

percent of the voting shares of Fairbury State Bank, Fairbury, Nebraska.

2. *Grandview Bankshares, Inc.*, Tahlequah, Oklahoma; to acquire 100 percent of the voting shares of Cherokee County Bankshares, Inc., Hulbert, Oklahoma, and thereby indirectly acquire First State Bank, Hulbert, Oklahoma.

Board of Governors of the Federal Reserve System, November 2, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-27629 Filed 11-07-95; 8:45 am]

BILLING CODE 6210-01-F

Peter Mahurin; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peter Mahurin*, Cecilia, Kentucky; to acquire 26.92 percent of the voting shares of First Cecilian Bancorp, Inc., Cecilia, Kentucky, and thereby indirectly acquire Cecilian Bank, Cecilia, Kentucky.

Board of Governors of the Federal Reserve System, November 2, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

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BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 951 0086]

The Stop & Shop Companies, Inc., and SSC Associates, L.P.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: This consent agreement, accepted subject to final Commission approval, settles alleged violations of federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition arising from Stop & Shop and SSC Associates' acquisition of the supermarkets owned by Purity Supreme, Inc. Under the terms of the proposed order contained in the consent agreement, Stop & Shop and SSC Associates, among other things, must divest 17 supermarkets within nine months to a purchaser or purchasers approved by the Commission. Seven of the 17 supermarkets to be divested are located on Cape Cod, and all seven must be divested to one acquirer who shall own and operate them as supermarkets. If Stop & Shop and SSC Associates are unable to divest all seven stores on Cape Cod to a single acquirer who shall own and operate them as supermarkets, Stop & Shop and SSC Associates may divest the stores to no more than two acquirers. If Stop & Shop and SSC Associates fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. For a period of ten years, the proposed order also would prohibit Stop & Shop and SSC Associates 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—Eastern Massachusetts, which includes the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein. This provision would not prevent Stop & Shop and SSC Associates from constructing new supermarket facilities on their own; nor would it prevent Stop & Shop and SSC Associates from leasing facilities not operated as supermarkets within the previous six months. Under the terms of an attached Asset Maintenance Agreement—from the time Stop & Shop and SSC Associates acquire the assets of Purity that must be divested, until the point at which the divestitures required by the proposed order have been completed—Stop & Shop and SSC Associates must maintain

their viability, competitiveness and marketability; must not cause their wasting or deterioration; and cannot sell, transfer, or otherwise impair their marketability or viability.

DATES: Comments must be received on or before January 8, 1996.

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: Ronald B. Rowe, FTC/S-2602, Washington, DC 20580 (202) 326-2610; or James A. Fishkin, FTC/S-2610, Washington, DC 20580 (202) 326-2663.

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 following 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. 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)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of Purity Supreme, Inc. ("Purity") by The Stop & Shop Companies, Inc. ("Stop & Shop") and SSC Associates, L.P., and it now appearing that Stop & Shop and SSC Associates, L.P., hereinafter sometimes referred to as "proposed respondents," are willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and among proposed respondents, their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent The Stop & Shop Companies, 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 1385 Hancock Street, Quincy, MA 02169.

2. Proposed respondent SSC Associates, L.P. is a limited partnership 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 c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York 10019.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

- a. any further procedural steps;
- b. the requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United

States Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the proposed complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file verified written reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "Stop & Shop" means The Stop & Shop Companies, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by The Stop & Shop Companies, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. "Respondent" or "SSC Associates, L.P." means SSC Associates, L.P., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by SSC Associates, L.P., their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. "Assets to be divested" means the supermarket assets described in Paragraph II.A. of this Order.

D. "Commission" means the Federal Trade Commission.

E. "Supermarket" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other

household products, and health and beauty aids.

F. The term "Eastern Massachusetts" means the area in Massachusetts consisting of the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein.

