

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

_____)
In the Matter of)
)
)
KONINKLIJKE AHOLD NV,)
a corporation; and) File No. 961-0052
)
)
AHOLD USA, INC.,)
a corporation.)
_____)

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of The Stop & Shop Companies, Inc. ("Stop & Shop") by Koninklijke Ahold nv ("Royal Ahold") and Ahold USA, Inc. ("Ahold USA"), and it now appearing that Royal Ahold and Ahold USA, 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 between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Koninklijke Ahold nv is a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH

Zaandam, The Netherlands.

2. Proposed Respondent Ahold USA, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at executive offices at One Atlanta Plaza, 950 East Paces Ferry Road, Suite 2575, Atlanta, Georgia, 30326.

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 complaint here attached and its decision containing the following Order to divest (as modified by any approved final purchase and sale agreements) 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' counsel, Robert D. Paul, Esq., White &

Case, 601 13th Street, N.W., Suite 600 South, Washington, D.C., 20005, 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. "Royal Ahold" means Koninklijke Ahold nv, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Koninklijke Ahold nv, their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. "Ahold USA" means Ahold USA, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Ahold USA, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. "Respondents" means Royal Ahold and Ahold USA.

D. "Assets to be Divested" means the supermarkets identified in Paragraph II.A. of this Order as well as the supermarket business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the supermarket operations at those locations, but need not include the "Stop & Shop" or "Edwards" 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 identified in Paragraph II.A. of this Order.

E. "Commission" means the Federal Trade Commission.

F. "Acquisition" means Royal Ahold's proposed purchase of all the voting stock of Stop & Shop pursuant to an agreement dated on or about March 27, 1996.

G. "Supermarket" means a full-line retail grocery store with annual sales of at least two million dollars 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, and other household products.

H. "Overlap Areas" means the following incorporated towns and cities:

- a) New Milford, Connecticut;
- b) Windham and Mansfield, Connecticut;
- c) Wallingford and Meriden, Connecticut;
- d) Waterbury, Watertown, and Naugatuck, Connecticut;
- e) "the greater Hartford, Connecticut, area," which includes Hartford, New Britain, Newington, Wethersfield, Farmington, West Hartford, Bloomfield, Windsor, South Windsor, East Hartford, Manchester, Glastonbury, and Vernon, Connecticut;
- f) Avon and Simsbury, Connecticut;
- g) Enfield, Somers, East Windsor, Suffield, and Windsor Locks, Connecticut;
- h) Southington and Plainville, Connecticut;
- i) Milford, Orange, West Haven, and New Haven, Connecticut;
- j) East Haven, Branford, Guilford, Madison, Clinton, and

Old Saybrook, Connecticut;

- k) Fairfield, Stratford, Bridgeport, Trumbull, and Shelton, Connecticut;
- l) South Kingstown and Narragansett, Rhode Island;
- m) "the greater Providence, Rhode Island, area," which includes East Providence, Providence, Pawtucket, Warwick, Cranston, Central Falls, Lincoln, Smithfield, Barrington, Bristol, Cumberland, North Providence, Johnston, West Warwick, East Greenwich, and Coventry, Rhode Island; and Attleboro and Seekonk, Massachusetts; and
- n) "the greater Springfield, Massachusetts, area," which includes Springfield, West Springfield, South Hadley, Chicopee, Westfield, Holyoke, Agawam, Southwick, Longmeadow, and East Longmeadow, Massachusetts.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest, absolutely and in good faith, within thirty (30) days from the date this Order becomes final:
 - 1) to Star Markets Company, pursuant to a letter of intent dated July 2, 1996:
 - a) Edwards supermarket number 821 located at 295 Armistice Boulevard, Pawtucket, RI;
 - b) Edwards supermarket number 751 located at 200

Niantic Avenue, Providence, RI;

c) Edwards supermarket number 815 located at
1810 Plainfield Pike, Cranston, RI;

d) Edwards supermarket number 817 located at 418
Kingstown Road, Wakefield, RI;

e) Edwards supermarket number 779 located at
1401 Bald Hill Road, Warwick, RI;

f) Edwards supermarket number 820 located at
1000 Division Street, East Greenwich, RI; and

g) Stop & Shop supermarket number 458 located at
Route 6 & 1 Commercial Way, Seekonk, MA.

