

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Edith Ramirez, Chairwoman  
Julie Brill  
Maureen K. Ohlhausen  
Joshua D. Wright**

**In the Matter of**

**AB Acquisition, LLC,  
a limited liability company.**

**Docket No.**

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by AB Acquisition, LLC (“Albertson’s” or “Respondent”) of United Supermarkets L.L.C. (“United”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with

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 makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent AB Acquisition, LLC is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate headquarters and principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho.
- 2.

Provided, however that Amarillo Supermarket Assets shall not include those assets consisting of or pertaining to any of the Respondent's trademarks, trade dress, service marks or trade names, except

- M. "Lawrence Brothers Divestiture Agreement" means the asset purchase agreement entered into on December 12, 2013, by and between Albertson's and Lawrence Brothers, attached as non-public Appendix I, for the divestiture by Respondent of the Assets To Be Divested.
- N. "Relevant Areas" means Randall, Potter and Wichita Counties in Texas.
- O. "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.
- P. "Third Party Consents" means all consents from any person other than the Respondent, including all landlords, that are necessary to effect the complete transfer to the Acquirer(s) of the Assets To Be Divested.
- Q. "Transition Services Agreement" means an agreement that receives the prior approval of the Commission between Respondent and an Acquirer of any of the assets divested under this Order to provide, at the option of each Acquirer, any services (or training for an Acquirer to provide services for itself) necessary to transfer the divested assets to the Acquirer in a manner consistent with the purposes of this Order.

## II.

### **IT IS FURTHER ORDERED** that:

- A. Respondent shall divest, by (a) 10 days after the date on which the Acquisition is consummated, or (b) January 13, 2014, whichever is later, absolutely and in good faith, the Assets To Be Divested as ongoing Supermarket businesses to Lawrence Brothers, pursuant to and in accordance with the Lawrence Brothers Divestiture Agreement;

Provided, however, that in cases in which books or records included in the Assets To Be Divested contain information (a) that relates both to the Assets To Be Divested and to other retained business of Respondent or (b) such that Respondent has a legal obligation to retain the original copies, then Respondent shall be required to provide only copies or relevant excerpts of the materials containing such information. In instances where such copies are provided, the Respondent shall provide access to original materials under





**III.**

**IT IS FURTHER ORDERED** that:

A. If Respondent has not divested all of the Assets To

divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission; provided, however, the Commission may extend the divestiture period only two (2) times.

5. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the relevant assets that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
6. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for the Amarillo Supermarket Assets or for the Wichita Falls Supermarket Assets, and if the Commission determines to approve more than one such acquiring entity for either Supermarket, the Divestiture Trustee shall divest such Supermarket to the acquiring entity selected by Respondent from among those approved by the Commission.







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

Provided, however, that advance written notification shall not apply to the construction of new facilities by Respondent or the acquisition or leasing of a facility that has not operated as a Supermarket within six (6) months prior to Respondent's offer to purchase or lease such facility.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent and not of any other party to the transaction. Respondent shall provide the notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

## V.

### **IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondent has fully complied with the provisions of Paragraphs II and III of this Order, Respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts bei

- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

## VI.

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

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in the Respondent, including but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

## VII.

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Respondent made to its principal United States office, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding any s nd atp42(s)-1(s(ve)2(nt)-10( upt1(e)4(r)3 s)1o)-29( s)-5,

**APPENDIX I**

Lawrence Brothers Divestiture Agreement

REDACTED FROM PUBLIC RECORD