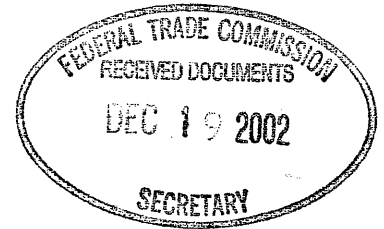


ANÍBAL ACEVEDO-VILÁ  
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FEDERAL ~~Congress~~ of the United States  
02 DEC 19 ~~House~~ of Representatives  
CONG. CORRES. BRANCH



December 18, 2002

Donal S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Acquisition of Supermercados Amigo by Wal-Mart Stores, Inc.

Dear Chairman Muris:

As the elected representative of the Commonwealth of Puerto Rico in the United States House of Representatives, I would like to submit as a public comment to the acquisition of Supermercados Amigo ("Amigo") by Wal-Mart Stores, Inc. ("Wal-Mart") the attached Joint Legislative Report recently issued by the Puerto Rican Senate and House of Representatives ("Joint Report"). An unofficial English translation accompanies the Joint Report.

Shortly after an initial hearing by the Joint Labor Caucus of the Puerto Rico legislative chambers on October 24, 2002, Resolutions of the House and Senate were filed simultaneously to investigate Wal-Mart's acquisition of Amigo. From October 30, 2002 to November 15, 2002, ten public and two executive hearings were held. Many interested parties appeared at the hearings, including representatives from food retail and wholesale industry members, labor unions and organizations, industry and business associations, and government officials. (See Joint Report English Translation at 2-7).

The findings contained in the Joint Report raise several concerns regarding the impact of Wal-Mart's acquisition on both competition and the Puerto Rican economy. Based on these findings, I urge the Federal Trade Commission ("FTC") to reconsider its recent approval of the transaction.

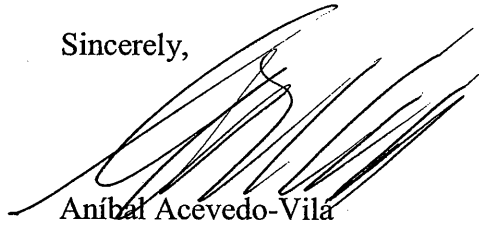
The modest divestiture of a few stores does not replace the competition that will be lost thus creating a monopoly in the vital supermarket and grocery market. If the FTC does not reverse the current consent decree, it should at least require a more substantial

divestiture that will help replace Amigo's lost competition, especially in the markets of municipalities such as Cayey and Bayamón, where according to the Puerto Rico Department of Justice, Wal-Mart will have a very high concentration and control.

The Joint Report speaks by itself, I am concern that Wal-Mart may unilaterally exercise market power and facilitate collusion or coordinated interaction, which may result in significant increases of food prices and would discourage new competitors to arrive. The aforementioned concerns, combined with the particularities of the island economy of Puerto Rico, are in my opinion important reasons for the FTC to carefully reconsider its decision to approve the Amigo acquisition.

If I may be of assistance in any way or if you would like to further discuss my concerns, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anibal Acevedo-Vila', written over a light blue horizontal line.

Anibal Acevedo-Vila

[TRANSLATION]

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## **BACKGROUND**

On October 24, 2002, the Labor Caucus of the Legislature Assembly met to listen to a claim of a group of citizens concerned by the proposed merger of the Wal-Mart and Amigo Supermarket chains. Among those attending were the President of the United Retailers Association, the Vice President of MIDA, the Director of the Association of Community Pharmacies and other representatives of the business sector of Puerto Rico.

From the presentation made by the panelists arose the unanimous determination to file a Resolution to investigate the impact of this transaction on jobs, the health of industry workers and the economy of the Country.

On October 28, 2002, Resolutions 5433 and 2301 of the House and Senate of Puerto Rico were filed simultaneously.

On October 30 the joint Public Hearings of the House and Senate began to broaden the participation to all interested sectors that wanted to express whether or not they were in favor of this transaction.

Ten (10) Public Hearings and (2) Executive Hearings were held where we received multiple recommendations and information of great importance so that these Committees could ultimately determine the course to follow with regard to proposed legislation that would contribute to resolving the stated problems. The following deponents made statements:

**On October 30, 2002, the following deponents were present:**

Mr. Pedro Malavé  
President  
Industrial Bakers Association

Mrs. Julie Hurtado  
Association of Community Pharmacies

Mr. Ricardo Calero  
President  
United Retailers Association

Atty. Julio Eduardo Torres  
President  
Entrepreneurial Coalition

**On October 31, 2002, the following deponents were present:**

Mr. José M. Revuelta  
President  
Amigo Supermarkets

Mr. Oscar Ramos  
President  
Oscar Cash & Carry

Mr. Ramon Gonzalez Beiro  
President  
PR Farm Bureau

**On November 1, 2002 the following deponents were cited but were excused:**

Mr. German Vázquez  
Secretary  
Treasurer of the Teamsters Union

Mr. Héctor René Lugo, President  
Authentic Independent Union of the Employees of the Water and Sewer Authority

