

ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

Docket No. C-4027  
PUBLIC VERSION

**PETITION OF RESPONDENT BRUNO'S SUPERMARKETS INC. TO  
REOPEN AND MODIFY DECISION AND ORDER**

Bruno's Supermarkets, Inc. ("Bruno's"), a Respondent *In the Matter of* Koninklijke Ahold, N.V. ("Ahold") and Bruno's Supermarkets, Inc., Federal Trade Commission File No. 011-0247, Federal Trade Commission Docket No. C-4027, respectfully requests the Federal Trade Commission (the "Commission") to reopen and terminate the Commission's Decision and Order ("Order"), dated January 16, 2002 (attached as Exhibit 1) as it applies to Bruno's, BI-LO, LLC and their ultimate parent entity, Lone Star Fund V (U.S.), L.P. ("Lone Star").

BI-LO, LLC was, at the time of the Order, owned by Ahold, the definition of which included affiliates controlled by Ahold, including but not limited to BI-LO, LLC. Ahold no longer owns BI-LO, LLC or its direct parent company, BI-LO Holding, LLC ("BI-LO Holding") due to the events described below. BI-LO, LLC owns Bruno's, a named Respondent, however, and this petition is being made on behalf of BI-LO Holding, BI-LO, LLC, Bruno's and, to the extent that the Order is applicable to Lone Star, on behalf of Lone Star. BI-LO Holding, BI-LO,

LLC and Bruno's, and to the extent applicable, Lone Star, are referred to collectively herein as the "Bruno's Respondents." The Bruno's Respondents make 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, 96<sup>th</sup> Cong, 2d. Sess. 9 (1979). The Bruno's Respondents' reasons for filing this Petition to Reopen and Terminate the Order ("Petition") are set forth in the attached affidavit of Brian Carney, the Chief Financial Officer of BI-LO Holding, LLC (attached as Exhibit 2).

Capitalized terms used herein and not defined have the meanings attributed to them in the Order.

In January 2005, all of the membership interests in BI-LO Holding, which holds all of the interests in BI-LO, LLC and which was, at that time, a subsidiary of Ahold, were sold by Ahold to Lone Star. One of BI-LO Holding's indirect subsidiaries was (and continues to be) Respondent, Bruno's. From that point, the compliance obligation continued on the part of Ahold and, because the transaction involved a change in the ownership of the business organization, a separate compliance obligation arose as to the Bruno's Respondents. Subsequent to that transaction, BI-LO, LLC and certain of its subsidiaries sold some of the assets that were held by them to C&S Wholesale Grocers, Inc. ("C&S") and its affiliate, Southern Family Markets Acquisition LLC ("Southern Family Markets"). The two stores in Baldwin County, Georgia that the Bruno's Respondents owned were included in the stores sold to C&S in September 2005. In

addition, on December 30, 2005, the Bruno's Respondents sold a store, closed since March 12, 2004, to redact . As a result of these sales, the Bruno's Respondents no longer own or operate Supermarkets in those two counties to which the Order relates. Furthermore, according to reports filed with the Commission prior to Lone Star's acquisition of BI-LO Holding, the Respondents divested stores in Milledgeville and Sandersville, Georgia as required by Paragraph III of the Order. Therefore, the Order as it relates to the Bruno's Respondents is no longer needed and should be vacated as to the Bruno's Respondents.

## **I. Procedural History**

### **A. The Transaction to Which the Order Relates**

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., Bruno's, and Elway Advisors, LLC, as stockholders' representative, Ahold acquired 100% of the outstanding voting securities of Bruno's for approximately \$500 million in cash by merger of New Bronco with and into Bruno's, with Bruno's continuing as the surviving corporation. (See Commission Press Release, attached as Exhibit 3.) As a result of this merger, until January 31, 2005, Ahold held 100% of the outstanding voting securities of Bruno's. At the time of Ahold's acquisition of Bruno's, Ahold held 100% of the limited liability company interests in BI-LO Holding and BI-LO, LLC.

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 voted 5-0 to accept the Order and place a copy on the public record. (See, Commission 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, Commission Press Release, attached as Exhibit 6). The Bruno's Respondents are in compliance with all provisions of the Order as further specified in this Petition.

B. The Order

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

Pursuant to Paragraph IV.A. of the Order, for a period of ten years from the date the Order became final (January 16, 2002), Respondents named in the Order are 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. None of the Bruno's Respondents has made any such acquisition.

Pursuant to Paragraph IV.B. of the Order, for a period of ten years from the date the Order became final, Respondents are 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. None of the Bruno's Respondents has made any such acquisition.

Pursuant to Paragraph V.A. of the Order, Respondents 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 Respondents. None of the Bruno's Respondents has entered into nor enforced any such agreements.

Pursuant to Paragraph V.B. of the Order, Respondents shall not remove any fixtures or equipment from a property owned or leased by Respondents 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 Respondents. The Bruno's Respondents are in compliance with Paragraph V.B. of the Order.

Pursuant to Paragraph VI.B. of the Order, Respondents are required to submit a verified written annual report. The most recent verified written annual report was submitted to the Commission by BI-LO Holding on January 16, 2007 (attached as Exhibit 8). The reporting requirement under the Order continues until 2012. The Bruno's Respondents are in compliance with Paragraph VI.B. of the Order.

Finally, pursuant to Paragraph VII. of the Order, Respondents are required to notify the Commission thirty days in advance of certain proposed changes to Respondents' business organization. Ahold filed notice pursuant to Paragraph VII. of the Order for the reasons stated below (Exhibit 9, redacted). In response to a comment by the Commission regarding interpretation of the Order, the Bruno's Respondents filed notice of the sale of two stores in the Relevant Area

to C&S (attached as Exhibit 10). The Bruno's Respondents are in compliance with Paragraph VII of the Order.

C. Sale of Limited Liability Company Interests: Ahold Exits the Relevant Areas

On December 23, 2004, Ahold announced that Ahold and Lone Star had entered into a Limited Liability Company Interest Purchase Agreement (the "Lone Star Agreement"), whereby Lone Star agreed to buy all of the outstanding limited liability company interests in BI-LO Holding. (See, Ahold Press Release, attached as Exhibit 11.)

At the time of the Lone Star Agreement, the operating companies for all of BI-LO Holding's Supermarkets throughout the Southeastern United States were included within BI-LO, LLC, Bruno's Supermarkets, Inc. and Bruno's Inc. Lone Star submitted a 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 Lone Star Agreement closed the transaction on January 31, 2005. (See, January 31, 2005 Ahold Press Release, attached as Exhibit 13). After the closing, BI-LO Holding or its subsidiaries continued to own or operate Supermarkets in the Relevant Areas subject to the compliance obligations of the Order, namely Baldwin County and Washington County, Georgia.

D. Sales of Assets: Bruno's Respondents Exit the Relevant Areas

On May 3, 2005, BI-LO, LLC announced that an affiliate of C&S had agreed to purchase 104 (later increased to 109) of the then total of 426 BI-LO and Bruno's stores. (See BI-LO/Bruno's press release attached as Exhibit 14.) On April 22, 2005, BI-LO, LLC entered into a Master Store Purchase Agreement with C&S and Southern Family Markets (the "C&S Agreement"), whereby BI-LO, LLC and certain of its subsidiaries agreed to sell certain of their stores to C&S.

Among the stores that BI-LO, LLC sold to C&S were both of the Supermarkets in Baldwin County, Georgia held by BI-LO, LLC or its subsidiaries. Lone Star, as the ultimate parent entity of BI-LO, LLC, submitted a Hart-Scott-Rodino filing in connection with this transaction and received early termination of the waiting period on June 17, 2005 (attached as Exhibit 15). The sales of the two Supermarkets in Baldwin County were closed on September 11, 2005 and September 12, 2005. In addition, on December 30, 2005, the Bruno's Respondents sold a store located in Washington County, Georgia, closed since March 12, 2004, to South Harris Street Partners, LLC. After the closing of the sales of the Supermarkets to C&S and South Harris Street Partners, LLC, the Bruno's Respondents do not own or operate any Supermarkets in the Relevant Areas. On that very basis, the Commission approved Ahold's petition to reopen and modify final order. (See, July 25, 2006 Commission Press Release attached as Exhibit 16.)

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

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.R.F. § 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 the fact that BI-LO, LLC or its subsidiaries sold their Supermarkets in Baldwin County and Washington County, Georgia,

the areas subject to the compliance obligations of the Order. Although the Bruno's Respondents have continued to comply with the reporting obligations of the Order since the sales of their Supermarkets in the Relevant Areas (a total of 3 Supermarkets), the changed conditions of fact have eliminated the need for the Order as it relates to the Bruno's Respondents.

The Bruno's Respondents' modification request is consistent with the goals of the Order and would eliminate unnecessary costs and burdens to the Bruno's Respondents and the Commission during the remaining term of the Order. The continuation of the reporting requirement for the remaining approximately 5 years of the Order (through January 15, 2012) would impose needless costs and burdens on the Bruno's Respondents and the Commission, in light of the changed conditions of fact.

B. Public Interest

In addition to changed conditions of fact, the Bruno's Respondents meet 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 combination of BI-LO with Bruno's might substantially lessen competition in Baldwin County and Washington County, Georgia. As a result of the sale of the Bruno's Respondents' remaining Supermarkets in the Relevant Areas, the Bruno's Respondents are no longer competitors in the Relevant Areas.

Now that the Bruno's Respondents no longer have assets in the Relevant Areas, the Order is no longer needed as to the Bruno's Respondents. In re Bendix Corp., 107 F.T.C. 60 (1986) (reopening and terminating provisions of order requiring prior approval because respondent divested or sold 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 the Bruno's Respondents have exited the Relevant Areas and are no longer competitors, there is no credible risk that, but for the Order, the Bruno's Respondents would engage in an otherwise unreportable anticompetitive merger. *Id.* at 39,746. The Bruno's Respondents have a different parent company than when the Order was issued and there is nothing to suggest that the Bruno's Respondents would attempt the same or essentially the same merger that gave rise to the original complaint.

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

The Bruno's Respondents have filed this Petition because of changed conditions of fact and the public interest so requires. The Bruno's Respondents respectfully request that the Commission vacate the Order as to the Bruno's Respondents.

### **IV. Request for Confidentiality**

Respondents have prepared both a confidential version of this petition and a redacted version, as the confidential version and the related exhibits attached thereto contain confidential and competitively sensitive business information relating to the Respondents. The disclosure of this information may prejudice Respondents or cause it to violate existing confidentiality agreements to which it is a party or otherwise cause it competitive harm. Respondents have prepared the redacted version of this petition for public comment.

Pursuant to 16 C.F.R. §4.9(c) of the Commission's Rules of Practice and Procedure, and all other applicable laws and regulations, Respondents hereby request that the confidential version of this petition and its attachments be afforded confidential treatment. The confidential version of this petition falls within the scope of confidentiality provided by 5 U.S.C. §552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure; 16 C.F.R. §4.10(a)(2). It is also exempt from disclosure under Exemption 4; 5 U.S.C. §§552(b)(4).

V. **Conclusion**

For the foregoing reasons, terminating the Order as to the Bruno's Respondents 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, this Petition should be granted.