II

It is further ordered that:

A. Respondents shall divest, absolutely and in good faith, within nine (9) months from the date this Order becomes final:

1. The following supermarkets located in Barnstable County, Massachusetts (a/k/a Cape Cod) to one acquirer who shall own and operate them:

a. Purity store no. 67 located at 137 Main St. (Route 28—Falmouth Mall), Falmouth, MA 02540;

b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151—Mashpee Commons Shopping Center), Mashpee, MA 02649;

c. Purity store no. 63 located at 625 West Main St., Hyannis, MA 02601;

d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA 02601;

e. Purity store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA 02664;

f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA 02671; and

g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA 02653.

If respondents are unable to divest all of the supermarkets listed to one acquirer who shall own and operate them, respondents may divest all of the supermarkets listed to no more than two acquirers who shall own and operate them.

2. The following supermarkets located in Plymouth County, Massachusetts:

a. Purity store no. 89 located at 182 Summer St. (Routes 3A and 53—Kingsbury Square Shopping Center), Kingston, MA 02364;

b. Purity store no. 74 located at Ocean and Webster Sts. (Routes 139 and 3A—Webster Square), Marshfield, MA 02050; and

c. Purity store no. 25 located at 240 East Ashland St. (Cary Hill Shopping Center), Brockton, MA 02402.

3. The following supermarket located in Suffolk County and in the city of Boston, Massachusetts:

a. Purity store no. 41 located at 630 American Legion Highway, Roslindale, MA 02131.

4. The following supermarkets located in Middlesex County, Massachusetts:

a. Purity store no. 03 located at 170 Great Road (Routes 4 and 225), Bedford, MA 01730;

b. Purity store no. 44 located at 2151 Mystic Valley Parkway, Medford, MA 02155; and

c. Stop & Shop store no. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, MA 02172.

5. The following supermarket located in Essex County, Massachusetts:

a. Purity store no. 01 located at 400 Lynn Fells Parkway, Saugus, MA 01960.

6. The following supermarkets located in Norfolk County, Massachusetts:

a. Purity store no. 20 located at 525 Harvard St., Brookline, MA 02146; and
b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA 02190.

The assets to be divested shall include the supermarket business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the supermarket operations at the locations listed above, but shall not include those assets consisting of or pertaining to Stop & Shop or Purity trade names, trade dress, trade marks, service marks, and such other intangible assets that respondents also utilize in their business at locations other than those listed above.

B. Respondents shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets to be divested as ongoing viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition alleged in the Commission's complaint.

C. Pending divestiture of the assets to be divested, respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the assets to be divested to comply with Paragraphs II. and III. of this Order and to prevent the destruction, removal, wasting, deterioration, or impairment of the assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

D. Respondents shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as all assets to be divested have been divested as required by this Order.

III

It is further ordered that:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the

assets to be divested within nine (9) months from the date this Order becomes final, the Commission may appoint a trustee to divest any of the assets to be divested. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The 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 trustee within ten (10) days after written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be delivered.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes divestiture can be achieved

within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her 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 at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The 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 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 trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at

least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II. of this Order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any ownership or leasehold interest in any facility that has operated as a supermarket within six (6) months of the date of such proposed acquisition in Eastern Massachusetts.

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 of such proposed acquisition in Eastern Massachusetts.

Provided, however, that advance written notification shall not apply to the construction of new facilities by respondents or the acquisition of or leasing of a facility that has not operated as a supermarket within six (6) months of respondents' offer to purchase or lease.

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 (hereinafter referred to as "the Notification"), 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 respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (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, respondents shall not consummate the transaction until twenty days after substantially complying with such request for additional information. 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, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. 12(a)) that requires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after July 1, 1995, to operate a supermarket at that site if such supermarket was formerly owned or operated by Purity in Eastern Massachusetts, or was owned or operated by respondents either in Barnstable County, Massachusetts (a/k/a Cape Cod) or not more than two miles from any other supermarket formerly owned or operated by Purity in Eastern Massachusetts. *Provided, however,* respondents shall not be prevented from entering into or enforcing any agreement (1) requiring their approval of any sublease, assignment, or change in occupancy, which approval shall not be unreasonably withheld; provided further that use of a site for the

operation of a supermarket shall not be a basis for withholding such approval; or (2) affecting any existing supermarket owned or operated by respondents and located not more than one mile from a replacement supermarket owned or operated by respondents and opened within six months of the date of such agreement.

