

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of	)	
	)	
KONINKLIJKE AHOLD NV,	)	
a corporation;	)	Docket No. C-4027
	)	
and	)	
	)	
BRUNO'S SUPERMARKET, INC.,	)	
a corporation.	)	
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**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Koninklijke Ahold NV ("Ahold") has entered into an agreement to acquire 100% of the outstanding voting securities of respondent Bruno's Supermarket, Inc. ("Bruno's"), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, that such acquisition, 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, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

**Definition**

PARAGRAPH ONE: For the purposes of this complaint "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 non-food items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

### Koninklijke Ahold NV

PARAGRAPH TWO: Respondent Ahold 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.

PARAGRAPH THREE: Respondent Ahold, through Ahold USA, Inc., BI-LO Holdings, LLC Inc.; Giant-Carlisle Holding, LLC Entities; Giant Food, Inc. n/k/a Ahold U.S.A. Holdings, Inc.; The Stop & Shop Supermarket Company; and Tops Markets, LLC; its wholly-owned domestic subsidiaries, is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Connecticut, the District of Columbia, Delaware, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia. Ahold and its wholly-owned domestic subsidiaries operate over 1,000 supermarkets, including 294 BI-LO stores, in these states under the BI-LO, Giant, MARTIN'S, Stop & Shop, and Tops Friendly Market trade names. Ahold had \$27.8 billion in total United States sales in fiscal year 2000.

PARAGRAPH FOUR: Respondent 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.

### Bruno's Supermarkets, Inc.

PARAGRAPH FIVE: Respondent Bruno's 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 800 Lakeshore Parkway, Birmingham, Alabama.

PARAGRAPH SIX: Respondent Bruno's is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Georgia, Florida and Mississippi. Bruno's operates approximately 169 supermarkets under the Bruno's, Food World, FoodMax, Food Fair and Fresh Value trade names. Bruno's had \$1.6 billion in total sales for the fiscal year ending January 27, 2001.

PARAGRAPH SEVEN: Respondent Bruno's 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

PARAGRAPH EIGHT: On or about September 4, 2001, Ahold, New Bronco Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of Ahold, Bruno's, and Elway

Advisors, LLC, as stockholder's representative, entered into an Agreement and Plan of Merger. Pursuant to this Agreement, Ahold will acquire all of the outstanding voting securities of Bruno's for approximately \$500 million in cash by merger of New Bronco with and into Bruno's Supermarkets, with Bruno's Supermarkets continuing as the surviving corporation. As a result of the merger, Ahold will hold 100% of the voting securities of Bruno's.

### Trade and Commerce

PARAGRAPH NINE: The relevant line of commerce (i.e., the product market) in which to analyze the acquisition described herein is the retail sale of food and grocery products in supermarkets.

PARAGRAPH TEN: Supermarkets provide a distinct set of products and services for consumers who desire one-stop shopping for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")) as well as a deep inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

PARAGRAPH ELEVEN: Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not significantly change their food and grocery prices in response to prices at other types of stores. 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.

PARAGRAPH TWELVE: Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, limited assortment stores, convenience stores, specialty food stores (e.g., seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. These stores operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enables one-stop shopping for food and grocery products.

PARAGRAPH THIRTEEN: The relevant sections of the country (i.e., the geographic markets) in which to analyze the acquisition described herein are the areas in and near Sandersville, Georgia and Milledgeville, Georgia.

### Market Structure

PARAGRAPH FOURTEEN: The Sandersville, Georgia and Milledgeville, Georgia relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios. The acquisition would

substantially increase concentration in each market. Ahold and Bruno's would have a combined market share of greater than 50% in each geographic market. The post-acquisition HHI in Milledgeville would exceed 5400 and, in Sandersville, would exceed 5500.

#### Entry Conditions

PARAGRAPH FIFTEEN: Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant markets.

#### Actual Competition

PARAGRAPH SIXTEEN: Ahold and Bruno's are actual and direct competitors in Sandersville, Georgia and Milledgeville, Georgia.

#### Effects

PARAGRAPH SEVENTEEN: The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant line 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 Bruno's;
- b. by increasing the likelihood that Ahold will unilaterally exercise market power; and
- 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

PARAGRAPH EIGHTEEN: The Agreement and Plan of Merger between and among Ahold, New Bronco Acquisition Corp., Bruno's, and Elway Advisors, LLC, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the proposed acquisition would, if consummated, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this Seventh day of December, 2001, issues its complaint against said respondents.

By the Commission.

Benjamin I. Berman  
Acting Secretary

SEAL: