
IN THE MATTER OF
CONSOLIDATED FOODS CORPORATION

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

Docket C-1024. Complaint, Dec. 21, 1965—Decision, Dec. 21, 1965

Consent order requiring one of the leading food merchandising companies in the Nation with principal office in Chicago, Ill.—having total sales of \$634 million in 1964—to divest itself absolutely within 3 years, to a purchaser approved by the Federal Trade Commission, all stocks and assets of its “supermarket group” which consist of three grocery-store chains, a drug-store chain, a dairy company and a baking concern; and to dispose of its stock interest in four other concerns operating supermarkets.

COMPLAINT

The Federal Trade Commission has reason to believe that Consolidated Foods Corporation has violated the provisions of Section

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7 of the Clayton Act, as amended, (15 U.S.C., Section 18) by its acquisitions of Piggly-Wiggly Midwest Co., Inc., Quality Food Stores, Inc., and Eagle Food Centers, Inc., and therefore issues this complaint, stating its charges in that respect as follows:

I

DEFINITIONS

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

a. *Food products* include all products, singly or in groups, commonly identified as "food and kindred products." It includes foods and beverages for human consumption and certain related products, such as vegetable and animal fats and oils. Establishments producing such products are included under Bureau of Census Major Group Classification 20.

b. A *wholesale food products establishment* is an establishment selling at wholesale a general line of grocery products, dairy products, poultry and meat products, confectionery, fish and seafoods, meat and meat products, fresh fruits and vegetables, and such specialty lines as bakery products, breakfast food cereal, canned goods, green and roasted coffee, flour, frozen foods, refined sugar, and soft drinks. This definition corresponds to Bureau of Census Industry Classification No. 504.

c. A *food store* is a retail establishment primarily engaged in selling food for home preparation and consumption. The term "food stores" includes grocery stores, delicatessen stores, dairy stores, certain meat markets, fish (seafood) markets, fruit stores, vegetable markets, candy, nut and confectionery stores, and retail bakeries. This definition corresponds to Bureau of Census Major Group Classification No. 54.

d. A *grocery store* is a retail establishment primarily selling (1) a wide variety of canned or frozen foods, such as vegetables, fruits and soups, (2) dry groceries either packaged or in bulk, such as tea, coffee, cocoa, dry fruits, spices, sugar, flour and crackers, (3) other processed food and non-edible grocery items. In addition, these establishments often sell smoked and prepared meats, fresh fish and poultry, fresh fruits and vegetables and fresh and frozen meats. This definition corresponds to Bureau of Census Industry Classification No. 541.

II

CONSOLIDATED FOODS CORPORATION

2. Respondent, Consolidated Foods Corporation, "Consolidated," is a corporation organized and existing under the laws of the

State of Maryland, with its principal office and place of business located at 135 South LaSalle Street, Chicago, Illinois.

3. Consolidated ranks eleventh among all food merchandising companies in the nation with total sales of \$634 million in 1964. Retail food store divisions accounted for about 37% of its 1964 sales, ranking it among the nation's twenty-five largest food store companies. Another 28% of its 1964 sales was derived from the operation of wholesale food products establishments, ranking Consolidated among the largest such wholesalers in the United States. Consolidated's sales of processed foods products represented 35% of its 1964 sales, and ranked Consolidated among the leading food products processing companies in the United States. Consolidated ranked as the nation's tenth largest fruit and vegetable canner and among the nation's four largest frozen food packers in 1964.

By 1964, Consolidated's net profits rose to \$14 million; its cash flow reached a total of \$26 million, of which depreciation accounted for \$7 million and bank loans for another \$5 million.

4. At all times relevant herein, Consolidated purchased, sold and shipped products in interstate commerce, and was engaged in "commerce" within the meaning of the Clayton Act.

III

PIGGY-WIGGLY MIDWEST CO., INC.

5. Prior to its acquisition by Consolidated on May 31, 1956, Piggly-Wiggly Midwest Co., Inc., "Piggly-Wiggly," was a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 1009 West Jefferson Street, Rockford, Illinois.

6. Prior to May 31, 1956, Piggly-Wiggly operated thirty-three grocery stores located in and around Rockford, Illinois; Madison, Wisconsin; and Waterloo, Iowa. Piggly-Wiggly had sales of approximately \$31.1 million, net income of \$342 thousand and an adequate cash flow.

7. At all times relevant herein, Piggly-Wiggly purchased, sold and shipped products in interstate commerce, and was engaged in "commerce" within the meaning of the Clayton Act.

IV

QUALITY FOOD STORES, INC.

8. Prior to its acquisition by Consolidated on February 19, 1959, Quality Food Stores, Inc., "Quality," was a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 1350 Foshey Tower, Minneapolis, Minnesota.

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9. Prior to February 19, 1959, Quality operated twelve grocery stores in and around Minneapolis, Minnesota. Quality had sales of approximately \$13 million in 1958, and enjoyed adequate profits and cash flow.

