

through its wholly-owned subsidiary, Norwest Mortgage Corporation, Des Moines, Iowa (Norwest Mortgage). Norwest Mortgage would provide this information to affiliated and unaffiliated depository institutions, and to other creditors for use in connection with an extension of credit including a lease transaction that is the functional equivalent of an extension of credit. These activities will be conducted nationwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form.

National Courier Ass'n v. Board of Governors, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant believes that the proposed activities meet the *National Courier* standard because: (1) employment and salary history information is information that is routinely obtained by a bank in connection with an extension of credit; (2) the information to be provided is primarily financial in nature because the relevant information is the amount of salary or wages earned by an individual over a period of time; and (3) the proposed activities are operationally and functionally similar to operating a credit bureau pursuant to § 225.25(b)(24) of Regulation Y.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 29, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis.

Board of Governors of the Federal Reserve System, March 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

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FEDERAL TRADE COMMISSION

[File No. 941 0131]

Schnuyck Markets, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition— in connection with Schnuck Markets' proposed acquisition of supermarkets currently owned by National Holdings, Inc.—this consent agreement, accepted subject to final Commission approval, would require, among other things, the Missouri-based corporation to divest 24 stores in the St. Louis area to Commission-approved purchasers, and would require the respondent, for ten years, to obtain Commission approval before acquiring an interest in a supermarket, or another entity that operates a supermarket, in the relevant area.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S-2105, Washington, D.C. 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or review will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of Schnuck Markets, Inc.'s ("Schnucks") proposed acquisition of certain assets of National Holdings, Inc. and certain affiliates ("National"), and it now appearing that Schnucks, hereinafter sometimes referred to as "proposed respondent," is willing to

enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and among proposed respondent, its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Schnuck Markets, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 11420 Lackland Road, St. Louis, MO 63146-6928.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

- a. Any further procedural steps;
- b. The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of the complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of the complaint and its decision containing

the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to-Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file verified written reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. *Respondent* or *Schnuck Markets, Inc.* means Schnuck Markets, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Schnuck Markets, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. *Assets to be divested* means the supermarket assets described in Paragraph II.A. of this Order.

C. *Commission* means the Federal Trade Commission.

D. *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.

E. The term *St. Louis MSA* means the metropolitan statistical area consisting of the following areas: in Missouri, the counties of Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and the city of St. Louis; in Illinois, the counties of Clinton, Jersey, Madison, Monroe, and St. Clair.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve months from the date this Order becomes final:

1. The following supermarkets located in the city of St. Louis, Missouri:

- a. National Store no. 15 located at 2700 S. Grand Avenue, St. Louis, MO 63118;
- b. National store no. 30 located at 5433 Southwest Avenue, St. Louis, MO 63139;
- c. National store no. 50 located at 8945 Riverview Drive, St. Louis, MO 63137; and
- d. National store no. 60 located at 1605 S. Jefferson, St. Louis, MO 63104.

2. The following supermarkets located in St. Louis County, Missouri:

- a. National store no. 26 located at 8823 Ladue Road, Ladue, MO 63124;
- b. National store no. 45 located at 6 S. Old Orchard, Webster, MO 63119;
- c. National store no. 46 located at 10431 St. Charles, St. Ann, MO 63074;
- d. National store no. 47 located at 13041 New Halls Ferry, Florissant, MO 63033;
- e. National store no. 62 located at 421 N. Kirkwood Road, Kirkwood, MO 63122;
- f. National store no. 63 located at 7434 Olive Street Road, University City, MO 63130;
- g. National store no. 77 located at 4432 Lemay Ferry Road, Mehlville, MO 63129;
- h. National store no. 85 located at 14855 Clayton Road, Chesterfield, MO 63011;
- i. Schnucks store no. 103 located at 9719 Crestwood Road, Crestwood, MO 63126;
- j. Schnucks store no. 124 located at 3661 Reavis Barracks, St. Louis, MO 63125;
- k. Schnucks store no. 130 located at 10223 Lewis & Clark, Bellefontaine, MO 63136; and
- l. Schnucks store no. 195 located at 6965 Parker Road, St. Louis, MO 63033.

3. The following supermarkets located in St. Charles County, Missouri:

- a. National store no. 22 located at 850 Jungerman, St. Peters, MO 63376; and

- b. Schnucks store no. 126 located at 1355 South 5th Street, St. Charles, MO 63301.
4. The following supermarkets located in Jefferson County, Missouri:
- a. National store no. 65 located at 1200 Sugar Creek Square, Fenton, MO 63026; and
- b. National store no. 70 located at 215 Arnold Cross Road, Arnold, MO 63010.
5. The following supermarkets located in Madison County, Illinois:
- a. National store no. 35 located at 1716 Vandalia Road, Collinsville, IL 62234; and
- b. Schnucks store no. 175 located at 1435 Vaughn Road, Wood River, IL 62095.
6. The following supermarkets located in St. Clair County, Illinois:
- a. National store no. 64 located at 1290 Camp Jackson Road, Cahokia, IL 62206; and
- b. National store no. 80 located at 4 Market Place, Fairview Heights, IL 62208.

