

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

*In the Matter of Dollar Tree, Inc. and Family Dollar Stores, Inc.
File No. 141-0207*

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 Dollar Tree, Inc. (“Dollar Tree”) and Family Dollar Stores, Inc. (“Family Dollar”), (collectively, the “Respondents”). On July 27, 2014, Dollar Tree and Family Dollar entered into an agreement whereby Dollar Tree would acquire Family Dollar for approximately \$9.2 billion (the “Acquisition”). The purpose of the proposed Consent Order is to remedy the anticompetitive effects that otherwise would result from Dollar Tree’s acquisition of Family Dollar. Under the terms of the proposed Consent Order, Respondents are required to divest 330 stores in local geographic markets (collectively, the “relevant markets”) in 35 states to the Commission-approved buyer. The divestitures must be completed within 150 days from the date of the Acquisition. The Commission and Respondents have agreed to an Order to Maintain Assets to maintain the viability of Respondents’ assets until they are transferred to the Commission-approved 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again will review the proposed Consent Order and any comments received, and decide whether the Consent Order should be withdrawn, modified, or made final.

The Commission’s Complaint alleges that the Acquisition, 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 competitor in localized geographic markets in 222 cities nationwide.¹ The elimination of this competition would result in significant competitive harm; specifically the Acquisition will allow the combined entity to increase prices unilaterally above competitive levels. Similarly, absent a remedy, there is significant risk that the merged firm may decrease the quality and service aspects of its stores. The proposed Consent Order would remedy the alleged violations by requiring divestitures to replace competition that otherwise would be lost in these markets because of the Acquisition.

II. THE RESPONDENTS

As of January 31, 2015, Dollar Tree operated 5,157 discount general merchandise retail stores across the United States under the Dollar Tree and Deals banners. Presently, Dollar Tree banner stores are located in 48 states and the District of Columbia, while Deals banner stores are

¹ The list of cities in which stores will be divested is attached as Appendix A. The list of stores to be divested is attached to the Decision and Order as Schedule A.

currently located in 18 states and the District of Columbia. In the Dollar Tree banner stores, Dollar Tree sells a wide selection of everyday basic, seasonal, closeout, and promotional merchandise for \$1 or less. At its Deals banner stores, Dollar Tree offers an expanded assortment of this merchandise at prices generally less than \$10. Dollar Tree and Deals banner stores range in size from 8,000 to 12,000 square feet of selling space and typically carry between 6,600 to 7,000 stock keeping units (“SKUs”).

As of February 28, 2015, Family Dollar operated approximately 8,184 discount general merchandise retail stores nationwide. Family Dollar sells an assortment of consumables, home products, apparel and accessories, seasonal items, and electronic merchandise at prices generally less than \$10. Currently, Family Dollar stores are located in 46 states and the District of Columbia. Stores typically have 7,150 square feet of selling space and carry approximately 6,500 to 7,000 SKUs.

III. COMPETITION IN THE RELEVANT MARKETS

Dollar stores are small-format, deep-discount retailers that sell an assortment of consumables and non-consumables, including food, home products, apparel and accessories, and seasonal items, at prices typically under \$10. Dollar stores differentiate themselves from other retailers on the basis of both convenience and value by offering a broad assortment but limited variety of general merchandise items at discounted prices in stores with small footprints (*i.e.*, approximately 7,000 to 10,000 square feet of selling space), located relatively close to consumers’ homes or places of work.² Customers often shop at dollar stores as part of a “fill-in” shopping trip. Dollar stores typically compete most closely with other dollar stores that provide the same kind of convenient shopping trip for discounted general merchandise.

Walmart competes closely with dollar stores and offers a wide assortment of products at deeply-discounted prices. Although Walmart does not provide the same kind of convenience as that of dollar stores given its less-accessible locations, larger store footprints, and greater assortment of products, Walmart nevertheless competes closely with dollar stores by offering a comparable or better value to consumers in terms of pricing. For purposes of this matter, “discount general merchandise retail stores” refers to dollar stores and the retailer Walmart.

Although other retail stores (*i.e.*, supermarkets, pharmacies, mass merchandisers, and discount specialty merchandise retail stores) often sell discounted merchandise similar to that offered by dollar stores and Walmart, these other retailers generally are not as effective at constraining Respondents as are other discount general merchandise retail stores.³ These other retailers do not offer the same value as Walmart or the same combination of convenience and

² The term “dollar stores” as used here includes stores operated by Respondents, Dollar General, 99 Cents Only, and Fred’s Super Dollar. Independently-owned retailers that sell discounted merchandise at the \$1 or multi-price point in substantially smaller stores are not included.