10. At all times relevant herein, Quality purchased, sold and shipped products in interstate commerce, and was engaged in "commerce" within the meaning of the Clayton Act.

V

EAGLE FOOD CENTERS, INC.

11. Prior to its acquisition by Consolidated on April 24, 1961, Eagle Food Centers, Inc., "Eagle," was a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at Route 67 and Knoxville Road, Milan, Illinois.

12. Prior to April 24, 1961, Eagle operated thirty-eight grocery stores in and around the counties of Davenport, Dubuque, Clinton and Des Moines in the State of Iowa and East Moline, Rock Island, Lee, Blake, McLean, DuPage, Cook and Sangamon in the State of Illinois. Eagle had sales of approximately \$61 million, enjoyed profits of about \$1 million and had a cash flow of nearly \$3 million in 1960.

13. At all times relevant herein, Eagle purchased, sold and shipped products in interstate commerce, and was engaged in "commerce" within the meaning of the Clayton Act.

VI

TRADE AND COMMERCE

14. Food stores account for the largest single segment of retail trade in the United States. In 1963, food store sales were approximately \$57 billion, or 23% of all retail trade in the United States. Grocery stores account for by far the largest portion of food store sales. In 1963, the 245,000 grocery stores in the United States represented 77% of the number of food store establishments, and their \$55 billion in sales represented over 92% of all food store sales.

15. Grocery stores are recognized as a separate class of retail establishments, distinguished by their trade in a wide variety of food and other high-volume, low-markup consumer goods.

16. In 1963, Consolidated ranked as the nation's 21st largest grocery store chain, with sales of approximately \$164 million. It operated 111 supermarkets located in the States of Illinois, Iowa, Minnesota and Wisconsin. Consolidated achieved its position largely by the acquisitions of Piggly-Wiggly, Quality and Eagle. It added

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to its overall grocery store operations by acquiring May Drug Stores, Inc., Golden Dairy Company, and Coin Baking Company. Since their acquisition, these companies have been operated as a part of Consolidated's Supermarket Group. In addition, Consolidated acquired a controlling stock interest in four corporations operating supermarkets which are sponsored by its wholesale establishments.

17. Consolidated ranks among the nation's largest general line food wholesale companies with 1964 sales of approximately \$178 million. Through its wholesale establishments, Consolidated sponsored approximately 1,020 retail food or grocery stores in the United States in 1963, and served another 3,368 independent retail food and grocery stores. Consolidated exercised a significant degree of control over the operations of its sponsored grocery stores through administrative, promotional, financial and other services provided to such stores.

18. At the time of the acquisitions of Piggly-Wiggly, Quality and Eagle, Consolidated's wholesale establishments sponsored grocery stores which were in competition with certain of the grocery stores acquired by Consolidated. In 1963, Consolidated's acquired grocery stores and sponsored grocery stores accounted for a substantial share of the grocery store business in a number of local areas.

19. Consolidated sells substantial quantities of processed food products to other chain grocery companies, many of which are actual or potential competitors of Consolidated's acquired chain grocery store companies. In 1959, grocery store chains operating eleven or more establishments accounted for about 28% of respondent's total shipments of canned fruits and vegetables, of which the nation's top ten chains alone accounted for 17%. Since 1959, the percentage of shipments to chain grocery store customers has increased along with the growth of Consolidated's nationally known brands, including its Sara Lee, Ocora, Thank You and Booth brands.

20. Consolidated also sells substantial quantities of its processed food products to other food processors whose products are sold through chain grocery establishments.

VII

VIOLATION OF THE CLAYTON ACT

21. On May 31, 1956, Consolidated acquired the capital stock of Piggly-Wiggly Midwest Co., Inc., in exchange for 211,603 shares of Consolidated's common stock.

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22. On February 19, 1959, Consolidated acquired the capital stock of Quality Food Stores, Inc., in exchange for 57,500 shares of Consolidated's common stock.

23. On April 24, 1961, Consolidated acquired the capital stock of Eagle Food Centers, Inc., in exchange for 367,603 shares of Consolidated's common stock.

VIII

EFFECTS OF THE VIOLATIONS CHARGED

24. The effect of the acquisitions of Piggly-Wiggly, Quality and Eagle, as described above, separately and collectively, may be substantially to lessen competition or tend to create a monopoly in the food industry and in the food store or grocery store segments thereof throughout the United States or portions thereof, in violation of Section 7 of the Clayton Act, in the following ways, among others:

a. Substantial competition, both actual and potential, has been eliminated between grocery stores sponsored by Consolidated's general line food wholesale establishments and grocery stores operated by the acquired grocery store companies.

b. Substantial competition, both actual and potential, has been eliminated between Consolidated and other large chain grocery store companies which are actual or potential purchasers of food products processed by Consolidated. Consolidated's acquired grocery store companies have been eliminated as substantial potential competitors outside the area historically served by such companies; and aggressive price rivalry between said companies and substantial customers of Consolidated's processing establishments has also been hindered or eliminated.

