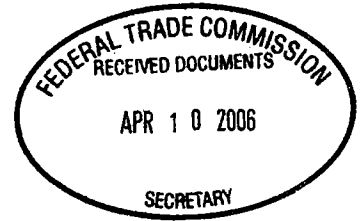


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of )  
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)  
KONINKLIJKE AHOLD N.V., )  
a corporation, )  
)  
and )  
)  
BRUNO'S SUPERMARKETS, INC., )  
a corporation. )  
)  
)

Docket No. C-4027  
PUBLIC VERSION

FEDERAL TRADE COMMISSION  
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DOCUMENT PROCESSING

**PETITION OF RESPONDENT KONINKLIJKE AHOLD N.V. TO  
REOPEN AND MODIFY DECISION AND ORDER**

Koninklijke Ahold N.V. ("Ahold"), a Respondent *In the Matter of* Koninklijke Ahold, N.V. and Bruno's Supermarkets, Inc., FTC File No. 011-0247, FTC Docket No. C-4027, respectfully requests the Federal Trade Commission (the "Commission") to reopen and modify the Commission's Decision and Order ("Order"), dated January 16, 2002. (Attached as Exhibit 1). Ahold makes this request pursuant to § 5(b) of the Federal Trade Commission Act, 15 U.S.C. §45(b), and §2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. §2.51, because of changed conditions of fact and because this request is in the public interest.

A satisfactory showing sufficient to require reopening is furnished when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. *See* S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979). Ahold's reasons for filing the foregoing

Petition to Reopen and Modify the Order (“Petition”) are set forth in the attached affidavit of Brian W. Hotarek, Executive Vice President, Ahold U.S.A., Inc. (Attached as Exhibit 2).

Briefly, in January 2005, Ahold sold all of its Supermarket assets in the areas covered by the Order and therefore does not own or operate any Supermarket assets in the areas. The party that acquired the assets from Ahold was identified to the Commission

Redacted

Therefore, the Order as it relates to Ahold is no longer needed and should be vacated as to Ahold.

**I. Procedural History**

**A. The Transaction**

Pursuant to an Agreement and Plan of Merger dated as of September 4, 2001, by and among Ahold; New Bronco Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Ahold U.S.A., Inc.;<sup>1</sup> Bruno’s Supermarkets, Inc., a Delaware corporation (“Bruno’s Supermarkets”); and Elway Advisors, LLC, as stockholders’ representative, Ahold acquired 100% of the outstanding voting securities of Bruno’s Supermarkets 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. (See FTC Press Release, attached as Exhibit 3). As a result of this merger, until December 2004, Ahold held 100% of the outstanding voting securities of Bruno’s Supermarkets.

The proposed transaction was investigated by the Commission. On December 7, 2001, the Commission issued a complaint (Attached as Exhibit 4), which culminated in an Agreement Containing Consent Orders signed by the parties. (Attached as Exhibit 5). The Commission

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<sup>1</sup> On December 5, 2005, Ahold U.S.A., Inc., a Delaware corporation, merged with and into Ahold U.S.A. Holdings, Inc., a Maryland corporation. On December 5, 2005, Ahold U.S.A. Holdings, Inc. changed its name to Ahold U.S.A., Inc.

voted 5-0 to accept the consent order and place a copy on the public record. (See FTC Press Release, attached as Exhibit 3). After the 30-day public comment period expired, the Commission voted 5-0 to issue the Order on January 16, 2002. (See FTC Press Release, attached as Exhibit 6). Ahold has complied, and continues to comply, with all provisions of the Order.

B. The Order

Specifically, the terms of the Order required the following. Ahold was required to divest two of its BI-LO Supermarkets in Georgia, one in Baldwin County and one in Washington County. The store in Baldwin County was sold to The Kroger Co. and the store in Washington County was sold to Winn-Dixie Stores, Inc. Pursuant to Paragraphs II.A. and II.B. of the Order, and as reported in Ahold's 30-day Report filed with the Commission and dated February 15, 2002, Ahold divested all assets as required by the Order. (Attached as Exhibit 7).

Pursuant to Paragraph IV.A. of the Order, for a period of ten (10) years from the date the Order became final (January 16, 2002), Ahold is required to provide advance written notice to the Commission prior to acquiring any ownership or leasehold interest in any facility that has operated as a Supermarket within six months of the date of such proposed acquisition in Baldwin County or Washington County, Georgia. Ahold has made no such acquisition.

