When the FTC Botches A Deal Review

Los Angeles Daily Journal
November 16, 2015

By Tony Sarabia

While Democrats and Republicans may not agree on much, they do agree that we do not want the government interfering in the consumer market to lessen competition and hurt employees. Unfortunately, this is precisely what the Federal Trade Commission did when it intervened in the recent Albertsons and Safeway merger.

In January, the FTC trumpeted its impact on this merger in a press release explaining that, as a result of the FTC's complaint, Albertsons and Safeway would divest 168 stores. The FTC crowed that "[t]his settlement will ensure that consumers in those communities continue to benefit from competition among their local supermarkets." Haggen Holdings, an Oregon-based supermarket company, acquired 146 of the 168 stores. A little over half of the stores were in Southern California, with the other stores spread over five states. With this concentration of divested stores in Southern California, the goal of the FTC was primarily focused on improving competition in that region.

It is not news that this plan became a dismal failure. It was quickly clear that Haggen was in over its head in the California market. Most of its Southern California stores are being sold or closed. Haggen is in bankruptcy. One might say that the FTC can hardly be blamed for Haggen mismanagement, but this view ignores a series of do not interfere stop signs that the FTC blew past. The result of FTC intervention was to harm employees of the stores, consumers and competition.

The first stop sign was the extremely competitive Southern California grocery market. Aside from Safeway/Albertsons, there are Ralphs, Kroger, Stater Brothers, Wal-Mart, Target and Costco. Then there are the niche chains: Trader Joes, Sprouts, Smart & Final and Whole Foods. With this kind of bludgeoning competition, one is hard pressed to understand why the FTC needed to interfere at all.

The second stop sign was the conclusion of a recent large-scale market test of competition in the grocery business is in Southern California. In 2008, Tesco, second only to Wal-Mart among the world's giant retailers, entered the Southern California grocery market with its Fresh and Easy stores. Tesco does not mess around. It had both research and over a billion dollars to invest in its Southern California grocery experiment. It also had 70 stores in Southern California — about the same number the FTC required

Safeway/Albertsons to divest in the region. By 2013, this massive market test had crashed, with Tesco bailing out of Southern California, closing stores and selling some to Yucaipa. Information about this collapse due to the extreme competitiveness of the Southern California market was widely available. It is a mystery how the FTC could ignore these stark results which showed that there is an enormous amount of competition in Southern California.

The third stop sign is the suitor the FTC approved to operate so many Southern California grocery stores, Haggen — literally a mom and pop grocery chain that operated in the Pacific Northwest for 77 years until it was bought by private equity outfit Comvest Group in 2011. Between 2011 and 2014, there was no steady growth or expansion under the new owners. There were still only 18 Haggen grocery stores in 2014, when the FTC encouraged its acquisition of more than three times that many grocery stores in Southern California alone. How one could expect tiny Haggen to succeed when massive Tesco had crashed defies both common sense and economics.

Not surprisingly, as soon as Haggen took over the stores, flashing red lights began. One of the first things it did was to reduce the hours of many long-time employees of Safeway/Albertsons — changing them from full-time to part-time employees. If one is the primary bread winner for one's family, this is a devastating change. Thousands of employees who supported their families were forced to scramble to make ends meet.

The employees filed union grievances. But those grievances will probably die a slow death in the Haggen bankruptcy filing. Meanwhile, many of the Haggen Southern California stores are being closed and others have stripped shelves to offer their customers, who now have fewer and worse choices as a result of the FTC intervention.

Long-time grocery business employees and their families were seriously hurt by this intervention. The lesson is that the FTC should be far more careful in brandishing its power. We can only hope that it will bear this lesson in mind as it reviews the Walgreens' acquisition of Rite Aid.

Antonio R. Sarabia II *is the principal in IP Business Law Inc., he specializes in licensing, victim restitution, contracts, trademarks and copyrights. He can be reached at (310) 377-5171 or asarabia@cox.net; www.calrestitution.com.*