

IN THE MATTER OF
WINN-DIXIE STORES, INC.

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

Docket C-1110. Complaint, Sept. 14, 1966—Decision, Sept. 14, 1966

Consent order prohibiting the seventh largest national retail grocery chain-store with headquarters in Jacksonville, Fla., from acquiring any retail food or grocery stores in the United States for a period of ten (10) years without the prior consent of the Federal Trade Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that Winn-Dixie Stores, Inc., has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, through its acquisition of the assets and business of Hill Grocery Company, Inc., and of certain assets of Colonial Stores Incorporated, and it appearing that a proceeding by the Commission in respect to such violations would be to the interest of the public, issues this complaint stating its charges as follows:

I

DEFINITIONS

1. "Food stores" are establishments primarily selling food for home preparation and consumption. This definition corresponds to Bureau of Census Major Group Classification No. 54.

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2. "Grocery stores" are establishments 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, dried fruits, spices, sugar, flour, and crackers; and (3) other processed food and nonedible grocery items. In addition, these establishments often sell smoked and prepared meats, fresh fish and poultry, fresh vegetables and fruits, and fresh or frozen meats. This definition corresponds to Bureau of Census Industry Classification No. 541.

II

WINN-DIXIE STORES, INC.

3. Winn-Dixie Stores, Inc., is named a respondent herein and is hereafter referred to as "Winn-Dixie." It is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 5050 Edgewood Court, Jacksonville, Florida.

4. The principal business of Winn-Dixie is the operation of grocery stores. In 1964, the company ranked seventh in sales among all grocery store chains in the United States, with sales of approximately \$905 million. As of July 27, 1964, Winn-Dixie operated 631 retail grocery stores, of which 246 were located in Florida, 89 in North Carolina, 78 in South Carolina, 46 in Georgia, 37 in Louisiana, 77 in Alabama, 29 in Kentucky, 9 in Mississippi, 9 in Tennessee, 9 in Virginia, and 2 in Indiana.

Winn-Dixie has for many years enjoyed a substantial cash flow. During 1964, Winn-Dixie had available to it funds from net earnings of over \$20 million and cash flow generated by depreciation and amortization of over \$9 million.

5. Prior to July 30, 1962, Winn-Dixie operated 29 grocery stores in northern and central Alabama; including 3 grocery stores in Huntsville, 3 grocery stores in Tuscaloosa and 1 grocery store each in the cities of Florence, Selma and Sylacauga.

6. Winn-Dixie is and for many years has been engaged in commerce, as "commerce" is defined in the Clayton Act.

III

HILL GROCERY COMPANY, INC.

7. Hill Grocery Company, Inc., hereafter referred to as "Hill," was formerly a corporation organized and existing under the laws

of the State of Alabama, with its principal office and place of business located at 230 South 16th Street, Birmingham, Alabama.

8. Prior to July 30, 1962, when Winn-Dixie acquired substantially all of its assets, Hill operated 35 retail grocery stores in northern and central Alabama. For the year ended December 31, 1961, Hill's sales were approximately \$38 million; its net profit was approximately \$1 million; and its total assets exceeded \$8 million.

9. Prior to July 30, 1962, Hill ranked first in sales among the grocery store companies in Birmingham, Alabama. It operated 23 grocery stores and accounted for some 15% of all grocery store sales in said city. Prior to July 30, 1962, Hill ranked among the leading grocery store companies in a number of other cities and towns in northern and central Alabama, including Selma, where it operated two grocery stores; in Huntsville, where it operated two grocery stores; and Florence, Sylacauga, and Tuscaloosa, in each of which it operated one grocery store.

10. Prior to July 30, 1962, and for some years past, Hill was engaged in commerce, as "commerce" is defined in the Clayton Act.

IV

COLONIAL STORES INCORPORATED

11. Colonial Stores Incorporated, hereafter referred to as "Colonial," is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business at 2251 north Sylvan Road, Atlanta, Georgia.