Mr. Juan Eliza Colón  
President UGT

Mrs. Rebeca Morales  
President  
Gastronomic Union

Mr. José Rivera  
Vice President  
Gastronomic Union

Mrs. Luisa Acevedo  
President  
“Federación Central de Trabajadores” [Union]

Mr. Federico Torres Montalvo  
President, “Central Puertorriqueña de Trabajadores” [Union]

Mr. Victor Villalba  
President  
“Federación de Trabajadores de Empresa Privada” [Union]

Mr. José La Luz  
President  
“Unión de Servidores Públicos Unidos” [Union]

Mr. Roberto Pagán  
President  
“Sindicato Puertorriqueño de Trabajadores” [Union]

Mr. Jimmy Torres  
President  
Health Workers’ Union

Mr. Ricardo Santos  
President U.T.I.E.R.

**Present in representation of the Union Movement:**

Mr. José Rodríguez Báez  
President  
“Federación del Trabajo de Puerto Rico”

Mrs. Ana Angelette  
President AFGÉ – Local

Mr. José Acosta  
President  
Union of Independent Telephone Employees

**On November 2, 2002 the following were cited but were excused for different reasons:**

Mrs. Graciela Eleta  
General Sales Manager  
Procter & Gamble

Mr. Andrea Stoffel  
General Manager  
Nestlé of Puerto Rico

Mr. Carlos Delpín  
General Manager  
Conagra Frozen Foods

Mr. José Luis Morales Fragoso  
Vice President  
Foundation for the Development of the Egg Industry in Puerto Rico

**In this prior Hearing, only Atty. Carlos Declat appeared in his personal capacity.**

**On November 3, 2002, the following deponents were cited to appear:**

Chamber of Commerce  
Estudios Técnicos  
Mr. Jose Joaquín Villamil  
President of both entities

Manufacturer's Association  
President,  
Mr. Manuel Cidre, was excused

**On November 5, 2002, the following Heads of Agency were cited to appear and the following were excused:**

Hon. Luis Rivera Cubano  
Secretary of Agriculture

Hon. Anabelle Rodríguez Rodríguez  
Secretary of Justice

Hon. Víctor Rivera Hernandez  
Secretary  
Department of Labor

Eng. Angel David Rodríguez  
President  
Planning Board

The Planning Board brought previously requested documents.

**On November 6, 2002, the following deponents were present:**

Mr. Manuel Cidre  
President  
Manufacturers' Association

Mr. William Riefkohl  
Vice President

Mr. Denzil Vázquez  
Independent Trucker

Mr. Claudio Medina  
President  
Wholesaler's Chamber of Commerce

Dr. Justo Pabón  
Consumer

**On November 8, 2002, the following Heads of Agency were cited to appear:**

\*This deponents also appeared in his personal capacity on the matter

Hon. Ramón Cantero Frau  
Secretary  
Department of Economic and Business Development

Hon. Luis Rivera Cubano  
Secretary of Agriculture

Hon. Juan. A. Flores Galarza  
Secretary  
Department of Treasury

Hon. Anabelle Rodríguez Rodríguez  
Secretary of Justice

Hon. Víctor Rivera Hernández  
Secretary  
Department of Labor

Mr. Antonio Sosa Pascual  
Administrator  
Commercial Development

Mr. Xavier González Calderón  
Executive Director  
Council of Occupational Development

Eng. Angel David Rodríguez  
President  
Planning Board

\* Dr. José I. Alameda  
Economist



The Honorable Ramón Cantero Frau, gave his statement in representation of all of the heads of agency. The presentation established the public policy of the Government with regard to the situation investigated in these Public Hearings.

**On November 12, 2002, the following were cited:**

Procter & Gamble  
Nestlé of Puerto Rico  
Conagra  
Foundation for the Development of the Egg Industry in Puerto Rico  
Colgate Palmolive  
Attorney Néstor Méndez of the Pietrantonio, Méndez & Alvarez law firm

The deponents cited above did not appear at the Hearing. They submitted excuses in writing.

The following deponents did attend:

Mr. Edwin Colón  
President MIDA

Mrs. Sandra Rodríguez  
Executive Director  
Cooperatives League of Puerto Rico

**On November 14 and 15, 2002, the following were cited:**

Nestlé of Puerto Rico  
Procter & Gamble  
Amigo Supermarkets  
Wal-Mart

The Executive Hearing was held to deliver information requested in prior Hearings and this was done.

## FINDINGS

### **Possible impact on the jobs and the health of industry workers from Amigo-Wal-Mart merger.**

According to the data submitted by the Planning Board of Puerto Rico for the year 2001-2002, the total number of jobs in the goods business sector was 242,000 and people employed in the services sector increased totaled 302,000, for a total of 544,000 jobs generated by our business sector.

This line can definitely be considered the spine of the Puerto Rican economy since in fiscal year 2001 retail sales were generated that totaled \$14.8 billion in the services sector and \$5.97 billion in the services sector. The concern that has been generated in the country by the potential merger of Amigo and Wal-Mart was the motive behind the Legislative Assembly making this investigation to learn the details about the transaction and effects on jobs, health and business in Puerto Rico.

