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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

Civil Action No. 99-3574A

COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
J. SAINSBURY, PLC. and)
SHAW'S SUPERMARKETS, INC.)
)
Defendants.)

PROPOSED
MODIFIED CONSENT DECREE

The Massachusetts Attorney General, having filed a Complaint in this action on behalf of the plaintiff Commonwealth of Massachusetts ("Commonwealth"), alleges that the proposed acquisition of supermarkets in Massachusetts by the defendants will reduce competition among supermarkets in the relevant markets. Defendants deny such allegations.

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Before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is hereby:

ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. Introduction

A. The Defendant J. Sainsbury, plc is a corporation organized, existing and doing business under and by virtue of the laws of England with its offices and principal place of business located at Stamford House, Stamford Street, London SE 19LL, England.

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B. The Defendant Shaw's Supermarkets, Inc. ("Shaw's") is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with office and principal place of business located at 140 Laurel Street, East Bridgewater, MA, 02333.

JUDGMENT ENTERED ON DOCKET 11-16-2000
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

C. The Defendants deny the substantive allegations of the Commonwealth's Complaint. The Commonwealth, J. Sainsbury, plc and Shaw's have consented to the entry of this final judgment without trial or adjudication of any issue of fact or law in this action, and by doing so do not admit any substantive allegations of the Complaint.

D. The Commonwealth believes that the implementation of this Consent Decree will resolve its concerns as alleged in the Complaint.

E. The Defendants and the Commonwealth have agreed to be bound by the provisions of this Consent Decree pending its approval by the Court.

F. The Defendants admit all the jurisdictional facts set forth in the Commonwealth's Complaint.

II. Jurisdiction

This Court has jurisdiction over the subject matter and over each of the parties hereto. The Complaint states a claim for relief under Section 4 of the Massachusetts Antitrust Act (M.G.L. c. 93, §4) and Section 2 of the Massachusetts Consumer Protection Act (M.G.L. c. 93A §2).

III. Definitions

A. "Plaintiff" means the Commonwealth as represented by the Massachusetts Attorney General.

B. "Defendants" means J. Sainsbury plc, and Shaw's Supermarkets, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate" and "joint venture" refer to any entity which is partially (25 percent or more) or totally owned or controlled by J. Sainsbury or Shaw's Supermarkets, Inc. and that entity.

C. "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, 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.

D. The term “Eastern Massachusetts” is defined as the counties of Suffolk, Middlesex, Essex, Norfolk, Plymouth and Worcester and all cities and towns within those counties.

E. The term “price zone” is defined as a geographic area, designated by Defendants, within which Defendants’ grocery stores use the same formula or methodology for setting prices, and within which all identical grocery items at Defendants’ various stores are priced the same.

IV. Applicability

A. Nothing in this document shall suggest that any portion of this Consent Decree is or has been created for the benefit of any third party and nothing in this document shall be construed to provide any rights to any third party.

V. Divestiture

A. Defendants shall divest, absolutely and in good faith, and to competitively suitable purchasers within six (6) months of the entry of this Consent Decree, the following supermarkets:

1. Located in Middlesex County, Massachusetts:

(a) J. Sainsbury store No. 193, operating under the “Shaw’s Supermarket” trade name, located at 836 Main Street, Waltham, MA 02154;

(b) Star Market store No. 152, operating under the Star Markets trade name, located at Rte 117, Stow Plaza, Stow, MA 01775; and

(c) Star Market store No. 118, operating under the Star Markets trade name, located at 509 Boston Post Road, Sudbury, MA 01776;

2. Located in Norfolk County, Massachusetts:

(a) J. Sainsbury store No. 196, operating under the “Shaw’s Supermarket” trade name, located at 475 Hancock Street, North Quincy, MA 02171; and

(b) J. Sainsbury store No. 122, operating under the “Shaw’s Supermarket” trade name, located at 435 Walpole Street, Route 1A, Norwood, MA, 02062.

