

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

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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 Ahold is a corporation organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located at Provincialeweg 11, 1506 MA Zaandam, the Netherlands. Koninklijke Ahold N.V.'s principal U.S. subsidiary, Ahold U.S.A., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its offices and principal place of business located at 1385 Hancock Street, Quincy, Massachusetts 02169.

2. Respondent Ahold owns and operates a number of supermarket chains in ten states in the United States, including supermarkets operating under the Giant, Martin's, and Stop & Shop banners.

3. Respondent Delhaize is a corporation 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, and its registered office at Ossenghemstraat 53, 1080, Brussels, Belgium. Delhaize Group NV/SA's principal U.S. subsidiary, Delhaize America, LLC., 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 offices and principal place of business at 2110 Executive Drive, Salisbury, North Carolina 28147.

4. Respondent Delhaize owns and operates a number of supermarket chains in 17 states in the United States, including supermarkets operating under the Food Lion and Hannaford banners.

5. Respondents Ahold and Delhaize own and operate supermarkets in each of the geographic markets relevant to this Complaint and compete and promote their businesses in these areas.

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II. JURISDICTION

6. 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 MERGER

7. Pursuant to an Agreement and Plan of Merger dated as of June 24, 2015, Ahold and Delhaize intend to combine their businesses through a merger of equals that will result in a combined entity valued at approximately \$28 billion (“the Merger”).

IV. THE RELEVANT PRODUCT MARKET

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

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

10. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for

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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.

11. 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 retail stores—including convenience stores, specialty food stores, limited assortment stores, hard-discounters, and club stores—and do not typically set or change their food or grocery prices in response to prices at these types of stores.

12. Although retail stores other than supermarkets may also sell food and grocery products, these types of stores do not, individually or collectively, provide sufficient competition to effectively constrain prices at supermarkets. These retail stores do not offer a supermarket's distinct set of products and services that provides 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 nontransitory price increase by supermarkets.

V. THE RELEVANT GEOGRAPHIC MARKETS

13. 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.

14. Respondents currently operate supermarkets under the Giant, Martin's, Stop & Shop, Food Lion, and Hannaford banners

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within approximately one-tenth of a mile to ten miles of each other in each of the relevant geographic markets, though the majority of overlapping banners raising concerns are within six miles or less of each other. The primary trade areas of Respondents' banners in each of the relevant geographic markets overlap significantly.

15. The 46 geographic markets in which to assess the competitive effects of the Merger are localized areas in (1) Lewes & Rehoboth Beach, Delaware; (2) Millsboro, Delaware; (3) Millville, Delaware; (4) Accokeek, Maryland; (5) Bowie, Maryland; (6) California, Maryland; (7) Columbia, Maryland; (8) Cumberland & Frostburg, Maryland; (9) Easton, Maryland; (10) Edgewater, Maryland; (11) Gaithersburg, Maryland; (12) Hagerstown (north), Maryland; (13) Hagerstown (south), Maryland; (14) La Plata, Maryland; (15) Lusby, Maryland; (16) Owings Mills, Maryland; (17) Prince Frederick, Maryland; (18) Reisterstown, Maryland; (19) Salisbury, Maryland; (20) Sykesville, Maryland; (21) Upper Marlboro, Maryland; (22) Gardner, Massachusetts; (23) Kingston, Massachusetts; (24) Mansfield & South Easton, Massachusetts; (25) Milford, Massachusetts; (26) Norwell, Massachusetts; (27) Norwood & Walpole, Massachusetts; (28) Quincy, Massachusetts; (29) Saugus, Massachusetts; (30) Mahopac & Carmel, New York; (31) New Paltz & Modena, New York; (32) Poughkeepsie & Lagrangeville, New York; (33) Rhinebeck & Red Hook, New York; (34) Wappingers Falls, New York; (35) Chambersburg, Pennsylvania; (36) Waynesboro, Pennsylvania; (37) York, Pennsylvania; (38) Culpeper, Virginia; (39) Fredericksburg, Virginia; (40) Front Royal, Virginia; (41) Purcellville, Virginia; (42) Richmond, Virginia; (43) Stafford, Virginia; (44) Stephens City, Virginia; (45) Winchester, Virginia; and (46) Martinsburg, West Virginia. A hypothetical monopolist controlling all supermarkets in any one of these areas could profitably raise prices by a small but significant nontransitory amount in that area.

VI. MARKET CONCENTRATION

16. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines") and relevant case law, the Merger is presumptively

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unlawful in the markets for the retail sale of food and other grocery products in supermarkets in all but one of the 46 geographic markets listed in Paragraph 15. Under the Merger Guidelines' standard measure of market concentration, the Herfindahl-Hirschman Index ("HHI"), an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. The Merger would result in market concentration levels in excess of these thresholds in all but one of these 46 geographic markets.

17. Post-merger HHI levels in the relevant geographic markets would range from 2,268 to 10,000, and the Merger would result in HHI increases ranging from 243 to 4977. Exhibit A presents market concentration levels for each of the relevant geographic markets.

18. As seen in Exhibit A, the Merger would reduce the number of meaningful supermarket competitors from two to one in three relevant geographic markets, three to two in 14 relevant geographic markets, four to three in 18 relevant geographic markets, five to four in ten relevant geographic markets, and seven to six in one relevant geographic market.

VII. ENTRY CONDITIONS

19. Entry into the relevant markets would not be timely, likely, or sufficient in magnitude to prevent or deter the likely anticompetitive effects of the Merger. Significant entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a supermarket, obtaining necessary permits and approvals, constructing a new supermarket or converting an existing structure to a supermarket, and generating sufficient sales to have a meaningful impact on the market.

VIII. EFFECTS OF THE MERGER

20. The Merger, if consummated, is likely to substantially lessen competition for the retail sale of food and other grocery

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products in supermarkets in the relevant geographic markets identified in Paragraph 15 in the following ways, among others:

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

21. The ultimate effect of the Merger would be to increase the likelihood that the prices of food or groceries will increase, and that the quality and selection of food, groceries, or services will decrease, in the relevant geographic markets.

IX. VIOLATIONS CHARGED

22. The agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the Merger, 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-second day of July, 2016, issues its complaint against said Respondents.

By the Commission.

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Exhibit A

Area Number (See Para. 16 of Complaint)	City	State	Merger Result	HHI (pre)	HHI (post)	Delta
1	Lewes/Rehoboth Beach	DE	4 to 3	2947	5369	2421
2	Millsboro	DE	3 to 2	3794	6440	2646
3	Millville	DE	4 to 3	4065	5762	1697
4	Gardner	MA	4 to 3	2517	3723	1207
5	Kingston	MA	5 to 4	3140	4459	1318
6	Mansfield/S. Easton	MA	4 to 3	2834	4307	1472
7	Milford	MA	5 to 4	2298	2780	482
8	Norwell	MA	4 to 3	4052	5840	1789
9	Norwood/Walpole ¹	MA	7 to 6	2025	2268	243
10	Quincy	MA	4 to 3	3854	5092	1239
11	Saugus	MA	5 to 4	2140	2819	679
12	Accokeek	MD	2 to 1	5430	10,000	4570
13	Bowie	MD	4 to 3	3288	3750	462
14	California	MD	4 to 3	3043	4121	1078
15	Columbia	MD	5 to 4	3093	3679	586
16	Cumberland & Frostburg	MD	3 to 2	4032	5157	1125
17	Easton	MD	4 to 3	2803	3578	775
18	Edgewater	MD	3 to 2	3920	5261	1341
19	Gaithersburg	MD	5 to 4	4203	5193	989
20	Hagerstown (South)	MD	4 to 3	3910	4525	615
21	Hagerstown (North)	MD	4 to 3	4043	4323	281
22	La Plata	MD	3 to 2	3935	5007	1072
23	Lusby	MD	2 to 1	5108	10,000	4892

¹ Based on a calculation giving full weight to a third-party supermarket with a large draw area, the Merger results in a post-acquisition HHI that does not meet the threshold for a highly concentrated market in the Norwood/Walpole, Massachusetts, market, even though the change in concentration is more than double the level that raises significant competitive concerns. Under calculations giving less than full weight to that supermarket, the Merger results in a highly concentrated market that meets the presumption for enhanced market power. Ultimately, an analysis of all the evidence indicates that the Merger is likely to substantially lessen competition in this market.

