

Complaint

IN THE MATTER OF

SUNKIST GROWERS, INC.

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

Docket 9100. Complaint, May 31, 1977—Decision, May 5, 1981

This consent order requires, among other things, that Sunkist Growers, Inc. ("Sunkist"), a Sherman Oaks, Calif. processor and marketer of citrus fruit to timely divest, in accordance with the terms of the order, the assets and properties constituting the Arizona Products Division ("APD"), and offer the purchaser, annually for four years, a prescribed volume of citrus fruit for processing. Respondent is also barred from using a non-Sunkist plant to process citrus fruit packed in Yuma County, Ariz. until it has first offered the opportunity to the acquirer of APD. Additionally, the order requires respondent, for specified periods, to limit the number of its commercial packinghouse affiliations and refrain from acquiring, without prior Commission approval, any California or Arizona commercial citrus fruit processing plant or packinghouse.

Appearances

For the Commission: *David D. Laufer, L. Barry Costilo*, special trial counsel; *Bert L. Slonim, Debra L. Goldstein, Richard Kudo* and *Patricia A. Bremer*.

For the respondent: *Raymond C. Fisher, Harold J. Kwalwasser, Marlene B. Jones* and *R. Scott Jenkins, Tuttle & Taylor, Inc.*, Los Angeles, Calif.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sunkist Growers, Inc. has violated and is now violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and that a proceeding by it in respect thereto is in the public interest, hereby issues its complaint charging as follows:

DEFINITIONS

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

- (a) *Western citrus fruit* includes oranges, lemons, grapefruit and other varieties of citrus which are grown in California and Arizona;
- (b) *Fresh-grade fruit* is citrus that is sold for fresh consumption;
- (c) *Product-grade fruit* is citrus that is used for processing into juice or peel products;
- (d) *Citrus products* are juice or peel products made from product-grade fruit;
- (e) *Packing* means services performed by packinghouses including, among others: receiving western citrus fruit, separating it into product-grade fruit and fresh-grade fruit, shipping the product-grade fruit to citrus processing plants, washing, waxing, grading and sizing fresh-grade fruit, placing it into cartons and shipping the cartons to buyers;
- (f) *Processing* means receiving western product-grade fruit and manufacturing it into citrus products;
- (g) *Marketing* is the sale and distribution of western citrus fruit or citrus products to wholesale buyers.

SUNKIST GROWERS, INC.

PAR. 2.

- (a) Respondent Sunkist Growers, Inc. (hereinafter "Sunkist") is an incorporated cooperative association, without capital stock, organized under the laws of the State of California, with its principal office and place of business at 14130 Riverside Drive, Sherman Oaks, California;
- (b) Sunkist engages in the marketing and processing of western citrus fruit packed by approximately 43 cooperative associations and 51 commercial citrus fruit packinghouses with which Sunkist has contracts and agreements;
- (c) Sunkist markets fresh or in processed form approximately 75 percent of the total production of western oranges and lemons;
- (d) Total sales for Sunkist were \$482.9 million for the fiscal year ending October 31, 1975.

TRADE AND COMMERCE

PAR. 3.

- (a) The western citrus fruit industry is composed of several levels of operation, including growing, packing, processing, and marketing;
- (b) Total wholesale sales of western citrus fresh-grade fruit and

western citrus products exceeded \$500 million in the 1974-75 crop year.

PAR. 4.

(a) The relevant markets include the following and any submarkets thereof:

- (1) The packing of western citrus fruit in California and Arizona;
- (2) The trade in product-grade western oranges in California and Arizona;
- (3) The trade in product-grade lemons in California and Arizona;
- (4) The manufacture, sale and distribution of lemon products in the United States and Canada;
- (5) The sale and distribution of fresh-grade western oranges to wholesale buyers in the United States and Canada;
- (6) The sale and distribution of fresh-grade lemons to wholesale buyers in the United States and Canada;
- (7) The sale and distribution of fresh-grade western oranges for export outside of the United States and Canada;
- (8) The sale and distribution of fresh-grade lemons for export outside of the United States and Canada.

(b) Sunkist controls approximately 65 percent or more of each of the relevant markets or submarkets alleged herein. No other firm accounts for more than 15 percent of any of the relevant markets or submarkets alleged herein.

JURISDICTION

PAR. 5. At all times relevant herein, Sunkist sold and shipped western citrus fruit and citrus products throughout the United States and to various foreign countries and engaged in commerce within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and engaged in or affected commerce within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44. Except to the extent that competition has been hindered, frustrated, lessened or eliminated by the acts and practices alleged in this complaint, Sunkist is in competition with other firms in the relevant markets and submarkets alleged herein.

COUNT ONE

PAR. 6. The allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 7.

(a) Sunkist maintains exclusive dealing contracts and agreements with approximately 51 commercial packinghouses which prohibit these packinghouses from:

- (1) Packing fruit for non-Sunkist growers; and
- (2) Dealing with marketers or processors which compete with Sunkist.

(b) The effects, among others, of these contracts separately or in combination with other agreements entered into by Sunkist have been or may be to foreclose competitors from a substantial share of one or more of the markets or submarkets alleged in Paragraph Four (a)(1)-(3) and (5)-(8).

