

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY

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

Docket C-1169. Complaint, Feb. 9, 1967—Decision, Feb. 9, 1967

Consent order requiring the Nation's largest producer of numerous household consumer products with its principal place of business in Cincinnati, Ohio, to divest itself of the Houston, Texas, coffee plant, within 5 years—one of five plants of the J. A. Folger & Co. coffee firm acquired through acquisition in November 1963—and prohibits further acquisition of household product firms for 7 years without prior approval of the Commission, and to comply with other related provisions of the divestiture order as set forth below.

COMPLAINT

The Federal Trade Commission has reason to believe that the above named respondent has acquired the assets of J. A. Folger & Company, a corporation, in violation of Section 7 of the Clayton Act, as amended (U.S.C., Title 15, Section 18); and therefore, pursuant to Section 11 of said Act, it issues this Complaint, stating its charges in that respect as follows:

I

DEFINITIONS

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

(a) "Green coffee" is raw unroasted coffee which is produced in certain countries in Central America, South America and Africa and is imported into the United States for roasting and making regular and soluble coffee.

(b) "Regular coffee" is coffee processed from green coffee by means of blending, roasting and grinding into varying granular sizes, and which must be heated and steeped in water before being consumed. It is generally packed and sold in varying quantities in vacuum tin containers and paper bags.

(c) "Soluble coffee" (instant coffee) is coffee processed from green coffee by means of blending, roasting, grinding, brewing and dehydration, and which is dissolved in water before being consumed. It is generally packed and sold in varying quantities in glass containers.

(d) A "non-retailer coffee company" is a concern which sells regular and/or soluble coffee under its own label, or labels, to supermarkets, other retail grocery and food establishments and wholesalers, for resale, as distinguished from a retail grocery chain organization, or other retailer, which sells its own brand, or brands, of regular and/or soluble coffee through its own store or stores.

II

RESPONDENT

2. Respondent, The Procter & Gamble Company (Procter & Gamble), is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business at The Procter & Gamble Building, 301 East Sixth Street, Cincinnati, Ohio.

3. Respondent, directly and through various completely owned subsidiary corporations, is a large diversified manufacturer and marketer of numerous lines of low cost, high turnover household consumer products, including packaged soaps; detergents; bleaches; shortenings, edible oils; and other food products; toilet goods, such as dentifrices, shampoos, home permanents and personal deodorants; and paper products; which are sold under ad-

vertised brand names. In 1964, respondent was the Nation's largest seller of toilet soap, packaged soaps and detergents (both heavy and light duty), abrasive cleaners, household cleaners, household liquid bleach, fabric softeners, dentifrices, shampoos, shortening and cake mixes. In each of these lines of household consumer products in which respondent was the largest seller, sales are concentrated in respondent and only two or three other diversified national concerns. Respondent was also a major producer and marketer of the other household consumer products it sells. Based on 1963 sales, respondent ranked as the 28th largest industrial corporation in the United States.

4. Respondent sells its household consumer products to supermarkets, other retail grocery and food establishments, cooperative buying groups and wholesale grocers. Respondent also sells its household consumer products to drug outlets, department stores and variety stores. Respondent markets its household consumer products under more than forty brand names.

5. Respondent also manufactures and sells soaps, detergents, shortenings and edible oils in bulk quantities to laundries, hotels, institutions, the baking industry and other industrial users; and manufactures vegetable oils and chemicals for use in its own products and for sale to other industrial users.

6. Respondent has an extensive nationwide marketing and selling organization and maintains numerous sales offices which are used in selling its household consumer and other products throughout the United States. It owns and operates more than 35 plants in the United States. It also conducts extensive technological and marketing research in developing and promoting its household consumer and other products.

7. For the year ended June 30, 1954, respondent and its subsidiaries' total assets were \$476,930,000, net sales \$911,050,000 and net earnings \$52,328,000. By the year ended June 30, 1964, respondent's total assets had increased to \$1,292,713,000, net sales to \$1,913,722,000 and net earnings to \$130,811,000. Respondent's expansion and growth during this ten year period were accomplished in part through internal growth; in part through internal diversification of its operations and the development of new products; and in part through acquisition of the stock and assets of seven independent companies, five of which were engaged in manufacturing and selling household consumer products. The companies acquired, their principal product lines and the year in which each was acquired by respondent, are as follows:

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Company	Product	Year
W. T. Young Foods, Inc.	Peanut butter and peanut products*	1955
Prepared Mix Division of Nebraska Consolidated Mills, Inc...	Cake mixes*	1956
Hines-Park Foods, Inc.	Licensing the Duncan Hines trademark for use on various food products	1956
Duncan Hines Institute	Licensing the Duncan Hines trade mark for use on household appliances and publishing directories of dining and lodging establishments	1956
Charmin Paper Mills, Inc.	Paper tissues and related paper products*	1957
Clorox Chemical Company	Liquid bleach*	1957
J. A. Folger & Company	Regular and soluble coffee*	1963

* Household consumer product.

