

Complaint

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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

bakery products and chips (potato, corn, etc.). Also excluded are establishments manufacturing bakery products primarily for direct sale on the premises to household consumers (classified by the Bureau of the Census as Retail Trade, Industry 5462). The perishable bakery products industry is composed of four sub-industries: wholesale bakeries, grocery chain bakeries, home service bakeries and retail multi-outlet bakeries.

(c) *Wholesale bakeries* (S.I.C. Sub-industry 2051-02): Bakeries selling chiefly at wholesale to other business concerns, including grocers, restaurants, hotels, institutions, and other establishments buying products for resale.

(d) *Grocery chain bakeries* (S.I.C. Sub-industry 2051-03): Bakeries owned and operated by grocery chain store companies and distributing their products through retail grocery stores owned by the same company.

(e) *Home service bakeries* (S.I.C. Sub-industry 2051-04): Bakeries selling chiefly through retail home service routes.

(f) *Retail multi-outlet bakeries* (S.I.C. Sub-industry 2051-06): Retail bakeries selling chiefly through non-baking outlets operated by the same company.

II

AMERICAN BAKERIES COMPANY

2. Respondent, American Bakeries Company, hereafter "American," is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at Ten South Riverside Plaza, Chicago, Illinois 60606.

3. The principal business of American is the baking and wholesale distribution of bread and bread-type rolls and cake under the advertised brand names "Taystee," "Merita," "Cookbook," and "Dressel's." American owns and operates 48 baking plants in 45 cities. In 1963, American had total sales of approximately \$170 million, of which approximately 72% was bread and bread-type rolls. As of December 28, 1963, American had total assets in excess of \$53 million.

4. In 1953, Purity Bakeries Corporation merged with American Bakeries Company. Purity Bakeries Corporation, the surviving company, thereupon changed its name to American Bakeries Company.

5. American's acquisitions and mergers subsequent to the merger in 1953 of Purity Bakeries Corporation and American Bakeries Company are as follows:

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Name of Bakery	No. of Plants Acquired	Year Acquired
Stella Baking Company, Danville, Illinois.	1	1959
Matthew Bros., Corp., Wethersfield, Connecticut.	1	1960
Connecticut Pie Co., Wethersfield, Connecticut.	1	1960
Atlas Baking Company, Richmond, Virginia.	1	1962
Grable's Bakeries, Inc., Miami, Florida.	1	1963
Dressel Bakeries, Inc., Chicago, Illinois.	3	1963
Mrs. Hackel's Bakery, Inc. Chicago, Illinois.	1	1964
Langendorf United Bakeries, Inc., San Francisco, California.	18	1964

6. At the time of its merger with Langendorf, American was growing in size and widening the geographic boundaries of its operations.

7. At all times relevant herein, American has been engaged in commerce within the meaning of the Clayton Act.

III

LANGENDORF UNITED BAKERIES, INC.

8. Prior to its merger with American on May 21, 1964, Langendorf United Bakeries, Inc., hereafter "Langendorf," was a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 1160 McAllister Street, San Francisco, California 94100.

9. At the time of the merger, Langendorf's principal business was the baking and wholesale distribution of bread and bread-type rolls, cake and cookies under various advertised brand names, the principal ones of which were: "Langendorf," "Butter Nut," "Holsum," "Barbara Ann," and "Jordan." At the time of the merger, Langendorf operated 18 bakery plants in the Pacific Coast States of California, Oregon and Washington. Eleven of these plants were engaged in the production and sale of bread and bread-type rolls and were located in the following cities: San Francisco, Berkeley, San Jose, Los Angeles, Bell Gardens and San Bernardino, California; Portland, Oregon; and Seattle,

Washington. In 1963, Langendorf was the seventh largest wholesale bakery company in the United States and had total sales of approximately \$75 million, of which approximately 70% was bread and bread-type rolls. As of December 28, 1963, its total assets were approximately \$18 million.

10. Langendorf's acquisitions and mergers, beginning with the year 1950, are as follows:

Name of Bakery	No. of Plants Acquired	Year Acquired
Hol-Grain Products Co. Seattle, Washington.	1	1950
Keller Baking Co., Portland, Oregon.	1	1952
Grandma Baking Co., Oakland and Los Angeles, California.	2	1955
Peerless Baking Co., San Luis Obispo, California.	1	1955
Cities French Bakeries, Berkeley, California.	1	1956
Jordan Baking Co., Tacoma, Washington.	1	1956
Ruth Ashbrook Bakery of San Francisco San Francisco, California.	1	1958
Golden Crust Bakery, d/b/a Valley Queen Bakery, Watsonville, California.	1	1962

11. Prior to its merger with American, Langendorf was growing in size and widening the geographic boundaries of its operations. It was a financially sound and profitable company.