B. Respondents shall not remove any equipment from a supermarket owned or operated by respondents in Eastern Massachusetts prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by respondents in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VI

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of Paragraphs II. or 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 compliance 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 the Order, including a description of all substantive contracts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date of 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, respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in respondents such as dissolution, assignment, sale resulting in the emergency of a successor

corporation, or the creation or dissolution of subsidiaries or any other change in respondents that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, respondents shall permit any duly authorized representative of the Commission:

A. Upon five days' written notice to respondents, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this Order; and

B. Upon five days' written notice to respondents and without restraint or interference from respondents, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between The Stop & Shop Companies, Inc. ("Stop & Shop"), 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 02169 11420; SSC Associates, L.P. ("SSC Associates"), a limited partnership 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 c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York 10019; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (collectively "the Parties").

Premises

Whereas, Stop & Shop and SSC Associates, pursuant to an agreement dated April 21, 1995, agreed to acquire all of Purity Supreme, Inc. (hereinafter "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is

required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested as described in II.A. of the attached Agreement Containing Consent Order ("Assets") during the period prior to their divestitures, when those Assets will be in the hands of Stop & Shop and SSC Associates, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Stop & Shop and SSC Associates entering into this Agreement shall in no way be construed as an admission by Stop & Shop and SSC Associates that the Acquisition is illegal; and

Whereas, Stop & Shop and SSC Associates understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets, the Parties agree as follows:

Terms of Agreement

1. Stop & Shop and SSC Associates agree to execute, and upon its issuance to be bound by, the attached Consent Order. The Parties further agree that each term defined in the attached

Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Stop & Shop and SSC Associates will be free to close the Acquisition after 3:00 p.m., October 31, 1995.

3. Stop & Shop and SSC Associates agree that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 3.a-3.b, they will comply with the provisions of this Agreement:

a. three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. on the day the divestiture set out in the Consent Order has been completed.

4. From the time Stop & Shop and SSC Associates acquire the Assets until the divestiture set out in the Consent Order has been completed, Stop & Shop and SSC Associates shall maintain the viability, competitiveness and marketability of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall they sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Commission seek in any proceeding to compel Stop & Shop and SSC Associates to divest themselves of the Assets or to seek any other injunctive or equitable relief, Stop & Shop and SSC Associates shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Stop & Shop and SSC Associates also waive all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Stop & Shop and SSC Associates and to their principal offices, Stop & Shop and SSC Associates shall permit any duly authorized representative or representatives of the Commission:

a. access during the office hours of Stop & Shop and SSC Associates, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Stop

& Shop and SSC Associates relating to compliance with this Agreement; and

b. upon five (5) days' notice to Stop & Shop and SSC Associates and without restraint or interference from them, to interview officers or employees of Stop & Shop and SSC Associates, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from The Stop & Shop Companies, Inc. ("Stop & Shop") and SSC Associates, L.P. ("SSC Associates") an agreement containing a proposed consent order. The agreement is designed to remedy anticompetitive effects stemming from Stop & Shop and SSC Associates' acquisition of the supermarkets owned by Purity Supreme, Inc. ("Purity").

The agreement 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 order.

The Commission's draft complaint charges that on or about April 21, 1995, Stop & Shop and SSC Associates agreed to acquire all of the supermarkets owned by Purity. The Commission has reason to believe 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, Stop & Shop and Purity are direct competitors for the retail sale of food and grocery items in supermarkets, or narrower product markets contained therein. Stores other than supermarkets 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.), 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 upscale food stores emphasizing organically grown fruits and vegetables, hormone-free meat and poultry products, and other more expensive food products, and club stores that offer only a limited number of food and grocery products in bulk sizes, do not have a significant effect on market concentration.