The presence of Wal-Mart and other multinational chains has already had a negative impact on the business sector, specifically on the medium-sized merchants, the small merchants and retailers, as well as being one of the main causes of urban sprawl and the closings of businesses operated by local investors.

This merger would negatively affect the local food distribution industry and could significantly upset the general economic chain of the Island. This negative effect would translate into higher prices for Puerto Rican consumers and a gloomier scenario that would propitiate the disappearance of the majority of the business class in Puerto Rico. The purchase of Amigo Supermarkets by Wal-Mart goes against the Puerto Rican bill for the 21<sup>st</sup> century presented to the country as platform of the Government by the Honorable Sila María Calderón before the Year 2000 elections.

One of the statements contained in the mentioned bill is the revitalization of traditional urban centers. Should this transaction be finalized, it would go against the efforts of the administration to revitalize these urban centers.

Should Wal-Mart absorb and saturate the market that services the small- and medium-sized merchants, they would be obligated to close their businesses. Another aspect of the government's program that would be affected is special communities: for residents to develop a sense of being owners of small businesses in these communities, [and] it is the key to their triumph; the big chains such as Wal-Mart go against this business model. This action definitely goes against the level of jobs that they want to increase with self-employment in this category.

In this transaction, the protection and security of temporary and permanent jobs are not guaranteed by either employer.

72% of the workforce of Wal-Mart is female and two-thirds of the managers of the stores are male; 90% of the upper level managers are men and the salaries of women in these positions are about \$3,500 less than the men in the United States.

On the other hand, according to the data submitted, we found that seventy (70) percent of the jobs that Wal-Mart generates are part-time, mostly 28 hours a week. We must not look past the corporate history of this business. According to the obtained data, it is calculated, for example, that Wal-Mart is the object of close to 20,000 lawsuits for causes of action from job discrimination to damages caused to customers. After the federal government, in the United States there is not other entity that is sued more than the Wal-Mart Corporation, recording an average of thirteen (13) complaints a day. In the past six (6) years, this business has been sanctioned by law more times than all of the Fortune 500 companies put together.

The President of the Food Marketing Industry and Distribution Association [MIDA by its Spanish acronym], Mr. Edwin Colón, stated the following in his statement on Tuesday, November 12, 2002:

### **JOBS**

“The assertion that the Wal-Mart expansion will create jobs is also a myth. A study done by Professor Donella Meadows, of the University of Darmouth [sic], determined that in the United States a typical Wal-Mart store creates 140 jobs, but at the cost of destroying 230 better paying jobs in neighboring businesses.

But, these numbers on job disappearances refer only to those that are lost due to the bankruptcy of medium-sized and small businesses in the areas where the monopoly is permitted. We have already seen that in the case of Puerto Rico, the effect will be much more encompassing, literally a domino effect on the loss of businesses and jobs.

Wal-Mart, moreover, has been highlighted for being an anti-labor employer. Due to the work environment, the average annual turnover in its stores is 50%. The salaries are kept as the lowest level possible on the basis of keeping an hourly salary as close as possible to the federal minimum wage and to employ the majority of people part-time. Generally, these people (at least 219,000 workers or 70 percent of all of the employees of Wal-Mart in the United States) work less than 28 hours a week and earn less than \$11,000 per year, which puts the majority of these families under the poverty level according to the definition of the federal government. Part-time workers do not have paid vacation or a medical plan or any type of insurance.

There are many other studies regarding the treatment Wal-Mart gives its workers. For example, when the butchers in Texas voted in favor of joining the Food and Comecial [sic] Workers Union, Wal-Mart proceeded to close the 180 meat packing operations in this State and substitute them with pre-packaged meat. The Equal Employment Opportunity Commission (EEOC) has not fined any other business more for

cases of discrimination against the handicapped. Just in Maine, they have discovered 1,400 violations of laws that prohibit the employment of minors.”

**Due to the impact of the following information given at the Public Hearing on Friday, November 1, 2002 by the President of the local American Federation of Government Employees, we are citing a part of the entire statement.**

Statement of Mrs. Ana Angelette:

“In this statement we want to concentrate on the course of Wal-Mart as an employer, above all with regard to its employment policies towards handicapped workers and female workers and the adverse effects that the proliferation of this anti-labor and anti-woman employer conduct would have on our working families.