2) to Bozzuto's Inc., pursuant to a letter of intent
dated July 1, 1996:

a) Edwards supermarket number 295 located at 207
Hartford Turnpike, Vernon, CT;

b) Edwards supermarket number 362 located at
Newbrite Plaza, 60 East Main Street, New Britain,
CT;

c) Edwards supermarket number 748 located at 333
North Main Street, West Hartford, CT; and

d) Edwards supermarket number 768 located at 750
Queen Street, Southington, CT.

3) to Shaw's Supermarkets, Inc., pursuant to a letter
of intent dated July 2, 1996:

- a) Edwards supermarket number 725 located at 40 Hazard Avenue, Enfield, CT;
- b) Edwards supermarket number 742 located at 953 Wolcott Road, Waterbury, CT;
- c) Edwards supermarket number 758 located at 538 Boston Post Road, Orange, CT;
- d) Edwards supermarket number 773 located at 875 Bridgeport Avenue, Shelton, CT;
- e) Stop & Shop supermarket number 665 located at 55 Welles Street, Glastonbury, CT;
- f) Edwards lease agreement for premises located in the former Rich's Department Store, Wakefield

- Mall, Tower Hill Road, South Kingstown, RI;
- g) Edwards supermarket number 312 located at 1100 Barnum Avenue, Stratford, CT;
 - h) Edwards lease agreement for the former Grand Union store site located at 800 Barnum Avenue, Stratford, CT;
 - i) Edwards supermarket number 200 located at 1975 Black Rock Turnpike, Fairfield, CT;
 - j) Edwards supermarket number 299 located at 1167 Main Street, Watertown, CT;
 - k) Edwards supermarket number 823 located at 266 East Main Street, Clinton, CT;
 - l) Edwards supermarket number 749 located at 60 Cantor Drive, Willimantic, CT;
 - m) Edwards supermarket number 783 located at 245 Kane Street, West Hartford, CT; and
 - n) Edwards supermarket number 317 located at 976 North Colony Road, Wallingford, CT.
- 4) to Big Y Foods, Inc., pursuant to a letter of intent dated June 7, 1996, as modified by letters of July 2, 1996:
- a) Edwards supermarket number 728 located at 830 Boston Post Road, Guilford, CT;
 - b) Edwards supermarket number 722 located at 650

Memorial Drive, Chicopee, MA;

c) Edwards supermarket number 704 located at West Main Route 44, Avon, CT;

d) Edwards supermarket number 368 located at 3 Kent Road, New Milford, CT; and

e) Edwards supermarket number 329 located at 265 Ellington Road, East Hartford, CT.

B. If Respondents have not divested the Assets to be Divested pursuant to Paragraph II.A., Respondents shall divest the Assets to be Divested within thirty (30) days from the date this Order becomes final 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.

C. The purpose of the divestiture of the Assets to be Divested is to ensure the continuation of the Assets to be Divested as ongoing viable enterprises engaged in the Supermarket business and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested absolutely and in good faith the Assets to be Divested pursuant to Paragraph II. of this Order, the Commission may appoint a trustee to divest the Assets to be Divested. In the event that the Commission brings an

action pursuant to § 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), 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 from seeking civil penalties or any other relief available to it, including a court-appointed trustee pursuant to § 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by 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 receipt of 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 Divested.

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 divestiture required by this Order.

4. The 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, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that 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 period only two (2) times for up to six (6) months each time.

