

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

In the Matter of))	
SHAW’S SUPERMARKETS, INC.,))	
a corporation;))	
J SAINSBURY plc,))	
a corporation;))	Docket No. C-3934
and))	
STAR MARKETS HOLDINGS, 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 J Sainsbury plc (“J Sainsbury”) and respondent Shaw’s Supermarkets, Inc. (“Shaw’s”), a wholly-owned subsidiary of respondent J Sainsbury’s, have entered into an agreement to acquire all of the outstanding shares of respondent Star Markets Holdings, Inc. (“Star Markets”), 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

1. For the purposes of this complaint:

“Supermarket” means a full-line retail grocery store with annual sales of at least \$2 million 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.

J Sainsbury plc

2. Respondent J Sainsbury is a corporation organized, existing, and doing business under and by virtue of the laws of England, with its office and principal place of business located at Stamford House, Stamford Street, London SE 19LL, England.

3. Respondent J Sainsbury, through its wholly-owned domestic subsidiary, Shaw's is, and at all times relevant herein has been, engaged in the operation of supermarkets in Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, and Vermont. J Sainsbury and Shaw's operate 126 supermarkets in these states under the "Shaw's" trade name. J Sainsbury had \$2.8 billion in total sales in the United States for fiscal year 1998.

4. Respondent J Sainsbury 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.

Star Markets Holdings, Inc.

5. Respondent Star Markets is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 625 Mt. Auburn Street, Cambridge, Massachusetts 02138.

6. Respondent Star Markets is, and at all times relevant herein has been, engaged in the operation of supermarkets in Massachusetts. Star Markets operates 53 supermarkets under the "Star Markets" and "Wild Harvest" trade names. Star Markets had \$1.034 billion in total sales for the fiscal year ending January 31, 1998.

7. Respondent Star Markets 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

8. On November 25, 1998, J Sainsbury plc and Star Markets entered into a Stock Purchase Agreement. J Sainsbury through its Shaw's subsidiary will acquire all of the outstanding voting securities of Star Markets for approximately \$490 million.

Trade and Commerce

9. 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.

10. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop 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 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.

11. Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices 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.

12. Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery 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 because they operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

13. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the county or counties that include the following incorporated cities and towns in Massachusetts:

- a) Waltham area that includes Waltham, Auburndale, Watertown, Newton, West Newton, Weston, and Lexington;
- b) Quincy-Dorchester area that includes Quincy, N. Quincy, Milton, Dorchester, Boston, S. Boston, Braintree, and Weymouth;
- c) Norwood area that includes Norwood, Walpole, Westwood, Dedham, Wrentham, and Sharon;
- d) Milford area that includes Milford, Hopedale, Mendon, and Upton;
- e) Salem-Lynn area that includes Salem, Lynn, Peabody, Swampscott, Danvers, Nahant, and

Marblehead;

- f) Norwell area that includes Norwell, Hanover, Rockland, Pembroke, Hanson, Scituate, Halifax, Hingham, Weymouth, Cohasset, and Hull;
- g) Hudson-Stow area that includes Stow, Hudson, Sudbury, Marlborough, and Bolton; and
- h) Saugus-Melrose-Stoneham area that includes Saugus, Melrose, Stoneham, and Wakefield.

Market Structure

14. The 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. Shaw's and Star Markets would have a combined market share that ranges from 29 percent to 64 percent in each geographic market. The post-acquisition HHIs in the geographic markets range from 2205 points to 5136 points.

Entry Conditions

15. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country.

Actual Competition

16. J Sainsbury through its Shaw's subsidiary and Star Markets are actual and direct competitors in the relevant markets.

Effects

17. 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 J Sainsbury and supermarkets owned and controlled by Star Markets;
- b) by increasing the likelihood that J Sainsbury 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

18. The Stock Purchase Agreement between J Sainsbury and Star Markets to acquire all of the outstanding voting stock of Star Markets 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 fifth day of April, 2000, issues its complaint against said respondents.

By the Commission, Commissioner Leary not participating.

SEAL:

Donald S. Clark
Secretary