- Right now, Wal-Mart is the largest private employer in the United States, employing a million workers in the United States in approximately 3,250 stores.
- 72% of the workforce of Wal-Mart is composed of women. Therefore, Wal-Mart is the business that employs the most women in all of the United States.
- Two-thirds of these 3,250 stores have male managers.
- 90% of the upper level managers in Wal-Mart are men.
- On average, female store managers earn \$3,500 less than male managers.
- Women hold only 10% of these upper management positions in Wal-Mart and are still paid less than their equals who are male.
- The average female employee of Wal-Mart in the United States earns \$6.10 an hour, while the men that hold similar positions earn \$8.50 an hour.
- During last August of this year, the Judge of the Federal District Court of Atlanta, Julie Carnes, certified a class action suit of a group of female employees that are alleging that Wal-Mart discriminates against female workers by excluding birth control treatment in its medical coverage. It has been estimated that Wal-Mart saves \$5 million a month by denying this coverage discriminatorily for its female workers.
- At this time, Wal-Mart faces a class action lawsuit, in violation of Title VII of the Federal Civil Rights Law, filed by 6 former female employees of Wal-Mart in representation of hundreds of women that have been discriminated against, because they are women, in opportunities for growth, monetary compensation, training and work assignments. The complaint that is pending in Federal Court in California (Northern District of California) states that the employer policies and practices of Wal-Mart relegate women to lower, lesser paying positions with many fewer opportunities to rise and grow within the company. These policies rebound not only

in extremely low salaries, many times below the poverty level of the United States, but also condemn women to have to continue working in these poorly compensated jobs even after retirement age, because their Social Security retirement, that is calculated on the basis of past income, is also very low and insufficient to live decently.

- Wal-Mart has had to pay millions of dollars to its employees that have filed complaints with the U.S. Department of Labor and its Wage and Hour Division for having been found guilty of not paying overtime worked by its female employees. Wal-Mart settled a class action lawsuit in the State of Colorado some years ago for \$50 million in the name of 69,000 employees that claimed to have been forced to work in excess of eight hours a day without any compensation.
- Wal-Mart has a disgraceful record with the U.S. Equal Employment Opportunity Commission (EEOC). Wal-Mart, as an employer, has been found guilty, frequently, of **intentionally** discriminating against its male and female handicapped workers. Wal-Mart employs handicapped persons to comply with the provisions of the federal antidiscrimination law. Nevertheless, once employees, they are submitted not only to unsustainable working conditions, but also to ridicule and lack of compassion by the business. Wal-Mart has had to compensate many hundreds of thousands of dollars to those affected that filed their different discrimination complaints. Moreover, the [EEOC] has, on occasion, obligated Wal-Mart, due to such illegal and egregious behavior, to publish advertisements on billboards, in newspapers and on even different local television channels, [in places] where these discriminatory actions have occurred, to the effect that it is committed to not discriminating against female workers and handicapped workers.
- Unfortunately, the anti-labor and anti-woman misdeeds of Wal-Mart transcend the borders of the United States according to the National Organization for Women (NOW, headquartered in Washington, D.C.). Wal-Mart employs female workers in El Salvador that it pays \$.15 (fifteen cents) per pair of pants, that later sell for at least \$16.95 in its stores in the United States. This organization has also denounced Wal-Mart's practice of administering pregnancy tests to women before employing them and during the duration of their contracts with the purpose of not employing pregnant women.
- The National Labor Committee has also reported on the horrors of the Chinese plants that make toys sold in Wal-Mart stores. The large majority of the workers in these plants are young women and adolescents. The female employees suffer in silence, so as not to be fired, with constant headaches and nausea from the vapors from the paint they use, the dust and pieces of material, and the temperature that exceeds one hundred degrees (100 F). These female workers have never received training in the management of the plastics, glue and paint solvents that they use daily in their work.
- Finally, but not less importantly, Wal-Mart has been found guilty of violating labor laws, perhaps the most recent being last September of this year with illegal tactics

against the union organization of its workers. The National Labor Relations Board found Wal-Mart guilty in the State of Nevada for repeatedly violating federal labor laws that protect the right of workers to form a union free from reprisals. The right of the union is of particular importance for female employees of Wal-Mart, since they are already in a disadvantaged position in terms of opportunities for growth, pay equal to men, adequate medical coverage and many other employment conditions.

All of the data that we have mentioned paints a picture of a very abusive institutional employer that the Wal-Mart business has characterized for some decades. It is difficult to imagine that the business would behave any other way in Puerto Rico if it establishes itself in the huge way that is proposed with the acquisition of Amigo Supermarkets. Our class of working women, also a part of our consumer class, should not be submitted to the abuses and whims of this business. In particular, our female workers are already sufficiently oppressed and relegated for eventually having to deal with Wal-Mart as one of their few job options.

Nevertheless, we believe that it is up to the small- and medium-sized merchants and Puerto Rican distributors today to ask the organized worker movement for solidarity before and against Wal-Mart by showing with clear and affirmative actions that employers truly value their male and female employees.

Sadly, many female workers in Puerto Rico, employed by Puerto Rican businesses, are also relegated to lower, lesser paying positions; they are also fired from their jobs if they show the least inclination towards being represented by a union; they are also discriminated against for being mothers; and they are also submitted to working conditions that are not safe and/or healthy. Yes, it is not only Wal-Mart that impedes the progress and wellbeing of workers for the purpose of unduly maximizing profits. There are those among us in the same situation. It would be irresponsible on our part to denounce Wal-Mart and remain quiet about those from here.