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24	Owings Mills	MD	4 to 3	3325	4017	692
25	Prince Frederick	MD	3 to 2	3734	5242	1508
26	Reisterstown	MD	4 to 3	3423	4169	746
27	Salisbury	MD	3 to 2	3976	5029	1053
28	Sykesville	MD	5 to 4	3012	3732	720
29	Upper Marlboro	MD	3 to 2	3645	5328	1683
30	Mahopac/Carmel	NY	5 to 4	2940	4352	1412
31	New Paltz/Modena	NY	3 to 2	3690	6601	2911
32	Poughkeepsie/Lagrange ville	NY	4 to 3	3269	5786	2517
33	Rhinebeck/Red Hook	NY	2 to 1	5023	10,000	4977
34	Wappingers Falls	NY	3 to 2	2646	4256	1610
35	Chambersburg	PA	5 to 4	3277	4232	955
36	Waynesboro	PA	3 to 2	5030	5537	506
37	York	PA	4 to 3	3710	4135	424
38	Culpeper	VA	4 to 3	3329	4371	1042
39	Fredericksburg	VA	5 to 4	2696	3560	864
40	Front Royal	VA	3 to 2	3638	5095	1456
41	Purcellville	VA	3 to 2	3679	5321	1642
42	Richmond Metro Area	VA	5 to 4	2198	2857	659
43	Stafford	VA	4 to 3	3333	4038	705
44	Stephens City	VA	3 to 2	4045	5018	973
45	Winchester	VA	3 to 2	3662	5094	1433
46	Martinsburg	WV	4 to 3	2759	3568	809

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger between Respondents Koninklijke Ahold N.V. (“Ahold”) and Delhaize Group NV/SA (“Delhaize”), and Respondents having been

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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:

1. Respondent Koninklijke Ahold N.V. is a corporation organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located at Provincialeweg 11, 1506 MA Zaandam, the Netherlands. Koninklijke Ahold N.V.’s principal U.S. subsidiary, Ahold U.S.A., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its offices and principal place of business located at 1385 Hancock Street, Quincy, Massachusetts 02169.

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2. Respondent Delhaize Group NV/SA 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, and its registered office at Ossenghemstraat 53, 1080, Brussels, Belgium. Delhaize Group NV/SA's principal U.S. subsidiary, Delhaize America, LLC, 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 offices and principal place of business at 2110 Executive Drive, Salisbury, North Carolina 28147.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

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. For purposes of this Order to Maintain Assets, the Assets To Be Divested under the Decision and Order include the Schedule C Additional Assets. In addition, "Supermarket To Be Maintained" means any Supermarket business identified as part of the Assets To Be Divested under the Decision and Order.

II.

IT IS FURTHER ORDERED that:

- A. 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. Respondents shall not cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or

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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, and shall not transfer store managers from any Supermarket To Be Maintained to any store that is not part of the Assets To Be Divested. Included in the above obligations, Respondents shall, without limitation:
1. Maintain all operations and departments, and not reduce hours, at each Supermarket To Be Maintained;
 2. Not transfer inventory from any Supermarket To Be Maintained, other than in the ordinary course of business consistent with past practice;
 3. Make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with

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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 pricing or 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, relocated, or sold.

Provided, however, that Respondents shall not be in violation of this Paragraph II. if Respondents take actions (i) as explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed-to by an Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer’s acquisition of Assets To Be Divested and consistent with the purposes of the Order.

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

- A. Brad Wise shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix VIII (“Monitor Agreement”) and Non-Public Appendix VIII-1 (“Monitor Compensation”) to the Decision and Order. The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s);
- B. No later than (1) day after the date the Merger is consummated, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents’ compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s), in a manner consistent with the purposes of the orders.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and related requirements of this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s), and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders and in consultation with the Commission.
 - 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

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3. The Monitor shall serve until the later of (a) one year from the date the Merger is consummated or (b) all divestiture obligations under Paragraphs II and IV of the Decision and Order have been satisfied.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s).
 - E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s).
 - F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
 - G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that

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such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph III.G., the term “Monitor” shall include all persons retained by the Monitor pursuant to Paragraph III.F. of this Order to Maintain Assets.

- H. Respondents shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets or the Decision and Order, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents’ obligations under this Order to Maintain Assets and the Decision and Order. Within thirty (30) days from the date the Monitor receives the first such report, and every thirty (30) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the orders.
- I. Respondents may require the Monitor and each of the Monitor’s consultants, accountants, 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.
- J. The Commission may require, among other things, the Monitor and each of the Monitor’s consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor’s duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

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1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant terms of this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s) in a manner consistent with the purposes of the orders and in consultation with the Commission.
- L. 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 to Maintain Assets.
- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

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

- A. Any proposed dissolution of Respondents;

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- 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.

V.

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, Respondents 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 submit at the same time a copy of their reports concerning compliance with this Order to Maintain Assets to the Monitor. 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.

VI.

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 provided by Respondents at the request of the

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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.

VII.

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 (or, in the case of the Schedule C Additional Assets, the completion of the divestiture of the Schedule C Assets to Publix).

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 Divestiture 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.

Decision and Order

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger between Respondents Koninklijke Ahold N.V. (“Ahold”) and Delhaize Group NV/SA (“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 duly considered the comments received from interested persons, 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 Koninklijke Ahold N.V. is a corporation organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located at Provincialeweg 11, 1506 MA Zaandam, the Netherlands. Koninklijke Ahold N.V.'s principal U.S. subsidiary, Ahold U.S.A., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its offices and principal place of business located at 1385 Hancock Street, Quincy, Massachusetts 02169.
2. Respondent Delhaize Group NV/SA 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, and its registered office at Ossenghemstraat 53, 1080, Brussels, Belgium. Delhaize Group NV/SA's principal U.S. subsidiary, Delhaize America, LLC, 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 offices and principal place of business at 2110 Executive Drive, Salisbury, North Carolina 28147.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. "Ahold" means Respondent Koninklijke Ahold N.V, its directors, officers, employees, agents,

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representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Ahold (including, but not limited to, Ahold U.S.A.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. “Delhaize” means Respondent Delhaize Group NV/SA, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Delhaize (including, but not limited to, Delhaize America, LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means Ahold and Delhaize, individually and collectively.
- D. “Acquirer” means any entity approved by the Commission to acquire any or all of the Assets To Be Divested pursuant to this Order.
- E. “Merger” means the proposed merger of Ahold and Delhaize, pursuant to the Merger Agreement.
- F. “Merger Agreement” means the Merger Agreement by and between Delhaize Group NV/SA and Koninklijke Ahold N.V. dated as of June 24, 2015.
- G. “Assets To Be Divested” means the Supermarkets identified on Schedule A, Schedule B, Schedule C, Schedule D, Schedule E, Schedule F, and Schedule G of this Order, or any portion thereof, 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

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numbers, and goodwill. Assets To Be Divested includes any of Respondents' other businesses or assets associated with, or operated in conjunction with, the Supermarket locations listed on Schedules A – G of this Order, including any fuel centers (including any convenience store and/or car wash associated with such fuel center), pharmacies, liquor stores, beverage centers, gaming or slot machine parlors, store cafes, or other related business(es) that customers reasonably associate with the Supermarket business operated at each such location. 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 the 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 Remedial Agreement(s).