Pursuant to Paragraph IV.B. of the Order, for a period of ten (10) years from the date the Order became final (January 16, 2002), Ahold is required to provide advance written notice to the Commission prior to acquiring any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any Supermarket, or owned a Supermarket within six months prior to such proposed acquisition in Baldwin County or Washington County, Georgia. Ahold has made no such acquisition.

Pursuant to Paragraph V.A. of the Order, Ahold may neither enter into nor enforce any agreement that restricts the ability of any person that acquires any Supermarket, any leasehold

interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after January 1, 2001 in Baldwin County or Washington County, Georgia to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Ahold. Ahold has neither entered into nor enforced any such agreements.

Pursuant to Paragraph V.B. of the Order, Ahold shall not remove any fixtures or equipment from a property owned or leased by Ahold in Baldwin County or Washington County, Georgia, that is no longer in operation as a Supermarket, except (1) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; or (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Ahold. Ahold is in full compliance with Paragraph V.B. of the Order.

Pursuant to Paragraph VI.B. of the Order, Ahold is required to submit a verified written annual report. The most recent verified written annual report was submitted to the Commission by Ahold on January 13, 2006. (Attached as Exhibit 8). The reporting requirement under the Order continues until 2012. Ahold is in full compliance with Paragraph VI.B. of the Order.

Finally, pursuant to Paragraph VII. of the Order, Ahold is required to notify the Commission thirty days in advance of certain proposed changes to Ahold's business organization. <sup>Redacted</sup>, Ahold filed notice pursuant to Paragraph VII. of the Order, for the reasons stated below. (Attached as Exhibit 9).

C. Sale of Assets: Ahold Exits the Relevant Areas

<sup>Redacted</sup>, Ahold entered into a Limited Liability Company Interest Purchase Agreement ("the Agreement") with Lone Star U.S. Acquisitions, LLC, a Delaware limited partnership ("Lone Star"), whereby Ahold, through Ahold U.S.A. Holdings, Inc., a Maryland corporation, n/k/a Ahold U.S.A., Inc., agreed to sell all of the outstanding limited

liability company interests in BI-LO Holding, LLC, a Delaware limited liability company. (Attached as Exhibit 10).

At the time of the Agreement, the operating companies for all of Ahold's Supermarkets throughout the Southeastern United States were included within BI-LO Holding, LLC: BI-LO, LLC; Bruno's Supermarkets Inc.; and Bruno's Inc. (See December 23, 2004 Ahold Press Release, attached as Exhibit 11). Redacted, Ahold submitted its Hart-Scott-Rodino filing in connection with this transaction, and received early termination of the waiting period on January 11, 2005. (Attached as Exhibit 12). The parties to the Agreement closed the transaction on January 31, 2005. (See January 31, 2005 Ahold Press Release, attached as Exhibit 13). As a result, after the closing, Ahold no longer owns or operates Supermarkets in the relevant areas subject to the compliance obligations of the Order, namely Baldwin County, or Washington County, Georgia ( the "Relevant Areas").

**II. The Requested Modification is Based Upon Changed Conditions of Fact and is in the Public Interest**

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A. Changed Conditions of Fact

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. §45(b), provides that the Commission may reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" or public interest so require. Furthermore, Section 2.51(b) of the Commission's Rules of Practice, 16 C.F.R. § 2.51(b) provides that, "[a] request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified, or set aside, in whole or in part, or that the public interest so requires."

As detailed above, the changed conditions of fact are based on Ahold's Agreement with Lone Star, whereby Ahold sold its Supermarkets in Baldwin County and Washington County,

Georgia, the areas subject to the compliance obligations of the Order. Although Ahold has continued to comply with the reporting obligations of the Order since the January 2005 sale of all of its outstanding interests in the Relevant Areas, the changed conditions of fact have eliminated the need for the Order as it relates to Ahold.

Ahold's requested modification is consistent with the goals of the Order and would eliminate unnecessary costs and burdens to Ahold and the Commission during the remaining term of the Order. The continuation of the reporting requirement for the remaining 6 years of the Order (until January 2012) would impose needless costs and burdens on Ahold and the Commission, in light of the changed conditions of fact. Furthermore,

Redacted

(See Exhibit 10).