The Working Woman Commission that I represent today exhorts Puerto Rican businesses to oppose the Plans of Wal-Mart for Puerto Rico for reasons sometimes very different from ours, so that unions are not stopped and that the businesses become those that truly develop the wellbeing of workers and their families, and value the strength and contributions of the organized worker movement.”

**On Friday, November 8, 2002, Dr. José I Alameda, a prestigious economist [and] a university professor at the College of Mayaguez, among other things, addressed the Joint Committee and provided us in his statement with the following information that we present:**

**EFFECTS ON STORE CLOSINGS AND**  
**DIRECT EMPLOYMENT**

In order to estimate the effect on supermarket closings, the following was done:

- The reason was sought from the change in sales to the change in stores in independent supermarkets and small markets between 1996 and 2001. Data A.C. Nielsen.
- For each loss in sales of \$2.8 million in an independent supermarket, one supermarket closes.
- For each loss of \$266,000 in a small market, one small market closes.
- This argument was applied to the projected reduction in sales between 2003 and 2010.

To estimate the effect on employment, this procedure was followed:

- Data from the Business Census of the U.S. Census Bureau of 1997 was sought.
- The number of direct jobs per establishment was sought.
- In the case of a supermarket, the argument was 47 jobs per store.
- For the small market information, information from Grocery Stores was used and the result is 6.5 jobs per store.

<b>Category</b>	<b>Store Closings</b>	<b>Job Losses</b>
Supermarkets	106	4,970
Small markets	4,660	30,300
<b>Total</b>	<b>4,766</b>	<b>35,270</b>

- 106 supermarkets may close, which is 49% of those existing in 2001. This means a loss of 4,970 direct jobs.
- 4,660 small markets may close, or 72% of those existing in 2001. The total loss of jobs would be 30,300.

- The total number of business closings is 4,766 with a loss of 35,270 jobs for the period between 2003 and 2010.
- On the other hand, the expansion of the chains (excluding Amigo) is \$863 million that would bring 58 new stores and 2,700 jobs.
- This supposes that the Wal-Mart – Amigo merger does NOT have any repercussions on the sales of those stores. Nevertheless, the net effect on employment is negative since 2,700 does not compensate for the loss of 35,000.
- NOTE: Remember that the Wal-Mart-Amigo merger does not generate new jobs, since Wal-Mart is buying a successful business (in fact, the first in sales in its category) which was already operating.
- Industry sources speculate that, on the contrary and within a year, Wal-Mart could lay-off original employees of Amigo since their jobs may be redundant.

Using this dynamic focus, we can conclude that:

- A high concentration of market power would be generated by Wal-Mart since it would capture a large part of the increase in the consumption of food and related items even without considering the expansions.
- If the proposed expansions are considered, the market power concentration is even more acute.
- This has been the experience with Wal-Mart in Mexico, Canada, England and other locations.
- It would affect independent supermarkets, it would increase the closings of the same and thousands of jobs would be lost.
- Lost employment would reach 35,270. Independent supermarkets would lose 4,970 and small markets, 30,300.
- Despite this, chain supermarkets would gain 2,700 direct jobs.

Finally, Amigo Supermarkets is one of the main supermarket chains of Puerto Rico. It was founded more than 35 years ago and currently employs more than 4,518 people around the entire island. It has a payroll that exceeds \$43 million dollars a year. Amigo Supermarkets has always been pointed out for its slogan “only the best at the best price” which has distinguished it among its competitors. Thirty-one percent (31%) of employees are full-time and sixty-nine



percent are part-time. The business also provides a benefits package to employees that includes a medical plan, dental plan, medication, Profit Sharing Plan and a 401(k) plan. The cost of these benefits can reach sixteen (16) million dollars. Moreover, the chain augments itself with its Bager [sic] service to bring an additional merchandise packaging service in its stores that totals between 1,200 and 1,500 employees, mostly students that in their free time are earning money for school expenses.

On the other hand, Wal-Mart is the largest retail business in the world with sales that exceed \$218 million a year, with more than 3,500 stores in the United States and more than 1,100 abroad.

As we have stated in our preceding report, the Wal-Mart mega corporation is in the midst of purchasing Amigo Supermarkets as a part of its expansion plan on the Island. The amount of this transaction reaches \$260 million dollars and is currently under evaluation by the Federal Trade Commission, which has not given a final report approving this transaction. With regard to these events, labor organizations, wholesalers, retailers, members of the Executive Cabinet and others have raised a clamor of alert faced with the possible dominance of the Wal-Mart business in the grocery market and its interference with others.

### **CONCLUSION ON THE IMPACT ON JOBS**

We can determine after evaluating all of this information, that Wal-Mart constrains the job market in various manners: in the first place, by jobs lost from the closing of medium and small businesses in the areas where Wal-Mart establishes itself. In the second place, through jobs that are lost by significantly reducing the sales volume and the sales income made by distributors. In the third place, by the reduction of activities related to brand distribution, such as the transportation of merchandise, sales, public relations, advertising, artistic and sporting events and other activities related to business.

### **RECOMMENDATIONS**

The Supreme Court of the United States in the State of Texas did not find in favor of the Wal-Mart administration in not extending to non-unionized employees the right to include a witness in the event of an irregularity during meetings.

