



655 15th Street, N.W.
Washington, DC 20005-5701
Tel: (202) 452-8444
Fax: (202) 429-4519
E-mail: fmi@fmi.org
Website: www.fmi.org



October 11, 2002

Mr. Michael Cowie
Assistant Director
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N. W.
Washington, D. C.

Dear Mr. Cowie:

Food Marketing Institute congratulates you on your new position as head of the Merger Litigation Task Force. FMI is the leading trade association of food retailers and wholesalers. We have a long history of working with the FTC staff, and look forward to working with you.

In recent testimony before the Senate Judiciary Committee, FTC Chairman Timothy Muris emphasized that “[m]erger enforcement continues to be a staple of the Commission’s enforcement agenda. Stopping mergers that substantially may lessen competition ensures that consumers pay lower prices and have greater choice in their selections of goods and services than they otherwise would.” At the same time, he highlighted the FTC’s ongoing efforts “to make the HSR merger review process more efficient and transparent...” including public workshops regarding “best practices” for merger investigations and remedies.

On June 18, 2002, FMI submitted comments to the staff on supermarket merger investigations and remedies. As noted in the submission, FMI’s comments reflected the views of a cross-section of members, based on those members’ unique and individual experiences with various aspects of the merger review and enforcement process. FMI’s comments endorsed an open and fair process, and most significantly, made suggestions to promote a level playing field for independents and smaller companies in the divestiture process. We urged the FTC to address the widely held perception that the divestiture process discriminates against independents, smaller companies, and wholesalers.

FMI’s domestic food retailer and wholesaler members operate approximately 25,000 retail food stores. Our membership ranges from the largest global companies to single store operators and the wholesalers who serve them. It is a large, heterogeneous membership and when it comes to mergers and acquisitions, FMI members have diverse and sometimes

Mr. Michael Cowie
October 11, 2002
Page 2

conflicting interests and positions. Accordingly, FMI must remain scrupulously neutral with respect to mergers and acquisitions in the supermarket industry. Because of the necessity to remain neutral, we want to emphasize that our June submission was not intended to, and did not, take a position on the merits of any individual transaction or did it advocate loosening or changing merger review or divestiture standards so that more mergers can occur.

It is important to note that there is not a unanimity of views within FMI's membership on the specific discussion of the merger review process in the June submission.. This is particularly the case with regard to the discussion of the second request process, because perceptions of undue burden and the effectiveness of the process vary substantially from company to company. Because of the lack of consensus within our membership with respect to the second request process and because of our obligation to maintain strict neutrality in those matters where there is disagreement among our members, we respectfully request that the Commissioners and staff not consider our submission concerning the second request process as representing the views of all our members. To the extent that the submission creates the impression that the position taken with respect to the second request process is the position of all the members of the FMI, we want to correct that impression and ask that to the extent the submission created that impression it be disregarded.

FMI looks forward to continuing the dialog with you and other members of the staff to address the perception that the merger process discriminates against smaller companies and wholesalers. Thank you for your consideration of these supplemental comments and, again, congratulations on your new position.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Hammonds", with a long horizontal flourish extending to the right.

Timothy M. Hammonds