
IN THE MATTER OF
THE KROGER CO.

ORDER OF DISMISSAL, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT AND
SEC. 7 OF THE CLAYTON ACT

Docket 7464. Complaint, Apr. 1, 1959—Decision, Oct. 31, 1968

Order terminating Section 7 proceeding and dismissing complaint due to change of Commission's policy with respect to merger activity in the food distribution industry.

COMPLAINT ¹

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and Section 7 of the Clayton Act as approved October 15, 1914, and as amended and approved December 29, 1950 (U.S.C., Title 15, Section 18), and it

¹ Reported as amended by Commission's order of Aug. 10, 1966, by adding "1963 Market Basket, Los Angeles, California, including 56 food stores" to paragraph six.

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appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Kroger Co., hereinafter referred to as respondent, is a corporation organized in 1902 as The Kroger Grocery & Baking Co. under and by virtue of the laws of the State of Ohio. The present name, The Kroger Co., was adopted March 11, 1946. The principal office and place of business of the respondent is located at 35 East 7th Street, Cincinnati 2, Ohio.

PAR. 2. Respondent is engaged in the business of operating a chain of approximately 1,421 retail food stores in 20 States of the United States and sells a wide variety of merchandise, including a substantial number of items manufactured, processed and packaged under trademarks or brands owned or controlled by the respondent. The respondent owns or leases and operates bread and cracker bakeries, dairies, coffee roasting plants, and a general manufacturing plant for producing and packing candies, salad dressing, preserves, gelatin pudding, peanut butter, spices, coffee, extracts, and other grocery items. The respondent operates egg exchanges. In addition thereto, respondent owns jointly with Westinghouse Electric & Manufacturing Company a patented process for tenderizing meat, known as "Tenderay Process." The respondent maintains the Kroger Food Foundation, a technical organization, which tests the quality of products it purchases, develops new products, offers technical services to all departments of the respondent, including a housewife's advisory service.

Division headquarters, consisting of an office, distribution center and transportation unit, are maintained by respondent in the following cities, and a number of subwarehouses are operated in conjunction with these:

Little Rock, Arkansas	Cincinnati, Ohio
Atlanta, Georgia	Cleveland, Ohio
Carbondale, Illinois	Columbus, Ohio
Peoria, Illinois	Dayton, Ohio
Chicago, Illinois	Toledo, Ohio
Fort Wayne, Indiana	Pittsburgh, Pennsylvania
Indianapolis, Indiana	Memphis, Tennessee
Louisville, Kentucky	Nashville, Tennessee
Shreveport, Louisiana	Houston, Texas
Detroit, Michigan	Roanoke, Virginia
Grand Rapids, Michigan	Charleston, West Virginia
Kansas City, Missouri	Madison, Wisconsin
St. Louis, Missouri	Milwaukee, Wisconsin

Of the cities named above, respondent operates bakeries in Chicago, Cincinnati, Cleveland, Columbus, Detroit, Fort Wayne, Grand Rapids, Indianapolis, Louisville, Memphis, Roanoke, St. Louis, Houston, and Madison.

Coffee roasting plants of respondent are located at Cincinnati and St. Louis.

Dairies are operated by respondent in Cincinnati, Dayton, and Indianapolis.

Respondent operates meat distributing plants in Cincinnati, Detroit, Chicago, and Grand Rapids.

In a Cincinnati, Ohio, factory various food products are processed and packaged by respondent for sale to respondent's stores under the Kroger brand names. In addition, the respondent operates its own printing plant, and has one laundry.

Respondent operates a peanut plant at Oglethorpe, Georgia, an evaporated milk plant at Marion, Indiana, a central equipment depot at Cincinnati, Ohio, and egg exchanges at Wabash, Indiana, Hudson, Michigan, Portage and Albert Lea, Wisconsin. Respondent is engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 3. Respondent is one of the largest retail food chains in the United States and, as of December 28, 1957, ranked third in total sales volume among the food chains of this country. Respondent's net sales increased from approximately \$258,000,000 in 1940, to \$1,674,000,000 in 1957, an increase of approximately \$1,400,000,000, or over 500 percent.

PAR. 4. The food industry is the largest segment of the American economy. According to the 1954 Census of Business, there were 385,000 food stores of all types in the United States. As of 1954, 6,334 grocery stores had individual sales of one million dollars or more, and 16,466 stores reported sales figures ranging from \$300,000 to one million dollars each.

Concentration of grocery store sales in large corporate chains has been intensified in the United States through sustained programs of corporate acquisitions. Twenty percent of the grocery stores in the United States account for over seventy-two percent of the total grocery store sales in the country. From 1954 to 1957, some thirty-six corporations absorbed eighty-eight grocery chains and thereby acquired, during this period, over one and a half billion dollars in total sales.

PAR. 5. Beginning in 1908, the respondent initiated a policy of expansion by acquiring a large number of food retailers and other concerns engaged in the manufacture, processing and distribution

of food products.

As a result of its policy of expansion by acquisition, the respondent has purchased, in selected localities, retail grocery stores, numerous warehouse facilities, packing and processing plants, as well as other interests.