c. Consolidated has been eliminated as an aggressive force in sponsoring independent grocery stores in areas in which its acquired companies operate grocery stores.

d. The opportunity for and the probability of substantial reciprocal dealing in the distribution of a wide variety of food products has been increased.

e. Other acquisitions in the food store and grocery store industries may be encouraged or stimulated, thus multiplying the competitive impact of the acquisitions challenged herein.

f. The members of the consuming public in areas in which Consolidated operates the acquired grocery store companies have been, or may be, denied the benefits of free and unrestricted competition in the distribution of food and grocery products.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraining Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondent has violated Section 7 of the Clayton Act, as amended, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Consolidated Foods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 135 South LaSalle Street, Chicago, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

I

It is ordered, That respondent, Consolidated Foods Corporation, a corporation, and its officers, directors, agents, representatives and employees, shall divest, absolutely and in good faith, of all stocks, assets, properties, rights and privileges, tangible and intangible, including but not limited to, all contract rights, plants, stores, machinery, equipment, trade names, trademarks, and good will acquired by Consolidated Foods Corporation as a result of the acquisition of stock, share capital or assets of Piggly-Wiggly Midwest Co., Inc., Quality Food Stores, Inc., May Drug Stores, Inc., Golden Dairy Company, Coin Baking Company, and Eagle Food Centers, Inc., together with all additions and improvements which have been added thereto as may be necessary to reconstitute

each such corporation, or new corporation in the event divestiture is effected through one corporation, as a going concern and viable competitor in the industry in which it is engaged.

II

It is further ordered, That, respondent, Consolidated Foods Corporation, a corporation, and its officers, directors, agents, representatives and employees, shall divest itself absolutely and in good faith, of its stock interest in (1) Food Giant, Inc., Columbus, Ohio; (2) La Porte City Foods Inc., La Porte City, Iowa; (3) Pearson's Food Market, Inc., Anamosa, Iowa; and (4) Stockton Foods, Inc., Stockton, Illinois.

III

It is further ordered, That, pending divestiture, respondent shall not make any changes in any of the aforesaid corporations which would impair their capacity for the sale of food and grocery products, or their market value.

IV

It is further ordered, That, in said divestitures, respondent shall not sell or transfer, directly or indirectly, any of said stock or assets (1) to any person who is, at the time of divestiture, an officer or director of, or under the control or direction of, Consolidated Foods Corporation 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 Consolidated Foods Corporation or any of its subsidiaries or affiliates; or (2) to any purchaser who is not approved in advance by the Federal Trade Commission.

V

If Consolidated Foods Corporation transfers the assets, properties, rights and privileges described in Paragraph I of this Order to a corporation, the stock of which is wholly owned by Consolidated Foods Corporation, and if Consolidated Foods Corporation then markets all of the stock in said corporation in a separate public offering, then Paragraph IV of this Order shall be inapplicable, and the following Paragraphs VI and VII shall take force and effect in its stead.

VI

No person who is an officer, director or executive of Consolidated Foods Corporation, or who owns or controls, directly or indirectly, more than one (1) percent of the stock of Consolidated Foods Corporation, shall be an officer, director or executive employee of

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any corporation described in Paragraph V, or shall own or control, directly or indirectly, more than one (1) percent of the stock of any corporation described in Paragraph V.

VII

As used in this Order, the word "person" shall include all members of the immediate family of the individual specified, and shall include corporations, partnerships, associations and other legal entities.

VIII

It is further ordered, That respondent shall not, without the prior approval of the Federal Trade Commission, acquire any part of the stock or assets of any retail establishment which is classified in Standard Industrial Classification Industry Number 5411 (Grocery Stores With or Without Fresh Meats) and Standard Industrial Classification Industry Number 5451 (Dairy Product Stores), as described in the Standard Industrial Classification Manual published by the Bureau of the Budget in 1957; except that nothing in this Section shall require prior approval of an acquisition of stock or assets in a corporation operating not more than three such retail establishments which are sponsored by or affiliated with a wholesale establishment operated by respondent where the contract by which respondent acquires said stock or assets requires respondent to divest its ownership interest within a period not in excess of three years from the date of such acquisition.

IX

It is further ordered, That respondent shall make every reasonable effort to effect a divestiture pursuant to Sections I and II of this Order within a period of three (3) years from the date of service upon it of this Order: *Provided, however,* That, if divestiture has not been effected within said three year period, the Commission shall grant respondent written notice and an opportunity to be heard before issuing any further order or orders which may be deemed appropriate. If at that time respondent shows it has made a good faith effort and that failure to accomplish divestiture within the three year period cannot be attributed to delays by it, the Commission will grant an additional period not to exceed two years in which to complete the divestiture.

X

It is further ordered, That respondent shall, within ninety (90) days after the date of service upon it of this Order, and every

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ninety (90) days thereafter until respondent has fully complied with the divestitures ordered herein, submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which respondent intends to comply, or is complying or has complied with this Order, together with such other information relating to compliance as may be requested by the Federal Trade Commission.