Dated: March 27, 2007

Respectfully submitted,



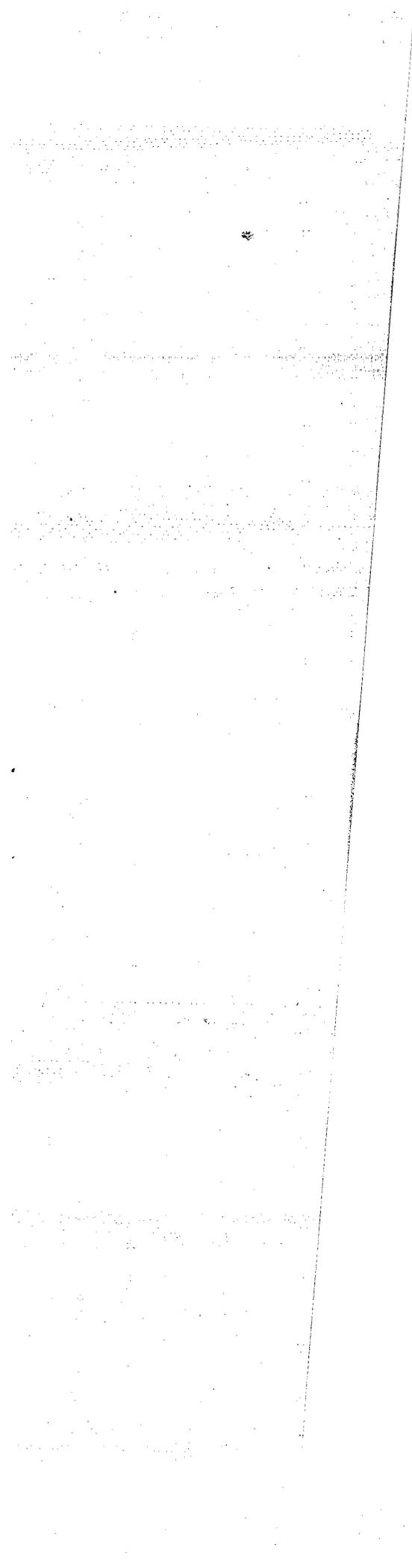
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Attorney for Jenkins & Gilchrist, P.C., attorneys for  
Bruno's Supermarkets, Inc., BI-LO Holding, LLC,  
BI-LO, LLC and Lone Star Fund V (U.S.), L.P. in  
the above-referenced matter

**[Signature page to Petition]**

## EXHIBIT LIST

Exhibit Tab No.	Exhibit Description
1	2002 Decision and Order In the Matter of Koninklijke Ahold N.V. and Bruno's Supermarkets, Inc.
2	Affidavit of BI-LO Holding
3	Press release regarding Ahold's acquisition of Bruno's
4	Commission Complaint In the Matter of Koninklijke Ahold N.V. and Bruno's Supermarkets, Inc.
5	Agreement Containing Consent Orders
6	Commission press release regarding denial of petition for modification or interpretation of injunctive decree
7	Ahold's 30-Day Report Submitted Pursuant to Decision and Order
8	Bruno's 1/16/07 Annual Compliance Report
9	Ahold's 30 Day Notice of Sale to Lone Star (redacted)
10	Bruno's 30-Day Notice of Sale to C&S (redacted)
11	Ahold's 12/23/04 press release regarding the acquisition
12	Commission's early termination notification to Lone Star regarding Ahold transaction
13	Ahold 1/31/05 press release regarding the closing
14	BI-LO/Bruno's press release announcing sale of certain assets to C&S
15	Commission's early termination notification regarding sale to C&S
16	Commission press release regarding approval of Ahold's petition to reopen and modify final order



UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

_____	)	
In the Matter of	)	
	)	
KONINKLIJKE AHOLD N.V.,	)	
a corporation;	)	
	)	Docket No. C-4027
and	)	
	)	
BRUNO'S SUPERMARKETS, INC.,	)	
a corporation.	)	
_____	)	

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

Advisors, LLC, as Stockholder's Representatives."

- E. "Commission" means the Federal Trade Commission.
- F. "Assets To Be Divested" means the Milledgeville Assets and the Sandersville Assets.
- G. "Business Day" means any day excluding Saturday, Sunday and any United States Federal holiday.
- H. "Commission-approved Acquirer" means any entity approved by the Commission to acquire either or both of the Assets To Be Divested pursuant to this Order.
- I. "Divestiture Agreement" means any agreement between the Respondents and a Commission-approved Acquirer (or a trustee appointed pursuant to Paragraph III of this Order and a Commission-approved Acquirer) and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested that have been approved by the Commission to accomplish the requirements of this Order. The term Divestiture Agreement includes, as appropriate, the Kroger Agreement, and/or the Winn-Dixie Agreement.
- J. "Divestiture Trustee(s)" means any person or entity appointed by the Commission pursuant to Paragraph III of the Decision and Order to act as a trustee in this matter.
- K. "Kroger" means The Kroger Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202-1100.
- L. "Kroger Agreement" means the "Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease" by and between BI-LO, LLC and The Kroger Co. made and entered into on November 14, 2001, and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- M. "Milledgeville Assets" means the Supermarket currently operated by Respondent Ahold under the BI-LO trade name located at 1692 North Columbia Street, Milledgeville, Georgia, 31061, and all assets, leases, properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or used in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.
- N. "Sandersville Assets" means the Supermarket currently operated by Respondent Ahold under the BI-LO trade name located at 648 Harris Street, Sandersville, Georgia, 31082, and all assets, leases,

properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or used in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.

- O. "Supermarket" means a full-line retail grocery store 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.
- P. "Third Party Consents" means all consents from any person other than the Respondents, including all landlords, that are necessary to effect the complete transfer to the Commission-approved Acquirer(s) of the Assets To Be Divested.
- Q. "Winn-Dixie" means Winn-Dixie Stores, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at 5050 Edgewood Court, Jacksonville, Florida 32254.
- R. "Winn-Dixie Agreement" means "Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease" by and between BI-LO, LLC and Winn-Dixie Stores, Inc. made and entered into on November 13, 2001, and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.

## II.

**IT IS FURTHER ORDERED** that:

- A. Not later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Milledgeville Assets as an ongoing business to Kroger pursuant to and in accordance with the Kroger Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix I. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Milledgeville Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Milledgeville Assets to Kroger pursuant to the Kroger Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Kroger is not an acceptable purchaser of the Milledgeville Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Kroger and shall divest the Milledgeville Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

- B. Not later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Sandersville Assets as an ongoing business to Winn-Dixie pursuant to and in accordance with the Winn-Dixie Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix II. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Sandersville Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Sandersville Assets to Winn-Dixie pursuant to the Winn-Dixie Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Winn-Dixie is not an acceptable purchaser of the Sandersville Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Winn-Dixie and shall divest the Sandersville Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

- C. Respondents shall obtain all required Third Party Consents prior to the closing of each Divestiture Agreement pursuant to which the Assets To Be Divested are divested to a Commission-approved Acquirer.
- D. Any Divestiture Agreement between Respondents (or a trustee appointed pursuant to Paragraph III. of this Order) and a Commission-approved Acquirer of the Assets To Be Divested that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.
- E. The purpose of the divestitures is to ensure the continuation of the Milledgeville Assets and the Sandersville Assets as ongoing viable enterprises engaged in the Supermarket business and to remedy

the lessening of competition resulting from the Acquisition alleged in the Commission's Complaint.

### III.

**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations specified in Paragraph II of this Order, the Commission may appoint a trustee or trustees to divest the relevant Assets To Be Divested pursuant to Paragraph II in a manner that satisfies the requirements of Paragraph II. The Commission may appoint a different Divestiture Trustee to accomplish each of the divestitures required in Paragraph II. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
  1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
  2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the relevant assets that are required by this Order to be divested.
  3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture(s) required by the Order.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; provided, however, the Commission may extend the divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the relevant assets that are required to be divested by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to a Commission-approved Acquirer as required by this Order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) Business Days of receiving notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement

contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute Divestiture Trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.
11. In the event that the Divestiture Trustee determines that he or she is unable to divest the relevant Assets To Be Divested pursuant to the relevant Paragraph(s) in a manner that preserves their marketability, viability and competitiveness and ensures their continued use as Supermarket businesses, the Divestiture Trustee may divest such additional assets related to the relevant Supermarket businesses of the Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
13. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).
14. Respondents may require the Divestiture Trustee to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

#### IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final, Respondents shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission:

- A. Acquire any ownership or leasehold interest in any facility that has operated as a Supermarket within six (6) months prior to the date of such proposed acquisition in Baldwin County or Washington County, Georgia.
- B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any Supermarket, or owned any interest in or operated any Supermarket within six (6) months prior to such proposed acquisition in Baldwin County or Washington County, Georgia.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Respondents or the acquisition of or leasing a facility that has not operated as a Supermarket within six (6) months prior to Respondent's offer to purchase or lease such facility.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

**IT IS FURTHER ORDERED** that, for a period of ten (10) years commencing on the date this Order becomes final:

- A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. § 12(a)) 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 Respondents.

- B. Respondents shall not remove any fixtures or equipment from a property owned or leased by Respondents 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; (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Respondents.

VI.

**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and
- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII.

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

VIII.

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

By the Commission.

Donald S. Clark  
Secretary

ISSUED: January 16, 2002

**APPENDIX I**

[Non-Public]

**APPENDIX II**

[Non-Public]





Commission voted to accept the Order and place a copy on the public record. After the 30-day public comment period expired, the Commission voted to issue the Order on January 16, 2002.

6. The terms of the Order required Ahold to divest two of its BI-LO Supermarkets in Georgia, one in Baldwin County and one in Washington County. In Ahold's 30-day Report filed with the Commission and dated February 15, 2002, Ahold reported that it had divested all assets as required by the Order.
7. In 2004, Ahold entered into a Limited Liability Company Interest Purchase Agreement (the "Agreement") with Lone Star U.S. Acquisitions, LLC, 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 to Lone Star U.S. Acquisitions, LLC.
8. Included within BI-LO Holding at the time of the transaction were BI-LO, LLC, Bruno's, and Bruno's, Inc. As this transaction affected Ahold's business organization in such a way as to affect compliance obligations, on December 23, 2004, as required by Paragraph VII of the Order, Ahold, the parent company of the Bruno's Respondents at that time, notified the Commission of the proposed change in the corporate Respondents.
9. Lone Star submitted a Hart-Scott-Rodino filing in connection with this transaction, and received early termination of the waiting period on January 11, 2005.
10. The parties to the Agreement closed the transaction on January 31, 2005 (the "Acquisition Date"), resulting in Lone Star becoming the ultimate parent entity of Bruno's and BI-LO HOLDING, LLC and succeeding to reporting obligations under the Order.
11. Pursuant to Paragraph IV.A. of the Order, for a period of ten years from the date the Order became final (January 16, 2002), the Bruno's Respondents are 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. Since the Acquisition Date, the Bruno's Respondents have made no such acquisition.
12. Pursuant to Paragraph IV. B of the Order, for a period of ten years from the date the Order became final, the Bruno's Respondents are 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. Since the Acquisition Date, the Bruno's Respondents have made no such acquisition.

13. Pursuant to Paragraph V.A. of the Order, the Bruno's Respondents 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 or the Bruno's Respondents. Since the Acquisition Date the Bruno's Respondents have neither entered into nor enforced any such agreements.
14. Pursuant to Paragraph V.B of the Order, the Bruno's Respondents may 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 (a) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; or (b) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by the Bruno's Respondents. The Bruno's Respondents are in compliance with Paragraph V.B of the Order.
15. Pursuant to Paragraph VI.B of the Order, the Bruno's Respondents are required to submit a verified written annual report. This obligation to file a verified written annual report separately from Ahold arose on January 31, 2005, the Acquisition Date. Since the Acquisition Date, BI-LO Holding has been required to file an annual report only twice. The last verified written annual report was submitted to the Commission by BI-LO Holding on January 16, 2007. The Bruno's Respondents are in compliance with Paragraph VI.B of the Order.
16. Pursuant to Paragraph VII of the Order, the Bruno's Respondents are required to notify the Commission thirty days in advance of certain proposed changes to the Bruno's Respondents' business organization. The Bruno's Respondents are in compliance with Paragraph VII of the Order.
17. Subsequent to the transaction described above, as part of an asset sale, the Bruno's Respondents sold some of their stores, including their remaining two stores in Baldwin County, Georgia, to Southern Family Markets Acquisition LLC and C&S Wholesale Grocers, Inc. ("C&S"). The Bruno's Respondents sold their one remaining Washington County, Georgia store, closed since March 12, 2004, to redacted. As a result, the Bruno's Respondents no longer own or operate Supermarkets in Baldwin County or Washington County, Georgia -- the Relevant Areas subject to the compliance obligations of the Order.
18. Lone Star submitted a Hart-Scott-Rodino filing in connection with the asset sale to C&S and received early termination of the waiting period on June 17, 2005.
19. In response to a comment by the Commission regarding interpretation of the Order, the Bruno's Respondents filed notice of the sale of two stores in the Relevant Area to C&S (attached as Exhibit 10 to the Petition). The Bruno's Respondents are in compliance with Paragraph VII of the Order.

20. The Bruno's Respondents are in compliance with all provisions of the Order applicable to them.
21. The Bruno's Respondents believe that the changed conditions of fact have rendered the Order, as to the Bruno's Respondents, unnecessary.
22. The Bruno's Respondents also believe that the requested modification of the Order is in the public interest because the Order in whole as to the Bruno's Respondents is no longer needed. The Bruno's Respondents no longer have assets in the Relevant Areas subject to the compliance obligations of the Order. These changes have eliminated the need for the Order as to the Bruno's Respondents.
23. Competition would not be adversely affected by the proposed modification.
24. Due to the foregoing, BI-LO Holding, LLC respectfully requests the Commission to vacate the Order as to the Bruno's Respondents.

