

Complaint

IN THE MATTER OF

**THE GOLUB CORPORATION,
TOPS MARKETS CORPORATION,
AND
PROJECT P NEWCO HOLDINGS, INC.**

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-4753; File No. 211 0002

Complaint, November 5, 2021 – Decision, January 20, 2022

This consent order addresses the \$772 million acquisition by The Golub Corporation of certain assets of Tops Markets Corporation. 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 a direct and substantial supermarket competitor in New York, Connecticut, Vermont, Massachusetts, New Hampshire, and Pennsylvania. The consent order requires Respondents to divest twelve supermarkets and related assets in eleven local geographic markets in New York and Vermont to C&S Wholesale Grocers.

Participants

For the *Commission*: Lindsey Bohl, Jeff Dahnke, Guia Dixon, Paul Frangie, Jennifer Lee, and Jeanne Nichols.

For the *Respondents*: Jamillia Ferris, Michelle Yost Hale, and Scott Sher, Wilson Sonsini Goodrich & Rosati; Logan Breed and Ashley Howett, Hogan Lovells.

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 The Golub Corporation (“Price Chopper”), a corporation subject to the jurisdiction of the Commission, agreed to merge with Respondent Tops Markets Corporation (“Tops”), a corporation subject to the jurisdiction of the Commission, becoming wholly-owned subsidiaries of Respondent Project P Newco Holdings, Inc. (“Holdco”), 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 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 The Golub Corporation (“Price Chopper”) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 461 Nott Street, Schenectady, New York.

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2. Respondent Price Chopper owns and operates supermarkets in Connecticut, Massachusetts, New Hampshire, New York, Pennsylvania, and Vermont under the Price Chopper, Market 32, and Market Bistro banners.

3. Respondent Tops is a corporation organized, existing, and doing business under and by virtue of the laws of State of Delaware, with its executive offices and principal place of business located at 1760 Wehrle Drive, Williamsville, New York 14221.

4. Respondent Tops owns and operates a supermarket chain under the Tops banner in New York, Pennsylvania, and Vermont.

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

6. Respondents Price Chopper and Tops will become wholly-owned subsidiaries of Respondent Holdco after the Merger.

II. JURISDICTION

7. 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

8. Pursuant to an Agreement and Plan of Merger dated as of February 8, 2021, Price Chopper and Tops intend to combine their businesses through a merger (“the Merger”). The Merger will result in a combined company with nearly 300 supermarkets across six states.

IV. THE RELEVANT PRODUCT MARKET

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

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

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pharmaceutical products and pharmacy services (where provided); and, to the extent permitted by law, wine, beer, and/or distilled spirits.

11. Supermarkets provide a distinct set of products and services and offer consumers convenient one-stop shopping for food and grocery products. Supermarkets typically carry more than 10,000 different items, typically referred to as stock-keeping units (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 approximately 10,000 square feet of selling space or more.

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

13. Although retail stores other than supermarkets may also sell food and grocery products, these types of 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. The limited competition from other types of retail stores does not warrant their inclusion in a supermarket product market.

V. THE RELEVANT GEOGRAPHIC MARKETS

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

15. Respondents currently operate supermarkets under the Price Chopper / Market 32 and Tops banners within eight miles or less of each other in each of the relevant geographic markets. The primary trade areas of Respondents' banners in each of the relevant geographic markets overlap significantly.

16. The 11 geographic markets in which to assess the competitive effects of the Merger are localized areas in (1) Cooperstown, New York; (2) Cortland, New York; (3) Lake Placid, New York; (4) Norwich, New York; (5) Oneida, New York; (6) Owego, New York; (7) Plattsburgh, New York; (8) Rome, New York; (9) Rutland, Vermont; (10) Warrensburg, New York; and (11) Watertown, New York.

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VI. MARKET CONCENTRATION

17. 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 four relevant geographic markets, four to three in three relevant geographic markets, and five to four in one relevant geographic market. The Merger will result in highly concentrated markets in each of the eleven relevant geographic markets identified in Paragraph 16.

VII. ENTRY CONDITIONS

18. 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

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

- a. By eliminating direct and substantial competition between Respondents Price Chopper and Tops;
- b. By increasing the likelihood that Respondents Price Chopper and Tops will unilaterally exercise market power; and
- c. By increasing the likelihood of, or facilitating, coordinated interaction between the remaining participants.

20. 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

21. The agreement described in Paragraph 8 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 fifth day of November 2021, issues its complaint against said Respondents.

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By the Commission.

EXHIBIT A

City	State	Merger Result
Cooperstown	New York	2 to 1
Cortland	New York	4 to 3
Lake Placid / Saranac Lake	New York	3 to 2
Norwich	New York	3 to 2
Oneida / Sherrill	New York	3 to 2
Owego	New York	2 to 1
Plattsburgh / Peru	New York	5 to 4
Rome	New York	4 to 3
Rutland	Vermont	3 to 2
Warrensburg	New York	2 to 1
Watertown	New York	4 to 3

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed merger of Respondent The Golub Corporation with Respondent Tops Markets Corporation whereby each such entity shall become a subsidiary of Respondent Project P Newco Holdings, Inc. The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of 30 days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent The Golub Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 461 Nott Street, Schenectady, New York 12308.
2. Respondent Tops Markets Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 1760 Wehrle Drive, Williamsville, New York 14221.
3. Respondent Project P Newco Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 461 Nott Street, Schenectady, New York 12308.
4. The Commission has jurisdiction over the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

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ORDER**I.**

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Decision and Order” means the proposed Decision and Order contained in the Consent Agreement or the Decision and Order issued in this matter:
- B. “Orders” means this Order to Maintain Assets and the Decision and Order.