5. The trustee shall have full and complete access to the Assets to be Divested and to the personnel, books, records and facilities related to the Assets to be Divested or to any other relevant information, as the trustee may

reasonably 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 divestiture. 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 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. In the event that the trustee receives bona fide offers from more than one acquiring entity, the trustee shall submit all such bids to the Commission, and if the Commission determines to approve more than one such acquiring entity for the Assets to be Divested, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

7. In the event the trustee determines that he or she is unable to divest the Assets to be Divested as described in Paragraph II in a manner consistent with the terms of this Order, the trustee may on his or her own initiative, or at the direction of the Commission, divest any additional or substitute supermarkets of the Respondents located in the respective overlap areas and effect such arrangements as are necessary to satisfy the requirements of this Order.

8. 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, and at reasonable fees, 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 divestiture 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, and may include an incentive arrangement relating to price.

9. 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, 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.

10. 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.

11. 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 reasonably necessary or appropriate to accomplish the divestiture required by this Order.

12. The trustee shall have no obligation or authority to operate or maintain the Assets to be Divested.

13. The trustee shall report in writing to Respondents and the Commission every forty-five (45) days concerning the trustee's efforts to accomplish divestiture.

IV.

IT IS FURTHER ORDERED that:

A. 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 consistent 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.

B. 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.

V.

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 the Overlap Areas; or

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any supermarket or owned any interest in or operated any supermarket within six (6) months of such proposed acquisition in the Overlap Areas.

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 the Notification. The Notification shall be filed with the Secretary of the Commission and need not be made to the United States Department of Justice. The 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.

VI.

IT IS FURTHER ORDERED that Respondents shall be bound by the terms and obligations of the Consent Order issued by the Commission in *The Stop & Shop Companies, Inc., et al.*, Docket No. C-3649.

VII.

IT IS FURTHER ORDERED that:

A. Within forty-five (45) days after the date this Order becomes final and every forty-five (45) 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. 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 proposals for 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 concerning divestiture.

B. One year (1) 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, 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.

VIII.

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 emergence of a successor corporation to Respondents, or the creation or dissolution of subsidiaries or any other change in Respondents that may affect compliance obligations arising out of the Order.

IX.

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.

Signed this day of July, 1996.

KONINKLIJKE AHOLD NV, A CORPORATION

By: _____
Paul P.J. Butzelaar
Senior Vice President General Counsel
KONINKLIJKE AHOLD NV

Robert D. Paul, Esq.
WHITE & CASE
Counsel for KONINKLIJKE AHOLD NV

J. Mark Gidley, Esq.
WHITE & CASE
Counsel for KONINKLIJKE AHOLD NV

AHOLD USA, INC., A CORPORATION

By: _____
Paul P.J. Butzelaar
Senior Vice President General Counsel
KONINKLIJKE AHOLD NV

Robert D. Paul
WHITE & CASE
Counsel for AHOLD USA, INC.

J. Mark Gidley, Esq.
WHITE & CASE
Counsel for AHOLD USA, INC.

FEDERAL TRADE COMMISSION

By:

Marimichael O. Skubel
Attorney
Bureau of Competition

Phillip L. Broyles
Assistant Director
Bureau of Competition

George S. Cary
Senior Deputy Director
Bureau of Competition

William J. Baer
Director
Bureau of Competition

APPENDIX I

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
KONINKLIJKE AHOLD NV,)	
a corporation; and)	File No. 961-0052
)	
AHOLD USA, INC.,)	
a corporation.)	

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between Koninklijke Ahold nv ("Royal Ahold"), a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands; Ahold USA, Inc. ("Ahold USA"), a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at One Atlanta Plaza, 950 East Paces Ferry Road, Suite 2575, Atlanta, GA 30326; 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, Royal Ahold and Ahold USA, pursuant to an agreement dated on or about March 27, 1996, agreed to acquire the voting stock of The Stop & Shop Companies, Inc. ("the 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 the attached Agreement Containing Consent Order ("Assets") during the period prior to their divestitures, 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 or acquirers, 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 divestitures to the acquirer or acquirers approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

WHEREAS, Royal Ahold and Ahold USA entering into this Agreement shall in no way be construed as an admission by Royal Ahold or Ahold USA that the Acquisition is illegal; and

WHEREAS, Royal Ahold and Ahold USA 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, the Parties agree as follows:

TERMS OF AGREEMENT

1. Royal Ahold and Ahold USA 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, Royal Ahold and Ahold USA will be free to close the Acquisition after July 15, 1996.

