

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

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In the Matter of ) )

Mississippi, with its office and principal place of business located at 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204.

2. Proposed Respondent Bruckmann, Rosser, Sherrill & Co., L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Two Greenwich Plaza, Greenwich, Connecticut 06830.

3. Proposed Respondent Delta Acquisition Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at c/o Jitney-Jungle Stores of America, Inc., 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204.

4. Proposed Respondent Delchamps, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 305 Delchamps Drive, Mobile, Alabama 36602.

5. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

6. Proposed Respondents waive:

7. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

9. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents'

addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

10. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final. By signing this Agreement, Proposed Respondents represent that the relief contemplated by this Agreement can be accomplished.

11. Proposed Respondents shall, within thirty (30) days of the date this Agreement is signed by Proposed Respondents, submit an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by the Proposed Respondents, setting forth in detail the manner in which the Proposed Respondents are complying with the terms of the Asset Maintenance Agreement signed by the Proposed Respondents on September \_\_, 1997 (attached to this Order and made a part hereof as Appendix I), and how they will comply with Paragraph II of the Order when and if entered. Such report will not become part of the public record unless and until the accompanying Agreement and Order are accepted by the Commission for public comment.

12. Proposed Respondents shall not divest the Assets To Be Divested until after the Order becomes final.

**ORDER**  
**I.**

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

A. "Jitney-Jungle" means Jitney-Jungle Stores of America, Inc., its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Jitney-Jungle, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each. Jitney-Jungle, after consummation of the Acquisition, includes Delchamps. A majority of the voting securities of Jitney-Jungle are owned by Bruckmann.

B. "Bruckmann" means Bruckmann, Rosser, Sherrill & Co., L.P., its predecessors, successors and assigns, subsidiaries, divisions, groups and affiliates controlled by Bruckmann and their respective general partners, officers, employees, agents, and representatives, and the respective successors and assigns of each. Bruckmann owns a majority of the voting securities of Jitney-Jungle.

C. "Delta" means Delta Acquisition Corporation, its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Delta, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each. Delta is a wholly-owned subsidiary of Jitney-Jungle.

D. "Delchamps" means Delchamps, Inc., its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Delchamps, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

E. "Respondents" means Jitney-Jungle, Bruckmann, Delta, and Delchamps.

F. "Commission" means the Federal Trade Commission.

G. "Acquisition" means Jitney-Jungle's, Bruckmann's and Delta's proposed acquisition of all of the outstanding voting securities of and merger with Delchamps pursuant to the Agreement and Plan of Merger dated July 8, 1997.

H. "Assets To Be Divested" shall consist of the supermarkets identified in Schedule A of this Order and all assets, leases, properties, permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names.

I. "Supermarket" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

J. "Supervalu" means Supervalu Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 11840 Valley View Road, Eden Prairie, Minnesota 55344; and Supervalu Holdings, Inc. a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 11840 Valley View

Road, Eden Prairie, Minnesota 55344. Supervalu Holdings, Inc. is a wholly-owned subsidiary of Supervalu Inc.

K. "R & M Foods" means R & M Foods, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal place of business located at 1612 Adeline Street, Hattiesburg, Mississippi 39402.

L. "Southeast Foods" means Southeast Foods, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal place of business located at 1001 North 11th Street, Monroe, Louisiana 71207-2230.

M. "Supervalu Agreement" means the Purchase Agreement between Supervalu and Jitney-Jungle executed on August 29, 1997, and all subsequent amendments thereto, for the divestiture by Respondents to Supervalu of the Assets To Be Divested.

N. "Acquirer(s)" means Supervalu, R & M Foods, Southeast Foods, and/or the entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this Order.

O. "Landlord Consents" means all consents from all landlords that are necessary to effect the complete transfer to the Acquirer(s) of the assets required to be divested pursuant to this Order.

**II.**

**IT IS FURTHER ORDERED** that:

A. Respondents shall divest, absolutely and in good faith, the Assets To Be Divested to:

1. Supervalu, in accordance with the Supervalu Agreement (which agreement shall not be construed to vary or contradict the terms of this Order or the Asset Maintenance Agreement) dated August 29, 1997, no later than,
  - a. one (1) month after the date on which this Order becomes final, or
  - b. five (5) months after acceptance of the Agreement Containing Consent Order by the Commission,

whichever is later; or

2. an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, within three (3) months after the date on which this Order becomes final; provided that the closing date of the Supervalu Agreement or any other agreement pursuant to which the Assets To Be Divested are divested to an Acquirer shall not occur until after Respondents have obtained all required Landlord Consents.

