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Dated September 18, 1997.

Federal Communications Commission.

**Shirley Suggs,**

*Chief, Publications Branch.*

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## FEDERAL TRADE COMMISSION

[File No. 971-0093]

**Jitney-Jungle Stores of America, Inc.; Bruckmann, Rosser, Sherrill & Co., L.P.; Delta Acquisition Corp.; Delchamps, Inc.; 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 and 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 24, 1997.

**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:** George S. Cary, Federal Trade Commission, H-374, 6th St. and Pennsylvania Ave. NW, Washington, DC 20580, (202) 326-3741. Phillip L. Broyles, Federal Trade Commission, S-2105, 6th St. and Pennsylvania Ave. NW, Washington, DC 20580. (202) 326-2805.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 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 accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for September 12, 1997), 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 § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

### **Analysis of Proposed Consent Order To Aid Public Comment**

#### **I. Introduction**

The Federal Trade Commission ("Commission") has accepted for public comment from Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckmann"), Delta Acquisition Corporation ("Delta"), and Delchamps, Inc. ("Delchamps") (collectively "the proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). Bruckmann owns a majority of the voting securities of Jitney-Jungle, and Delta is wholly-owned subsidiary of Jitney-Jungle. The proposed consent order is designed to remedy likely anticompetitive effects arising from Jitney-Jungle and Delta's proposed acquisition of the outstanding shares of Delchamps.

#### *II. Description of the Parties and the Acquisition*

Jitney-Jungle, which is headquartered in Jackson, Mississippi, is one of the leading supermarket chains in the Southeast. Jitney-Jungle operates 105 supermarkets in the states of Alabama, Arkansas, Louisiana, Mississippi, Florida, and Tennessee. The company is the largest supermarket operator in Mississippi with 72 stores. The company operates under three formats: (1) 78 conventional supermarkets under the "Jitney-Jungle" trade name; (2) 23 discount supermarkets under the "Sack and Save," "Mega Market," and "Mega Pantry" trade names; and (3) four premium supermarkets under the "Jitney Premier" trade name. Jitney-Jungle has sales of approximately \$1.13 billion at its supermarkets, and total sales of \$1.28 billion, in its 1997 fiscal year. The ultimate parent entity of Jitney-Jungle is Bruckmann, which owns a majority of the voting securities of Jitney-Jungle.

Delchamps, which is headquartered in Mobile, Alabama, is another leading supermarket chain in the Southeast. Delchamps operates a total of 118 conventional supermarkets under the "Delchamps" trade name. Delchamps' supermarkets are located in Alabama, Florida, Louisiana, and Mississippi. In addition, the company operates ten liquor stores in the state of Florida, Louisiana, and Mississippi. In addition, the company operates ten liquor stores in the state of Florida. Delchamps had sales of approximately \$1.08 billion at its supermarkets, and total sales of \$1.1 billion, in its 1997 fiscal year.

On or about July 8, 1997, Jitney-Jungle and Delta, a wholly-owned subsidiary of Jitney-Jungle, entered into a cash tender offer agreement with Delchamps to acquire all of the outstanding common stock of Delchamps for \$30 per share. The total value of the proposed acquisition is approximately \$228 million.

#### *III. The Complaint*

The draft complaint accompanying the proposed consent order alleges that the acquisition, as well as the agreement to enter into the acquisition, would substantially lessen competition in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45.

According to the draft complaint, the relevant line of commerce (i.e., the product market) is the retail sale of food and grocery items in supermarkets, and Jitney-Jungle and Delchamps are direct competitors. Stores other than

supermarkets are not in the relevant product market because they do not have a significant price-constraining effect on food and grocery products sold at supermarkets. 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. In addition, supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not typically change their food and grocery prices in response to prices at other types of stores.

