

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill  
Maureen K. Ohlhausen

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In the Matter of )  
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Koninklijke Ahold N.V., )

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Koninklijke Ahold N.V. is a corporation organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located at Piet Heinkade 167-173, Amsterdam 1019-GM. Ahold U.S.A., Inc., a subsidiary of Koninklijke Ahold N.V., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

D.

with the damage or destruction of any of the foregoing assets that would have been included but for such damage or destruction, less the amount paid by Safeway in repairing or replacing such assets prior to the closing.

transfer to the Commission-approved Acquirer of the Genuardi's Supermarket Assets.

II.

IT IS FURTHER ORDERED

1. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Genuardi's Supermarket, to minimize any risk of loss of competitive potential for the Genuardi's Supermarket, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Genuardi's Supermarket Assets or the Genuardi's Supermarket, except for ordinary wear and tear; and
2. Not sell, transfer, encumber, or otherwise impair the Genuardi's Supermarket Assets or the Genuardi's Supermarket (other than in the manner prescribed in this Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Genuardi's Supermarket.

D.



- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture 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 Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
  2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission. ~~provided, however,~~ the Commission may extend the divestiture period only two (2) times.
  3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend



the time for divestiture under this Paragraph III. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable 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 and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring person, and if the Commission determines to approve more than one such acquiring person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission *provided further, however*, that Respondents shall select such person within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture 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 Divestiture 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 Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
  8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
  9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph II.
  - F. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

#### IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final, Respondent Ahold shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, ~~but~~ 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 Newtown, PA; or
- 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 Newtown, PA;

*Provided, however*, that advance written notification shall not apply to the construction of new facilities by Respondent Ahold or the acquisition ~~or~~ leasing of a facility that has not operated as a Supermarket within six (6) months prior to Respondent Ahold's offer to purchase or lease such facility.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Respondents made to the principal United States office, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent relating to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. To interview officers, directors, employees of Respondents, who may have counsel present, regarding any such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date the Order is issued.

By the Commission.

Donald S. Clark  
Secretary

ISSUED:

SEAL

Confidential Appendix I

[Redacted From the Public Version, But Incorporated By Reference]