B. If Respondents divest the Assets To Be Divested pursuant to the terms of Paragraph II.A.1., Supervalu may sell, within three (3) months of the date on which this Order becomes final, any of the supermarkets constituting the Assets To Be Divested to R & M Foods or Southeast Foods, but only in a manner that receives the prior approval of the Commission. Respondents shall use their best efforts to assist Supervalu in the sale of the Assets To Be Divested pursuant to this Paragraph in accordance with the terms of this Order.

C. A condition of approval by the Commission of the divestiture transaction described in Paragraph II.A.1. shall be a written agreement by Supervalu that it will not sell the Assets To Be Divested, other than as provided in Paragraph II.B., for a period of three (3) years from the date on which this Order becomes final, directly or indirectly, through subsidiaries, partnerships or otherwise, without the prior approval of the Commission.



D. The purpose of the divestitures is to ensure the continuation of the Assets To Be Divested as ongoing viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the Acquisition alleged in the Commission's complaint.

**III.**

**IT IS FURTHER ORDERED** that:

A. If Respondents fail to divest absolutely and in good faith the Assets To Be Divested pursuant to Paragraph II.A. of this Order, the Commission may appoint a trustee to divest the Assets To Be Divested.

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 trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed 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. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person

accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the period for each divestiture only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her 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 make each divestiture required by this Order at no minimum price. Each divestiture shall be made in the manner consistent

with the terms of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

7. The 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 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 trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.
8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out

of, or in connection with, the performance of the trustee's duties, including  
all reasonable fees of counsel and other expenses incurred in connection

**IV.**

**IT IS FURTHER ORDERED** that:

A. Pending divestiture of the Assets To Be Divested pursuant to this Order, Respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of Assets To Be Divested except for ordinary wear and tear.

B. Respondents shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as all Assets To Be Divested have been divested as required by this Order.

**V.**

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any ownership or leasehold interest in any facility that has operated as a supermarket within six (6) months of the date of such proposed acquisition in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida.

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 of such proposed acquisition in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida.

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

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 (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until twenty days after submitting such additional information or documentary material. 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.

## **VI.**

**IT IS FURTHER ORDERED** that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. § 12(a)) that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail

location used as a supermarket on or after July 1, 1997, to operate a supermarket at that site if such supermarket was formerly owned or operated by Respondents in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida.

B. Respondents shall not remove any equipment from a supermarket owned or operated by Respondents in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida, prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by Respondents in the ordinary course of business, or except as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

**VII.**

**IT IS FURTHER ORDERED** that:

A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II or III of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all



substantive contacts or negotiations for divestitures and the identity of all parties contacted.

Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) 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, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

**VIII.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in Respondents that may affect compliance obligations arising out of the Order.

**IX.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, upon written request, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the

possession or under the control of Respondents relating to any matters contained in this Order;  
and

B. Upon five days' notice to Respondents and without restraint or interference from Respondents, to interview Respondents or officers, directors, or employees of Respondents in the presence of counsel.

Signed this \_\_\_\_\_ day of September, 1997

**JITNEY-JUNGLE CORPORATION OF AMERICA, INC., a corporation**

By: \_\_\_\_\_  
Michael E. Julian  
Chief Executive Officer and President

\_\_\_\_\_  
R. Barry Cannada, Esq.  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
Counsel for Jitney-Jungle Stores of America, Inc.

\_\_\_\_\_  
Stephen A. Stack, Jr., Esq.  
Dechert Price & Rhoads  
Counsel for Jitney-Jungle Stores of America, Inc.

**BRUCKMANN, ROSSER, SHERRILL & CO., L.P., a limited partnership**

By: \_\_\_\_\_  
Harold O. Rosser, II  
Managing Director

\_\_\_\_\_  
Stephen A. Stack, Jr., Esq.  
Dechert Price & Rhoads  
Counsel for Bruckmann, Rosser, Sherrill & Co., L.P.

