

and form in which they have complied with this order.

IN THE MATTER OF
ALLIED STORES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket C-1001. Complaint, Oct. 8, 1965—Decision, Oct. 8, 1965

Consent order requiring the Nation's second largest conventional department store chain with headquarters in New York City to divest within 1 year

Complaint

a department store located in a San Antonio, Tex., suburb to a responsible purchaser approved by the Commission, and refrain from making any horizontal mergers for 10 years without prior Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent, Allied Stores Corporation, has violated the provisions of Section 7 of the Clayton Act and Section 5(a)(1), of the Federal Trade Commission Act (15 U.S.C. §§ 18, 45(a)(1)), through its acquisition of Wolff & Marx, Inc., and that a proceeding in respect thereof would be to the interest of the public, issues this complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Apparel" includes clothing (excluding footwear) and related articles and accessories for personal wear and adornment, for men, women, and children.

(b) "Household linens and dry goods" includes curtains, draperies, bed sheets, blankets, linens, piece goods, patterns, laces, trimmings, notions, closet accessories, blinds, and window shades.

(c) "Department stores" are retail stores normally employing 25 or more people and engaged in selling some items in each of the following lines of merchandise:

- (i) Furniture, home furnishings, appliances, radio and TV sets;
- (ii) A general line of apparel; and
- (iii) Household linens and dry goods.

An establishment with annual total sales of less than \$5 million is not classified as a "department store" if: (a) sales of any one of these groups is greater than 80 percent of total sales, or (b) sales of groups (ii) and (iii) combined represent less than 20 percent of total sales. An establishment with annual total sales of \$5 million or more is classified as a "department store" even if sales of one of the groups described above is more than 80 percent of total sales, provided that the combined annual sales of the other two groups is \$500,000 or more. This definition corresponds to Bureau of Census Industry Classification No. 531, as defined in the 1963 Census of Business.

(d) "General Merchandise, Apparel, Furniture stores," hereinafter referred to as "GMAF stores," include retail establishments in the following categories:

- (i) Department stores;

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(ii) Other stores primarily engaged in the sale of apparel;

(iii) Limited price variety stores—establishments primarily selling a variety of merchandise at low and popular price ranges, such as stationery, gift items, accessories, toilet articles, light hardware, toys, housewares, confectionery; these establishments frequently are known as “5 and 10¢ stores,” although they usually sell merchandise outside these price ranges; these stores comprise Bureau of Census Industry Classification No. 533;

(iv) Miscellaneous general merchandise stores—retail stores primarily selling household linens and dry goods and/or a combination of apparel, hardware, homewares or home furnishings; stores which meet the criteria for department stores except as to number of employees are included here; these stores comprise Bureau of Census Industry Classification No. 539;

(v) Furniture, home furnishings, and equipment stores—retail stores primarily selling merchandise used in furnishing the home, such as furniture, floor coverings, draperies, glass and chinaware, domestic stoves, refrigerators, and other household electrical and gas appliances, including radio and TV sets; such stores comprise Bureau of Census Major Industry Group No. 57.

GMAF stores, as defined herein, correspond to all retail store groups under Bureau of Census Major Industry Groups No. 53, 56, and 57.

(e) The “San Antonio Standard Metropolitan Statistical Area,” is comprised of Bexar and Guadalupe Counties, Texas.

II. ALLIED AND JOSKE'S

2. Allied Stores Corporation, named respondent herein, and hereinafter referred to as “Allied,” is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 401 Fifth Avenue, New York, New York 10018.

3. Allied is the second largest among conventional department store chains in the United States, *i.e.*, those including large, downtown, traditional-type department stores carrying a wide variety of major brand items and offering a wide variety of customer services; it is the nation's fifth largest department store chain. Its approximately 100 stores, in over 80 cities, with over 19 million square feet of floor space, annually sell to the members of the consuming public approximately \$830 million worth of wearing apparel and accessories, household linens and dry goods, home furnishings, housewares, appliances, and other merchandise.

4. Each of Allied's stores is a leading retail institution in the

community in which it is located—and the stores include such major department stores as Stern's (New York, New York), Jordan Marsh (Boston, Massachusetts, and Miami, Florida), Block's (Indianapolis, Indiana), Bon Marche (Seattle, Washington), Joske's (Houston and San Antonio, Texas), and Titcher's (Dallas, Texas).

5. Allied ranks thirteenth in sales among all United States retailing firms and ranks 74th in sales among all United States retailing and industrial firms. The retained earnings of the company exceed \$120 million and its total assets (including those of its unconsolidated real estate subsidiary) are approximately \$530 million. Allied for many years has enjoyed a substantial cash flow and ready access to institutional funds and other sources of capital. During 1963, Allied had available to it funds from net earnings of \$13,600,000, proceeds from long-term promissory notes placed with institutional investors of \$50,000,000, and cash flow generated by depreciation and amortization of \$7,800,000. Allied has advised its stockholders that it issued the aforesaid notes in recognition of the company's "need for further suburban growth" and that the funds would provide "an additional \$30 million for expansion financing."