3. Royal Ahold and Ahold USA agree that from the date this Agreement is signed 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 divestitures set out in the Consent Order have been completed.

4. From the time Royal Ahold and Ahold USA acquire The Stop & Shop Companies, Inc., until the divestiture set out in the Consent Order has been completed, Royal Ahold and Ahold USA shall maintain the viability 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. From the time Royal Ahold and Ahold USA acquire The Stop & Shop Companies, Inc., until the divestiture set out in the Consent Order has been completed, Royal Ahold and Ahold USA shall maintain the competitiveness of the Assets. This includes but is

not limited to the maintaining of promotions and discount policies (e.g., double and triple coupon policies and store coupon promotions) as well as the continuation of specific store services (e.g., hours of operation and operation of specific departments).

6. Should the Commission seek in any proceeding to compel Royal Ahold and Ahold USA to divest themselves of the Assets or to seek any other injunctive or equitable relief, Royal Ahold and Ahold USA 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. Royal Ahold and Ahold USA also waive all rights to contest the validity of this Agreement.

7. 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 Royal Ahold or Ahold USA and to their principal offices, Royal Ahold and Ahold USA shall permit any duly authorized representative or representatives of the Commission:

a. upon three (3) days' notice to Royal Ahold or Ahold USA, access during the office hours of Royal Ahold or Ahold USA, 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 Royal Ahold or Ahold USA relating to compliance

with this Agreement; and

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

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

Signed this day of July, 1996.

KONINKLIJKE AHOLD NV, A CORPORATION

By: _____
Paul P.J. Butzelaar
Senior Vice President General Counsel
KONINKLIJKE AHOLD NV

Robert D. Paul, Esq.
WHITE & CASE
Counsel for KONINKLIJKE AHOLD NV

J. Mark Gidley, Esq.
WHITE & CASE
Counsel for KONINKLIJKE AHOLD NV

AHOLD USA, INC., A CORPORATION

By: _____
Paul P.J. Butzelaar
Senior Vice President General Counsel
KONINKLIJKE AHOLD NV

Robert D. Paul
WHITE & CASE
Counsel for AHOLD USA, INC.

J. Mark Gidley, Esq.
WHITE & CASE
Counsel for AHOLD USA, INC.

FEDERAL TRADE COMMISSION

By: _____
Stephen C. Calkins

General Counsel

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

In the Matter of)	
)	
KONINKLIJKE AHOLD NV,)	
a corporation; and)	
)	Docket No.
AHOLD USA, INC.,)	
a corporation.)	
)	
)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Koninklijke Ahold nv, and respondent Ahold USA, Inc. (collectively referred to as "Ahold"), corporations subject to the jurisdiction of the Commission, have acquired certain voting securities of The Stop & Shop Companies, Inc. ("Stop & Shop") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

Definitions

1. For the purposes of this complaint, the following definition shall apply:

"Supermarket" means a full-line retail grocery store with annual sales of at least two million dollars 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, and other household products.

Koninklijke Ahold nv

2. Respondent Koninklijke Ahold nv ("Royal Ahold") is a corporation organized, existing and doing business under and by virtue of the laws of The Netherlands, with its executive offices located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands.

3. Respondent Royal Ahold owns and operates five regional supermarket chains in the United States. Royal Ahold owns a chain of supermarkets that operate under the trade name "Edwards" in Connecticut, Rhode Island, and Massachusetts.

