TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	G & B Tugs, Inc.
	19984239	G	Merck & Co. Inc.
		G	Eastman Kodak Company.
		G	NanoSystems L.L.C.
	19984251	G	The Health Alliance of Greater Cincinnati.
		G	Fort Hamilton-Hughes Healthcare Corporation.
		G	Fort Hamilton-Hughes Healthcare Corporation.
	19984254	G	Schuff Steel Company.
		G	Wayne Harris.
		G	Six Industries, Inc.
	19984266	G	Lonnie C. Poole, Jr.
		G	Thomas C. Cannon.
		G	Trans Waste Services, Inc.
	19984279	G	Sara Lee Corporation.
		G	Quaker Oats Company (The).
		G	Continental Coffee Products Company.
	19984288	G	WinStar Communications, Inc.
		G	Cellular Vision USA, Inc.
		G	CellularVision of New York, L.P.
	19984291	G	Dawson Production Services, Inc.
		G	Hellums Services II.
		G	Hellums Services II.
	19984293	G	Fenway Partners Capitals Fund, L.P.
		G	New Creative Enterprises, Inc.
		G	New Creative Enterprises, Inc.
	19984295	G	Pentacon, Inc.
		G	West Coast Aero Products Holding Corp.
		G	West Coast Aero Products Holding Corp.
	19984301	G	Aviation Sales Company.
		G	Primark Corporation.
		G	Triad International Maintenance Corporation.
	19984302	G	Cox Enterprises, Inc.
		G	DWI Acquisition Corporation.
		G	DWI Acquisition Corporation.
	19984305	G	FS Equity Partners III, L.P.
		G	Thomas H. Lee Equity Partners, L.P.
		G	Cinnabon International, Inc.
	19984306	G	Hoechst AG.
		G	J. Roger Lumsden.
		G	Pye-Barker Welding Supply Company.
	19984308	G	Berkshire Cruise Holdings LLC.
		G	Phillip Levine.
		G	On-Board Media, Inc., Cruise Mgnt Intl, Inc., Boxer MediaInc.
	19984309	G	Continental AG.
		G	ITT Industries, Inc.
		G	ITT Industries, Inc.
	19984364	G	The Metzler Group, Inc.
		G	Peterson Consulting L.L.C.
		G	Peterson Consulting L.L.C.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–26030 Filed 9–28–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 981–0134]

Albertson's, Inc., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement an the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 30, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Richard Liebeskind, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2441.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 22, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of The Draft Complaint, Proposed Consent Order, and Asset Maintenance Agreement to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from Albertson's, Inc. (''Albertson's''), Locomotive Acquisition Corporation (''Locomotive''), Buttrey Food and Drug Store Company (''Buttrey''), and FS Equity Partners II, L.P. (''FS Equity Partners'')(collectively ''the proposed Respondents'') an Agreement Containing Consent Order (''the proposed consent order'') and an Asset Maintenance Agreement. Locomotive is a wholly-owned subsidiary of Albertson's, and FS Equity Partners owns a majority of the voting securities of Buttrey. The proposed consent order is designed to remedy likely anticompetitive effects arising from Albertson's and Locomotive's proposed acquisition of the outstanding shares of Buttrey.

II. Description of the Parties and the Proposed Acquisition

Albertson's, a Delaware corporation headquartered in Boise, Idaho, operates approximately 916 supermarkets in 23 Western, Midwestern, and Southern states. Albertson's supermarkets operate under the ''Albertson's'' and ''Max Food and Drug'' trade names. In the states where Albertson's competes with Buttrey, Albertson's operates nine supermarkets in Montana (eight directly compete with Buttrey stores) and nine supermarkets in Wyoming (seven directly compete with Buttrey stores). Albertson's total sales for the fiscal year ending January 29, 1998, were approximately $14.7 billion. At this time, based on total sales, Albertson's is the fourth largest supermarket chain in the United States.

Buttrey, a Delaware corporation headquartered in Great Falls, Montana, operates 44 supermarkets in Montana, Wyoming, and North Dakota. Buttrey operates supermarkets under the ''Buttrey Big Fresh,'' ''Buttrey Food & Drug,'' and ''Buttrey Fresh Foods'' trade names. Buttrey's total sales for the fiscal year ending January 31, 1998, were $391.4 million. FS Equity Partners owns 50.8% of the outstanding shares of Buttrey and is the ultimate parent entity. Freeman Spogli & Co., Inc., an investment firm, is the general partner of FS Equity Partners.

On or about January 19, 1998, Albertson's and Locomotive entered into an Agreement and Plan of Merger (''the proposed acquisition'') with Buttrey to acquire through a cash tender offer all of the outstanding common stock of Buttrey for $15.50 per share. Albertson's will also assume Buttrey's debt obligations. The total value of the proposed acquisition, including debt obligations, is approximately $174 million.

III. The Draft Complaint

The draft complaint accompanying the proposed consent order alleges that the proposed acquisition under which Albertson's and Locomotive would acquire all of the outstanding shares of Buttrey violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The draft complaint also alleges that the proposed acquisition would, if consummated, substantially lessen competition in violation of 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.