PAR. 8. The aforesaid acts and practices, considered alone or in combination with the other acts and practices alleged in this complaint, have had or may have, among other things, the tendency and capacity to increase barriers to entry or to restrain, lessen or eliminate competition or create a monopoly in one or more of the markets or submarkets alleged in Paragraph Four (a)(1)-(3) and (5)-(8) and thus are to the prejudice and injury of the public and constitute unfair methods of competition or unfair acts and practices in or affecting commerce all in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

COUNT TWO

PAR. 9. The allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 10.

(a) In January 1966, Sunkist combined, contracted, or agreed with the Western Sales Division of Blue Goose Growers, Inc. (hereinafter "Blue Goose"). Pursuant to this combination, contract, or agreement, Blue Goose ceased marketing fresh-grade western citrus fruit and Sunkist entered exclusive dealing contracts with 13 commercial packinghouses that were owned by or under contract to Blue Goose and formerly marketed through Blue Goose;

(b) The combination, contracts, or agreements alleged above resulted in prohibiting commercial packinghouses owned by or under contract to Blue Goose from dealing with growers that are not members of Sunkist or with marketers or processors that compete with Sunkist;

(c) The effects, among others, of the combination, contracts, or

agreements described above have been or may be to eliminate substantial competition between Sunkist and Blue Goose, or increase entry barriers, or increase concentration or strengthen the position of Sunkist in one or more of the relevant markets or submarkets alleged in Paragraph Four (a)(1)-(3) and (5)-(8).

PAR. 11. The aforesaid act and practice, considered alone or in combination with the other acts and practices alleged in this complaint, has had or may have, among other things, the tendency and capacity to increase barriers to entry or to restrain, lessen or eliminate competition or create a monopoly in one or more of the markets or submarkets alleged in Paragraph Four (a)(1)-(3) and (5)-(8) and thus is to the prejudice and injury of the public and constitutes an unfair method of competition or unfair act and practice in or affecting commerce all in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

COUNT THREE

PAR. 12. The allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 13.

(a) In August 1974, Sunkist, which then owned two citrus processing plants, acquired the assets of Growers Citrus Products, a division of Golden Y Growers, Inc. (hereinafter "GCP"), a corporation. The assets consisted of a citrus processing plant located in Yuma, Arizona. At the same time, Sunkist also purchased land and cold storage facilities from Southwestern Ice and Cold Storage Co. (hereinafter "Southwestern"), a corporation. The land and cold storage facilities were previously leased by GCP from Southwestern for use in connection with operation of the processing plant;

(b) Prior to the acquisition, GCP was in competition with Sunkist in the markets or submarkets alleged in Paragraph Four(a)(3)-(4). In the years prior to the acquisition, Sunkist's share of the markets or submarkets alleged in Paragraph Four(a)(3)-(4), exceeded 65 percent and GCP's share was approximately 5 percent.

(c) At all times relevant herein, GCP and Southwestern were engaged in commerce within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. Section 12, and engaged in or affected commerce within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

(d) The effects, among others, of the acquisitions described above have been or may be to eliminate substantial competition between

Sunkist and GCP, or increase entry barriers, or increase concentration or strengthen the position of Sunkist in one or more of the relevant markets or submarkets alleged in Paragraph Four (a)(1)–(8).

PAR. 14. The acquisitions by Sunkist alleged herein may substantially lessen competition or tend to create a monopoly in one or more of the relevant markets or submarkets alleged in Paragraph Four (a)(1)–(8) in 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.

COUNT FOUR

PAR. 15. The allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 16. Sunkist processes approximately 75 percent of the product-grade lemons grown in the United States.

PAR. 17.

(a) Sunkist, as an instrumentality of its members, who are otherwise competitors of each other, stores and withholds from the market a large supply of lemon products for the purpose or with the effect of stabilizing the price of lemon products.

(b) The effects, among others, of the act and practice described above have been or may be to stabilize the price of lemon products, or to deter entry into lemon processing.

PAR. 18. The aforesaid act and practice, considered alone or in combination with the other acts and practices alleged in this complaint, has had or may have, among other things, the tendency and capacity to increase barriers to entry or to restrain, lessen or eliminate competition or create a monopoly in the market or one or more of the submarkets alleged in Paragraph Four (a)(4) and thus is to the prejudice and injury of the public and constitutes an unfair method of competition or unfair act and practice in or affecting commerce all in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

COUNT FIVE

PAR. 19. The allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 20. Sunkist has monopoly power in one or more of the relevant markets or submarkets alleged in Paragraph Four (a)(1)–(8) above.

PAR. 21. Sunkist, individually or in combination with others, has engaged in the acts and practices alleged in Counts One through Four, above, among others.

PAR. 22. Sunkist has adopted and followed a policy of refusing to permit competing processors to purchase product-grade western oranges and lemons from cooperative associations under contract to Sunkist.

PAR. 23. Sunkist has adopted and followed a policy of refusing to permit competing marketers to purchase or market fresh-grade western oranges and lemons packed by cooperative associations under contract to Sunkist.