4. Respondent Royal Ahold is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Ahold USA, Inc.

5. Respondent Ahold USA, Inc. ("Ahold USA"), a wholly-owned subsidiary of Royal Ahold, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its executive offices at One Atlanta Plaza, 950 East Paces Ferry Road, Suite 2575, Atlanta, GA 30326.

6. Respondent Ahold USA is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Acquisition

7. On or about March 27, 1996, Ahold and Stop & Shop entered into an agreement whereby Ahold agreed to purchase the voting stock of Stop & Shop.

Trade and Commerce

8. The relevant line of commerce in which to analyze the effects of the acquisition described herein is the retail sale of food and grocery products in supermarkets.

9. The relevant sections of the country in which to analyze the acquisition described herein are the areas in and around the following incorporated cities and towns:

- a) New Milford, Connecticut;
- b) Windham and Mansfield, Connecticut;
- c) Wallingford and Meriden, Connecticut;
- d) Waterbury, Watertown, and Naugatuck, Connecticut;
- e) "the greater Hartford, Connecticut, area," which includes Hartford, New Britain, Newington, Wethersfield, Farmington, West Hartford, Bloomfield, Windsor, South Windsor, East Hartford, Manchester, Glastonbury, and Vernon, Connecticut;
- f) Avon and Simsbury, Connecticut;
- g) Enfield, Somers, East Windsor, Suffield, and Windsor Locks, Connecticut;
- h) Southington and Plainville, Connecticut;
- i) Milford, Orange, West Haven, and New Haven, Connecticut;
- j) East Haven, Branford, Guilford, Madison, Clinton, and Old Saybrook, Connecticut;
- k) Fairfield, Stratford, Bridgeport, Trumbull, and Shelton, Connecticut;
- l) South Kingstown and Narragansett, Rhode Island;
- m) "the greater Providence, Rhode Island, area," which includes East Providence, Providence, Pawtucket, Warwick, Cranston, Central Falls, Lincoln, Smithfield, Barrington, Bristol, Cumberland, North Providence, Johnston, West Warwick, East Greenwich, and Coventry, Rhode Island; and Attleboro and Seekonk, Massachusetts; and
- n) Chicopee, Massachusetts.

Market Structure

10. The retail sale of food and grocery products in supermarkets in the relevant sections of the country is concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios.

Entry Conditions

11. 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.

Actual Competition

12. Prior to the acquisition described herein, Ahold and Stop & Shop were actual competitors in the relevant line of commerce in the relevant sections of the country.

Effects

13. The effect of the acquisition may be substantially to lessen competition in the relevant lines of commerce in the relevant sections of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating direct competition between supermarkets owned or controlled by Ahold and supermarkets owned or controlled by Stop & Shop,
- b. by increasing the likelihood that Ahold will unilaterally exercise market power, or
- c. by increasing the likelihood of, or facilitating, collusion or coordinated interaction,

each of which 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.

Violations Charged

14. The acquisition as described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

15. The acquisition as described in Paragraph 7, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this day of
1996.

By the Commission.

Donald S. Clark
Secretary

Seal:

Issued:

**ANALYSIS TO AID PUBLIC COMMENT ON
THE PROVISIONALLY ACCEPTED CONSENT ORDER**

The Federal Trade Commission ("the Commission") has accepted for public comment, from Koninklijke Ahold nv and Ahold USA, Inc., Inc. (collectively referred to as "Ahold"), an agreement containing a consent order. The agreement is designed to remedy any anticompetitive effect stemming from Ahold's proposed acquisition of The Stop & Shop Companies, Inc. ("Stop & Shop").

This agreement has been placed on the public record for sixty days for reception of comments from interested persons. The Commission is requesting public comment on the entire consent agreement, including the proposed divestitures as well as the proposed purchasers of these assets.

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 order.