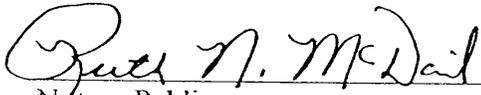
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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

**BI-LO Holding, LLC**

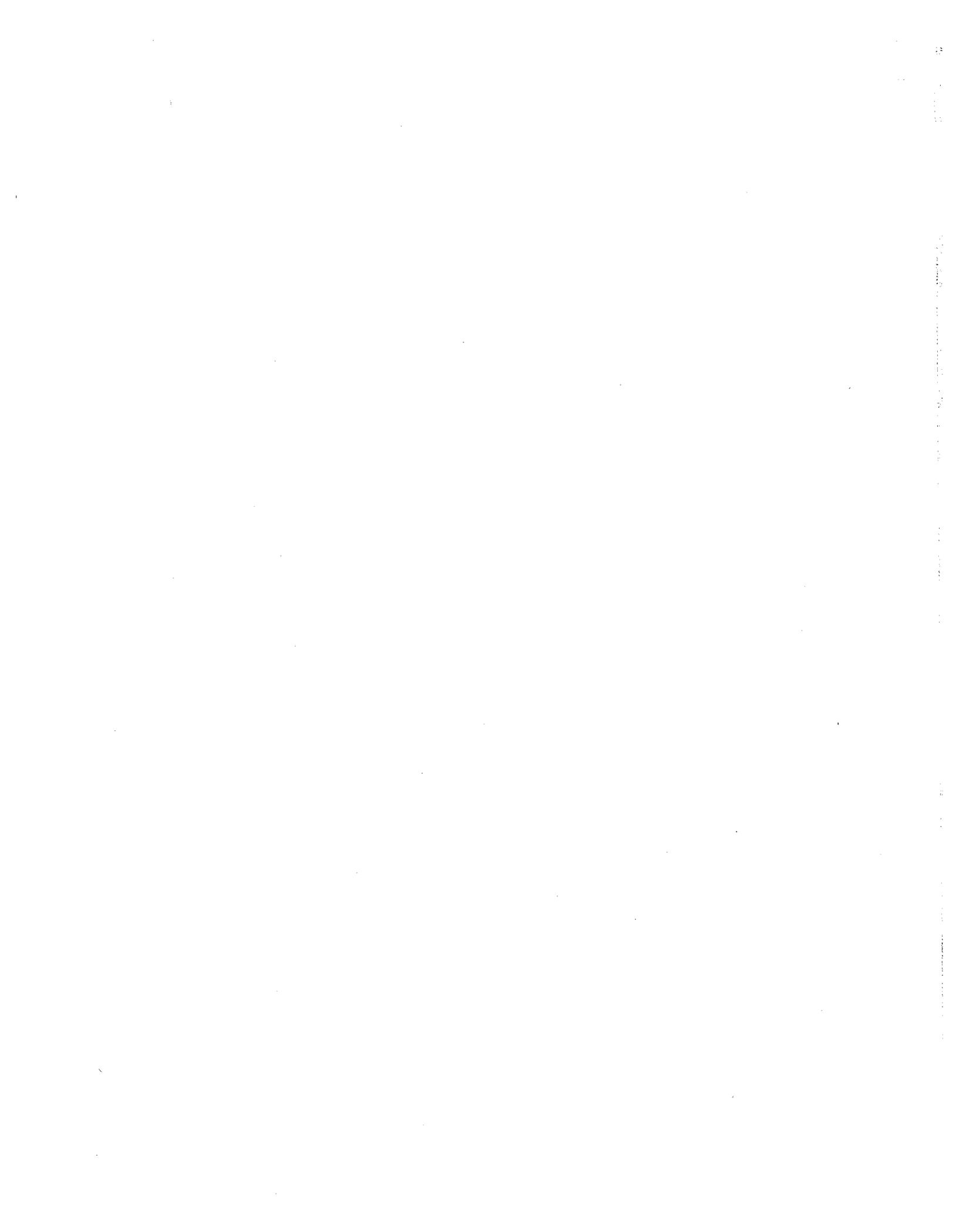
By:   
Name: Brian Carney  
Title: Chief Financial Officer

Subscribed and sworn to before me,  
this 14 day of March, 2007  
Greenville, South Carolina

  
Notary Public

Commission expires \_\_\_\_\_ My Commission Expires  
July 14, 2015

[Signature page to Affidavit in Support of Petition]





Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

For Release: December 7, 2001

## Preserving Competition, FTC Consent Order Allows Koninklijke Ahold NV Purchase of Bruno's Supermarkets, Inc.

### *Ahold Would Be Required to Sell its BI-LO Supermarkets in Two Georgia Towns*

Under the terms of a proposed consent order approved by the Federal Trade Commission and announced today, Koninklijke Ahold NV (Ahold), a global food service distributor and retailer headquartered in the Netherlands, would be permitted to acquire all of the outstanding voting stock of Bruno's Supermarkets, Inc. (Bruno's), a large supermarket chain in the southeastern United States, for approximately \$500 million, while agreeing to remedy the likely anticompetitive effects of the transaction as proposed. Prior to completing the stock purchase, Ahold would be required to divest two of its BI-LO supermarkets in Georgia, one in Milledgeville and one in Sandersville. Under the terms of the proposed order, Ahold will sell its Milledgeville store to The Kroger Co. (Kroger) and its Sandersville store to Winn-Dixie Stores, Inc. (Winn-Dixie). In addition, Ahold would be required to ensure that both stores remain viable prior to their sale and to sell the supermarkets and related assets within 10 business days after consummating its merger with Bruno's.

"The merger would reduce the number of major supermarket competitors in Milledgeville and Sandersville, which already have high concentration," said Joe Simons, Director of the FTC's Bureau of Competition. "The consent order approved by the Commission ensures that competition will be maintained in these two areas."

### The Proposed Transaction

On September 4, 2001, Ahold and Bruno's signed an agreement under which the former would purchase all of the latter's voting securities through the merger of New Bronco Acquisition Corp., an indirect wholly owned subsidiary of Ahold, with Bruno's. Under the terms of the transaction, Bruno's will continue as the surviving corporation.

Bruno's Supermarkets currently operates 169 supermarkets in Alabama (123 stores), Georgia (25), Florida (16), and Mississippi (2) under the trade names Bruno's Fine Foods, Food World, Food Max, Food Fair, and Fresh Value. In addition, it operates 13 liquor stores and two gas stations. Ahold operates 1,300 U.S. food stores through its Ahold U.S.A., Inc. subsidiary under the trade names Giant, Stop & Shop, Tops, and BI-LO. In the southeastern United States, it owns and operates 294 BI-LO supermarkets, as well as a number of Golden Gallon convenience stores.

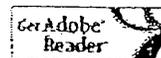
### The Commission's Complaint

#### Related Documents:

["Promoting Competition, Protecting Consumers: A Plain English Guide to Antitrust Laws."](#)

File No. 011 0247  
Docket No. C-4027  
*In the Matter of Koninklijke Ahold N.V. and Bruno's Supermarkets, Inc.*

[Agreement](#) [PDF 11K]  
[Decision & Order](#) [PDF 30K]  
[Analysis to Aid Public Comment](#) [PDF 14K]  
[Complaint](#) [PDF 12K]  
[Order to Maintain Assets](#) [PDF 15K]



According to the Commission's complaint, Ahold's purchase of Bruno's outstanding voting securities would violate Section 7 of the Clayton Act, as amended, and Section 5 of the FTC Act, as amended, by substantially reducing competition in the retail sale of food and grocery items in supermarkets in or near the towns of Milledgeville and Sandersville, Georgia, through the elimination of direct competition between supermarkets owned and controlled by Ahold and those owned or controlled by Bruno's.

In addition, the complaint contends that the proposed acquisition would increase the likelihood that Ahold will unilaterally exercise market power in each of the relevant markets and also increase the likelihood of, or facilitate, collusion or coordinated interaction among the remaining supermarket firms in each market. Each of these effects, the Commission contends, increases the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries, or services will decrease in the geographic markets defined by the areas in and around the two towns. The complaint further alleges that entry by a new competitor within these geographic markets would not be timely, likely, or sufficient to prevent the anticompetitive effects of the transaction as proposed.

#### Terms of the Consent Order

Under the terms of the proposed consent order, Ahold would be required to divest two BI-LO supermarkets, one in Milledgeville and one in Sandersville, Georgia, within 10 business days of its merger with Bruno's. In each community, Ahold owns only one supermarket. Both stores would be sold to up-front buyers approved by the Commission, with the Milledgeville BI-LO divested to Kroger and the Sandersville BI-LO divested to Winn-Dixie. Both Kroger and Winn-Dixie currently operate supermarkets in the southeastern United States and, according to the Commission, are well-qualified to maintain the assets as competitive and financially viable following their purchase from Ahold.

If Ahold consummates the divestitures during the public comment period regarding the consent agreement with the Commission, and if, at the time the FTC decides to make the order final, it notifies Ahold that Kroger or Winn-Dixie is not an acceptable acquirer (or that the relevant manner of divestiture is not acceptable), Ahold would be required to immediately rescind the transaction in question and divest the assets to another buyer within three months of the date the order becomes final. The new acquirer selected by Ahold would be subject to prior FTC approval, as would the manner of divestiture. If a Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture, the FTC could appoint a trustee to satisfy the order's divestiture requirements. A trustee could also be appointed to divest specific assets if Ahold does not complete the divestitures required by the order. In such a case, the order would also allow the Commission to seek civil penalties against Ahold for not complying with its terms.

In addition, the proposed order contains an Order to Maintain Assets, under which Ahold would be required to maintain the stores to be sold as viable, competitive, and marketable pending their divestiture to Kroger and Winn-Dixie. Ahold also would be prohibited from acquiring any supermarkets (or supermarket interests) in the counties that include Milledgeville and Sandersville for 10 years, without first providing prior notice to the FTC. Ahold may, however, build new supermarkets in these

areas or lease facilities not operated as supermarkets within the previous six months.

For 10 years after entering into the agreement, however, Ahold would be prohibited from entering into or enforcing any agreement that restricts the ability of any person acquiring any location used as a supermarket (or interest thereof) to operate a supermarket at that site if the site was formerly owned or operated by Ahold or Bruno's in the defined counties. This and other more-detailed terms of the order are designed to allow new entry by competitors to occur with a few impediments as possible.

Finally, the proposed order contains reporting requirements for 10 years designed to ensure Ahold's compliance with its terms.

The Commission vote to accept the consent order and place a copy on the public record was 5-0. The order will be subject to public comment for 30 days, until January 7, 2002, after which the Commission will decide whether to make it final. Comments should be sent to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

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**NOTE:** A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000.

The FTC's Bureau of Competition seeks to prevent business practices that restrain competition. The Bureau carries out its mission by investigating alleged law violations and, when appropriate, recommending that the Commission take formal enforcement action. To notify the Bureau concerning particular business practices, call or write the Office of Policy and Evaluation, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, D.C. 20580, Electronic Mail: [antitrust@ftc.gov](mailto:antitrust@ftc.gov), Telephone (202) 326-3300. For more information on the laws that the Bureau enforces, the Commission has published "Promoting Competition, Protecting Consumers: A Plain English Guide to Antitrust Laws," which can be accessed at <http://www.ftc.gov/bc/compguide/index.htm>.

**MEDIA CONTACT:**

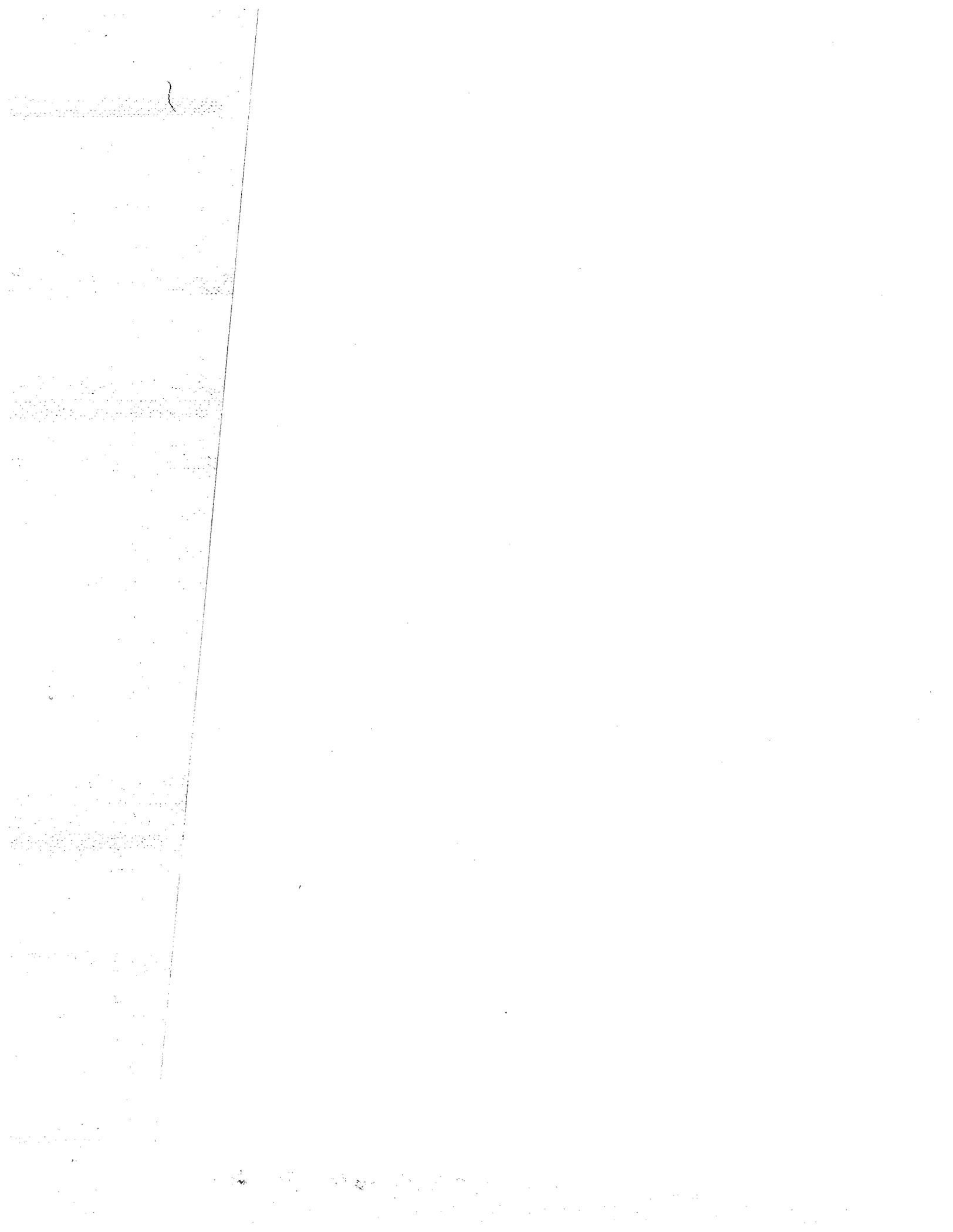
Mitchell J. Katz,  
Office of Public Affairs  
202-326-2161

