Analysis of the Draft Complaint and Proposed Decision Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission) has accepted for public comment from Koninklijke Ahold NV, ("Ahold"), and Bruno's Supermarkets Inc., ("Bruno's") (collectively "the Proposed Respondents") an Agreement Containing Consent Orders ("the proposed consent order"). The Proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from Ahold's proposed acquisition of all of the outstanding voting stock of Bruno's.

II. Description of the Parties and the Proposed Acquisition

Ahold is a global food service and food retailer headquartered in the Netherlands. The company operates or services approximately 8,500 stores in the United States, Europe, Latin America and Asia and had sales of over \$49 billion in 2000. In the United States, Ahold, through its U.S. subsidiary Ahold U.S.A., Inc., operates over 1,300 retail food stores, including supermarkets under the Giant, Stop & Shop, Tops and BI-LO trade names. In the southeastern United States, Ahold owns and operates 294 BI-LO supermarkets as well as a number of Golden Gallon convenience stores.

Bruno's, headquartered in Birmingham, is the largest supermarket chain in the state of Alabama. With annual sales in 2000 of over \$1.5 billion, Bruno's operates 169 supermarkets in Alabama (123), Georgia (25), Florida (16) and Mississippi (2) as well as 13 liquor stores and two gas stations. Bruno's operates supermarkets under the trade names Bruno's Fine Foods, Food World, FoodMax, Food Fair and Fresh Value.

On September 4, 2001, Ahold and Bruno's signed an agreement whereby Ahold will purchase all of the outstanding voting securities of Bruno's through the merger of New Bronco Acquisition Corp., an indirect wholly owned subsidiary of Ahold, with and into Bruno's Supermarkets. Bruno's Supermarkets will continue as the surviving corporation. The value of the transaction is approximately \$500 million.

III. The Draft Complaint

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different stock-keeping units ("SKUs")), as well as an extensive inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

The Agreement Containing Consent Orders ("proposed consent order") will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Ahold must divest two BI-LO supermarkets, one in Milledgeville and one in Sandersville, Georgia. In each community, Ahold owns only one supermarket. Both of the divestitures are to experienced up-front buyers who would be new entrants in the relevant geographic markets and who the Commission has pre-evaluated for competitive and financial viability. The Commission's evaluation process consisted of analyzing the financial condition of the proposed acquirers and the locations of their current supermarkets to ensure that divestitures to them would not increase concentration or decrease competition in the relevant markets and to determine that these purchasers are well qualified to operate the divested stores.

In Milledgeville, Ahold will sell its BI-LO to The Kroger Co. ("Kroger"), which is headquartered in Cincinnati, Ohio. Kroger operates supermarkets in southeastern Georgia and throughout the United States. Ahold will sell its BI-LO in Sandersville to Winn-Dixie Stores, Inc. ("Winn-Dixie"), headquartered in Jacksonville, Florida. Winn-Dixie also operates supermarkets in southeastern Georgia and throughout the U.S.

Paragraph II.A. of the proposed consent order requires that the divestitures must occur no later than 10 business days after the merger is consummated. However, if Ahold consummates the divestitures to Kroger and Winn-Dixie during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Ahold that Kroger or Winn-Dixie is not an acceptable acquirer or that the asset purchase agreement with Kroger or Winn-Dixie is not an acceptable manner of divestiture, then Ahold must immediately rescind the transaction in question and divest those assets to another buyer within three months of the date the order becomes final. At that time, Ahold must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture the Commission may appoint a trustee with the power to divest any assets that have not been divested to satisfy the requirements of the proposed consent order.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or sites identified in the order that Ahold has not divested to satisfy the requirements of the proposed consent order. In addition, the proposed order enables the Commission to seek civil penalties against Ahold for non-compliance with the proposed consent order.

The proposed consent also requires Proposed Respondents to maintain the viability, marketability and competitiveness of the supermarkets identified for divestitures. Among other requirements related to maintaining operations at these supermarkets, the proposed consent order also specifically requires the Proposed Respondents to: (1) maintain the viability, competitiveness and marketability of the assets to be divested; (2) not causs tkre ld 0drf3u78 Tj 355.92 d ift thesupermark be divested; (2) no6 -14. supermarkets

with suppliers, customers, and employees; and (6) keep the supermarkets open for business and maintain the inventory at levels consistent with past practices.

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