traded corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 5005 East McDowell Road, Phoenix, AZ 85008.

2. Respondent ON is engaged in the design, manufacture, and sale of a range of semiconductor products used in a variety of electronic systems for automotive, industrial, communications, consumer, computing, and other applications.

3. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose businesses is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED COMPANY

4. Fairchild is a publicly traded company organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1272 Borregas Avenue, Sunnyvale, CA 94089.

5. Fairchild is engaged in the design, manufacture, and sale of a range of semiconductor products used in a variety of electronic systems for automotive, industrial, home appliance, mobile, server and cloud computing, lighting, consumer electronics, and other applications.

III. THE PROPOSED ACQUISITION

6. Pursuant to an Agreement and Plan of Merger dated November 18, 2015, ON entered into a definitive agreement pursuant to which it would commence an all cash tender offer to acquire all of the outstanding shares of common stock of Fairchild for approximately \$2.4 billion (“the Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

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IV. THE RELEVANT MARKET

7. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is insulated-gate bipolar transistors (IGBTs) used in automotive ignition systems (“Ignition IGBTs”). Ignition IGBTs are a type of power semiconductor specifically designed and calibrated for automotive ignition systems in gasoline engine vehicles. Ignition IGBTs are switches that control the electrical current that passes through the ignition coil.

8. For the purposes of this Complaint, the relevant geographic market in which to analyze the effects of the Acquisition in the Ignition IGBT market is worldwide. Transportation costs are low for Ignition IGBTs, which are routinely shipped from manufacturing facilities around the globe to customer locations worldwide.

V. STRUCTURE OF THE MARKET

9. ON and Fairchild are the two largest manufacturers of Ignition IGBTs in the world, with a combined market share in excess of 60% of worldwide revenues. The proposed merger would increase the Herfindahl-Hirschman Index in excess of 1500 points, and result in a highly concentrated market. Under the *Horizontal Merger Guidelines*, this increase in concentration far exceeds the thresholds set out for raising a presumption that the Acquisition would create or enhance market power.

VI. ENTRY CONDITIONS

10. Given the substantial time and investment required to develop Ignition IGBTs and to qualify these products with customers in the automotive industry, entry sufficient to deter or counteract the anticompetitive effects created by the Acquisition is unlikely.

VII. EFFECTS OF THE ACQUISITION

11. The effects of the Acquisition, if consummated, may be to substantially lessen competition in violation of Section 7 of the

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Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. The Acquisition would eliminate the direct competition between ON and Fairchild, which may lead to anticompetitive unilateral effects in the form of higher prices and reduced innovation.

VIII. VIOLATIONS CHARGED

12. The allegations contained in Paragraphs 1 through 11 above are hereby incorporated by reference as though fully set forth here.

13. The Agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

14. The Acquisition described in Paragraph 6, if consummated, would constitute a 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of September, 2016, issues its Complaint against said Respondent.

By the Commission.

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondent ON Semiconductor Corporation (“ON”) of Fairchild Semiconductor International, Inc. (“Fairchild”) 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

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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 order (“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 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 Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, 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 issues its Complaint, makes the following jurisdictional findings and enters the following Decision and Order (“Order”):

1. Respondent ON Semiconductor Corporation is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 5005 E. McDowell Road, Phoenix, AZ 85008.
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 HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “ON” means ON Semiconductor Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries (including Falcon Operations Sub, Inc.), divisions, groups, and affiliates in each case controlled by ON Semiconductor Corporation (including Fairchild, after the Acquisition), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means (i) Littelfuse or (ii) any other Person that acquires the Ignition IGBT Assets pursuant to this Order.
- D. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger by and among ON Semiconductor Corporation, Falcon Operations Sub, Inc., and Fairchild Semiconductor International, Inc., dated November 18, 2015.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondent, that is not in the public domain and that is related to the Ignition IGBT Assets. For avoidance of doubt, Confidential Business Information does not include any information related to Retained Intellectual Property or Retained Assets.

