

## Complaint

## IN THE MATTER OF

## THE SOUTHLAND CORPORATION, ET AL.

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

*Docket 9127. Complaint, April 26, 1979—Decision, Feb. 25, 1980*

This consent order requires, among other things, The Southland Corporation (Southland), a Dallas, Texas dairy processor, to refrain for seven years from acquiring, without prior Commission approval: 1) any fluid milk processing plant, distribution facility or route within a 150-mile radius of a Southland fluid milk processing plant or distribution facility; 2) any such company or plant located within a 150- to 500-mile radius of a Southland fluid milk processing plant or distribution facility, which processed more than 26 million pounds of Class I milk within any of the three years prior to the acquisition; or 3) any fluid milk processing company that processes 300 million pounds of Class I milk annually.

*Appearances*

For the Commission: *James R. Chamberlain* and *Robert C. Cheek*.

For the respondents: *Peter K. Bleakley, Arnold & Porter, Wash., D.C.*

## 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 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 a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to 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 term "San Antonio market area" refers to the Office of Management and Budget's Standard Metropolitan Statistical Area for San Antonio, Texas which is composed of the three counties of Bexar, Comal, and Guadalupe.

## II. THE SOUTHLAND CORPORATION

2. The Southland Corporation ("Southland") is a corporation organized and existing under the laws of the State of Texas with its principal office at 2828 North Haskell Ave., Dallas, Texas.

3. Southland is a major operator and franchisor of convenience food stores doing business almost exclusively under the "7-Eleven" brand name. As of December 31, 1977, Southland owned or franchised 6,357 convenience food stores throughout forty states, the District of Columbia, and Canada.

4. Southland is also one of the nation's largest dairy processors. Since 1960, Southland has acquired approximately twenty-nine other dairy processors and currently sells packaged fluid milk in thirty states and the District of Columbia under twelve strong regional brand names. In 1978 Southland processed over one billion pounds of packaged fluid milk.

5. In the fiscal year ending December 31, 1977, Southland reported total net sales of \$2,536,109,000 of which approximately \$344,807,000 were packaged fluid milk products.

## III. KNOWLTON'S, INC.

6. Knowlton's, Inc. ("Knowlton's") is a corporation organized and existing under the laws of the State of Texas with its principal office at 1314 Fredericksburg Road, San Antonio, Texas.

7. Knowlton's, a family owned firm, is the largest, or one of the largest, independent dairy processors in the San Antonio market area. In 1978, Knowlton's processed approximately 44,857,000 pounds of packaged fluid milk.

8. Knowlton's also owns and operates nine milk and ice cream stores in the San Antonio market area.

9. In 1978 Knowlton's reported \$10,988,416 total net sales of which \$4,009,000 were packaged fluid milk products.

## IV. JURISDICTION

10. At all times relevant herein, Southland and Knowlton's have engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, and their activities, including those challenged herein, are in or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended.

## V. THE ACQUISITION AGREEMENT

11. On or about January 31, 1979, Southland and Knowlton's entered into an agreement whereby Southland would acquire 100% of Knowlton's assets, including the dairy processing plant and the nine milk and ice cream stores, for approximately \$3.3 million. The acquisition is scheduled to be consummated on April 30, 1979.

## VI. TRADE AND COMMERCE

12. The relevant line or relevant lines of commerce are the processing, distribution and sale of packaged fluid milk and the processing and wholesale distribution of packaged fluid milk.

13. A relevant section of the country is the San Antonio market area.

14. The lines of commerce described in Paragraph 12 in the San Antonio market area are highly concentrated.

## VII. ACTUAL COMPETITION

15. From its Oak Farms plants in Dallas and Houston, Southland ships packaged fluid milk to its distribution center in San Antonio, Texas. Southland then sells packaged fluid milk from this distribution center throughout the San Antonio market area.

16. Knowlton's sells packaged fluid milk in the San Antonio market area from its one plant located in San Antonio.

17. Southland and Knowlton's are presently and have been for many years actual competitors for packaged fluid milk sales in the San Antonio market area.

## VIII. EFFECTS: VIOLATIONS CHARGED

18. The effects of the proposed acquisition 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 agreement is an unfair method of competition in violation of 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 Southland and Knowlton's for packaged fluid milk sales in the San Antonio market area will be eliminated;

(b) already high levels of concentration will increase;

(c) Knowlton's, the largest, or one of the largest, independent dairies

in the market and a known price competitor will be eliminated from competition; and

(d) additional acquisitions and mergers between dairy processors may be fostered, causing a further substantial lessening of competition and increasing concentration.

