

1 James E. Figenshaw  
2 Steven L. Weinstein  
3 Antitrust Division  
4 Department of Justice  
5 450 Golden Gate Avenue  
6 Box 36046, Room 16432  
7 San Francisco, California 94102  
8 Telephone: (415) 556-6300

9 Attorneys for the United States

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF IDAHO

12 UNITED STATES OF AMERICA,	)	
	)	
13 Plaintiff,	)	Civil Action No. 1-74-66
	)	<i>filed</i> JAN 28 1977
14 v.	)	
	)	
15 ALBERTSON'S, INC., ET AL.,	)	<u>COMPETITIVE IMPACT STATEMENT</u>
	)	
16 Defendants.	)	

17 Pursuant to Section 2(b) of the Antitrust Procedures and  
18 Penalties Act [15 U.S.C. §§ 16(b)-(h), P.L. 93-528 (December 21,  
19 1974)], the United States of America hereby files this Competitive  
20 Impact Statement relating to the proposed consent judgment submitted  
21 for entry in this civil antitrust proceeding.

22 I

23 NATURE AND PURPOSE OF THE PROCEEDING

24 On April 19, 1974, the United States filed a civil complaint  
25 under Section 15 of the Clayton Act [15 U.S.C. § 25], alleging that  
26 the defendants had violated Section 7 of the Clayton Act [15 U.S.C.  
27 § 18]. The complaint charged that the June 13, 1972 sale of the  
28 assets and business of Mountain States Wholesale Company by  
29 DiGiorgio Corporation to Albertson's, Inc. threatened to substantially  
30 lessen competition and create a monopoly in the wholesale and retail  
31 distribution of a general line of groceries and related products in  
32 southern Idaho and eastern Oregon.

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II

PRACTICES AND EVENTS GIVING RISE TO THE  
ALLEGED VIOLATION OF THE ANTITRUST LAWS

The wholesale distribution of a general line of groceries and related products in southern Idaho and eastern Oregon, also sometimes referred to as the Snake River Valley, is performed principally by three companies, with Mountain States Wholesale Company having the largest market share. The retail distribution of a general line of groceries and related products within this area is performed by a large number of independent retail grocery stores and by several retail grocery chains, with Albertson's, Inc. having the largest market share. Both Albertson's and Mountain States are headquartered in Boise, Idaho. At the time of the acquisition, Albertson's was a large customer of Mountain States, accounting for over 40% of Mountain States' total sales. In addition to supplying Albertson's stores and other independent retail customers with groceries and related products, Mountain States also sponsored a group of some 30 affiliated retail stores known as Foodland and Clover Farm Stores which were located in various cities and towns throughout southern Idaho and eastern Oregon.

In 1972, total wholesale sales of groceries and related products in southern Idaho and eastern Oregon were estimated to be about \$124 million and total retail sales were estimated to be about \$250 million. The complaint alleged that Albertson's acquisition of Mountain States would injure competition in several respects, including the following: (1) Wholesale competitors of Mountain States would be foreclosed from access to Albertson's as a customer; (2) Retail competitors of Albertson's might be foreclosed from access to Mountain States as a supplier; and (3) The acquisition generally reduced competition between Albertson's and Mountain States' group of affiliated stores throughout southern Idaho and eastern Oregon and in Boise, Idaho in particular. To remedy these

1 and other effects, the complaint asked that Albertson's be required  
2 to divest itself of all the assets and business of Mountain States.

3 III

4 EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

5 The proposed consent judgment directs Albertson's to divest  
6 itself of all of its interest in Mountain States' wholesale grocery  
7 business within eighteen months from the date the decree is entered  
8 to a person approved by the Government, or failing such approval, to  
9 a person approved by the Court. Albertson's has informed the Govern-  
10 ment that it has negotiated but not yet closed an agreement with  
11 American Strevell, Inc. which provides for the sale of said wholesale  
12 grocery business to American Strevell, Inc. The Government has  
13 informed Albertson's by letter that, based upon its present  
14 information, the Government has no objection to said divestiture.

15 American Strevell is a grocery wholesaler headquartered in Salt  
16 Lake City, Utah, that presently competes in southern Idaho only in  
17 that portion of the state east of Twin Falls, Idaho. American  
18 Strevell presently has no sales in the area of Boise, Idaho, the  
19 state's largest city, and, by its purchase of Mountain States' whole-  
20 sale grocery business, would be a new competitor in that area.  
21 Mountain States presently does compete to a small extent with  
22 American Strevell in a portion of southern Idaho east of Twin Falls,  
23 however, the Government believes that after sale of Mountain States'  
24 wholesale grocery business to American Strevell, all communities of  
25 southern Idaho and eastern Oregon will generally be served by the  
26 same number of wholesale distributors of groceries and related  
27 products and with comparable service as are other communities of  
28 similar size in adjacent geographical markets. Under the terms  
29 of the proposed consent judgment American Strevell would acquire  
30 the customer accounts of Mountain States' wholesale grocery business  
31 other than Albertson's. These accounts would include Mountain  
32 States' group of affiliated Foodland and Clover Farm

