

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

*In the Matter of Koninklijke Ahold N.V. and Delhaize Group NV/SA
File No. 151-0175*

I. INTRODUCTION AND BACKGROUND

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

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

The Commission’s Complaint alleges that the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial supermarket competitor in each of the 46 local geographic markets. The elimination of this competition would result in significant competitive harm; specifically, the Merger will allow the merged firm to increase prices above competitive levels, unilaterally or through coordinated interaction among the remaining market participants. Similarly, absent a remedy, there is significant risk that the merged firm may decrease quality and service aspects of its stores below competitive levels. The proposed Consent Order would remedy the alleged violations by requiring divestitures to replace competition that otherwise would be lost in the relevant markets because of the Merger.

II. THE RESPONDENTS

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

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

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

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

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

² *See, e.g.*, Cerberus Institutional Partners, L.P./Safeway, Inc., Docket C-4504 (Jul. 2, 2015); Bi-Lo Holdings, LLC/Delhaize America, LLC, Docket C-4440 (Feb. 25, 2014); AB Acquisition, LLC, Docket C-4424 (Dec. 23, 2013); Koninklijke Ahold N.V./Safeway Inc., Docket C-4367 (Aug. 17, 2012); Shaw’s/Star Markets, Docket C-3934 (Jun. 28, 1999); Kroger/Fred Meyer, Docket C-3917 (Jan. 10, 2000); Albertson’s/American Stores, Docket C-3986 (Jun. 22, 1999); Ahold/Giant, Docket C-3861 (Apr. 5, 1999); Albertson’s/Buttrey, Docket C-3838 (Dec. 8, 1998); Jitney-Jungle Stores of America, Inc., Docket C-3784 (Jan. 30, 1998). *But see* Wal-Mart/Supermercados Amigo, Docket C-4066 (Nov. 21, 2002) (the Commission’s complaint alleged that in Puerto Rico, club stores should be included in a product market that included supermarkets because club stores in Puerto Rico enabled consumers to purchase substantially all of their weekly food and grocery requirements in a single shopping visit).

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

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

(1) Lewes & Rehoboth Beach, Delaware; (2) Millsboro, Delaware; (3) Millville, Delaware; (4) Accokeek, Maryland; (5) Bowie, Maryland; (6) California, Maryland; (7) Columbia, Maryland; (8) Cumberland & Frostburg, Maryland; (9) Easton, Maryland; (10) Edgewater, Maryland; (11) Gaithersburg, Maryland; (12) Hagerstown (north), Maryland; (13) Hagerstown (south), Maryland; (14) La Plata, Maryland; (15) Lusby, Maryland; (16) Owings Mills, Maryland; (17) Prince Frederick, Maryland; (18) Reisterstown, Maryland; (19) Salisbury, Maryland; (20) Sykesville, Maryland; (21) Upper Marlboro, Maryland; (22) Gardner, Massachusetts; (23) Kingston, Massachusetts; (24) Mansfield & South Easton, Massachusetts; (25) Milford, Massachusetts; (26) Norwell, Massachusetts; (27) Norwood & Walpole, Massachusetts; (28) Quincy, Massachusetts; (29) Saugus, Massachusetts; (30) Mahopac & Carmel, New York; (31) New Paltz & Modena, New York; (32) Poughkeepsie & Lagrangeville, New York; (33) Rhinebeck & Red Hook, New York; (34) Wappingers Falls, New York; (35) Chambersburg, Pennsylvania; (36) Waynesboro, Pennsylvania; (37) York, Pennsylvania; (38) Culpeper, Virginia; (39) Fredericksburg, Virginia; (40) Front Royal, Virginia; (41) Purcellville, Virginia; (42) Richmond, Virginia; (43) Stafford, Virginia; (44) Stephens City, Virginia; (45) Winchester, Virginia; and (46) Martinsburg, West Virginia.

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

The relevant markets are also highly concentrated in terms of the number of remaining market participants post-Merger. Of the 46 geographic markets, the Merger will result in a merger-to-monopoly in three markets and a merger-to-duopoly in 14 markets. In the remaining markets, the

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

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

Merger will reduce the number of market participants from four to three in 18 markets, from five to four in ten markets, and from seven to six in one market.⁵

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

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

IV. THE PROPOSED CONSENT ORDER

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

- 1 store in Maryland to New Albertson’s Inc. (“Albertsons”);
- 7 stores in Massachusetts to Big Y Foods, Inc. (“Big Y”);
- 10 stores in Virginia to Publix North Carolina, LP (“Publix”);
- 1 store in Pennsylvania to Saubel’s Market, Inc. (“Saubels”);
- 18 stores in Maryland, Pennsylvania, Virginia, and West Virginia to Shop ‘N Save East, LLC (“Supervalu”);
- 6 stores in Massachusetts and New York to Tops Markets, LLC (“Tops”); and
- 38 stores in Delaware, Maryland, and Virginia to Weis Markets Inc. (“Weis”).

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

Albertsons is a large supermarket chain operating over 2,200 stores around the country. Albertsons will purchase the Salisbury, Maryland, store. Big Y is a regional supermarket operator with 61 stores in Connecticut and Massachusetts. Big Y will purchase seven divested stores in

⁵ See Exhibit A.

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

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

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

The proposed Consent Order contains additional provisions designed to ensure the adequacy of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will be issued at the time the proposed Consent Order is accepted for public comment. The Order to Maintain Assets requires Ahold and Delhaize to operate and maintain each divestiture store in the normal course of business through the date the store is ultimately divested to a buyer. Since the

⁶ In the case of the Richmond, Virginia, the Consent Order also provides the Commission the option to add six additional Richmond-area Ahold stores to the Richmond divestiture package, as may be needed, to secure an approvable alternative buyer for the Richmond assets.

divestiture schedule with certain stores runs for an extended period of time (potentially up to 360 days following the Merger date), the proposed Consent Order appoints Brad Wise⁷ as a Monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Order and Order to Maintain Assets. Brad Wise has the experience and skills to be an effective Monitor, no identifiable conflicts, and sufficient time to dedicate to this matter through its conclusion. Lastly, for a period of ten years, Ahold is required to give the Commission prior notice of plans to acquire any interest in a supermarket that has operated or is operating in the counties included in the relevant markets.

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

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

Exhibit A

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

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