

Opinion

69 F.T.C.

IN THE MATTER OF

PILLSBURY MILLS, INC.*

ORDER OF DISMISSAL, OPINION, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 7 OF THE CLAYTON ACT*Docket 6000. Complaint, June 16, 1952—Decision, March 28, 1966*

Order dismissing pursuant to a Court remand, 354 F. 2d 952 (1966), 8 S. & D. 5, the Commission has determined that it would not be in the public interest to proceed further in its antimerger case against respondent; however, the Commission pointed out that it will maintain continuing surveillance of future developments in this industry and will give careful attention to any future acquisitions by respondent.

OPINION OF THE COMMISSION

On January 7, 1966, the Court of Appeals for the Fifth Circuit vacated the Commission's order and decision in this matter (57 F.T.C. 1274, 1389-1415), and remanded the case in order that the Commission, as now constituted, could "determine what steps should [now] appropriately be taken in view of both the lapse of time and the present state of the case law applying Section 7." (*Pillsbury Co. v. Federal Trade Commission*, 354 F.2d 952 (5th Cir. 1966) [8 S.&D. 5].)

This proceeding has had a long, complex history, which is detailed in the opinion of the Court of Appeals and need not be repeated here. The case is fourteen years old. The record exceeds 40,000 pages in length. The evidence contained in the record pertains to market conditions which existed more than a decade ago. Whether the Commission could properly adjudicate the merits on the basis of the present record, without taking further evidence, is at least highly doubtful. Passage of time has also created serious uncertainty as to the availability of effective relief, even if the challenged acquisitions should be found unlawful. There are also in the case a number of procedural problems; thus, it is not unlikely that, upon a further court review, the substantive questions on the merits may not be reached.

Accordingly, in the light of all these considerations, the Commission, mindful of its responsibility to "develop that enforcement policy best calculated to achieve the ends contemplated by Congress and to allocate [the Commission's] available funds

*Now known as The Pillsbury Company.

and personnel in such a way as to execute [that] policy efficiently and economically" (*Moog Industries, Inc. v. Federal Trade Commission*, 355 U.S. 411, 413 (1958)), has determined that it would not be in the public interest to proceed further in this matter. The complaint will be dismissed. Continuing surveillance will be maintained, however, of future developments in this industry. Any future acquisitions by respondent will receive careful attention, and the Commission will take such action thereon as may be required in the public interest.

Commissioner MacIntyre did not participate.

ORDER DISMISSING COMPLAINT

For the reasons set forth in the accompanying opinion, *It is ordered*, That the complaint herein be, and it hereby is, dismissed.

Commissioner MacIntyre not participating.