II. Asset Maintenance

IT IS FURTHER ORDERED that Respondents shall ensure that the Supermarket Assets relating to each Supermarket Business are operated and maintained in the ordinary course of business consistent with past practices until such assets are fully transferred to the Acquirer, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Supermarket Business and related Supermarket Assets, to minimize the risk of any loss of their competitive potential, to operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear).
- B. Not sell, transfer, encumber, or otherwise impair the Supermarket Business and related Supermarket Assets (other than in the manner prescribed in the Orders) or take any action that lessens their full economic viability, marketability, or competitiveness;
- C. Not terminate the operations of the Supermarket Business and related Supermarket Assets, and shall conduct or cause to be conducted the operations of the Supermarket Business and related Supermarket Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, ongoing operations, marketability, and competitiveness of the Supermarket Business and related Supermarket Assets; and
- D. Use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Supermarket Business and related Supermarket Assets.

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Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Supermarket Assets and consistent with the purposes of the Orders.

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

- A. Until Respondents have transferred all Business Information included in the Supermarket Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. At the option of Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the applicable Supermarket Assets to the Acquirer and (2) allow the Acquirer to operate the acquired Supermarket Business and Supermarket Assets in a manner that is equivalent in all material respects to the manner in which Respondents did so prior to the Merger.
- C. Respondents shall provide Transitional Assistance:
 - 1. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the applicable Divestiture Date);
 - 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at no more than Direct Cost; and
 - 3. For a time period sufficient to meet the requirements of this Paragraph, which shall be, at the option of the Acquirer, for up to 12 months after the applicable Divestiture Date;

Provided, however, that within 15 days after a request by the Acquirer, Respondents shall file with the Commission a request for prior approval to extend the term for providing Transitional Assistance as the Acquirer requests in order to achieve the purposes of the Orders.
- D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transitional Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages

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(including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondents breach of the Divestiture Agreement.

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

- A. Until 90 days after the applicable Divestiture Date, Respondents shall cooperate with and assist the Acquirer of any of the Supermarket Assets to evaluate independently and offer employment to any Supermarket Employee.
- B. Until 90 days after the applicable Divestiture Date, Respondents shall:
 - 1. No later than 10 days after a request from the Acquirer, provide a list of all Supermarket Employees and provide Employee Information for each;
 - 2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to privately interview any of the Supermarket Employees outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any of the Supermarket Employees;
 - 3. Remove any impediments within the control of Respondents that may deter Supermarket Employees from accepting employment with the 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 Acquirer, and shall not make any counteroffer to a Supermarket Employee who receives an offer of employment from the Acquirer;

Provided, however, that nothing in the Orders shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 - 4. Continue to provide Supermarket Employees with compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 - 5. Provide reasonable financial incentives for Supermarket Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Supermarket Employees by the Acquirer; and
 - 6. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Supermarket Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise

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interfere with the recruitment of any Supermarket Employee by the Acquirer.

- C. Respondents shall not, for a period of one year following the applicable Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed by the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;
 2. 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 one or more Person employed by the Acquirer; or
 3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section IV.
- D. Respondent shall not enforce any non-compete provision or non-compete agreement against any individual who seeks or obtains a position with the Supermarket Business or does business with the Supermarket Business.

V. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not (x) disclose (including to Respondents' employees) or (y) use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Supermarket Assets, Supermarket Business, or post-divestiture Supermarket Business; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
1. Performing its obligations or as permitted under the Orders or a Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Supermarket Assets or Supermarket Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph V.A of this Order to Maintain Assets, Respondents shall limit such disclosure or use (1) only to the extent such

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information is required, (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A, and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

- C. Respondents shall enforce the terms of this Section V and take necessary actions to ensure that their employees and other Persons comply with the terms of this Section V, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

VI. Consents and Authorizations; Acquirer Due Diligence

IT IS FURTHER ORDERED that Respondents shall:

- A. Respondents shall obtain, no later than the applicable Divestiture Date and at their sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to effect the complete transfer and divestiture of the relevant Supermarket Assets to the Acquirer and for the Acquirer to operate any aspect of the relevant Supermarket Business;

Provided, however:

1. Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant third party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and
 2. With respect to any Governmental Authorization relating to any Supermarket Assets that are not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate the relevant Supermarket Assets under Respondents' Governmental Authorization pending the Acquirer's receipt of its own Governmental Authorization, and Respondents shall provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorization.
- B. Respondents shall assist each potential Acquirer to conduct a due diligence investigation of the applicable Supermarket Assets and Supermarket Business, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, and other documents and data relating to the applicable Supermarket Business, with such rights of access to be

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exercised in a manner that does not unreasonably interfere with the operations of Respondents.

VII. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints Larry Appel to serve as Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
 - 1. Shall be subject to the approval of the Commission;
 - 2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VII or Section VIII of the Decision and Order ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
 - 3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.
- C. The Monitor shall:
 - 1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
 - 2. Act in consultation with the Commission or its staff;
 - 3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
 - 4. Serve without bond or other security;
 - 5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 - 6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other

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representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;

7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with the Orders on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, and VI of the Decision and Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under the Orders, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Orders;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that

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arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.