All of the acquired corporations, prior to and at the time of the acquisitions, were engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. Respondent's acquisitions include, among others, all or part of the capital stock or physical assets of the following corporations, which occurred in the years indicated:

1928

Hoosier Stores Corp., Fort Wayne, Indiana, including 73 stores.
Foltz Grocery & Baking Co., Cincinnati, Ohio, and Louisville, Kentucky, including 195 stores.
Eagle Grocery Co., Pittsburgh, Pennsylvania, including 82 stores.
C. Thomas Stores, Inc., Western Michigan, including 166 stores.
Universal Grocery Co., Madison, Wisconsin, including 75 stores.
Piggly-Wiggly Valley Co., Kentucky, Ohio, and Indiana, including 108 stores.
Middle States Stores Co., Cincinnati, and Dayton, Ohio, including 30 stores.
Columbus Piggly-Wiggly Co., Columbus, Ohio, including 31 stores.
Missouri-Illinois Stores, St. Louis, Missouri, including 150 stores.
Memphis Piggly-Wiggly Co., Memphis, Tennessee, including 58 stores.
Cox Stores, Inc., Little Rock, Arkansas, including 81 stores.
Piggly-Wiggly Ellis Co., Indianapolis, Indiana, including 4 stores.
Three Rivers Grocery Co., Fort Wayne, Indiana.
Piggly-Wiggly Johnson Co., Michigan, including 26 stores.
Heilman Baking Co., Madison, Wisconsin.
Fly & Hobson Co., Memphis, Tennessee, etc., including 115 stores.
Consumers Sanitary Coffee & Butter Stores, Chicago, Illinois, etc., including 297 stores.
Piggly-Wiggly Corp., including practically entire capital stock.
Dunn Mercantile Co., Wichita, Kansas.

1929

H. W. Bracy & Co., Herrin, Illinois, including 41 stores.
McCarty Wholesale Grocery Co., Inc., Kansas City, Missouri.
Milgram Stores Inc., Kansas City, Missouri, including 34 stores.
Piggly-Wiggly Haynes, Inc., Columbia, Missouri, including 2 stores.
Richards Bros., Columbia, Missouri, including 8 stores.
Roanoke (Va.) Grocery & Milling Co., Jamison Stores, Inc., Virginia, West Virginia, Tennessee, and North Carolina, including 90 stores.
Thrift Stores System, Oklahoma City, Oklahoma.
Piggly-Wiggly Lewis Co., Oklahoma City, Oklahoma.
Franklin Piggly-Wiggly, Tulsa, Oklahoma.
Piggly-Wiggly Irwin Co., Memphis, Tennessee.

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Patterson Wholesale Grocery Co.

Piggly-Wiggly Roanoke Co.

1930

G. Batchelor Hall Co., which was reorganized into Wesco Foods Co., a California corporation organized for the purpose of purchasing produce and other commodities as a subsidiary of the respondent.

1931

Clarence Saunders' Stores, Inc., Memphis, Tennessee, including 26 stores.

1938

United States Stores Corp., Pittsburgh, Pennsylvania, including 9 stores.

1939

Oakley Chain, in and around Terre Haute, Indiana, including 58 stores.

1941

Model Grocery & Baking Co., Springfield, Missouri, including 15 stores.

1943

Manufacturers & Merchants Indemnity Co., an Ohio corporation, now Selective Insurance Co.

PAR. 6. Subsequent to 1950, respondent acquired the following corporations and other concerns engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act:

1955

Henke & Pillot, Inc., Houston, Texas, including 27 stores.

Krambo Food Stores, Inc., in and around Milwaukee, Wisconsin, including 27 supermarkets.

Childs Food Stores, Inc., East Texas and West Louisiana and Arkansas, including 28 supermarkets.

1956

Big Chain Stores, Inc., Shreveport, Louisiana, including 7 stores.

1958

Wyatt Food Stores, Dallas, Texas, including 43 supermarkets.

1963

Market Basket, Los Angeles, California, including 56 food stores.

PAR. 7. The effect of the aforesaid acquisitions by the respondent, individually and collectively, through increased concentration and otherwise, may be substantially to lessen competition or tend to create a monopoly in the processing, manufacturing, purchasing and distributing of products sold in grocery stores and in the

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sale of merchandise in retail grocery stores, within the meaning of Section 7 of the Clayton Act.

PAR. 8. The foregoing acquisitions which occurred prior to December 29, 1950, as alleged and heretofore set forth, constitute a violation of Section 7 of the Clayton Act, as approved October 15, 1914.

PAR. 9. The foregoing acquisitions which occurred after December 29, 1950, as alleged and set forth hereinabove, constitute a violation of Section 7 of the Clayton Act, as amended and approved December 29, 1950.

PAR. 10. The acquisitions hereinbefore described, tending substantially to lessen competition or to create a monopoly, are to the prejudice and injury of the public and constitute an unfair method of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45).

PAR. 11. The foregoing acquisitions, acts and practices, as hereinbefore alleged and set forth, constitute a violation of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45).

ORDER TERMINATING PROCEEDING

The hearing examiner, on February 16, 1967, certified to the Commission two motions filed by respondent requesting that the complaint be dismissed and a motion by respondent requesting that a subpoena duces tecum be quashed.

By order issued on March 1, 1967 [71 F.T.C. 1647], the Commission remanded the matter to the examiner with the directions that he explore the possibilities of a settlement. The examiner has reported to the Commission that the proposals submitted by the parties contain fundamental differences and that no useful purpose would be served in further discussions.

Upon review of this matter, the Commission has determined that the public interest does not warrant further proceedings. This determination is based on the longevity of the case, the fact that evidentiary hearings would have to be further delayed as a result of an additional acquisition challenged in the amended complaint, and the fact that the Commission has announced its enforcement policy with respect to mergers in the food distribution industries. In implementing this policy, the Commission is now requiring large food retailers, including respondent, to file special reports sixty days in advance of any merger activity in the food distribution industry. Accordingly, this proceeding will

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be terminated without adjudication.

Since this decision has been made by the Commission in the exercise of its administrative discretion, the motions certified by the examiner are moot.

For the reasons stated herein:

It is ordered, That this proceeding be, and it hereby is, terminated.

Commissioner MacIntyre not participating.