W. T. Young Foods, Inc., Prepared Mix Division of Nebraska Consolidated Mills, Inc., Charmin Paper Mills, Inc., Clorox Chemical Company and J. A. Folger & Company had combined sales of approximately \$244,000,000 in the year preceding acquisition of each.

8. Respondent spends substantial sums to advertise, promote and sell its household consumer products. In 1963, it spent over \$120,000,000 for television advertising; over \$7,000,000 for newspaper, magazine and billboard advertising; and approximately \$500,000 for radio advertising. By virtue of such substantial expenditures, respondent promotes the sale of, achieves wide consumer acceptance of, and obtains valuable shelf space for, its household consumer products. As a result of continuous advertising in all media and the use of extensive consumer and trade promotions, most of respondent's household consumer products have wide consumer acceptance, command shelf space, and are, in effect, presold to the consumer. By virtue of respondent's substantial advertising of its household consumer products, it generally receives the lowest rates available in the placement of such advertising, particularly on spot (local) and network television and radio.

9. At all times relevant herein, respondent sold and shipped its products in interstate commerce throughout the United States.

III

J. A. FOLGER & COMPANY

10. Prior to November 30, 1963, J. A. Folger & Company (J. A. Folger) was a corporation organized and existing under the laws of the State of Nevada, with its office and principal place of business at 101 Howard Street, San Francisco, California.

11. Prior to November 30, 1963, J. A. Folger was, and for many years had been, engaged in the business of processing and selling regular coffee and soluble coffee, mainly to supermarkets and other retail grocery and food establishments, including warehouses of food chainstores, co-operative buying groups and wholesale grocers. J. A. Folger also sold small quantities of regular and soluble coffee to private label and institutional customers, such sales constituting less than 3% of its total unit sales of coffee in 1962.

12. At the time of the acquisition, J. A. Folger's sales territory (market area) included the United States west of the Mississippi River, the portion of Minnesota east of that river, Wisconsin, Illinois, Indiana, Kentucky, Mississippi, Florida and parts of Michigan, Ohio, West Virginia, Tennessee, Alabama and Georgia. This market area included approximately 100,000,000 population of the total United States population of 180,000,000.

13. As of December 31, 1962, J. A. Folger, the Nation's largest independent coffee company, had total assets of \$65,368,123, net sales of \$156,935,000 and net income of \$6,952,000. In 1962, its total dollar sales of "Folger" brand coffee amounted to \$153,641,000; private label and institutional coffee sales amounted to \$3,066,000; and sales of sundry products (principally spices) purchased for resale amounted to \$228,000.

14. Prior to November 30, 1963, J. A. Folger operated regular coffee roasting plants at San Francisco and Los Angeles, California; Portland, Oregon; Houston, Texas; New Orleans, Louisiana; and Kansas City, Missouri. It also operated two soluble coffee plants, located in south San Francisco, California and Houston, Texas.

15. In 1962, in its market area (defined in paragraph 12 herein), J. A. Folger was the largest nonretailer seller of regular coffee through the grocery market (defined in paragraph 19 herein), accounting for approximately 25.7% of total regular coffee sales. With approximately 15.1% of total regular coffee sales through the grocery market in the United States during 1962, J. A. Folger

ranked as the Nation's second largest nonretailer seller of regular coffee.

16. In 1962, in its market area, J. A. Folger was the second largest nonretailer seller of soluble coffee through the grocery market, accounting for approximately 15.4% of total soluble coffee sales. With approximately 6.6% of total soluble coffee sales through the grocery market in the United States during 1962, J. A. Folger ranked as the Nation's fourth largest nonretailer seller of soluble coffee.

17. During 1962, J. A. Folger spent \$1,274,000 in advertising its coffee by means of radio, \$5,202,000 for television advertising, \$54,000 for consumer and trade publication advertising and \$1,492,000 for outdoor, display and miscellaneous advertising. Such advertising expenditures, plus substantial consumer and trade promotions, were used by J. A. Folger in promoting the sale of, obtaining shelf space for, and gaining consumer acceptance of Folger regular and soluble coffee, sold primarily through the grocery market.