- E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Orders.
- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of the Orders. The Commission shall select the substitute Monitor, subject to the consent of the Respondents. Respondents:
 - 1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 - 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 - 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VII.B.; or (b) receives Commission approval.
- G. 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 the Orders.

VIII. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Supermarket Assets as required by the Decision and Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or

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otherwise convey these assets in a manner that satisfies the requirements of the Decision and Order.

- B. 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 to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Section 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 the Orders.
- C. 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 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.
- D. Not later than 10 days after the appointment of a 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 divestitures required by the Decision and Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of the Orders.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by the Decision and Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
 - 2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the

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divestitures 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 2 times;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by the Decision and Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures 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;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer that receives the prior approve of the Commission as required by the Decision and Order,

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission,

Provided further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture

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Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by the Decision and Order;

6. 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 gross negligence or willful misconduct by the Divestiture Trustee;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by the Decision and Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. 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, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee'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 Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by the Decision and Order.

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IX. Prior Approval

IT IS FURTHER ORDERED that Respondents shall not, without the prior approval of the Commission, acquire, directly or indirectly, through subsidiaries, partnerships, or otherwise:

- A. Any ownership or leasehold interest in any facility that has operated as a Supermarket in a Relevant Area within 6 months prior to the date of such proposed acquisition; or
- B. Any stock, share capital, equity, or other interest in any entity that owns any interest in or operates a Supermarket, or owned any interest in or operated a Supermarket in a Relevant Area within 6 months prior to such proposed acquisition.

Provided however, that Respondents are not required to obtain the prior approval of the Commission for the Respondents' construction or opening of new facilities

X. Additional Obligations

IT IS FURTHER ORDERED that Respondents shall neither enter into nor enforce any agreement that restricts the ability of any Person to operate a Supermarket at any location formerly owned or operated by Respondents in a Relevant Area.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
 - 1. Notify Commission staff via email at bccompliance@ftc.gov of the Merger Date and of the Divestiture Date of the Supermarket Assets relating to each Supermarket Business no later than 5 days after the occurrence of each; and
 - 2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after Respondents close on a Divestiture Agreement.
- B. Respondents shall file verified written reports ("Compliance Reports") in accordance with the following:
 - 1. Respondents shall submit Compliance Reports 30 days after this Order to Maintain Assets is issued and every 30 days thereafter until the Commission issues a Decision and Order in this matter, and additional Compliance Reports as the Commission or its staff may request.
 - 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Orders. Conclusory

Order to Maintain Assets

statements that Respondents have complied with their obligations under the Orders are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Orders.

3. Respondents shall retain all material written communications with each party identified in the Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents' obligations under the Orders and provide copies of these documents to Commission staff upon request.
- C. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file its compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XII. Change in Respondents

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

- A. The proposed dissolution of The Golub Corporation, Tops Markets Corporation, or Project P Newco Holdings, Inc.;
- B. The proposed acquisition, merger, or consolidation of The Golub Corporation, Tops Markets Corporation, or Project P Newco Holdings, Inc.; or
- C. Any other changes in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such changes may affect compliance obligations arising out of the Orders.

XIII. Access

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with the Orders, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in the Orders, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

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- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with the Orders, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Supermarket Business through its full transfer and delivery to Acquirer; to minimize any risk of loss of competitive potential for the Supermarket Business; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Supermarket Assets except for ordinary wear and tear.

XV. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate the day after the Decision and Order in this matter becomes final or the Commission withdraws acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34.

By the Commission.

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed merger of Respondent The Golub Corporation with Respondent Tops Markets Corporation whereby each such entity shall become a subsidiary of Respondent Project P Newco Holdings, Inc. The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

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Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent The Golub Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 461 Nott Street, Schenectady, New York 12308.
2. Respondent Tops Markets Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 1760 Wehrle Drive, Williamsville, New York 14221.
3. Respondent Project P Newco Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its executive offices and principal place of business located at 461 Nott Street, Schenectady, New York 12308.
4. C&S Wholesale Grocers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Vermont with its executive offices and principal place of business located at 7 Corporate Drive, Keene, New Hampshire 03431.
5. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents and the proceeding is in the public interest.

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ORDER**I. Definitions**

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

- A. “Golub” means The Golub Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by The Golub Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Tops” means Tops Markets Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Tops Markets Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Holdco” means Project P Newco Holdings, Inc., its officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Project P Newco Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “C&S” means C&S Wholesale Grocers, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by C&S Wholesale Grocers, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Respondents” means Golub, Tops, and Holdco collectively.
- F. “Acquirer” means:
 - 1. C&S; or
 - 2. Any other person that the Commission approves to acquire any of the Supermarket Assets pursuant to this Order.
- G. “Business Information” means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format. Business Information includes books, records, data, and information relating to sales, marketing, logistics, products, pricing, promotions, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, vendors, research and development, registrations, licenses, and permits, and operations.

