

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

In the Matter of

**Lone Star Fund V (U.S.), L.P.,
a limited partnership;**

**Bi-Lo Holdings, LLC,
a limited liability company;**

**Etablissements Delhaize Frères et Cie “Le
Lion” (Group Delhaize) SA/NV,
a public limited company (société
anonyme/naamloze vennootschap);**

and

**Delhaize America, LLC
a limited liability company.**

Docket No. C-4440

DECISION AND ORDER

[Public Record Version]

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Bi-Lo Holdings, LLC (“Bi-Lo”), a subsidiary of Respondent Lone Star Fund V (U.S.), L.P. (“Lone Star”), of certain assets of Respondent

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Lone Star” means Respondent Lone Star Fund V (U.S.), L.P., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Lone Star Fund V (U.S.), L.P. (including Respondent Bi-Lo), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Bi-Lo” means Respondent Bi-Lo Holdings, LLC

- H. “Acquisition Agreement” means the Agreement and Plan of Merger by and among Delhaize America, LLC, Kash N’ Karry Food Stores, Inc., J.H. Harvey, Co., LLC, Food Lion, LLC, Retained Subsidiary One, LLC, Bi-Lo, LLC and Samson Merger Sub, LLC, dated as of May 27, 2013, as amended and restated on January 31, 2014.
- I. “Assets To Be Divested” means the Harveys Supermarkets (Store Nos. 2336, 2349, 2370, 2374, 2375, 2378, and 2379), the Reid’s Supermarket (Store No. 442), and the Sweetbay Supermarket (Store No. 1791) identified on Schedule A of this Order, and all rights, title and interest in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Supermarket business operated at each of those locations, including but not limited to all properties, leases, leasehold interests, equipment and fixtures, books and records, government approvals and permits (to the extent transferable), telephone and fax numbers, and goodwill. At each Acquirer’s option, the Assets To Be Divested shall also include any or all inventory as of the Divestiture Date.
- Provided, however, that Assets To Be Divested shall not include those assets consisting of or pertaining to any of the Respondents’ trademarks, trade dress, service marks or trade names, ~~except~~ with respect to any purchased inventory (including private label inventory) or as may be allowed pursuant to any Transition Services Agreement.
- J. “Divestiture Agreement” means any agreement between Respondents and an Acquirer (or a Divestiture Trustee appointed pursuant to Paragraph III of this Order and an Acquirer) and all amendments, exhibits, attachments, agreements, and schedules thereto, related to any of the Assets To Be Divested that have been approved by the Commission to accomplish the requirements of this Order. The term “Divestiture Agreement” includes, as appropriate, the Food Giant Divestiture Agreement, the Homeland Divestiture Agreement, the Sunripe Market Divestiture Agreement, and the W. Lee Flowers Divestiture Agreement.
- K. “Divestiture Date” means a closing date of the respective divestitures required by this Order.
- L. “Divestiture Trustee” means any person or entity appointed by the Commission pursuant to Paragraph III of the Order to act as a trustee in this matter.
- M. “Fifth Closing” means the fifth scheduled closing pursuant to Article II of the Acquisition Agreement.
- N. “Sixth Closing” means the sixth scheduled closing pursuant to Article II of the Acquisition Agreement.
- O. “Seventh Closing” means the seventh scheduled closing pursuant to Article II of the Acquisition Agreement.
- P. “Eighth Closing” means the eighth and final scheduled closing pursuant to Article II of the Acquisition Agreement.

- Q. “Food Giant” means Food Giant Supermarkets, Inc., a Supermarket operator organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its offices and principle place of business located at 120 Industrial Drive, Sikeston, Missouri.
- R. “Food Giant Divestiture Agreement” means the Divestiture Agreement dated as of January 24, 2014, by and between Respondent Bi-

2. Within 10 days of the Sixth Closing pursuant to the Acquisition Agreement, Harveys Store No. 2370 (Sylvania, Georgia) shall be divested to W. Lee Flowers pursuant to and in accordance with the W. Lee Flowers Divestiture Agreement;
3. Within 10 days of the Seventh Closing pursuant to the Acquisition Agreement, Harveys Store No. 2349 (Waynesboro, Georgia) shall be divested to W. Lee Flowers pursuant to and in accordance with the W. Lee Flowers Divestiture Agreement;
4. Within 10 days of the Eighth Closing pursuant to the Acquisition Agreement, Harveys Store Nos. 2378 (Bainbridge, Georgia) and 2379 (Madison, Florida) shall be divested to Food Giant pursuant to and in accordance with the Food Giant Divestiture Agreement, and Reid's Store No. 442 (Batesburg, South Carolina) shall be divested to W. Lee Flowers pursuant to and in accordance with the W. Lee Flowers Divestiture Agreement;
5. Within 30 days of the date this Order becomes final, Sweetbay Store No. 1791 (Wauchula, Florida) shall be divested to Sunripe Market pursuant to and in accordance with the Sunripe Market Divestiture Agreement.

Provided, however, that in cases in which books or records included in the Assets To Be Divested contain information (a) that relates both to the Assets To Be Divested and to other retained businesses of Respondents or (b) such that Respondents have a legal obligation to retain the original copies, then Respondents shall be required to provide only copies or relevant excerpts of the materials containing such information. In instances where such copies are provided to an Acquirer, the Respondents shall provide to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes.