The assets to be divested shall include the supermarket business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the supermarket operations at the locations listed above, but shall not include those assets consisting of or pertaining to Schnucks or National trade names, trade dress, trade marks, service marks, and such other intangible assets that respondent also utilizes in its business at locations other than those listed above.

B. Respondent shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets to be divested 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.

C. Pending divestiture of the assets to be divested, respondent shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the assets to be divested to comply with Paragraphs II and III of this Order and to prevent the destruction, removal, wasting, deterioration, or impairment of the assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

D. Respondent shall comply with all the terms of the Asset Maintenance

Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as all assets to be divested have been divested as required by this Order.

III

It is further ordered that:

A. If respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the assets to be divested within twelve months from the date this Order becomes final, the Commission may appoint a trustee to divest any of the assets to be divested. In the event that the Commission or the Attorney General brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to be appoint a 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 trustee, pursuant to § 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers

necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent 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 trustee, by the court.

6. The 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 respondent's absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives

and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II of this Order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute 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 trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any ownership or leasehold interest in any facility that has operated as a supermarket within six (6) months of the date of such proposed acquisition in the St. Louis MSA.

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 of such proposed acquisition in the St. Louis MSA.

Provided, however, that these prohibitions shall not apply to the construction of new facilities by respondent or the acquisition of or leasing of a facility that has not operated as a supermarket within six (6) months of respondent's offer to purchase or lease.

V

It is further ordered that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondent 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)) acquiring any supermarket owned or operated by respondent, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1995 in the St. Louis MSA to operate a supermarket at that site; provided however, that nothing in this Paragraph shall prevent respondent from entering into or enforcing any agreement requiring its approval of any sublease, assignment, or change in occupancy, which approval shall not be unreasonably withheld; provided further that use of a site for the operation of a supermarket shall not be a basis for withholding such approval.

B. Respondent shall not remove any equipment from a supermarket owned or operated by respondent in the St. Louis MSA prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by respondent in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VI

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II or III of this Order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and from in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Respondent shall include in its compliance 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 the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

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, respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent 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 respondent that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, respondent shall permit and duly authorize representative of the Commission:

A. Upon five days' written notice to respondent, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order; and

B. Upon five days' written notice to respondent and without restraint or interference from it, to interview respondent or officers, directors, or employees of respondent in the presence of counsel.

Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between Schnuck Markets, Inc. ("Schnucks"), a corporation organized under the laws of the State of Missouri, with its principal offices located at 11420 Lackland Road, St. Louis, MO 63146-6928, and the Federal Trade Commission ("Commission"), an independent agency of the United States

Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively "the Parties").

Premises

Whereas, Schnucks, pursuant to an agreement dated November 23, 1994, agreed to purchase certain assets of National Holdings, Inc. and certain affiliates (hereinafter "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested as described in II.A. of the attached Agreement Containing Consent Order ("Assets") during the period prior to their divestitures, when those Assets will be in the hands of Schnucks, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Schnucks entering into this Agreement shall in no way be construed as an admission by Schnucks that the Acquisition is illegal; and

Whereas, Schnucks understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with

respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets, the Parties agree as follows:

Terms of Agreement

1. Schnucks agrees to execute, and upon its issuance to be bound by, the attached Consent Order. The Parties further agree that each term defined in the attached Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Schnucks will be free to close the Acquisition after 11:59 p.m., March 8, 1995.

3. Schnucks agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 3.a-3.b it will comply with the provisions of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or

b. On the day the divestiture set out in the Consent Order has been completed.

4. From the time Schnucks acquires the Assets until the divestiture set out in the Consent Order has been completed, Schnucks shall maintain the viability, competitiveness and marketability of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall it sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Commission seek in any proceeding to compel Schnucks to divest itself of the Assets or to seek any other injunctive or equitable relief, Schnucks shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Schnucks also waives all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Schnucks to its principal offices, Schnucks will permit any duly

authorized representative or representatives of the Commission:

a. Access during the office hours of Schnucks, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Schnucks relating to compliance with this Agreement; and

b. Upon five (5) days' notice to Schnucks and without restraint or interference from them, to interview officers or employees of Schnucks, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from Schnucks Markets, Inc. ("Schnucks") an agreement containing a proposed consent order. The agreement is designed to remedy anticompetitive effects stemming from Schnucks' acquisition of a number of supermarkets owned by National Holdings, Inc. and certain affiliates ("National").

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 November 23, 1994, Schnucks agreed to acquire supermarkets owned by National in Missouri and Illinois. 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, Schnucks and National are direct competitors for the retail sale of food and grocery items in supermarkets, or narrower product markets contained therein, in the St. Louis MSA, or narrower geographic markets contained therein. The St. Louis MSA consists of the Missouri counties of Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren; the City of St. Louis; and the Illinois counties of Clinton, Jersey, Madison, Monroe, and St. Clair.

