

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

In the Matter of)	
)	
JITNEY-JUNGLE STORES OF AMERICA, INC.,)	
a corporation;)	
)	
BRUCKMANN, ROSSER, SHERRILL & CO., L.P.,)	
a limited partnership;)	File No. 971-0093
)	
DELTA ACQUISITION CORPORATION,)	
a corporation; and)	
)	
DELCHAMPS, INC.,)	
a corporation.)	
)	

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of Delchamps, Inc. ("Delchamps") by Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckmann"), and Delta Acquisition Corporation ("Delta"), and it now appearing that Jitney-Jungle, Bruckmann, Delta, and Delchamps, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into an agreement containing an Order ("Agreement") 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 Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Jitney-Jungle Stores of America, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

Mississippi, with its office and principal place of business located at 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204.

2. Proposed Respondent Bruckmann, Rosser, Sherrill & Co., L.P. is a limited partnership 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 Two Greenwich Plaza, Greenwich, Connecticut 06830.

3. Proposed Respondent Delta Acquisition Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at c/o Jitney-Jungle Stores of America, Inc., 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204.

4. Proposed Respondent Delchamps, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 305 Delchamps Drive, Mobile, Alabama 36602.

5. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

6. Proposed Respondents waive:

- 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.

7. 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 Respondents, 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.

8. This 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 of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

9. 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 Section 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached 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 manner and within 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 Respondents'

addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they 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.

10. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final. By signing this Agreement, Proposed Respondents represent that the relief contemplated by this Agreement can be accomplished.

11. Proposed Respondents shall, within thirty (30) days of the date this Agreement is signed by Proposed Respondents, submit an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by the Proposed Respondents, setting forth in detail the manner in which the Proposed Respondents are complying with the terms of the Asset Maintenance Agreement signed by the Proposed Respondents on September __, 1997 (attached to this Order and made a part hereof as Appendix I), and how they will comply with Paragraph II of the Order when and if entered. Such report will not become part of the public record unless and until the accompanying Agreement and Order are accepted by the Commission for public comment.

12. Proposed Respondents shall not divest the Assets To Be Divested until after the Order becomes final.

ORDER
I.

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

A. "Jitney-Jungle" means Jitney-Jungle Stores of America, Inc., its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Jitney-Jungle, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each. Jitney-Jungle, after consummation of the Acquisition, includes Delchamps. A majority of the voting securities of Jitney-Jungle are owned by Bruckmann.

B. "Bruckmann" means Bruckmann, Rosser, Sherrill & Co., L.P., its predecessors, successors and assigns, subsidiaries, divisions, groups and affiliates controlled by Bruckmann and their respective general partners, officers, employees, agents, and representatives, and the respective successors and assigns of each. Bruckmann owns a majority of the voting securities of Jitney-Jungle.

C. "Delta" means Delta Acquisition Corporation, its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Delta, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each. Delta is a wholly-owned subsidiary of Jitney-Jungle.

D. "Delchamps" means Delchamps, Inc., its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Delchamps, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

E. "Respondents" means Jitney-Jungle, Bruckmann, Delta, and Delchamps.

F. "Commission" means the Federal Trade Commission.

G. "Acquisition" means Jitney-Jungle's, Bruckmann's and Delta's proposed acquisition of all of the outstanding voting securities of and merger with Delchamps pursuant to the Agreement and Plan of Merger dated July 8, 1997.

H. "Assets To Be Divested" shall consist of the supermarkets identified in Schedule A of this Order and all assets, leases, properties, permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the Respondents' trade marks, trade dress, service marks, or trade names.

I. "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.

J. "Supervalu" means Supervalu Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 11840 Valley View Road, Eden Prairie, Minnesota 55344; and Supervalu Holdings, Inc. a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 11840 Valley View

Road, Eden Prairie, Minnesota 55344. Supervalu Holdings, Inc. is a wholly-owned subsidiary of Supervalu Inc.

K. "R & M Foods" means R & M Foods, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal place of business located at 1612 Adeline Street, Hattiesburg, Mississippi 39402.

