

IN THE MATTER OF
LANCASTER COLONY CORPORATION, ET AL.

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

Docket 9101. Complaint, June 17, 1977 — Decision, Feb. 1, 1978

This consent order, among other things, requires a Columbus, Ohio manufacturer of machine-made glassware, and a Montvale, N.J. firm, similarly engaged, to present the Commission with evidence that their acquisition agreement has been terminated, and to return to each other all exchanged confidential documents. Further, during periods set forth in the order, these firms are required to provide the Commission with prescribed advance notice of any intention to acquire a machine-made glassware business, and refrain from consummating any such transaction, pending final Commission decision.

Appearances

For the Commission: *Peter E. Greene, Brian H. Siegel, Edward S. Atkinson, Jr., David J. Saylor and Alfred F. Dougherty.*

For the respondents: *Richard R. Murphey, Jr., Dunbar, Kiengle & Murphey, Columbus, Ohio and Ralph W. Brenner, Montgomery, McCracken, Walker & Rhoads, Philadelphia, Pa. for Lancaster Colony Corp. Edward Wolfe, White & Case, New York City for Federal Paper Board Company Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into an acquisition agreement which, if consummated, would violate 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, that said agreement already constitutes a violation of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b), of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I

DEFINITION

1. For the purpose of this complaint, the following definition

shall apply: "Machine-made glassware" means all moderately priced soda-lime glass beverageware, tableware, food preparation glassware and novelty and ornamental glassware items produced by machine and employed in everyday use.

II

Federal Paper Board Company, Inc.

2. Federal Paper Board Company, Inc. (Federal Paper) is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 75 Chestnut Ridge Road, Montvale, New Jersey.

3. Federal Paper through its unincorporated Federal Glass Company division (F.G.D.) produces machine-made glassware and sells said machine-made glassware throughout the United States.

4. In its fiscal year ended January 1, 1977, Federal Paper had net sales of approximately \$393,580,000, and net income of approximately \$22,589,000; F.G.D. had net sales of approximately \$50,000,000 and income before allocation for taxes and corporate overhead of approximately \$4,000,000.

5. F.G.D. is the third largest manufacturer of machine-made glassware in the United States.

6. F.G.D. is now and for many years has been a member of the American Glassware Association, which is a trade association made up of the major domestic manufacturers of machine-made glassware.

III

LANCASTER COLONY CORPORATION

7. Lancaster Colony Corporation (Lancaster Colony) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 37 West Broad St., Columbus, Ohio.

8. Lancaster Colony, through its subsidiary Indiana Glass Company, an Indiana corporation, produces machine-made glassware, and sells said machine-made glassware throughout the United States. Lancaster Colony also produces machine-made glassware through its subsidiary Lancaster Glass Corporation, and sells said machine-made glassware throughout the United States.

9. In its fiscal year ended June 30, 1976, Lancaster Colony had sales of approximately \$174,500,000 and net income of approximately \$8,236,000. Indiana Glass Company had sales of machine-made

113

Complaint

glassware of approximately \$36,488,445, and Lancaster Glass Company had sales of machine-made glassware of approximately \$382,000.

10. Indiana Glass Company is the fifth largest manufacturer of machine-made glassware in the United States.

11. Indiana Glass Company is and for many years has been a member of the American Glassware Association, which is a trade association made up of the major domestic manufacturers of machine-made glassware.

IV

JURISDICTION

12. At all times relevant herein Federal Paper and Lancaster Colony have been engaged in the manufacture and sale of machine-made glassware in interstate commerce and are engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

V

THE ACQUISITION AGREEMENT

13. On or about March 4, 1977 Federal Paper and Lancaster Colony agreed in principle to the acquisition by Lancaster Colony of all F.G.D. assets of Federal Paper. The proposed purchase agreement provides, *inter alia*, for the sale of the F.G.D. assets of Federal Paper in exchange for approximately \$45,000,000.

VI

TRADE AND COMMERCE

14. Relevant lines of commerce are the manufacture and sale of machine-made glassware and submarkets thereof.

15. A relevant section of the country or geographic market is the entire United States.

16. The United States machine-made glassware market is highly concentrated with the combined market share of the four largest manufacturers estimated to be approximately 70 percent.

17. Barriers to entry into the manufacture of machine-made glassware and submarkets thereof are substantial.

VII

ACTUAL COMPETITION

18. Federal Paper and Lancaster Colony are and have been for many years actual competitors of each other in the manufacture and sale of machine-made glassware and submarkets thereof, and actual competitors of others engaged in the manufacture and sale of machine-made glassware and submarkets thereof throughout the United States.

VIII

EFFECTS

19. The effect of the proposed acquisition may be to substantially lessen competition or tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, or Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) actual competition between Federal Paper and Lancaster Colony in the manufacture and sale of machine-made glassware and submarkets thereof will be eliminated;

(b) actual competition between competitors generally in the manufacture and sale of machine-made glassware and submarkets thereof may be lessened;

(c) Federal Paper will be eliminated as an actual substantial independent competitor in the manufacture and sale of machine-made glassware and submarkets thereof;

(d) concentration in the manufacture and sale of machine-made glassware and submarkets thereof will be increased and possibilities for eventual deconcentration may be diminished;

(e) mergers or acquisitions between other machine-made glassware manufacturers may be fostered, thus causing a further substantial lessening of competition and tendency toward monopoly in the relevant markets.

IX

VIOLATIONS CHARGED

20. The proposed acquisition by Lancaster Colony of the F.G.D. assets of Federal Paper (if consummated), the proposed Purchase Agreement between Lancaster Colony and Federal Paper (if executed), and the agreement in principle between Lancaster Colony and Federal Paper, constitute violations of Section 7 of the Clayton

Act, as amended, 15 U.S.C. 18, and are or would be unfair acts, practices or methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Lancaster Colony Corporation is a corporation, 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 in the City of Columbus, State of Ohio.

