

VII

It is further ordered that, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Upon reasonable 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 reasonable 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.

VIII

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Appendix I

Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between The Penn Traffic Company ("Penn Traffic"), a corporation organized under the laws of the State of Delaware, with its principal offices located at 1200 State Fair Boulevard, Syracuse, New York 13221-4737, 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, Penn Traffic, pursuant to an agreement dated September 30, 1994, agreed to purchase certain assets of American Stores Company (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 divestiture, when those Assets will be in the hands of Penn Traffic, 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, Penn Traffic entering into this Agreement shall in no way be construed as an admission by Penn Traffic that the Acquisition is illegal; and

Whereas, Penn Traffic 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. Penn Traffic 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, Penn Traffic will be free to close the Acquisition after 11:59 p.m., January 17, 1995.

3. Penn Traffic 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 Section 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 Penn Traffic acquires the Assets until the divestiture set out in the Consent Order has been completed, Penn Traffic 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 Penn Traffic to divest itself of the Assets or to seek any other injunctive or equitable relief, Penn Traffic 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. Penn Traffic 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 Penn Traffic to its principal offices, Penn Traffic shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Penn Traffic, 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 Penn Traffic relating to compliance with this Agreement; and

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

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

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("the Commission") has accepted for public comment from The Penn Traffic Company ("Penn Traffic") an agreement containing consent order to divest certain assets. The agreement is designed to remedy any anticompetitive effect stemming from Penn Traffic's acquisition of a number of Acme supermarkets from American Stores Company.

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

The Commission's draft complaint charges that on or about September 30, 1994, Penn Traffic agreed to acquire certain assets of Acme Markets, Inc., wholly-owned subsidiary of American Stores Company, for \$94 million. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, may have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the draft complaint, Penn Traffic and Acme are direct competitors for the retail sale of food and grocery items in the market areas of (1) the Towanda, Pennsylvania area, which includes the Borough of