Provided, further, 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.

Provided, further, that if Publix is the Acquirer of the Schedule C Assets, then the Schedule C Assets may exclude certain associated assets of individual stores, as explicitly excluded in the Publix Divestiture Agreement.

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Provided, further, that if Publix is not the Acquirer of the Schedule C Assets, then the Commission may, in its sole discretion, include any or all of the Schedule C Additional Assets as part of the Assets To Be Divested.

- H. “Albertsons” means New Albertson’s Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho 83706.
- I. “Albertsons Divestiture Agreement” means the Asset Purchase Agreement dated as of July 8, 2016, by and between Respondent Ahold and Albertsons, attached as non-public Appendix I, for the divestiture of the Schedule A Assets.
- J. “Big Y” means Big Y Foods, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its offices and principal place of business located at 2145 Roosevelt Avenue, Springfield, Massachusetts 01104.
- K. “Big Y Divestiture Agreement” means the Asset Purchase Agreement dated as of July 7, 2016, by and between Respondent Delhaize and Big Y, attached as non-public Appendix II, for the divestiture of the Schedule B Assets.
- L. “Direct Costs” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide services under this Order or any Transition Services Agreement. “Direct Cost” to an Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.

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- M. “Divestiture Agreement” means any agreement between Respondents and an Acquirer (or a Divestiture Trustee appointed pursuant to Paragraph IV 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 Albertsons Divestiture Agreement, the Big Y Divestiture Agreement, the Publix Divestiture Agreement, the Saubels Divestiture Agreement, the Supervalu Divestiture Agreement, the Tops Divestiture Agreement, and the Weis Divestiture Agreement.
- N. “Divestiture Date” means a closing date of any of the respective divestitures required by this Order.
- O. “Divestiture Trustee” means any person or entity appointed by the Commission pursuant to Paragraph IV of this Order to act as a trustee in this matter.
- P. “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, Albertsons, Big Y, Publix, Saubels, Supervalu, Tops, and Weis.
- Q. “Publix” means Publix Super Markets, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at 3300 Publix Corporate Parkway, Lakeland, Florida 33811, and including Publix North Carolina, L.P.,
- R. “Publix Divestiture Agreement” means the Asset Purchase Agreement dated as of July 7, 2016, by and between Respondent Ahold and Publix, attached as non-public Appendix III, for the divestiture of the Schedule C Assets.

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- S. “Remedial Agreement(s)” means the following:
1. Any Divestiture Agreement; and
 2. Any other agreement between Respondents and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer), including any Transition Services Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested, that have been approved by the Commission to accomplish the requirements of this Order.
- T. “Relevant Areas” means: Sussex County in Delaware; Allegany, Anne Arundel, Baltimore, Calvert, Carroll, Charles, Howard, Montgomery, Prince George’s, St. Mary’s, Talbot, Washington, and Wicomico Counties in Maryland; Bristol, Essex, Norfolk, Plymouth, and Worcester Counties in Massachusetts; Franklin, and York Counties in Pennsylvania; Dutchess, Putnam, and Ulster Counties in New York; Chesterfield, Clarke, Colonial Heights City, Culpeper, Frederick, Fredericksburg City, Hanover, Henrico, Loudoun, Richmond City, Spotsylvania, Stafford, Winchester City, and Warren Counties in Virginia; and Berkeley County in West Virginia.
- U. “Saubels” means Saubels Market, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its offices and principal place of business located at 65 East Forrest Avenue, Shrewsbury, Pennsylvania 17361.
- V. “Saubels Divestiture Agreement” means the Asset Purchase Agreement dated as of July 7, 2016, by and between Respondent Delhaize and Saubels, attached as non-public Appendix IV, for the divestiture of the Schedule D Assets.

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- W. “Schedule A Assets” means the Assets To Be Divested identified on Schedule A of this Order.
- X. “Schedule B Assets” means the Assets To Be Divested identified on Schedule B of this Order.
- Y. “Schedule C Assets” means the Assets To Be Divested identified on Schedule C of this Order.
- Z. “Schedule C Additional Assets” means the additional Supermarket businesses, identified as such on Schedule C of this Order.

Provided, however, that Martin’s Store No. 6492 shall be removed from the list of Schedule C Additional Assets on April 1, 2017, if the Commission has notified Respondents, in advance of that date and in writing, that the sale of that store will not be required pursuant to Paragraph II.B.1 and/or IV.A. of this Order.

- AA. “Schedule D Assets” means the Assets To Be Divested identified on Schedule D of this Order.
- BB. “Schedule E Assets” means the Assets To Be Divested identified on Schedule E of this Order.
- CC. “Schedule F Assets” means the Assets To Be Divested identified on Schedule F of this Order.
- DD. “Schedule G Assets” means the Assets To Be Divested identified on Schedule G of this Order.
- EE. “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

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

- FF. “Supervalu” means Supervalu Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 11840 Valley View Road, Eden Prairie, Minnesota 55344, and including its direct and indirect wholly-owned subsidiaries, Shop ‘N Save East, LLC and Shop ‘N Save East Prop, LLC.
- GG. “Supervalu Divestiture Agreement” means the Asset Purchase Agreement dated as of July 7, 2016, by and between Respondent Delhaize and Supervalu, attached as non-public Appendix V, for the divestiture of the Schedule E Assets.
- HH. “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.
- II. “Tops” means Tops Markets, LLC, a New York limited liability company that is organized, existing, and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 6363 Main Street, Williamsville, New York 14221 and a mailing address c/o PO Box 1027, Buffalo, NY 14240-1027.

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- JJ. “Tops Divestiture Agreement” means the two Asset Purchase Agreements dated as of July 7, 2016, by and between Respondents and Tops, attached as non-public Appendix VI, for the divestiture of the Schedule F Assets.
- KK. “Transition Services” means services (or training for an Acquirer to provide services for itself) related to payroll, employee benefits, accounting, IT systems, back-office and front-office systems (including inventory and price management), distribution, warehousing, use of trademarks or trade names for transitional purposes, and other transitional support as may be required by an Acquirer to transfer and operate the divested assets in a manner consistent with the purposes of this Order.
- LL. “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.
- MM. “Weis” means Weis Markets, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its offices and principal place of business located at 1000 S. Second Street, P.O. Box 471, Sunbury, Pennsylvania 17801.
- NN. “Weis Divestiture Agreement” means the Asset Purchase Agreement dated as of July 7, 2016, by and between Respondent Delhaize and Weis, attached as non-public Appendix VII, for the divestiture of the Schedule G Assets.