6. Allied does business in San Antonio, Texas, under the name "Joske Bros. Co.," hereinafter referred to as "Joske's." Joske's is a well-established, highly respected, profitable retail institution. Its 1963 total sales exceeded \$27 million. Joske's is the second largest department store operation in San Antonio, and it ranks second among all San Antonio GMAF stores, exceeded in sales volume only by Sears, Roebuck & Co. Among San Antonio sellers of apparel, Joske's ranks first, with sales nearly twice those of the next ranking firm; it is also first in point of household linens and dry goods sales. Joske's is by far the principal advertiser in San Antonio; in 1963 it accounted for 6.6 million lines, more than twice the advertising lineage of second ranking Sears.

7. Joske's operates two department stores in the San Antonio Standard Metropolitan Statistical Area, neither of which is located in a suburban center. The principal store, with about 550,000 square feet of floor space, is located in the downtown business district of San Antonio. It is the principal department store in the city, and its annual sales volume is approximately \$25 million. The only branch store that Joske's now operates is located in Las Palmas, a lower income section of the city, and has about 80,000 square feet of floor space and annual sales of about \$2.4 million.

8. Allied is extensively engaged in the shipment and in the pur-

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chase for resale of goods across State lines. Allied is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

III. WOLFF & MARX

9. Wolff & Marx, Inc., hereinafter referred to as "Wolff & Marx," was a corporation organized and existing under the laws of the State of Texas, with its principal office located at 210 West Houston Street, San Antonio, Texas.

10. Wolff & Marx was the fourth-ranking department store company and the sixth-ranking GMAF store in San Antonio. Wolff & Marx had grown substantially in recent years; its annual sales had more than doubled over the past seven years, from \$3.4 million in 1956 to \$7.4 million in 1963. Wolff & Marx was a financially sound, locally owned organization, with total assets of more than \$4.7 million and total stockholder equity in excess of \$1 million. Wolff & Marx had enjoyed adequate access to local sources of working and expansion capital.

11. Wolff & Marx operated an established downtown department store at 210 West Houston Street in San Antonio, Texas, and a new suburban department store at the North Star Mall Shopping Center in San Antonio. The 1963 sales for the two stores amounted to \$3.6 million and \$3.8 million, respectively.

12. The new suburban store is located in a section of higher income population, and accordingly it is a highly profitable and desirable operation. In 1963, the suburban store contributed the overwhelming portion of Wolff & Marx' profits. Currently, the suburban store has 82,000 square feet of floor space, 20,000 square feet having been added at the close of 1963.

13. Wolff & Marx was extensively engaged in the purchase for resale of goods across State lines. Wolff & Marx was engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

IV. NATURE OF TRADE AND COMMERCE

A. Generally

14. GMAF stores comprise the second largest group of retailers in the United States, with a sales volume of approximately \$55 billion in 1963, and they are exceeded in sales only by retail food stores. GMAF store sales represent approximately 23% of all retail sales in the United States.

15. Within the GMAF store group, department stores constitute the largest component, accounting for 37% of GMAF store sales. Department stores, moreover, are the fourth most important group of retail stores in the United States, exceeded in sales volume only by food stores, automotive dealers and stores, and gasoline stations. Their national sales volume of approximately \$20.5 billion in 1963 represented over 8% of all retail sales in the country. Department stores account for approximately 35% of apparel sales, 43% of women's and children's apparel sales, 46% of household linens and dry goods sales.

16. Department stores are recognized by the consuming public and in the trade as a distinct line of business:

(a) They are particularly favored by the public because they sell a cluster of commodities and services not duplicated by other retailers. They offer the opportunity to satisfy under one roof shopping needs for a wide variety of merchandise, including apparel, household linens and dry goods, furniture, appliances, and other housewares. This package of products is combined with an array of services such as the extension of credit, delivery of goods, the sending of goods on approval with liberal return privileges, fashion shows, and a number of other free services. Moreover, frequently they enjoy a favorable image of stability and respectability attributable, at least in part, to their size and importance as retailers in the communities which they serve.

(b) In the last connection, department stores enjoy an image which derives at least in part, from the fact that they are the major advertisers in the communities which they serve, usually advertising more than all other GMAF stores combined—as is the case in San Antonio, where the four leading department store advertisers account for more than half of GMAF store advertising lineage. As a result of department stores' enormous advertising expenditure, they frequently receive preferred treatment from newspapers in the form of free publicity.

