

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

<p style="text-align: center;">In the Matter of)) SHAW’S SUPERMARKETS, INC.,) a corporation;) J SAINSBURY plc,) a corporation;) and) STAR MARKETS HOLDINGS, INC.,) a corporation.)</p>)	<p style="text-align: center;">Docket No. C-3934 Decision and Order</p>
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The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of Star Markets Holdings, Inc. (“Star Markets”) by J Sainsbury plc and its wholly-owned subsidiary Shaw’s Supermarkets, Inc. (“Shaw’s”) (collectively, “Respondents”), and Respondents having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge Respondents with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, and having modified the consent order in certain respects, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent J Sainsbury is a corporation organized, existing, and doing business under and by virtue of the laws of England, with its office and principal place of business located at Stamford House, Stamford Street, London SE 19LL, England.

2. Respondent Shaw's, a wholly-owned subsidiary of J Sainsbury, is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 140 Laurel Street, P.O. Box 600, East Bridgewater, Massachusetts 02333.

3. Respondent Star Markets is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 625 Mt. Auburn Street, Cambridge, Massachusetts 02138.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

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

A. "J Sainsbury

F. “Acquirer” means Victory and Foodmaster and/or any other entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this Order, individually and collectively.

G. “Acquisition” means J Sainsbury’s proposed acquisition of Star Markets pursuant to the Stock Purchase Agreement dated November 25, 1998.

H. “Assets To Be Divested” means the Schedule A Assets, Schedule B Assets, Schedule C Assets, and Schedule D Assets.

I. “Applicable Consent Decree” means a consent decree in an action commenced by the Commonwealth of Massachusetts, under which decree Respondents will divest all or part of the Schedule A Assets, Schedule B Assets, Schedule C Assets, and Schedule D Assets.

J. “Schedule A Assets” means the Supermarkets identified in Schedule A of this Order and all assets, leases, properties, government 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.

K. “Schedule B Assets” means the Supermarkets identified in Schedule B of this Order and all assets, leases, properties, government 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.

L. “Schedule C Assets” means the Supermarkets identified in Schedule C of this Order and all assets, leases, properties, government 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.

M. “Schedule D Assets” means the Supermarket identified in Schedule D of this Order and all assets, leases, properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents’ trade marks, trade dress, service marks, or trade names.

N. “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; frozen and refrigerated 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.

O. “Victory” means Victory Super Markets, a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal place of business located at 75 North Main Street, Leominster, MA 01453.

P. “Foodmaster” means Foodmaster Super Markets, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of

T. “Third Party Consents” means all consents from any other person, including all landlords, that are necessary to effect the complete transfer to the Acquirer(s) of the Assets To Be Divested.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall divest, absolutely and in good faith, the Schedule A Assets to Victory, in accordance with the Victory Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than:

1. twenty (20) days after the date on which the Acquisition is consummated, or
2. four (4) months after the date on which Respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if Respondents have divested the Schedule A Assets to Victory pursuant to the Victory Agreement prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Victory is not an acceptable Acquirer or that the Victory Agreement is not an acceptable manner of divestiture, then Respondents shall immediately rescind the transaction with Victory and shall divest the Schedule A Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

B. Respondents shall divest, absolutely and in good faith, the Schedule B Assets to Foodmaster, in accordance with the Foodmaster Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), within ten (10) days of the date on which the Order becomes final.

Provided, however, that if Respondents have divested the Schedule B Assets to Foodmaster pursuant to the Foodmaster Agreement prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Foodmaster is not an acceptable Acquirer or that the Foodmaster Agreement is not an acceptable manner of divestiture, then Respondents shall immediately rescind the transaction with Foodmaster and shall divest the Schedule B Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. Respondents shall obtain all required Third Party Consents prior to the closing of each of the respective divestiture agreements, or any other agreement pursuant to which the Assets To Be Divested are divested to an Acquirer.

D. The purpose of the divestitures is to ensure the continuation of the Schedule A Assets and Schedule B Assets 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. Respondents shall divest either the Schedule C or Schedule D Assets to an Acquirer, only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price, within three (3) months from the date on which Respondents sign the Agreement Containing Consent Order.

B. The purpose of the divestiture is to ensure the continuation of the divested supermarket(s) 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.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested the Assets To Be Divested within the time periods required by Paragraphs II and III of this Order, absolutely and in good faith and with the Commission's prior approval, the Commission may appoint a trustee to divest those assets that Respondents have failed to divest. In the event that the Commission or the Attorney General brings an action pursuant to Section 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 Section 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.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.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 with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.
3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect each divestiture required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph IV.B.3. to 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 no more than two (2) additional periods.
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 divest expeditiously at no minimum price. The divestitures shall be made to an Acquirer or Acquirers that receive Commission approval and in a manner approved by the Commission; 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 J Sainsbury from among those approved by the Commission; provided further, however, that J Sainsbury shall select such entity within five (5) days of receiving notification of the Commission's approval.

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 J Sainsbury, 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 with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton

11. In the event that the trustee determines that he or she is unable to divest the Assets To Be Divested in a manner consistent with the Commission's purpose as described in Paragraphs II and III, the trustee may divest additional ancillary assets of Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.
13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish each divestiture required by this Order.

V.