**STAFF CONTACT:**

Susan Huber,  
Bureau of Competition  
202-326-3331

(FTC File No. 011-0247)

(<http://www.ftc.gov/opa/2001/12/koninklijke.htm>)



UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

_____		)
In the Matter of		)
		)
KONINKLIJKE AHOLD NV,		)
a corporation;		)
		)
and		)
		)
BRUNO'S SUPERMARKET, INC.,		)
a corporation.		)
_____		)

Docket No. C-4027

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Koninklijke Ahold NV ("Ahold") has entered into an agreement to acquire 100% of the outstanding voting securities of respondent Bruno's Supermarket, Inc. ("Bruno's"), 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

PARAGRAPH ONE: For the purposes of this complaint "Supermarket" means a full-line retail grocery store 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 non-food items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

Koninklijke Ahold NV

PARAGRAPH TWO: 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.

PARAGRAPH THREE: Respondent Ahold, through Ahold USA, Inc., BI-LO Holdings, LLC Inc.; Giant-Carlisle Holding, LLC Entities; Giant Food, Inc. n/k/a Ahold U.S.A. Holdings, Inc.; The Stop & Shop Supermarket Company; and Tops Markets, LLC; its wholly-owned domestic subsidiaries, is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Connecticut, the District of Columbia, Delaware, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia. Ahold and its wholly-owned domestic subsidiaries operate over 1,000 supermarkets, including 294 BI-LO stores, in these states under the BI-LO, Giant, MARTIN'S, Stop & Shop, and Tops Friendly Market trade names. Ahold had \$27.8 billion in total United States sales in fiscal year 2000.

PARAGRAPH FOUR: Respondent Ahold 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.

Bruno's Supermarkets, Inc.

PARAGRAPH FIVE: 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, Alabama.

PARAGRAPH SIX: Respondent Bruno's is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Georgia, Florida and Mississippi. Bruno's operates approximately 169 supermarkets under the Bruno's, Food World, FoodMax, Food Fair and Fresh Value trade names. Bruno's had \$1.6 billion in total sales for the fiscal year ending January 27, 2001.

PARAGRAPH SEVEN: Respondent Bruno's 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

PARAGRAPH EIGHT: On or about September 4, 2001, Ahold, New Bronco Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of Ahold, Bruno's, and Elway

Advisors, LLC, as stockholder's representative, entered into an Agreement and Plan of Merger. Pursuant to this Agreement, Ahold will acquire all of the outstanding voting securities of Bruno's 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. As a result of the merger, Ahold will hold 100% of the voting securities of Bruno's.

#### Trade and Commerce

PARAGRAPH NINE: 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.

PARAGRAPH TEN: Supermarkets provide a distinct set of products and services for consumers who desire one-stop shopping 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 a variety of brand names and sizes. 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.

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

PARAGRAPH TWELVE: Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, limited assortment 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. These stores operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enables one-stop shopping for food and grocery products.

PARAGRAPH THIRTEEN: The relevant sections of the country (i.e., the geographic markets) in which to analyze the acquisition described herein are the areas in and near Sandersville, Georgia and Milledgeville, Georgia.

#### Market Structure

PARAGRAPH FOURTEEN: The Sandersville, Georgia and Milledgeville, Georgia 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. Ahold and Bruno's would have a combined market share of greater than 50% in each geographic market. The post-acquisition HHI in Milledgeville would exceed 5400 and, in Sandersville, would exceed 5500.

#### Entry Conditions

PARAGRAPH FIFTEEN: Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant markets.

#### Actual Competition

PARAGRAPH SIXTEEN: Ahold and Bruno's are actual and direct competitors in Sandersville, Georgia and Milledgeville, Georgia.

#### Effects

PARAGRAPH SEVENTEEN: 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 Ahold and Supermarkets owned or controlled by Bruno's;
- b. by increasing the likelihood that Ahold 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

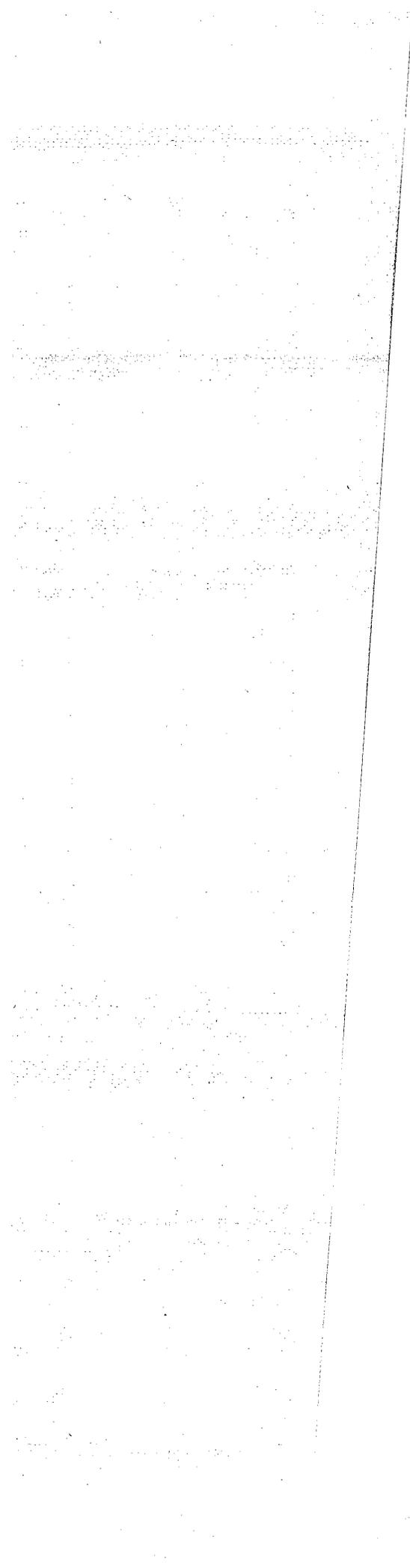
PARAGRAPH EIGHTEEN: The Agreement and Plan of Merger between and among Ahold, New Bronco Acquisition Corp., Bruno's, and Elway Advisors, LLC, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the proposed acquisition would, if consummated, violate Section 7 of the 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 Seventh day of December, 2001, issues its complaint against said respondents.

By the Commission.

Benjamin I. Berman  
Acting Secretary

SEAL:



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

In the Matter of

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

and

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

File No. 011 0247

**AGREEMENT CONTAINING CONSENT ORDERS**

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of 100% of the outstanding voting securities of Bruno's Supermarkets, Inc. ("Bruno's") by Koninklijke Ahold N.V. ("Ahold"), and it now appearing that Ahold and Bruno's, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into this Agreement Containing Consent Orders ("Consent Agreement") to divest certain assets and providing for other relief:

**IT IS HEREBY AGREED** by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed 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. Proposed 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. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

4. Proposed Respondents waive:
  - (a) any further procedural steps;
  - (b) the requirement that the Commission's Order to Maintain Assets and Decision and Order, both attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - (c) all rights to seek judicial review or otherwise challenge or contest the validity of the Order to Maintain Assets or the Decision and Order entered pursuant to this Consent Agreement; and
  - (d) any claim under the Equal Access to Justice Act.
5. Because there may be interim competitive harm, and because divestiture or other relief resulting from a proceeding challenging the legality of the proposed merger might not be possible, or might be less than an effective remedy, the Commission may issue its Complaint and an Order to Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
6. Proposed Respondents shall submit within thirty (30) days of the date this Consent Agreement is signed by Proposed Respondents an initial report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, and subsequent reports every thirty (30) days thereafter until the Decision and Order becomes final or the required divestitures are accomplished, whichever is earlier, signed by Proposed Respondents, setting forth in detail the manner in which Proposed Respondents have complied and will comply with the Order to Maintain Assets and the Decision and Order. Such reports will not become part of the public record unless and until the accompanying Consent Agreement and Decision and Order are accepted by the Commission for public comment.
7. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue or amend its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.
8. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

9. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (1) issue and serve its Complaint corresponding in form and substance with the draft of Complaint here attached, (2) issue and serve its Order to Maintain Assets, and (3) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to the Respondents, issue the attached Decision and Order containing the following order to divest in disposition of the proceeding. When final, the Decision and Order and the Order to Maintain Assets shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and Order to Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondent Ahold's counsel's offices and to Proposed Respondent Bruno's offices at the addresses specified in this Consent Agreement by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. Proposed Respondents also waive any right they may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agree that they are bound to comply with and will comply with the Decision and Order to the same extent as if they had been served with copies of the Appendices, where Proposed Respondents are already in possession of copies of such Appendices. The Complaint may be used in construing the terms of the Decision and Order and Order to Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, Order to Maintain Assets, or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order or Order to Maintain Assets.
10. By signing this Consent Agreement, Proposed Respondents represent and warrant that they can comply with the provisions of the attached Decision and Order and the Order to Maintain Assets, and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are parties to the Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and to the orders.
11. Proposed Respondents have read the draft Complaint, Decision and Order, and Order to Maintain Assets contemplated hereby. Proposed Respondents understand that once the Decision and Order and Order to Maintain Assets have been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Decision and Order and Order to Maintain Assets. Proposed Respondents agree to comply with the terms of the Decision and Order and Order to Maintain Assets, as applicable, from the date they sign this Consent Agreement. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and Order to Maintain Assets, as applicable, after they become final.

Signed this \_\_\_\_\_ day of November, 2001.

KONINKLIJKE AHOLD N.V.

By: \_\_\_\_\_  
Cees van der Hoeven  
President and Chief Executive Officer  
Koninklijke Ahold N.V.

\_\_\_\_\_  
J. Mark Gidley, Esq.  
White & Case  
601 Thirteenth Street, N.W.  
Suite 600 South  
Washington, D.C. 20005-3807  
Counsel for Koninklijke Ahold N.V.

BRUNO'S SUPERMARKETS, INC.

By: \_\_\_\_\_  
James A. Demme  
President and Chief Executive Officer  
Bruno's Supermarkets, Inc.

\_\_\_\_\_  
Michael H. Byowitz, Esq.  
Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
Counsel for Bruno's Supermarkets, Inc.

FEDERAL TRADE COMMISSION,  
BUREAU OF COMPETITION

By:   
\_\_\_\_\_  
Susan Huber  
Attorney

  
\_\_\_\_\_  
Richard Liebskind  
Assistant Director

\_\_\_\_\_  
Joseph J. Simons  
Director  
Bureau of Competition

Signed this \_\_\_\_\_ day of November, 2001.

KONINKLIJKE AHOLD N.V.

FEDERAL TRADE COMMISSION,  
BUREAU OF COMPETITION

By: \_\_\_\_\_  
Ceas van der Heeven  
President and Chief Executive Officer  
Koninklijke Ahold N.V.

By: \_\_\_\_\_  
Susan Huber  
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\_\_\_\_\_  
J. Mark Gidley, Esq.  
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Washington, D.C. 20005-3807  
Counsel for Koninklijke Ahold N.V.

\_\_\_\_\_  
Richard Liebskind  
Assistant Director

BRUNO'S SUPERMARKETS, INC.

\_\_\_\_\_  
Joseph J. Simons  
Director  
Bureau of Competition

By: James A. Demme  
James A. Demme  
President and Chief Executive Officer  
Bruno's Supermarkets, Inc.

\_\_\_\_\_  
Michael H. Byowitz, Esq.  
Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
Counsel for Bruno's Supermarkets, Inc.

Signed this \_\_\_\_\_ day of November, 2001.

KONINKLIJKE AHOLD N.V.