L. "Southeast Foods" means Southeast Foods, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal place of business located at 1001 North 11th Street, Monroe, Louisiana 71207-2230.

M. "Supervalu Agreement" means the Purchase Agreement between Supervalu and Jitney-Jungle executed on August 29, 1997, and all subsequent amendments thereto, for the divestiture by Respondents to Supervalu of the Assets To Be Divested.

N. "Acquirer(s)" means Supervalu, R & M Foods, Southeast Foods, and/or the entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this Order.

O. "Landlord Consents" means all consents from all landlords that are necessary to effect the complete transfer to the Acquirer(s) of the assets required to be divested pursuant to this Order.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall divest, absolutely and in good faith, the Assets To Be Divested to:

1. Supervalu, in accordance with the Supervalu Agreement (which agreement shall not be construed to vary or contradict the terms of this Order or the Asset Maintenance Agreement) dated August 29, 1997, no later than,
 - a. one (1) month after the date on which this Order becomes final, or
 - b. five (5) months after acceptance of the Agreement Containing Consent Order by the Commission,

whichever is later; or

2. an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, within three (3) months after the date on which this Order becomes final; provided that the closing date of the Supervalu Agreement or any other agreement pursuant to which the Assets To Be Divested are divested to an Acquirer shall not occur until after Respondents have obtained all required Landlord Consents.

B. If Respondents divest the Assets To Be Divested pursuant to the terms of Paragraph II.A.1., Supervalu may sell, within three (3) months of the date on which this Order becomes final, any of the supermarkets constituting the Assets To Be Divested to R & M Foods or Southeast Foods, but only in a manner that receives the prior approval of the Commission. Respondents shall use their best efforts to assist Supervalu in the sale of the Assets To Be Divested pursuant to this Paragraph in accordance with the terms of this Order.

C. A condition of approval by the Commission of the divestiture transaction described in Paragraph II.A.1. shall be a written agreement by Supervalu that it will not sell the Assets To Be Divested, other than as provided in Paragraph II.B., for a period of three (3) years from the date on which this Order becomes final, directly or indirectly, through subsidiaries, partnerships or otherwise, without the prior approval of the Commission.

D. The purpose of the divestitures 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.

III.

IT IS FURTHER ORDERED that:

A. If Respondents fail to divest absolutely and in good faith the Assets To Be Divested pursuant to Paragraph II.A. of this Order, the Commission may appoint a trustee to divest the Assets To Be Divested.

B. 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 trustee in such action. Neither the appointment of a trustee nor a decision not to 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(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.

C. If a 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 trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The 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 trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents 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, Respondents 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 each divestiture 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.C.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 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 the period for each divestiture only two (2) times.

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. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. 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 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 Respondents' absolute and unconditional obligation to make each divestiture required by this Order at no minimum price. Each divestiture shall be made in the manner consistent

with the terms 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 Respondents from among those approved by the Commission.

7. The 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 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 trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures 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 Respondents, 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.
8. Respondents 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 each divestiture required by this Order.
11. The trustee may also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Assets To Be Divested.
12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.
13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish each divestiture required by this Order.

IV.

IT IS FURTHER ORDERED that:

A. Pending divestiture of the Assets To Be Divested pursuant to this Order, Respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of Assets To Be Divested except for ordinary wear and tear.

B. Respondents 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.

V.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, Respondents shall not, without providing advance written notification to 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 Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida.

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 Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida.

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

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 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 twenty days after submitting such additional information or documentary material. 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.

VI.

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 July 1, 1997, to operate a supermarket at that site if such supermarket was formerly owned or operated by Respondents in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida.

B. Respondents shall not remove any equipment from a supermarket owned or operated by Respondents in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida, 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 Respondents in the ordinary course of business, or except as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VII.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II or 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 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 divestitures and the identity of all parties contacted.

Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) 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.

VIII.