According to the draft complaint, these markets are highly concentrated and entry is difficult or unlikely. Schnucks' acquisition of National may reduce competition in these markets by eliminating the direct competition between Schnucks and National, by increasing the likelihood that Schnucks 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, Schnucks must divest 24 supermarkets within twelve months, to a purchaser approved by the Commission. If Schnucks fails to satisfy the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. The 24 supermarkets to be divested are:

1. The following supermarkets located in the city of St. Louis, Missouri:
 - a. National store No. 15 located at 2700 S. Grand Avenue, St. Louis, MO 63118;
 - b. National store No. 30 located at 5433 Southwest Avenue, St. Louis, MO 63139;
 - c. National store No. 50 located at 8945 Riverview Drive, St. Louis, MO 63137; and
 - d. National store No. 60 located at 1605 S. Jefferson, St. Louis, MO 63104.
2. The following supermarkets located in St. Louis County, Missouri:
 - a. National store No. 26 located at 8823 Ladue Road, Ladue MO 63124;
 - b. National store No. 45 located at 6 S. Old Orchard, Webster, MO 63119;
 - c. National store No. 46 located at 10431 St. Charles, St. Ann, MO 63074;
 - d. National store No. 47 located at 13041 New Halls Ferry, Florissant, MO 63033;
 - e. National store No. 62 located at 421 N. Kirkwood Road, Kirkwood, MO 63122;
 - f. National store No. 63 located at 7434 Olive Street Road, University City, MO 63130;
 - g. National store No. 77 located at 4432 Lemay Ferry Road, Mehlville, MO 63129;
 - h. National store No. 85 located at 14855 Clayton Road, Chesterfield, MO 63011;
 - i. Schnucks store No. 103 located at 9719 Crestwood Road, Crestwood, MO 63126;
 - j. Schnucks store No. 124 located at 3661 Reavis Barracks, St. Louis, MO 63125;

- k. Schnucks store No. 130 located at 10223 Lewis & Clark, Bellefontaine, MO 63136; and
 - l. Schnucks store No. 195 located at 6965 Parker Road, St. Louis, MO 63033.
3. The following supermarkets located in St. Charles County, Missouri:
 - a. National store No. 22 located at 850 Jungerman, St. Peters, MO 63376; and
 - b. Schnucks store No. 126 located at 1355 South 5th Street, St. Charles, MO 63301.
 4. The following supermarkets located in Jefferson County, Missouri:
 - a. National store No. 65 located at 1200 Sugar Creek Square, Fenton, MO 63026; and
 - b. National store No. 70 located at 215 Arnold Cross Road, Arnold MO 63010.
 5. The following supermarkets located in Madison County, Illinois:
 - a. National store No. 35 located at 1716 Vandalia Road, Collinsville, IL 62234; and
 - b. Schnucks store No. 175 located at 1435 Vaughn Road, Wood River, IL 62095.
 6. The following supermarkets located in St. Clair County, Illinois:
 - a. National store No. 64 located at 1290 Camp Jackson Road, Cahokia, IL 62206; and
 - b. National store No. 80 located at 4 Market Place, Fairview Heights, IL 62208

For a period of ten years from the date the order becomes final, the order also prohibits Schnucks from acquiring, without prior Commission approval, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, the St. Louis MSA. This does not prevent Schnucks from constructing new supermarket facilities on its own; nor does it prevent Schnucks from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, if Schnucks sells or leases a supermarket to another person, Schnucks may not enter into or enforce any agreement that would restrict the ability of that person to operate a supermarket. In addition, subject to certain exceptions, Schnucks may not remove any equipment from a supermarket it owns or operates prior to a sale, sublease, assignment, or change in occupancy.

The respondent is 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.

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.

Donald S. Clark,
Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga

Re: *Schnuck Markets, Inc.*, File No. 941-0131; *Schwegmann Giant Super Markets, Inc.*, File No. 941-0130

The two complaints allege geographic markets comprising "the St. Louis MSA, and narrower markets contained therein" and "metro New Orleans, Louisiana area, which consists of the parishes of Orleans, Jefferson, and St. Bernard, and narrower markets contained therein." Although I question the board geographic markets alleged, the investigational record contains sufficient information to support a finding of reason to believe with respect to small, discrete geographic markets located within the broad regions alleged in the complaint, and the stores to be divested were selected with a view to remedying competitive concerns in the small, discrete markets.

In addition, the complaints allege as the product market "the retail sale of food and grocery products in supermarkets, and narrow markets contained therein." A serious argument can be made that the market should include sales of food and groceries in certain stores other than traditional supermarkets. Since the investigational record suggests that the concentration is high even if additional sales are included in the market, the issue need not be resolved at this time. Accordingly, I concur in the decision to accept the consent agreements for publication.

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[File No. 941 0130]

Schwegmann Giant Super Markets, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.