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- G. “Contract” means any agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding with third parties.
- H. “Divestiture Agreement” means (i) the Littelfuse Acquisition Agreement or (ii) any other agreement between Respondent (or a Divestiture Trustee) and an Acquirer that receives the prior approval of the Commission to divest the Ignition IGBT Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto that have received the Commission’s prior approval.
- I. “Divestiture Date” means the date on which Respondent (or the Divestiture Trustee) closes the transaction to divest the Ignition IGBT Assets to an Acquirer.
- J. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph V. of this Order.
- K. “Ignition IGBT Assets” means all of Respondent’s right, title, and interest in and to all property and assets, wherever located, relating to the operation of the Ignition IGBT Business, including, but not limited to:
 - 1. the finished goods inventories relating to the Ignition IGBT Business in amounts equaling the monthly dollar average quantity of finished goods inventory held by Respondent at the end of the twelve months ending on March 31, 2016;
 - 2. all consents, licenses, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, if any,

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and all pending applications therefor or renewals thereof, to the extent assignable;

3. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records;
4. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent;
5. all part numbers and product identifying numbers for the Ignition IGBTs.

Provided, however, that the Ignition IGBT Assets does not include Respondent's right, title, and interest in the (i) Retained Assets or (ii) Retained Intellectual Property.

- L. "Ignition IGBT Business" means the business conducted by ON as of November 18, 2015, the date of the announcement of the Acquisition, in respect of researching, designing, developing, testing, manufacturing, commercializing, packaging, marketing, distributing, selling and/or servicing automotive Ignition IGBTs.
- M. "Ignition IGBT Employee" means any individual (i) employed by ON on a full-time, part-time, or contract basis at any time as of, and after, November 18, 2015, the date of the announcement of the Acquisition and (ii) whose job responsibilities relate to the Ignition IGBT Business.

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- N. “Ignition IGBT License” means a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license under:
1. The Retained Intellectual Property sufficient for Littelfuse or any other Acquirer to operate the Ignition IGBT Business in substantially the same manner as ON prior to the Acquisition, including the freedom under such Retained Intellectual Property to improve existing products and develop modifications, improvements and derivatives thereof within the field of planar ignition insulated-gate bipolar transistors;
 2. Any Intellectual Property owned or licensed (as licensor, or licensee if sublicensable) by ON sufficient for Littlefuse or any other Acquirer to research, design, develop, test, manufacture, commercialize, package, market, distribute, sell and service automotive Ignition IGBTs; and
 3. Such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable Littelfuse or any other Acquirer to use the rights.
- O. “Ignition IGBTs” means the planar automotive ignition insulated-gate bipolar transistors sold by ON prior to the Acquisition Date.
- P. “Intellectual Property” means all intellectual property, including (i) commercial names, all assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and tradedress, excluding “ON” and “ON Semiconductor”; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all know-how, trade

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secrets, and confidential or proprietary information in customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; and (v) all rights in internet web sites and internet domain names, in each case, presently used by ON in the operation of the Ignition IGBT Business. Intellectual Property does not include any intellectual property acquired by ON pursuant to the Acquisition.

- Q. “Littelfuse” means Littelfuse Inc., a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 8755 West Higgins Road, Suite 500, Chicago, IL, 60631.
- R. “Littelfuse Acquisition Agreement” means the asset purchase agreement between ON Semiconductor Trading SARL, ON Management C.V., Semiconductor Components Industries, LLC, Littelfuse, Inc., Littelfuse Netherland C.V., and ON Semiconductor Corporation, dated August 11, 2016, including related ancillary agreements, amendments, schedules, exhibits, and attachments, thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- S. “License-Back” means a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license to Respondent from Acquirer under any Intellectual Property included in the Ignition IGBT Assets (that is not exclusively related to the operation of the Ignition IGBT Business) for use in any business operated by Respondent that does not compete with the Ignition IGBT Business.
- T. “Monitor” means the Person appointed by the Commission pursuant to Paragraph IV. of this Order.
- U. “Person” means any individual, partnership, corporation, business trust, limited liability company,