**DELTA ACQUISITION CORPORATION, a corporation**

By: \_\_\_\_\_  
Michael E. Julian  
President

\_\_\_\_\_  
R. Barry Cannada, Esq.  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
Counsel for Delta Acquisition Corporation

\_\_\_\_\_  
Stephen A. Stack, Jr., Esq.  
Dechert Price & Rhoads  
Counsel for Delta Acquisition Corporation

**DELCHAMPS, INC., a corporation**

By: \_\_\_\_\_  
David W. Morrow  
Chairman of the Board and Chief Executive Officer

\_\_\_\_\_  
Howard E. Sinor, Jr., Esq.  
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.  
Counsel for Delchamps, Inc.

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_  
James A. Fishkin  
Attorney  
Bureau of Competition

APPROVED:

\_\_\_\_\_  
Phillip L. Broyles  
Assistant Director  
Bureau of Competition

\_\_\_\_\_  
George S. Cary  
Senior Deputy Director  
Bureau of Competition

\_\_\_\_\_  
William J. Baer  
Director  
Bureau of Competition

Schedule A

1. The following supermarket located in Hancock County, Mississippi:
  - a. Delchamps store no. 64 operating under the "Delchamps" trade name, which is located at Choctaw Plaza Shopping Center, 318 Highway 90, Waveland, MS 39576;
2. The following supermarkets located in Harrison County, Mississippi:
  - a. Jitney-Jungle store no. 33 operating under the "Jitney-Jungle" trade name, which is located at 917 Division St., Biloxi, MS 39530;
  - b. Jitney-Jungle store no. 32 operating under the "Jitney-Jungle" trade name, which is located at 1225 Pass Road, Gulfport, MS 39501;
  - c. Jitney-Jungle store no. 42 operating under the "Jitney-Jungle" trade name, which is located at Handsboro Square Shopping Center, 1345 East Pass Road, Gulfport, MS 39501; and
  - d. Delchamps store no. 364 operating under the "Delchamps" trade name, which is located at 11240-A Highway 49 North, Gulfport, MS 39503;
3. The following supermarkets located in Escambia County, Florida:
  - a. Jitney-Jungle store no. 54 operating under the "Jitney-Jungle" trade name, which is located at 4081-A East Olive Road, Pensacola, FL 32514.
  - b. Jitney-Jungle store no. 52 operating under the "Sack & Save" trade name, which is located at Brent Oaks Mall, East Brent Lane, Pensacola, FL 32503.
4. The following supermarket located in Lamar County, Mississippi:
  - a. Delchamps store no. 67 operating under the "Delchamps" trade name, which is located at Oak Grove Plaza Shopping Center, 4600 West Hardy Street, Hattiesburg, MS 39401.
5. The following supermarket located in Forrest County, Mississippi:
  - a. Delchamps store no. 9 operating under the "Delchamps" trade name, which is located at 601 Broadway Street, Hattiesburg, MS 39401.

6. The following supermarket located in Warren County, Mississippi:
  - a. Delchamps store no. 115 operating under the "Delchamps" trade name, which is located at Delchamps Plaza, 3046-D Indiana Avenue, Vicksburg, MS 39180.

APPENDIX I

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

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In the Matter of )  
)  
**JITNEY-JUNGLE STORES OF AMERICA, INC.,** )  
a corporation; )  
)  
**BRUCKMANN, ROSSER, SHERRILL & CO., L.P.,** )  
a limited partnership; ) File No. 971-0093  
)  
**DELTA ACQUISITION CORPORATION,** )  
a corporation; and )  
)  
**DELCHAMPS, INC.,** )  
a corporation. )  

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**ASSET MAINTENANCE AGREEMENT**

This Asset Maintenance Agreement ("Agreement") is by and between Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204; Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckman"), a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Two Greenwich Plaza, Greenwich, Connecticut 06830; Delta Acquisition Corporation ("Delta"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business

located at c/o Jitney-Jungle Stores of America, Inc., 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204; Delchamps, Inc. ("Delchamps"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 305 Delchamps Drive, Mobile, Alabama 36602 (collectively "Proposed Respondents"); and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively "the Parties").