(c) Statistics on department store sales and other economic data relating to department stores, institutionally classified as such, are regularly gathered and published by the United States Bureau of Census, the various Federal Reserve Banks, various State agencies, the National Retail Merchants Association, universities, and other trade publications and organizations.

(d) Department stores differ from other GMAF stores in that they carry far more private label merchandise. For example, Allied carries a wide variety of private label apparel, household linens and

dry good, appliances, and home furnishings. Department stores are in a particularly advantageous position to obtain private label merchandise because of their enormous volume of purchases.

B. The San Antonio Market

17. Within recent years, several new, important suburban shopping centers have opened in the San Antonio Standard Metropolitan Statistical Area, and the pattern of the San Antonio retail market has shifted toward increasing sales through store locations in such centers as compared with downtown stores. Heretofore, Joske's has not participated in the movement of retail store locations to the suburbs, and it has begun to feel acutely the necessity for a suburban location in order for it to preserve its share of the rapidly expanding San Antonio market. It views the acquisition of Wolff & Marx as an economically advantageous method of entering the suburban market, one more financially attractive to it than building its own suburban store. Allied's president has declared that the Wolff & Marx suburban store was "the prime location" for a Joske's branch, "if Joske's were to take its proper place in the suburban market."

18. The Wolff & Marx downtown store is located in the San Antonio central business district, not very far from the downtown Joske's store. The sales volume of this store, like that of other downtown department stores in many sections of the United States, has declined in recent years. Nevertheless, the store still contributes substantially toward Wolff & Marx' overhead and general expenses. In its most recent annual report, Wolff & Marx stated: "Although the lease [on the downtown store] expires July 31, 1967, it is the intention of management to exercise the option available, extending the lease an additional ten years." Allied has informed the staff of the Commission, however, that it is its intention not to renew the lease and that it will "liquidate the downtown store" after consummation of the merger.

19. Department store sales in the San Antonio Standard Metropolitan Statistical Area totalled approximately \$105 million in 1963, while GMAF store sales totalled approximately \$226 million. San Antonio Standard Metropolitan Statistical Area 1963 apparel sales were approximately \$100 million; 1963 dry goods and household linen sales amounted to approximately \$11 million.

Allied's 1963 total sales through its two San Antonio Joske's stores were approximately \$27 million, of which \$12.2 million was in apparel and \$2.3 million in household linen and dry goods. Wolff & Marx' two stores accounted for \$7.4 million in total sales, \$5.1

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million in apparel, and \$770,000 in household linen and dry goods. These sales represent the following shares of 1963 San Antonio sales:

	<i>Joske's</i>	<i>Wolff & Marx</i>	<i>Combined</i>
Department stores	25%	7%	33%
GMAF stores	12%	3%	15%
Apparel	12%	5%	17%
Household linen and dry goods	21%	7%	28%

Prior to the merger, Joske's ranked second among department and GMAF stores, and first among sellers of apparel and sellers of household linen and dry goods. After the merger Joske's will rank first in each category—and in apparel the combined share of the merging stores will be about 2½ times the market share of the second ranking seller.

A significant degree of concentration already exists in the San Antonio market. The two leading department store companies presently account for 54% of department store sales. The addition of Wolff & Marx' share to Joske's raises the percentage of sales commanded by the top two department store companies in San Antonio to nearly two-thirds of department store sales. Similar concentration exists among GMAF stores as a group, the top four presently accounting for more than a third and the top eight presently accounting for nearly half of GMAF store sales. In the sale of apparel, the four leading sellers presently account for nearly a third of the market, while the four leading sellers of household linen and dry goods account for approximately one-half of San Antonio sales:

V. VIOLATION CHARGED

20. After extensive negotiations during 1964, the directors of Allied and the principal stockholders of Wolff & Marx entered into an agreement on November 25, 1964, for Allied to acquire for cash the outstanding shares of stock of Wolff & Marx. According to the terms and conditions of Allied's offer to the Wolff & Marx stockholders, Allied agreed to pay \$11 in cash for each share of Wolff & Marx common stock, or approximately \$1,200,000 for the entire company.

By January 11, 1965, the owners of more than 95% of the outstanding shares of Wolff & Marx common stock had deposited their stock with Allied's escrow agent, and accordingly the purchase offer was declared consummated. Shortly thereafter, Allied succeeded to the ownership of the assets of Wolff & Marx.

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21. The effect of the acquisition of Wolff & Marx by Allied, may be substantially to lessen competition or to tend to create a monopoly in the department store industry, the GMAF store industry, and in the sale and purchase of apparel, household linens and dry goods, and other merchandise sold by department stores and other retailers, throughout the United States or certain sections thereof, in violation of Section 7 of the Clayton Act, as more fully described below in Paragraph 23.