12. Until its merger into American, Langendorf was engaged in commerce within the meaning of the Clayton Act.

IV

TRADE AND COMMERCE

13. The perishable bakery products industry is one of the most important of the food industries. Bread and bread-type rolls alone account for more than three percent of the average household weekly food budget.

14. Wholesale baking makes up the largest segment of the perishable bakery products industry. In 1958, wholesale bakeries accounted for 76% of the total sales of perishable bakery products; grocery chain bakeries accounted for approximately 10% and home service and retail multi-outlet bakeries accounted for the rest.

15. Bread and bread-type rolls alone make up over 60% of the

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production of the perishable bakery products industry and were the principal products of both American and Langendorf.

16. Wholesale bakeries sell almost all of their bread and bread-type rolls through route delivery systems. The distance the products are shipped is limited by the necessity for freshness and by the distance a driver or route salesman can cover and return to the plant in one day. A wholesale bakery's distribution area can in some circumstances be extended through the use of loading stations where bread and bread-type rolls can be delivered to the route trucks on large semi-trailers. The maximum distribution radius thus attainable is approximately 150-300 miles.

17. Sale of bread and bread-type rolls by wholesale bakeries to grocery stores and supermarkets is generally made on a consignment basis. The baker's route salesman delivers fresh goods and picks up and credits the grocer or supermarket operator with the amount of the unsold goods or "stale." The "stale" is returned to the plant for disposal at reduced prices through "thrift" or "day old" stores or for sale as animal feed.

18. Technological and other changes are increasing both the optimum size for a baking plant and the minimum size operation necessary for continuing operation as a viable enterprise. The baking industry has thus seen and can look forward to a further decrease in the total number of establishments.

19. Since 1947 concentration in the perishable bakery products industry has increased substantially. The share of total value of shipments of the perishable bakery products industry in the United States held by the four and eight largest firms is set out below for the years 1947, 1954, 1958 and 1962.

	1947 %	1954 %	1958 %	1962 %
Four Largest	16	20	22	25
Eight Largest	26	31	33	35

Concentration in local areas is far higher and is increasing.

20. A large part of this increase in concentration has been due to acquisitions by large wholesale baking companies. Since 1950 the eight largest wholesale baking companies in the United States have acquired over 60 independent baking companies which operated over 100 plants. Both American and Langendorf made several acquisitions and mergers which are set out at paragraphs 5 and 10 above, and thereby contributed substantially to this trend toward concentration.

21. The Pacific Coast as a whole (the States of California, Oregon and Washington) and the State of California alone represent the most rapidly expanding consumer markets in the United States. The State of California showed a greater absolute increase in population between 1950 and 1960 than any other State in the United States.

22. Since 1950, the number of local and regional bakeries on the Pacific Coast of the United States has declined substantially.

23. The acquisition of other bakers operating on the Pacific Coast by the larger wholesale bakers has contributed substantially to the increase in concentration in the perishable bakery products industry.

24. Prior to the merger of American and Langendorf, the wholesale baking industry on the Pacific Coast comprised Langendorf, which was a strong regional firm, three large national or multi-regional wholesale bakers (Continental Baking Company, Campbell Taggart Associated Bakeries, Inc., and Interstate Bakeries Corp.) and a number of small, predominantly single plant firms.

25. In 1962 Langendorf was the leading producer of bread and bread-type rolls on the Pacific Coast with 16% of the shipments in the Pacific Coast States. Although its plants served only portions of the States of California, Oregon and Washington, Langendorf had 16.3%, 8.2% and 20.4%, respectively, of the sales of bread and bread-type rolls in those States. Its position in local markets was even more substantial. Langendorf's percentage share of the wholesale sales of bread and bread-type rolls in 1962 was approximately 20.9% in California, 10.5% in Oregon, 26.2% in Washington and 20.5% in the Pacific Coast States combined. Continental, Campbell Taggart and Interstate accounted for 41% of the wholesale sales of bread and bread-type rolls on the Pacific Coast in 1962 and ranked second, third and fourth on the Pacific Coast and first, second and fifth among wholesale bakers of bread and bread-type rolls in the United States.

26. Prior to the merger with Langendorf, American was a likely entrant and potential competitor in the Pacific Coast States. It was the third largest wholesale baker in the United States. It was the largest wholesale baker which did not operate on the Pacific Coast and was the most probable wholesale baker to seek entry into that concentrated market.