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limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

- V. “Products” means Ignition IGBTs.
- W. “Record” means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium.
- X. “Retained Assets” means:
 - 1. all Contracts to which ON is a party and all outstanding offers or solicitations for ON to enter into any Contract, if any, and all rights thereunder and related thereto;
 - 2. all property and assets acquired by ON pursuant to the Acquisition;
 - 3. all real property, manufacturing facilities and equipment;
 - 4. all consents, licenses, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, in each case, that do not relate exclusively to the Ignition IGBT Business;
 - 5. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, in each case, that are not

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reasonably required to conduct the Ignition IGBT Business, are not otherwise reasonably required to utilize the Acquired Assets (as defined in the Littelfuse Acquisition Agreement), or are not expressly transferred to Acquirer or any of its affiliates pursuant to the Littelfuse Acquisition Agreement; and

6. all intangible rights and property, including intellectual property owned or licensed (as licensor or licensee) by Respondent, that do not relate predominantly to the Ignition IGBTs or that are acquired by ON pursuant to the Acquisition.
- Y. “Retained Intellectual Property” means any Intellectual Property owned or licensed (as licensor or licensee if sublicensable) by ON relating to both the operation of the Ignition IGBT Business and any other business owned by ON prior to the Acquisition, unless such Intellectual Property is predominantly used by the Ignition IGBT Business and is owned by ON prior to the Acquisition. The Retained Intellectual Property also includes, without limitation, all Intellectual Property related to processes for manufacturing semiconductors owned by ON prior to the Acquisition.
- Z. “Support Services” means administrative and technical services and training related to ON’s operation of the Ignition IGBT Business as of the Divestiture Date, including but not limited to, such services and training relating to (i) manufacturing and manufacturing transfer activities, (ii) front end transfer services and support, (iii) back end transfer services and support, (iv) product audits and reports, (v) business operations training, (vi) exporting, (vii) finance and accounting, (viii) information technology, (ix) intellectual property, (x) manufacturing support, (xi) purchasing, (xii) quality control, (xiii) sales and marketing, (xiv) supply chain management, (xv) technology transfer, (xvi) order fulfillment services, and (xvii) warehousing.

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

- A. No later than ten (10) days after the Acquisition Date, Respondent shall divest the Ignition IGBT Assets and grant the Ignition IGBT License, absolutely and in good faith, to Littelfuse pursuant to the Littelfuse Acquisition Agreement.
- B. Notwithstanding any other provision of this Order, Respondent may enter into an agreement with Littelfuse or any other Acquirer for a License-Back (subject to the prior approval of the Commission).
- C. If Respondent has divested the Ignition IGBT Assets to Littelfuse prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:
 - 1. Littelfuse is not acceptable as the acquirer of the Ignition IGBT Assets, then Respondent shall immediately rescind the Littelfuse Acquisition Agreement, and shall divest the Ignition IGBT Assets and grant the Ignition IGBT License no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
 - 2. The manner in which the divestiture or grant of the Ignition IGBT License to Littelfuse was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Ignition IGBT Assets or grant of the Ignition IGBT License as the Commission may determine are necessary to satisfy the requirements of this Order.