18. At all times relevant herein, J. A. Folger sold and shipped regular and soluble coffee in interstate commerce.

IV

TRADE AND COMMERCE

19. The lines of commerce relevant herein are the processing, distribution and sale of (1) regular coffee through the grocery market and (2) soluble coffee through the grocery market. Regular coffee and soluble coffee are distributed and sold through two separate and distinct markets: (a) the grocery market and (b) the institutional market. The grocery market (the distributional market relevant herein) is comprised of supermarkets and other retail grocery and food establishments.

20. Regular coffee and soluble coffee sold through the grocery market are low cost, high turnover household consumer products which, in general, are presold to the consumer, principally by advertising and consumer promotions.

21. Sales of regular coffee and soluble coffee through the grocery market are substantial and are increasing. Between 1957 and 1962 inclusive, sales of regular coffee through this market increased from approximately 1,250,000,000 to 1,392,000,000 pounds. During this same period, sales of soluble coffee through this market increased from 921,300,000 to 1,286,600,000 2-ounce units. Based on 1962 price levels, retail sales of regular coffee and sol-

uble coffee totaled approximately \$934,400,000 and \$407,159,000 respectively.

22. The geographic markets (sections of the country) relevant herein are the entire United States and/or various parts thereof in which regular coffee and soluble coffee are sold.

23. Prior to 1963, the regular coffee and soluble coffee industries in the United States were composed essentially of several diversified national firms, a large number of regional and local independent coffee companies and several large retail grocery chain organizations. The Nation's largest nonretailer seller of regular coffee and soluble coffee through the grocery market was a diversified national firm. The second, third, and fourth largest nonretailer sellers of regular coffee through the grocery market were regional independent coffee companies. These three independents were also substantial marketers of soluble coffee. The retail grocery chain organizations made sales of their own captive brands of regular coffee and soluble coffee only through their own stores.

24. Between 1957 and 1962 inclusive, concentration increased substantially in the sale of regular coffee through the grocery market in the United States. During this period, the combined share of the regular coffee market held by the five largest nonretailer coffee companies increased from approximately 48.1% to approximately 62.9%. During this period, the combined share of said market held by all other coffee companies, including retail grocery chain organizations, declined approximately 14.8 percentage points. During these six years, total unit sales of regular coffee through the grocery market increased approximately 11.4%.

25. Between 1957 and 1962 inclusive, there was a continuation of the high degree of concentration already present in the sale of soluble coffee through the grocery market in the United States. During this period, the combined share of the market held by the four largest nonretailer soluble coffee companies increased from approximately 75.3% to approximately 76.4%. During this period, the combined share of said market held by all other soluble coffee companies, including retail grocery chain organizations, declined 1.1 percentage points. During these six years, total unit sales of soluble coffee through the grocery market increased approximately 39.6%.

26. Since 1957, numerous acquisitions, mergers, liquidations and discontinuance of sales through the grocery market have reduced significantly the number of companies, and increased substantially the size of some of the remaining firms, engaged in

selling regular coffee through the grocery market in the United States. Moreover, only two firms, each of which was already established in the institutional coffee market, have entered the business of selling regular and soluble coffee through the grocery market since 1950.

27. As a result of respondent's acquisition of J. A. Folger (as alleged in paragraph 29 herein), the Nation's second largest non-retailer seller of regular coffee through the grocery market, which was also the fourth largest nonretailer seller of soluble coffee through the grocery market, has been absorbed into and combined with respondent, one of the Nation's largest diversified manufacturers, marketers, advertisers and promoters of household consumer products sold through the grocery market.

28. By virtue of respondent's acquisition of J. A. Folger, the diversified, national, nonretailer coffee companies substantially increased their combined share of regular coffee sales through the grocery market.

(a) In 1962, two large diversified national companies ranked first and fifth respectively in national sales and represented 30.8% of the regular coffee sold through the grocery market. In 1962, the Nation's three largest independent coffee companies ranked second, third and fourth respectively in national sales and represented 32.1% of the regular coffee sold through the grocery market.

(b) In 1963, subsequent to respondent's acquisition of J. A. Folger, three diversified national companies ranked first, second and fifth respectively in national sales and represented 47.2% of the regular coffee sold through the grocery market. Independent coffee companies continued to rank third and fourth respectively in national sales but these two companies represented only 17.1% of the regular coffee sold through the grocery market.