1 Stores.

2 Prior to advising defendant Albertson's of its tentative  
3 approval of American Strevell as the purchaser of Mountain States'  
4 wholesale grocery business, the Government contacted and interviewed  
5 several executives in the wholesale grocery industry to ascertain  
6 whether such a sale would be in the public interest. Based upon  
7 those interviews and other investigation which it has conducted,  
8 the Government believes such a sale will remedy the anticompetitive  
9 effects charged by the complaint, restore competition in both the  
10 wholesale and retail distribution of groceries and related products  
11 in southern Idaho and eastern Oregon, and otherwise satisfy the public  
12 interest.

13 The proposed consent judgment also enjoins Albertson's for a  
14 period of five years from acquiring any retail grocery chain or whole-  
15 sale grocery business in the State of Idaho or within Eastern  
16 Oregon except with the approval of the Government or the Court upon a  
17 showing that such acquisition will not substantially lessen competitio  
18 or tend to create a monopoly.

19 IV

20 REMEDIES AVAILABLE TO POTENTIAL  
21 PRIVATE PLAINTIFFS

22 Any potential private plaintiffs who might have been damaged  
23 by the alleged violation will retain the same right to sue for  
24 monetary damages and any other legal and equitable remedies that  
25 they would have had were the proposed consent judgment not entered.  
26 However, pursuant to Section 5 (a) of the Clayton Act [15 U.S.C.  
27 § 15(a)], as amended, this judgment may not be used as prima facie  
28 evidence in private litigation.

29 V

30 PROCEDURES AVAILABLE FOR MODIFICATION OF  
31 THE PROPOSED CONSENT JUDGMENT

32 The proposed consent judgment is subject to a stipulation by

1 and between the United States and the defendant, which provides that  
2 the United States may withdraw its consent to the proposed judgment  
3 at any time until the Court has found that entry of the proposed  
4 judgment is in the public interest. The Government has advised  
5 Albertson's that, if it should have any objection to Albertson's  
6 contemplated sale of Mountain States' wholesale grocery business to  
7 American Strevell, Inc. before the proposed consent judgment is  
8 entered by the Court, it will withdraw its consent to the judgment.  
9 By its terms, the proposed consent judgment provides for the Court's  
10 retention of jurisdiction of this action in order, among other  
11 reasons, to permit either of the parties thereto to apply to the  
12 Court for such orders as may be necessary or appropriate for the  
13 modification of the final judgment.

14 As provided by Section 2(b) of the Antitrust Procedures and  
15 Penalties Act [15 U.S.C. § 16(b)], any persons wishing to comment  
16 upon the proposed judgment may, for a sixty-day period prior to the  
17 effective date of the proposed judgment, submit written comments to  
18 the United States Department of Justice, Attention Anthony E.  
19 Desmond, Chief, San Francisco Office, Antitrust Division, 450 Golden  
20 Gate Avenue, Box 36046, San Francisco, California 94102. The  
21 Department of Justice will file with the Court and publish in the  
22 Federal Register such comments and its response to them. In  
23 evaluating any and all such comments, the Department will determine  
24 whether there is any reason for withdrawal of its consent to the  
25 proposed judgment.

26 VI

27 DETERMINATIVE DOCUMENTS

28 Since there are no materials or documents which were considered  
29 determinative in formulating the proposed consent judgment, none are  
30 being filed by the United States pursuant to Section 2(b), of the  
31 Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)).

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VII

ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT  
CONSIDERED BY THE UNITED STATES


Under the terms of the proposed consent judgment, Albertson's will divest itself of Mountain States' wholesale grocery business but will retain Mountain States' sundries business. Sundries consist of several hundred non-food items such as drugs, housewares, and apparel. Their manner and method of distribution is generally both separate and different from that of groceries. The Government has not insisted that Albertson's dispose of Mountain States' sundries business because the contemplated purchaser of Mountain States' grocery business, American Strevell, already has sufficient sundry supply centers of its own to meet the demand for sundries by Mountain States' non-Albertson's customers.

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this consent judgment. The Department of Justice believes the substantive language in the consent judgment to be of sufficient scope and effectiveness to make litigation for relief unnecessary as the judgment provides for all of the relief requested in the Complaint.

Dated: JAN 28 1977

Respectfully Submitted,

JAMES E. FIGENSHAW  
STEVEN L. WEINSTEIN

  
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Attorney, Department of Justice