27. After the merger of American and Langendorf, the four

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leading wholesale bakers of bread and bread-type rolls on the Pacific Coast were all multi-plant firms selling in a large number of States outside of, as well as on the Pacific Coast. Among all wholesale bakers in the United States they ranked first, second, third and fifth. Together these firms accounted for approximately 62% of the wholesale sales of bread and bread-type rolls and 48% of all sales of bread and bread-type rolls in the Pacific Coast States.

28. In any given marketing area, comparable products of different bakers will be similar in taste, texture and quality. Wholesale bakers attempt to differentiate their product and create consumer demand through advertising and promotion.

29. The sale of bread and bread-type rolls in grocery stores and supermarkets is strongly influenced by the size and location of display. Various point-of-sale promotional devices are utilized by wholesale bakers, and frequently concessions and inducements are offered by wholesale bakers to obtain preferable location and larger areas for display of their products.

30. Multi-plant, geographically diversified wholesale bakers are better able than their smaller competitors to create consumer demand for their products through advertising and promotion and are in a better position to offer inducements and concessions, such as cash payments, services, free racks, free goods, discounts, allowances and rebates, in order to obtain customers in local markets.

31. The tendency of the consumer to pick bread from the largest display of bread is frequently exploited by some wholesale bakers by over-stocking store shelves with bread of their manufacture, a practice known variously as "plugging" or "slugging the market," "rack loading" or "crowding." This practice results in larger stale returns and short-term decreased profits or losses to the baker engaging in the practice. Other bakers must respond in kind or accept decreased sales and possible loss of shelf space.

32. Multi-plant, geographically diversified wholesale bakers are particularly able to engage in "plugging the market" to the disadvantage of local or less geographically diversified firms which cannot bear decreased profits or losses in their limited markets for extended periods.

33. The ability of large, multi-plant wholesale bakers to absorb high stale returns, grant large concessions and inducements and create strong consumer preference for their brands have raised

substantial barriers to entry of new firms of expansion of existing firms.

34. In the wholesale baking sub-industry the substitution of large national multi-plant companies for smaller local or regional firms has increased the ability of the larger firms to discipline the market behavior of smaller competitors reluctant to enter into competitive warfare with a baker many times their size and with many times their financial resources, and has tended to bring about a deterioration in the vigor of competition among those multi-plant bakers which face one another in several markets.

35. The increasing barriers to entry in the perishable bakery products industry, the increasing degree of concentration (resulting largely from acquisitions and mergers) and the decline in the total number of competitors in this industry have increased the importance of preserving strong regional competitors such as Langendorf, since it is these firms that are best able to compete with the largest national companies.

V

VIOLATION OF SECTION 7 OF THE CLAYTON ACT

36. On May 21, 1964, Langendorf was merged into American through an exchange of stock. Immediately prior to the merger all outstanding shares of Langendorf's stock, common and preferred, had an aggregate value in excess of \$16 million.

37. The effect of the merger of Langendorf into American may be substantially to lessen competition or to tend to create a monopoly in the production and sale, and particularly the wholesale sale, of bread and bread-type rolls in the nation, the Pacific Coast States as a whole, the States of California, Oregon and Washington individually, and certain metropolitan areas within said States, in the following ways, among others:

(a) American and Langendorf have each been eliminated as potential entrants into each other's markets.

(b) The restraining influence upon noncompetitive behavior in the Pacific Coast States which existed by reason of the potential entry of American has been eliminated.

(c) Barriers to entry have been further increased.

(d) Langendorf has been eliminated as an independent competitive factor.

(e) Concentration has been preserved and increased.

(f) Existing competitors may restrain their competitive efforts for the reasons set out in paragraph 34 above.

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(g) Other acquisitions in the baking industry may be encouraged or stimulated, thus multiplying the competitive impact of the instant acquisition.

(h) The members of the consuming public will be denied the benefits of free and unrestricted competition in the production and sale, and particularly in the wholesale sale, of bread and bread-type rolls.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of 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 American Bakeries Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at Ten South Riverside Plaza, in the city of Chicago, State of Illinois, 60606.

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

ORDER

I

It is ordered, That for ten (10) years from the date this Order becomes final, respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal

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Trade Commission, any part of the share capital or other assets of any firm, partnership or corporation engaged in the production or sale of bakery products (United States Bureau of Census SIC Codes 2051 and 2052) in the United States.

II

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying or has complied with this Order.