B. Public Interest

In addition to changed conditions of fact, Ahold meets the public interest requirement of Section 2.51(b) because "the order in whole or in part is no longer needed." To meet the public interest requirement of Section 2.51(b), the requester must:

make a *prima facie* showing of a legitimate "public interest" reason or reasons justifying relief. [T]his showing requires the requester to demonstrate, for example, that there is a more

effective or efficient way of achieving the purposes of the order, that the order in whole or in part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief.

*Requests to Reopen*, 65 Fed. Reg. 50,636, 50,637 (Aug. 21, 2000), *amending* 16 C.F.R. 2.51(b).

When the Order was issued on January 16, 2002, the Commission was concerned that the transaction might substantially lessen competition in Baldwin County and Washington County, Georgia. As a result of the sale of Ahold's outstanding interests in the Relevant Areas, Ahold is no longer a competitor in the Relevant Areas.

The Redacted Agreement with Lone Star resulted in the sale of any remaining assets held or operated by Ahold in the Relevant Areas. Today, Ahold no longer owns or operates Supermarkets in the Relevant Areas, nor does Ahold own or operate supermarkets in any part of the Southeastern United States. Now that Ahold has sold its assets in the Relevant Areas, the Order is no longer needed as to Ahold. *In re Bendix Corp.*, 107 F.T.C. 60 (1986) (reopening and terminating provisions of order requiring prior approval because respondent divested or sold off all product lines that gave rise to the order, and the Commission's concerns leading to the order were no longer applicable).

Finally, continuation of the Order's notice and reporting provisions are not needed to protect the public interest. *See Notice and Request for Comment Regarding Statement of Policy Concerning Prior Approval and Prior Notice Provisions in Merger Cases*, 60 Fed. Reg. 39,745, 39,746 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241 (limiting prior approval and notice provisions to narrow circumstances). Since Ahold has exited the Relevant Areas and is no longer a competitor, there is no credible risk that, but for the Order, Ahold would engage in an otherwise unreportable anticompetitive merger. *Id.* at 39,746. Here, there is nothing to suggest

that Ahold would attempt the same or essentially the same merger that gave rise to the original complaint.

**III. Requested Modification to Decision and Order**

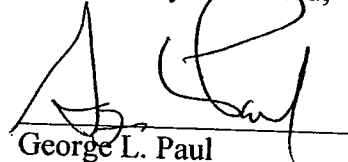
Ahold has filed this Petition because of changed conditions of fact and the public interest so requires. Ahold respectfully requests that the Commission vacate the Order as to Respondent Ahold.

**IV. Conclusion**

For the foregoing reasons, modifying the Order by vacating it as to Respondent Ahold is consistent with the purposes of the Order. The Order is unnecessary due to the changed conditions of fact and because the public interest no longer requires it. Therefore, Ahold's Petition should be granted.

Dated: April 10, 2006

Respectfully submitted,



George L. Paul  
Douglas M. Jasinski  
Anna Kertesz

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Attorneys for Koninklijke Ahold N.V.

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

**COMMISSIONERS:**                    **Timothy J. Muris, Chairman**  
    **Sheila F. Anthony**  
    **Mozelle W. Thompson**  
    **Orson Swindle**  
    **Thomas B. Leary**

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In the Matter of )

**KONINKLIJKE AHOLD N.V.,** )  
    a corporation; )

and )

**BRUNO'S SUPERMARKETS, INC.,** )  
    a corporation. )

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**Docket No. C-4027**

**DECISION AND ORDER**

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of 100% of the outstanding voting securities of Respondent Bruno's Supermarkets, Inc. ("Bruno's") by Respondent Koninklijke Ahold N.V. ("Ahold"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. 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.
2. 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, AL.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

## ORDER

### I.

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

- A. "Ahold" means Koninklijke Ahold N.V., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Koninklijke Ahold N.V. (including, but not limited to, BI-LO, LLC, and New Bronco Acquisition Corp.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Bruno's" means Bruno's Supermarkets, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Bruno's Supermarkets, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Respondents" means Ahold and Bruno's, individually and collectively.
- D. "Acquisition" means Ahold's proposed acquisition of the outstanding voting securities of Bruno's pursuant to the "Agreement and Plan of Merger Dated as of September 4, 2001 By and Among Koninklijke Ahold N.V., New Bronco Acquisition Corp., Bruno's Supermarkets, Inc. and Elway