1. Given this situation of the intervention of the Supreme Court of the United States in lawsuits with regard to different administrative practices, we recommend the mandatory participation of the Department of Labor and Human Resources and any other concerned agency in order to give the necessary training to employees of the Amigo Supermarket chain, Wal-Mart and Sam's Club, etc., with regard to their rights to organize and their rights in a situation of unjustified firing under the laws and regulations of the Commonwealth of Puerto Rico.

2. The assignment of funding necessary for these purposes.
3. The proposal for legislation such that no business related to commerce may have in its workforce more than 50% of part-time jobs.
4. Legislate incentives for businesses that have a workforce of more than 80% full-time.
5. Increase penalties of businesses that discriminate by gender, especially pregnant women.
6. Analyze the contract and different guarantees, if any, with the purpose of retaining and conserving the conditions of jobs in the Amigo Supermarket chain with regard to this transaction.

## **THE IMPACT THAT THE SALE OF THE AMIGO SUPERMARKET CHAIN TO THE MULTINATIONAL WAL-MART BUSINESS WILL HAVE ON THE LOCAL ECONOMY**

### **BACKGROUND**

The retail market in the food sector has changed throughout the last hundred years in Puerto Rico. With the arrival of the U.S. business system, the small and medium-sized local merchants have suffered a significant impact with the establishment of shopping centers outside of urban centers and the proliferation of Mega Stores. Following will be demonstrated the effects on small and medium-sized local merchants on the loss of jobs and commercial space.

### **COURSE OF BUSINESS IN PUERTO RICO**

During the 1960s, retail businesses were already lamenting the situation of their class; they had pressures from warehouses and distributors with regard to charges, embargos and unfair competition. On the other hand, supermarkets entered the market and that reduced small markets and they clamored the government for protection. In the 1980s began the surge of **shopping centers**, provoking a disappearance of the same the length and breadth of Puerto Rico, joined by the relocation of governmental offices in these shopping centers, prejudicing retailers even more and causing the economic collapse of business in the traditional urban centers of the towns, the closings of thousands of small and medium-sized businesses and the loss of jobs.

Today, the threat of a new octopus looms over the heads of not only retailers, but also wholesalers, distributors and even shopping centers. "Wal-Mart" is the largest retailer in the world with sales that surpass 200 billion a year with more than 3,500 stores in the United States and more than 1,100 stores in international markets. Worldwide it is

in the process of increasing its amount of stores as well as going into different markets and sectors. Puerto Rico's experience began in 1992 when the first store was established on the Island.

Today there are 19 stores divided in the following manner: 9 Wal-Mart stores, 9 Sam's Club stores and 1 Wal-Mart Supercenter. The new growth strategy of the corporation is directed towards the food market through Neighborhood Stores. Last fiscal year in Puerto Rico, the Wal-Mart conglomerate surpassed \$1.1 billion in sales, keeping a payroll of over one hundred million dollars a year employing 6,800 Puerto Ricans, 60% of which are part-time (part-time employees do not have benefits of permanent employees according to existing labor laws), and has contributed \$160 million in taxes to the treasury, according to information submitted to the Labor and Veterans Affairs Committee. On the other hand, Amigo Supermarkets is a private corporation founded in 1966 by ten (10) local merchants and today it is the third most important corporation in Puerto Rico with annual sales of about 600 million dollars in its 36 stores distributed around the Island. It employs 4,500 people, 60% of which are part-time and the remaining 31% are full-time. The payroll exceeds 43 million a year and the cost of the marginal benefits package exceeds 16 million dollars. It is pertinent to point out that the part-time employees, in conformance with Law No. 180 of July 27, 1998, do not accumulate vacation days or sick leave if they work less than 115 hours a month. For this reason, big businesses seek to maximize their profits through contracting part-time employees.

In Puerto Rico in the last six years, sales in the supermarket category have decreased due to Puerto Rican consumers changing their style of consumption and preferences. Consumers spend less time at home so there has been an increase in their choice to buy fast food and in restaurants. In 1997, sales of independent chains, from supermarkets to small markets, were \$5,161,900,000 and for 2001 only \$4,896,300,000 with a reduction of 265.6 million dollars. This trend is limiting the expansion of the Puerto Rican small market and supermarket sector.

#### IMPORTANT DATA

- With the purchase of the Amigo Supermarket chain by Wal-Mart Corp in Puerto Rico, some market conditions may exist that would propitiate competitive advantages with monopolistic trends of cornering the market, depredation and market power in the short and long-term. With the new current enterprises, some businesses have monopolistic characteristics when they displace competition in this market and do not leave room for new businesses, such as has occurred with the immersion of Wal-Mart in other markets.

- These characteristics, according to the statement of José I. Alameda Lozada, PH.D., are: high investment, economies of scale and technological dominance, which have the effect of limiting the entrance of other competitors and achieving the

control of suppliers and purchase conditions. By having this purchasing power, savings and lower prices can be achieved. These conditions give Wal-Mart a competitive advantage that joined with the high penetration in the Puerto Rican market, would result in a high rate of saturation, that will rebound in the disappearance of small and medium-sized local merchants. This provokes it being able to control prices after the displacement or when it wants to control a market as happened in Cayey.