19. The acquisition, 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.

20. By entering into the agreement which would give rise to the violation described in Paragraph 18, herein, Southland and Knowlton's have violated Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. 45.

Commissioner Pitofsky did not participate.

#### DECISION AND ORDER

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

The respondents, their attorney, 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, and having duly considered the comment filed thereafter by an interested person pursuant to Section 3.25 of its Rules, 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 The Southland Corporation is a corporation organized, existing and doing business under and by virtue of the laws of

the State of Texas with its office and principal place of business located at 2828 N. Haskell Ave., Dallas, Texas.

Respondent Knowlton's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1314 Fredericksburg Road, San Antonio, Texas. Since on or about June 15, 1979, all of Knowlton's assets have been owned by Southland.

2. 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.

### ORDER

#### DEFINITIONS

For purposes of this order the following definitions shall apply:

(a) "Class I Milk" means packaged fluid whole milk, partially skim milk (approximately 2% butterfat or less), skim milk, buttermilk, cultured fluid milk products (except yogurt), flavored milk, and flavored milk drinks.

(b) "Southland" refers to The Southland Corporation, its subsidiaries, divisions, affiliates, successors and assigns.

#### I.

*It is ordered*, That Southland shall refrain, for a period of seven (7) years from the date of service upon it of this order, from acquiring, directly or indirectly, without prior approval of the Federal Trade Commission: (i) Any fluid milk processing plant, distribution facility or route (except those serving fluid milk processed by Southland exclusively) within a 150-mile radius of a Southland fluid milk processing plant or distribution facility; (ii) Any fluid milk processing company or plant located within a radius of between 150 and 500 miles of a Southland fluid milk processing plant or distribution facility which in any of the three years prior to the acquisition processed more than 26 million pounds of Class I milk; or (iii) Any fluid milk processing company that processes 300 million pounds of Class I milk annually; *provided, however*, that if the Federal Trade Commission at any time during the seven (7) year period of this order should modify its Criteria for Assessing Future Mergers, as set forth in the Commission's Enforcement Policy With Respect to Mergers in the Dairy Industry, the Commission will modify this order to conform to the modified Criteria.

## II.

*It is further ordered,* That Southland shall within thirty (30) days after service upon it of this order file with the Commission a report setting forth in detail the location of its existing fluid milk processing plants, distribution facilities and routes (including those operated by Knowlton's). Thereafter annually for seven years, Southland shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order and shall include in such report a current list of Southland's fluid milk processing plants, distribution facilities and routes.

## III.

*It is further ordered,* That Southland 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.

Commissioner Pitofsky did not participate.

IN THE MATTER OF  
FORD MOTOR COMPANY, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 9073. Decision, March 29, 1979—Modifying Order, Feb. 26, 1980*

This order reopens and modifies a consent order issued on March 29, 1979, 44 FR 25630, 93 F.T.C. 402, so that Paragraph II (C) (7) of the order provides for a waiver of customers' surplus rights in the event that a dealership retains a repossessed vehicle for its own use, rather than for resale. This brings the order into conformity with one aspect of an order issued against Francis Ford, Inc. on September 21, 1979 under the same docket number, 44 FR 62481, 94 F.T.C. 564.

ORDER REOPENING AND MODIFYING CONSENT ORDER

By petition of November 26, 1979, respondents Ford Motor Company and Ford Motor Credit Company (hereafter "Ford respondents") have asked the Commission to modify Paragraph II C.(7) of the consent order entered by the Commission against these respondents on March 29, 1979, in order to conform with a less restrictive provision of the litigated order in this docket entered against respondent Francis Ford, Inc. on September 21, 1979. An "Order to Show Cause" as to why the requested change should not be made, dated January 15, 1980, has elicited no objection.

Paragraph VII B. of the consent order provides that if a final order is issued in Dkts. 9073, 9074, or 9075 that imposes less restrictive standards in certain enumerated respects than does the consent order, the Commission shall reopen the consent order within 120 days of a petition to do so and modify the consent order to conform with the less restrictive provisions contained in the other order.

Although the less restrictive order upon which Ford respondents rely for their request has not yet become final, due to the pendency of an appeal, no purpose would be served by delaying modification of the Consent Order until such time as the appeal is resolved, inasmuch as the appeal by Francis Ford is hardly likely to result in imposition of a *more* restrictive standard than the Commission has imposed. Modification now will expedite achievement of uniform treatment of automobile dealers which is a primary purpose of Paragraph VII B. Therefore,

*It is ordered,* That the consent order in this docket be reopened for the limited purpose of effecting the following changes.

*It is further ordered,* That Paragraph II of the consent order be modified to eliminate the following language: