

**ANALYSIS OF PROPOSED CONSENT ORDER  
TO AID PUBLIC COMMENT**

The Federal Trade Commission ("Commission") has accepted for public comment from The Stop & Shop Companies, Inc. ("Stop & Shop") and SSC Associates, L.P. ("SSC Associates") an agreement containing a proposed consent order. The agreement is designed to remedy anticompetitive effects stemming from Stop & Shop and SSC Associates' acquisition of the supermarkets owned by Purity Supreme, Inc. ("Purity").

The agreement has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's draft complaint charges that on or about April 21, 1995, Stop & Shop and SSC Associates agreed to acquire all of the supermarkets owned by Purity. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

According to the draft complaint, Stop & Shop and Purity are direct competitors for the retail sale of food and grocery items in supermarkets, or narrower product markets contained therein.

Stores other than supermarkets do not have a significant price-constraining effect on food and grocery products sold at supermarkets. 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. In addition, supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not typically change their food and grocery prices in response to prices at other types of stores.

Food stores other than supermarkets, such as convenience stores, "mom & pop" stores, and specialty food stores (e.g., seafood markets, bakeries, etc.), typically offer far fewer items than the average supermarket and charge higher prices for many of the same or similar items. Other types of stores that sell some food and grocery products, such as large drug stores and mass merchandisers, offer only a limited number of items sold in the typical supermarket. The small number of upscale food stores emphasizing organically grown fruits and vegetables, hormone-free meat and poultry products, and other more expensive food products, and club stores that offer only a limited number of food and grocery products in bulk sizes, do not have a significant effect on market concentration.

According to the draft complaint, the relevant sections of the country in which to analyze the acquisition of Purity are the following:

a. Barnstable County, Massachusetts (a/k/a Cape Cod), and narrower markets contained therein, including Falmouth, Mashpee, Hyannis, Yarmouth, Harwich, and Orleans;

b. the South Shore area of Massachusetts, which consists of parts of Suffolk and Plymouth counties, and narrower markets contained therein, including Marshfield and Kingston;

c. the Boston, Massachusetts metropolitan area, which consists of the city of Boston and parts of Essex, Middlesex, Norfolk, and Suffolk counties, and narrower markets contained therein, including Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth;

d. Brockton, Massachusetts; and

e. Bedford, Massachusetts.

According to the draft complaint, these markets are highly concentrated. The post-acquisition Herfindahl-Hirschman Index ("HHI"), a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants, in Barnstable County, Massachusetts (a/k/a Cape Cod) would increase by approximately 2,778 points, from approximately 3,541 to approximately 6,319. The post-acquisition HHI in Falmouth, Mashpee, and Hyannis would increase to 10,000 or near 10,000 in each of these markets. The post-acquisition HHI in Yarmouth, Harwich, and Orleans would significantly increase already highly concentrated markets.

The post-acquisition HHI in the South Shore area of Massachusetts would increase by approximately 3,866 points, from

approximately 3,930 to approximately 7,795. The post-acquisition HHI in Marshfield and Kingston would increase to 10,000 or near 10,000 in each of these markets.

The post-acquisition HHI in the Boston, Massachusetts metropolitan area would increase by approximately 512 points, from approximately 1,381 to approximately 1,893. The post-acquisition HHI exceeds 2,000 when club stores and upscale food stores are not included in the market. The post-acquisition HHI in Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth would significantly increase already highly-concentrated markets.

The post-acquisition HHI in Bedford, Massachusetts would increase by approximately 4,702 points, from approximately 5,298 to approximately 10,000.

The post-acquisition HHI in Brockton, Massachusetts would increase by approximately 497 points, from approximately 5,162 to approximately 5,659.

According to the draft complaint, entry into the retail sale of food and grocery products in supermarkets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country. Entry that would prevent the anticompetitive effects in the relevant sections of the country is generally difficult because there are few available sites suitable for supermarkets and the time necessary to receive state

and local regulatory approval for a new supermarket is typically quite long.