### **PREMISES**

**WHEREAS**, Jitney-Jungle, of which a majority of the voting securities are owned by Bruckmann, and Delta, a wholly-owned subsidiary of Jitney-Jungle, pursuant to an Agreement and Plan of Merger dated July 8, 1997, agreed to acquire all of the outstanding stock of Delchamps (hereinafter "the proposed Acquisition"); and

**WHEREAS**, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

**WHEREAS**, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently either withdraw such acceptance or issue and serve its Complaint and its Decision and final Order in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

**WHEREAS**, the Commission is concerned that if an agreement is not reached preserving the status quo ante of the Assets To Be Divested as defined in the attached Consent Order





2. Proposed Respondents agree that from the date Proposed Respondents sign this Agreement until the earlier of the dates listed in subparagraphs 2.a. and 2.b., Proposed Respondents will comply with the provisions of this Agreement:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the date all of the divestitures required by the Consent Order have been completed.

3. Proposed Respondents shall maintain the viability, mar ment04040 0 Tw9 m<sup>3</sup>4D

organization and properties of each of the Supermarkets intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with each Supermarket. Included in the above obligations, Proposed Respondents shall, without limitation:

- a. maintain operations and departments and shall not reduce hours at each Supermarket;
- b. not transfer inventory from any Supermarket other than in the ordinary course of

- supermarkets of the Proposed Respondents not being closed or relocated; or
- h. not transfer any of the Proposed Respondents' on-site employees employed at any Supermarket on the date of this Agreement to any other supermarket or location owned or operated by any Proposed Respondent other than transfers in the ordinary course of business consistent with past practice.

4. Should the Commission seek in any proceeding to compel Proposed Respondents to divest themselves of the Assets or to seek any other injunctive or equitable relief, Proposed Respondents shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Proposed Respondents also waive all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with five (5) days' notice to Proposed Respondents and to their principal office(s), Proposed Respondents shall permit any duly authorized representative or representatives of the Commission:

- a. access during the office hours of Proposed Respondents, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under

the control of Proposed Respondents relating to compliance with this Agreement; and

b. to interview officers or employees of Proposed Respondents, who may have counsel present, regarding any such matters.

6. This Agreement shall not be binding on the Commission until approved by the Commission.

Signed this \_\_\_\_\_ day of September, 1997.

**JITNEY-JUNGLE CORPORATION OF AMERICA, INC., a corporation**

By: \_\_\_\_\_  
Michael E. Julian  
Chief Executive Officer and President

\_\_\_\_\_  
R. Barry Cannada, Esq.  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
Counsel for Jitney-Jungle Stores of America, Inc.

\_\_\_\_\_  
Stephen A. Stack, Jr., Esq.  
Dechert Price & Rhoads  
Counsel for Jitney-Jungle Stores of America, Inc.

**BRUCKMANN, ROSSER, SHERRILL & CO., L.P., a limited partnership**

By: \_\_\_\_\_  
Harold O. Rosser, II  
Managing Director

\_\_\_\_\_  
Stephen A. Stack, Jr., Esq.  
Dechert Price & Rhoads  
Counsel for Bruckmann, Rosser, Sherrill & Co., L.P.

**DELTA ACQUISITION CORPORATION, a corporation**

By: \_\_\_\_\_  
Michael E. Julian  
President

\_\_\_\_\_  
R. Barry Cannada, Esq.  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
Counsel for Delta Acquisition Corporation

\_\_\_\_\_  
Stephen A. Stack, Jr., Esq.  
Dechert Price & Rhoads  
Counsel for Delta Acquisition Corporation

**DELCHAMPS, INC., a corporation**

By: \_\_\_\_\_  
David W. Morrow  
Chairman of the Board and Chief Executive Officer

\_\_\_\_\_  
Howard E. Sinor, Jr., Esq.  
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.  
Counsel for Delchamps, Inc.

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_  
Debra Valentine  
General Counsel

The Commission accepted the consent agreement for public comment  
on September 11, 1997.