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

- A. Respondents shall divest the Assets To Be Divested, absolutely and in good faith, as follows:
1. Within 60 days of the date the Merger is consummated, the Schedule A Assets shall be divested as ongoing Supermarket businesses to Albertsons pursuant to and in accordance with the Albertsons Divestiture Agreement;
 2. Within 90 days of the date the Merger is consummated, the Schedule B Assets shall be divested as ongoing Supermarket businesses to Big Y pursuant to and in accordance with the Big Y Divestiture Agreement;
 3. The Schedule C Assets shall be divested to Publix, pursuant to and in accordance with the Publix Divestiture Agreement, on the following schedule:
 - a. Within 180 days of the date the Merger is consummated, the Schedule C, Group I Stores shall be divested to Publix;
 - b. Within 240 days of the date the Merger is consummated, the Schedule C, Group II Stores shall be divested to Publix; and
 - c. Within 360 days of the date the Merger is consummated, the Schedule C, Group III Stores shall be divested to Publix;
 4. Within 60 days of the date the Merger is consummated, the Schedule D Assets shall be divested as an ongoing Supermarket business to Saubels pursuant to and in accordance with the Saubels Divestiture Agreement;

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5. Within 105 days of the date the Merger is consummated, the Schedule E Assets shall be divested as ongoing Supermarket businesses to Supervalu pursuant to and in accordance with the Supervalu Divestiture Agreement;
 6. Within 60 days of the date the Merger is consummated, the Schedule F Assets shall be divested as ongoing Supermarket businesses to Tops pursuant to and in accordance with the Tops Divestiture Agreement;
 7. The Schedule G Assets shall be divested as ongoing Supermarket businesses to Weis, pursuant to and in accordance with the Weis Divestiture Agreement, on the following schedule:
 - a. Within 90 days of the date the Merger is consummated, at least 15 of the Schedule G, Phase I Locations shall be divested to Weis; and
 - b. Within 230 days of the date the Merger is consummated, the remaining Schedule G, Phase I Locations and all of the Schedule G, Phase II Locations shall be divested to Weis.
- B. *Provided, that*, if prior to the date this Order becomes final, Respondents 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 Respondents that:
1. Any Proposed Acquirer identified in Paragraph II.A is not an acceptable Acquirer, then Respondents shall, within five days of notification by the Commission, rescind such transaction with that Proposed Acquirer, and shall divest such assets (and, in the case of the Schedule C Assets, including any of the Schedule C Additional Assets, as determined by the Commission in its sole

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discretion) 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 Respondents 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 pursuant to Paragraph IV 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 Remedial 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 Remedial Agreement(s) shall constitute a violation of this Order; and
 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 Remedial Agreement(s) varies from the terms

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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 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, 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.

Provided, however, that Respondents shall not be in violation of this Paragraph II.F. if Respondents take actions (i) as explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested

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or agreed-to by an Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of Assets To Be Divested and consistent with the purposes of the Order.

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

III.

IT IS FURTHER ORDERED that, with respect to each Divestiture Agreement, Respondents shall:

- A. No later than ten (10) days after a request from a Proposed Acquirer, provide the Proposed Acquirer with the following information for each employee of the Assets To Be Divested, as requested by the Proposed Acquirer, and to the extent permitted by law:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;
 5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are

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not otherwise generally available to similarly situated employees; and

7. At the Proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- B. Within a reasonable time after a request from a Proposed Acquirer, provide to the Proposed Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one, or all, of the employees of the Assets To Be Divested, and to make offers of employment to any one, or more, of the employees of the Assets To Be Divested.
- C. Not interfere, directly or indirectly, with the hiring or employing by the Proposed Acquirer of any employee of the Assets To Be Divested, not offer any incentive to such employees to decline employment with the Proposed Acquirer, and not otherwise interfere with the recruitment or employment of any employee by the Proposed Acquirer.
- D. Remove any impediments within the control of Respondents that may deter employees of the Assets To Be Divested from accepting employment with the Proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment, or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Proposed Acquirer, and shall not make any counteroffer to an employee who has an outstanding offer of employment from the Proposed Acquirer or has accepted an offer of employment from the Proposed Acquirer.
- E. Provide all employees with reasonable financial incentives to continue in their positions until the Divestiture Date. Such incentives shall include, but are not limited to, a continuation, until the Divestiture

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Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting as of the Divestiture Date of any unvested qualified 401(k) plan account balances (to the extent permitted by law, and for those employees covered by a 401(k) plan), offered by Respondents.

- F. Not, for a period of one (1) year following the Divestiture Date, directly or indirectly, solicit, or otherwise attempt to induce any of the employees who have accepted offers of employment with the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, that Respondents may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at employees of the Assets To Be Divested; or
 2. Hire employees of the Assets To Be Divested who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to, or employing, any such employees if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

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

- A. If Respondents 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

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appoint a Divestiture Trustee to divest the remaining Assets To Be Divested (including, in the case of the Schedule C Assets, the Schedule C Additional Assets) 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, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(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, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

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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.
3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, 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 IV.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 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

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Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

6. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The 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 Respondents from among those approved by the Commission; *provided further, however*, that Respondents 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 Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The

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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 Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets required to be divested by this Order.

8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not 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 IV.
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.

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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 Respondents and to the Commission every thirty (30) days concerning 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.

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

- A. Brad Wise shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix VIII ("Monitor Agreement") and Non-Public Appendix VIII-1 ("Monitor Compensation"). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreement(s);

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- B. No later than one (1) day after the date the Merger is consummated, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order, the Order to Maintain Assets, and the Remedial Agreement(s), in a manner consistent with the purposes of the orders.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and related requirements of this Order, the Order to Maintain Assets, and the Remedial Agreement(s), and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders and in consultation with the Commission.
 - 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - 3. The Monitor shall serve until the later of (a) one year from the date this Order is issued or (b) all divestiture obligations under Paragraphs II and IV of this Order have been satisfied.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order, the Order to Maintain Assets, and the Remedial Agreement(s).

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- E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order, the Order to Maintain Assets, and the Remedial Agreement(s).
- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph V.G., the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph V.F. of this Order.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order or the Order to Maintain Assets, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order and the Order to Maintain Assets. Within thirty (30) days from the date the Monitor receives the first such

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report, and every thirty (30) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the orders.

- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, 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.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
 1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance

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with the relevant terms of this Order, the Order to Maintain Assets, and the Remedial Agreement(s) in a manner consistent with the purposes of orders and in consultation with the Commission.

- L. 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.
- M. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

VI.

IT IS FURTHER ORDERED that if Supervalu purchases the Schedule E Assets pursuant to Paragraph II.A.5, Supervalu shall not sell or otherwise convey, directly or indirectly, any of the Schedule E Assets, except to an Acquirer approved by the Commission and only in a manner that receives the prior approval of the Commission. *Provided, however*, that prior approval of the Commission is not required if Supervalu sells or conveys, directly or indirectly, any or all of its interests in the Schedule E Assets to Donstekim Enterprises, LLC pursuant to and in accordance with the Shop 'N Save East, LLC Joint Venture Term Sheet attached to this Order as non-public Appendix IX. Supervalu shall comply with this Paragraph until three (3) years after the date this Order is issued.

VII.

IT IS FURTHER ORDERED that:

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

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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.

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 Respondents' 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 Respondents and not of any other party to the transaction. Respondents shall provide the notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where

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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.

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

- A. Within thirty (30) days after the date this Order is issued and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and IV of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to the Monitor. 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, 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 is issued, annually for the next nine (9) years on the anniversary of the date this Order is issued, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

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IX.

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 dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

X.

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.

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XI.

IT IS FURTHER ORDERED that this Order shall terminate on October 14, 2026.

By the Commission.

Schedule A Assets

1. Giant Store No. 351, located at 751 S Salisbury Boulevard, Salisbury, Maryland (Wicomico County).

Schedule B Assets

1. Hannaford Store No. 8008, located at 182 Summer Street, Kingston, Massachusetts (Plymouth County).
2. Hannaford Store No. 8018, located at 475 Hancock Street, Quincy, Massachusetts (Norfolk County).
3. Hannaford Store No. 8020, located at 10 Washington Street, Norwell, Massachusetts (Plymouth County).
4. Hannaford Store No. 8021, located at 7 Medway Road, Milford, Massachusetts (Worcester County).
5. Hannaford Store No. 8022, located at 434 Walpole Street, Norwood, Massachusetts (Norfolk County).

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6. Hannaford Store No. 8286, located at 357 Broadway, Saugus, Massachusetts (Essex County).