Stop & Shop and SSC Associates' acquisition of Purity may reduce competition in these markets by eliminating the direct competition between Stop & Shop and Purity, by increasing the likelihood that Stop & Shop will become a dominant firm, and by increasing the likelihood of collusive behavior among the remaining competitors. The Agreement Containing Consent Order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order Stop & Shop and SSC Associates must divest 17 supermarkets within nine months to a purchaser or purchasers approved by the Commission. Seven of the 17 supermarkets to be divested are located on Cape Cod, and all seven must be divested to one acquirer who shall own and operate them as supermarkets. If Stop & Shop and SSC Associates are unable to divest all seven stores on Cape Cod to a single acquirer who shall own and operate them as supermarkets, Stop & Shop and SSC Associates may divest the stores to no more than two acquirers. If Stop & Shop and SSC Associates fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. The 17 supermarkets to be divested are:

1. The following supermarkets located in Barnstable County, Massachusetts (a/k/a Cape Cod):
  - a. Purity store no. 67 located at 137 Main St. (Route 28 - Falmouth Mall), Falmouth, MA 02540;

- b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151 - Mashpee Commons Shopping Center), Mashpee, MA 02649;
- c. Purity store no. 63 located at 625 West Main St., Hyannis, MA 02601;
- d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA 02601;
- e. Purity store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA 02664;
- f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA 02671; and
- g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA 02653.

2. The following supermarkets located in Plymouth County, Massachusetts:

- a. Purity store no. 89 located at 182 Summer St. (Routes 3A and 53 - Kingsbury Square Shopping Center), Kingston, MA 02364;
- b. Purity store no. 74 located at Ocean and Webster Sts. (Routes 139 and 3A -- Webster Square), Marshfield, MA 02050; and
- c. Purity store no. 25 located at 240 East Ashland St. (Cary Hill Shopping Center), Brockton, MA 02402.

3. The following supermarket located in Suffolk County and in the city of Boston, Massachusetts:

- a. Purity store no. 41 located at 630 American Legion Highway, Roslindale, MA 02131.

4. The following supermarkets located in Middlesex County, Massachusetts:

- a. Purity store no. 03 located at 170 Great Road (Routes 4 and 225), Bedford, MA 01730;

- b. Purity store no. 44 located at 2151 Mystic Valley Parkway, Medford, MA 02155; and
- c. Stop & Shop store no. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, MA 02172.

5. The following supermarket located in Essex County, Massachusetts:

- a. Purity store no. 01 located at 400 Lynn Fells Parkway, Saugus, MA 01960.

6. The following supermarkets located in Norfolk County, Massachusetts:

- a. Purity store no. 20 located at 525 Harvard St., Brookline, MA 02146; and
- b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA 02190.

For a period of ten years from the date the order becomes final, the order also prohibits Stop & Shop and SSC Associates from acquiring, without prior notice to the Commission, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in Eastern Massachusetts. Eastern Massachusetts consists of the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein. This provision does not prevent Stop & Shop and SSC Associates from constructing new supermarket facilities on their own; nor does it prevent Stop & Shop and SSC Associates from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the order prohibits Stop & Shop and SSC Associates from entering into or enforcing any agreement

that restricts the ability of any person acquiring any location used as a supermarket, or interest in any location used as a supermarket on or after July 1, 1995, to operate a supermarket at that site if that site was a former Purity store in Eastern Massachusetts, and any supermarket owned or operated by any Stop Shop and SSC Associates either in Cape Cod or not more than two miles from any other supermarket formerly owned or operated by Purity in Eastern Massachusetts. There is an exception for agreements that impose restrictions on supermarkets that are located no more than one mile from a new replacement supermarket owned and operated by Stop & Shop or SSC Associates when the restrictions are entered into within six months of the opening of the new replacement store. In addition, Stop & Shop and SSC Associates may not remove any equipment from a supermarket they own or operate prior to a sale, sublease, assignment, or change in occupancy, except in the ordinary course of business or certain other circumstances.

Stop & Shop and SSC Associates are required to provide to the Commission a report of compliance with the order within sixty (60) days following the date the order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

Stop & Shop and SSC Associates also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time Stop & Shop and SSC Associates acquire the assets of Purity that must be divested until the divestitures



set out in the attached consent agreement have been completed, Stop & Shop and SSC Associates must maintain their viability, competitiveness and marketability, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability.

The purpose of this analysis is to invite public comment on the proposed consent order to aid the Commission in its determination of whether it should make final the proposed consent order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed consent order, nor is it intended to modify the terms of the agreement and proposed consent order in any way.