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- H. “Confidential Information” means all Business Information and knowledge of employees not in the public domain, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents.
- I. “Consent” means an approval, consent, ratification, waiver, or other authorization.
- J. “Contract” means an agreement, contract, lease, license agreement, consensual obligation, promise or undertaking with one or more third parties, whether written or oral and whether express or implied, and whether or not legally binding.
- K. “Direct Cost” means the cost of labor, goods and materials, travel, and other expenditures. The cost of any labor included in Direct Cost shall not exceed the hours of labor provided times the then-current average hourly wage rate, including benefits, for the employee providing such labor.
- L. “Divestiture Agreement” means:
1. The Second Amended and Restated Asset Purchase Agreement by and between GU Markets LLC, as Buyer, Tops Markets, LLC, as Seller with respect to Markets Store Locations and Tops PT, LLC, as Seller with respect to PT Store Locations, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Nonpublic Appendix A; or
 2. Any agreement between Respondents (or a Divestiture Trustee appointed pursuant to Section IX of this Order) and an Acquirer to purchase the Supermarket Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- M. “Divestiture Date” means the date on which the assets relating to each Supermarket Business are divested. For example, the Divestiture Date in connection with the divestiture of the assets relating to the Cooperstown Supermarket Business would be the date on which the assets for that specific business are divested.
- N. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Section IX of this Order.
- O. “Employee Information” means for each Supermarket Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;

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3. The employee's base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for the last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- P. "Equipment" means all tangible personal property (other than inventories), including all: fixtures, furniture, computer equipment and third-party software, office equipment, telephone systems, security systems, registers, credit card systems, credit card invoice printers and electronic point of sale devices, money order machines and money order stock, shelving, display racks, walk-in boxes, furnishings, signage, parts, tools, supplies, and all other items of equipment or tangible personal property of any nature, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part, to the extent such warranty is transferrable, and all maintenance records and other related documents.
- Q. "Governmental Authorization" means a Consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- R. "Intellectual Property" means all intellectual property, including: (1) commercial names, all assumed fictional business names, trade names, "doing business as" (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; (2) all patents, patent applications and inventions and discoveries that may be patentable; (3) all registered and unregistered copyrights in both published works and unpublished works; (4) all rights in mask works; (5) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (6) and all rights in internet web sites and internet domain names presently used.
- S. "Merger" means the proposed merger described in the Agreement and Plan of Merger by and among (1) The Golub Corporation, (2) The Golub Stockholders Set Forth in Appendix A Hereto, (3) Tops Markets Corporation, (4) The Tops

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Stockholders Set Forth in Appendix B Hereto, (5) Project P Newco Holdings, Inc., (6) TMC Merger Sub, Inc., (7) Pines Merger Sub, Inc., (8) Shareholders Representative Services LLC, Solely in its Capacity as the Tops Stockholders Representative, and (9) Shareholder Representative Services LLC, Solely in its Capacity as the Golub Stockholders Representative, Dated as of February 8, 2021.

- T. “Merger Date” means the date the Respondents consummate the Merger.
- U. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.
- V. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- W. “Relevant Area” means any of these counties in New York: Chenango, Clinton, Cortland, Franklin, Jefferson, Oneida, Otsego, Tioga, or Warren; or Rutland County in Vermont.
- X. “Retained Assets” means the assets identified on Exhibit B of this Order.
- Y. “Retained Intellectual Property” means any owned or licensed (as licensor or licensee) Intellectual Property (not included in the Retained Assets) relating to both the operation of the Supermarket Business and any other business owned by Tops prior to the Merger.
- Z. “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.
- AA. “Supermarket Assets” means all of Respondents’ rights, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, used in, or relating to the Supermarket Business, including:
 - 1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together

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with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. All Equipment;
3. At the Acquirer's option, any or all inventories;
4. All accounts receivable;
5. All Intellectual Property;
6. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
7. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
8. All Business Information; and
9. All intangible rights and property, including going concern value, goodwill, and telephone and telecopy listings;

Provided, however, that the Supermarket Assets need not include the (x) Retained Assets or (y) Retained Intellectual Property.

- BB. "Supermarket Business" means the Cooperstown Supermarket Business, Cortland Supermarket Business, Norwich Supermarket Business, Owego Supermarket Business, Peru Supermarket Business, Rome Supermarket Business, Rutland Supermarket Business, Saranac Lake Supermarket Business, Sherrill Supermarket Business, Warrensburg Supermarket Business, Watertown Supermarket Business, and Watertown II Supermarket Business defined in Appendix C of this Order.
- CC. "Supermarket Employee" means each full-time, part-time, or contract individual employed by Tops whose job responsibilities relate or related to the Supermarket Business at any time after February 8, 2021.
- DD. "Transitional Assistance" means services and support as required by the Acquirer to facilitate the transfer of the Supermarket Business and operation of the Supermarket Assets, including services and support related to payroll, employee benefits, accounting, information technology systems, back-office and front-office systems (including inventory and price management), distribution, warehousing, and use of trademarks or trade names for transitional purposes.

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

- A. Respondents shall divest the Supermarket Assets, as ongoing businesses, absolutely and in good faith, to C&S as follows:
1. The assets relating to at least 2 of the Supermarket Businesses identified on Appendix C no later than January 17, 2022;
 2. The assets relating to at least 4 of the Supermarket Businesses identified on Appendix C no later than January 24, 2022;
 3. The assets relating to at least 6 of the Supermarket Businesses identified on Appendix C no later than January 31, 2022;
 4. The assets relating to at least 8 of the Supermarket Businesses identified on Appendix C no later than February 7, 2022;
 5. The assets relating to at least 10 of the Supermarket Businesses identified on Appendix C no later than February 14, 2022; and
 6. The assets relating to all of the Supermarket Businesses identified on Appendix C no later than February 21, 2022.