³ The term “supermarkets” as used here includes traditional supermarkets such as Kroger and Publix, as well as supermarkets included within hypermarkets such as SuperTarget or Kroger’s Fred Meyer banner. The term “pharmacies” includes national retail drug stores such as CVS, Rite Aid, and Walgreens. The term “mass merchandisers” includes retailers such as Target and K-Mart. The term “discount specialty merchandise retail stores” includes retailers such as Big Lots and Aldi.

value offered by dollar stores, which tends to make them less effective substitutes for discount general merchandise retail stores. As a result, consumers shopping at discount general merchandise retail stores are unlikely to significantly increase purchases of discounted merchandise at other retailers in response to a small but significant price increase at discount general merchandise retail stores. However, in certain geographic markets, typically characterized by high population density, where the number and geographic proximity of these other retailers is substantial relative to the competing discount general merchandise retail stores, the collective presence of these other retailers acts as a more significant price constraint on the discount general merchandise retail stores operating in the area.⁴

Thus, the relevant line of commerce in which to analyze the Acquisition is no narrower than discount general merchandise retail stores. In certain geographic markets, the relevant line of commerce may be as broad as the sale of discounted general merchandise in retail stores (*i.e.*, discount general merchandise retail stores as well as supermarkets, pharmacies, mass merchandisers, and discount specialty merchandise retail stores). Whether the relevant line of commerce is discount general merchandise retail stores or discounted general merchandise in retail stores depends on the specifics of the geographic market at issue, such as population density and the density and proximity of the Respondents' stores and competing retailers.

The relevant geographic market varies depending on the unique characteristics of each market, including the local road network, physical boundaries, and population density. A strong motivation of consumers shopping at discount general merchandise retail stores is convenience. As with grocery shopping, the vast majority of consumers who shop for discounted general merchandise do so at stores located very close to where they live or work. The draw area of a dollar store, which varies depending on whether it is located in an urban, suburban, or rural area, may range from a couple of city blocks to several miles. Other market participants, such as supermarkets and retail pharmacies, may have similar, although somewhat broader draw areas. Walmart's stores, particularly Walmart Supercenters, tend to have a considerably broader draw area. In highly urban areas, the geographic markets are generally no broader than a half-mile radius around a given store. In highly rural areas, the geographic market is generally no narrower than a three-mile radius around a given store. In areas neither highly urban nor highly rural, the geographic market is generally within a half-mile to three-mile radius around a given store.

Respondents are close competitors in terms of format, customer service, product offerings, and location in the relevant geographic markets. With regard to pricing, product assortment, and a host of other competitive issues, Respondents typically focus most directly on the actions and responses of each other and other dollar stores, while also paying close attention to Walmart. In many of the relevant geographic markets, Dollar Tree and Family Dollar operate the only dollar stores in the area or the vast majority of conveniently-located discount general merchandise retail stores. Absent relief, the Acquisition would increase the incentive and ability of Dollar Tree to raise prices unilaterally post-Acquisition in the relevant geographic markets.

⁴ Online retailers are not participants in the relevant product market. The primary appeal of dollar stores is the combination of value and convenience they offer consumers. Given the time required to process and ship items ordered online, Internet retailers are less convenient shopping options for consumers looking to make an immediate purchase on a fill-in trip.

The Acquisition would also decrease incentives to compete on non-price factors, including product selection, quality, and service.

Entry into the relevant geographic markets that is timely and sufficient to prevent or counteract the expected anticompetitive effects of the Acquisition is unlikely. Entry barriers include the time, costs, and feasibility associated with identifying and potentially constructing an appropriate and available location for a discount general merchandise retail store, the resources required to support one or more new stores over a prolonged ramp-up period, and the sufficient scale to compete effectively. An entrant's ability to secure a viable competitive location may be hindered by restrictive-use commercial lease covenants, which can limit the products sold, or even the type of retailer that can be located, at a particular location.

