
IN THE MATTER OF

GENERAL MILLS, INC.

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

Docket C-1501. Complaint, Mar. 11, 1969—Decision, Mar. 11, 1969

Consent order prohibiting a large food processing corporation headquartered in Minneapolis, Minn., from acquiring any manufacturer or wholesaler of potato or corn chips and other food products for the next 10 years without prior approval of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that

General Mills, Inc. has acquired the assets of Morton Foods, Inc., a corporation, and Tom Huston Peanut Company, a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18), hereby 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) "Potato chips," a highly perishable and fragile food processed primarily from potatoes.

(b) "Corn chips," a highly perishable and fragile food processed primarily from corn.

II

Respondent

2. Respondent, General Mills, Inc. ("General Mills"), is a corporation organized and existing under the laws of the State of Delaware, with its offices and principal place of business at 9200 Wayzata Boulevard, Minneapolis, Minnesota.

3. Respondent was formed in 1928 for the purpose of acquiring several flour milling companies. Since that time, acquisitions and development of new products have played essential roles in the company's growth. This is evidenced by the fact that new products, either developed by General Mills or acquired by them within the past five years, accounted for about one-third of respondent's total sales in 1966. Other factors in the company's growth have been internal expansion and diversification.

4. Respondent possesses the ability to develop and establish new products. Indicative of this has been the successful introduction of "Bugles," "Whistles" and "Daisy*s" into the Nation's snack foods market by the company's Grocery Products Division. These products were introduced into the market on a limited basis in 1965, but it was not until the latter part of 1966 that they were distributed on a national basis. Sales of these products amounted to about \$21 million in the first six months of 1967 or, about 6.9% of national snack foods sales.

At the same time, respondent has entered into the production and sale of additional food and snack food products by acquiring assets and stock of existing producers of said products. Among such acquisitions in recent years have been the following:

Year	Company	Product or activity
1964	Morton Foods, Inc.	Potato chips, corn chips and other snack foods.
1966	Tom Huston Peanut Co.	Potato chips, corn chips, peanuts, confectionery products and other snack foods.
1966	Toronto Macaroni and Imported Foods Limited [Canada].	Dough and food products.
1966-67	Smith's Potato Crisps [England].	Potato chips and other snacks.
1967	Cherry-Levis Food Products Corp.	Sausages and pickled meat products.
1967	Productor de Trigo S.A. [Mexico]	Cookies, crackers, pasta products and flour.

5. Respondent, directly and through various completely owned subsidiary corporations, is one of the largest flour milling companies in the United States, and is a leading producer of commercial flour, and packaged consumer foods. It ranks among the three largest companies in sales of breakfast cereals, is among the leaders in sales of cake mixes and other packaged convenience foods and is first by a considerable margin in sales of family flour.

Among its better known trade names and consumer products are the following:

"Betty Crocker" Bake and Other Food Products—

Cake Mixes	Muffin Mixes
Pie Mixes	"Masted Potato Buds"
Brownie Mixes	Noodles Romanoff
Cookie Mixes	Pancake Mixes
Frosting Mixes	Gingerbread Mix
Pound Cake	"SAFF-O-LIFE" Safflower Oil

"Bisquick" Mix—

Snacks—

"Bugles"	"Buttons"
"Whistles"	"Bows"
"Daisys"	

Breakfast Cereals—

"Wheaties"	"Wheat Stax"
"Cheerios"	"Lucky Charms"
"Corn Kix"	"Country Corn Flakes"
"Trix"	"Wheat Hearts"
"Sugar Jets"	"Cocoa Puffs"
"Frosty O's"	"Goodness Pack"
"Tutti-Frutti Twinkles"	"Wackies"
"Total"	

Flour—

"Gold Medal"

"Softasilk"

"Purasnow"

"Sperry Drifted Snow"

"White Deer"

"Red Band"

"La Pina"

"Red Star"

"*Toastwiches*"—refrigerated, prepared, fruit-filled sandwiches, designed for toaster heating.

Oat Products—

"Purity" Oatmeal

"Chief" Oatflakes

"Purity" Oat Flour

Sponges—

"O-Cel-O"

"Hired Hand"

"Fast Back"

6. Respondent markets its packaged consumer foods nationwide through its own sales organization, supported by intensive advertising and other promotional marketing activities. These products are distributed, in most cases directly, to chain stores, co-operatives, voluntary grocery chains and other wholesale outlets.