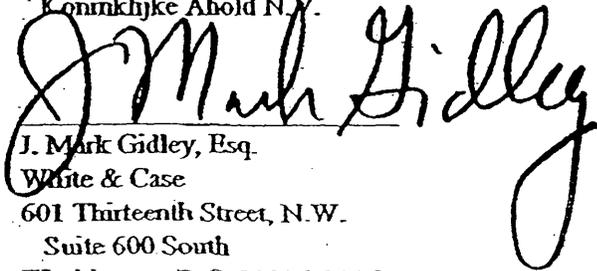
FEDERAL TRADE COMMISSION,  
BUREAU OF COMPETITION

By: \_\_\_\_\_

Cees van der Hoeven  
President and Chief Executive Officer  
Koninklijke Ahold N.V.

By: \_\_\_\_\_

Susan Huber  
Attorney



J. Mark Gidley, Esq.  
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BRUNO'S SUPERMARKETS, INC.

By: \_\_\_\_\_

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Michael H. Byowitz, Esq.  
Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
Counsel for Bruno's Supermarkets, Inc.

Signed this \_\_\_\_\_ day of November, 2001.

KONINKLIJKE AHOLD N.V.

FEDERAL TRADE COMMISSION,  
BUREAU OF COMPETITION

By: \_\_\_\_\_  
Cees van der Hoeven  
President and Chief Executive Officer  
Koninklijke Ahold N.V.

By: \_\_\_\_\_  
Susan Huber  
Attorney

\_\_\_\_\_  
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601 Thirteenth Street, N.W.  
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Washington, D.C. 20005-3807  
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\_\_\_\_\_  
Richard Liebskind  
Assistant Director

\_\_\_\_\_  
Joseph J. Simons  
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Bureau of Competition

BRUNO'S SUPERMARKETS, INC.

By: \_\_\_\_\_  
James A. Demme  
President and Chief Executive Officer  
Bruno's Supermarkets, Inc.

  
\_\_\_\_\_  
Michael H. Byowitz, Esq.  
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51 West 52<sup>nd</sup> Street  
New York, NY 10019  
Counsel for Bruno's Supermarkets, Inc.





Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

For Your Information: January 18, 2002

**Commission denial of petition for modification or interpretation of injunctive decree:**

The FTC has denied a petition by the Superior Court Trial Lawyers' Association seeking a modification or interpretation of a Commission order to limit its scope regarding price fixing. In its petition, received by the Commission on September 20, 2001, and available on the FTC's Web site, the Association sought to modify an order issued by the FTC in *Superior Court Trial Lawyers' Association*; Docket No. 9171. The order prohibits collective action among the Association's members for the purpose of "fixing, increasing, stabilizing or otherwise affecting in any way" the level of fees paid by the District of Columbia Superior Court to court-appointed lawyers.

The modification requested by the Association would have allowed its members practicing before the D.C. Courts to discuss a possible collective work stoppage addressing the timing of payment - if, for example, the D.C. Courts suspend payment for services rendered - "without the possibility that their conduct would be questioned by the Commission under the antitrust laws." The Association contended that such activities would be "exclusively pro-competitive," as the proposed consultations would not involve any effort to raise or lower the price of the lawyers' services. The petition requested, therefore, that the Commission limit the scope of the order to allow such collective action.

The Commission stated that the proposed collective boycott would - inasmuch as it affected the timing and terms of payment of legal fees - "affect the level of fees for such legal services" as well, and that such action "was squarely rejected when the Supreme Court condemned such conduct as *per se* unlawful." Accordingly, the Commission disagreed with the Association's assessment that the proposed collective conduct would be pro-competitive. The Commission noted, however, that the Association is free, pursuant to the order and the First Amendment, to petition the government concerning payment procedures and further noted that the District of Columbia Court system was subject to the Prompt Payments Act.

The Commission vote to deny the petition and place a copy on the public record was 5-0. (FTC Docket No. D-9171; staff contact is Daniel P. Ducore, Bureau of Competition; 202-326-2526.)

**Commission approval of final consent order:**

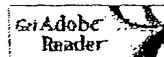
Following a public comment period, the Commission has approved a final consent order in the matter concerning **Royal Ahold NV and Bruno's Supermarkets, Inc.** The vote to approve the final order was 5-0. (FTC File No. 011-0247; staff contact is Susan Huber, Bureau of Competition, 202-326-3331; see press release dated December 7, 2001.)

**Related Documents**

Docket No. 9171  
*In the Matter of Superior Court  
Trial Lawyers' Association*

Letter Denying Petition for  
Reopening and Modification,  
or Interpretation, of the  
Commission Order:

*Koninklijke Ahold N.V. and  
Bruno's Supermarkets, Inc.,  
File No. 011 0247, Docket No.  
C-4027*



Copies of the documents mentioned in this release are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Call toll-free: 1-877-FTC-HELP.

**MEDIA CONTACT:**

*Office of Public Affairs*

202-326-2180

(<http://www.ftc.gov/opa/2002/01/fyi0205.htm>)



**ORIGINAL**



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

In the Matter of )

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

and )

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

Docket No. C-4027

**COMPLIANCE REPORT  
SUBMITTED PURSUANT TO  
DECISION AND ORDER**

Pursuant to the Federal Trade Commission (the "Commission") Decision and Order ("Order") issued as final in the above-referenced matter on January 16, 2002, Koninklijke Ahold N.V. and Bruno's Supermarkets, Inc. (collectively "Ahold") submit this verified written report in accordance with paragraph VI.A. of the Order. Paragraph VI.A. provides that:

Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

This report sets forth the manner and form in which Ahold has complied with Paragraphs II and III of the Order.

**DIVESTITURES PURSUANT TO PARAGRAPH II OF THE ORDER**

1. The Proposed Respondents consummated Ahold's acquisition of the outstanding voting securities of Bruno's Supermarket, Inc. 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 Advisors, LLC, as Stockholder's Representatives" ("Acquisition") on December 11, 2001.
2. Paragraph II.A. provides that:

[n]ot later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Milledgeville Assets as an ongoing business to Kroger pursuant to and in accordance with the Kroger Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix I. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Milledgeville Assets shall constitute a failure to comply with this Order.
3. In accordance with Paragraph II.A of the Order, and pursuant to an Agreement of Purchase and Sale of Assets and Assignment of Lease by and between BI-LO, LLC ("BI-LO") and The Kroger Co. ("Kroger") made and entered into on November 14, 2001 ("Kroger Agreement"), Ahold divested the Milledgeville Assets to Kroger on December 14, 2001, which was within ten (10) business days of consummating the Acquisition as required by Paragraph II.A. of the Order.
4. Paragraph II.B. provides that:

[n]ot later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Sandersville Assets as an ongoing business to Winn-Dixie pursuant to and in

accordance with the Winn-Dixie Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix II. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Sandersville Assets shall constitute a failure to comply with this Order.

5. In accordance with Paragraph II.B of the Order and pursuant to an Agreement of Purchase and Sale of Assets and Assignment of Lease by and between BI-LO, LLC ("BI-LO") and Winn-Dixie Stores, Inc. ("Winn-Dixie") made and entered into on November 13, 2001 ("Winn-Dixie Agreement"), Ahold divested the Sandersville Assets to Winn-Dixie on December 17, 2001, which was within ten (10) business days of consummating the Acquisition as required by Paragraph II.B. of the Order.

**PARAGRAPH III OF THE ORDER NO LONGER APPLIES TO AHOLD**

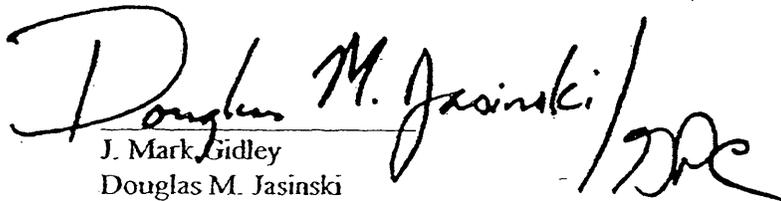
6. Paragraph III.A. of the Order provides in part that:  
  
[i]f Respondents have not fully complied with the obligations specified in Paragraph II of this Order, the Commission may appoint a trustee or trustees to divest the relevant Assets To Be Divested pursuant to Paragraph II in a manner that satisfies the requirements of Paragraph II.
7. As detailed above, Ahold has complied fully with the obligations in Paragraph II of the Order and divested the Assets To Be Divested pursuant to Paragraph II in a manner that satisfies the requirements of Paragraph II and thus, the obligations of Paragraph III of the Order no longer apply to Ahold.

VERIFICATION

Pursuant to Section VI.A. of the Order, on behalf of Ahold, this Annual Report has been verified by Steven L. Ortega, Executive Vice President and Chief Financial Officer, BI-LO, LLC and the verification is attached hereto.

DATED: February 15, 2002

Respectfully submitted,

A large, stylized handwritten signature in black ink that reads "Douglas M. Jasinski". The signature is written over a horizontal line and extends to the right with a flourish.

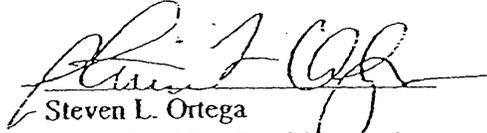
J. Mark Gidley  
Douglas M. Jasinski  
WHITE & CASE LLP  
Suite 600 South  
601 13<sup>th</sup> St., N.W.  
Washington, D.C. 20005  
(202) 626-3600

Attorneys for Respondents

VERIFICATION

This response has been prepared under my supervision from records of BI-LO, LLC, and is true and correct to the best of my knowledge and belief.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Steven L. Ortega  
Executive Vice President and  
Chief Financial Officer

Subscribed and sworn before me in the County of  
Greenville, South Carolina, this 12<sup>th</sup> day of  
February, 2002.

Kimberly A. Parks  
(Notary Public)

SEAL:





acquisition of BI-LO Holding, LLC by Lone Star. This report sets forth the manner and form in which BI-LO has complied with the Order subsequent to Lone Star's acquisition of BI-LO Holding, LLC, but does not set forth information regarding compliance by Ahold, an unrelated third party, or compliance by BI-LO prior to the consummation of Lone Star's acquisition of BI-LO Holding, LLC on January 30, 2005 (the "Compliance Date").

**I. COMPLIANCE WITH CONSENT ORDER**

**A. DIVESTITURES**

Previously, Ahold reported to the Commission that pursuant to Sections II.A and II.B. Ahold had divested all properties as required by the Order in compliance with the Order.

**B. NOTIFICATION OBLIGATIONS**

**1. Acquisitions**

Pursuant to Section IV.A of the Order, for a period of ten (10) years from the date the Order became final (January 16, 2002), the Respondents named therein, (and from the Compliance Date, BI-LO) are 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. BI-LO has made no such acquisition since the Compliance Date.

Pursuant to Section IV.B of the Order, for a period of ten (10) years from the date the Order became final (January 16, 2002), the Respondents named therein, (and from the Compliance Date, BI-LO) are 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. BI-LO has made no such acquisition since the Compliance Date.

2. **Restrictive Agreements and Removal of Fixtures**

Pursuant to Section V.A of the Order, BI-LO 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 BI-LO. Since the Compliance Date, BI-LO has neither entered into nor enforced any such agreements.

Pursuant to Section V.B of the Order, BI-LO shall not remove any fixtures or equipment from a property owned or leased by BI-LO 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 BI-LO. BI-LO is in full compliance with Section V.B of the Order.

3. **Changes To Business Organization**

Pursuant to Section VII of the Order, BI-LO is required to notify the Commission thirty days in advance of certain proposed changes to BI-LO's business organization. Section VII provides that Respondents (in this case, BI-LO) shall:

[N]otify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

Since the Compliance Date, BI-LO has made no change to its business organization that affects BI-LO's compliance obligations arising out of the Order. However, on December 14, 2006, BI-LO notified the Commission of a proposed change in the corporate Respondents in accordance with Section VII of the Order. Confidential treatment of the December 14, 2006 material was requested under the FTC Rules of Practice (16 C.F.R. § 4.1(a)(c)).

## II. VERIFICATION

Pursuant to Section VI.B of the Order, on behalf of BI-LO, this Annual Report has been verified by Kevin McDougall, Secretary of BI-LO Holding, LLC, and the verification is attached hereto.

DATED: January 15, 2007

Respectfully submitted,



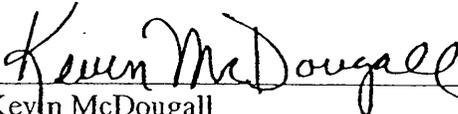
Judy G. Gechman  
JENKENS & GILCHRIST,  
A Professional Corporation,  
1401 McKinney Street  
Suite 2600  
Houston, TX 77010  
(713) 951-3356

Attorney for BI-LO Holding, LLC

**VERIFICATION**

This response has been prepared under my supervision from records of BI-LO Holding, LLC and its subsidiaries, BI-LO, LLC; Bruno's Supermarkets, Inc.; and Bruno's, Inc.; and is true and correct to the best of my knowledge and belief.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

  
Kevin McDougall  
Secretary,  
BI-LO Holding, LLC

Subscribed and sworn before me in the County of Greenville, South Carolina, this 12<sup>th</sup> day of January, 2007.

  
(Notary Public)

My Commission Expires  
September 1, 2015

SEAL

ANNEX 1

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

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

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

Advisors, LLC, as Stockholder's Representatives.”