Complaint's Allegations

The Commission's proposed complaint alleges that Ahold and Stop & Shop are direct competitors for the retail sale of food and grocery items in supermarkets in the market areas of 1) New Milford, Connecticut; 2) Windham and Mansfield, Connecticut; 3)

Wallingford and Meriden, Connecticut; 4) Waterbury, Watertown and Naugatuck, Connecticut; 5) the greater Hartford, Connecticut area, which includes Hartford, New Britain, Newington, Wethersfield, Farmington, West Hartford, Bloomfield, Windsor, South Windsor, East Hartford, Manchester, Glastonbury, and Vernon, Connecticut; 6) Avon and Simsbury, Connecticut; 7) Enfield, Somers, East Windsor, Suffield, and Windsor Locks, Connecticut; 8) Southington and Plainville, Connecticut; 9) Milford, Orange, West Haven, and New Haven, Connecticut; 10) East Haven, Branford, Guilford, Madison, Clinton, and Old Saybrook, Connecticut; 11) Fairfield, Stratford, Bridgeport, Trumbull, and Shelton, Connecticut; 12) South Kingstown and Narragansett, Rhode Island; 13) the greater Providence, Rhode Island area, which includes East Providence, Providence, Pawtucket, Warwick, Cranston, Central Falls, Lincoln, Smithfield, Barrington, Bristol, Cumberland, North Providence, Johnston, West Warwick, East Greenwich, and Coventry, Rhode Island and Attleboro and Seekonk, Massachusetts; and 14) Chicopee, Massachusetts. In these areas, the proposed acquisition would leave a single firm with a market share substantially greater than 35 percent and would facilitate unilateral anticompetitive behavior or coordinated interaction. According to the draft complaint, these markets are highly concentrated and entry is difficult or unlikely. The Commission has reason to believe that the acquisition agreement violates Section 5 of the Federal Trade

Commission Act and the acquisition, if consummated, would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

Settlement Agreement

The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the fourteen markets.

Proposed Divestiture and Proposed Purchases of Divested Assets

The agreement containing consent order seeks to remedy the Commission's competitive concerns about the acquisition by requiring divestiture of specified stores in each market. As with the recent consent agreements accepted by the Commission in The Scotts Company (Docket No. C-3613), Illinois Tool Works, Inc. (Docket No. C-3651), and most recently Fresenius AG (File No. 961-0053), the proposed order identifies both the assets to be divested and specific companies to be recommended to the Commission as purchasers for these assets. The identification of specific buyers for the assets to be divested will allow the public to comment on the effectiveness of the proposed relief in the context of specific proposed purchasers. It also minimizes the delay in restoring competition lost by the transaction and

lessens the risk of unsuccessful divestiture.

Under the terms of the proposed order, Ahold must divest to Star Markets Company 1) its supermarket located at 295 Armistice Boulevard, Pawtucket, Rhode Island; 2) its supermarket located at 200 Niantic Avenue, Providence, Rhode Island; 3) its supermarket located at 1810 Plainfield Pike, Cranston, Rhode Island; 4) its supermarket located at 418 Kingstown Road, Wakefield, Rhode Island; 5) its supermarket located at 1401 Bald Hill Road, Warwick, Rhode Island; 6) its supermarket located at 1000 Division Street, East Greenwich, Rhode Island; and 7) the Stop & Shop supermarket located at Route 6 and 1 Commercial Way, Seekonk, Massachusetts. Star Markets Company, Inc., is a corporation with headquarters at 625 Mt. Auburn Street, Cambridge, Massachusetts.

Under the terms of the proposed order, Ahold must also divest to Bozzuto's Inc. 1) its supermarket located at 207 Hartford Turnpike, Vernon, Connecticut; 2) its supermarket located at Newbrite Plaza, 60 East Main Street, New Britain, Connecticut; 3) its supermarket located at 333 North Main Street, West Hartford, Connecticut; and 4) its supermarket located at 750 Queen Street, Southington, Connecticut. Bozzuto's Inc. is a corporation with headquarters at 275 Schoolhouse Road, Cheshire, Connecticut.