7. Respondent also manufactures a number of bakery mixes and other items which are marketed to members of the food service trade such as wheat gluten, wheat starch, guar and locust bean gums, wheat germ oil, spice base and multi-vitamin enrichment compounds. It also engages in grain merchandising and manufactures and markets a number of ingredient products for the dairy and other segments of the food processing industry. At the same time it operates facilities to supply its own flour requirements and for sale of flour to commercial users.

8. Respondent operates eight flour mills, having an aggregate daily capacity of approximately 56,300 hundred-weights of flour; a food service mix plant with a daily capacity of about 160,000 pounds; six cereal prepared mix and other packaged consumer food plants having an aggregate daily capacity of about 5,250,000 pounds; six plants for the manufacture of specialty chemical products with total floor space of about 420,000 square feet; five terminal grain elevators; one flour packaging plant and a number of warehouses. As of June 15, 1967, respondent employed approximately 10,100 employees.

9. For the year ended May 31, 1963, respondent and its subsidiaries' total assets were \$266,693,648, sales totaled \$523,946,000, and net earnings were \$14,912,196. For the year ended

May 31, 1967, respondent and its subsidiaries' total assets were \$366,841,000, sales \$602,536,000 and net earnings \$28,456,000. During this same period the company's consumer foods sales increased from about \$288 million to where it now exceeds \$458 million in annual sales. Further, there was a relative change in General Mills' product mix as consumer foods' sales increased from 55% to 76% of total company sales during the 1963 to 1967 period.

10. Prior to the acquisitions set out in this Complaint, respondent was engaged in internal research and development of snack foods such as potato chips. Further, General Mills is now test-marketing a new potato chip product under the name of "Chipos."

11. At all times relevant, herein, respondent sold and shipped its products in interstate commerce throughout the United States; hence, respondent was, and is, engaged in commerce as "commerce" is defined in the Clayton Act.

III

Morton Foods Inc.

12. Prior to February 28, 1964, Morton Foods, Inc. ("Morton"), was a corporation organized and existing under the laws of the State of Texas, with its offices and principal place of business at 6333 Denton Drive, Dallas, Texas.

13. Prior to February 28, 1964, Morton was, and for many years had been, engaged in manufacturing, processing, packaging, distributing and selling over 300 food and related items, its principal products being potato chips, corn chips, pickles, salad dressing and tea.

14. At the time of its acquisition by respondent, the products of Morton were distributed through 450 route salesmen and independent distributors to grocery stores and other retail and institutional outlets in Texas and Oklahoma and portions of Arkansas, Missouri, Louisiana, and New Mexico.

15. Prior to its acquisition, Morton planned to obtain nationwide distribution of its corn chips through a network of franchises.

16. Prior to February 28, 1964, Morton operated potato chip manufacturing plants in Dallas, Ft. Worth, Lubbock, El Paso and Corpus Christi, Texas, Albuquerque, New Mexico, and Tulsa, Oklahoma, and sales warehouses in Amarillo and Houston, Texas. The manufacture of corn chips took place in the Dallas plant and

the processing of pickles in Garland, Texas. At the time of the acquisition Morton Foods, Inc., had 850 employees.

17. As of December 31, 1963, Morton had total assets of \$14,092,546, net sales of \$24,568,581 and net income of \$470,889. In 1963, its sales of potato chips were \$8,990,000; sales of corn chips were \$1,369,000.

18. In 1963, Morton was among the ten largest potato chip and corn chip producers in the nation. In its market area, in 1967, it was the second leading seller of potato chips with 26% of the market and second largest seller of corn chips with 3.8% of the market.

19. At all times relevant herein, Morton sold and shipped its potato chips and corn chips in interstate commerce; hence, Morton was, and is, engaged in commerce, as "commerce" is defined in the Clayton Act.

IV

Tom Huston Peanut Company

20. Prior to August 27, 1966, Tom Huston Peanut Company ("Tom Huston") was a corporation organized and existing under the laws of the State of Georgia, with its offices and principal place of business at 900-8th Street, Columbus, Georgia.

21. Prior to August 27, 1966, Tom Huston was, and for many years had been, engaged in the manufacture, processing, packaging and sale of some 300 food items, its principal products being potato chips, corn chips, confectionery products, and cracker sandwiches.