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 Respondents that may affect compliance obligations arising out of the Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, Respondents shall permit any duly authorized representative of the Commission:

A. 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 Respondents relating to any matters contained in this Order;
and

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

Signed this _____ day of September, 1997

JITNEY-JUNGLE CORPORATION OF AMERICA, INC., a corporation

By: _____
Michael E. Julian
Chief Executive Officer and President

R. Barry Cannada, Esq.
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Counsel for Jitney-Jungle Stores of America, Inc.

Stephen A. Stack, Jr., Esq.
Dechert Price & Rhoads
Counsel for Jitney-Jungle Stores of America, Inc.

BRUCKMANN, ROSSER, SHERRILL & CO., L.P., a limited partnership

By: _____
Harold O. Rosser, II
Managing Director

Stephen A. Stack, Jr., Esq.
Dechert Price & Rhoads
Counsel for Bruckmann, Rosser, Sherrill & Co., L.P.

DELTA ACQUISITION CORPORATION, a corporation

By: _____
Michael E. Julian
President

R. Barry Cannada, Esq.
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Counsel for Delta Acquisition Corporation

Stephen A. Stack, Jr., Esq.
Dechert Price & Rhoads
Counsel for Delta Acquisition Corporation

DELCHAMPS, INC., a corporation

By: _____
David W. Morrow
Chairman of the Board and Chief Executive Officer

Howard E. Sinor, Jr., Esq.
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.
Counsel for Delchamps, Inc.

FEDERAL TRADE COMMISSION

By: _____
James A. Fishkin
Attorney
Bureau of Competition

APPROVED:

Phillip L. Broyles
Assistant Director
Bureau of Competition

George S. Cary
Senior Deputy Director
Bureau of Competition

William J. Baer
Director
Bureau of Competition

Schedule A

1. The following supermarket located in Hancock County, Mississippi:
 - a. Delchamps store no. 64 operating under the "Delchamps" trade name, which is located at Choctaw Plaza Shopping Center, 318 Highway 90, Waveland, MS 39576;
2. The following supermarkets located in Harrison County, Mississippi:
 - a. Jitney-Jungle store no. 33 operating under the "Jitney-Jungle" trade name, which is located at 917 Division St., Biloxi, MS 39530;
 - b. Jitney-Jungle store no. 32 operating under the "Jitney-Jungle" trade name, which is located at 1225 Pass Road, Gulfport, MS 39501;
 - c. Jitney-Jungle store no. 42 operating under the "Jitney-Jungle" trade name, which is located at Handsboro Square Shopping Center, 1345 East Pass Road, Gulfport, MS 39501; and
 - d. Delchamps store no. 364 operating under the "Delchamps" trade name, which is located at 11240-A Highway 49 North, Gulfport, MS 39503;
3. The following supermarkets located in Escambia County, Florida:
 - a. Jitney-Jungle store no. 54 operating under the "Jitney-Jungle" trade name, which is located at 4081-A East Olive Road, Pensacola, FL 32514.
 - b. Jitney-Jungle store no. 52 operating under the "Sack & Save" trade name, which is located at Brent Oaks Mall, East Brent Lane, Pensacola, FL 32503.
4. The following supermarket located in Lamar County, Mississippi:
 - a. Delchamps store no. 67 operating under the "Delchamps" trade name, which is located at Oak Grove Plaza Shopping Center, 4600 West Hardy Street, Hattiesburg, MS 39401.
5. The following supermarket located in Forrest County, Mississippi:
 - a. Delchamps store no. 9 operating under the "Delchamps" trade name, which is located at 601 Broadway Street, Hattiesburg, MS 39401.

6. The following supermarket located in Warren County, Mississippi:
 - a. Delchamps store no. 115 operating under the "Delchamps" trade name, which is located at Delchamps Plaza, 3046-D Indiana Avenue, Vicksburg, MS 39180.

APPENDIX I

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

In the Matter of)
)
JITNEY-JUNGLE STORES OF AMERICA, INC.,)
a corporation;)
)
BRUCKMANN, ROSSER, SHERRILL & CO., L.P.,)
a limited partnership;) File No. 971-0093
)
DELTA ACQUISITION CORPORATION,)
a corporation; and)
)
DELCHAMPS, INC.,)
a corporation.)