3. Located in Worcester County, Massachusetts:

(a) Star Market store No. 169, operating under the Star Markets trade name, located at 7 Medway Road, Milford, MA 01757.

4. Located in Plymouth County, Massachusetts:

(a) Star Market store No. 128, operating under the “Star Markets” trade name, located at 4 Washington Street & Pond Street, Norwell, MA 02106.

5. Located in Essex County, Massachusetts:

(a) Star Market store No. 144, operating under the “Star Markets” trade name, located at 50 Boston Street, Lynn, MA 01904;

(b) Star Market store No. 129, operating under the “Star Markets” trade name, located at 38 Paradise Road, Swampscott, MA 01907; and

B. Defendants may elect to divest J. Sainsbury store no. 338, operated under the “Shaw’s Supermarkets” trade name, located at 10 Technology Drive, Route 85, Hudson, Middlesex County, MA 01749, within six (6) months of the entry of this Consent Decree, instead of divesting Star Market store nos. 152 (Stow) and 118 (Sudbury).

C. In addition to the divestitures set forth above, Defendants shall keep J. Sainsbury Store No. 190, operating under the “Shaw’s Supermarket” trade name, located at 35 Columbia Road in Hanover, Massachusetts, in the same internal “price zone” as the Shaw’s locations in Weymouth, Randolph, and Braintree until such time as another major competitor opens within two driving miles of the supermarket currently operated by Stop & Shop in Pembroke. For the purpose of this paragraph, “another major competitor” shall include either a vertically integrated chain other than Stop & Shop, or an independent supermarket operator that owns ten stores or more. In the event that a Wal-Mart supercenter opens or a traditional Wal-Mart is expanded into

a supercenter within five driving miles of the Shaw's locations in Hanover, Weymouth, Randolph or Braintree, defendants may modify the relevant price zone to remove one of the affected locations from the price zone. If, due to such a market entry by Wal-Mart, Defendants wish to modify the relevant price zone by removing more than one of these locations from the price zone, defendants may do so only if they establish the Hanover location in a substitute price zone which, for the past two years, has had the same or lower price levels as the relevant price zone the Defendants are modifying.

D. In addition to the divestitures set forth above, Defendants shall keep J. Sainsbury Store No. 173, operating under the "Star Market" trade name, located at 400 Lynn Fells Parkway in Saugus, Massachusetts, (the "Saugus location") in the same internal "price zone" as the Shaw's locations in Peabody, Melrose, Stoneham and Salem until such time as another major competitor opens within two driving miles of the Saugus location. For the purpose of this paragraph, "another major competitor" shall include either a vertically integrated supermarket chain other than Stop & Shop, or an independent supermarket operator that owns ten stores or more. In the event that a Wal-Mart supercenter opens or a traditional Wal-Mart is expanded into a supercenter within five driving miles of the Shaw's locations in Saugus, Peabody, Melrose, Stoneham and Salem, defendants may modify the relevant price zone to remove one of the affected locations from the price zone. If, due to such a market entry by Wal-Mart, Defendants wish to modify the relevant price zone by removing more than one of these locations from the price zone, defendants may do so only if they establish the Saugus location in a substitute price zone which, for the past two years, has had the same or lower price levels as the relevant price zone the Defendants are modifying.

VI. Prior Notice of Future Acquisitions

A. For a period of five (5) years after the date this Consent Decree is signed, Defendants shall deliver to the Plaintiff at least thirty (30) days prior notice of any proposed acquisition by Defendants of any Supermarket within Eastern Massachusetts.

VII. Maintenance of Supermarket Sites and Equipment

A. For a period of ten (10) years commencing on the date this Consent Decree is entered:

1. Defendants shall 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, 1998, in Eastern Massachusetts to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Shaw's or Star Markets in Eastern Massachusetts.

2. Defendants shall not remove any equipment from a Supermarket owned or operated by Defendants in Eastern Massachusetts 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 Defendants in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such Supermarket.