22. At the time of the acquisition, products of Tom Huston were distributed through some 450 independent distributors to grocery stores and other retail and institutional outlets throughout the United States with 83% of its sales being made in Texas, Oklahoma, Arkansas, Louisiana, Missouri, Mississippi, Alabama, Tennessee, Kentucky, Georgia, Florida, North Carolina, South Carolina, Virginia, Delaware and Maryland.

23. Prior to August 27, 1966, Tom Huston operated potato chip and corn chip manufacturing plants in Corsicana, Texas, Knoxville, Tennessee, and Salem, Virginia and confectionery and cracker sandwich manufacturing and processing plants in Columbus and Macon, Georgia. At the time of the acquisition, Tom Huston had 1,500 employees.

24. As of August 28, 1965, Tom Huston had total assets of \$24,286,521, net sales of \$43,283,872 and net income of \$3,821,490.

In 1965, its sales of potato chips were \$8,156,704; and sales of corn chips totaled \$948,314.

25. At the time of its acquisition, Tom Huston was among the ten largest potato chip and corn chip producers in the nation and was a substantial seller of potato chips and corn chips in its market area.

26. At all times relevant herein, Tom Huston sold and shipped its potato chips and corn chips in interstate commerce; hence, Tom Huston was, and is, engaged in commerce as "commerce" is defined in the Clayton Act.

V

Trade and Commerce

27. The broad lines of commerce primarily relevant to the Tom Huston and Morton acquisitions are the manufacture, distribution and sale of potato chips and corn chips.

28. Sales of potato chips and corn chips are substantial and are increasing at an annual rate of about 10%. Between 1958 and 1963 inclusive, manufacturers' sales of potato chips increased from \$263,326,000 to \$355,016,000 and corn chips increased from \$30,980,000 to \$63,299,000.

29. The marketing of potato chips and corn chips is highly susceptible to product differentiation through advertising, promotions and merchandising, and acceptance of these products by retailers is conditioned to a large extent on promotional support of this nature. In 1966, General Mills spent a total of \$47,751,273 on advertising all of its products in major media where it ranked fifteenth among all users and second among food companies.

30. Prior to 1955, the production of potato chips and corn chips took place in fragmented industries comprised of closely held single plant, single product companies which distributed their products regionally or locally through driver salesmen and independent multi-product distributors.

31. Between 1955 and the present a series of acquisitions by diversified national companies, primarily food concerns, has taken place in the potato chip and corn chip manufacture and distribution industries transforming their structure from one dominated by independent companies to one dominated by these diversified national food concerns. Since 1955, these acquisitions and mergers, as well as liquidations, have significantly reduced the number of competitors in these industries and disproportion-

ately increased concentration of production and sales in a small number of diversified national food concerns.

32. Whereas, prior to 1955, only one diversified national food concern was among the ten largest manufacturers of potato chips or corn chips, today, the ten largest potato chip producers and all but two of the ten largest corn chip producers are diversified national corporations. In this regard acquisitions were the most significant factor accounting for the present position of all but one of the large concerns manufacturing, distributing and/or selling potato chips and all of the manufacturers, distributors and/or sellers of corn chips. Further, respondent's acquisitions of Morton and Tom Huston have substantially increased this trend.

33. Similarly, more than fifty percent (50%) of the production and sale of potato chips and corn chips is concentrated in a dozen diversified national food concerns.

34. In 1957, the eight largest companies' combined share amounted to 44.0% of the potato chip market and 92.5% of the corn chip market. By 1961, the eight largest companies' combined share, most of whom were now diversified national companies, amounted to 51.9% of the potato chip market and 95.7% of the corn chip market.

35. Prior to and at the time of the acquisitions, Morton and respondent were substantial potential competitors and Tom Huston and respondent were substantial actual and potential competitors in the sale of potato chips and corn chips within the respective market areas served by Morton and Tom Huston and throughout the United States.

36. As a result of respondent's acquisition of Morton and Tom Huston, respondent is now one of the largest sellers of potato chips and corn chips in the United States.

37. The geographical markets (section of the country) relevant hereto are the United States as a whole and market areas and parts thereof in which General Mills, Morton and Huston did business.

VI

Violations of Section 7 of the Clayton Act

38. On or about February 28, 1964, respondent acquired substantially all of the assets and business of Morton in exchange for 512,975 shares of General Mills common stock having a market value of \$19.4 million.

39. On or about August 27, 1966, respondent acquired substantially all of the assets and business of Tom Huston in exchange for 1,644,605 shares of General Mills cumulative convertible preference stock having a market value of \$80.7 million.