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- D. No later than the Divestiture Date, Respondent shall secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of the Ignition IGBT Assets and grant of the Ignition IGBT License; *provided, however*, that Respondent may satisfy this requirement by certifying that the Acquirer has executed appropriate agreements directly with each of the relevant Persons; and *provided further* that in the event Respondent is unable to obtain any consent, assignment, or waiver required by this Paragraph II.C., Respondent shall (i) provide such assistance as the Acquirer may reasonably request in its efforts to obtain the consent or (ii) with the acceptance of the Acquirer and the prior approval of the Commission, Respondent may substitute equivalent assets or arrangements.
- E. Respondent shall:
1. At the request of Acquirer and in a manner that receives the prior approval of the Commission, provide (a) Product for a period of up to thirty-six (36) months, and (b) Support Services for a period of up to thirty-six (36) months, from the Divestiture Date;
 2. Provide the Product required by this Order at the price(s) set forth in Exhibit D (Planar Ignition IGBT Transitional Manufacturing and Supply Agreement) of the Littelfuse Acquisition Agreement, and in quality and quantity sufficient to enable Acquirer to operate the Ignition IGBT Business in substantially the same manner as ON prior to the Acquisition, including the ability to increase sales of current products; and
 3. Provide the Support Services required by this Order at the price(s) set forth in Exhibit E (Planar Ignition IGBT Transition Services Agreement) of the Littelfuse Acquisition Agreement.

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Provided, however, that after the expiration of thirty-six (36) months, at the request of any Acquirer, the Acquirer shall have an option to extend the length of time that it receives Product and Support Services from Respondent pursuant to Paragraph II.D.1 for up to an additional twelve (12) months. After the expiration of forty-eight (48) months, the Acquirer shall have an additional option to extend the time that it receives Product and Support Services from Respondent pursuant to Paragraph II.D.1 for up to an additional twelve (12) months.

- F. Notwithstanding any provision of this Order, Respondent shall permit Acquirer to use any trademarks owned by ON, or any abbreviation thereof, or any name, logo, or lettering which is similar, in the operation of the Ignition IGBT Business for a period of up to six (6) months from the Divestiture Date.
- G. Respondent shall cooperate with and assist Acquirer to evaluate and retain any and all Ignition IGBT Employees necessary to operate the Ignition IGBT Business in substantially the same manner as ON prior to the divestiture, including but not limited to:
 - 1. Not later than twenty (20) days before the Divestiture Date, Respondent shall (i) identify all Ignition IGBT Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all Ignition IGBT Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any Ignition IGBT Employee;
 - 2. Respondent shall (i) not offer any incentive to any Ignition IGBT Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any Ignition IGBT Employee from accepting employment with Acquirer, including but not limited to, any non-compete or confidentiality provision of

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employment or other contracts with Respondent that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any Ignition IGBT Employee by Acquirer;

3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any Ignition IGBT Employee who accepts an offer of employment from Acquirer and (ii) provide each Ignition IGBT Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and
 4. For a period of two (2) years after the Ignition IGBT Assets are divested, Respondent shall not solicit the employment of any Ignition IGBT Employee who becomes employed by Acquirer; *provided, however*, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondent hires an individual who responds to an advertisement for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.
- H. Respondent shall not join, file, prosecute, or maintain any suit, in law or equity, against Acquirer or any Person working on behalf of Acquirer, under the Intellectual Property transferred pursuant to this Order to any Acquirer, if such suit would have the potential to limit or interfere with Acquirer's freedom to use the Ignition IGBT Assets in any application of the Ignition IGBT Business.

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- I. Respondent shall grant Acquirer an irrevocable, worldwide, perpetual immunity from suit based on claims of infringement under all of Respondent's Intellectual Property for the development, manufacture, having manufactured, using, having used, selling, offering for sale, having sold, and importing, of any Ignition IGBTs for any use anywhere in the world.
- J. The purpose of the divestiture of the Ignition IGBT Assets is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

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

- A. Respondent shall (i) keep confidential (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Business Information received or maintained by Respondent relating to the Ignition IGBT Assets; *provided, however*, that Respondent may disclose or use such Confidential Business Information in the course of:
 - 1. Performing its obligations or as permitted under this Order, or the Divestiture Agreement; or
 - 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Ignition IGBT Business or Ignition IGBT Assets, or as required by law.
- B. If disclosure or use of any Confidential Business Information is permitted to Respondent's employees or to any other Person under Paragraph III.A. of this Order, Respondent and Respondent's employees shall not use or share, directly or indirectly, any

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Confidential Business Information with any of Respondent's employees who manage, market, produce, or sell, Respondent's automotive Ignition IGBTs, and shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph III.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

- C. Respondent shall enforce the terms of this Paragraph III. as to its employees or any other Person, and shall take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

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

- A. Charlotte Diener shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent and attached as Appendix III ("Monitor Agreement") and Non-Public Appendix IV ("Monitor Compensation"). The Monitor is appointed to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. No later than one (1) day after the Acquisition Date, Respondent shall transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform her duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order.