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204; Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckman"), a limited partnership 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 Two Greenwich Plaza, Greenwich, Connecticut 06830; Delta Acquisition Corporation ("Delta"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business

located at c/o Jitney-Jungle Stores of America, Inc., 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204; Delchamps, Inc. ("Delchamps"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 305 Delchamps Drive, Mobile, Alabama 36602 (collectively "Proposed Respondents"); 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, Jitney-Jungle, of which a majority of the voting securities are owned by Bruckmann, and Delta, a wholly-owned subsidiary of Jitney-Jungle, pursuant to an Agreement and Plan of Merger dated July 8, 1997, agreed to acquire all of the outstanding stock of Delchamps (hereinafter "the proposed Acquisition"); and

WHEREAS, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

WHEREAS, if the Commission accepts the attached Agreement Containing Consent Order ("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 either withdraw such acceptance or issue and serve its Complaint and its Decision and final Order in disposition of the proceeding pursuant to the provisions of Section 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 defined in the attached Consent Order

(hereinafter referred to as "Assets" or "Supermarket(s)") during the period prior to their divestiture, any divestiture resulting from the Consent Order or from any other administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

WHEREAS, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending their divestiture pursuant to the terms of the Consent Order, in order to remedy any anticompetitive effects of the proposed Acquisition; and

WHEREAS, Proposed Respondents entering into this Agreement shall in no way be construed as an admission by Proposed Respondents that the proposed Acquisition is illegal; and

WHEREAS, Proposed Respondents understand 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 at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, the Parties agree as follows:

TERMS OF AGREEMENT

1. Proposed Respondents agree 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. Proposed Respondents agree that from the date Proposed Respondents sign this Agreement until the earlier of the dates listed in subparagraphs 2.a. and 2.b., Proposed Respondents will comply with the provisions of this Agreement:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the date all of the divestitures required by the Consent Order have been completed.

3. Proposed Respondents shall maintain the viability, marketability, and competitiveness of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall they cause the Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the marketability, viability, or competitiveness of the Assets. Proposed Respondents shall conduct or cause to be conducted the business of the Supermarkets in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with each Supermarket's suppliers, customers, employees and others having business relations with the Supermarkets, in the ordinary course of the Supermarkets' business and in accordance with past practice. Proposed Respondents shall not terminate the operation of any Supermarket. Proposed Respondents shall continue to maintain the inventory of each Supermarket at levels and selections (e.g., stock-keeping units) consistent with those maintained by such Proposed Respondent(s) at such Supermarket in the ordinary course of business consistent with past practice. Proposed Respondents shall use best efforts to keep the

organization and properties of each of the Supermarkets intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with each Supermarket. Included in the above obligations, Proposed Respondents shall, without limitation:

- a. maintain operations and departments and shall not reduce hours at each Supermarket;
- b. not transfer inventory from any Supermarket other than in the ordinary course of business consistent with past practice;
- c. make any payment required to be paid under any contract or lease when due, and otherwise shall pay all liabilities and satisfy all obligations, in each case in a manner consistent with past practice;
- d. maintain each Supermarket's books and records;
- e. not display any signs or conduct any advertising (including direct mailing, point-of-purchase coupons, etc.), that indicates that any Proposed Respondent is moving its operations to another location, or that indicates a Supermarket will close;
- f. not conduct any "going out of business," "close-out," "liquidation" or similar sales or promotions at or relating to any Supermarket;
- g. not change or modify in any material respect the existing advertising practices, programs and policies for any Supermarket, other than changes in the ordinary course of business consistent with past practice for

- supermarkets of the Proposed Respondents not being closed or relocated; or
- h. not transfer any of the Proposed Respondents' on-site employees employed at any Supermarket on the date of this Agreement to any other supermarket or location owned or operated by any Proposed Respondent other than transfers in the ordinary course of business consistent with past practice.