The draft complaint alleges that the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units (''SkUs'')) as well as a deep inventory of those SKUs. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices on the prices of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood ''mom & pop'' grocery stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets because they operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

According to the draft complaint, the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition of Buttrey by Albertson's and Locomotive are the areas in and near following cities and towns: (a) Billings, Montana; (b) Bozeman, Montana, (c) Butte, Montana; (d) Great Falls, Montana; (e) Helena, Montana; (f) Missoula, Montana; (g) Casper, Wyoming; (h) Cheyenne, Wyoming; (I) Cody, Wyoming; (j) Gillette, Wyoming; and (k) Laramie, Wyoming.

According to the draft complaint, the relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as ''HHI'') or by two-firm and four-firm concentration ratios.[1] The acquisition would substantially increase concentration in each market. Albertson's and Buttrey have a combined market share of more than 35% in each geographic market. The post-acquisition HHIs in the geographic markets range from 2,264 to 10,000.

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

Albertson's and Buttrey are direct competitors in every geographic market. According to the draft complaint, Albertson's and Locomotive's proposed acquisition of Buttrey, if consummated, may substantially lessen competition in the relevant markets by eliminating direct competition between supermarkets owned or controlled by Albertson's and supermarkets owned or controlled by Buttrey; by increasing the likelihood that Albertson's will unilaterally exercise market power; or by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country. According to the draft complaint, entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

IV. Terms of the Agreement Containing Consent Order, i.e., the Proposed Consent Order

The proposed consent order attempts to remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, the proposed Respondents must divest fifteen specific supermarkets in the relevant markets. Six of the supermarkets that the proposed Respondents must divest are currently owned and operated by Albertson's (of which five operate under the ''Albertson's'' banner and one operates under the ''Max'' banner) and nine of the supermarkets are currently owned and operated by Buttrey (of which two operate under the ''Buttrey Big Fresh'' banner and seven operate under the ''Buttrey Fresh Foods'' banner). The proposed Respondents must divest thirteen supermarkets to Smith's Food & Drug Centers, Inc. (''Smith's''), a wholly-owned subsidiary of Fred Meyer, Inc., and two supermarkets to Supervalu Holdings, Inc., a wholly-owned subsidiary of Supervalu, Inc. (collectively ''Supervalu''). The specific supermarkets that the proposed Respondents must divest to Smith's and Supervalu are listed below.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that exists prior to the merger. When divestiture is an appropriate remedy in a supermarket merger, the Commission requires the merging parties to find a buyer for the divested stores. A proposed buyer must not itself present competitive problems. For example, the Commission is less likely to approve a buyer that already has a large retail presence in the relevant geographic area than a buyer without such a presence. The Commission is satisfied that the purchasers presented by the parties are well qualified to run the divested stores and pose no separate competitive issues.

Although a supermarket chain is the proposed purchaser in many of the markets in this matter, this does not represent a Commission position that only large chains can be competitive in the supermarket business. Indeed, in several cases during the last few years, supermarkets required to be divested as a result of a Commission merger investigation have been sold to independent store operators (often with financial support from a wholesaler). See Jitney-Jungle Stores of America, Inc., Docket No. C–3784 (1998), Koninklijke Ahold nv, 122 F.T.C. 248 (1996), Schnuck Markets, Inc., 119 F.T.C. 798 (1995), Schwegmann Giant Super Markets, Inc., 119 F.T.C. 783 (1995), Red Apple Companies, Inc., 119 F.T.C. 273 (1995). With respect to the proposed divestiture in this matter, the proposed purchaser in Casper, Wyoming is Supervalu, Inc., itself a supplier of independent grocers.

Under the terms of the proposed consent order, the proposed Respondents must divest thirteen supermarkets to Smith's and two supermarkets to Supervalue either within ten days after the date on which Albertson's and Locomotive complete their proposed acquisition of the outstanding shares of Buttrey or four months after the date the proposed Respondents have signed the proposed consent order, whichever is earlier. Alternatively, the proposed Respondents shall divest the supermarkets to another acquirer that receives the prior approval of the Commission within three months after the proposed consent order becomes final. A sale to Smith's must be in accordance with the agreement between Albertson's and Smith's dated August 10, 1998. A sale to Supervalue must be in accordance with the agreement between Albertson's and Supervalu dated August 12, 1998. Supervalu cannot sell either of the two divested supermarkets within three years of when the proposed consent order becomes final to anyone without the prior approval of the Commission. If the proposed Respondents fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the proposed consent order.

Eight of the supermarkets that the proposed Respondents must divest are located in Montana—two in Billings, two in Butte, and one each in Bozeman, Great Falls, Helena, and Missoula. Seven of the supermarkets that the proposed Respondents must divest are located in Wyoming—two in Casper, two in Cheyenne, and one each in Cody, Gillette, and Laramie.