7. Hannaford Store No. 8382, located at 25 Robert Drive, Easton, Massachusetts (Bristol County).

Schedule C Assets**Closing Group 1**

1. Martin's Store No. 6499, located at 4591 S. Laburnum Avenue, Richmond, Virginia (Henrico County).

2. Martin's Store No. 6434, located at 2250 John Rolfe Parkway, Henrico, Virginia (Henrico County).

3. Martin's Store No. 6433, located at 10250 Staples Mill Road, Glen Allen, Virginia (Henrico County).

Closing Group 2

4. Martin's Store No. 6421, located at 3460 Pump Road, Henrico, Virginia (Henrico County).

5. Martin's Store No. 6435, located at 10150 Brook Road, Glen Allen, Virginia (Henrico County).

6. Martin's Store No. 6438, located at 13700 Hull Street Road, Midlothian, Virginia (Chesterfield County).

7. Martin's Store No. 6494, located at 3107 Boulevard, Colonial Heights, Virginia (Colonial Heights City).

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Closing Group 3

8. Martin's Store No. 6429, located at 3522 West Cary Street, Richmond, Virginia (Richmond City).

9. Martin's Store No. 6439, located at 7035 Three Chopt Road, Richmond, Virginia (Henrico County).

10. Martin's Store No. 6498, located at 9645 West Broad Street, Glen Allen, Virginia (Henrico County).

Schedule C Additional Assets

1. Martin's Store No. 6491, located at 12601 Jefferson Davis Highway, Chester, Virginia (Chesterfield County).

2. Martin's Store No. 6492, located at 10001 Hull Street Road, Richmond, Virginia (Chesterfield County).

3. Martin's Store No. 6428, located at 7045 Forest Hill Avenue, Richmond, Virginia (Richmond City).

4. Martin's Store No. 6588, located at 200 Charter Colony Parkway, Midlothian, Virginia (Chesterfield County).

5. Martin's Store No. 6489, located at 253 N Washington Highway, Ashland, Virginia (Hanover County).

6. Martin's Store No. 6436, located at 5700 Brook Road, Richmond, Virginia (Henrico County).

Schedule D Assets

1. Food Lion Store No. 1241, located at 3611 E. Market Street, York, Pennsylvania (York County).

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Schedule E Assets

1. Food Lion Store No. 362, located at 707 Fort Collier Road, Winchester, Virginia (Winchester City).
2. Food Lion Store No. 366, located at 2600 Valley Avenue, Winchester, Virginia (Winchester City).
3. Food Lion Store No. 626, located at 761 East Wilson Boulevard, Hagerstown, Maryland (Washington County).
4. Food Lion Store No. 733, located 249 Sunnyside Plaza Circle, Winchester, Virginia (Frederick County).
5. Food Lion Store No. 745, located at 609 K East Main Street, Purcellville, Virginia (Loudoun County).
6. Food Lion Store No. 994, located at 4170 Philadelphia Avenue, Chambersburg, Pennsylvania (Franklin County).
7. Food Lion Store No. 1059, located at 260 Remount Road, Front Royal, Virginia (Warren County).
8. Food Lion Store No. 1147, located at 18717 North Pointe Drive, Hagerstown, Maryland (Washington County).
9. Food Lion Store No. 1164, located at 409 North McNeil Road, Berryville, Virginia (Clarke County).
10. Food Lion Store No. 1180, located at 17718 Virginia Avenue, Hagerstown, Maryland (Washington County).
11. Food Lion Store No. 1189, located at 1140 Winchester Avenue, Martinsburg, West Virginia (Berkeley County).
12. Food Lion Store No. 1281, located at 190 Delco Plaza, Winchester, Virginia (Frederick County).
13. Food Lion Store No. 1489, located at 380 Fairfax Pike, Stephens City, Virginia (Frederick County).

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14. Food Lion Store No. 1527, located at 875 Lincoln Way West, Chambersburg, Pennsylvania (Franklin County).

15. Food Lion Store No. 1663, located at 11105 Buchanan Trail, Waynesboro, Pennsylvania (Franklin County).

16. Food Lion Store No. 1683, located at 18360 College Road, Hagerstown, Maryland (Washington County).

17. Food Lion Store No. 2568, located at 1317 Old Courthouse Square, Martinsburg, West Virginia (Berkeley County).

18. Food Lion Store No. 2668, located at 159 Grocery Avenue, Winchester, Virginia (Frederick County).

Schedule F Assets

1. Stop & Shop Store No. 536, located at 6726 Route 9, Rhinebeck, New York (Dutchess County).

2. Stop & Shop Store No. 515, located at 271 Main Street, New Paltz, New York (Ulster County).

3. Stop & Shop Store No. 598, located at 1357 Route 9, Wappingers Falls, New York (Dutchess County).

4. Stop & Shop Store No. 434, located at 372 Timpany Boulevard, Gardner, Massachusetts (Worcester County).

5. Hannaford Store No. 8325, located at 1936 U.S. Route 6, Carmel, New York (Putnam County).

6. Hannaford Store No. 8368, located at 16 Jon J Wagner Way, LaGrange, New York (Dutchess County).

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Schedule G Assets**Phase I Locations**

1. Food Lion Store No. 488, located at 19287 Miller Road, Unit 14, Rehoboth Beach, Delaware (Sussex County).
2. Food Lion Store No. 784, located at 45315 Alton Lane, California, Maryland (St. Mary's County).
3. Food Lion Store No. 786, located at 10 Village Center Road, Reisterstown, Maryland (Baltimore County).
4. Food Lion Store No. 960, located at 24832 John J Williams Highway, Millsboro, Delaware (Sussex County).
5. Food Lion Store No. 1168, located at 100 Drury Drive, La Plata, Maryland (Charles County).
6. Food Lion Store No. 1187, located at 17600 Old National SW Pike, Frostburg, Maryland (Allegany County).
7. Food Lion Store No. 1210, located at 19 St. Mary's Square, Lexington Park, Maryland (St. Mary's County).
8. Food Lion Store No. 1289, located at 219 Marlboro Avenue, Easton, Maryland (Talbot County).
9. Food Lion Store No. 1315, located at 3261 Solomons Island Road, Edgewater, Maryland (Anne Arundel County).
10. Food Lion Store No. 1321, located at 215 Atlantic Avenue, Millville, Delaware (Sussex County).
11. Food Lion Store No. 1324, located at 6375 Monroe Avenue, Sykesville, Maryland (Carroll County).
12. Food Lion Store No. 1345, located at 16567 S. Frederick Road, Gaithersburg, Maryland (Montgomery County).

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13. Food Lion Store No. 1356, located at 15789 Livingston Road, Accokeek, Maryland (Prince George's County).