Provided, however, that, if within 12 months after issuing the Order, the Commission determines, in consultation with the Acquirer and the Monitor, should one be appointed, that the Acquirer needs one or more Retained Assets to operate any of the Supermarket Assets in a manner that achieves the purposes of the Order, Respondents shall divest, absolutely and in good faith, such needed Retained Assets to the Acquirer; and

Provided further, however, that if Business Information relating to any of the Supermarket Assets includes information (1) that also relates to other retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to such Supermarket Assets or (2) where Respondents have a legal obligation to retain the original copies, then Respondents may provide copies of the Business Information (with redactions as appropriate) and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes;

- B. If Respondents have divested any of the Supermarket Assets to C&S prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

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1. C&S is not acceptable as the acquirer of the applicable Supermarket Assets, then Respondents shall rescind the divestiture within 5 days of notification, and shall divest such Supermarket Assets no later than 180 days from the date this Order is issued, as ongoing businesses, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
 2. The manner in which the divestiture to C&S was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to modify the manner of divestiture of the Supermarket Assets as the Commission may determine is necessary to satisfy the requirements of this Order.
- C. Respondents shall grant a license to the Acquirer under any Retained Intellectual Property that is needed for the Acquirer to operate the Supermarket Business.
- D. Respondents shall obtain, no later than the applicable Divestiture Date and at their sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to effect the complete transfer and divestiture of the relevant Supermarket Assets to the Acquirer and for the Acquirer to operate any aspect of the relevant Supermarket Business;

Provided, however:

1. Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant third party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and
 2. With respect to any Governmental Authorization relating to any Supermarket Assets that are not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate the relevant Supermarket Assets under Respondents' Governmental Authorization pending the Acquirer's receipt of its own Governmental Authorization, and Respondents shall provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorization.
- E. Respondents shall assist each potential Acquirer to conduct a due diligence investigation of the applicable Supermarket Assets and Supermarket Business, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts,

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Governmental Authorizations, Business Information, and other documents and data relating to the applicable Supermarket Business, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order;

Provided, however, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.

- B. Respondents shall not modify or amend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transitional Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information included in the Supermarket Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. At the option of Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the applicable Supermarket Assets to the Acquirer and (2) allow the Acquirer to operate the acquired Supermarket Business and Supermarket Assets in a manner that is equivalent in all material respects to the manner in which Respondents did so prior to the Merger.
- C. Respondents shall provide Transitional Assistance:
1. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the applicable Divestiture Date);

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2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at no more than Direct Cost; and
3. For a time period sufficient to meet the requirements of this Paragraph, which shall be, at the option of the Acquirer, for up to 12 months after the applicable Divestiture Date;

Provided, however, that within 15 days after a request by the Acquirer, Respondents shall file with the Commission a request for prior approval to extend the term for providing Transitional Assistance as the Acquirer requests in order to achieve the purposes of this Order.

- D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transitional Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondents breach of the Divestiture Agreement.

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

- A. Until 90 days after the applicable Divestiture Date, Respondents shall cooperate with and assist the Acquirer of any of the Supermarket Assets to evaluate independently and offer employment to any Supermarket Employee.
- B. Until 90 days after the applicable Divestiture Date, Respondents shall:
 1. No later than 10 days after a request from the Acquirer, provide a list of all Supermarket Employees and provide Employee Information for each;
 2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to privately interview any of the Supermarket Employees outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any of the Supermarket Employees;
 3. Remove any impediments within the control of Respondents that may deter Supermarket Employees from accepting employment with the 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

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Acquirer, and shall not make any counteroffer to a Supermarket Employee who receives an offer of employment from the Acquirer;

Provided, however, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

4. Continue to provide Supermarket Employees with compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 5. Provide reasonable financial incentives for Supermarket Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Supermarket Employees by the Acquirer; and
 6. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Supermarket Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Supermarket Employee by the Acquirer.
- C. Respondents shall not, for a period of one year following the applicable Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed by the Acquirer to terminate his or her employment with the Acquirer; *provided, however,* Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;
 2. 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 one or more Person employed by the Acquirer; or
 3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section V.
- D. Respondent shall not enforce any non-compete provision or non-compete agreement against any individual who seeks or obtains a position with the Supermarket Business or does business with the Supermarket Business.

VI. Asset Maintenance

IT IS FURTHER ORDERED that Respondents shall, subject to their obligations under the Order to Maintain Assets, ensure that the Supermarket Assets relating to each Supermarket

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Business are operated and maintained in the ordinary course of business consistent with past practices until such assets are fully transferred to the Acquirer, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Supermarket Business and related Supermarket Assets, to minimize the risk of any loss of their competitive potential, to operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear).
- B. Not sell, transfer, encumber, or otherwise impair the Supermarket Business and related Supermarket Assets (other than in the manner prescribed in this Order and the Order to Maintain Assets) or take any action that lessens their full economic viability, marketability, or competitiveness;
- C. Not terminate the operations of the Supermarket Business and related Supermarket Assets, and shall conduct or cause to be conducted the operations of the Supermarket Business and related Supermarket Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, ongoing operations, marketability, and competitiveness of the Supermarket Business and related Supermarket Assets; and
- D. Use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Supermarket Business and related Supermarket Assets.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Supermarket Assets and consistent with the purposes of this Order and the Order to Maintain Assets.