According to the draft complaint, the relevant sections of the country in which to analyze the acquisition of Purity are the following:

a. Barnstable County, Massachusetts (a/k/a Cape Cod), and narrower markets contained therein, including Falmouth, Mashpee, Hyannis, Yarmouth, Harwich, and Orleans;

b. the South Shore area of Massachusetts, which consists of parts of Suffolk and Plymouth counties and narrower markets contained therein, including Marshfield and Kingston;

c. the Boston, Massachusetts metropolitan area, which consists of the city of Boston and parts of Essex, Middlesex, Norfolk, and Suffolk counties, and narrower markets contained therein, including Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth;

d. Brockton, Massachusetts; and

e. Bedford, Massachusetts.

According to the draft complaint, these markets are highly concentrated. The post-acquisition Herfindahl-Hirschman Index ("HHI"), a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants, in Barnstable County, Massachusetts (a/k/a Cape Cod) would increase by approximately 2,778 points, from approximately 3,541 to approximately 6,319. The post-acquisition HHI in Falmouth, Mashpee, and Hyannis would increase to 10,000 or near 10,000 in each of these markets. The post-acquisition HHI in Yarmouth, Harwich, and Orleans would significantly increase already highly concentrated markets.

The post-acquisition HHI in the South Shore area of Massachusetts would increase by approximately 3,866 points,

from approximately 3,930 to approximately 7,795. The post-acquisition HHI in Marshfield and Kingston would increase to 10,000 or near 10,000 in each of these markets.

The post-acquisition HHI in the Boston, Massachusetts metropolitan area would increase by approximately 512 points, from approximately 1,381 to approximately 1,893. The post-acquisition HHI exceeds 2,000 when club stores and upscale food stores are not included in the market. The post-acquisition HHI in Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth would significantly increase already highly-concentrated markets.

The post-acquisition HHI in Bedford, Massachusetts would increase by approximately 4,702 points, from approximately 5,298 to approximately 10,000.

The post-acquisition HHI in Brockton, Massachusetts would increase by approximately 497 points, from approximately 5,162 to approximately 5,659.

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 sections of the country. Entry that would prevent the anticompetitive effects in the relevant sections of the country is generally difficult because there are few available sites suitable for supermarkets and the time necessary to receive state and local regulatory approval for a new supermarket is typically quite long.

Stop & Shop and SSC Associates' acquisition of Purity may reduce competition in these markets by eliminating the direct competition between Stop & Shop and Purity, by increasing the likelihood that Stop & Shop will become a dominant firm, and by increasing the likelihood of collusive behavior among the remaining competitors. The Agreement Containing Consent Order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order Stop & Shop and SSC Associates must divest 17 supermarkets within nine months to a purchaser or purchasers approved by the Commission. Seven of the 17 supermarkets to be divested are located on Cape Cod, and all seven must be divested to one acquirer who shall own and operate them as supermarkets. If Stop & Shop and SSC Associates are unable to divest all seven stores on Cape Cod to a single acquirer who shall own

and operate them as supermarkets, Stop & Shop and SSC Associates may divest the stores to no more than two acquirers. If Stop & Shop and SSC Associates fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. The 17 supermarkets to be divested are:

1. The following supermarkets located in Barnstable County, Massachusetts (a/k/a Cape Cod):

a. Purity store no. 67 located at 137 Main St. (Route 28—Falmouth Mall), Falmouth, MA 02540;

b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151—Mashpee Commons Shopping Center), Mashpee, MA 02649;

c. Purity store no. 63 located at 625 West Main St., Hyannis, MA 02601;

d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA 02601;

e. Purity Store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA 02664;

f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA 02671; and

g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA 02653.