VIOLATION OF SECTION 7 OF THE CLAYTON ACT

29. On or about November 30, 1963, respondent acquired substantially all of the assets and business of J. A. Folger, including goodwill, intangible property, trademarks and names, trade secrets and the Folger name, for 1,650,000 shares of Procter & Gamble common stock having a market value of approximately \$130,000,000. Respondent did not acquire the institutional and private label business of J. A. Folger or its Los Angeles, California and Portland, Oregon manufacturing operations. These phases of the business and these plants were sold by J. A. Folger imme-

diately prior to its acquisition by respondent. The assets and business acquired from J. A. Folger were transferred to a newly formed subsidiary of respondent, The Folger Coffee Company, an Ohio corporation.

30. The effect of the acquisition of J. A. Folger by respondent may be substantially to lessen competition or to tend to create a monopoly in the processing and sale of (1) regular coffee through the grocery market and (2) soluble coffee through the grocery market, in the sections of the country set forth in paragraph 22 herein, in the following ways, among others:

(a) The Nation's largest independent coffee company has been permanently eliminated as a substantial independent competitive factor.

(b) Respondent has been permanently eliminated as a potential competitor in the regular coffee and soluble coffee industries.

(c) Respondent's replacement of J. A. Folger in the expanding regular coffee and soluble coffee business through the grocery market constitutes a major structural change in the regular coffee industry and the soluble coffee industry which: may alter substantially the existing competitive relations between large and small firms; may increase previously existing concentration; may raise the existing barriers to new entry which were already high; may precipitate additional acquisitions, mergers and liquidations of other independent coffee companies; and may stimulate and encourage additional withdrawals of independent coffee companies from selling through the grocery market.

(d) The trend toward domination of the regular coffee and soluble coffee industries by a few diversified national manufacturers selling low cost, high turnover household consumer products through the grocery market has been increased, and may be further increased by acquisitions and mergers of additional independent coffee companies by other diversified national manufacturers selling household consumer products through the grocery market.

(e) Actual and potential competition generally in the processing and sale of regular coffee and soluble coffee through the grocery market has been, or may be, substantially lessened or eliminated, due to any one or more, or all of the following factors:

1. Respondent's position as the leading seller in many highly concentrated markets for household consumer products;

2. Respondent's position as one of the largest marketers, advertisers and promoters of household consumer products sold through the grocery market;

3. Respondent's substantial financial resources and economic power;

4. Respondent's power to create consumer preference for its household consumer products and to obtain valuable grocery store shelf space by mass advertising and consumer and sales promotions;

5. Respondent's capacity to concentrate on one or more of its household consumer products, or on one or more selected sections of the country, the impact of its advertising, promotional and merchandising techniques; and

6. Respondent's capacity to make substantial expenditures for research and development.

(f) Actual and potential competition in the processing and sale of regular coffee and soluble coffee through the grocery market has been, or may be, substantially lessened or eliminated by the achievement of significant cost reductions in any one or more, or all of the following ways:

1. The buying of green coffee;
2. The procuring of financing;
3. The buying and placement of advertising;
4. The conducting of consumer and sales promotions;
5. The buying of containers and packaging materials; and
6. The procuring of warehousing and transportation.

31. The acquisition by respondent, as alleged above, constitutes a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18), as amended.

DISSENTING STATEMENT

FEBRUARY 9, 1967

By REILLY, *Commissioner*:

I should like to associate myself with Commissioner Jones's dissenting statement.

While I do not fully share Commissioner Jones's feeling that any remedy short of divestiture is inappropriate as a general rule, I do agree with her that in this case the failure of the Commission to require divestiture is most unfortunate.

In my opinion, considering the size and economic power represented by the acquiring firm, the Commission was fully justified in issuing a complaint wherein the anticompetitive effects of this merger were set forth in terms strongly suggesting that divestiture was the only feasible remedy.

In settling for a lesser remedy the Commission did not, to my knowledge, have available any facts justifying disposition of this matter on a basis short of divestiture. I can only conclude that the Commission substituted an intuitive reaction that "regulation" as described by Commissioner Jones was an adequate substitute.

In short, in my opinion the Commission thundered in the complaint and cheeped in the order.

DISSENTING STATEMENT

FEBRUARY 9, 1967

BY JONES, *Commissioner*:

On June 23, 1966, the Commission served its complaint on Procter & Gamble Company challenging its acquisition of the Folger Company as a violation of Section 7 of the Clayton Act.