Food stores other than supermarkets, such as convenience stores, "mom & pop" stores, and specialty food stores (e.g., seafood markets, bakeries, etc.) are not in the relevant product market because they typically offer far fewer items than the average supermarket and charge higher prices for many of the same or similar items. Other types of stores that sell some food and grocery products, such as large drug stores and mass merchandisers, offer only a limited number of items sold in the typical supermarket. The small number of membership club stores in the relevant market, which offer only a limited number of food and grocery products primarily in bulk sizes, do not have a significant effect on market concentration.

Military commissaries are also not in the relevant product market. Military commissaries, which are not open to the public, operate as supermarkets for eligible military personnel and their families with retail prices substantially below the average retail prices at supermarkets for the same or similar items in the Gulfport-Biloxi area in Mississippi, and in Pensacola, Florida. Retail prices at military commissaries are not advertised and are uniform throughout the country based on the actual cost of the item plus a nationwide uniform surcharge determined by rules established by the Secretary of Defense. Retail prices at military commissaries are not based on local market conditions. Supermarkets do not price-check food and grocery products sold at military commissaries and do not base their prices on the retail prices at the military commissaries.

According to the draft complaint, the relevant sections of the country (i.e., the geographic markets) in which to analyze the acquisition of Delchamps by Jitney and Delta are the following:

a. The Gulfport-Biloxi area of Mississippi, which consists of the parts of Hancock, Harrison, and Jackson counties that include Waveland, Bay Saint Louis, Pass Christian, Long Beach, Gulfport, Biloxi, D'Iberville, and Ocean

Springs, and narrower markets contained therein, including Waveland/Bay Saint Louis, Gulfport, north Gulfport, and Biloxi/D'Iberville.

b. Pensacola, Florida, and narrower markets contained therein;

c. Hattiesburg, Mississippi, and the area immediately west of Hattiesburg; and

d. Vicksburg, Mississippi.

According to the draft complaint, these 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. The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants. The acquisition would significantly increase the HHIs in each of the already highly concentrated markets.

According to the draft complaint, entry into the retail sale of food and grocery products in supermarkets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

Jitney-Jungle and Delta's acquisition of Delchamps may reduce competition in these markets by eliminating the direct competition between Jitney-Jungle and Delchamps, by increasing the likelihood that Jitney-Jungle will unilaterally exercise market power, or by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining competitors. 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.

#### *IV. Terms of the Proposed Consent Order*

The proposed consent order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed consent order, the proposed Respondents must divest the ten supermarkets listed below—five Jitney-Jungle owned and operated stores (four of which are "Jitney-Jungle" stores and one is a "Sack & Save" store) and five Delchamps—to Supervalu Holdings, Inc., a wholly-owned subsidiary of Supervalu, Inc. (collectively "Supervalu"), within either one month after the date on which the proposed consent order becomes final, or five months after the acceptance of the proposed consent order for public

comment, whichever is later, or to another acquirer that receives the prior approval of the Commission within three months after the proposed consent order becomes final. A sale to Supervalu by the proposed Respondents must be in accordance with the agreement between Supervalu and Jitney-Jungle dated August 29, 1997, and all subsequent amendments thereto.

If the proposed Respondents divest the ten listed supermarkets to Supervalu within three months of the date on which the proposed consent order becomes final, Supervalu may sell any of these supermarkets to either R&M Foods, Inc. ("R&M Foods") or Southeast Foods, Inc. ("Southeast Foods"). R&M Foods currently operates 18 supermarkets, and Southeast Foods currently operates 21 supermarkets. If Supervalu does not sell the ten listed supermarkets to either R&M Foods or Southeast Foods within three months of the date on which the proposed consent order becomes final, Supervalu cannot sell the ten listed supermarkets to anyone without the prior approval of the Commission.

