

I. INTRODUCTION

The Federal Trade Commission (“Commission”) has accepted for public comment, and subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from The Great Atlantic & Pacific Tea Company, Inc. (“A&P”) and Pathmark Stores, Inc. (“Pathmark”). The purpose of the Consent Agreement is to remedy the anticompetitive effects that likely would result from A&P’s proposed \$1.3 billion acquisition (a figure that includes the assumption of debt by A&P) of Pathmark, as alleged in the Complaint the Commission has issued.

The Consent Agreement provides for relief in two markets where the Commission believes the proposed acquisition is anticompetitive. Under the terms of the Consent Agreement, A&P must divest four Waldbaum’s supermarkets and one Pathmark supermarket in Staten Island, New York, and one Waldbaum’s supermarket in Shirley, Long Island, New York.

The Commission, A&P, and Pathmark have also agreed to an Order to Maintain Assets.

Under the terms of their March 4, 2007, agreement, A&P will acquire all of the voting securities of Pathmark for approximately \$1.3 billion, including the assumption of debt.

III. C

According to the Commission's Complaint, A&P and Pathmark compete in the retail sale of grocery products from supermarkets. Supermarkets are stores that carry a wide selection and deep inventory of food and grocery products in a variety of brands and sizes, enabling consumers to purchase substantially all of their food and other grocery shopping requirements in a single shopping visit.

The Complaint alleges that the acquisition by A&P of Pathmark would be competitively problematic in Staten Island, New York, and Shirley, Long Island, New York, both of which are highly concentrated geographic markets. As alleged in the Complaint, the proposed acquisition may increase opportunities for all firms in these markets to engage in coordinated interaction or for A&P to exercise unilateral market power, leading to higher prices or decreases in services. The Complaint further alleges that entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the geographic markets.

The Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in connection with the

5. 999 Montauk Hwy.
Shirley, NY

The address of the one Pathmark store required to be divested is:

1. 2660 Hylan Blvd.
Staten Island, NY

The one Pathmark store and four Waldbaum's stores in Staten Island are required to be divested to King Kullen Grocery Co., Inc., headquartered in Bethpage, New York, and the Waldbaum's store in Shirley is required to be divested to The Stop & Shop Supermarket Company LLC ("Stop & Shop"). Stop & Shop is a subsidiary of Koninklijke Ahold NV, a Dutch corporation. The Commission evaluated these prospective acquirers and determined that they are well qualified to operate the divested supermarkets.

The proposed Consent Order requires that the divestitures occur no later than January 10, 2008. If Respondents consummate the divestitures to the purchasers during the public comment period, and if, at the time the Commission determines whether to make the proposed Consent Order final, the Commission notifies Respondents that the purchasers are not acceptable acquirers, or that the asset purchase agreements with those acquirers are not acceptable manners of divestiture, then Respondents must immediately rescind those transactions and divest the five Waldbaum's stores and one Pathmark store (and their related assets) to other buyers, within three (3) months of the date the Consent Order becomes final. Under those circumstances, Respondents must divest those stores and related 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 Respondents have not divested the supermarkets in a manner that satisfies the requirements of the Consent Order, the Commission may appoint a trustee to divest those assets.

The Commission has also issued an Order to Maintain Assets. Under its terms, Respondents are required to maintain the viability of the six supermarkets and their related assets pending their divestiture. More specifically, Respondents must: (1) maintain the viability, competitiveness, and marketability of the assets; (2) not cause the wasting or deterioration of those assets; (3) not sell, transfer, encumber, or otherwise impair the marketability of the assets; (4) maintain the supermarkets consistent with the parties' past practices; (5) use best efforts to preserve the supermarkets' existing relationships with suppliers, customers, and employees; and (6) keep the supermarkets open for business and maintain inventories at levels consistent with past practices.

The proposed Consent Order prohibits Respondents, for a period of ten years, from acquiring, without providing the Commission with prior notice, 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 Staten Island, New York, and the Shirley, Long Island, New

York area. The proposed Consent Order also prohibits Respondents, for a period of ten (10) years, from entering into or enforcing any agreement that restricts the ability of any person acquiring any interest in any location formerly used by Respondents as a supermarket in Staten Island or the Shirley area to operate that location as a supermarket. The proposed Consent Order does not prohibit Respondents from building new supermarkets, or leasing a facility not operated as a supermarket within the preceding six (6) months.

Under the terms of the proposed Consent Order, A&P is also required to provide the Commission with regular compliance reports demonstrating how it is complying with the terms of the Consent Agreement until it is in full compliance with that Agreement.