



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 Delaware, with its office and principal place of business located at 1385 Hancock Street, Quincy, MA 02160.
2. Respondent Safeway Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, CA 94588.
3. 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. “Ahold” means Koninklijke Ahold N.V, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries (including, but not limited to, Ahold U.S.A. and Giant Food Stores, LLC), divisions, groups, and affiliates controlled by Ahold and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Safeway” means Safeway Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, partnerships (including, but not limited to, Genuardi’s Family Markets LP), subsidiaries, divisions, groups, and affiliates controlled by Safeway and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means Ahold and Safeway, individually and collectively.

- D. “Acquisition” means Ahold’s acquisition of certain Genuardi’s supermarkets, owned and operated by Safeway, in the greater Philadelphia, PA, area pursuant to the Acquisition Agreement.
- E. “Acquisition Agreement” means the Asset Purchase Agreement by and among Genuardi’s Family Markets LP, Safeway Inc., and Giant Food Stores, LLC, dated January 4, 2012, together with the Schedules and Exhibits attached thereto, as the same may be amended from time to time in accordance with the terms hereof.
- F. “Commission-approved Acquirer” means the entity approved by the Commission to acquire the Genuardi’s Supermarket Assets pursuant to this Order.
- G. “Divestiture Agreement” means any agreement between the Respondents and a Proposed Acquirer (or a trustee appointed pursuant to Paragraph III. of this Order and an Acquirer) and all amendments, exhibits, attachments, agreements, and

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.

For the avoidance of doubt, the Genuardi's Supermarket Assets shall include all assets in connection with the Genuardi's Supermarket, as defined herein, that Respondent Ahold acquires from Respondent Safeway pursuant to the Acquisition Agreement; *provided, however*, that the assets shall not include those assets consisting of or pertaining to any of the Respondents' trademarks, trade dress, service marks, or trade names.

- K. "McCaffrey's" means a chain of supermarkets organized, existing and doing business under and by virtue of the laws of Pennsylvania and New Jersey, with its offices and principal place of business located at 2200 Cabot Boulevard West, Langhorne, PA 19047-1842.
- L. "McCaffrey's Divestiture Agreement" means the Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease made and entered into April

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

## II.

**IT IS FURTHER ORDERED** that:

- A. Not later than ten (10) days after the date on which the Acquisition is consummated, Respondents shall divest the Genuardi's Supermarket Assets, absolutely and in good faith, as an ongoing business to McCaffrey's, pursuant to and in accordance with the McCaffrey's Divestiture Agreement, which is attached as non-public Appendix I.
- B. *Provided, however,* that if, prior to the date this Order becomes final, Respondents have divested the Genuardi's Supermarket Assets to McCaffrey's pursuant to the McCaffrey's Divestiture Agreement, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
  - 1. McCaffrey's is not a Commission-approved Acquirer of the Genuardi's Supermarket Assets, then Respondents shall:
    - a. immediately rescind the transaction with McCaffrey's, and
    - b. divest the Genuardi's Supermarket Assets 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, and otherwise comply with the obligations of Paragraph II, no later than sixty (60) days from the date the Commission notifies Respondents that McCaffrey's is not a Commission-approved Acquirer; or
  - 2. The manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee pursuant to Paragraph III. of this Order, to effect such modifications to the manner of divesting the Genuardi's Supermarket Assets to McCaffrey's (including, but not limited to, entering into additional agreements or arrangements, or modifying the McCaffrey's Divestiture Agreement) as may be necessary to satisfy the requirements of this Order.
- C. Pending divestiture of the Genuardi's Supermarket Assets, Respondents shall:

1.



- 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

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, 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 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 Part 803 of Title 16 of the Code of Federal Regulations as amended, 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 Respondent Ahold and not of any other party to the transaction. Respondent Ahold 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 the meaning of 16 C.F.R. § 803.20), Respondent Ahold shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

## V.

**IT IS FURTHER ORDERED** that:

- A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II. and III. of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. of this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of this Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their reports copies of all non-privileged written communications to and from such parties, all non-privileged internal memoranda, and all non-privileged reports and recommendations concerning completing the obligations; and
- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent Ahold shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

## VI.

**IT IS FURTHER ORDERED**

**VIII.**

**IT IS FURTHER ORDERED** that this Order shall terminate on August 16, 2022.

By the Commission.

Donald S. Clark  
Secretary

ISSUED: August 16, 2012  
SEAL

## Confidential Appendix I

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

## Appendix II

[Map of Newtown, Pennsylvania]