- E. “Commission” means the Federal Trade Commission.
- F. “Assets To Be Divested” means the Milledgeville Assets and the Sandersville Assets.
- G. “Business Day” means any day excluding Saturday, Sunday and any United States Federal holiday.
- H. “Commission-approved Acquirer” means any entity approved by the Commission to acquire either or both of the Assets To Be Divested pursuant to this Order.
- I. “Divestiture Agreement” means any agreement between the Respondents and a Commission-approved Acquirer (or a trustee appointed pursuant to Paragraph III of this Order and a Commission-approved Acquirer) and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested that have been approved by the Commission to accomplish the requirements of this Order. The term Divestiture Agreement includes, as appropriate, the Kroger Agreement, and/or the Winn-Dixie Agreement.
- J. “Divestiture Trustee(s)” means any person or entity appointed by the Commission pursuant to Paragraph III of the Decision and Order to act as a trustee in this matter.
- K. “Kroger” means The Kroger Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202-1100.
- L. “Kroger Agreement” means the “Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease” by and between BI-LO, LLC and The Kroger Co. made and entered into on November 14, 2001, and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- M. “Milledgeville Assets” means the Supermarket currently operated by Respondent Ahold under the BI-LO trade name located at 1692 North Columbia Street, Milledgeville, Georgia, 31061, and all assets, leases, properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or used in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.
- N. “Sandersville Assets” means the Supermarket currently operated by Respondent Ahold under the BI-LO trade name located at 648 Harris Street, Sandersville, Georgia, 31082, and all assets, leases,

properties, government permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or used in the Supermarket business operated at that location, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names. Provided, however, the inventory of consumer goods and merchandise owned by the Respondents for sale in the ordinary course of the Supermarket business may be excluded from the divestiture at the option of the Commission-approved Acquirer.

- O. "Supermarket" means a full-line retail grocery store 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.
- P. "Third Party Consents" means all consents from any person other than the Respondents, including all landlords, that are necessary to effect the complete transfer to the Commission-approved Acquirer(s) of the Assets To Be Divested.
- Q. "Winn-Dixie" means Winn-Dixie Stores, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at 5050 Edgewood Court, Jacksonville, Florida 32254.
- R. "Winn-Dixie Agreement" means "Agreement of Purchase and Sale of Assets and Assignment and Assumption of Lease" by and between BI-LO, LLC and Winn-Dixie Stores, Inc. made and entered into on November 13, 2001, and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.

## II.

### IT IS FURTHER ORDERED that:

- A. Not later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Milledgeville Assets as an ongoing business to Kroger pursuant to and in accordance with the Kroger Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix I. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Milledgeville Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Milledgeville Assets to Kroger pursuant to the Kroger Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Kroger is not an acceptable purchaser of the Milledgeville Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Kroger and shall divest the Milledgeville Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

- B. Not later than ten (10) Business Days after the date on which the Acquisition is consummated, Respondents shall divest, absolutely and in good faith, the Sandersville Assets as an ongoing business to Winn-Dixie pursuant to and in accordance with the Winn-Dixie Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made part hereof as non-public Appendix II. Any failure by Respondents to comply with all terms of any Divestiture Agreement related to the Sandersville Assets shall constitute a failure to comply with this Order.

Provided, however, that if Respondents have divested the Sandersville Assets to Winn-Dixie pursuant to the Winn-Dixie Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Winn-Dixie is not an acceptable purchaser of the Sandersville Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Winn-Dixie and shall divest the Sandersville Assets within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

- C. Respondents shall obtain all required Third Party Consents prior to the closing of each Divestiture Agreement pursuant to which the Assets To Be Divested are divested to a Commission-approved Acquirer.
- D. Any Divestiture Agreement between Respondents (or a trustee appointed pursuant to Paragraph III. of this Order) and a Commission-approved Acquirer of the Assets To Be Divested that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.
- E. The purpose of the divestitures is to ensure the continuation of the Milledgeville Assets and the Sandersville Assets as ongoing, viable enterprises engaged in the Supermarket business and to remedy

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; provided, however, the Commission may extend the divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the relevant assets that are required to be divested by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to a Commission-approved Acquirer as required by this Order, provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) Business Days of receiving notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement

contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute Divestiture Trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.
11. In the event that the Divestiture Trustee determines that he or she is unable to divest the relevant Assets To Be Divested pursuant to the relevant Paragraph(s) in a manner that preserves their marketability, viability and competitiveness and ensures their continued use as Supermarket businesses, the Divestiture Trustee may divest such additional assets related to the relevant Supermarket businesses of the Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
13. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).
14. Respondents may require the Divestiture Trustee to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

#### IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final, Respondents shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission:

- B. Respondents shall not remove any fixtures or equipment from a property owned or leased by Respondents 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; (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Respondents.

VI.

**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and
- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII.

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

VIII.

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

By the Commission.

Donald S. Clark  
Secretary

ISSUED: January 16, 2002

APPENDIX I

{Non-Public}

APPENDIX II

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[Non-Public]



Exhibit 9

Redact



Exhibit 10

Redact





## Ahold agrees to sell BI-LO and Bruno's to Lone Star Funds

*Major milestone achieved in EUR 2.5 billion divestment program*

Zaandam, The Netherlands, December 23, 2004 – Ahold today announced it has entered into an agreement to sell its U.S. retail subsidiaries BI-LO and Bruno's to an affiliate of the Lone Star Funds for total cash proceeds of up to USD 660 million. BI-LO and Bruno's will retain all of their debt obligations and other liabilities including capitalized lease obligations, although Ahold may be contingently liable under existing guarantees in respect of a portion of such capitalized lease obligations.

The final purchase price is subject to customary price adjustments. Closing is anticipated in the first quarter of 2005 and is subject to the fulfillment of customary closing conditions, including antitrust approval. The closing is not subject to any financing condition. At closing, Ahold will receive cash proceeds of USD 560 million and a letter of credit for USD 100 million will be placed in escrow. Within 18 months of closing, Ahold will be entitled to receive the balance of the purchase price of up to USD 100 million depending upon BI-LO and Bruno's achieving certain targets relating to dispositions of inventory, real estate and other assets.

BI-LO and Bruno's are two of the leading food retail chains in the Southeastern region of the United States with a combined store count of over 450 supermarkets and combined 2003 net sales of approximately EUR 4.7 billion.

"This divestment comes at the end of a year of transition for Ahold and marks a major milestone along our Road to Recovery," said Ahold President and CEO Anders Moberg. "Divesting BI-LO and Bruno's is part of our strategy to optimize our portfolio and strengthen our financial position by reducing debt. Our U.S. retail business will be fully focused on our other prominent supermarket operations, Stop & Shop / Giant-Landover and Giant-Carlisle / Tops. We committed ourselves to a caring and careful divestment of BI-LO and Bruno's in the best interests of our associates and shareholders. This has been achieved and our 'Road to Recovery' is on track," he concluded. Lone Star Funds, based in Dallas, Texas, is a leading U.S. private investment company that manages more than USD 13 billion in assets and investments in North America, Europe and Asia.

Ahold acquired BI-LO, headquartered in Mauldin, South Carolina, in 1977. The company operates 287 stores in South Carolina, North Carolina, Georgia and Tennessee. BI-LO employs approximately 23,000 associates. Ahold acquired Bruno's, based in Birmingham, Alabama, in 2001. The company operates 168 stores in Alabama, Florida, Georgia and Mississippi. Bruno's employs approximately 11,500 associates.

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Certain statements in this press release are "forward-looking statements" within the meaning of U.S. federal securities laws. These forward-looking statements include, but are not limited to, statements regarding Ahold's intention to complete the divestment of BI-LO and Bruno's, Ahold's ability to consummate the transaction, statements relating to the total cash proceeds Ahold expects to receive, Ahold's expectations as to the timing of the closing and the payment of the balance of the purchase price that may occur after the closing depending on the companies achieving certain disposition targets, the contribution of the BI-LO and Bruno's sale to Ahold's debt reduction and statements as to the achievement and progress of Ahold's Road to Recovery program. These forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results to differ materially from future results expressed or implied by the forward-looking statements. Important factors that could cause actual results to differ materially from the information set forth in these forward-looking statements include, but are not limited to Ahold's ability to complete the divestment of BI-LO and Bruno's, the effect

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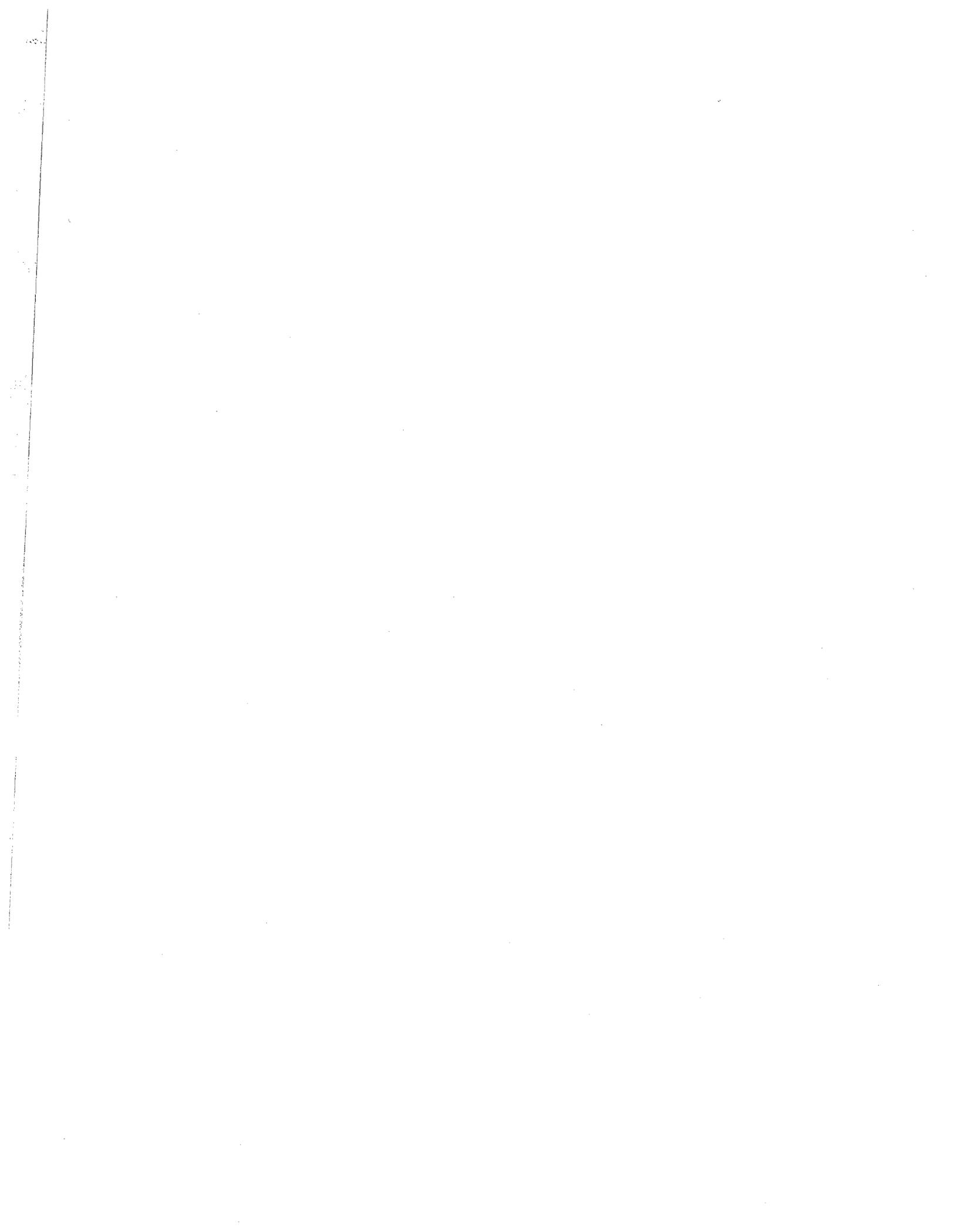
of any adjustments to the proceeds Ahold will receive in the sale, any inability to obtain, or delays in obtaining, antitrust approval, the actions of government and law enforcement agencies, the inability to satisfy, or delays in satisfying, closing conditions, BI-LO and Bruno's ability to achieve certain disposition targets, Ahold's liquidity needs exceeding expected levels, the ability of Ahold to implement successfully its plans and strategies, the diversion of management's attention in implementing plans, the effect of general economic conditions, actions of competitors and increases in competition in the markets in which Ahold's subsidiaries and joint ventures operate, and other factors discussed in Ahold's public filings. Many of these factors are beyond Ahold's ability to control or predict. Given these uncertainties, readers are cautioned not to place undue reliance on the forward-looking statements, which only speak as of the date of this press release. Ahold does not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect events or circumstances after the date of this press release or to reflect the occurrence of unanticipated events or circumstances, except as may be required under applicable securities laws. Outside The Netherlands, Koninklijke Ahold N.V., being its registered name, presents itself under the name of "Royal Ahold" or simply "Ahold."