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- C. Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform her duties pursuant to this Order;
 3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondent shall indemnify the Monitor and hold her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of her 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 the Monitor's gross negligence or willful misconduct; and

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5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission (i) every thirty (30) days after the Acquisition Date for a period of one (1) year, (ii) every ninety (90) days thereafter until Respondent has completed all obligations required by Paragraph II. of this Order (including a final report when Respondent has completed all such obligations), and (iii) at any other time as requested by the staff of the Commission, concerning Respondent's compliance with this Order.
 - E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed her final report pursuant to Paragraph IV.D. of this Order, or at such other time as directed by the Commission.
 - G. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:
 1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to

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Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph IV.
- H. The Monitor appointed pursuant to this Order may be the same Person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.
- I. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

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

- A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Ignition IGBT Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as the Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the

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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 to divest the relevant assets in accordance with the terms of this Order. 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 the Respondent to comply with this Order.

- C. 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.
- D. Within ten (10) days after appointment of a 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 divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

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1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Divestiture Assets.
2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and 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. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

Decision and Order

4. 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 and at no minimum price. The divestiture 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, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. 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 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 the Divestiture Trustee's 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

Decision and Order

Divestiture Trustee shall be based at least in significant part on a Commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. 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 gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. 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.

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- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a 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 V.
- H. The Divestiture Trustee appointed pursuant to this Order may be the same Person appointed as the Monitor pursuant to the relevant provisions of this Order.
- I. The Commission or, in the case of a court-appointed Divestiture 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 divestitures and other obligations or action required by this Order.

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

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondent shall comply with all terms of the agreement. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order and nothing in this Order shall be construed to reduce any rights or benefits of the Acquirer or to reduce any obligations of Respondent under such agreement.

Decision and Order

- B. If any term of the 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. Respondent shall not modify, replace, or extend the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

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

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
1. Thirty (30) days from the date this Order is issued and every thirty (30) days thereafter for a period of one (1) year, and every ninety (90) days thereafter until Respondent has fully complied with the provisions of Paragraph II.A. and Paragraph II.D. of this Order; and
 2. No later than one (1) year after the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission staff may request.
- B. With respect to the divestiture required by Paragraph II. of this Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the Ignition IGBT Assets; and (ii) a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.

Decision and Order

VIII.

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 the Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the 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 the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

Decision and Order

X.

IT IS FURTHER ORDERED that this Order shall terminate on September 30, 2026.

By the Commission.

NON-PUBLIC APPENDIX I

Asset Purchase Agreement by and between ON Semiconductor Trading SARL, ON Management C.V., Semiconductor Components Industries, LLC, Littelfuse, Inc., Littelfuse Netherland C.V., and ON Semiconductor Corporation

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

NON-PUBLIC APPENDIX II

Agreement and Plan of Merger by and among ON Semiconductor Corporation, Falcon Operations Sub, Inc., and Fairchild Semiconductor International, Inc., dated November 18, 2015.

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

Analysis to Aid Public Comment

APPENDIX III
Monitor Agreement

NON-PUBLIC APPENDIX IV
Monitor Compensation

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

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

1. INTRODUCTION

The Federal Trade Commission (“Commission”) has accepted from ON Semiconductor Corporation (“ON”), subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) designed to remedy the anticompetitive effects that would likely result from ON’s proposed acquisition of Fairchild Semiconductor International, Inc. (“Fairchild”).