Donald S. Clark  
Secretary

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

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In the Matter of	)	
	)	
<b>JITNEY-JUNGLE STORES OF AMERICA, INC.,</b>	)	
a corporation;	)	
	)	
<b>BRUCKMANN, ROSSER, SHERRILL &amp; CO., L.P.,</b>	)	
a limited partnership;	)	File No. 971-0093
	)	
<b>DELTA ACQUISITION CORPORATION,</b>	)	
a corporation; and	)	
	)	
<b>DELCHAMPS, INC.,</b>	)	
a corporation.	)	

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**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), a corporation of which a majority of the voting securities are owned by respondent Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckmann"), a limited partnership, and respondent Delta Acquisition Corporation ("Delta"), a wholly-owned subsidiary of respondent Jitney-Jungle, have entered into an agreement



products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

Jitney-Jungle Stores of America, Inc.

2. Respondent Jitney-Jungle Stores of America, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204. Jitney-Jungle had sales of approximately \$1.13 billion at its supermarkets, and total sales of \$1.28 billion, in its 1997 fiscal year.

3. Respondent Jitney-Jungle is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Arkansas, Florida, Louisiana, Mississippi, and Tennessee.

4. Respondent Jitney-Jungle is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Bruckmann, Rosser, Sherrill & Co., L.P.

5. Respondent Bruckmann, Rosser, Sherrill & Co., L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 126 East 56th Street, 29th Floor, New York, New York 10022.

6. Respondent Bruckmann is, and at all times relevant herein has been, the owner of a majority of the voting securities of Jitney-Jungle.

7. Respondent Bruckmann is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Delta Acquisition Corporation

8. Respondent Delta Acquisition Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at c/o Jitney-Jungle Stores of America, Inc., 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204.

9. Respondent Delta is, and at all times relevant herein has been, a wholly-owned subsidiary of Jitney-Jungle established to acquire the outstanding shares of Delchamps.

10. Respondent Delta is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

#### Delchamps, Inc.

11. Respondent Delchamps, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 305 Delchamps Drive, Mobile, Alabama 36602. Delchamps had sales of approximately \$1.08 billion at its supermarkets, and total sales of \$1.1 billion, in its 1997 fiscal year.

12. Respondent Delchamps is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Florida, Louisiana, and Mississippi.

13. Respondent Delchamps is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

#### Acquisition

14. On or about July 8, 1997, Jitney-Jungle and Delta entered into a cash tender offer agreement with Delchamps to acquire all of the outstanding common stock of Delchamps for \$30 per share. The total value of the proposed acquisition is approximately \$228 million.

#### Trade and Commerce

15. The relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition described herein is the retail sale of food and grocery products in supermarkets.

16. Stores other than supermarkets do not have a significant price-constraining effect on food and grocery products sold at supermarkets. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by

and specialty food stores (*e.g.*, seafood markets, bakeries, etc.), are not in the relevant market because they typically offer far fewer items than the average supermarket and charge higher prices for many of the same or similar items. Other types of stores that sell some food and grocery products, such as large drug stores and mass merchandisers, offer only a limited number of items sold in the typical supermarket. The small number of membership club stores, which offer only a limited number of food and grocery products primarily in bulk sizes, do not have a significant effect on market concentration.

18. Military commissaries are also not in the relevant product market. Military commissaries, which are not open to the public, operate as supermarkets for eligible military personnel and their families with retail prices substantially below the average retail prices at supermarkets for the same or similar items. Retail prices at military commissaries are not advertised and are uniform throughout the country based on the actual cost of the item plus a nationwide uniform surcharge determined by rules established by the Secretary of Defense. Retail prices at military commissaries are not based on local market conditions. Supermarkets do not price-check food and grocery products sold at military commissaries and do not base their prices on the retail prices at the military commissaries.

19.

sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country.

Actual Competition

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on day of        A.D., 19   , issues its complaint against said respondents.

By the Commission.

SEAL:

Donald S. Clark  
Secretary

# **ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT**

## **I. Introduction**

The Federal Trade Commission ("Commission") has accepted for public comment from Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckmann"), Delta Acquisition Corporation ("Delta"), and Delchamps, Inc. ("Delchamps") (collectively "the proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). Bruckmann owns a majority of the voting securities of Jitney-Jungle, and Delta is a wholly-owned subsidiary of Jitney-Jungle. The proposed consent order is designed to remedy likely anticompetitive effects arising from Jitney-Jungle and Delta's proposed acquisition of the outstanding shares of Delchamps.