4. Should the Commission seek in any proceeding to compel Proposed Respondents to divest themselves of the Assets or to seek any other injunctive or equitable relief, Proposed Respondents 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. Proposed Respondents also waive all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with five (5) days' notice to Proposed Respondents and to their principal office(s), Proposed Respondents shall permit any duly authorized representative or representatives of the Commission:

- a. access during the office hours of Proposed Respondents, 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 Proposed Respondents relating to compliance with this Agreement; and

b. to interview officers or employees of Proposed Respondents, who may have counsel present, regarding any such matters.

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

Signed this _____ day of September, 1997.

JITNEY-JUNGLE CORPORATION OF AMERICA, INC., a corporation

By: _____
Michael E. Julian
Chief Executive Officer and President

R. Barry Cannada, Esq.
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Counsel for Jitney-Jungle Stores of America, Inc.

Stephen A. Stack, Jr., Esq.
Dechert Price & Rhoads
Counsel for Jitney-Jungle Stores of America, Inc.

BRUCKMANN, ROSSER, SHERRILL & CO., L.P., a limited partnership

By: _____
Harold O. Rosser, II
Managing Director

Stephen A. Stack, Jr., Esq.
Dechert Price & Rhoads
Counsel for Bruckmann, Rosser, Sherrill & Co., L.P.

DELTA ACQUISITION CORPORATION, a corporation

By: _____
Michael E. Julian
President

R. Barry Cannada, Esq.
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Counsel for Delta Acquisition Corporation

Stephen A. Stack, Jr., Esq.
Dechert Price & Rhoads
Counsel for Delta Acquisition Corporation

DELCHAMPS, INC., a corporation

By: _____
David W. Morrow
Chairman of the Board and Chief Executive Officer

Howard E. Sinor, Jr., Esq.
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.
Counsel for Delchamps, Inc.

FEDERAL TRADE COMMISSION

By: _____
Debra Valentine
General Counsel

The Commission accepted the consent agreement for public comment
on September 11, 1997.

Donald S. Clark
Secretary

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

In the Matter of)	
)	
JITNEY-JUNGLE STORES OF AMERICA, INC.,)	
a corporation;)	
)	
BRUCKMANN, ROSSER, SHERRILL & CO., L.P.,)	
a limited partnership;)	File No. 971-0093
)	
DELTA ACQUISITION CORPORATION,)	
a corporation; and)	
)	
DELCHAMPS, INC.,)	
a corporation.)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), a corporation of which a majority of the voting securities are owned by respondent Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckmann"), a limited partnership, and respondent Delta Acquisition Corporation ("Delta"), a wholly-owned subsidiary of respondent Jitney-Jungle, have entered into an agreement to acquire the outstanding shares of respondent Delchamps, Inc. ("Delchamps"), a corporation, all subject to the jurisdiction of the Commission, 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, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

Definitions

1. For the purposes of this complaint:

"Supermarket" means a full-line retail grocery store with annual sales of at least two million dollars 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.

Jitney-Jungle Stores of America, Inc.

2. Respondent Jitney-Jungle Stores of America, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204. Jitney-Jungle had sales of approximately \$1.13 billion at its supermarkets, and total sales of \$1.28 billion, in its 1997 fiscal year.

3. Respondent Jitney-Jungle is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Arkansas, Florida, Louisiana, Mississippi, and Tennessee.

4. Respondent Jitney-Jungle 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.

Bruckmann, Rosser, Sherrill & Co., L.P.

5. Respondent Bruckmann, Rosser, Sherrill & Co., L.P. is a limited partnership 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 126 East 56th Street, 29th Floor, New York, New York 10022.

6. Respondent Bruckmann is, and at all times relevant herein has been, the owner of a majority of the voting securities of Jitney-Jungle.

7. Respondent Bruckmann 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.

Delta Acquisition Corporation

8. Respondent Delta Acquisition Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at c/o Jitney-Jungle Stores of America, Inc., 1770 Ellis Avenue, Suite 200, Jackson, Mississippi 39204.

9. Respondent Delta is, and at all times relevant herein has been, a wholly-owned subsidiary of Jitney-Jungle established to acquire the outstanding shares of Delchamps.

10. Respondent Delta 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.

Delchamps, Inc.