14. Food Lion Store No. 1387, located at 12100 Central Avenue, Bowie, Maryland (Prince George's County).

15. Food Lion Store No. 1443, located at 13300 H G Trueman Road, Solomons, Maryland (Calvert County).

16. Food Lion Store No. 1477, located at 883 Russell Avenue, Gaithersburg, Maryland (Montgomery County).

17. Food Lion Store No. 1526, located at 750 Prince Frederick Boulevard, Prince Frederick, Maryland (Calvert County).

18. Food Lion Store No. 1529, located at 6551 Waterloo Road, Elkridge, Maryland (Howard County).

19. Food Lion Store No. 1535, located at 5715 Crain Highway, Upper Marlboro, Maryland (Prince George's County).

20. Food Lion Store No. 1549, located at 15300 McMullen Highway SW, Cumberland, Maryland (Allegany County).

21. Food Lion Store No. 2515, located at 20995 Point Lookout Road, Callaway, Maryland (St. Mary's County).

22. Food Lion Store No. 2535, located at 9251 Lakeside Boulevard, Owings Mills, Maryland (Baltimore County).

23. Food Lion Store No. 2565, located at 17232 N Village Main Boulevard, Lewes, Delaware (Sussex County).

24. Food Lion Store No. 2598, located at 5896 Robert Oliver Place, Columbia, Maryland (Howard County).

25. Food Lion Store No. 2606, located at 210 H G Trueman Rd, Lusby, Maryland (Calvert County).

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Phase II Locations

26. Food Lion Store No. 250, located at 505 Meadowbrook Shopping Center, Culpeper, Virginia (Culpeper County).

27. Food Lion Store No. 358, located at 282 Deacon Road ,Suite 106, Fredericksburg, Virginia (Stafford County).

28. Food Lion Store No. 419, located at 10611 Courthouse Road, Fredericksburg, Virginia (Spotsylvania County).

29. Food Lion Store No. 450, located at 4153 Plank Road, Fredericksburg, Virginia (Spotsylvania County).

30. Food Lion Store No. 578, located at 905 Garrisonville Road, Stafford, Virginia (Stafford County).

31. Food Lion Store No. 1043, located at 515 Jefferson Davis Highway, Fredericksburg, Virginia (Fredericksburg City).

32. Food Lion Store No. 1166, located at 2612 Jefferson Davis Highway, Stafford, Virginia (Stafford County).

33. Food Lion Store No. 1177, located at 9801 Courthouse Road, Spotsylvania, Virginia (Spotsylvania County).

34. Food Lion Store No. 1235, located at 10601 Spotsylvania Avenue, Fredericksburg, Virginia (Spotsylvania County).

35. Food Lion Store No. 1243, located at 736 Warrenton Road, Fredericksburg, Virginia (Stafford County).

36. Food Lion Store No. 1567, located at 540 Culpeper Town Mall, Culpeper, Virginia (Culpeper County).

37. Food Lion Store No. 1579, located at 7100 Salem Fields Boulevard, Fredericksburg, Virginia (Spotsylvania County).

38. Food Lion Store No. 2583, located at 10871 Tidewater Trail, Fredericksburg, Virginia (Spotsylvania County).

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APPENDIX I

Albertsons Divestiture Agreement

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

APPENDIX II

Big Y Divestiture Agreement

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

APPENDIX III

Publix Divestiture Agreement

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

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APPENDIX IV

Saubels Divestiture Agreement

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

APPENDIX V

Supervalu Divestiture Agreement

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

APPENDIX VI

Tops Divestiture Agreement

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

Decision and Order

APPENDIX VII

Weis Divestiture Agreement

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

APPENDIX VIII

Monitor Agreement

APPENDIX VIII-1

Monitor Compensation

[Redacted From the Public Record Version]

APPENDIX IX

Shop 'N Save East, LLC Joint Venture Term Sheet

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

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 Order (“Consent Order”) from Koninklijke Ahold N.V. (“Ahold”) and Delhaize Group NV/SA (“Delhaize”) (collectively, the “Respondents”). Pursuant to an Agreement and Plan of Merger dated June 24, 2015, Ahold and Delhaize will combine their businesses through a merger of equals, resulting in a combined entity valued at approximately \$28 billion (“the Merger”). The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from the Merger. Under the terms of the proposed Consent Order, Respondents are required to divest 81 supermarkets and related assets in 46 local geographic markets (collectively, the “relevant markets”) in seven states to seven Commission-approved buyers. The divestitures must be completed within a time-period ranging from 60 to 360 days following the date of the Merger. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture store in the normal course of business through the date the store is ultimately divested to a buyer.

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

The Commission’s Complaint alleges that the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial supermarket competitor in each of the 46 local geographic markets. The elimination of this competition would result in significant competitive harm;

Analysis to Aid Public Comment

specifically, the Merger will allow the merged firm to increase prices above competitive levels, unilaterally or through coordinated interaction among the remaining market participants. Similarly, absent a remedy, there is significant risk that the merged firm may decrease quality and service aspects of its stores below competitive levels. The proposed Consent Order would remedy the alleged violations by requiring divestitures to replace competition that otherwise would be lost in the relevant markets because of the Merger.

II. THE RESPONDENTS

Respondent Ahold is a Dutch company that operates in the United States through its principal U.S. subsidiary Ahold U.S.A., Inc. As of June 24, 2015, Ahold operated 760 supermarkets in the United States under the Stop & Shop, Giant, and Martin's banners. Ahold's stores are located in Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and West Virginia.

Delhaize is a Belgian company that operates in the United States through its principal U.S. subsidiary Delhaize America, LLC. As of June 24, 2015, Delhaize operated 1,291 supermarkets in the United States under the Food Lion and Hannaford banners, dispersed throughout Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Vermont, and West Virginia.

III. RETAIL SALE OF FOOD AND OTHER GROCERY PRODUCTS IN SUPERMARKETS

The Merger presents substantial antitrust concerns for the retail sale of food and other grocery products in supermarkets. Supermarkets are traditional full-line retail grocery stores that sell food and non-food products that customers regularly consume at home—including, but not limited to, fresh produce and meat, dairy products, frozen foods, beverages, bakery goods, dry groceries, household products, detergents, and health and beauty products. Supermarkets also provide service options that enhance the shopping experience, including deli, butcher, seafood, bakery,

Analysis to Aid Public Comment

and floral counters. This broad set of products and services provides consumers with a “one-stop shopping” experience by enabling them to shop in a single store for all of their food and grocery needs. The ability to offer consumers one-stop shopping is the critical difference between supermarkets and other food retailers.

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

Other types of retailers, such as hard discounters, limited assortment stores, natural and organic markets, ethnic specialty stores, and club stores, also sell food and grocery items. These types of retailers are not in the relevant product market because they offer a more limited range of products and services than supermarkets and because they appeal to a distinct customer type. Shoppers typically do not view these other food and grocery retailers as adequate substitutes for supermarkets.¹ Consistent with prior Commission precedent, the Commission has excluded these other types of retailers from the relevant product market.²

1 That is, supermarket shoppers would be unlikely to switch to one of these other types of retailers in response to a small but significant nontransitory increase in price or “SSNIP” by a hypothetical supermarket monopolist. See U.S. DOJ and FTC Horizontal Merger Guidelines § 4.1.1 (2010).

2 See, e.g., Cerberus Institutional Partners, L.P./Safeway, Inc., Docket C-4504 (Jul. 2, 2015); Bi-Lo Holdings, LLC/Delhaize America, LLC, Docket C-4440 (Feb. 25, 2014); 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 (Jun. 28, 1999); Kroger/Fred Meyer, Docket C-3917 (Jan. 10, 2000); Albertson’s/American Stores, Docket C-3986 (Jun. 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

Analysis to Aid Public Comment

The relevant geographic markets in which to analyze the effects of the Merger are areas that range from one-tenth of a mile to a ten-mile radius around each of the Respondents' supermarkets, though the majority of Respondents' overlapping supermarkets raising concerns are within six miles or less of each other.³ The length of the radius depends on factors such as population density, traffic patterns, and other specific characteristics of each market. Where the Respondents' supermarkets are located in rural areas, the relevant geographic areas are larger than areas where the Respondents' supermarkets are located in more densely populated cities. A hypothetical monopolist of the retail sale of food and grocery products in supermarkets in each relevant area could profitably impose a small but significant nontransitory increase in price.