## **II. Description of the Parties and the Acquisition**

Jitney-Jungle, which is headquartered in Jackson, Mississippi, is one of the leading supermarket chains in the Southeast. Jitney-Jungle operates 105 supermarkets in the states of Alabama, Arkansas, Louisiana, Mississippi, Florida, and Tennessee. The company is the largest supermarket operator in Mississippi with 72 stores. The company operates under three formats: (1) 78 conventional supermarkets under the "Jitney-Jungle" trade name; (2) 23 discount supermarkets under the "Sack and Save," "Mega Market," and "Mega Pantry" trade names; and (3) four premium supermarkets under the "Jitney Premier" trade name. Jitney-Jungle had sales of approximately \$1.13 billion at its supermarkets,

Delchamps, which is headquartered in Mobile, Alabama, is another leading supermarket chain in the Southeast. Delchamps operates a total of 118 conventional supermarkets under the "Delchamps" trade name. Delchamps' supermarkets are located in Alabama, Florida, Louisiana, and Mississippi. In addition, the company operates ten liquor stores in the state of Florida. Delchamps had sales of approximately \$1.08 billion at its supermarkets, and total sales of \$1.1 billion, in its 1997 fiscal year.

On or about July 8, 1997, Jitney-Jungle and Delta, a wholly-owned subsidiary of Jitney-Jungle, entered into a cash tender offer agreement with Delchamps to acquire all of the outstanding common stock of Delchamps for \$30 per share. The total value of the proposed acquisition is approximately \$228 million.

### **III. The Complaint**

The draft complaint accompanying the proposed consent order alleges that the acquisition, as well as the agreement to enter into the acquisition, would substantially lessen competition 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.

According to the draft complaint, the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets, and Jitney-Jungle and Delchamps are direct competitors. Stores other than supermarkets are not in the relevant product market because they do not have a significant price-constraining effect on food and grocery products sold at supermarkets. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets. In addition, supermarkets do not regularly price-check food and grocery products sold at other types of stores

and do not typically change their food and grocery prices in response to prices at other types of stores.

Food stores other than supermarkets, such as convenience stores, "mom & pop" stores, and specialty food stores (*e.g.*, seafood markets, bakeries, etc.), are not in the relevant product market because they typically offer far fewer items than the average supermarket and charge higher prices for many of the same or similar items. Other types of stores that sell some food and grocery products, such as large drug stores and mass merchandisers, offer only a limited number of items sold in the typical supermarket. The small number of membership club stores in the relevant markets, which offer only a limited number of food and grocery products primarily in bulk sizes, do not have a significant effect on market concentration.

Military commissaries are also not in the relevant product market. Military commissaries, which are not open to the public, operate as supermarkets for eligible military personnel and their families with retail prices substantially below the average retail prices at supermarkets for the same or similar items in the Gulfport-Biloxi area in Mississippi, and in Pensacola, Florida. Retail prices at military commissaries are not advertised and are uniform throughout the country based on the actual cost of the item plus a nationwide uniform surcharge determined by rules established by the Secretary of Defense. Retail prices at military commissaries are not based on local market conditions. Supermarkets do not price-check food and grocery products sold at military commissaries and do not base their prices on the retail prices at the military commissaries.



- a. the Gulfport-Biloxi area of Mississippi, which consists of the parts of Hancock, Harrison, and Jackson counties that include Waveland, Bay Saint Louis, Pass Christian, Long Beach, Gulfport, Biloxi, D'Iberville, and Ocean Springs, and narrower markets contained therein, including Waveland/Bay Saint Louis, Gulfport, north Gulfport, and Biloxi/D'Iberville.
- b. Pensacola, Florida, and narrower markets contained therein;
- c. Hattiesburg, Mississippi, and the area immediately west of Hattiesburg; and
- d. Vicksburg, Mississippi.

According to the draft complaint, these markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios. The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants. The acquisition would significantly increase the HHIs in each of the already highly concentrated markets.

According to the draft complaint, entry into the retail sale of food and grocery products in supermarkets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

Jitney-Jungle and Delta's acquisition of Delchamps may reduce competition in these markets by eliminating the direct competition between Jitney-Jungle and Delchamps, by increasing the likelihood

groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country.