11. Respondent Delchamps, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 305 Delchamps Drive, Mobile, Alabama 36602. Delchamps had sales of approximately \$1.08 billion at its supermarkets, and total sales of \$1.1 billion, in its 1997 fiscal year.

12. Respondent Delchamps is, and at all times relevant herein has been, engaged in the operation of supermarkets in Alabama, Florida, Louisiana, and Mississippi.

13. Respondent Delchamps 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

14. On or about July 8, 1997, Jitney-Jungle and Delta entered into a cash tender offer agreement with Delchamps to acquire all of the outstanding common stock of Delchamps for \$30 per share. The total value of the proposed acquisition is approximately \$228 million.

Trade and Commerce

15. 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.

16. 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.

17. Food stores other than supermarkets, such as convenience stores, "mom & pop" stores,

and specialty food stores (*e.g.*, seafood markets, bakeries, etc.), are not in the relevant market because they 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 membership club stores, which offer only a limited number of food and grocery products primarily in bulk sizes, do not have a significant effect on market concentration.

18. Military commissaries are also not in the relevant product market. Military commissaries, which are not open to the public, operate as supermarkets for eligible military personnel and their families with retail prices substantially below the average retail prices at supermarkets for the same or similar items. Retail prices at military commissaries are not advertised and are uniform throughout the country based on the actual cost of the item plus a nationwide uniform surcharge determined by rules established by the Secretary of Defense. Retail prices at military commissaries are not based on local market conditions. Supermarkets do not price-check food and grocery products sold at military commissaries and do not base their prices on the retail prices at the military commissaries.

19. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the following:

a. the Gulfport-Biloxi area of Mississippi, which consists of the parts of Hancock, Harrison, and Jackson counties that include Waveland, Bay Saint Louis, Pass Christian, Long Beach, Gulfport, Biloxi, D'Iberville, and Ocean Springs, and narrower markets contained therein, including Waveland/Bay Saint Louis, Gulfport, north Gulfport, and Biloxi/D'Iberville.

b. Pensacola, Florida, and narrower markets contained therein;

c. Hattiesburg, Mississippi and the area immediately west of Hattiesburg; and

d. Vicksburg, Mississippi.

Market Structure

20. The retail sale of food and grocery products in supermarkets in each of the relevant sections of the country is 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 significantly increase the HHIs in each of the already highly concentrated markets.

Entry Conditions

21. 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.

Actual Competition

22. Jitney-Jungle and Delchamps are actual competitors in the relevant line of commerce and sections of the country.

Effects

23. The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant lines 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 Jitney-Jungle and supermarkets owned or controlled by Delchamps;
- b. by increasing the likelihood that Jitney-Jungle will unilaterally exercise market power; or
- 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

24. The proposed acquisition by Jitney-Jungle, Bruckmann, and Delta of all of the outstanding stock of Delchamps violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and 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 day of A.D., 19 , issues its complaint against said respondents.

By the Commission.

SEAL:

Donald S. Clark
Secretary

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from Jitney-Jungle Stores of America, Inc. ("Jitney-Jungle"), Bruckmann, Rosser, Sherrill & Co., L.P. ("Bruckmann"), Delta Acquisition Corporation ("Delta"), and Delchamps, Inc. ("Delchamps") (collectively "the proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). Bruckmann owns a majority of the voting securities of Jitney-Jungle, and Delta is a wholly-owned subsidiary of Jitney-Jungle. The proposed consent order is designed to remedy likely anticompetitive effects arising from Jitney-Jungle and Delta's proposed acquisition of the outstanding shares of Delchamps.

II. Description of the Parties and the Acquisition

Jitney-Jungle, which is headquartered in Jackson, Mississippi, is one of the leading supermarket chains in the Southeast. Jitney-Jungle operates 105 supermarkets in the states of Alabama, Arkansas, Louisiana, Mississippi, Florida, and Tennessee. The company is the largest supermarket operator in Mississippi with 72 stores. The company operates under three formats: (1) 78 conventional supermarkets under the "Jitney-Jungle" trade name; (2) 23 discount supermarkets under the "Sack and Save," "Mega Market," and "Mega Pantry" trade names; and (3) four premium supermarkets under the "Jitney Premier" trade name. Jitney-Jungle had sales of approximately \$1.13 billion at its supermarkets, and total sales of \$1.28 billion, in its 1997 fiscal year. The ultimate parent entity of Jitney-Jungle is Bruckmann, which owns a majority of the voting securities of Jitney-Jungle.