VII

Effects of Violations Charged

40. The effect of respondent's acquisitions of Morton and Tom Huston has been or may be, substantially to lessen competition or tend to create a monopoly in the manufacture, distribution and sale of potato chips and corn chips in the United States, or sections thereof, thereby violating Section 7 of the Clayton Act, as amended, in the following ways, among others:

(1) Actual or potential competition between respondent and each acquired corporation in the manufacture, distribution and sale of potato chips, and corn chips has been eliminated;

(2) Potential competition by respondent as a manufacturer, distributor or seller of potato chips and corn chips has been, or may be lessened or eliminated;

(3) Each of the acquired corporations has been eliminated as a substantial independent competitive factor in the manufacture, distribution and sale of potato chips and corn chips;

(4) Each of the acquired corporations has been eliminated as an independent purchaser and user of raw materials, supplies and equipment used in the manufacture, distribution and sale of potato chips and corn chips;

(5) Former independent distributors of the acquired companies have lost independent sources of supply and may be foreclosed from outlets for potato chips and corn chips;

(6) Respondent's replacement of Morton and Tom Huston in the manufacture and marketing of potato chips and corn chips constitute significant elements in a series of major structural changes which may alter substantially the existing competitive relations between large and small firms in these industries;

(7) Industrywide concentration in the manufacture, distribution and sale of potato chips and corn chips has been substantially increased to the detriment of actual and potential competition;

(8) Previously existing industrywide concentration in the manufacture, distribution and sale of potato chips and corn chips has been, or may be, further accelerated in that respon-

dent's acquisitions may precipitate additional acquisitions, mergers and liquidations of other independent manufacturers;

(9) Entry into the potato chip and corn chip industries may be discouraged or inhibited;

(10) Respondent has potentially decisive competitive advantage over many of its competitors and has the financial resources and economic power to dominate or tend to monopolize the manufacture, distribution and sale of potato chips and corn chips in the sections of the country heretofore identified through its capacity to bargain for materials; absorb high raw material costs in times of shortage; effect product differentiation and demand through advertising, promotions and merchandising; and to obtain full coverage of outlets and prime shelf space.

41. Separately and together the acquisitions of Tom Huston and Morton by respondent, as alleged above, constitute violations of Section 7 of the Clayton Act (15 U.S.C. Section 18) as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in

further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent General Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 9200 Wayzata Boulevard, Minneapolis, Minnesota.

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 a period of ten (10) years from the date this order becomes final, respondent, General Mills, Inc., a corporation, shall cease and desist from entering, without prior approval of the Federal Trade Commission, into any arrangement with another party, corporate or noncorporate as a result of which respondent obtains, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or other share capital, or the assets (other than products purchased or sold in the ordinary course of business), of any concern, corporate or noncorporate (other than respondent's distributors) engaged at the time of such acquisition in the United States in the manufacture or wholesale distribution of wheat or oat flour; ready-to-eat, or hot farina-type, breakfast cereals; hot casseroles or flour-based baking and dessert mixes; potato chips; corn chips; cereal-based or corn-based snacks of the "Bugles," "Whistles" and "Daisy*s" type; peanuts and cashews; salad dressing; tea; pickles; peanut, hard and moulded starch-processed candies; cracker sandwiches with white sugar or butter-based filling; crackers, peanut or cheese filled; cellulose sponges; ready-to-eat popcorn; porkskins; dry condiments; powdered soft drinks and prepared sandwiches of the fruit filled "Toastwiches" type, designed for toaster heating. As used in this paragraph, the acquisition of assets includes any arrangement by respondent with any other party, pursuant to which such other party discontinues manufacturing any of said products under a brand name or label owned by such other party and

thereafter distributes any of said products under any of respondent's brand names or labels.

II

It is further ordered, That within sixty (60) days after this order becomes final, and annually thereafter, respondent shall furnish to the Federal Trade Commission a verified written report setting forth the manner and form in which it intends to comply, is complying, or has complied with paragraph I of this order.

III

It is further ordered, That in the event the Commission issues any order or rule which is less restrictive than the provisions of paragraph I of this order, in any proceeding involving the merger or acquisition of a snack food or milling or cereal company, then the Commission shall, upon the application of General Mills reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraph into conformity with the less stringent restrictions imposed upon respondent's competitors.

IV

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondent herein 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 this order.