The 46 geographic markets in which to analyze the effects of the Merger are local areas in and around:

(1) Lewes & Rehoboth Beach, Delaware; (2) Millsboro, Delaware; (3) Millville, Delaware; (4) Accokeek, Maryland; (5) Bowie, Maryland; (6) California, Maryland; (7) Columbia, Maryland; (8) Cumberland & Frostburg, Maryland; (9) Easton, Maryland; (10) Edgewater, Maryland; (11) Gaithersburg, Maryland; (12) Hagerstown (north), Maryland; (13) Hagerstown (south), Maryland; (14) La Plata, Maryland; (15) Lusby, Maryland; (16) Owings Mills, Maryland; (17) Prince Frederick, Maryland; (18) Reisterstown, Maryland; (19) Salisbury, Maryland; (20) Sykesville, Maryland; (21) Upper Marlboro, Maryland; (22) Gardner, Massachusetts; (23) Kingston, Massachusetts; (24) Mansfield & South Easton, Massachusetts; (25) Milford, Massachusetts; (26) Norwell, Massachusetts; (27) Norwood & Walpole, Massachusetts; (28) Quincy, Massachusetts; (29) Saugus, Massachusetts; (30) Mahopac &

Puerto Rico enabled consumers to purchase substantially all of their weekly food and grocery requirements in a single shopping visit).

3 For purpose of the Complaint and remedial orders, Richmond, Virginia, is considered one geographic market because of the particular facts in this case, including the extensive overlaps between the Respondents' supermarkets in Richmond and because identifying narrower relevant geographic markets in Richmond would not have changed the analysis.

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Carmel, New York; (31) New Paltz & Modena, New York; (32) Poughkeepsie & Lagrangeville, New York; (33) Rhinebeck & Red Hook, New York; (34) Wappingers Falls, New York; (35) Chambersburg, Pennsylvania; (36) Waynesboro, Pennsylvania; (37) York, Pennsylvania; (38) Culpeper, Virginia; (39) Fredericksburg, Virginia; (40) Front Royal, Virginia; (41) Purcellville, Virginia; (42) Richmond, Virginia; (43) Stafford, Virginia; (44) Stephens City, Virginia; (45) Winchester, Virginia; and (46) Martinsburg, West Virginia.

Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, an acquisition that results in an HHI in excess of 2,500 and increases the HHI by more than 200 significantly increases concentration in a highly concentrated market and therefore is presumed anticompetitive. With the exception of one market,⁴ each of the relevant geographic markets identified above meets the Horizontal Merger Guidelines presumption. Based on the market shares of the parties and other market participants, the post-Merger HHI levels in the relevant markets vary from 2,268 to 10,000, and the HHI deltas vary from 243 to 5,000.

The relevant markets are also highly concentrated in terms of the number of remaining market participants post-Merger. Of the 46 geographic markets, the Merger will result in a merger-to-monopoly in three markets and a merger-to-duopoly in 14 markets. In the remaining markets, the Merger will reduce the number of market participants from four to three in 18 markets, from five to four in ten markets, and from seven to six in one market.⁵

4 Based on a calculation giving full weight to a third-party supermarket with a large draw area, the Merger results in a post-Merger HHI that does not meet the threshold for a highly concentrated market in the Norwood/Walpole, Massachusetts, market, even though the change in concentration is more than double the level that raises significant competitive concerns. Under calculations giving less than full weight to that supermarket, the Merger results in a highly concentrated market that meets the presumption for enhanced market power. Ultimately, an analysis of all the evidence indicates that the Merger is likely to substantially lessen competition in this market.

5 See Exhibit A.

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The anticompetitive implications of such significant increases in market concentration are reinforced by substantial evidence demonstrating that Ahold and Delhaize are close and vigorous competitors in terms of price, format, service, product offerings, promotional activity, and location in each of the relevant geographic markets. Absent relief, the Merger would eliminate significant head-to-head competition between Ahold and Delhaize and would increase the ability and incentive of Ahold to raise prices unilaterally post-Merger. The Merger would also decrease incentives to compete on non-price factors, such as service levels, convenience, and quality. Lastly, the high levels of concentration also increase the likelihood of competitive harm through coordinated interaction.

New entry or expansion in the relevant markets is unlikely to deter or counteract the anticompetitive effects of the Merger. Even if a prospective entrant existed, the entrant must secure an economically-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. As a result, new entry sufficient to achieve a significant market impact and act as a competitive constraint is unlikely to occur in a timely manner.

IV. THE PROPOSED CONSENT ORDER

The proposed remedy, which requires the divestiture of either Ahold or Delhaize supermarkets in each relevant market to seven Commission-approved upfront buyers (the “proposed buyers”) will restore fully the competition that otherwise would be eliminated in these markets as a result of the Merger. Specifically, Respondents have agreed to divest:

- 1 store in Maryland to New Albertson’s Inc. (“Albertsons”);
- 7 stores in Massachusetts to Big Y Foods, Inc. (“Big Y”);
- 10 stores in Virginia to Publix North Carolina, LP (“Publix”);
- 1 store in Pennsylvania to Saubel’s Market, Inc. (“Saubels”);

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- 18 stores in Maryland, Pennsylvania, Virginia, and West Virginia to Shop ‘N Save East, LLC (“Supervalu”);
- 6 stores in Massachusetts and New York to Tops Markets, LLC (“Tops”); and
- 38 stores in Delaware, Maryland, and Virginia to Weis Markets Inc. (“Weis”).

The proposed buyers appear to be highly suitable purchasers that are well positioned to enter the relevant geographic markets through the divested stores and prevent the increase in market concentration and likely competitive harm that otherwise would have resulted from the Merger. The supermarkets currently owned by the proposed buyers are all located outside the relevant geographic markets in which they are purchasing divested stores.

Albertsons is a large supermarket chain operating over 2,200 stores around the country. Albertsons will purchase the Salisbury, Maryland, store. Big Y is a regional supermarket operator with 61 stores in Connecticut and Massachusetts. Big Y will purchase seven divested stores in Massachusetts. Publix is a large supermarket chain with approximately 1,100 supermarkets in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee. Publix will purchase ten divested stores in Richmond, Virginia. Saubels is a small supermarket chain with three stores in Pennsylvania and Maryland. Saubels will purchase the York, Pennsylvania, store. Tops operates 165 supermarkets in New York, Pennsylvania, and Vermont. Tops will purchase five divested stores in New York and one divested store in Massachusetts. Supervalu is a wholesale food distributor that operates corporate-owned stores. Supervalu will purchase 18 divested stores in Maryland, Pennsylvania, Virginia, and West Virginia. Because Supervalu has in the past sold or assigned its rights in corporate-owned stores to independent operators, the Order requires Supervalu to seek prior approval for any such transfer of the divested stores for a period of three years. Weis is a regional supermarket operating 163 stores in Maryland, New Jersey, New York, Pennsylvania, and West Virginia. Weis will purchase 38 divested stores in Delaware, Maryland, and Virginia.

The proposed Consent Order requires Respondents to divest:
(a) the Salisbury, Maryland, asset to Albertsons within 60 days of

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the date of Merger; (b) the Massachusetts (except Gardner) assets to Big Y within 90 days from the date of the Merger; (c) the Richmond, Virginia, assets to Publix in three groupings (the first within 180 days of the date of Merger, the second within 240 days, and the third within 360 days); (d) the York, Pennsylvania, asset to Saubels within 60 days of the date of Merger; (e) the Chambersburg and Waynesboro, Pennsylvania, assets, the Hagerstown, Maryland, assets, certain of the Virginia assets, and the West Virginia assets to Supervalu within 105 days of the date of the Merger; (f) the New York and Gardner, Massachusetts, assets to Tops within 60 days of the date of the Merger; and (g) the Delaware, Maryland (except Hagerstown and Salisbury), and certain of the Virginia assets to Weis in two phases (the first within 90 days of the date of the Merger, and the second within 230 days).