VIII. Costs and Attorneys Fees

A. The Defendants shall contribute to the Plaintiff a total amount of \$10,000 toward Plaintiff's costs and reasonable attorneys fees. The Defendants shall deliver a cashier's check in said amount to the Office of the Attorney General on or before July 30, 1999. Said cashier's check shall be made payable to the Commonwealth of Massachusetts.

IX. Reporting

A. Within sixty (60) days after the date this Consent Decree is entered, Defendants shall submit to the Attorney General a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the provisions of this Decree.

B. One (1) year from the date this Decree becomes final, and at other times as the Attorney General may require, Defendants shall file verified written reports with the Attorney General setting forth in detail the manner and form in which it has complied and is complying

with this Decree.

C. It is further ordered that Defendants shall notify the Attorney General at least (30) days prior to any proposed change in Defendants 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 Defendants that may affect compliance obligations arising out of the Decree.

X. Investigation by Plaintiff

A. For the purpose of determining or securing compliance with this Consent Decree, and subject to any legally recognized privilege, upon written request with reasonable notice to Defendants made to their principal office(s) in Massachusetts, Defendants shall permit any duly authorized representative of the Attorney General:

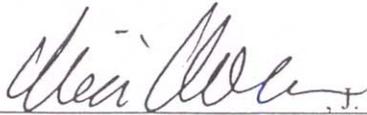
1. Upon five day's written notice to Defendants, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendants relating to any matters contained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

2. Upon five day's written notice to Defendants and without restraint or interference from it, to interview Defendants or officers, directors, or employees of Defendants in the presence of counsel relating to any matters contained in this Decree.

XI. Retention of Jurisdiction

A. This Court retains jurisdiction for the purpose of enabling any party hereto to apply for such further orders and directions as may be necessary or appropriate for the modification or enforcement of this Consent Decree to the extent any such modification is permitted, and for the punishment of any violation of the provisions contained herein. This Court shall have the authority specifically to enforce the provisions of this Consent Decree between the Commonwealth and Defendants.

SO ORDERED:



Superior Court Judge


Dated: _____, 2000

Commission, conducted an investigation of competitive concerns raised by the proposed supermarket acquisition. In a Complaint filed in August, 1999, the Massachusetts Attorney General alleged that the proposed acquisition of supermarkets by the defendants would reduce competition among supermarkets in relevant markets in Massachusetts.

3) To resolve competitive concerns, Defendants entered into a proposed Consent Decree with the Massachusetts Attorney General, which was entered as a Judgment by this court on August 17, 1999. A copy of the Consent Decree is attached as "Exhibit A". In accordance with the Consent Decree, Defendants agreed to divest certain supermarket stores, including Star Market Store No. 173, located at 400 Lynn Fells Parkway in Saugus, MA (the "Saugus location"), and to keep a particular non-divested store in a specified "price zone" as defined in the Consent Decree. See Exhibit A, Consent Decree, V.A. 5(c). The Defendants entered into a separate agreement with the Federal Trade Commission which as originally proposed, required a divestiture of the Saugus location, among other divestitures.

4) Defendants have complied with all provisions of the Consent Decree entered into with the Massachusetts Attorney General, with the exception of section V.A. 5(c) regarding the Saugus location. In order to comply with the divestiture requirement of the Consent Decree, Defendants have engaged in efforts to locate a buyer for this property since early summer of 1999. These efforts included distributing preliminary information packages to a number of companies that Defendants believed would be highly interested in acquiring the property; widening the scope of their search in August and September 1999 to nearly seventy food retailers located throughout New England and surrounding States in an attempt to attract a buyer for the

Saugus location; and advertising the availability of the Saugus location to industry members in the Griffin Report, a supermarket industry periodical, soliciting any indications of interest.

5) As a result of these efforts, Defendants received only two offers for the Saugus location from two proposed buyers who were deemed preliminarily by the Federal Trade Commission not to be suitable pro-competitive acquirers of the Saugus location.

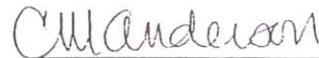
6) In April, 2000, the Federal Trade Commission agreed to modify its Consent Agreement so that the Defendants no longer were obligated to divest the Saugus location.

