Organization for Competitive Markets
P.O. Box 6486
Lincoln, NE 68506

Tel: 662.476.5568
Fax: 208.441.5092

web site: www.competitivemarkets.com

December 20, 2002

FEDERAL TRADE COMMISSION
RECEIVED DOCUMENTS
496864-#2
DEC 20 2002
SECRETARY

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room 172
600 Pennsylvania Ave NW
Washington, D.C. 20580

Re: In the Matter of Wal-Mart Stores, Inc., and Supermercados Amigo, Inc.
File No. 021 0090, Docket No. C-4066

Dear Mr. Clark:

This is a public comment by the Organization for Competitive Markets and the Puerto Rico Farm Bureau regarding *In the Matter of* Wal-Mart Stores, Inc., and Supermercados Amigo, Inc., File No. 021 0090, Docket No. C-4066. For the following reasons, we oppose the proposed acquisition.

The Organization for Competitive Markets ("OCM") is a multidisciplinary nonprofit group made up of farmers, ranchers, academics, attorneys, political leaders and business people. The mission of the OCM is to re-establish fair and truly competitive markets for agricultural products; and to protect those markets from any abuse of power.

The Puerto Rico Farm Bureau is a non-profit group, affiliated with the American Farm Bureau Federation. Its purpose it to promote and represent Puerto Rican farmers and other agricultural interests.

The Acquisition will Increase Wal-Mart's Monopsony Power in Puerto Rico with No Counter-veiling Efficiency Gains.

The Federal Trade Commission's November 21, 2002 acceptance of a Proposed Consent Order ("Consent Order") permitting Wal-Mart Stores, Inc. ("Wal-Mart") to proceed with its acquisition of Supermercados Amigo, Inc. ("Amigo") in Puerto Rice with only a modest divestiture of four (4) Amigo locations is alarming in both its failure to address the certain anticompetitive effects on Puerto Rican agricultural and food distribution markets and because of the apparent deficiency in the supposed curative divestiture of a few locations to an unproven, untested operator, Supermercados Maximo, Inc. ("Maximo") that will do nothing to alleviate Wal-Mart's monopsony power in Puerto Rico. The vacuum left after Wal-Mart completes its digestion of the Amigo chain will lead to irreparable harm to the agricultural and food distribution markets in Puerto Rico including reduced output and increased prices.

The OCM urges the Commission to reevaluate its decision to allow this transaction to proceed altogether, or alternatively, asks that the Commission reopen its investigation to address the competitive issues affecting Puerto Rican farmers, other agricultural producers and the food distribution industry in Puerto Rico.

It is unclear from the *Analysis of the Complaint and Proposed Decision and Order to Aid Public Comment in the Matter of Wal-Mart Stores, Inc and Supermercados Amigos, Inc.("Analysis to Aid Public Comment")* whether or not the Commission even investigated and deliberated over these concerns in reaching its approval of the Consent Order. As noted in Section 0.2 of the *1992 Horizontal Guidelines*, "[t]he exercise of market power by buyers ('monopsony power') has adverse effects comparable to those associated with the exercise of market power by sellers. In order to assess potential monopsony concerns, the Agency will apply an analytical framework analogous to the framework of these Guidelines."

Both the Commission and the U.S. Department of Justice have recently analyzed monopsony issues in other transactions. *See Analysis of the Proposed Consent Order and Draft Complaint to Aid Public Comment In the Matter of* BP Amoco p.l.c., and Atlantic Richfield Company, File No. 991 0192, Docket No. C-3938 at Section V.B. ("Firms . . . will simply be unable to fill the void created by the loss of ARCO as an independent bidder for exploration and development acreage"), and *U.S. v. Cargill, Inc. and Continental Grain Co.* Competitive Impact Statement, No. 1:99CV01875 (D.D.C. July 23, 1999) at 7-10 (requiring divestiture of grain elevators in several local markets to preserve existing competition for grain purchasing services and to "ensures that farmers and other suppliers in the affected markets will continue to have effective alternatives to Cargill when selling their crops" where "transportation costs would preclude them from selling to other grain traders or purchasers in sufficient quantities to prevent an anticompetitive price decrease").

An important issue left untouched by the *Analysis to Aid Public Comment* is the significance of Puerto Rico's island geography and economy. The geographical barriers of the island of Puerto Rico create a unique situation that magnify the anticompetitive effects of Wal-Mart's acquisition of Amigo and raise significant monopsony issues.

Wal-Mart's acquisition of Amigo greatly increases its buying power on the island of Puerto Rico and more importantly, eliminates one of the few competitive buyers (Amigo) with sufficient scale to challenge Wal-Mart in the Puerto Rican marketplace. Unchecked, Wal-Mart will have the ability to squeeze lower and lower prices from local farmers, eventually leading to a reduction in their output or complete exit from agricultural production and increased prices to consumers. The Puerto Rico Farm Bureau estimates that prior to the acquisition, Amigo annually purchased as much as $30 million in local agricultural products (including eggs, milk, cheese, meat, poultry, fruits and vegetables) and specifically has been the leading purchaser of locally grown fruits and vegetables. Wal-Mart traditionally has not purchased large volumes of Puerto Rican agricultural products.

The addition of Amigo's 2001 annual sales of approximately $542 million and 36 supermarkets to the Wal-Mart juggernaut is a mere blip on the screen to Wal-Mart's balance sheet, given Wal-Mart's approximately 4,200 stores in the United States, Europe, Latin America, and Asia and sales of over $191 billion in 2001. On the other hand, the transaction does not have the same effect on Puerto Rican farmers and businesses left to compete with Wal-Mart on what is now an unbalanced playing field.

