

IN THE MATTER OF
FOOD TOWN STORES, INC., ET AL.

ORDER DISMISSING COMPLAINT IN REGARD TO ALLEGED VIOLATION
OF SECTION 7 OF THE CLAYTON ACT AND SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9087. Complaint, Aug. 4, 1976 — Order, Sept. 24, 1976

Order dismissing complaint issued against Food Town Stores, Inc., and Lowe's Food Stores, Inc., two North Carolina retail food stores for alleged violations of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act. The complaint has been dismissed because the proposed merger between the two respondents which gave rise to the complaint, has been abandoned.

Appearances

For the Commission: *Ronald A. Bloch* and *Joseph Tasker, Jr.*

For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents have entered into an agreement which, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45) and that said agreement therefore constitutes a violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended (15 U.S.C. §45(a)(1)), and having found that a proceeding with respect to said violation is in the public interest, issues its complaint stating its charges as follows:

DEFINITION

PARAGRAPH 1. For the purposes of this complaint, the following definition shall apply: "retail food stores" shall be defined as retail food establishments primarily engaged in selling food for home preparation and consumption.

FOOD TOWN STORES, INC.

PAR. 2. Respondent Food Town Stores, Inc., (Food Town) is a North Carolina corporation with its principal office at Harrison Road, Salisbury, North Carolina.

PAR. 3. In 1975, Food Town operated twenty-nine (29) retail food stores in North Carolina, which were located in the following eleven

Complaint

88 F.T.C.

contiguous counties in the west-central region of that State: Cabarrus, Davidson, Forsyth, Gaston, Guilford, Mecklenburg, Rowan, Stanley, Surry, Union and Yadkin. In 1976, Food Town opened one retail food store in Iredell County, North Carolina. In 1972, Food Town operated seventeen (17) retail food stores in ten (10) counties in west-central North Carolina.

PAR. 4. Food Town's total retail sales in 1975 were approximately \$130,406,000. In 1972, Food Town's total retail sales were approximately \$49,253,000.

PAR. 5. At all times relevant herein, Food Town has engaged and is engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, and Section 4 of the Federal Trade Commission Act, as amended.

LOWE'S FOOD STORES, INC.

PAR. 6. Respondent Lowe's Food Stores, Inc., (Lowe's) is a North Carolina corporation with its principal office at Wilkesboro, North Carolina 28697.

PAR. 7. In 1975, Lowe's operated thirty-five retail food stores which were located in the following eighteen-county contiguous region in North Carolina: Alexander, Ashe, Burke, Caldwell, Catawba, Cleveland, Davidson, Davie, Forsyth, Iredell, Lincoln, McDowell, Mitchell, Rowan, Surry, Watauga, Wilkes and Yadkin. In 1972, Lowe's operated nineteen (19) retail food stores which were located in eleven (11) counties in west-central North Carolina.

PAR. 8. Lowe's total retail sales in 1975 were approximately \$79,771,000. For the fiscal year ending September 30, 1972, Lowe's had total retail sales of approximately \$34,739,000.

PAR. 9. At all times relevant herein, Lowe's has engaged and is engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, and Section 4 of the Federal Trade Commission Act, as amended.

MERGER AGREEMENT

PAR. 10. On or about April 30, 1976, Food Town and Lowe's entered into an "Agreement and Plan of Merger" under the terms of which Lowe's and Food Town agreed to merge into a single corporation pursuant to the provisions of the North Carolina Business Corporation Act. The agreement provides, *inter alia*, that Food Town will be the surviving corporation, and that the Lowe's shareholders will receive shares of Food Town in exchange for their Lowe's shares. The practical

result of the agreement, if consummated, would be the acquisition of Lowe's by Food Town.

TRADE AND COMMERCE

Relevant Product Market

PAR. 11. The relevant product market is retail food store sales.

PAR. 12. Concentration in the relevant product market is high in each of the relevant geographic markets alleged below.

Relevant Geographic Market

Actual Competition

PAR. 13. The relevant geographic markets in which actual competition exists are cities or town(s) in North Carolina and their trading areas in which Food Town and Lowe's both operate retail food stores, including but not limited to Winston-Salem, Mount Airy, Jonesville, Kannapolis, Lexington and Statesville.