On November 18, 2015, ON announced that it had entered into a definitive agreement involving an all-cash tender offer to acquire all of the outstanding shares of common stock of Fairchild for approximately \$2.4 billion (“Acquisition”). The proposed Acquisition would combine the two largest suppliers of insulated-gate bipolar transistors (IGBTs) used in automotive ignition systems (“Ignition IGBTs”) worldwide. The Commission’s Complaint alleges that the proposed 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.

Analysis to Aid Public Comment

§ 45, by substantially lessening competition in the worldwide market for Ignition IGBTs.

Under the terms of the proposed Decision and Order (“Order”) contained in the Consent Agreement, ON is required to divest its Ignition IGBT business to Littelfuse, Inc. (“Littelfuse”) no later than 10 days from the close of the Acquisition. The divestiture package includes design files and intellectual property associated with the manufacture and sale of Ignition IGBTs, customer and distributor relationships with respect to Ignition IGBTs, and technology transfers and transitional services such as manufacturing support. In short, the Consent Agreement provides Littelfuse with everything it needs to compete effectively in the Ignition IGBT market.

The Commission has placed the Consent Agreement 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 will again review the Consent Agreement and the comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

2. THE PARTIES

Headquartered in Phoenix, Arizona, ON is a semiconductor developer and manufacturer providing a highly diversified portfolio of semiconductor products, including power and signal management, image sensing, and other standard and custom devices, for a variety of end-use applications, including communications, computing, consumer, industrial, and automotive. ON designs, manufactures, and sells Ignition IGBTs, among other products, in its Automotive Product Division.

Fairchild, headquartered in Sunnyvale, California, develops and manufactures a wide variety of low to high voltage power semiconductor products and devices as well as certain non-power semiconductor devices, which are used in a variety of end-use applications, including automotive, consumer, computing, and industrial applications. Fairchild designs, manufactures, and sells Ignition IGBTs in its Automotive Business Unit.

Analysis to Aid Public Comment

3. THE RELEVANT PRODUCT AND MARKET STRUCTURE

The relevant product market in which to assess the competitive effects of the proposed Acquisition is no broader than Ignition IGBTs. IGBTs are a type of semiconductor that transmits, converts, and switches electrical power. Ignition IGBTs are a type of IGBT specifically designed and calibrated for automotive ignition systems in gasoline engine vehicles. They function as switches that control the electrical current that passes through the ignition coil. ON and Fairchild sell Ignition IGBTs to Tier 1 automotive suppliers, who then incorporate them into the ignition systems that they sell to automotive manufacturers. Currently, there is no functional substitute for Ignition IGBTs.

The relevant geographic market for Ignition IGBTs is worldwide. The two major Ignition IGBT suppliers—ON and Fairchild— manufacture the products in facilities around the world, and ship them to customer locations worldwide. There are no regulatory barriers, tariffs, or technical specifications to impede worldwide trade, and transportation costs are low.

The Ignition IGBT market is characterized by a limited number of suppliers. ON and Fairchild are by far the two largest suppliers of Ignition IGBTs. Fairchild is the market leader and ON is the second-largest supplier. Their combined share of the Ignition IGBT market would exceed 60%. The parties' next closest competitor has a significantly smaller share of the market. Other market participants are even smaller and do not constrain the parties. There are also several other suppliers located in Japan, but they primarily supply Japanese automotive manufacturers. Due to burdensome qualification requirements for customers outside of Japan, it would take several years before these suppliers could be qualified to supply the parties' customers with Ignition IGBTs.

The proposed ON/Fairchild combination would cause a highly concentrated market for Ignition IGBTs to become even more concentrated, increasing the Herfindahl-Hirschman Index ("HHI") by more than 1500. This increase in concentration far exceeds the thresholds set out in the *Horizontal Merger Guidelines* for raising

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a presumption that the Acquisition would create or enhance market power.