Delchamps, which is headquartered in Mobile, Alabama, is another leading supermarket chain in the Southeast. Delchamps operates a total of 118 conventional supermarkets under the "Delchamps" trade name. Delchamps' supermarkets are located in Alabama, Florida, Louisiana, and Mississippi. In addition, the company operates ten liquor stores in the state of Florida. Delchamps had sales of approximately \$1.08 billion at its supermarkets, and total sales of \$1.1 billion, in its 1997 fiscal year.

On or about July 8, 1997, Jitney-Jungle and Delta, a wholly-owned subsidiary of Jitney-Jungle, entered into a cash tender offer agreement with Delchamps to acquire all of the outstanding common stock of Delchamps for \$30 per share. The total value of the proposed acquisition is approximately \$228 million.

III. The Complaint

The draft complaint accompanying the proposed consent order alleges 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, the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets, and Jitney-Jungle and Delchamps are direct competitors. Stores other than supermarkets are not in the relevant product market because they 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.), are not in the relevant product market because they 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 membership club stores in the relevant markets, which offer only a limited number of food and grocery products primarily in bulk sizes, do not have a significant effect on market concentration.

Military commissaries are also not in the relevant product market. Military commissaries, which are not open to the public, operate as supermarkets for eligible military personnel and their families with retail prices substantially below the average retail prices at supermarkets for the same or similar items in the Gulfport-Biloxi area in Mississippi, and in Pensacola, Florida. Retail prices at military commissaries are not advertised and are uniform throughout the country based on the actual cost of the item plus a nationwide uniform surcharge determined by rules established by the Secretary of Defense. Retail prices at military commissaries are not based on local market conditions. Supermarkets do not price-check food and grocery products sold at military commissaries and do not base their prices on the retail prices at the military commissaries.

According to the draft complaint, the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition of Delchamps by Jitney and Delta are the following:

- a. the Gulfport-Biloxi area of Mississippi, which consists of the parts of Hancock, Harrison, and Jackson counties that include Waveland, Bay Saint Louis, Pass Christian, Long Beach, Gulfport, Biloxi, D'Iberville, and Ocean Springs, and narrower markets contained therein, including Waveland/Bay Saint Louis, Gulfport, north Gulfport, and Biloxi/D'Iberville.
- b. Pensacola, Florida, and narrower markets contained therein;
- c. Hattiesburg, Mississippi, and the area immediately west of Hattiesburg; and
- d. Vicksburg, Mississippi.

According to the draft complaint, these 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 HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants. The acquisition would significantly increase the HHIs in each of the already highly concentrated markets.

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 geographic markets.

Jitney-Jungle and Delta's acquisition of Delchamps may reduce competition in these markets by eliminating the direct competition between Jitney-Jungle and Delchamps, by increasing the likelihood that Jitney-Jungle will unilaterally exercise market power, or by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining competitors. Each of these effects 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.

IV. Terms of the Proposed Consent Order

The proposed consent order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed consent order, the proposed Respondents must divest the ten supermarkets listed below -- five Jitney-Jungle owned and operated stores (four of which are "Jitney-Jungle" stores and one is a "Sack & Save" store) and five Delchamps -- to Supervalu Holdings, Inc., a wholly-owned subsidiary of Supervalu, Inc. (collectively "Supervalu"), within either one month after the date on which the proposed consent order becomes final, or five months after the acceptance of the proposed consent order for public comment, whichever is later, or to another acquirer that receives the prior approval of the Commission within three months after the proposed consent order becomes final. A sale to Supervalu by the proposed Respondents must be in accordance with the agreement between Supervalu and Jitney-Jungle dated August 29, 1997, and all subsequent amendments thereto.