First, prior to Wal-Mart's acquisition, local farmers and agricultural producers already faced limited channels of distribution and potential purchasers of their products due to the island geography. The result of Wal-Mart's acquisition is to further concentrate the buying power of Wal-Mart to the detriment of local farmers and agricultural producers. Wal-Mart's buying power could lead it to exploit the small and comparatively disorganized farmers and agricultural producers, thereby leading to a decrease in output. *See generally*, Jon Lauck, *Toward An Agrarian Antitrust: A New Direction For Agricultural Law*, 75 N.D. L. Rev. 449, 474 (1999) (discussing power buyer considerations in the agricultural arena).

Second, the increased buying power of Wal-Mart in Puerto Rico will have a ripple effect on the food distribution and retail industries in Puerto Rico. While Wal-Mart may allege some limited economies of scale and efficiencies in Puerto Rico from its acquisition of Amigo, it comes at great expense to the Puerto Rican economy and its citizens, and specifically to the farmers and distributors that now must face increasing costs and loss of bargaining power. The geographic barriers of the island limit the alternatives available to Puerto Rican farmers and food distributors.

Neither the Commission nor Wal-Mart have shown that efficiency gains in Puerto Rico will result from the acquisition, that there are no alternative ways to achieve efficiency gains, that the alleged efficiencies will passed on to Puerto Rican consumers, or that the alleged efficiencies outweigh the harm to competition. The ability of Wal-Mart to obtain lower prices from Puerto Rico's farmers and agricultural producers as a result of its acquisition of Amigo is not evidence of efficiency, but of monopsony power.

Wal-Mart arguably is already the most efficient retailer in the world. The Amigo chain will not add to these efficiencies in any significant way, but the acquisition will greatly increase Wal-Mart's buying power in Puerto Rico. The strengthening of Wal-Mart's buying power in Puerto Rico will almost certainly rise to the level of monopsony (*i.e.*, Wal-Mart's ability to depress the price paid for local products to a level that is below the competitive price and thereby depress output), and the Commission is in the best position analyze the monopsony issue and its anticompetitive effects in Puerto Rico. Unfortunately, the Commission fails to address the monopsony issue in the *Analysis to Aid Public Comment*, or provide any information to allow the public to do anything other than raise questions that the Commission itself should have answered.

For instance, the *Analysis to Aid Public Comment* includes Amigo's 2001 annual sales (approximately $542 million), but does not provide the 2001 annual sales for Wal-Mart's operations in Puerto Rico or more specifically, for Wal-Mart's eight (8) Sam's Clubs and one (1) Supercenter included in the Commission's relevant product market. The use of Wal-Mart's worldwide 2001 annual sales of over $191 billion serves no useful purpose other than to raise the monopsony alarms discussed in this public comment. Wal-Mart's global sales serve no useful purpose to the competitive analysis of the Puerto Rican island economy. Furthermore, there is no estimate of the overall size of the Puerto Rican product market in terms of sales or volume, save for an approximate number of supermarket locations (250).

Furthermore, the *Analysis to Aid Public Comment* provides no information regarding Wal-Mart's claimed efficiencies or evidence that any savings will be passed through to consumers. In other words, will Wal-Mart's buying power in Puerto Rico lead it to squeeze lower prices from its suppliers, including local farmers, and if so, will these cost be passed on to consumers? Wal-Mart's notoriety for its EDLP ("every day low price") strategy should not be a shield to Commission review of the monopsony issue.

In addition, there is little information regarding the Commission-approved purchaser of the four divestiture locations. All that is known is that Maximo is a newly-formed entity that includes as "its founders and management two former long-time members of Amigo's board." There is no information to show that Maximo would be a viable competitor on either the buy-side or the sell-side. There is no information to show that Maximo will be a viable business. Again, rather than alleviating the competitive concerns associated with the acquisition, this limited information only serves to raise more questions and concerns. What are the estimated annualize sales of the Maximo? Will Maximo have the ability to expand and aggressively compete with Wal-Mart and Amigo? It seems unlikely that Maximo will come close to restraining the huge gain in Wal-Mart's purchasing power in Puerto Rico from its acquisition of Amigo. The Consent Order is meant to alleviate any competitive harm resulting from Wal-Mart's acquisition of Amigo, but the sale of a few stores to an unproven operator with little or no buying power falls short of preserving competition, as it existed prior to acquisition.

In sum, the acquisition of Amigo by Wal-Mart can only be viewed as decreasing competition in relation to input suppliers, *i.e.*, the farmers of Puerto Rico. The alleged efficiency gains are unproven, unlikely to be passed on to Puerto Rican consumers or farmers, able to be achieved through means other than acquisition, and unlikely to outweigh the harm to competition.

Conclusion

In order to adequately address the potential anticompetitive effects of this transaction on the local farmers, agricultural producers and food distribution industry in Puerto Rico, the OCM urges the Commission to withdraw from the Agreement Containing Consent Order and the Proposed Consent Order.

Sincerely,

Michael C. Stumo
General Counsel,
Organization for Competitive Markets

Joined by: Puerto Rico Farm Bureau

Organization for Competitive Markets
P.O. Box 6486
Lincoln, NE 68506

Tel: (662) 476-5568
Fax: (208) 441-5092
web site: www.competitivemarkets.com

FAX MEMORANDUM

TO	:	Mr. Donald S. Clark
COMPANY	:	Secretary, Federal Trade Commission
FAX NO.	:	202-326-2496
FROM	:	Michael C. Stumo
DATE	:	December 20, 2002
NO. OF PAGES (including cover page)	:	5

Comments

Please respond to:
Michael C. Stumo
Tel: 860.379.6199
Fax: 208.441.5092
Email: stumo.and.milleron@snet.net