4. EFFECTS OF THE ACQUISITION

Absent a divestiture, the proposed Acquisition is likely to cause competitive harm in the Ignition IGBT market. ON and Fairchild compete directly against each other for Ignition IGBT sales, and customers benefit from that competition in terms of both pricing and product innovation. Customers describe ON and Fairchild as each other's closest competitor. Likewise, ON and Fairchild view each other the same way. By eliminating the competition between ON and Fairchild, the proposed Acquisition likely would lead to unilateral effects in the form of higher prices and reduced innovation.

5. ENTRY

Entry into the Ignition IGBT market is not likely to deter or counteract any anti-competitive effects of the proposed Acquisition. Given the niche nature of the Ignition IGBT market, declining demand, and the lengthy time it would take to qualify new products with customers, entry is unlikely and would not be timely. Market participants confirmed that it would take at least three to four years before a new entrant could become a viable supplier. Existing IGBT manufacturers, moreover, are not rapid entrants. The process of designing an IGBT for ignition systems and qualifying it with customers would take years.

6. THE PROPOSED CONSENT AGREEMENT

The Consent Agreement restores the competition lost from the proposed Acquisition by requiring ON to divest its Ignition IGBT business to Littelfuse, a publicly traded company based in Chicago, Illinois. The proposed divestiture includes everything needed for Littelfuse to compete effectively in the worldwide market for Ignition IGBTs.

Under the Order, ON is required to divest its Ignition IGBT business to Littelfuse no later than 10 days from the close of the Acquisition. The divestiture package consists of the following

Analysis to Aid Public Comment

assets: design files, patents and technologies for Ignition IGBTs; licenses to manufacturing process technology; a process to facilitate the transfer of customer and distributor relationships with respect to Ignition IGBTs; technology transfers and transitional services including manufacturing support; and, if Littelfuse requests, secondment of ON personnel to support the transfer from ON to Littelfuse of the technology and know-how for production of Ignition IGBTs. No physical assets are being divested because a third party will manufacture Ignition IGBTs for Littelfuse.

The Order requires that, at the request of Littelfuse and in a manner approved by the Commission, ON must provide transitional manufacturing for a period of up to three years with a possible option to extend the period by up to two years. Similarly, the Order also requires ON to provide support services such as logistical and administrative support for up to three years with a possible option to extend the period for up to two years. In addition, the Order includes other standard terms designed to ensure the viability of the divested business.

A Monitor will monitor ON's compliance with the obligations set forth in the Order. If ON does not fully comply with the divestiture and requirements of the Order, the Commission may appoint a Divestiture Trustee to divest the Ignition IGBT business and perform ON's other obligations consistent with the Order.

The divestiture of ON's Ignition IGBT business to Littelfuse will preserve competition that would otherwise have been lost as a result of the Acquisition. Potential customers have confirmed that the divested assets include everything necessary to compete effectively as a viable business. Similarly, potential customers have confirmed that Littelfuse would be a competitive option as a supplier.

7. OPPORTUNITY FOR PUBLIC COMMENT

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This

Analysis to Aid Public Comment

analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

Complaint

IN THE MATTER OF

**KONINKLIJKE AHOLD, N.V.
AND
DELHAIZE GROUP, NV/SA****CONSENT 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-4588; File No. 151 0175**Complaint, July 22, 2016 – Decision, October 14, 2016*

This consent order addresses the \$28 billion merger of equals by Koninklijke Ahold N.V. and Delhaize Group NV/SA. The complaint alleges that the 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 each of the 46 local geographic markets. The consent order requires Respondents to divest 81 supermarkets and related assets in 46 local geographic markets in seven states to seven Commission-approved buyers.

Participants

For the *Commission*: Paul Frangie, Jill M. Frumin, Matthew McDonald, Nancy Park, Neal Perlman, and Joshua Smith.

For the *Respondents*: Sara Razi, Simpson Thacher & Bartlett; Julie North, Christine Varney, and Jesse Weiss, Cravath, Swaine, & Moore.

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 Koninklijke Ahold, N.V. (“Ahold”), a corporation subject to the jurisdiction of the Commission, agreed to merge with Respondent Delhaize Group, NV/SA (“Delhaize”), a corporation 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