If the proposed Respondents divest the ten listed supermarkets to Supervalu within three months of the date on which the proposed consent order becomes final, Supervalu may sell any of these supermarkets to either R & M Foods, Inc. ("R & M Foods") or Southeast Foods, Inc. ("Southeast Foods"). R & M Foods currently operates 18 supermarkets, and Southeast Foods currently operates 21 supermarkets. If Supervalu does not sell the ten listed supermarkets to either R & M Foods or Southeast Foods within three months of the date on which the proposed consent order becomes final, Supervalu cannot sell the ten listed supermarkets to anyone without the prior approval of the Commission.

Five of the ten supermarkets to be divested are located in the Gulfport-Biloxi area; two are located in Pensacola, Florida; two are located in Hattiesburg, Mississippi; and one is located in Vicksburg, Mississippi. If the proposed Respondents fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the proposed consent order. The ten supermarkets to be divested are:

1. The following supermarket located in Hancock County, Mississippi:
 - a. Delchamps store no. 64 operating under the "Delchamps" trade name, which is located at Choctaw Plaza Shopping Center, 318 Highway 90, Waveland, MS 39576;
2. The following supermarkets located in Harrison County, Mississippi:
 - a. Jitney-Jungle store no. 33 operating under the "Jitney-Jungle" trade name, which is located at 917 Division St., Biloxi, MS 39530;
 - b. Jitney-Jungle store no. 32 operating under the "Jitney-Jungle" trade name, which is located at 1225 Pass Road, Gulfport, MS 39501;
 - c. Jitney-Jungle store no. 42 operating under the "Jitney-Jungle" trade name, which is located at Handsboro Square Shopping Center, 1345 East Pass Road, Gulfport, MS 39501; and
 - d. Delchamps store no. 364 operating under the "Delchamps" trade name, which is located at 11240-A Highway 49 North, Gulfport, MS 39503;
3. The following supermarkets located in Escambia County, Florida:
 - a. Jitney-Jungle store no. 54 operating under the "Jitney-Jungle" trade name, which is located at 4081-A East Olive Road, Pensacola, FL 32514.

- b. Jitney-Jungle store no. 52 operating under the "Sack & Save" trade name, which is located at Brent Oaks Mall, East Brent Lane, Pensacola, FL 32503.
- 4. The following supermarket located in Lamar County, Mississippi:
 - a. Delchamps store no. 67 operating under the "Delchamps" trade name, which is located at Oak Grove Plaza Shopping Center, 4600 West Hardy Street, Hattiesburg, MS 39401.
- 5. The following supermarket located in Forrest County, Mississippi:
 - a. Delchamps store no. 9 operating under the "Delchamps" trade name, which is located at 601 Broadway Street, Hattiesburg, MS 39401.
- 6. The following supermarket located in Warren County, Mississippi:
 - a. Delchamps store no. 115 operating under the "Delchamps" trade name, which is located at Delchamps Plaza, 3046-D Indiana Avenue, Vicksburg, MS 39180.

For a period of ten years from the date the proposed consent order becomes final, the proposed Respondents are prohibited 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 Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida. This provision does not prevent the proposed Respondents from constructing new supermarket facilities on their own; nor does it prevent the proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the proposed consent order also prohibits the proposed Respondents from entering into or enforcing 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 July 1, 1997, to operate a supermarket at that site if such supermarket was formerly owned or operated by the proposed Respondents in Hancock, Harrison, Jackson, Lamar, Forrest, and Warren counties in Mississippi, and Escambia County, Florida. In addition, the proposed Respondents 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 except as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

The proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within sixty (60) days following the date the proposed consent order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

The proposed Respondents also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time Jitney-Jungle acquires the outstanding stock of Delchamps until the divestitures have been completed, the proposed Respondents must maintain their viability, competitiveness and marketability, and must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability. The Asset Maintenance Agreement specifies these obligations in detail.

V. Opportunity for Public Comment

The proposed consent order 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 consent order.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Supervalu, R & M Foods, and Southeast Foods, 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.