- B. Provided, further that if, prior to the date this Order becomes final, Lone Star and Bi-Lo have divested the Assets To Be Divested pursuant to Paragraph II.A and if, at the time the Commission determines to make this Order final, the Commission notifies Lone Star and Bi-Lo that:
1. Any Proposed Acquirer identified in Paragraph II.A is not an acceptable Acquirer, then Lone Star and Bi-Lo shall, within five days of notification by the Commission, rescind such transaction with that Proposed Acquirer, and shall divest such assets as ongoing Supermarket businesses, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission, within 90 days of the date the Commission notifies Lone Star and Bi-Lo that such Proposed Acquirer is not an acceptable Acquirer; or

- C. Respondents shall obtain at their sole expense all required Third Party Consents relating to the divestiture of all Assets To Be Divested prior to the applicable Divestiture Date.
- D. All Divestiture Agreements approved by the Commission:
1. Shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of any such Divestiture Agreement shall constitute a violation of this Order.
 2. Shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligation of Respondents under such agreement. If any term of any Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.
- E. At the option of each Acquirer of any Assets To Be Divested, and subject to the prior approval of the Commission, Respondents shall enter into a Transition Services Agreement for a term extending up to 180 days following the relevant Divestiture Date. The services subject to the Transition Services Agreement shall be provided at no more than Respondents’ direct costs and may include, but are not limited to, payroll, employee benefits, accounting, IT systems, distribution, warehousing, use of trademarks or trade names for transitional purposes, and other logistical and administrative support.
- F. Pending divestiture of any of the Assets To Be Divested, Respondents shall:
1. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Assets To Be Divested, to minimize any risk of loss of competitive potential for the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested, except for ordinary wear and tear; and
 2. Not sell, transfer, encumber, or otherwise impair the Assets To Be Divested (other than in the manner prescribed in this Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Assets To Be Divested.
- G. With respect to each Divestiture Agreement:
1. No later than fifteen (15) days after signing each Divestiture Agreement, Respondents shall provide an opportunity for the Proposed Acquirer to:
 - a. Meet personally, and outside of the presence or hearing of any employee or agent of any Respondents, with any one or more of the employees of the Supermarket assets to be divested pursuant to the Divestiture Agreement; and

- b. Make offers of employment to any one or more of the employees of the Supermarket assets to be divested pursuant to the Divestiture Agreement; and
 2. Respondents shall: not interfere with the hiring or employing by the Acquirer of employees of the divested Supermarkets; remove any impediments within the control of Respondents that may deter those employees from accepting employment with such Acquirer (including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer); and not make any counteroffer to any employee who has an outstanding offer of employment from such Acquirer. This obligation shall continue for a period of one (1) year from the date of the divestiture of any of the Assets To Be Divested to an Acquirer.
- H. The purpose of the divestitures 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 as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Lone Star and Bi-Lo have not divested all of the Assets To Be Divested in the time and manner required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the remaining Assets To Be Divested in a manner that satisfies the requirements of this Order. 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, Lone Star and Bi-Lo shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture 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 Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Lone Star and Bi-Lo shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 1. The Commission shall select the Divestiture Trustee, subject to the consent of Lone Star and Bi-Lo, which consent shall not be unreasonably withheld. The Divestiture Trustee -61.
failure

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, contract, deliver, or otherwise convey the relevant assets or rights that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order.
3. Within ten (10) days after appointment of the Divestiture Trustee, Lone Star and Bi-Lo shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestitures or transfers required by the Order.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission; provided, however, the Commission may extend the divestiture period only two (2) times.
5. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the relevant assets that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). 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 Divestiture Trustee, by the court.
6. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the

7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Lone Star and Bi-Lo, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Lone Star and Bi-Lo, such consultants, accountants, attorneys,

14. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

IV.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years commencing on the date this Order is issued, Lone Star and Bi-Lo shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission:
 1. Acquire any ownership or leasehold interest in any facility that has operated as a Supermarket within six (6) months prior to the date of such proposed acquisition in any of the Relevant Areas.
 2. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any Supermarket, or owned any interest in or operated any Supermarket within six (6) months prior to such proposed acquisition, in any of the Relevant Areas.

Provided, however, that advance written notification shall not apply to the construction of new facilities or the acquisition or leasing of a facility that has not operated as a Supermarket within six (6) months prior to Lone Star's or Bi-Lo's offer to purchase or lease such facility.

- B. Said notification under this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Lone Star and Bi-Lo and not of any other party to the transaction. Lone Star and Bi-Lo shall provide the notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Lone Star and Bi-Lo shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. **Provided, however,** that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all material written communications to and from such parties, all non-privileged internal memoranda, reports and recommendations concerning completing the obligations; and
- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Lone Star and Bi-Lo shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VI.

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

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

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

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

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on January 13, 2025.

By the Commission, Commission McSweeney not participating.

Donald S. Clark
Secretary

SEAL:
ISSUED: January 13, 2015

Schedule A
Assets To Be Divested

Harvey's Store No. 2336, located 300 W 1st St., Vidalia, Georgia
Harvey's Store No. 2349, located at 208 W 6th St., Waynesboro, Georgia
Harvey's Store No. 2370, located at 101 Mims Rd, Sylvania, Georgia
Harvey's Store No. 2374, located at 603 Northside Dr. W, Suite 2, Statesboro, Georgia
Harvey's Store No. 2375, located at 620 Fair Rd, Statesboro, Georgia
Harvey's Store No. 2378, located at 1615 E. Shotwell St., Bainbridge, Georgia
Harvey's Store No. 2379, located at 819 E. Base St., Madison, Florida
Reid's Store No. 442, located at 217 W. Columbia Ave., Batesburg, South Carolina
Sweetbay Store No. 1791, located at 1133 US Highway 17 South, Wauchula, Florida

APPENDIX I

Food Giant Divestiture Agreement

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

APPENDIX II
Homeland Divestiture Agreement

APPENDIX III

Sunripe Market Divestiture Agreement

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

APPENDIX IV

W. Lee Flowers Divestiture Agreement

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