12. The principal business of Colonial is the operation of grocery stores. In 1963, the company ranked thirteenth in sales among all United States grocery chains, with sales of approximately \$460 million. At the end of 1963, Colonial operated 446 grocery stores in ten Southeastern and Midwestern states. Colonial has for many years enjoyed a substantial cash flow.

13. Prior to March 4, 1964, when Winn-Dixie acquired Colonial's Birmingham stores, Colonial operated nine grocery stores in that city, ranking sixth among all grocery store chains in Birmingham and accounting for 5.2% of all Birmingham grocery store sales.

14. Colonial is and for many years has been engaged in commerce, as "commerce" is defined in the Clayton Act.

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V

NATURE OF TRADE AND COMMERCE

A. *Generally*

15. 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.

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

17. Concentration in the grocery store industry is high and has been steadily increasing. Between 1949 and 1958, the number of food stores in the nation declined from 350,000 to 245,000. During the same period the share of grocery store sales accounted for by the top twenty companies increased from 26% in 1948 to 34% in 1958. By 1963, the top twenty had increased their share to 37% of all grocery store sales in the United States.

18. Mergers and acquisitions have been responsible for a substantial portion of the increase in concentration in the grocery store industry. Between 1949 and 1958 alone, the nation's top twenty grocery store companies acquired 147 companies operating 1,600 grocery stores with sales of \$1.5 billion.

19. The competitive impact of mergers and concentration in the grocery store industry, and of the growth of national chains, has been felt both in local and regional markets on both the selling and buying side of the market.

One of the significant effects of the merger movement and the trend toward concentration in the grocery store industry has been that mergers have become a substitute for the entry of new competition. The merger movement has eliminated potential competition, has tended to remove the threat of entry and the restraining influence which entry has upon noncompetitive behavior, and has tended to discipline the market behavior of smaller competitors reluctant to enter into competitive warfare with chains many times their size and with many times their resources. The merger movement and the trend toward concentration have tended to bring

about a deterioration of competition among grocery store chains which face one another in several markets.

On the buying side of the market, suppliers have tended to favor the large chains, including Winn-Dixie, with preferences and advantages over other purchasers by reason of the chains' economic power as large buyers. The merger movement and the trend toward concentration have also weakened the ability of independent grocery store chains to compete and have tended to precipitate additional acquisitions and mergers and the disappearance of such independent chains from the grocery store and food store industries.

20. Winn-Dixie has been in the forefront of the food store and grocery store merger movement. Winn-Dixie alone accounted for some 15% of the \$1.5 billion in food store sales acquired between 1949 and 1958, ranking second both in total sales of acquired stores and number of stores acquired. Winn-Dixie has demonstrated a continuing proclivity for the acquisition of other grocery store companies. Between 1954 and 1964, Winn-Dixie acquired the following grocery store companies:

Year	Company Whose Stores Were Acquired	Location	Number of Stores Acquired
1954	Wylie Company	Anniston, Alabama	8
1955	The Penny Stores, Inc.	Meridian, Mississippi	8
1955	Edens Food Stores	South Carolina	33
1955	Ballentine Grocery Stores	South Carolina	15
1955	Dixie Home Stores	North and South Carolina	117
1956	Ketner-Milner Stores, Inc.	North Carolina	24
1956	H. G. Hill Stores, Inc.	New Orleans, Louisiana	42
1958	Southside Markets, Inc.	Louisville, Kentucky	2
1958	George's Inc.	Martinsville, Virginia	2
1959	Anderson's Super Markets	Elizabethtown, Tennessee	2
1960	Guyton Food Stores	Wilmington, North Carolina	2
1962	Marsh Supermarkets*	North Carolina	6
1962	Hill Grocery Co.	Birmingham, Alabama	35
1962	Stop & Shop*	Louisville, Kentucky	1
1964	Colonial Stores*	Birmingham, Alabama	9

(*Partial acquisition)

21. A substantial portion of Winn-Dixie's growth in sales between 1954 and 1964 was the direct result of acquisitions which contributed to the increasing concentration in the grocery store industry described above. Winn-Dixie sales more than quadrupled between 1954 and 1964. Acquisitions accounted for one-third of the total increase in Winn-Dixie's sales during the period.

