

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

_____)
In the Matter of)
)
WINN-DIXIE STORES, INC.,) **Docket No. C-4001**
a corporation.)
_____)

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Winn-Dixie Stores, Inc. ("Winn-Dixie") of certain assets from Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), an entity controlled by Bruckmann, Rosser, Sherrill & Co., L.P., and Respondent having been furnished with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and

consideration of public comments, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order:

- a. Respondent Winn-Dixie is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 5050 Edgewood Court, Jacksonville, Florida 32254.
- b. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

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

A. "Winn-Dixie" or "Respondent" means Winn-Dixie Stores, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Winn-Dixie, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Winn-Dixie, after consummation of the Acquisition, includes the assets that it is acquiring from Jitney-Jungle.

B. "Jitney-Jungle" means Jitney-Jungle Stores of America, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39202, and includes its subsidiaries, divisions, groups, and affiliates controlled by Jitney-Jungle, including Interstate Jitney Jungle Stores, Inc., Pump and Save, Inc., P&S Operations, Inc., Supermarket Cigarette Sales, Inc., Delchamps, Inc., and Southern Jitney Jungle Company, Inc.

C. "Acquisition" means the October 29, 2000, "Agreement for Purchase and Sale of Retail Grocery Stores By and Between Interstate Jitney Jungle Stores, Inc., Pump and Save, Inc., P&S Operations, Inc., Supermarket Cigarette Sales, Inc., Jitney-Jungle Stores of America, Inc., Delchamps, Inc., and Southern Jitney Jungle Company, Inc. and Winn-Dixie Stores, Inc." pursuant to which Winn-Dixie will acquire certain assets from Jitney-Jungle and will merge them into Winn-Dixie.

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.

II.

IT IS FURTHER ORDERED that:

A. For a period of ten (10) years commencing on the date this Order becomes final, Respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, acquire any stock, share capital, equity, or other interest in any supermarket or leasehold interest in any supermarket located at:

1. 65 Poinciana Boulevard, Destin, Florida 32541 (Walton County);
2. 1104 John Sims Parkway, Niceville, Florida 32578 (Okaloosa County);
3. 334 Gulf Breeze Parkway, Gulf Breeze, Florida 32561 (Santa Rosa County);
and
4. 171 Porter Avenue, Biloxi, Mississippi 39530 (Harrison County),

including any facility that has operated as a supermarket at such location within six (6) months of the date of the proposed acquisition.

B. The purpose of this prohibition is to ensure the continuation of these assets 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.

III.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the Commission:

A. 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 Okaloosa, Santa Rosa or Walton counties in Florida; Hancock, Harrison, Jackson or Lauderdale counties in Mississippi; St. Tammany Parish, Louisiana; or Mobile County, Alabama.

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 prior to such proposed acquisition in Okaloosa, Santa Rosa or Walton counties in Florida; Hancock, Harrison, Jackson or Lauderdale counties in Mississippi; St. Tammany Parish, Louisiana; or Mobile County, Alabama.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Respondent or the acquisition of or leasing of a facility that has not operated as a Supermarket within six (6) months prior to Respondent's 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 Respondent and not of any other party to the transaction. Respondent 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), Respondent shall not consummate the transaction until twenty (20) 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.

IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondent 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 acquires any Supermarket, any leasehold interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after January 1, 2000, in Okaloosa, Santa Rosa or Walton counties in Florida; Hancock, Harrison, Jackson or Lauderdale counties in Mississippi; St. Tammany Parish, Louisiana; or Mobile County, Alabama to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Respondent.

B. Respondent shall not remove any fixtures or equipment from a property owned or leased by Respondent in Okaloosa, Santa Rosa or Walton counties in Florida; Hancock, Harrison,

Jackson or Lauderdale counties in Mississippi; St. Tammany Parish, Louisiana; or Mobile County, Alabama, that is no longer in operation as a Supermarket, except (1) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Respondent; or (3) otherwise with the prior approval of the Commission.

V.

IT IS FURTHER ORDERED that, 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, Respondent 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 Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change the corporation that may affect compliance obligations arising out of the 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 with reasonable notice to Respondent, Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on February 14, 2011.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: February 14, 2001