2. The following supermarkets located in Plymouth County, Massachusetts:

a. Purity store no. 89 located at 182 Summer St. (Routes 3A and 53—Kingsbury Square Shopping Center), Kingston, MA 02364;

b. Purity store no. 74 located at Ocean and Webster Sts. (Routes 139 and 3A—Webster Square), Marshfield, MA 02050; and

c. Purity store no. 25 located at 240 East Ashland St. (Cary Hill Shopping Center), Brockton, MA 02402.

3. The following supermarket located in Suffolk County and in the city of Boston, Massachusetts:

a. Purity store no. 41 located at 630 American Legion Highway, Roslindale, MA 02131.

4. The following supermarkets located in Middlesex County, Massachusetts:

a. Purity store no. 03 located at 170 Great Road (Routes 4 and 225), Bedford, MA 01730;

b. Purity store no. 44 located at 2151 Mystic Valley Parkway, Medford, MA 02155; and

c. Stop & Shop store no. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, MA 02172.

5. The following supermarket located in Essex County, Massachusetts:

a. Purity store no. 01 located at 400 Lynn Fells Parkway, Saugus, MA 01960.

6. The following supermarkets located in Norfolk County, Massachusetts:

a. Purity store no. 20 located at 525 Harvard St., Brookline, MA 02146; and

b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA 02190.

For a period of ten years from the date the order becomes final, the order also prohibits Stop & Shop and SSC Associates 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 Eastern Massachusetts. Eastern Massachusetts consists of the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein. This provision does not prevent Stop & Shop and SSC Associates from constructing new supermarket facilities on their own; nor does it prevent Stop & Shop and SSC Associates from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the order prohibits Stop & Shop and SSC Associates from entering into or enforcing any agreement that restricts the ability of any person acquiring any location used as a supermarket, or interest in any location used as a supermarket on or after July 1, 1995, to operate a supermarket at that site if that site was a former Purity store in Eastern Massachusetts, and any supermarket owned or operated by any Stop & Shop and SSC Associates either in Cape Cod or not more than two miles from any other supermarket formerly owned or operated by Purity in Eastern Massachusetts. There is an exception for agreements that impose restrictions on supermarkets that are located no more than one mile from a new replacement supermarket owned and operated by Stop & Shop or SSC Associates when the restrictions are entered into within six months of the opening of the new replacement store. In addition, Stop & Shop and SSC Associates 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 certain other circumstances.

Stop & Shop and SSC Associates are required to provide to the Commission a report of compliance with the order within sixty (60) days following the date the order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

Stop & Shop and SSC Associates also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time

Stop & Shop and SSC Associates acquire the assets of Purity that must be divested until the divestitures set out in the attached consent agreement have been completed, Stop & Shop and SSC Associates must maintain their viability, competitiveness and marketability, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability.

The purpose of this analysis is to invite public comment on the proposed consent order 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.

By direction of the Commission.

Donald S. Clark,
Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in The Stop & Shop Companies, Inc., File No. 951-0086

I concur in the Commission's decision to accept a proposed consent order for public comment to the extent that the order requires divestiture of supermarkets on Cape Cod and the South Shore, but dissent to the extent that the order requires divestiture of stores in the Boston metropolitan area. Although serious questions can be raised about some of the allegations in the complaint that relate to the product market, I find reason to believe that the law has been violated even if the product market includes sales of food and groceries in stores other than traditional supermarkets. Assuming either the product market alleged in the complaint or a broader product market, I concur in the decision to accept the order as to Cape Cod and South Shore. I dissent from the decision to require divestiture of stores in the Boston metropolitan area. Although a small geographic market theoretically may exist within a broad metropolitan area, at this time the record before the Commission does not contain sufficient evidence to support a finding of reason to believe that the communities of Saugus, Medford, Brookline, Roslindale, Watertown, Weymouth, Brockton and Bedford, Massachusetts are relevant antitrust markets.

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