VII. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not (x) disclose (including to Respondents' employees) or (y) use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Supermarket Assets, Supermarket Business, or post-divestiture Supermarket Business; *provided, however,* that Respondents may disclose or use such Confidential Information in the course of:
 - 1. Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or a Divestiture Agreement; or

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2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Supermarket Assets or Supermarket Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph VII.A of this Order, Respondents shall limit such disclosure or use (1) only to the extent such information is required, (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph VII.A., and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Section VII and take necessary actions to ensure that their employees and other Persons comply with the terms of this Section VII, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

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

- A. The Commission appoints Larry Appel to serve as Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
1. Shall be subject to the approval of the Commission;
 2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VIII or Section ___ of the Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
 3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of this Order in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in this Order, Respondents and the Monitor shall comply with this Order.

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C. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in this Order;
2. Act in consultation with the Commission or its staff;
3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, and VI of this Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under this Order, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information and facilities;

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- and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to this Order;
 3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under this Order, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
 4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to this Order; and
 5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under this Order, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.
- E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with this Order.
- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of this Order. The Commission shall select the substitute Monitor, subject to the consent of the Respondents. Respondents:
1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission

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of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and

3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VIII.B.; or (b) receives Commission approval.
- G. 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.

IX. Divestiture Trustee**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Supermarket Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order.
- B. 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 to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Section 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.
- C. 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 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.
- D. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the

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Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures 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 2 times;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures 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;
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer that receives the prior approve of the Commission as required by this Order,

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Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission,

Provided further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. 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 gross negligence or willful misconduct by the Divestiture Trustee;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by this Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. 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,

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Provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee'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 Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Prior Approval

IT IS FURTHER ORDERED that Respondents shall not, without the prior approval of the Commission, acquire, directly or indirectly, through subsidiaries, partnerships, or otherwise:

- A. Any ownership or leasehold interest in any facility that has operated as a Supermarket in a Relevant Area within 6 months prior to the date of such proposed acquisition; or
- B. Any stock, share capital, equity, or other interest in any entity that owns any interest in or operates a Supermarket, or owned any interest in or operated a Supermarket in a Relevant Area within 6 months prior to such proposed acquisition.

Provided however, that Respondents are not required to obtain the prior approval of the Commission for the Respondents' construction or opening of new facilities.

XI. Additional Obligations

IT IS FURTHER ORDERED that Respondents shall neither enter into nor enforce any agreement that restricts the ability of any Person to operate a Supermarket at any location formerly owned or operated by Respondents in a Relevant Area.

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XII. Acquirer

IT IS FURTHER ORDERED that:

A. For a period of:

1. 3 years after the Divestiture Date, C&S or any other Acquirer shall not sell, license, or otherwise convey, through subsidiaries or otherwise, without the prior approval of the Commission, any Supermarket that was divested pursuant to Section II to any Person; and
2. 7 years after the term of Paragraph XII.A.1. ends, C&S or any other Acquirer shall not sell, license, or convey, through subsidiaries or otherwise, without the prior approval of the Commission, a Supermarket that was divested pursuant to Section II to any Person who owns, or within 6 months prior to such sale date, owned, directly, or indirectly, through subsidiaries or otherwise, a leasehold, ownership interest, or any other interest in whole or in part, in a Supermarket located in the same Relevant Area as the divested Supermarket;

Provided, however, C&S is not required to obtain prior approval of the Commission under this Paragraph XII.A. for a change of control, merger, reorganization, or sale of all or substantially all of its business.

B. C&S shall neither enter into nor enforce any agreement that restricts the ability of any Person to operate a Supermarket at any location formerly owned or operated by C&S in a Relevant Area.

XIII. Compliance Reports

IT IS FURTHER ORDERED that:

A. Respondents shall:

1. Notify Commission staff via email at bccompliance@ftc.gov of the Merger Date and of the Divestiture Date of the Supermarket Assets relating to each Supermarket Business no later than 5 days after the occurrence of each; and
2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after Respondents close on a Divestiture Agreement.

B. Respondents shall file verified written reports (“Compliance Reports”) in accordance with the following:

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1. Respondents shall submit:
 - a. Interim Compliance Reports 30 days after this Order is issued and every 30 days thereafter until Respondents have fully complied with the provisions of Sections II and IV of this Order;
 - b. Annual Compliance Reports one year after the date this Order is issued and annually thereafter for the next nine years on the anniversary of that date; and
 - c. Additional Compliance Reports as the Commission or its staff may request.
 2. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of this Order.
 3. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under this Order during the period covered by such Compliance Report. Respondents shall provide copies of these documents to Commission staff upon request.
- C. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file its compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

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XIV. Change in Respondents

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

- A. The proposed dissolution of The Golub Corporation, Tops Markets Corporation, or Project P Newco Holdings, Inc.;
- B. The proposed acquisition, merger, or consolidation of The Golub Corporation, Tops Markets Corporation, or Project P Newco Holdings, Inc.; or
- C. Any other changes in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such changes may affect compliance obligations arising out of the Order.

XV. Access

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XVI. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and to ensure the Acquirer can operate the Supermarket Business in a manner equivalent in all material respects to the manner in which Respondents operated the Supermarket Business prior to the Merger.

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XVII. Term

IT IS FURTHER ORDERED that this Order shall terminate on January 20, 2032.

By the Commission.