IV. THE PROPOSED CONSENT ORDER

The proposed remedy, which requires the divestiture of 330 Family Dollar stores in the relevant markets to Sycamore Partners ("Sycamore"), will restore fully the competition that otherwise would be eliminated in these markets as a result of the Acquisition. Sycamore is a private equity firm specializing in consumer and retail investments. The proposed buyer appears to be a highly suitable purchaser and is well positioned to enter the relevant geographic markets and prevent the likely competitive harm that otherwise would result from the Acquisition. Sycamore's proposed executive team has extensive experience operating discount general merchandise retail stores.

The proposed Consent Order requires Respondents to divest 330 stores to Sycamore within 150 days from the date of the Acquisition. If, at any time before the proposed Consent Order is made final, the Commission determines that Sycamore is not an acceptable buyer, Respondents must immediately rescind the divestitures and divest the assets to a different buyer that receives the Commission's prior approval.

The proposed Consent Order contains additional provisions 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 Family Dollar to operate and maintain each divestiture store in the normal course of business through the date the store is ultimately divested to Sycamore. Because the divestiture schedule runs for an extended period of time, the proposed Consent Order appoints Gary Smith as a Monitor to oversee Respondents' compliance with the requirements of the proposed Consent Order and Order to Maintain Assets. Mr. Smith has the experience and skills to be an effective Monitor, no identifiable conflicts, and sufficient time to dedicate to this matter through its conclusion.

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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.

Appendix A

State	City	Number of Stores Divested
Alabama	Montgomery	1
Arizona	Lake Havasu	1
Arizona	Tucson	1
California	Farmersville	1
California	Fresno	1
California	Inglewood	1
California	Lemoore	1
California	San Bernardino	1
Colorado	Aurora	1
Colorado	Colorado Springs	3
Colorado	Denver	1
Colorado	Federal Heights	1
Colorado	Lakewood	1
Connecticut	Bloomfield	1
Connecticut	Bridgeport	1
Connecticut	Groton	1
Connecticut	Meriden	1
Connecticut	New Haven	1
Connecticut	West Hartford	1
Delaware	Wilmington	1
Florida	Dania	1
Florida	Deltona	2
Florida	Hollywood	1
Florida	Homestead	1
Florida	Jacksonville	2
Florida	Kissimmee	3
Florida	Miami	3
Florida	Miami Gardens	1
Florida	Plantation	1
Florida	Tampa	3
Georgia	Atlanta	7
Georgia	Columbus	1
Georgia	Decatur	3
Georgia	Lake City	1
Georgia	Norcross	1
Georgia	Stone Mountain	1
Idaho	Emmett	1
Illinois	Aurora	1
Illinois	Berwyn	1
Illinois	Chicago	13
Illinois	Elgin	1
Illinois	Harvey	1
Indiana	Fort Wayne	1
Indiana	Gary	2
Indiana	Indianapolis	2
Kentucky	Covington	1
Kentucky	Louisville	2

State	City	Number of Stores Divested
Louisiana	Baton Rouge	1
Louisiana	Lafayette	1
Louisiana	New Orleans	1
Maine	Caribou	1
Maine	Gray	1
Maine	Lewiston	1
Maine	Livermore Falls	1
Maine	Old Town	1
Maine	South Portland	1
Maine	Waterville	1
Maryland	Baltimore	4
Maryland	Capitol Heights	1
Maryland	Lanham	1
Maryland	Mount Rainier	1
Maryland	Oxon Hill	1
Maryland	Salisbury	1
Maryland	Silver Spring	1
Maryland	Temple Hills	1
Massachusetts	Boston	1
Massachusetts	Brockton	1
Massachusetts	Cambridge	1
Massachusetts	Chelsea	1
Massachusetts	Dorchester	1
Massachusetts	Framingham	1
Massachusetts	Gloucester	1
Massachusetts	Greenfield	1
Massachusetts	Holyoke	1
Massachusetts	Lowell	1
Massachusetts	Medford	1
Massachusetts	New Bedford	1
Massachusetts	North Adams	1
Massachusetts	Randolph	1
Massachusetts	Revere	1
Massachusetts	South Yarmouth	1
Massachusetts	Springfield	2
Massachusetts	Ware	1
Massachusetts	West Springfield	1
Massachusetts	Worcester	1
Michigan	Benton Harbor	1
Michigan	Burton	1
Michigan	Detroit	5
Michigan	Eastpointe	1
Michigan	Ferndale	1
Michigan	Grand Rapids	2
Michigan	Hamtramck	1
Michigan	Hazel Park	1
Michigan	Highland Park	1