IT IS FURTHER ORDERED that Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested pending their divestiture, and shall not cause the wasting or deterioration of the Assets To Be Divested, nor shall they cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Assets To Be Divested. Respondents shall comply with the terms of this Paragraph until such time as Respondents have divested the Assets To Be Divested pursuant to the terms of this Order. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operation of any of the Assets To Be Divested. Respondents shall continue to maintain the inventory of each of the Assets To Be Divested at levels and selections (*e.g.*, stock-keeping units) consistent with those maintained by such Respondent(s) at such Supermarket in the ordinary course of business consistent with past practice. Respondents shall use best efforts to keep the organization and properties of each of the Assets To Be Divested intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with the Supermarket. Included in the above obligations, Respondents shall, without limitation:

1. maintain operations and departments and not reduce hours at each of the Assets To Be Divested;
2. not transfer inventory from any of the Assets To Be Divested other than in the ordinary course of business consistent with past practice;
3. make any payment required to be paid under any contract or lease when

due, and otherwise pay all liabilities and satisfy all obligations, in each case in a manner consistent with past practice;

4. maintain the books and records of each of the Assets To Be Divested;
5. not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations to another location, or that indicates any of the Assets To Be Divested will close;
6. not remove the trade marks, trade dress, service marks, or trade names of Respondents at any of the Assets To Be Divested;
7. not conduct any “going out of business,” “close-out,” “liquidation” or similar sales or promotions at or relating to any of the Assets To Be Divested; and
8. not change or modify in any material respect the existing advertising practices, programs and policies for any of the Assets To Be Divested, other than changes in the ordinary course of business consistent with past practice for Supermarkets of the Respondents not being closed or relocated.

VI.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, J Sainsbury shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to 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 the county or counties that include 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 the county or counties that include the Relevant Areas.

Provided, however, that advance written notification shall not apply to the construction of new facilities by J Sainsbury or the acquisition of or leasing of a facility that has not operated as a Supermarket within six (6) months prior to J Sainsbury’s 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 J Sainsbury and not of any other party to the transaction. J Sainsbury 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

to the Commission verified written reports setting forth in detail the manner and form in which

XI.

IT IS FURTHER ORDERED, that if (i) Respondents have fully complied with all terms of Paragraphs VI through X of this Order; (ii) Respondents within forty-five (45) days after final issuance of this Order by the Commission have submitted a complete application in support of the divestiture of the Assets To Be Divested pursuant to Paragraphs II and III of this Order, as the case may be (including the buyer, manner of divestiture and all other matters subject to Commission approval); and (iii) the Commission has approved the divestiture and has not withdrawn its acceptance; but (iv) Respondents have certified to the Commission within ten (10) days after the Commission's approval of the divestiture that the Commonwealth of Massachusetts, notwithstanding timely and complete application by Respondents to the Commonwealth of Massachusetts, has failed to approve the divestiture under an Applicable Consent Decree of the particular assets or businesses whose divestiture is also required under this Order, then with respect to the particular divestiture that remains unconsummated, the time in which the divestiture is required under this Order to be completed shall be extended for sixty (60) days. During such sixty (60) day period, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the Commonwealth of Massachusetts.

By the Commission, Commissioner Leary not participating.

Donald S. Clark
Secretary

SEAL:

ISSUED: April 5, 2000

Schedule A

The Schedule A Assets consist of all assets, leases, properties, government permits, customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at the following locations in eastern Massachusetts, excluding the trade marks, trade dress, service marks, or trade names of Respondents:

J Sainsbury store No. 193, operating under the “Shaw’s Supermarket” trade name, located at 836 Main Street, Waltham, MA 02154;

J Sainsbury store No. 196, operating under the “Shaw’s Supermarket” trade name, located at 475 Hancock Street, North Quincy, MA 02171;

J Sainsbury store No. 122, operating under the “Shaw’s Supermarket” trade name, located at 435 Walpole Street, Route 1A, Norwood, MA 02062;

Star Markets store No. 169, operating under the “Star Markets” trade name, located at 7 Medway Road, Milford, MA 01757; and

Star Markets store No. 128, operating under the “Star Markets” trade name, located at 4 Washington Street and Pond Road, Norwell, MA 02106.

Schedule B

The Schedule B Assets consist of all assets, leases, properties, government permits, customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at the following locations in eastern Massachusetts, excluding the trade marks, trade dress, service marks, or trade names of Respondents:

Star Markets store No. 144, operating under the “Star Markets” trade name, located at 50 Boston Street, Lynn, MA 01904 and

Star Markets store No. 129, operating under the “Star Markets” trade name, located at 38 Paradise Road, Swampscott, MA 01907.

Schedule C

The Schedule C Assets consist of all assets, leases, properties, government permits, customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at the following locations in eastern Massachusetts, excluding the trade marks, trade dress, service marks, or trade names of Respondents:

Star Markets store No. 152, operating under the “Star Markets” trade name, located at 155 Great Road, Route 117, Stow, MA 01775 and

Star Markets store No. 118, operating under the “Star Markets” trade name, located at 3509 Boston Post Road, Route 20, Sudbury, MA 01776.

Schedule D

The Schedule D Assets consist of all assets, leases, properties, government permits, customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at the following location in eastern Massachusetts, excluding the trade marks, trade dress, service marks, or trade names of Respondents:

J Sainsbury store No. 338, operating under the “Shaw’s Supermarket” trade name, located at 10 Technology Drive, Route 85, Hudson, MA 01749.