Nonpublic Appendix A**Divestiture Agreement**

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

Appendix B

Retained Assets

- Corporate or regional offices
- Cash, cash equivalents, accounts, notes receivable, except for till cash
- Inventory as agreed between Respondents and the Acquirer
- Assets not stored at a location of a Supermarket Business or not used exclusively in the Supermarket Business, including, without limitation, any and all of Respondent Tops' Medicare, Medicaid and other provider or supplier numbers and registrations that are not exclusive and unique to pharmacy and which are being, or could be used by Respondent Tops' pharmacies not subject to the merger agreement with Acquirer
- All contracts as agreed between Respondents and the Acquirer
- All trade names and trademarks used corporate-wide, and website content, domain names, or e-mail addresses that contain such trade names or trademarks
- Proprietary software, security codes located on any hardware of Respondent Tops or associated with any computer systems, network systems, point of sale (POS) systems, and any other software systems of Respondent Tops

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- Signage, banners, display, and other assets containing, displaying or otherwise bearing any of Respondent Tops' intellectual property
- Minute books and organizational documents and financial and business records relating to the retained business operations of Respondent Tops
- Equity securities of Respondent Tops
- Rights under the documents and agreement governing the Merger
- Motor vehicles, including trucks and trailers
- Leased equipment and vendor-owned equipment as agreed between Respondents and the Acquirer
- Parcel pick-up equipment
- Tax returns of Respondent Tops and other documents related to Respondent Tops' taxes
- Tax assets or attributes of Respondent Tops, including tax refunds and prepayments
- Refunds and rebates owed to Respondent Tops

Appendix C

State	City	Business	Store Number	Description
NY	Cooperstown (Otsego County)	Cooperstown Supermarket Business	Tops 568	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 5 Commons Drive, Rt. 28 Cooperstown, New York 13326.

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State	City	Business	Store Number	Description
NY	Cortland (Cortland County)	Cortland Supermarket Business	Tops 517	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 3932 State Route 281, Cortland, New York 13045.
NY	Norwich (Chenango County)	Norwich Supermarket Business	Tops 569	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 54 East Main Street, Norwich, New York 13815.
NY	Owego (Tioga County)	Owego Supermarket Business	Tops 579	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 1145 Rt. 17-C, Owego, New York 13827.
NY	Peru (Clinton County)	Peru Supermarket Business	Tops 713	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 2 Gorman Way, Suite #1, Peru, New York 12972.
NY	Rome (Oneida County)	Rome Supermarket Business	Tops 587	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 217 Erie Boulevard West, Rome, New York 13440.
NY	Saranac Lake (Franklin County)	Saranac Lake Supermarket Business	Tops 707	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 156 Church Street, Saranac Lake, New York 12983.

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State	City	Business	Store Number	Description
NY	Sherrill (Oneida County)	Oneida Supermarket Business	Tops 364	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 87 East State Street, Sherrill, New York 13461.
NY	Warrensburg (Warren County)	Warrensburg Supermarket Business	Tops 701	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 3836 Main Street, Warrensburg, New York 12885.
NY	Watertown (Jefferson County)	Watertown Supermarket Business	Tops 589	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 22050 Seaway Shopping Center, Watertown, New York 13601.
NY	Watertown (Jefferson County)	Watertown II Supermarket Business	Tops 597	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 1330 Washington Street, Watertown, New York 13601.
VT	Rutland (Rutland County)	Rutland Supermarket Business	Tops 740	All business activities conducted by Tops prior to the Merger Date at or relating to the Supermarket located at 14 N. Main Street, Rutland, Vermont 05701.

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

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from The Golub Corporation, which operates Price Chopper, Market 32, and Market Bistro stores (collectively, “Golub”) and Tops Markets Corporation (“Tops”) (collectively, the “Respondents”). Pursuant to an Agreement and Plan of Merger dated February 8, 2021, Golub and Tops intend to combine their businesses through a merger (“the Merger”). The Merger will result in a combined company with nearly 300 supermarkets across six states. The purpose of the Consent Agreement is to remedy the anticompetitive effects that otherwise would result from the Merger. Under the terms of the proposed Decision and Order (“Order”), Respondents are required to divest twelve supermarkets and related assets in eleven local geographic markets (collectively, the “relevant markets”) in New York and Vermont to a Commission-approved buyer, C&S Wholesale Grocers (“C&S”). 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 C&S. The Commission also issued the Order to Maintain Assets.

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 FTC Act, as amended, 15 U.S.C. § 45, by removing a direct and substantial supermarket competitor in each of the eleven relevant markets. The elimination of this competition would result in significant competitive harm; specifically, absent a remedy, the Merger would allow the merged firm to increase prices above competitive levels, unilaterally or through coordinated interaction among the remaining market participants. Similarly, there is significant risk that the merged firm may decrease quality and service aspects of its stores below competitive levels. The proposed 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.

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

II. THE RESPONDENTS

Respondent Golub owns and operates 131 grocery stores under the Price Chopper, Market 32, and Market Bistro banners. The Golub stores are located in New York, Connecticut, Vermont, Massachusetts, New Hampshire, and Pennsylvania.

Respondent Tops owns and operates a supermarket chain with 162 stores under the Tops banner in New York, Pennsylvania, and Vermont.

Analysis to Aid Public Comment

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, 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

The relevant geographic markets in which to analyze the effects of the Merger are localized areas in which Respondents’ supermarkets compete. Most of Respondents’ overlapping supermarkets raising concerns are within approximately eight miles or less of each other. The contours of the relevant geographic markets depend on factors such as population density, traffic

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., Koninklijke Ahold N.V./Delhaize Group, Docket C-4588 (Jul. 22, 2016); 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 Puerto Rico enabled consumers to purchase substantially all of their weekly food and grocery requirements in a single shopping visit).