The Commission's complaint charges in essence that the acquisition by Procter & Gamble of Folger is anticompetitive because it effects a "major structural change" in the regular and soluble coffee industries. The structural change is not the usual immediate increase in concentration associated with a horizontal merger. The acquisition was charged with having the effect of increasing the trend toward the domination of the two coffee industries by a few diversified national manufacturers (Procter & Gamble joins General Foods in entering this field) which sell low price, high turnover household consumer products through the grocery market. It is alleged that the replacement of Folger, a non-diversified regional company that was the dominant factor in its large regional market, by Procter, a large diversified national company, can be expected to alter substantially the existing competitive relationships among the large and small firms already in these two industries; to increase eventually the level of concentration through its own growth, by precipitating additional acquisitions, and by encouraging further withdrawals; and to raise barriers to entry which were already high.

The complaint further alleges that the conduct of firms in the industry can be expected to change significantly as Procter employs its substantial resources to advertise and otherwise promote its products, utilizes its ability to obtain valuable grocery store shelf space, concentrates the impact of its advertising and merchandising techniques on one or more of its products and on one or more selected sections of the country, and makes substantial expenditures for research and development. In addition, the sur-

vival of existing firms is made more difficult because Procter, propelling its own great power from the important base acquired, can achieve significant cost reductions in such areas as the buying of green coffee and packaging materials, the conducting of consumer and sales promotions, and the buying and placement of advertising.

The complaint sought divestiture of Folger in the belief that only divestiture can minimize the probability of the foreseen anticompetitive changes in conduct and structure created by this entry.

The consent order reaches only the periphery of the complaint. It allows Procter to keep four of the five acquired plants, thus perpetuating the major structural change caused by this merger. Instead of seeking divestiture, the order seeks to regulate, in a quite direct manner and for a five year period, certain aspects of the conduct of Procter—Procter's conduct of joint promotions involving coffee and its other products and Procter's ability to exact reductions in media rates because of the magnitude of its overall expenditures on advertising. The order also requires Procter to observe Section 2(a) of the Robinson-Patman Act and to obtain Commission approval of any future acquisition of a household consumer product company for a period of seven years and of any interest in a company manufacturing or selling coffee for a period of ten years.

The merger here charged by the complaint to be illegal is a product extension or conglomerate merger. The Commission has stated many times in public that corporate acquisitions will increasingly be of the conglomerate type. Since mergers of this type involve no immediate change in the level of concentration in the relevant market, their anticompetitive effect is not demonstrated by the more obvious and measureable changes in market shares associated with horizontal mergers. Instead the anticompetitive impact of these mergers, if any, turns on the elimination of potential competition, on changes in conduct which can be anticipated will occur as a result of the entry of the acquiring firm into the industry and on the subsequent structural changes which these conduct changes can be anticipated to produce in the future.

I do not believe that the Commission, having filed a complaint in which it had reason to believe that a challenged acquisition violated the law, should settle that complaint by consent unless the consent order adequately and fully removes the anticompetitive impact which the acquisition is believed to have engendered

and provides the relief which the Commission could reasonably anticipate a court would direct. Clearly in this case divestiture is the only remedy which will restore Folger to its former viable competitive existence and will eliminate Procter from the market as a substitute for Folger.

The law respecting the anticompetitive impact of conglomerate mergers has not yet been established. There is a great need to test and develop the case law in these areas. By its willingness to enter into consent orders and agreements, a majority of the Commission has prevented the development of case law dealing with such mergers that is so essential both to the law enforcement agency and to the businessman seeking to conform his conduct to the confines of the law. The Commission's acceptance of the requirement of prior approval for future acquisitions and reliance upon regulation of conduct by the order—apparently in place of divestiture—will not accomplish the objective of Section 7, which is designed to prevent undue concentration by mergers.¹

I believe that the coffee industry will be significantly less competitive seven years hence because of the majority's acquiescence in Procter's acquisition of Folger. There are strong reasons to believe that the level of competition that would have existed if this acquisition had not occurred would have been substantially greater than the level that will result from this acquisition. At least if the Commission was wrong in so believing in its issuance of the complaint, it should either dismiss the complaint or make its decision on the basis of a full and complete record which will document the effects, if any, of this acquisition on competition.

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 con-

¹ "The dominant theme pervading Congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy." *Brown Shoe v. United States*, 370 U.S. 313, 315.

stitute 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 The Procter & Gamble Company is a corporation organized, existing and doing business under the laws of the State of Ohio, with its office and principal place of business located at 301 East Sixth Street, Cincinnati, Ohio.