B. The Local Markets

22. *Birmingham.* Birmingham is one of the South's largest industrial cities, ranking as the nation's 24th largest city in 1960. It has demonstrated steady expansion, both in terms of population and economic development. Although Winn-Dixie did not operate any stores in Birmingham prior to 1962, it did operate stores in several nearby markets, such as Tuscaloosa, Sylacauga and Huntsville.

23. In 1962, when Winn-Dixie acquired the Hill stores, Hill ranked first in sales among Birmingham grocery store companies. The following year, the Winn-Dixie-Hill stores in Birmingham accounted for about 15% of all grocery store sales and about 14% of all food store sales in that city.

24. A significant degree of concentration exists in the grocery store business in the city of Birmingham. In 1963, the two leading grocery store chains, including first ranking Winn-Dixie-Hill, accounted for approximately 28% of all grocery store sales, while the leading four chains accounted for approximately 47% of such sales.

25. In 1963, the year before Winn-Dixie acquired Colonial's Birmingham grocery stores, Colonial was the sixth ranking grocery store company in that city, accounting for about 5 percent of all grocery store sales. As a result of the acquisition from Colonial, Winn-Dixie strengthened its leading position to about 20% of all grocery store sales in Birmingham. At the same time, the concentration of grocery store sales by the two leading chains was increased to approximately 34%, and by the leading four chains to approximately 53%.

26. *Huntsville.* Huntsville is among the most rapidly expanding markets in the State of Alabama, both in terms of population and sales. In the decade between 1954 and 1958, grocery store sales nearly tripled in the city of Huntsville and in the Huntsville Standard Metropolitan Area (Madison and Limestone Counties, Alabama). Despite this growth in market opportunities, concentration in the grocery store business increased substantially: the top four grocery store companies increased their share of grocery store sales in the Huntsville Standard Metropolitan Statistical Area from 31% in 1954 to 50% in 1963.

27. In 1962, when Winn-Dixie acquired Hill, Winn-Dixie was already by far the leading grocery store company in the city of Huntsville, operating three grocery stores and accounting for about 22% of all grocery store sales. Hill ranked second, operating

two grocery stores and accounting for about 14% of all such sales. As a result of the acquisition of Hill, Winn-Dixie strengthened its leading position to approximately 36% of all grocery store sales in the city of Huntsville. At the same time, concentration among the two leading grocery store companies was raised to approximately 44%. The corresponding data for the two-county Huntsville Standard Metropolitan Statistical Area show a similar increase in market position and concentration.

28. *Other Local Markets.* In 1962, when Winn-Dixie acquired Hill, both companies operated grocery stores in three other local markets in Alabama. In Sylacauga, Alabama, Hill and Winn-Dixie ranked second and third, respectively. As a result of its acquisition of Hill, Winn-Dixie gained the leading position in Sylacauga, increasing its share of food store sales from about 16% to about 37%. In Selma, Alabama, Hill and Winn-Dixie ranked third and fourth, respectively. As a result of its acquisition of Hill, Winn-Dixie gained the leading position in Selma, accounting for about 17% of all food store sales in the city. Winn-Dixie also gained the leading position in Tuscaloosa, Alabama, by its acquisition of Hill, increasing its sales to about 18% of all food store sales in that city.

VI

VIOLATION OF THE CLAYTON ACT

29. On July 30, 1962, Winn-Dixie acquired substantially all of the assets of Hill Grocery Company, Inc., as a going business for a cash consideration of approximately \$8.6 million.

30. On March 4, 1964, Winn-Dixie acquired the assets and retail grocery store business of Colonial Stores Incorporated located in Birmingham, Alabama, for a cash consideration of \$621,469.