2. Respondent Federal Paper Board Company, Inc. is a corporation, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the City of Montvale, State of New Jersey.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

Decision and Order

91 F.T.C.

ORDER

Definition

For the purposes of this order the following definition shall apply: "Machine-made glassware" means all moderately priced soda-lime glass beverageware, tableware, food preparation glassware and novelty and ornamental glassware items produced by machine and employed in everyday use.

I

It is ordered, That Lancaster Colony Corporation (Lancaster Colony) and Federal Paper Board Company, Inc. (Federal Paper) do forthwith provide evidence that the agreement (acquisition agreement) whereby Lancaster Colony agreed to purchase all or substantially all of the assets of Federal Paper used by it in its business of the manufacture and sale of machine-made glassware which is conducted through its unincorporated Federal Glass Company Division has been terminated and each shall use its best efforts to forthwith return any confidential documents provided by either Lancaster Colony or Federal Paper to the other in connection with the acquisition agreement. Nothing herein contained shall relieve any party from any obligations of confidentiality imposed by agreement between them or by operation of law.

II

It is further ordered, That until December 31, 1980 neither Lancaster Colony nor Federal Paper shall acquire either directly or indirectly any part of the machine-made glassware business of the other, whether represented by securities or assets (other than products and securities acquired in the regular course of business) until sixty (60) days following receipt by the Director of the Bureau of Competition of the Federal Trade Commission of written notice of the proposed acquisition, which notice shall specifically refer to this order. If within sixty (60) days of receipt by the Director of said notice the Commission issues an administrative complaint challenging the proposed acquisition such proposed acquisition shall not be consummated nor shall any steps be taken to effectuate such proposed acquisition until the administrative complaint issued by the Commission is dismissed by the Commission, or until a final order as defined in 15 U.S.C. 21 and 45 is entered, or until a consent order is entered and served upon the respondents in that administrative proceeding. If within the aforesaid sixty (60) days the

Competition receives any additional written position papers from either Lancaster Colony or Federal Paper and the Bureau recommends the issuance of a complaint, the Bureau shall promptly forward to the Commission such papers together with the written notice submitted to the Bureau Director. In the event that within sixty (60) days of the Director's receipt of the said notice the Commission issues an administrative complaint challenging the proposed acquisition the Bureau of Competition shall exert its best efforts to complete the administrative proceeding in an expedited manner.

III

It is further ordered, That until December 31, 1978 Lancaster Colony and Federal Paper each shall notify the Director of the Bureau of Competition of the Federal Trade Commission thirty (30) days prior to the consummation of any acquisition, merger, or sale of any of its machine-made glassware business, whether direct or indirect, (other than products and securities acquired or sold in the regular course of business) if (a) such transaction is with any company engaged in the business of manufacture and domestic sale of machine-made glassware; and (b) such company for the year preceding such transaction had total domestic sales of such machine-made glassware of \$10,000,000 or more. Such notice shall contain all information requested by the Commission's pre-merger notification program (39 F.R. 35717-8, Oct. 3, 1974) on the forms as found in 1 CCH Trade Reg. Rep. ¶ 4540. If, during the period in which this paragraph is in effect the rules and notification report forms to implement Section 7A of the Clayton Act become effective, this paragraph shall from that date forward have no further effect.

IV

It is further ordered, That Lancaster Colony and Federal Paper each shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change, which may affect compliance obligations arising out of this order.

V

It is further ordered, That Lancaster Colony and Federal Paper each shall, within sixty (60) days after service upon it of this order

file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

AMERICAN CREDIT BUREAU, INC., ET AL.

Docket C-2608. Interlocutory Order, Feb. 3, 1978

Petition to vacate or modify consent order denied on grounds that respondents' allegations were insufficient because of public interest or changed conditions of law.

ORDER DENYING PETITION TO VACATE OR MODIFY CONSENT
ORDER

Respondents, by petition filed pursuant to Rule 3.72(b)(2) on November 17, 1977, request that the Commission vacate or modify the consent order to cease and desist entered herein on December 4, 1974 (84 F.T.C. 1582), on the ground that changed conditions of law require such action.

The specific change of law underlying respondents' petition is the enactment of Pub. Law 95-109, the "Fair Debt Collection Practices Act," 15 U.S.C. 1601, *et seq.* (1977). The Act becomes effective on March 20, 1978.

Respondents allege that the Act regulates the same practices as are covered by the order, that the order differs substantially in terms from the Act, and that since the Act imposes severe penalties for violation, it would be in the public interest to vacate the order. Respondents further contend that certain sections of the Act are less restrictive than comparable sections of the order, that respondents would be competitively disadvantaged if they were subject to the order while their competitors were subject to the Act, and that, in the alternative, the order should be modified to bring it into conformity with the Act. The Director of the Bureau of Consumer Protection has filed an answer in opposition to respondents' petition.

The Commission, having carefully considered the petition and answer thereto, is of the opinion that (1) it would be premature and contrary to the public interest to grant respondents' request inasmuch as the Commission is currently conducting an investigation to determine whether or not respondents are in compliance with the cease and desist order, (2) the Fair Debt Collection Practices Act as a whole is more restrictive than the cease and desist order, and that those few instances in which the order may be more restrictive are necessary and proper as remedies fashioned by the Commission to redress abusive practices engaged in by respondents in violation of the Federal Trade Commission Act. There is nothing in the Fair Debt Collection Practices Act to prohibit the imposition of similar