Five of the ten supermarkets to be divested are located in the Gulfport-Biloxi area; two are located in Pensacola, Florida; two are located in Hattiesburg, Mississippi; and one is located in Vicksburg, Mississippi. 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. The ten supermarkets to be divested are:

1. The following supermarket located in Hancock County, Mississippi:

a. Delchamps store no. 64 operating under the "Delchamps" trade name, which is located at Choctaw Plaza Shopping Center, 318 Highway 90, Waveland, MS 39576;

2. The following supermarkets located in Harrison County, Mississippi:

a. Jitney-Jungle store no. 33 operating under the "Jitney-Jungle" trade name, which is located at 917 Division St., Biloxi, MS 39530;

b. Jitney-Jungle store no. 32 operating under the "Jitney-Jungle" trade name, which is located at 1225 Pass Road, Gulfport, MS 39501;

c. Jitney-Jungle store no. 42 operating under the "Jitney-Jungle" trade name, which is located at Handsboro Square Shopping Center, 1345 East Pass Road, Gulfport, MS 39501; and

d. Delchamps store no. 364 operating under the "Delchamps" trade name, which is located at 11240-A Highway 49 North, Gulfport, MS 39503;

3. The following supermarkets located in Escambia County, Florida:

a. Jitney-Jungle store no. 54 operating under the "Jitney-Jungle" trade name, which is located at 4081-A East Olive Road, Pensacola, FL 32514.

b. Jitney-Jungle store no. 52 operating under the "Sack & Save" trade name, which is located at Brent Oaks Mall, East Brent Lane, Pensacola, FL 32503.

4. The following supermarket located in Lamar County, Mississippi:

a. Delchamps store no. 67 operating under the "Delchamps" trade name, which is located at Oak Grove Plaza Shopping Center, 4600 West Hardy Street, Hattiesburg, MS 39401.

5. The following supermarket located in Forrest County, Mississippi:

a. Delchamps store no. 9 operating under the "Delchamps" trade name, which is located at 601 Broadway Street, Hattiesburg, MS 39401.

6. The following supermarket located in Warren County, Mississippi:

a. Delchamps store no. 115 operating under the "Delchamps" trade name, which is located at Delchamps Plaza, 3046-D Indiana Avenue, Vicksburg, MS 39180.

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 Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida. 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 July 1, 1997, to operate a supermarket at that site if such supermarket was formerly owned or operated by the proposed Respondents in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida. In addition, the proposed Respondents may not remove any equipment from a supermarket they own or operate prior to a sale, sublease,

assignment, or change in occupancy, 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 sixty (60) days following the date the proposed consent order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

The proposed Respondents also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time Jitney-Jungle acquires the outstanding stock of Delchamps until the divestitures have been completed, the proposed Respondents must maintain their viability, competitiveness and marketability, 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.

#### *V. 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 Supervalu, R&M Foods, and Southeast Foods, 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 agreement and proposed consent order, nor is it intended to modify the

terms of the agreement and proposed consent order in any way.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97-25185 Filed 9-22-97; 8:45 am]

BILLING CODE 6750-01-M

## **GENERAL SERVICES ADMINISTRATION**

### **Privacy Act of 1974; System of Records**

**AGENCY:** Notice of a revised record system subject to the Privacy Act of 1994.

**SUMMARY:** This document gives notice, under the Privacy Act of 1994, 5 U.S.C. 552a, of GSA's proposal to revise a record system maintained by GSA.

GSA proposes to revise the record system, Payroll Information Processing System, PPFM-9, to reflect that GSA plans to disclose data to: (1) The Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action; (2) the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement; and (3) the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return. A revised system report has been filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget.

**DATES:** And interested party may submit written comments concerning the revision. Comments must be received on or before the 30th day after GSA publishes this notice. The system becomes effective without further notice on October 1, 1997. Unless comments received would warrant a contrary decision.

**ADDRESSES:** Address comments to Denise Johnson, Privacy Act Officer, General Services Administration, 1800 F Street, NW, (CAI), Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Denise W. Johnson, GSA Privacy Act Officer (202) 501-1659.