- The Sam's Clubs in the U.S. this year have had a decrease in their sales, bringing them a decrease in profits of 2.4%. Their economic studies have given them a new strategy in the food market. The new strategy in the food market in the U.S. is the acquisition of small stores, called "Neighborhood Stores" or the equivalent in Puerto Rico, "Supermercados Amigo." With this strategy in the U.S., Wal-Mart has achieved an increase of 35% in its food sales. In Puerto Rico, Wal-Mart had a similar increase as in the U.S. without having acquired the Amigo supermarket chain by increasing the area for food in each one of its general merchandise stores.
- Another strategy used by Wal-Mart to achieve market saturation in Puerto Rico is to establish a regional distribution center of 300 thousand square feet with a future expansion of up to 800 thousand square feet, affecting local food distributors since it would compete directly with local manufacturers due to its size. Both strategies are already being implemented in Puerto Rico.
- Among the strategies used in the Neighborhood Stores is to establish services of extended hours, with Pharmacies and One Hour Service. After having obtained the pharmacy permits, requesting from the state that they be open 24 hours a day, it thereby captured other markets in prejudice of already established businesses of this type. Market saturation is the strategy used by this corporation, increasing its Market Share and therefore displacing the competition. According to the business magazine, Reuters of Chicago, the International Division of Wal-Mart has obtained profits of 447 million dollars in 2002, 42.4% more than last year. In Mexico it has managed to capture 50% of the supermarket sales in only ten (10) years; and the Federal Trade Commission of Mexico is studying the complaints from businesses over unfair practices with respect to price fixing. In Germany, its highest Court of Justice established that the milk and butter sales at lower prices than wholesalers was affecting competition and determined that it prejudiced small businesses, showing that [Wal-Mart's] limitation of competition is notorious.

- The Market Share for food that Wal-Mart would control in PR at the time of purchase would be 36% according to a study made by Economist José I. Alameda.
- It is projecting the consumption of food, alcoholic beverages and tobacco at 4.6% a year. The merger of Wal-Mart and Amigo and the natural expansion of these businesses would mean that corporation will capture 128% of the food market growth in the next 8 years.
- The effect of the increase on sales of Wal-Mart-Amigo would be detrimental for small markets and independent supermarkets that are already showing trends of sales reductions; the small markets would lose 1.24 billion dollars and independent supermarkets, 296 million dollars, causing the closing of 4,600 small markets and 106 supermarkets with a loss of 35,270 jobs.
- If we consider the census of A.C. Nielsen, (presented in the statement of Amigo Supermarkets) between 1994 and 2001, 5,878 independent supermarkets, kiosks, liquor stores and community pharmacies have been lost and 43,497 jobs by the closing of these businesses. With statistics for the years 1994 through 2001, we can predict that in the next 10 years, 4,776 businesses will be lost with an additional loss of 32,570 jobs.

The Federal Trade Commission (FTC) uses the HHI index as a guide and has established that if the HHI is less than 1,000, then the market is not saturated, if it is between 1,000 and 1,800, the market is slightly saturated and if it is over 1,800, it is highly concentrated; if the growth surpasses 100 points, it is considered it is going to increase Market power.

- According to the study done by Estudios Técnicos using the Herndahl-Hirshman Index [sic], the levels of concentration of the different regional markets are the following: Caguas (2,177 HHI points), Bayamón (2,334 HHI points), Cayey (2,160 HHI points), Manatí (2,645 HHI points), Mayaguez (2,774 HHI points), Ponce (2,933 HHI points) and Humacao (3,659 HHI points) considering these markets extremely high, according to the study.
- The Puerto Rico Farm Bureau does not favor the acquisition of Amigo because it believes that the market control that Wal-Mart would have would allow it to impose import policies in substitution of the local distribution of farm products, forcing lower prices and destroying many farmers with the effect of the loss of jobs.

- According to the Planning Board of PR, Regional Economies must be studied carefully and the impact on the small businesses, the decrease in prices (predatory pricing), the flight of capital and the impact on jobs.
- According to the statement of the Secretary of the Department of Economic and Business Development, the Hon. Ramón Cantero Frau, it must be ensured that citizens are protected from antitrust practices in the long-term. Also, he added that “when a company increases its market concentration, it increases the risk of antitrust practices” and stated that there are eight (8) objections of the government with regard to the Wal-Mart-Amigo merger. [Translator’s Note: Although it is implied here that 8 objections will be listed, only 7 were in the document].
  1. Possible strangulation of suppliers and distributors.
  2. Possible increase in concentration.
  3. Possible total suspension of Puerto Rican farm products.
  4. Flight of Puerto Rican capital from the market, affecting the Puerto Rican business class.
  5. Adverse impact on the business activity in urban centers.
  6. Adverse impact on pharmacies.
  7. Uncertainty regarding the protection and security of permanent and temporary jobs, the negative effect in terms of salary levels, marginal benefits and union negotiation power.