31. The effect of the acquisitions from Hill Grocery Company, Inc., and Colonial Stores Incorporated, as described above, separately, and as the latest in a series of acquisitions described in paragraph 20, may be substantially to lessen competition or to tend to create a monopoly in the food store business or grocery store business throughout the United States or portions thereof, in violation of Section 7 of the Clayton Act, as is more fully described below in paragraph 32.

VII

EFFECTS OF VIOLATIONS CHARGED

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

(a) Substantial actual competition between Winn-Dixie and Hill has been eliminated in Birmingham, Huntsville, Sylacauga, Tuscaloosa, Selma and Florence in the State of Alabama;

(b) Substantial actual competition has been eliminated between Winn-Dixie and Colonial in Birmingham, Alabama.

(c) Substantial potential competition between Winn-Dixie and Hill, and between Winn-Dixie and Colonial, has been, or may be, eliminated throughout the State of Alabama and in portions thereof;

(d) The combination of the assets and business acquired from Hill Grocery Company, Inc., and Colonial Stores Incorporated, as well as from other earlier acquisitions, may so increase Winn-Dixie's facilities, technology, financial and market strength as to provide decisive competitive advantages over the remaining independent food store and grocery store operators.

(e) New entry into the food store or grocery store industries in the State of Alabama or in portions thereof may be inhibited or prevented.

(f) Other acquisitions in the food store and grocery store industries in the United States or sections thereof relevant herein may be encouraged or stimulated, thus multiplying the competitive impact of the acquisitions challenged herein. Also, the food store industry and the grocery store industry may thereby be transformed or further transformed from ones comprised of viable, independent locally owned businesses into concentrated industries comprised of national chains.

(g) The acquisitions challenged herein contribute to the over-all trend toward concentration and oligopoly in the food store and grocery store industries described in paragraphs 17 and 18, and thus tend further to bring about the deterioration of the vigor of competition described in paragraph 19.

(h) The members of the consuming public in the sections of the county relevant herein, and throughout the United States, will be denied the benefits of free and unrestricted competition in the food store and grocery store industries.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, to wit: the acquisition of Hill Grocery Company, Inc., and of certain assets of Colonial Stores Incorporated; and the respondent having been furnished thereafter with a copy

of a draft of complaint by the Bureau of Restraint of Trade and which draft of complaint, if approved and 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 Winn-Dixie Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 5050 Edgewood Court, Jacksonville, Florida 32203.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That for ten (10) years from the effective date of this order, respondent shall not, without the prior approval of the Federal Trade Commission, make any acquisition, directly or indirectly, of any retail food or grocery stores in the United States.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist as set forth herein.

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IN THE MATTER OF

AMERICAN BAKERIES COMPANY

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

Docket C-1111. Complaint, Sept. 14, 1966—Decision, Sept. 14, 1966

Consent order prohibiting one of the Nation's largest wholesale baking companies with headquarters in Chicago from acquiring any domestic producer or seller of bakery products for the next 10 years without prior approval of the Federal Trade Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Bakeries Company has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, through its merger with Langendorf United Bakeries, Inc., issues its complaint charging as follows:

I

DEFINITIONS

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

(a) Bread and bread-type rolls (Bureau of the Census Standard Industrial Classification (S.I.C.) product class 20511): Includes white pan and hearth bread, variety and special breads, such as whole and cracked wheat, rye, raisin, etc.; it also includes hamburger, weiner, kaiser, parkerhouse, brown-and serve rolls, etc. Excluded are sweet yeast items such as sweet rolls, coffee cakes, soft cakes such as pound, layer and fruit, pies, pastries, cookies and doughnuts; biscuits, crackers, pretzels and other "dry" bakery products; frozen bakery products; and chips (potato, corn, etc.).

(b) Perishable bakery products industry (S.I.C. Industry 2051): Includes establishments primarily engaged in manufacturing bread and bread-type rolls, cakes, pies, doughnuts, sweet goods and hand-made cookies. Excluded are establishments primarily engaged in producing biscuits, crackers, pretzels, hard cookies and other "dry" and semiperishable products (S.I.C 2052), frozen