#### **IV. Terms of the Proposed Consent Order**

The proposed consent order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed consent order, the proposed Respondents must divest the ten supermarkets listed below -- five Jitney-Jungle owned and operated stores (four of which are "Jitney-Jungle" stores and one is a "Sack & Save" store) and five Delchamps -- to Supervalu Holdings, Inc., a wholly-owned subsidiary of Supervalu, Inc. (collectively "Supervalu"), within either one month after the date on which the proposed consent order becomes final, or five months after the acceptance of the proposed consent order for public comment, whichever is later, or to another acquirer that receives the prior approval of the Commission within three months after the proposed consent order becomes final. A sale to Supervalu by the proposed Respondents must be in accordance with the agreement between Supervalu and Jitney-Jungle dated August 29, 1997, and all subsequent amendments thereto.

If the proposed Respondents divest the ten listed supermarkets to Supervalu within three months of the date on which the proposed consent order becomes final, Supervalu may sell any of these supermarkets to either R & M Foods, Inc. ("R & M Foods") or Southeast Foods, Inc. ("Southeast Foods"). R & M Foods currently operates 18 supermarkets, and Southeast Foods currently operates 21 supermarkets. If Supervalu does not sell the ten listed supermarkets to either R & M Foods or Southeast Foods within three months of the date on which the proposed consent order becomes final, Supervalu cannot sell the ten listed supermarkets to anyone without the prior approval of the Commission.

Five of the ten supermarkets to be divested are located in the Gulfport-Biloxi area; two are located in Pensacola, Florida; two are located in Hattiesburg, Mississippi; and one is located in Vicksburg, Mississippi. If the proposed Respondents fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the proposed consent order. The ten supermarkets to be divested are:

1. The following supermarket located in Hancock County, Mississippi:
  - a. Delchamps store no. 64 operating under the "Delchamps" trade name, which is located at Choctaw Plaza Shopping Center, 318 Highway 90, Waveland, MS 39576;
2. The following supermarkets located in Harrison County, Mississippi:
  - a. Jitney-Jungle store no. 33 operating under the "Jitney-Jungle" trade name, which is located at 917 Division St., Biloxi, MS 39530;
  - b. Jitney-Jungle store no. 32 operating under the "Jitney-Jungle" trade name, which is located at 1225 Pass Road, Gulfport, MS 39501;
  - c. Jitney-Jungle store no. 42 operating under the "Jitney-Jungle" trade name, which is located at Handsboro Square Shopping Center, 1345 East Pass Road, Gulfport, MS 39501; and
  - d. Delchamps store no. 364 operating under the "Delchamps" trade name, which is located at 11240-A Highway 49 North, Gulfport, MS 39503;
3. The following supermarkets located in Escambia County, Florida:
  - a. Jitney-Jungle store no. 54 operating under the "Jitney-Jungle" trade name, which

- b. Jitney-Jungle store no. 52 operating under the "Sack & Save" trade name, which is located at Brent Oaks Mall, East Brent Lane, Pensacola, FL 32503.
- 4. The following supermarket located in Lamar County, Mississippi:
    - a. Delchamps store no. 67 operating under the "Delchamps" trade name, which is located at Oak Grove Plaza Shopping Center, 4600 West Hardy Street, Hattiesburg, MS 39401.
  - 5. The following supermarket located in Forrest County, Mississippi:
    - a. Delchamps store no. 9 operating under the "Delchamps" trade name, which is located at 601 Broadway Street, Hattiesburg, MS 39401.
  - 6. The following supermarket located in Warren County, Mississippi:
    - a. Delchamps store no. 115 operating under the "Delchamps" trade name, which is located at Delchamps Plaza, 3046-D Indiana Avenue, Vicksburg, MS 39180.

For a period of ten years from the date the proposed consent order becomes final, the proposed Respondents are prohibited from acquiring, without prior notice to the Commission, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County,

For a period of ten years, the proposed consent order also prohibits the proposed Respondents from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after July 1, 1997, to operate a supermarket at that site if such supermarket was formerly owned or operated by the proposed Respondents in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida. In addition, the proposed Respondents may not remove any equipment from a supermarket they own or operate prior to a sale, sublease, assignment, or change in occupancy, except in the ordinary course of business, or except as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

**V. Opportunity for Public Comment**

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the