

Contact: Tom Wenning

National Grocers Association

**Senior Vice President and General
Counsel**

(703) 516-0700

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GAO Confirms Independents Disadvantaged by Divestiture Process; N.G.A. Urges Immediate Change in FTC Policy

ARLINGTON – The National Grocers Association (N.G.A.) released the statement below regarding the General Accounting Office report issued Sept. 26, which questioned whether the Federal Trade Commission's divestiture policies have disadvantaged independent retailers and their wholesalers. "N.G.A. has consistently argued to the FTC and the Congress that current FTC merger and divestiture policy discriminates against independent retailers and wholesalers," said Thomas K. Zaucha, President & CEO of N.G.A.

- First, N.G.A. would like to commend the U.S. General Accounting Office for undertaking this study on a subject of great importance to the grocery industry. GAO has earned a well-deserved reputation for its fairness, accuracy, and impartiality as the non-partisan investigative arm of Congress. The study reflects this, providing an exceptionally thoughtful and balanced examination of the issues raised by N.G.A. surrounding the FTC's divestiture policies and how they affect competition in the retail sector. N.G.A. believes that such unbiased research is an important step toward developing better public policy.
- N.G.A. believes that the American consumer benefits significantly from a diversified marketplace, in terms of competitive pricing, product variety, and outstanding service. The cornerstone of that diversity is the independent, community-focused retailer. As the food industry becomes more consolidated, that diversity is being threatened. For 20 years, N.G.A. has been and remains committed to serving the interests of independent, community-focused retail operators and their wholesalers, and to promoting a level competitive playing field.
- The GAO report states that, after 1996, smaller businesses were significantly less likely to purchase divested assets, particularly grocery stores, and that this may have occurred for reasons including FTC divestiture practices and consolidation in the grocery industry. These findings are entirely consistent with N.G.A.'s stated views on divestiture policy. The GAO report states: "N.G.A.'s September 6, 2000, public comment concerning the Food Lion and Hannaford divestiture in Richmond, Virginia, raised concerns about the impact of FTC's clean sweep and single buyer approaches on the ability of an independent grocer to purchase divested assets in the Richmond geographic market. While N.G.A.'s concerns focused on the effect of these divestiture practices on a specific independent grocer, it also raised concerns about the impact of FTC's policies and practices on small and independent businesses in general."
- N.G.A. agrees with the GAO's recommendation for a study of divestiture orders since 1994. But while continued research is important, the reality is that growing marketplace concentration in the grocery industry makes it imperative that the FTC make changes in policy **immediately** to level the playing field for independent, community-focused retailers. We believe there is sufficient evidence to conclude that improvements in merger and divestiture policy are necessary.
- In light of the GAO's findings, N.G.A. believes that the FTC should take immediate steps to improve access to divested stores for independent retailers and wholesalers. The agency should

eliminate practices which disadvantage independents, such as “clean sweep” divestitures, and single buyers. In a recent meeting with FTC officials, N.G.A. was told that those practices are not current FTC policy. In light of these discussions, N.G.A. believes that the FTC should publicly articulate its divestiture policy, to state what its divestiture policies **are** and what they are **not**. The FTC should also state the steps it is taking to make sure all interested buyers are made aware of divested stores before a buyer is chosen, so that all interested buyers can participate.

- In addition, it is vital that the FTC move beyond its “micro” view in merger analyses, which examine the effects of mergers in limited geographic markets, and look more closely at the “macro” effects of mergers on the nation’s supermarket industry as a whole.

N.G.A. is the national trade association representing the retail and wholesale grocers that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating in a variety of formats. Some are publicly traded but with controlling shares held by the family and others are employee owned. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. Independents are the true “entrepreneurs” of the grocery industry and dedicated to their customers, associates, and communities. N.G.A. members include retail and wholesale grocers and their state associations, as well as manufacturers and service suppliers.