PAR. 14. At the time Food Town and Lowe's entered into the agreement described in Paragraph 10 herein, respondents both operated retail food stores in the following cities or towns:

<i>City/Town</i>	<i>Food Town</i>	<i>Lowe's</i>
<i>Winston-Salem</i>	<i>3</i>	<i>3</i>
<i>Mount Airy</i>	<i>2</i>	<i>2</i>
<i>Jonesville</i>	<i>1</i>	<i>1</i>
<i>Kannapolis</i>	<i>2</i>	<i>1</i>
<i>Lexington</i>	<i>1</i>	<i>1</i>

PAR. 15. During the period 1972-1975, Lowe's opened one retail food store in Lexington, three retail food stores in Winston-Salem and one retail food store in Kannapolis. At the time Lowe's commenced operating these stores, Food Town operated retail food stores in those cities or town, but Lowe's previously had not operated retail food stores therein. In addition, during this period, Lowe's opened a retail food store in Mount Airy, in which, at the time, both Lowe's and Food Town operated retail food stores.

PAR. 16. In 1976, Food Town commenced operation of a retail food store in Statesville, North Carolina, in which town Lowe's was operating two retail food stores.

PAR. 17. Food Town and Lowe's have for some time been and are now direct and substantial competitors in the relevant product market in each of the geographic areas described in Paragraphs 13-16 herein.

Potential Competition

PAR. 18. The relevant geographic markets in which potential competition exists are: (a) the trading areas within the eleven county contiguous region described in Paragraph 3, and (b) the trading areas within the eighteen county contiguous region described in Paragraph 7.

PAR. 19. Food Town is an actual and potential entrant into Lowe's trading areas, as described in Paragraph 18(b), herein.

PAR. 20. Lowe's is an actual and potential entrant into Food Town's trading areas, as described in Paragraph 18(a), herein.

PAR. 21. Barriers to entry into the retail food store business in the relevant geographic markets alleged in Paragraph 18 are high.

EFFECTS OF THE MERGER

PAR. 22. The effects of the proposed merger set forth in Paragraph 10 may be substantially to lessen competition or tend to create a monopoly in the relevant markets, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), and the acquisition constitutes an unfair method of competition and an unfair act or practice within the meaning of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. §45) in the following ways among others:

a. the elimination of actual competition between Food Town and Lowe's in the North Carolina cities or towns of Winston-Salem, Mount Airy, Jonesville, Kannapolis, Lexington and Statesville, and their trading areas; (b) increased concentration in the retail food store business in each of the areas described in (a) above; (c) the elimination of potential competition in the markets described in Paragraph 18; (d) increased barriers to entry into the retail food store business in some or all of the relevant geographic markets herein alleged.

VIOLATION CHARGED

PAR. 23. The merger between Food Town and Lowe's, if consummated, would for the reasons set forth herein constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

PAR. 24. By entering into the agreement giving rise to the violation described in Paragraph 23, herein, Food Town and Lowe's have violated Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

ORDER DISMISSING COMPLAINT

The administrative law judge has certified a motion filed by

435

Order

complaint counsel and respondents that the complaint be dismissed on the ground that the proposed merger challenged in the complaint has been abandoned. Upon consideration of the motion and the papers filed therewith,

It is ordered, That the complaint be, and it hereby is, dismissed. Commissioner Dole not participating.

Complaint

88 F.T.C.

IN THE MATTER OF

GIFFORD-HILL & COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket 8989. Complaint, Aug. 7, 1976 — Decision, Sept. 28, 1976

Consent order requiring a Dallas, Tex., producer and seller of construction material, among other things, to divest itself of the stock assets and capital stock of three acquired companies; Southern Equipment Corporation, Becker Sand & Gravel Company, and Concrete Supply Company, within one (1) year of the effective date of this order. Further, respondent is prohibited from acquiring any company engaged in the sale of construction aggregates within a specified radius of respondent's North Carolina plant, for a period of ten (10) years without prior F.T.C. approval.

Appearances

For the Commission: *Paul N. Kane* and *Paul T. Breitstein*.

For the respondent: *John H. Schafer*, *Covington & Burling*, Washington, D.C. *Merlyn D. Sampels*, *Worsham, Forsythe & Sampels*, Dallas, Tex.

COMPLAINT

The Federal Trade Commission having reason to believe that Gifford-Hill & Company, Inc., a corporation, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45) through the acquisition of the capital stock or assets of Concrete Materials, Inc., a corporation; Southern Equipment Corporation, a corporation; H. L. Coble Construction Company, a corporation; Becker Sand & Gravel Company, a corporation; and capital stock of Concrete Supply Co., a corporation, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to the provisions of Section 11 of the aforesaid Clayton Act (15 U.S.C. §21) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45) stating its charges as follows:

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DEFINITIONS

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