

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



Office of
the
Secretary

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June 26, 1996

Richard C. Weisberg, Esq.
Simpson, Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017-3954

Re: The Stop & Shop Companies, Inc., et al.
Docket No. C-3649

Dear Mr. Weisberg:

This letter responds to the January 24, 1996, Application that you filed on behalf of your client, The Stop & Shop Companies, Inc. ("Stop & Shop") seeking prior approval by the Federal Trade Commission ("Commission") of the divestiture of four Massachusetts supermarkets located in Marshfield, Saugus, Medford and Watertown, respectively, to Star Markets Company, Inc. ("Star"). The order in Docket No. C-3649 requires prior Commission approval of the divestiture by Stop & Shop.

The Commission has considered Stop & Shop's Star Application and all supporting materials, as well as other available information, and has concluded that Stop & Shop has not demonstrated that the divestiture of the Watertown supermarket to Star will adequately remedy the anticompetitive effects resulting from Stop & Shop's acquisition of Purity Supreme in the Watertown market. Accordingly, the Commission has determined to deny Stop & Shop's Star Application with respect to the Watertown supermarket. The Commission has previously determined to approve the Application with respect to the Marshfield, Saugus and Medford supermarkets.¹

The remedial purposes of the divestiture provision in the Stop & Shop Order are stated in the Order itself: "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."

¹ The Commission will respond separately to Stop & Shop's recent application for approval to divest seven Cape Cod, Massachusetts supermarkets.

Order ¶ II.B. The Commission's Complaint, in relevant part, describes the lessening of competition that would result from the proposed acquisition in terms of the following: ". . . increasing the likelihood of, or facilitating, collusion or coordinated interaction." Complaint ¶ 22.c.

Thus, Stop & Shop's burden with respect to the Watertown supermarket is two-fold; it must show that divesting this store to Star would: (1) result in a viable competitor and (2) adequately restore competition to the relevant market. Stop & Shop has shown that Star has the ability to finance the acquisition and to fund the working capital necessary to operate the assets consistent with the objectives of the Order. However, it has not shown that divesting the supermarket to Star, which is the second largest supermarket operator in the Boston metropolitan area and has the largest number of supermarkets in the Watertown area, will adequately restore competition to the relevant market.

The complaint defines the relevant market in which to analyze the proposed acquisition by Star of Stop & Shop's Store No. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, Massachusetts as "the Boston . . . metropolitan area, which consists of the city of Boston . . . and narrower markets contained therein, including . . . Watertown" Complaint ¶ 12.c. In particular, the Commission was concerned about the effects of the Stop & Shop/Purity merger ("the merger") on competition between Stop & Shop, Purity and Star, the three Watertown market participants at the time. Before the merger, Purity faced substantial competition in the Watertown area from Stop & Shop and Star. Specifically, Stop & Shop store No. 436, the store Star now proposes to acquire, competed with former Purity store No. 28 located less than two miles away. Two additional former Purity stores (Nos. 45 and 49), respectively, faced (and currently face) head-to-head competition from two adjacent Star supermarkets. Star also operated all of the nearby supermarkets in the Watertown area after the merger, including its Cambridge store (No. 506), a store in Brighton (No. 503) and a store in Belmont (No. 500). Stop & Shop asserts that Star's supermarket in Cambridge, as well as Star's supermarkets in Brighton and Belmont, do not provide service to the Watertown community. The record, however, indicates that the Watertown supermarket Star seeks to acquire is the primary competitor of Star's Cambridge supermarket. Star's Cambridge and Brighton supermarkets are located less than a mile from the Watertown store. Stop & Shop has not shown that Star's Cambridge and Brighton stores do not directly compete with the Stop & Shop supermarket Star proposes to acquire.

The merger reduced the Watertown market participants to two: Stop & Shop and Star. Specifically, the Commission was concerned that Stop & Shop, as the post-acquisition market leader, may be able to lead any coordinated effort to tacitly raise prices in the Watertown market. Star's acquisition of the Watertown supermarket will not restore competitive conditions to the level that existed prior to the merger. With only two participants in the Watertown market, and with new entry unlikely to interrupt and deter coordinated behavior within a meaningful time-frame, the post-merger market conditions the Order was designed to remedy will remain conducive to Stop & Shop and Star coordinating their activities to the detriment of consumers.²

In conclusion, Stop & Shop's Star Application fails to show that its proposal to divest the Watertown supermarket to Star will sufficiently achieve the remedial purposes of the Order by restoring sufficient competition to the relevant market. The Commission, therefore, has determined to deny Stop & Shop's Star Application with respect to the proposed Watertown supermarket transaction.

By direction of the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark
Secretary

² Market conditions that would facilitate such coordinated behavior in the Watertown market include the presence of only two competitors, relatively stable and constant demand, and publicly available price information.