22. The combination by which Allied and Wolff & Marx undertook to merge Wolff & Marx into Allied is in unreasonable restraint of trade and commerce in the department store industry, the GMAF store industry, and in the sale and purchase of apparel, household linens and dry goods, and other merchandise by department stores and other retailers, throughout the United States or certain sections thereof, in violation of Section 5 of the Federal Trade Commission Act, as more fully described below in Paragraph 23.

VI. EFFECTS OF VIOLATIONS CHARGED

23. The effects of the foregoing violations have been and may be the following, among others:

(a) Actual or potential competition between Allied and Wolff & Marx in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other lines of merchandise distributed by department stores has been eliminated, prevented, or lessened in the San Antonio Standard Metropolitan Statistical Area;

(b) Allied, a major competitive factor in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other merchandise distributed by department stores, in the San Antonio Standard Metropolitan Statistical Area, has eliminated Wolff & Marx, another major competitive factor in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other merchandise distributed by department stores, in the San Antonio Standard Metropolitan Statistical Area;

(c) Concentration in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other lines of merchandise distributed by department stores, will be preserved and increased in the San Antonio Standard Metropolitan Statistical Area;

(d) The restraining influence upon non-competitive behavior in the department store industry, the GMAF store industry, and in the sale of apparel, household linens and dry goods, and other

lines of merchandise distributed by department stores, in the San Antonio Standard Metropolitan Statistical Area, which existed by reason of the independent operation of Wolff & Marx, has been eliminated;

(e) The monopsonistic power of Allied may be substantially increased in the San Antonio Standard Metropolitan Statistical Area, thus depriving other merchants of access to sources of supply and resulting in a substantial lessening of competition in the distribution of apparel and other merchandise sold by GMAF stores.

(f) The members of the consuming public, in the San Antonio Standard Metropolitan Statistical Area, will be denied the benefits of free and unrestricted competition in the department store industry, and in the sale and purchase of apparel, household linens and dry goods, and other merchandise distributed by GMAF stores.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Allied Stores Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 401 Fifth Avenue, New York, New York, 10018.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

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ORDER

I

It is ordered, That respondent, Allied Stores Corporation, hereinafter referred to as "Allied," absolutely and in good faith, divest the retail store situated at the North Star Mall Shopping Center in San Antonio, Texas, acquired by Allied as the result of its acquisition of Wolff & Marx, Inc. Such divestiture shall include all leases, warehousing facilities, inventories, the trade name "Wolff & Marx," trademarks, and goodwill, together with all additions thereto and replacements thereof. Such divestiture shall be to a responsible purchaser approved by the Federal Trade Commission, who shall preserve said store as a going concern and fully effective competitor in the lines of commerce in which it was engaged prior to the acquisition, and said divestiture shall take duly into account the interest of North Star Mall, Inc., and of the other merchants in the North Star Mall Shopping Center in the maintenance of the drawing power of the store and the effective operation of the Shopping Center as an integrated merchandising unit.

II

It is further ordered, That Allied begin to make good faith efforts to divest the above said assets promptly after the effective date of this Order. It shall continue such efforts to the end that the divestiture thereof be effected within one (1) year. If divestiture of said store to a satisfactory purchaser shall not have been accomplished within the specified one (1) year period, or any extensions thereof, the Commission will give respondent notice and an opportunity to be heard before the Commission issues any further order or orders which the Commission may deem appropriate.

III

It is further ordered, That, in the aforesaid divestiture, Allied not sell or transfer, directly or indirectly, any of said assets to anyone who is at the time of divestiture an officer, director, employee, or agent of, or under the control or direction of, Allied or any of its subsidiaries or affiliates, or to any person who owns or controls more than one (1) percent of the outstanding shares of common stock of Allied or any of its subsidiaries or affiliates.

IV

It is further ordered, That, pending divestiture, Allied not make any changes in, nor fail to take appropriate steps to preserve, any

of the aforesaid assets if such action or inaction would impair their capacity for the retail sale or distribution of apparel, household linens and dry goods, or other merchandise, or their market value.

V

It is further ordered, That, for ten (10) years from the effective date of this Order, Allied cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any part of the stock or assets of any firm engaged in the department store business or GMAF store business in any SMSA in the United States in which Allied then operates a department store or GMAF store.

VI

It is further ordered, That, within sixty (60) days after the effective date of this Order, within every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I through IV of this Order, and within every year thereafter until it has fully complied with the provisions of Paragraph V of this Order, Allied submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this Order. All compliance reports shall include, among other things that will be from time to time required, a summary* of all contacts and negotiations with potential purchasers of the assets to be divested under this Order, the identity of all such potential purchasers, copies of all written communications to and from such potential purchasers, and a statement as will disclose the identity of all department store or GMAF store businesses, any part of the stock or assets of which Allied has acquired, contracted to acquire, or offered to acquire since the preparation of the prior compliance report, together with the location of each such store.
