ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT
In the Matter of Koninklijke Ahold N.V./Safeway Inc., File No. 121-0055, Docket No.

I. Introduction and Background

The Federal Trade Commission ("Commission") has accepted for public comment, and subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Koninklijke Ahold N.V. ("Ahold"), its subsidiary, Giant Food Stores, LLC ("Giant"), Safeway Inc. ("Safeway"), and its subsidiary ("Genuardi's") (collectively "Respondents"), that is designed to remedy the anticompetitive effects that otherwise would result from Ahold's acquisition of certain Genuardi's supermarke purchased the chain in February 2001. Safeway is exiting the Philadelphia metropolitan market by selling or closing all 24 remaining Genuardi's markets in eastern Pennsylvania (Bucks, Montgomery, Delaware, and Chester counties), as well as four stores in New Jersey.

III. Supermarket Competition in Newtown, Pennsylvania

Ahold's proposed acquisition of Genuardi's in Newtown presents antitrust concerns in the retail sale of groceries. Competition in food retailing depends on proximity in both retailing format and in geographic location. Stores with similar formats located nearby each other provide a greater competitive constraint on each other's pricing than do stores of different formats or stores located at a greater distance. Giant and Genuardi's have stores in the Newton area, and they have a very similar format.

Giant and Genuardi's compete as supermarket retailers of grocery products. Supermarkets are full-line retail grocery stores that sell thousands of food and non-food products that typical families regularly consume at home (*e.g.*, fresh meat and seafood, dairy products, frozen goods, beverages, bakery goods, dry groceries, soaps, detergents, and health and beauty aids) and offer these products in a variety of sizes and brands. Supermarkets are large stores with at least 10,000 square feet of selling space and 30,000 to 60,000 different items, typically referred to as stock-keeping units or "SKUs." This broad set of products and services provides a "one-stop shopping" experience for consumers by enabling them to shop in a single store for all of their food and grocery needs. The ability to offer consumers one-stop shopping is a critical differentiating factor between supermarkets and other food retailers.

Other types of retailers that sell food and grocery items compete less strongly with Giant and Genuardi's. These others include "mom & pop" stores, convenience stores, specialty food stores, "premium natural and organic" markets,[1] mass merchants, and club stores. Although these types of retailers provide some level of competition to supermarkets, they do not have a supermarket's full complement of products and services, which means that if customers elect to shop at these retailers, they also must shop at a supermarket in order to satisfy their weekly grocery needs. Because of this, shoppers at one supermarket are more likely to respond to a price increase by switching to another supermarket than to choose a store with a different format, if both are equally convenient.[2]

To evaluate the effects of the acquisition on market concentration levels, we define the product market to be the retail sale of grocery products in supermarkets, consistent with practice in all but one prior grocery retailing case settled by consent order.[3]

[1] *See FTC v. Whole Foods Mkt., Inc.*, 533 F.3d 869 (D.C. Cir. 2008).

[2] Shoppers typically do not view these other food and grocery retailers as adequate substitutes for supermarkets and would be unlikely to switch to one of these retailers in response to a small but significant price increase or "SSNIP" by a hypothetical supermarket monopolist. *See* U.S. DOJ and FTC Horizontal Merger Guidelines § 4.1.1 (2010).

[3] *See, e.g.*, *Shaw's/Star Markets*, Docket C- 3934 (June 28, 1999); *Kroger/Fred Meyer*, Docket C - 3917 (January 10, 2000); *Albertson's/American Stores*, Docket C – 3986 (June 22, 1999); *Ahold/Giant*, Docket C - 3861 (April 5, 1999); *Albertson's/Buttrey*, Docket C - 3838 (December 8, 1998); *Jitney-Jungle Stores of America, Inc.*, Docket C - 3784 (January 30, 1998). *But see Wal-Mart/Supermercados Amigo*, Docket C - 4066 (November 21, 2002) (the Commission's complaint alleged that in Puerto Rico, club stores should be included in a product market that

Customers shopping at supermarkets are motivated primarily by convenience and, as a result, competition for supermarkets is local in nature. Generally, the overwhelming majority of consumers' grocery shopping occurs at stores located very close to where they live. Location is a critical component for closeness of competition between supermarkets. Supermarkets are a differentiated products industry with location serving as one of the primary drivers of differentiation and competition. A supermarket tends to be in most direct competition with those supermarkets located closest to it. Giant and Genuardi's are located approximately two miles from each other in the Newtown area, and the supermarkets' primary trade areas overlap significantly with each other. Acme is the only other supermarket operating in this area. The next-closest supermarket is located at least twice as far away as the Newtown supermarkets are to each other.

The relevant geographic market in which to measure concentration and analyze the competitive implications of Ahold's proposed acquisition of the Newtown Genuardi's is a roughly three to three-and-a-half mile circle measured from the center of Newtown and made up of the U.S. census tracts surrounding this area. Specifically, it consists of Newtown Township, Newtown Borough, and the portion of Middletown Township north of the line formed by Bridgetown Pike and Langhorne Yardley Road in Bucks County, Pennsylvania.

The Newtown, Pennsylvania, market for the sale of retail food and groceries in supermarkets is already highly concentrated, and would become significantly more so post-acquisition. The acquisition would reduce the number of supermarket competitors from three to two, creating a duopoly between Giant and Acme Markets. Under the Herfindal-Hirschman Index ("HHI"), which is the standard measure of market concentration under the 2010 Department of Justice and Federal Trade Commission Merger Guidelines, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. Giant's proposed acquisition of the Newtown Genuardi's creates market concentration levels well in excess of these thresholds. The post-acquisition HHI is 5000-5017, representing an increase of between 1221-1373 from pre-acquisition levels.

Staff's investigation and analysis demonstrate that Giant and Genuardi's are close competitors that compete directly for grocery shoppers in Newtown. Because a substantial number of consumers in Newtown consider Giant's and Genuardi's stores to be close substitutes, a post-acquisition price increase at one (or both) of Giant's stores would be profitable because the other Giant-owned supermarket would likely recoup enough of the otherwise lost volume for the price increase to be profitable. Absent relief, the transaction may also facilitate tacit or express coordination since Acme would be Giant's only remaining competitor in Newtown post-acquisition. Given the transparency of pricing and promotional practices between supermarkets and the fact that supermarkets "price check" competitors in the ordinary course of business, reducing the number of nearby competitors from three to two may facilitate collusion between the remaining supermarket competitors by making coordination easier to establish and monitor.

included supermarkets because club stores in Puerto Rico enabled consumers to purchase substantially all of their weekly food and grocery requirements in a single shopping visit).

New entry is unlikely to deter or counteract the likely anticompetitive effects of the proposed acquisition. Normally, as here, it takes two or more years for an entrant to secure a viable location, obtain the necessary permits and governmental approvals, build its retail establishment, and open to customers. Moreover, incumbent supermarkets often oppose entry efforts by competitor supermarkets, delaying further any potential entry into the relevant market. It is unlikely that entry sufficient to achieve a significant market impact would occur in a timely manner.

IV. The Proposed Consent Agreement

The sole purpose of this Analysis is to facilitate public comment on the proposed Consent Agreement. This Analysis does not constitute an official interpretation of the proposed Consent Agreement, nor does it modify its terms in any way.