The thirteen supermarkets that the proposed Respondents must divest to Smith's in accordance with the agreement between Albertson's and Smith's dated August 10, 1998, are the following:

1. Buttery store no. 3925 operating under the ''Buttrey Big Fresh'' trade name, which is located at 1601 Marketplace Drive, Great Falls, MT 59404 (Cascade County).
2. Buttery store no. 3934 operating under the ''Buttrey Big Fresh'' trade name, which is located at 2825 West Main Street, Bozeman, MT 59715 (Gallatin County).
3. Buttery store no. 3824 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 1000 Boulder Avenue, Helena, MT 59601 (Lewis and Clerk County).
4. Albertson's store no. 226 operating under the ''Albertson's'' trade name, which is located at 1906 Brooks Street, Missoula, MT 59801 (Missoula County).
5. Buttery store no. 3930 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 3745 Harrison Avenue, Butte, MT 59701 (Silver Bow County).
6. Buttery store no. 3985 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 600 South Excelsior Street, Butte, MT 59701 (Silver Bow County).
7. Albertson's store no. 209 operating under the ''Albertson's'' trade name, which is located at 1633 Grand Avenue, Billing, MT 59102 (Yellowstone County).
8. Albertson's store no. 232 operating under the ''Albertson's'' trade name, which is located at 1531 Main Street, Billings, MT 59101 (Yellowstone County).
9. Albertson's store no. 805 operating under the ''Albertson's'' trade name, which is located at 1209 15th Street, Laramie, WY 82070 (Albany County).
10. Buttery store no. 3855 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 906 Camel Drive, Gillette, WY 82716 (Campbell County).
11. Albertson's store no. 863 operating under the ''Albertson's'' trade name, which is located at 3745 E. Lincoln

Way, Cheyenne, WY 82001 (Laramie County).

12. Albertson's store no. 1804 operating under the ''Max'' trade name, which is located at 1600 E. Pershing Blvd., Cheyenne, WY 82001 (Laramie County).

13. Buttery store no. 3941 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 1526 Rumsey Avenue, Cody, WY 82414 (Park County).

The two supermarkets that the proposed Respondents must divest to Supervalu in accordance with the agreement between Albertson's and Supervalu dated August 12, 1998, are the following:

1. Buttery store no. 3872 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 2101 East 12th Street, Casper, WY 82601 (Natrona County).

2. Buttery store no. 3878 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 4075 Cy Avenue, Caspter, WY 82601 (Natrona County).

For a period of ten years from the date the proposed consent order becomes final, the proposed Respondents are prohibited from acquiring, without prior notice to the Commission, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, Cascade, Gallatin, Lewis and Clerk, Missoula, Silver Bow, and Yellowstone counties in Montana, and Albany, Campbell, Laramie, Natrona, and Park counties in Wyoming. This provision does not prevent the proposed Respondents from constructing new supermarket facilities on their own; nor does it prevent the proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the proposed consent order also prohibits the proposed Respondents from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1998, to operate a supermarket at that site if such supermarket was formerly owned or operated by the proposed Respondents in Cascade, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone counties in Montana, and Albany, Campbell, Laramie, Natrona, and Park counties in Wyoming. In addition, the proposed Respondents may not remove any equipment from a supermarket they own or operate in these counties prior to a sale, sublease, assignment, or change in occupancy in these counties, except in the ordinary course of business, or except as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

The proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within thirty (30) days following the date on which they signed the proposed consent, every thirty (30) days thereafter until the divestitures are completed, and annually for a period of ten years. The obligations of FS Equity Partners under the proposed consent order will terminate upon consummation of the proposed acquisition between Albertson's, Locomotive, and Buttrey.

V. Terms of the Asset Maintenance Agreement

The proposed Respondents also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time Albertson's and Locomotive acquire the outstanding stock of Buttrey until the divestitures have been completed, the proposed Respondents must maintain the viability, competitiveness and marketability of the assets to be divested, and must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability. The Asset Maintenance Agreement specifies these obligations in detail. The obligations of FS Equity Partners under the Asset Maintenance Agreement will terminate upon consummation of the proposed acquisition between Albertson's, Locomotive, and Buttrey.

VI. Opportunity for Public Comment

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed consent order.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Smith's and Supervalu, to aid the Commission in its determination of whether it should make final the proposed consent order contained in the agreement. This analysis is not intended to constitute an official interpretation of the proposed consent order or the Asset Maintenance Agreement, nor is it intended to modify the terms of the proposed consent order or Asset Maintenance Agreement in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–26028 Filed 9–28–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following advisory subcommittees scheduled to meet during October 1998:

Name: Health Services Research Initial Review Group (Subcommittees: Health Systems Research, Health Care Quality and Effectiveness Research).

Date and Time: October 6, 1998, 8:30 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open October 6, 8:30 a.m. to 8:45 a.m.

Closed for remainder of meetings.

Purpose: The Health Systems Research Subcommittee is charged with the initial review of research applications relating to cost and financing of health care, health care markets, organizational and delivery system issues, and the provider workforce. The Health Care Quality and Effectiveness Research Subcommittee is charged with the initial review of research applications relating to clinical outcomes and effectiveness, quality and cost-effectiveness of health care, effectiveness research, evidence-based medicine, and quality of care research.

Agenda: The open sessions of these meetings on October 6, from 8:30 a.m. to 8:45 a.m., will be devoted to business meetings covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing research and demonstration grant applications relating to the delivery organization, and financing of health services. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.