Analysis to Aid Public Comment

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 Respondents' supermarkets are located in more densely populated cities.

Absent relief, of the eleven geographic markets, the Merger would result in a merger-to-monopoly in three markets and a merger-to-duopoly in four markets. In the remaining markets, the Merger would reduce the number of market participants from four to three in three markets and from five to four in one market.³ Each relevant market would be highly concentrated following the Merger.

The Merger would also eliminate substantial competition between Golub and Tops and would increase the ability and incentive of the combined company to raise prices unilaterally after the Merger. The fact that few supermarket competitors will remain in each of these areas also increases the likelihood of competitive harm through coordinated interaction. The Merger would also decrease incentives to compete on non-price factors, such as service levels, convenience, and quality.

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 ORDER AND THE ORDER TO MAINTAIN ASSETS

The proposed Order and the Order to Maintain Assets remedy the likely anticompetitive effects in the relevant markets. The proposed Order, which requires the divestiture of Tops supermarkets in each relevant market to a Commission-approved upfront buyer, C&S, will restore fully the competition that otherwise would be eliminated in these markets as a result of the Merger.

The proposed buyer appears to be a suitable purchaser that is well-positioned to enter the relevant 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 C&S are all located outside the relevant geographic markets in which it is purchasing divested stores.

C&S is the largest private wholesale grocery supply company and is the eleventh largest company in America. C&S has owned and operated retail stores in the past, including in certain of the relevant markets. C&S recently expanded its retail operations with the acquisition of eleven Piggly Wiggly Midwest retail stores, and hired a former retail grocery executive with significant retail experience to lead retail efforts. C&S has sufficient financing to fund the acquisition and

³ See Exhibit A.

Analysis to Aid Public Comment

operate the business. C&S also has sufficient distribution and supply capabilities through its wholesale business, which can efficiently supply the twelve stores.

The proposed Order requires Respondents to divest the twelve Tops stores and related assets as ongoing businesses to C&S on a rolling basis, beginning by January 17, 2022, and continuing (two stores per week) for six weeks. The proposed Order also contains additional provisions designed to ensure the adequacy of the proposed relief. For example, the proposed 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 C&S. If, at the time before the proposed Order is made final, the Commission determines that C&S is not an acceptable buyer, Respondents must rescind the divestiture(s) and divest the assets to a different buyer that receives the Commission's prior approval. The proposed Order imposes other terms, including the obligation to provide Transition Assistance to C&S as may be needed, an obligation to facilitate C&S's interviewing and hiring of employees, and the appointment of a Monitor to oversee the Respondents' compliance with the requirements of the proposed Order and Order to Maintain Assets. The proposed Order requires the Respondents to receive the Commission's prior approval, for a period of ten years, to acquire any interest in a supermarket that has operated or is operating in the counties in which the relevant markets are located. Finally, the proposed Order also prohibits the Respondents from entering into or enforcing agreements to restrict a new owner from operating a supermarket at any store Respondents may sell in these areas.

The proposed Order also contains a ten-year prior approval provision relating to C&S, which prohibits C&S from selling acquired stores for a period of three years after the Order is issued, except to an acquirer that receives the prior approval of the Commission. The initial three-year period is followed by an additional seven-year period during which C&S is required to receive prior approval from the Commission to sell an acquired store to a buyer that operates one or more supermarkets in the same county. Similar to the prohibition on Respondents, the proposed Order also prohibits C&S from entering into or enforcing certain restrictive covenants in any of relevant markets for the duration of the Order.

* * *

The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.

Complaint

IN THE MATTER OF

**NVIDIA CORPORATION,
SOFTBANK GROUP CORPORATION,
AND
ARM, LTD.**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. 9404; File No. 211 0015**Complaint, December 2, 2021 – Decision, February 11, 2022*

This case addresses the \$40 billion acquisition by Nvidia Corporation of certain assets of Arm, Ltd. 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 significantly reducing competition in the markets for DPU SmartNICs, High-Level Automotive ADAS Central Compute SoCs, and Arm-Based Datacenter CPUs for Cloud Computing Service Providers. The order dismisses the Complaint because Respondents terminated their share purchase agreement and that Nvidia has withdrawn its Hart-Scott-Rodino Notification and Report Forms for the proposed transaction.

Participants

For the *Commission*: Cem Akleman, Taylor Alexander, Amanda Butler, Maria Cirincione, Michael Franchak, Joshua Goodman, Kelly Horne, Sean Hughto, Merrick Pastore, Blake Risenmay, Lisa Rothfarb, Lily Rudy, Stephen Santulli, Aylin Skroejer, and Heidi Smucker.

For the *Respondents*: Joshua Holian, Latham & Watkins LLP; Jeff Jaeckel, Morrison & Forrester LLP; Logan Breed, Hogan Lovells US LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Nvidia Corporation (“Nvidia”), Softbank Group Corporation (“Softbank”), and Arm Ltd. (“Arm”) have executed a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

NATURE OF THE CASE

1. Nvidia is one of the world’s largest and most valuable computing companies. Nvidia proposes to acquire Arm, the world’s largest and most significant licensor of designs and architectures for computer processors, in a deal valued at more than \$40 billion (the “Proposed Acquisition”). If consummated, the Proposed Acquisition would allow the combined firm to use