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TRANSACTION GRANTED EARLY TERMINATION

ET DATE	TRANS NUM	ET REQ STATUS	PARTY NAME
11-JAN-05	20050359	G	Onex Partners LP
		G	Laidlaw International, Inc.
		G	American Medical Response, Inc.
		G	EmCare Holdings Inc.
	20050387	G	Schawk, Inc.
		G	KAGT Holdings, Inc.
		G	KAGT Holdings, Inc.
	20050411	G	The Veritas Capital Fund II, L.P.
		G	Computer Sciences Corporation
		G	DynCorp International, LLC
		G	DynCorp International Asset Corp.
	20050421	G	Lone Star Fund V (U.S.), L.P.
		G	Koninklijke Ahold N.V.
		G	ARP, etc.
		G	BI-LO, LLC
		G	Golden Gallon Holding LLC
		G	v/s BI-LO Brands, Inc.
		G	Bruno's, Inc., Bruno's Supermarkets, Inc.
	20050437	G	CenterPoint Energy, Inc.
		G	American Electric Power Company, Inc.
		G	AEP Texas Central Company





## Ahold completes sale of BI-LO and Bruno's to Lone Star

January 31 2005

Divestment program nearly completed.

Zaandam, The Netherlands, January 31, 2005 - Ahold today announced it has completed the sale of its U.S. retail subsidiaries BI-LO and Bruno's to an affiliate of Lone Star Funds.

Ahold and Lone Star Funds successfully closed the transaction, which was announced on December 23, 2004. Completion was subject to the fulfillment of customary closing conditions, including antitrust approval. BI-LO and Bruno's are two of the leading food retail chains in the southeastern region of the United States with a combined store count of over 450 supermarkets and combined 2003 net sales of approximately EUR 4.7 billion.

"We are pleased to be able to complete the divestment of BI-LO and Bruno's to Lone Star as planned," said Ahold President and CEO Anders Moberg. "This transaction is part of our strategy to optimize our portfolio and strengthen our financial position by reducing debt. We are nearing completion of our divestment program ahead of time and are well on our way along the Road to Recovery," he concluded.

Lone Star Funds, based in Dallas, Texas, is a leading U.S. private investment company that manages more than USD 13 billion in assets and investments in North America, Europe and Asia.

Ahold acquired BI-LO, headquartered in Mauldin, South Carolina, in 1977. The company operates 287 stores in South Carolina, North Carolina, Georgia and Tennessee. BI-LO employs approximately 23,000 associates. Ahold acquired Bruno's, based in Birmingham, Alabama, in 2001. The company operates 168 stores in Alabama, Florida, Georgia and Mississippi. Bruno's employs approximately 11,500 associates.

Certain statements in this press release are "forward-looking statements" within the meaning of U.S. federal securities laws. These forward-looking statements include, but are not limited to, statements regarding the status and timing of the divestment program, the contribution of the BI-LO and Bruno's sale to Ahold's debt reduction and the progress of Ahold's Road to Recovery program. These forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results to differ materially from future results expressed or implied by the forward-looking statements. Important factors that could cause actual results to differ materially from the information set forth in these forward-looking statements include, but are not limited to, Ahold's ability to complete other divestments that are part of the divestment program, any inability to obtain, or delays in obtaining, antitrust approval, the actions of government and law enforcement agencies, the inability to satisfy, or delays in satisfying, closing conditions in connection with such other divestments, Ahold's liquidity needs exceeding expected levels, the ability of Ahold to implement successfully its plans and strategies, the diversion of management's attention in implementing plans, the effect of general economic conditions, actions of competitors and increases in competition in the markets in which Ahold's subsidiaries and joint ventures operate, and other factors discussed in Ahold's public filings. Many of these factors are beyond Ahold's ability to control or predict. Given these uncertainties, readers are cautioned not to place undue reliance on the forward-looking statements, which only speak as of the date of this press release. Ahold does not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect events or circumstances after the date of this press release or to reflect the occurrence of unanticipated events or circumstances, except as may be required under applicable securities laws. Outside The Netherlands, Koninklijke Ahold N.V., being its registered name, presents itself under the name of "Royal Ahold" or simply "Ahold."

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## BI-LO/Bruno's Announces Last Phase of Long-Term Growth Strategy

### *Strategy focuses on strengthening competitive position in core markets*

Greenville, South Carolina, May 3, 2005 – BI-LO, LLC, the parent company of BI-LO, LLC and Bruno's Supermarkets Inc., today announced the last phase of its long-term growth strategy. This long-term growth strategy is designed to make the newly transformed company the leading independent food retailer in the Southeast.

The new company will concentrate its efforts and financial resources on a group of more than 300 stores in core markets across the region. BI-LO/Bruno's will be remodeling current stores, building new stores, investing in technology and bolstering marketing efforts in these core markets.

Dean Cohagan, President and CEO of BI-LO/Bruno's said, "This is an exciting time for BI-LO/Bruno's, our Associates and our customers. After more than a year of planning and development, all of the elements of our long-term strategy are now underway. By increasing the efficiency of our business and making strategic reinvestments in our core markets, we will be well-positioned to succeed and thrive in the fast-growing Southeast marketplace.

"After conducting a thorough review of our stores and the markets in which we operate, we have decided to focus on the markets in which we currently have the Number One or Number Two position or can reach that position in a reasonable period of time – or in markets where we see significant growth potential," said Mr. Cohagan. "Our new company is building on a strong foundation, supported by a talented team and by brands our customers trust and admire. By implementing this plan we will be in a position to grow in our core markets."

In January the Company sold its warehouse facilities and moved its distribution and replenishment functions to C&S Wholesale Grocers, Inc., one of the nation's leading distribution companies. The decision allows BI-LO/Bruno's to free up capital for reinvestment in its stores, while also enabling the company to focus on operating supermarkets.

The Company also announced in January that it would consolidate corporate support functions – such as marketing, accounting and human resources – in Mauldin (South Carolina), as well as integrate the separate information technology systems at BI-LO and Bruno's onto one common IT platform. The goal of these programs, which are currently being implemented, is to avoid duplication of effort and eliminate redundant computer systems, while reducing costs and improving efficiency throughout the entire organization. Both the consolidation and integration efforts are on track and are scheduled for completion in the third quarter of this year.

As part of its plan to concentrate resources on its core markets, the Company also announced today that Southern Family Markets Acquisition, LLC, an affiliate of C&S, has agreed to purchase 104 of the current total of 426 BI-LO and Bruno's stores. These stores will be divested in a series of transactions to be executed over the course of the next 11 months.

In addition to the 104 stores that are part of the Southern Family Markets agreement, the Company will seek to market and sell an additional nine stores on its own and will close three stores.

Each of the 113 stores to be divested will continue to be operated by BI-LO/Bruno's under normal business procedures until its ownership is transferred to Southern Family Markets or to other parties. Both parties noted that their objective is that these stores continue operating as supermarkets.

The Company is pleased that Southern Family Markets plans to operate the majority of the stores and will offer positions to all of the Associates working in those stores at the time the ownership changes.

For any stores that Southern Family Markets may designate for purchase by a third-party, it has agreed to negotiate purchase agreements that provide that the new owners offer positions to all of the Associates working in these stores at the time the ownership changes. For the nine stores that BI-LO/Bruno's intends to divest on its own, the company will seek to negotiate similar employment terms with the new owners. In the three stores to be closed, Associates will receive all benefits to which they are entitled.

Rick Cohen, C&S and Southern Family Markets CEO, said, "Through the store purchase we look forward to building on the success of our prior distribution agreement with BI-LO/Bruno's and further strengthening our presence in the Southeast. This new agreement will allow us to strategically integrate the wholesale and retail aspects of the purchased stores and grow sales."

Mark Gross, the President of Southern Family Markets, stated, "We are excited to enter the growing Southeast retail market through the purchase of these stores that are operated by a group of talented and dedicated associates."

"It is always a difficult decision to divest stores, but we must make some tough choices to ensure that we invest our valuable resources in the most prudent way possible and focus on our core markets," said Mr. Cohagan. "The stores we're divesting are good stores that don't fit our core market strategy. Under new ownership they have the potential to grow and continue serving customers. We appreciate the contributions of our Associates who have served our customers and supported our stores in these locations through the years, and will work hard to ensure a positive future for them."

#### **About BI-LO/Bruno's**

BI-LO/Bruno's operates 426 stores in South Carolina, North Carolina, Georgia, Tennessee, Alabama, Florida and Mississippi. The company employs approximately 30,000 Associates.

#### **About C&S**

Southern Family Markets is an affiliate of C&S. C&S is a privately owned company with annual sales of over \$15.5 billion. The company is the eighth largest privately held company in the nation, as ranked by Forbes magazine. Founded in 1918, C&S provides distribution services to grocery chains and independent stores, delivering to more than 3,500 locations from its over 45 distribution centers in Vermont, Massachusetts, Connecticut, New York, New Jersey, Maryland, Ohio, Pennsylvania, California, Alabama, South Carolina, Tennessee and Hawaii.

#### **Contact:**

<b>BI-LO / Bruno's</b>	<b>Southern Family Markets</b>
Joyce Smart (864) 234-1757	Carl Wistreich (603) 354-4616

BI-LO	1700 Eatonton Rd	Madison	GA	30650
BI-LO	Lowe's Blvd.	Lexington	NC	27292
BI-LO	39 East May	Winder	GA	30680
BI-LO	4835 W. Wendover Avenue	Greensboro	NC	27282
BI-LO	3516 Drawbridge Pkwy	Greensboro	NC	27410
BI-LO	1050 Alamance Church Rd	Greensboro	NC	27406
BI-LO	433 E. Main St	Cartersville	GA	30120
BI-LO	1025 Dawsonville Rd NE	Gainesville	GA	30501
BI-LO	3120 Randalman Rd	Greensboro	NC	27406
BI-LO	4025 Lexington Rd	Athens	GA	30605
BI-LO	1025 E. Spring St	Monroe	GA	30655
BI-LO	1802 N. Jackson St.	Tullahoma	TN	37388
BI-LO	7326 Maynardville Hwy	Knoxville	TN	37918
BI-LO	130 N. Forest Park Blvd	Knoxville	TN	37919
BI-LO	1715 W. Broadway	Maryville	TN	37801
BI-LO	612 Madison St	Shelbyville	TN	37160
BI-LO	2135 E. Broadway	Maryville	TN	37804
BI-LO	Chapman Highway	Knoxville	TN	37901
BI-LO	11130 Kingston Pike	Farragut	TN	37922
BI-LO	226 Watson Glen Circle	Franklin	TN	37064
BI-LO	4216 N Broadway	Knoxville	TN	37917
BI-LO	2050 Hillsboro Rd	Manchester	TN	37355
BI-LO	3333 N. Main St	Hope Mills	NC	28348
BI-LO	3915 Ramsey St	Fayetteville	NC	28311
BI-LO	707 First Avenue	Ellijay	GA	30540
BI-LO	1313 W. Main St.	Lebanon	TN	37087
BI-LO	235 E. Plaza Dr.	Mooresville	NC	28115
BI-LO	10564 US Hwy #15-501	Southern Pines	NC	28387
BI-LO	5149 Murfreesboro Rd	LaVergne	TN	37086
BI-LO	Covered Bridge Shop. Ctr.	Clayton	GA	30525
BI-LO	1400 Walter Reid Road	Fayetteville	NC	28303
BI-LO	2620 N. Main St	High Point	NC	27265
BI-LO	W. Clemmons Rd	Winston-Salem	NC	27127
BI-LO	2639 Lawndale Dr	Greensboro	NC	27408
BI-LO	2358 S. Church St.	Burlington	NC	27215
BI-LO	796 Valley Rd	Mocksville	NC	27028
BI-LO	2026 S. Milledge Ave	Athens	GA	30605
BI-LO	484 North Avenue	Athens	GA	30601
BI-LO	200 Homer Rd	Commerce	GA	30529
BI-LO	1199 Oak Ridge Turnpike	Oak Ridge	TN	37830
BI-LO	155 Bonanza Dr	Fayetteville	NC	28303
BI-LO	284 Morrell Rd	Knoxville	TN	37919
BI-LO	814 W. College St.	Pulaski	TN	38478
BI-LO	3627 Clemmons Road	Clemmons	NC	27012
BI-LO	203 N. Main St.	Greensboro	GA	30642
BI-LO	US Hwy 441/Baldwin Rd	Cornelia	GA	30531
BI-LO	1906 Shady Brook St	Columbia	TN	38401
Food\$mart	545 Oakland Rd	Spindale	NC	28160