“No government that believes in free trade can favor any transaction that creates unmeasured concentration,” according to the Secretary of Economic and Business Development, the Hon. Ramón Cantero Frau.

### CONCLUSIONS

1. A high concentration of market power will be created for Wal-Mart.
2. Wal-Mart would capture 100% of the market increase by 2007 and increase its Market Share by 14 points.
3. Independent supermarkets and small markets would lose 296 million dollars and 1.24 billion dollars respectively in ten (10) years.
4. 4,766 stores would be lost.

5. 35,270 permanent and temporary jobs would be lost.
6. The expansion of the chain would produce 58 new stores recruiting 60% of the employees part-time with no marginal benefits such as vacation or sick leave.
7. It would generate a domino effect conducive to the destruction of the competitive market climate.
8. Jobs in more than one business category would disappear.
9. It would affect farm and manufacturing sectors.
10. The competition would have to increase prices.
11. It would affect Puerto Rican distributors and wholesalers.
12. Urban centers would collapse completely.
13. It would affect the Real Estate sector with the closing of businesses and the collapse of urban centers.
14. It would increase retail sector and personal bankruptcies.
15. With the flight of capital and bankruptcies, local banking would be affected.
16. It would affect planning in general.
17. Wal-Mart will share the title of largest employer in PR with the Government. Municipal taxes and collections would be affected.

### RECOMMENDATIONS

Small and medium-sized merchants have been facing such a difficult economic situation that, in many cases, it has obligated them to stop operating, thereby provoking a loss of jobs. This Committee, independent of the approval of the purchase transaction of Amigo by Wal-Mart that will have a significant impact on small and medium-sized merchants, [but] with the purpose of improving the long-term situation of this sector, recommends the following:

- That the Government of Puerto Rico take the necessary actions within the scope of the laws of the Commonwealth to avoid this transaction within a framework that propitiates a present and future monopoly.
- For the benefit of permanent part-time workers, the approval of House Bill 3275, the purpose of which is to establish that every employee that works between forty

(40) and one hundred fifteen (115) hours per month would have to receive benefits of vacation and sick leave in proportion to the time worked.

- The approval of House Bill 768, the purpose of which is to increase from seven to fifteen the number of employees for a business to be exempt from the provisions of Law No. 1 of December 1, 1989, known as the "Law to Regulate the Operations of Business Establishments" with respect to their closing. In this way, small merchants can stay open when the big chains are closed, giving service to the community and obtaining a competitive advantage and power to capture the market while the big stores are closed, therefore creating more permanent jobs.
- Accelerate the process of revitalization of the urban centers to make them more attractive to consumers.
- That the Planning Board establish a policy of granting permits for the location of shopping centers in the periphery of the urban centers or municipalities in a way that keeps them within a constant flow of people in the areas where there is a greater amount of small merchants.
- Stop the practices that have been brought about during the past ten years of moving governmental offices from these urban centers.
- Amend Law No. 77 of June 25, 1964 with the purpose of making antitrust practices a felony, assigning greater penalties for the infringement of it and anticipate the phase of vertical monopoly.
- Restrict the granting of certificates of need and convenience for pharmacies of the Amigo Supermarket chain.
- Respectfully exhort the Department of Justice to demand by consent agreement or through judicial proceedings that the Wal-Mart business commit to buying Puerto Rican farm products for its operations within and outside of Puerto Rico at a minimum of \$25,000,000 a year.

### FINAL CONCLUSION

Therefore, this Joint Committee concludes that after the merger of Wal-Mart-Amigo transaction is finalized, adversely affecting the price and market system and the environment of healthy competition, it will be obligated to demand, whether through a consent agreement or through the courts, that Wal-Mart comply with the requirements imposed on it for the realization of a transaction with the purpose of preserving the balance that must exist in an open and free market system.

This Joint Committee will maintain permanent jurisdiction over this matter to keep watch over and supervise the effect that it may have on workers, industry, business,



farmers and any other matter related to the economy of the country, once this transaction of the purchase of Amigo by Wal-Mart is concluded.

Given the above, the Committees of Labor and Veterans Affairs, Industry and Business of the House of Representatives and of Infrastructure and Technological Development and of Business and Labor, Veterans Affairs and Human Resources of the Senate of Puerto Rico, upon study and in consideration thereof, sign the Final Joint Report on Resolutions No. 5433 and 2301, with the findings, conclusions and recommendations set forth therein.

Respectfully submitted,

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**Hon. Severo E. Colberg Toro**  
President  
Committee of Labor and Veterans  
Affairs

/s/

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**Hon. Juan Cancel Alegría**  
President  
Committee of Infrastructure and Techno-  
logical Development and of Business

/s/

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**Hon. Guillermo Valero Ortiz**  
President  
Committee on Business and Industry

/s/

\_\_\_\_\_  
**Hon. Rafael Irizarry Cruz**  
President  
Committee of Labor, Veterans Affairs  
and Human Resources