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, The Procter & Gamble Company ("Procter"), a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within five years from the date of service upon it of this Order, shall, unless the period of five years is extended by further order of the Commission on application of Procter, divest, absolutely and in good faith, to a purchaser or purchasers approved by the Federal Trade Commission, the coffee plant of The Folger Coffee Company, a subsidiary of Procter, located in Houston, Texas, and all assets, facilities and properties related to the Houston, Texas coffee plant, which were acquired by Procter as a result of the acquisition of the assets of J. A. Folger & Company, together with all machinery, buildings, improvements, and equipment which have been added to the Houston, Texas coffee plant since the acquisition and used in the production and sale of coffee together with a freeze dry unit now at the plant site but not in operation, if the purchaser desires to acquire this unit along with the plant.

II

It is further ordered, That none of the assets or properties, described in paragraph I of this Order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, Procter or any of Procter's subsidiary

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or affiliated corporations, or owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Procter, or to any purchaser who is not approved in advance by the Federal Trade Commission.

III

It is further ordered, That pending divestiture, Procter shall not make or permit any deterioration in the plant, machinery, buildings, equipment, or other property or assets of the Houston, Texas, coffee plant, other than ordinary wear and tear, which may impair present capacity of such plant unless such capacity is restored prior to divestiture.

IV

It is further ordered, That Procter, for a period of seven years from the date of service upon it of this Order, shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, the whole, or any part, of the stock or other share capital of any corporation engaged in commerce and in the manufacture, production, sale or distribution of any household consumer product or any assets valued in excess of \$25,000 used by such a corporation in the manufacture, production, sale or distribution of any household consumer product in the United States. A household consumer product is any product made for use or consumption in the home and generally sold through the grocery market as defined in the complaint.

V

It is further ordered, That Procter, for a period of ten years from the date of service upon it of this Order, shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, any interest in any organization engaged in growing, producing, importing, manufacturing, processing or selling green coffee, regular coffee, soluble coffee or other coffee products in the commerce of the United States or any assets of such organization used in such activities.

VI

It is further ordered, That Procter, for a period of five years

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from the date of service upon it of this Order, shall cease and desist from the acceptance of discounts or reductions in media rates of any kind on its purchase of advertising for regular coffee, soluble coffee or other coffee products in any media, other than discounts or reductions in rate resulting solely from Procter's purchases of advertising for regular coffee, soluble coffee or other coffee products.

VII

It is further ordered, That Procter, for a period of five years from the date of service upon it of this Order, shall cease and desist from initiating or conducting any type of promotion in which regular coffee, soluble coffee or other coffee product is promoted in conjunction with any of Procter's other products in the same promotion.

VIII

It is further ordered, That Procter, for a period of five years from the date of service upon it of this Order, shall cease and desist from granting or allowing any price discrimination, directly or indirectly, in or in connection with the sale or offering for sale of regular coffee, soluble coffee, or other coffee products to different purchasers unless any different price to a purchaser (a) makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such products are to such purchaser sold or delivered, or (b) is granted in good faith to meet an equally low price of a competing seller of such products.

IX

It is further ordered, That Procter, having by acquisition succeeded to the business of J. A. Folger & Company, shall accept the responsibilities and duties imposed on J. A. Folger & Company prior to the acquisition under the cease and desist order in Federal Trade Commission Docket No. 8094 [61 F.T.C. 1166] with respect to the offer for sale, sale or distribution of regular coffee, soluble coffee or other coffee products.

X

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 as well as natural persons.

XI

It is further ordered, That Procter 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 orders to cease and desist as set forth herein. Within such sixty (60) days and every six (6) months thereafter until complete divestiture of the Houston, Texas coffee plant and facilities is effected, Procter shall file a report in writing with the Commission, detailing its actions, plans and progress in complying with the divestiture provisions of this Order, including the name of every person who shall in writing have indicated to Procter a bona fide interest in purchasing said plant. On or before March 31 of each year for a period of ten years from the date of this Order, Procter shall report for that portion of the preceding year this Order is in effect: (a) any stock or share capital of any domestic concern purchased or acquired by Procter, directly or indirectly, and (b) any assets of any domestic concern valued in excess of \$100,000 purchased or acquired by Procter, directly or indirectly, except assets purchased or acquired in the normal course of business for use, processing or resale.

Commissioners Reilly and Jones dissenting.