Bruno's	3090 Ross Clark Circle SW	Dothan	AL	36301
Bruno's	8050 Highway 72 West	Madison	AL	35758
Bruno's	9020 Bailey Cove Road	Huntsville	AL	35802
Bruno's	816 South Hill Street	Griffin	GA	30223
Bruno's	2826 Meredyth Drive	Albany	GA	31707
Bruno's Wine & Spirits	843 Hwy. 98 East	Destin	FL	32541
Bruno's Wine & Spirits	65 Poincianna Blvd.	San Destin	FL	32550
Food Fair	2200 Avenue D Ensley	Birmingham	AL	35218
Food Fair	720 East Main Street	Prattville	AL	36067
Food Fair	6501 1st Avenue North / Woodlawn	Birmingham	AL	35206
Food Fair	1218 South 6th Avenue	Birmingham	AL	35233
Food Fair	15 West Fairview Avenue	Montgomery	AL	36105
Food Fair	2500 29th Avenue North	Birmingham	AL	35207
Food Fair	2096 Springdale Lane	Tarrant	AL	35217
Food Fair	2207 7th Street	Clanton	AL	35045
Food Fair	1157 Bankhead Hwy W	Birmingham	AL	35214
Food Fair	1900 Douglas Avenue	Brewton	AL	36426
Food Fair	462 Gilmer Avenue	Tallassee	AL	36078
Food Fair	161 Lindberg Avenue	Atmore	AL	36502
Food Fair	Rt 3 Box 6 (E Highway 331 South)	Luverne	AL	36049
Food Fair	1011 Highway 43	Thomasville	AL	36784
Food World	1600 2nd Avenue East	Oneonta	AL	35121
Food World	7100 Aaron Aronov Road	Fairfield	AL	35064
Food World	1604 Florence Blvd	Florence	AL	35630
Food World	1032 A U.S. 84 By Pass	Enterprise	AL	36330
Food World	3813 Ross Clark Circle	Dothan	AL	36303
Food World	11707 Hwy 157 North	Moulton	AL	35650
Food World	1652 Beltline Road SW	Decatur	AL	35601
Food World	1327 S. Brundridge Street	Troy	AL	36081
Food World	1402 County Park Road	Scottsboro	AL	35769
Food World	3413 Woodward Avenue	Muscle Shoals	AL	35661
Food World	14214 US Highway 431	Guntersville	AL	35976
Food World	625 Athens Towne Center	Athens	AL	35611
Food World	1500 Military Street South, Suite 7	Hamilton	AL	35570

Food World	2019 6th Avenue South Unit 18	Decatur	AL	35602
Food World Liquor	525 Beckrich Road	Panama City Beach	FL	32407
Food World Liquor	3 West 9 Mile Road Suite 8 A	Pensacola	FL	32534
Food World Liquor	5007 N. Davis Hwy Suite 20	Pensacola	FL	32503
Food World Liquor	7861 Pine Forest Road Suite B	Pensacola	FL	32526
Food World Liquor	133 Tyndall Parkway	Callaway	FL	32404
Food World Liquor	251 Mary Esther Cutoff	Mary Esther	FL	32569
Food World Liquor	13390 Perdido Bay Drive	Pensacola	FL	32507
Food World Liquor	4051 Barrancas Avenue, Suite E	Pensacola	FL	32507
Food World Liquor	1106 John Sims Parkway	Niceville	FL	32578
FoodMax	2934 North Hills Street	Meridian	MS	39305
FoodMax	505 Bankhead Avenue	Carrollton	GA	30117
FoodMax	118 Hwy 12 West	Starkville	MS	39759
FoodMax	407 West Main Street	West Point	MS	39773
FoodMax	1605 Shurling Drive	Macon	GA	31211
FoodMax	433 Roundtree Drive	Dawson	GA	31742
FoodMax	102 Hillcrest Pkwy	Dublin	GA	31021
FoodMax	1250 Eisenhower Pkwy	Macon	GA	31206
FoodMax	1310 North Columbia Street	Milledgeville	GA	31061
FoodMax	814 Russell Parkway	Warner Robins	GA	31093
FoodMax	4437 Columbus Road	Macon	GA	31206
FoodMax	1425 Rocky Creek Road	Macon	GA	31206
FoodMax	806 NE Dykes Street	Cochran	GA	31014
FoodMax	Westgate Shopping Center Hwy 80	Dublin	GA	31021
FoodMax	201 5th Avenue SW	Eastman	GA	31023
FoodMax	121 College Street / Box 7	Gordon	GA	31031
FoodMax	731 S. Wayne St / Box 1048	Milledgeville	GA	31061
FoodMax	1810 Tift Avenue	Tifton	GA	31794
FoodMax	613 Central Drive 31021	East Dublin	GA	31027
FoodMax	249 Temple Avenue	Newnan	GA	30263
FoodMax	823 North Houston Road	Warner Robins	GA	31093

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For Your Information: July 25, 2006

## Announced Actions for July 25, 2006

**Commission approval of petition to reopen and modify final order:** Following a public comment period, the Commission has approved a petition from **Koninklijke Ahold N.V.** requesting that the FTC reopen and modify a final decision and order dated January 16, 2002. Under the order, Ahold, a global food service distributor and retailer headquartered in the Netherlands, was permitted to acquire all of the outstanding voting stock of Bruno's Supermarkets, Inc., a large supermarket chain in the southeastern United States, provided it met certain conditions.

Specifically, among other things, the order required Ahold to divest 2 BI-LO supermarkets, one in Milledgeville and one in Sandersville, Georgia, to Kroger and Winn-Dixie, respectively. Under the order, Ahold also must notify the Commission, for 10 years from the date the order became final, prior to acquiring any supermarkets (or supermarket interests) in Baldwin and Washington counties, Georgia. In its petition, Ahold stated that in 2005 it sold all of its supermarket assets in the areas covered by the order to Lone Star U.S. Acquisitions, LLC, and that, therefore, it no longer owns or operates any supermarket assets in these areas. Consequently, Ahold requested that the Commission vacate the order insofar as it relates to Ahold. The FTC has now done so.

The Commission vote approving the petition was 5-0. (FTC File No. 011-0247, Docket No. C-4027; the staff contact is Elizabeth A. Piotrowski, Bureau of Competition, 202-326-2623; see press releases dated December 7, 2001; and April 18, 2006.)

**Commission approval of modified final consent order:** Following a public comment period, the Commission has approved a modified final consent order in the matter of **Boston Scientific Corporation and Guidant Corporation**. The one substantive modification concerns Paragraph VI.B.5 of the order, which relates to Boston Scientific's ability to obtain non-public information from Cameron Health, Inc., which it has an option to acquire. It changes the paragraph from reading, in part: "BSC shall not exercise its rights to obtain information from Cameron pursuant to Section 5.6 of the Agreement and Plan of Merger and 6.7 of the Securities Purchase Agreement," to "BSC shall not exercise its rights to obtain information from Cameron pursuant to Section 5.6 of the Agreement and Plan of Merger and 6.7 of the Securities Purchase Agreement, or Paragraph 7.5 of each Cameron Convertible Promissory Note to Boston Scientific executed (or to be executed) before BSC exercises its option to acquire Cameron."

The Commission vote to make the order final was 4-0, with Commissioner Pamela Jones Harbour recused. Copies of the modified final order are available now on the FTC's Web site as a link to this press release. (FTC File No. 061-0046; the staff contact is Michael Moiseyev, Bureau of Competition, 202-326-3106; see press release dated April 20, 2006.)

Copies of the documents mentioned in this release are available from the FTC's Web site at <http://www.ftc.gov> and from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Call toll-free: 1-877-FTC-HELP.

### MEDIA CONTACT:

Office of Public Affairs  
202-326-2180

(<http://www.ftc.gov/opa/2006/07/fyi0649.htm>)

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Consumer Information:

*In the Matter of Koninklijke Ahold N.V. and Bruno Supermarkets, Inc.*; File No. 011-0247, Docket No. C-40

*In the Matter of Boston Scientific Corporation and Guidant Corporation*, File No. 061-0046

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Commission voted to accept the Order and place a copy on the public record. After the 30-day public comment period expired, the Commission voted to issue the Order on January 16, 2002.

6. The terms of the Order required Ahold to divest two of its BI-LO Supermarkets in Georgia, one in Baldwin County and one in Washington County. In Ahold's 30-day Report filed with the Commission and dated February 15, 2002, Ahold reported that it had divested all assets as required by the Order.
7. In 2004, Ahold entered into a Limited Liability Company Interest Purchase Agreement (the "Agreement") with Lone Star U.S. Acquisitions, LLC, 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 to Lone Star U.S. Acquisitions, LLC.
8. Included within BI-LO Holding at the time of the transaction were BI-LO, LLC, Bruno's, and Bruno's, Inc. As this transaction affected Ahold's business organization in such a way as to affect compliance obligations, on December 23, 2004, as required by Paragraph VII of the Order, Ahold, the parent company of the Bruno's Respondents at that time, notified the Commission of the proposed change in the corporate Respondents.
9. Lone Star submitted a Hart-Scott-Rodino filing in connection with this transaction, and received early termination of the waiting period on January 11, 2005.
10. The parties to the Agreement closed the transaction on January 31, 2005 (the "Acquisition Date"), resulting in Lone Star becoming the ultimate parent entity of Bruno's and BI-LO HOLDING, LLC and succeeding to reporting obligations under the Order.
11. Pursuant to Paragraph IV.A. of the Order, for a period of ten years from the date the Order became final (January 16, 2002), the Bruno's Respondents are 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. Since the Acquisition Date, the Bruno's Respondents have made no such acquisition.
12. Pursuant to Paragraph IV. B of the Order, for a period of ten years from the date the Order became final, the Bruno's Respondents are 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. Since the Acquisition Date, the Bruno's Respondents have made no such acquisition.

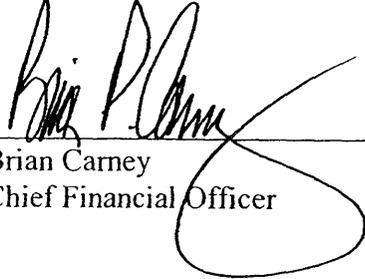
13. Pursuant to Paragraph V.A. of the Order, the Bruno's Respondents may neither enter into nor enforce any agreement that restricts the ability of any person that acquires any Supermarket, any leasehold interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after 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 or the Bruno's Respondents. Since the Acquisition Date the Bruno's Respondents have neither entered into nor enforced any such agreements.
14. Pursuant to Paragraph V.B of the Order, the Bruno's Respondents may 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 (a) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; or (b) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by the Bruno's Respondents. The Bruno's Respondents are in compliance with Paragraph V.B of the Order.
15. Pursuant to Paragraph VI.B of the Order, the Bruno's Respondents are required to submit a verified written annual report. This obligation to file a verified written annual report separately from Ahold arose on January 31, 2005, the Acquisition Date. Since the Acquisition Date, BI-LO Holding has been required to file an annual report only twice. The last verified written annual report was submitted to the Commission by BI-LO Holding on January 16, 2007. The Bruno's Respondents are in compliance with Paragraph VI.B of the Order.
16. Pursuant to Paragraph VII of the Order, the Bruno's Respondents are required to notify the Commission thirty days in advance of certain proposed changes to the Bruno's Respondents' business organization. The Bruno's Respondents are in compliance with Paragraph VII of the Order.
17. Subsequent to the transaction described above, as part of an asset sale, the Bruno's Respondents sold some of their stores, including their remaining two stores in Baldwin County, Georgia, to Southern Family Markets Acquisition LLC and C&S Wholesale Grocers, Inc. ("C&S"). The Bruno's Respondents sold their one remaining Washington County, Georgia store, closed since March 12, 2004, to redacted. As a result, the Bruno's Respondents no longer own or operate Supermarkets in Baldwin County or Washington County, Georgia -- the Relevant Areas subject to the compliance obligations of the Order.
18. Lone Star submitted a Hart-Scott-Rodino filing in connection with the asset sale to C&S and received early termination of the waiting period on June 17, 2005.
19. In response to a comment by the Commission regarding interpretation of the Order, the Bruno's Respondents filed notice of the sale of two stores in the Relevant Area to C&S (attached as Exhibit 10 to the Petition). The Bruno's Respondents are in compliance with Paragraph VII of the Order.

20. The Bruno's Respondents are in compliance with all provisions of the Order applicable to them.
21. The Bruno's Respondents believe that the changed conditions of fact have rendered the Order, as to the Bruno's Respondents, unnecessary.
22. The Bruno's Respondents also believe that the requested modification of the Order is in the public interest because the Order in whole as to the Bruno's Respondents is no longer needed. The Bruno's Respondents no longer have assets in the Relevant Areas subject to the compliance obligations of the Order. These changes have eliminated the need for the Order as to the Bruno's Respondents.
23. Competition would not be adversely affected by the proposed modification.
24. Due to the foregoing, BI-LO Holding, LLC respectfully requests the Commission to vacate the Order as to the Bruno's Respondents.

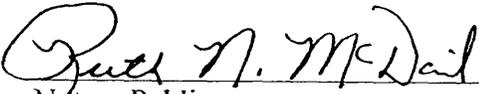
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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

BI-LO Holding, LLC

By:   
Name: Brian Carney  
Title: Chief Financial Officer

Subscribed and sworn to before me,  
this 14 day of March, 2007  
Greenville, South Carolina

  
Notary Public

Commission expires            My Commission Expires  
           July 14, 2015           

[Signature page to Affidavit in Support of Petition]