Under the terms of the proposed order, Ahold must also divest to Shaw's Supermarkets, Inc. 1) its supermarket located at

40 Hazard Avenue, Enfield, Connecticut; 2) its supermarket located at 953 Wolcott Road, Waterbury, Connecticut; 3) its supermarket located at 538 Boston Post Road, Orange, Connecticut; 4) its supermarket located at 875 Bridgeport Avenue, Shelton, Connecticut; 5) Stop & Shop supermarket number 665 located at 55 Welles Street, Glastonbury, Connecticut; 6) its lease agreement for the premises located in the former Rich's Department Store located at the Wakefield Mall, Tower Hill Road, South Kingstown, Rhode Island; 7) its supermarket located at 1100 Barnum Avenue, Stratford, Connecticut; 8) its lease agreement for the Grand Union Store site located at 800 Barnum Avenue, Stratford, Connecticut; 9) its supermarket located at 1975 Black Rock Turnpike, Fairfield, Connecticut; 10) its supermarket located at 1167 Main Street, Watertown, Connecticut; 11) its supermarket located at 266 East Main Street, Clinton, Connecticut; 12) its supermarket located 60 Cantor Drive, Willimantic, Connecticut; 13) its supermarket located at 245 Kane Street, West Hartford, Connecticut; and 14) its supermarket located at 976 North Colony Road, Wallingford, Connecticut. Shaw's Supermarkets, Inc., is a corporation with headquarters at 140 Laurel Street, East Bridgewater, Massachusetts.

Under the terms of the proposed order, Ahold must also divest to Big Y Foods, Inc. 1) its supermarket located at 830 Boston Post Road, Guilford, Connecticut; 2) its supermarket located at 650 Memorial Drive, Chicopee, Massachusetts; 3) its

supermarket located at West Main Route 44, Avon, Connecticut; 4) its supermarket located at 3 Kent Road, New Milford, Connecticut; and 5) its supermarket located at 265 Ellington Road, East Hartford, Connecticut. Big Y Foods, Inc., is a corporation with headquarters at 280 Chestnut Street, Springfield, Massachusetts.

The purpose of the divestitures to these purchasers is to ensure the continuation of the Assets to be Divested as ongoing viable enterprises engaged in the supermarket business and to remedy any lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

Star, Bozzuto's, Shaw's, and Big Y already own and operate supermarkets. The management of each company has substantial experience in the supermarket business. Star and Bozzuto's do not operate supermarkets in the areas where the stores they are buying are located. Big Y and Shaw's operate, or will shortly, in a few of the markets where they are buying divested supermarkets. In these markets, however, Big Y and Shaw's are not now significant competitors, and the additional stores will make them more competitive against the combined Ahold/Stop & Shop.

Under the terms of the proposed order, Ahold must divest the assets to be divested within thirty (30) days after the proposed Order is made final by the Commission. Because the proposed order contemplates divestiture within 30 days to purchasers that have already been identified to the Commission, and because the

proposed order includes a strong trustee provision and an Asset Maintenance Agreement, the Commission has not required a hold separate agreement in this case. Under the proposed order, if any of the divestitures are not accomplished within 30 days after the order is made final, then the Commission may appoint a trustee to divest the remaining assets. The trustee may, on his or her own initiative or at the direction of the Commission (and subject to Commission approval after a 30-day public comment period), add or substitute supermarkets in the overlap areas listed in the order so as to accomplish the required divestitures. This provision is important to insure that the divestitures will be made. Ahold is unlikely to permit the deterioration of any of the supermarkets to be divested, because to do so could ultimately invite a divestiture trustee to make a substitution, leaving Ahold with a store that had been allowed to deteriorate. The fact that the trustee provision can be invoked quickly, i.e., within 30 days, also gives Ahold an incentive to complete the divestitures in a timely manner.

The purpose of this analysis is to invite public comment concerning the proposed order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.