7) Despite repeated attempts to sell the store at no minimum price, Defendants have been unable to attract a buyer for the Saugus location. Therefore, Defendants submit that no public interest would be served by obligating Defendants to continue their search for a purchaser that could be approved as pro-competitive by the Attorney General, as none can be found.

8) To ensure that prices at the Saugus location will remain competitive, absent a divestiture to another supermarket operator, Defendants agree to an additional provision in the modified Consent Judgment which will require that the Saugus location be placed in the same internal "price zone" (as that term is defined in the Consent Decree) as Defendants' stores in Peabody, Melrose, Stoneham and Salem until such time as another major competitor other than Stop & Shop opens a store within two driving miles of the Saugus location. Defendants submit that this will ensure that prices in the Saugus location will be set according to the competitive market conditions in the geographic area comprised of that price zone, which has at least one other strong competitor able to constrain Defendants' prices.

Wherefore, Defendants move that this Court modify the Judgment and Consent Decree to eliminate the divestiture requirement in paragraph V.A.5(c), and to include paragraph V.D, as it appears in the Modified Consent Decree, submitted herewith.

Respectfully submitted,
Defendants,
By their attorneys



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Assented To:

COMMONWEALTH OF MASSACHUSETTS

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(617) 727-2200

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

Civil Action No.

99-3574 *Q*

_____)
COMMONWEALTH OF MASSACHUSETTS,)
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Plaintiff,))
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J SAINSBURY plc and)
SHAW'S SUPERMARKETS, INC.)
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JUDGMENT ENTERED ON DOCKET 01/17 1999
PURSUANT TO THE PROVISIONS OF MASS.R.CIV.P. 58(b)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS.R.CIV.P. 77(d) AS FOLLOWS:

WA 222455.1

TRUE COPY OF JUDGEMENT DULY ENTERED ON 01/17 1999

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2. Defendants shall not remove any equipment from a Supermarket owned or operated by Defendants in Eastern Massachusetts 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 Defendants in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such Supermarket.

VIII. Costs and Attorneys Fees

A. The Defendants shall contribute to the Plaintiff a total amount of \$10,000 toward Plaintiff's costs and reasonable attorneys fees. The Defendants shall deliver a cashier's check in said amount to the Office of the Attorney General on or before July 30, 1999. Said cashier's check shall be made payable to the Commonwealth of Massachusetts.

IX. Reporting

A. Within sixty (60) days after the date this Consent Decree is entered, Defendants shall submit to the Attorney General a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the provisions of this Decree.

B. One (1) year from the date this Decree becomes final, and at other times as the Attorney General may require, Defendants shall file verified written reports with the Attorney General setting forth in detail the manner and form in which it has complied and is complying with this Decree.

C. It is further ordered that Defendants shall notify the Attorney General at least (30) days prior to any proposed change in Defendants 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 Defendants that may affect compliance obligations arising out of the Decree.

X. Investigation by Plaintiff

A. For the purpose of determining or securing compliance with this Consent Decree, and subject to any legally recognized privilege, upon written request with reasonable notice to Defendants made to their principal office(s) in Massachusetts, Defendants shall permit any duly authorized representative of the Attorney General:

1. Upon five day's written notice to Defendants, 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

Defendants relating to any matters contained in this Decree; and

2. Upon five day's written notice to Defendants and without restraint or interference from it, to interview Defendants or officers, directors, or employees of Defendants in the presence of counsel relating to any matters contained in this Decree.

XI. Retention of Jurisdiction

A. This Court retains jurisdiction for the purpose of enabling any party hereto to apply for such further orders and directions as may be necessary or appropriate for the modification or enforcement of this Consent Decree to the extent any such modification is permitted, and for the punishment of any violation of the provisions contained herein. This Court shall have the authority specifically to enforce the provisions of this Consent Decree between the Commonwealth and Defendants.

SO ORDERED:

Mitchell A. Sihora, Jr.
Superior Court Judge

Dated: July 30, 1999