The variation in divestiture date deadlines is a function of the number of stores being acquired by each proposed buyer, as those acquiring a larger number of stores have requested and need a longer acquisition and transition period than those acquiring a smaller number of stores. In the case of Publix, the divestiture schedule is extended in order to give Publix sufficient time prior to the divestitures to secure permits and approvals needed for remodeling and construction work for the store locations it is acquiring. Publix is planning to make significant improvements to the acquired stores, including rebuilding several of them, in order to conform them to a typical Publix store. In addition, the extended divestiture schedule will reduce the time periods these stores will need to be closed before being reopened as Publix stores. The proposed Consent Order and the Order to Maintain Assets require Respondents to continue operating and maintaining the divestiture stores in the normal course of business until the date that each store is sold to the proposed buyer. If, at the time before the proposed Consent Order is made final, the Commission determines that any of the proposed buyers are not acceptable buyers, Respondents must rescind the divestiture(s) and divest the assets to a different buyer that receives the Commission's prior approval.⁶

⁶ In the case of the Richmond, Virginia, the Consent Order also provides the Commission the option to add six additional Richmond-area Ahold stores to

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The proposed Consent Order contains additional provisions designed to ensure the adequacy of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will be issued at the time the proposed Consent Order is accepted for public comment. The Order to Maintain Assets requires Ahold and Delhaize to operate and maintain each divestiture store in the normal course of business through the date the store is ultimately divested to a buyer. Since the divestiture schedule with certain stores runs for an extended period of time (potentially up to 360 days following the Merger date), the proposed Consent Order appoints Brad Wise⁷ as a Monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Order and Order to Maintain Assets. Brad Wise has the experience and skills to be an effective Monitor, no identifiable conflicts, and sufficient time to dedicate to this matter through its conclusion. Lastly, for a period of ten years, Ahold is required to give the Commission prior notice of plans to acquire any interest in a supermarket that has operated or is operating in the counties included in the relevant 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.

the Richmond divestiture package, as may be needed, to secure an approvable alternative buyer for the Richmond assets.

⁷ Mr. Wise is a retired, long-time industry executive, having most recently served as President of Hannaford until his retirement in 2015. Mr. Wise currently works at pro-voke, a business consulting firm.

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Exhibit A

Area Number	City	State	Merger Result	HHI (pre)	HHI (post)	Delta	Divested Store(s)
1	Lewes & Rehoboth Beach	DE	4 to 3	2,947	5,369	2,421	D2565 & D488
2	Millsboro	DE	3 to 2	3,794	6,440	2,646	D960
3	Millville	DE	4 to 3	4,065	5,762	1,697	D1321
4	Gardner	MA	4 to 3	2,517	3,723	1,207	A434
5	Kingston	MA	5 to 4	3,140	4,459	1,318	D8008
6	Mansfield & South Easton	MA	4 to 3	2,834	4,307	1,472	D8382
7	Milford	MA	5 to 4	2,298	2,780	482	D8021
8	Norwell	MA	4 to 3	4,052	5,840	1,789	D8020
9	Norwood & Walpole	MA	7 to 6	2,025	2,268	243	D8022
10	Quincy	MA	4 to 3	3,854	5,092	1,239	D8018
11	Saugus	MA	5 to 4	2,140	2,819	679	D8286
12	Accokeek	MD	2 to 1	5,430	10,000	4,570	D1356
13	Bowie	MD	4 to 3	3,288	3,750	462	D1387
14	California	MD	4 to 3	3,043	4,121	1078	D784, D1210 & D2515
15	Columbia	MD	5 to 4	3,093	3,679	586	D2598 & D1529
16	Cumberland & Frostburg	MD	3 to 2	4,032	5,157	1,125	D1549 & D1187
17	Easton	MD	4 to 3	2,803	3,578	775	D1289
18	Edgewater	MD	3 to 2	3,920	5,261	1,341	D1315
19	Gaithersburg	MD	5 to 4	4,203	5,193	989	D1345 & D1477
20	Hagerstown (South)	MD	4 to 3	3,910	4,525	615	D626, D1683 & D1180
21	Hagerstown (North)	MD	4 to 3	4,043	4,323	281	D1147
22	La Plata	MD	3 to 2	3,935	5,007	1,072	D1168
23	Lusby	MD	2 to 1	5,108	10,000	4,892	D1443 & D2606
24	Owings Mills	MD	4 to 3	3,325	4,017	692	D2535
25	Prince Frederick	MD	3 to 2	3,734	5,242	1,508	D1526

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Area Number	City	State	Merger Result	HHI (pre)	HHI (post)	Delta	Divested Store(s)
26	Reisterstown	MD	4 to 3	3,423	4,169	746	D786
27	Salisbury	MD	3 to 2	3,976	5,029	1,053	A351
28	Sykesville	MD	5 to 4	3,012	3,732	720	D1324
29	Upper Marlboro	MD	3 to 2	3,645	5,328	1,683	D1535
30	Mahopac & Carmel	NY	5 to 4	2,940	4,352	1,412	D8325
31	New Paltz, Modena & Highland	NY	3 to 2	3,690	6,601	2,911	A515
32	Poughkeepsie & Lagrangeville	NY	4 to 3	3,269	5,786	2,517	D8368
33	Rhinebeck & Red Hook	NY	2 to 1	5,023	10,000	4,977	A536
34	Wappingers Falls	NY	3 to 2	2,646	4,256	1,610	A598
35	Chambersburg	PA	5 to 4	3,277	4,232	955	D1527 & D994
36	Waynesboro	PA	3 to 2	5,030	5,537	506	D1663
37	York	PA	4 to 3	3,710	4,135	424	D1241
38	Culpepper	VA	4 to 3	3,329	4,371	1,042	D250 & D1567
39	Fredericksburg	VA	5 to 4	2,696	3,560	864	D358, D419, D450, D1043, D1177, D1235, D1243, D1579 & D2583
40	Front Royal	VA	3 to 2	3,638	5,095	1,456	D1059
41	Purcellville	VA	3 to 2	3,679	5,321	1,642	D745
42	Richmond	VA	5 to 4	2,198	2,857	659	A6421, A6434, A6433, A6498, A6429, A6439, A6435, A6499, A6438 & A6494
43	Stafford	VA	4 to 3	3,333	4,038	705	D578 & D1166
44	Stephens City	VA	3 to 2	4,045	5,018	973	D1489
45	Winchester	VA	3 to 2	3,662	5,094	1,433	D366, D362, D733, D1281, D2668 & D1164
46	Martinsburg	WV	4 to 3	2,759	3,568	809	D1189 & D2568

Complaint

IN THE MATTER OF

**THE PENN STATE HERSHEY MEDICAL
CENTER
AND
PINNACLEHEALTH SYSTEM**

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED
VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION
ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. 9368; File No. 141 0191

Complaint, December 7, 2015 – Order, October 23, 2016

This case addresses the merger of certain assets of The Penn State Hershey Medical Center and PinnacleHealth System. The complaint alleges that a merger agreement between the Respondents to combine Penn State Hershey Medical Center and Pinnacle Health System violated Section 5 of the Federal Trade Commission Act, and, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by significantly reducing competition in the market for general acute care inpatient services in the Harrisburg, Pennsylvania, area. The order dismisses the Complaint without prejudice on the ground that the Respondents have ended their efforts to pursue the proposed merger and the Hart-Scott-Rodino filing for the proposed merger has expired.

Participants

For the *Commission*: Ryan Harsch, Jared P. Nagley, Jonathan Platt, Gerald Stein, GERALYN J. Trujillo, Nancy Turnblacer, and Theodore Zang.

For the *Respondents*: Ken Field and Toby Singer, Jones Day.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the Act, the Federal Trade Commission (“Commission”), having reason to believe that the Penn State Hershey Medical Center (“Hershey”) and PinnacleHealth System (“Pinnacle”) (collectively the “Respondents”), having executed a letter of intent to enter into a merger agreement (the “Merger”), in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which, if