State	City	Number of Stores Divested
Michigan	Holland	1
Michigan	Inkster	1
Michigan	Lansing	1
Michigan	Livonia	1
Michigan	Mount Morris	1
Michigan	Oak Park	1
Michigan	Portage	1
Michigan	Saginaw	1
Michigan	Taylor	1
Michigan	Westland	1
Michigan	Wyoming	1
Minnesota	Minneapolis	3
Minnesota	Robbinsdale	1
Minnesota	St. Paul	3
Mississippi	Jackson	1
Missouri	Jennings	1
Missouri	St. Louis	6
Nebraska	Omaha	1
New Jersey	Belmar	1
New Jersey	Brigantine	1
New Jersey	East Orange	1
New Jersey	Elizabeth	2
New Jersey	Ewing	1
New Jersey	Glassboro	1
New Jersey	Hamilton Township	1
New Jersey	Irvington	1
New Jersey	Mount Holly	1
New Jersey	Newark	2
New Jersey	Paterson	1
New Jersey	Pleasantville	1
New Jersey	Vineland	1
New Mexico	Albuquerque	3
New Mexico	Las Cruces	1
New York	Astoria	1
New York	Bronx	8
New York	Brooklyn	7
New York	College Point	1
New York	East Aurora	1
New York	Far Rockaway	1
New York	Glendale	1
New York	Grand Island	1
New York	Greece	1
New York	Jamaica	2
New York	Johnstown	1
New York	Lindenhurst	1
New York	Mattydale	1
New York	Mount Vernon	1

State	City	Number of Stores Divested
New York	Patchogue	1
New York	Poughkeepsie	1
New York	Queens	2
New York	Queens Village	1
New York	Ridgewood	1
New York	Rochester	3
New York	Rocky Point	1
New York	Saranac Lake	1
New York	Selden	1
New York	Shirley	1
New York	Springfield Gardens	1
New York	Staten Island	2
New York	Syracuse	2
New York	Utica	1
North Carolina	Charlotte	2
Ohio	Akron	1
Ohio	Canton	1
Ohio	Cincinnati	5
Ohio	Cleveland	4
Ohio	Columbus	3
Ohio	East Cleveland	1
Ohio	Milford	1
Ohio	St. Bernard	1
Ohio	Toledo	2
Ohio	Whitehall	1
Oklahoma	Oklahoma City	2
Pennsylvania	Allentown	1
Pennsylvania	East Liberty	1
Pennsylvania	Edwardsville	1
Pennsylvania	Harrisburg	2
Pennsylvania	Lansdowne	1
Pennsylvania	Levittown	1
Pennsylvania	Mckeesport	1
Pennsylvania	Middletown	1
Pennsylvania	Morrisville	1
Pennsylvania	Philadelphia	5
Pennsylvania	Pittsburgh	2
Pennsylvania	Swissvale	1
Pennsylvania	Upper Darby	1
Pennsylvania	Yeadon	1
Rhode Island	Bristol	1
Rhode Island	Central Falls	1
Rhode Island	Pawtucket	2
Rhode Island	Providence	2
Rhode Island	Rumford	1
Tennessee	Memphis	3
Tennessee	Nashville	1

State	City	Number of Stores Divested
Texas	Arlington	1
Texas	Balch Springs	1
Texas	Beaumont	1
Texas	Brownsville	1
Texas	Corpus Christi	1
Texas	Dallas	1
Texas	Eagle Pass	1
Texas	El Paso	3
Texas	Fort Worth	2
Texas	Houston	5
Texas	Lubbock	1
Texas	Odessa	1
Texas	Pasadena	1
Texas	San Antonio	2
Utah	Midvale	1
Utah	Ogden	1
Utah	Provo	1
Utah	Salt Lake City	1
Utah	St. George	1
Utah	West Valley City	1
Vermont	Morrisville	1
Vermont	Newport	1
Virginia	Alexandria	1
Virginia	Chesapeake	1
Virginia	Hampton	1
Virginia	Lynchburg	1
Virginia	Norfolk	3
Virginia	Portsmouth	1
Virginia	Richmond	1
West Virginia	Huntington	1
Wisconsin	Appleton	1
Wisconsin	Eau Claire	1
Wisconsin	Milwaukee	3
Wisconsin	St. Francis	1