PAR. 24. Sunkist has adopted and followed a policy of refusing to permit western citrus fruit of non-Sunkist growers to be packed in packinghouses owned by cooperative associations under contract to Sunkist.

PAR. 25. Sunkist has adopted and followed a policy of refusing to sell product-grade or fresh-grade western oranges and lemons to competing marketers or processors.

PAR. 26. Sunkist has adopted and followed a policy of achieving and maintaining control of at least 70 percent of the total supply of western oranges and lemons packed by packinghouses in California and Arizona.

PAR. 27. The effects, among others, of the acts and practices described above, have been or may be to increase barriers to entry, or stabilize, control, hinder, lessen, foreclose, or restrain competition in one or more of the relevant markets or submarkets alleged in Paragraph Four (a)(1)-(8).

PAR. 28. By engaging in the acts and practices alleged herein, Sunkist by itself or in combination with others has monopolized, attempted to monopolize, or maintained a non-competitive market structure in one or more of the relevant markets or submarkets alleged in Paragraph Four (a)(1)-(8) above 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 respondent named in the caption hereof with violations of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, 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 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 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 Sunkist Growers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 14103 Riverside Drive, in the City of Sherman Oaks, State of California.

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

ORDER

DEFINITIONS

For the purpose of this order, the following definitions shall apply:

(a) *Sunkist* means Sunkist Growers, Inc.; its divisions and subsidiaries; its officers, directors, representatives, agents and employees acting as such; and its successors and assigns.

(b) *Affiliated packinghouse or packinghouse affiliated with* means a citrus packinghouse authorized by Sunkist to pack citrus for Sunkist grower-members. It does not include a packinghouse which packs citrus for Sunkist members only on a temporary, ad hoc, emergency basis.

(c) *Arizona Products Division* means (1) all facilities and assets located in Yuma, Arizona, owned by Sunkist which are used in connection with the conversion of citrus fruit into citrus products; (2) the cold storage facilities and assets, acquired by Sunkist, which

previously had been part of the Southwestern Ice and Cold Storage Company; and (3) all agricultural lands used for effluent disposal from the above-described facilities. The facilities, assets and agricultural lands listed above shall include, but are not limited to, all land, buildings, equipment, supplies and machinery used by Arizona Products Division, together with any other additions and improvements thereto.

(d) *Citrus Packinghouse* means any facility which packs lemons, navel oranges, valencia oranges, grapefruit or tangerines for fresh fruit shipment on a regular basis, but does not include a facility which packs those varieties only on an auxiliary and overflow basis.

(e) *Commercial Packinghouse* means a citrus packinghouse located in California or Arizona which is not a packinghouse owned or operated by an association of growers meeting the requirements of Section 1 of the Capper-Volstead Act, or by one or more growers packing only their own citrus fruit.

(f) *Commercial Citrus Processing Plant* means a processing plant, used or equipped to be used, in whole or in part, to process whole citrus fruit into juice, peel or oil products, which is not owned or operated by an association of growers meeting the requirements of Section 1 of the Capper-Volstead Act.

(g) *District III* means the prorated district established pursuant to the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601 et seq., as amended, and as specified in regulations thereunder, 7 C.F.R. 907.66(c), 908.66(c) and 910.64(c), as of the date this order becomes final.

(h) *Lemon Administrative Committee* means the Lemon Administrative Committee established pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and regulations thereunder.

(i) *Orange Administrative Committees* means the Navel and Valencia Orange Administrative Committees established pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and regulations thereunder.

(j) *Product-grade citrus* means citrus which is received by processing plants for processing into citrus products.

I

It is ordered, That within eighteen (18) months from the date this order becomes final, Sunkist shall divest as a unit, absolutely and in good faith, all properties and assets constituting the Arizona Products Division ("APD") of Sunkist in order to establish APD as a viable competitor in the citrus processing business. The divestiture

shall be subject to the prior approval of the Federal Trade Commission. Pending divestiture, Sunkist shall take all measures necessary to maintain APD in its present condition and prevent any deterioration, except for normal wear and tear, of any of the assets to be divested which may impair their present operating abilities or market value.

II

It is further ordered, That for each of the four (4) complete District III citrus seasons (approximately September-August) after the divestiture of APD or the four (4) years (twelve-month periods) beginning on the date of divestiture, whichever the acquirer of APD ("acquirer") shall elect, Sunkist shall offer to sell to the acquirer for processing by the acquirer a mixed supply of product-grade citrus grown in District III in the manner described below, unless otherwise modified by mutual agreement between Sunkist and the acquirer:

(a) The total volume of citrus to be offered for sale in the first three (3) seasons or years shall be determined as follows:

Sunkist's total seasonal or yearly tons of product-grade citrus from District III	Total tons Sunkist shall offer to sell to the acquirer of APD
0-100,000	45% of Sunkist's product- grade citrus from District III
100,001-150,000	45,000
150,001-170,000	50,000
170,001 and above	55,000

(b) The total volume of citrus to be offered for sale in the fourth (4th) season or year shall be one-half ($\frac{1}{2}$) of the amount determined in accordance with subparagraph (a) of this paragraph.

(c) The volume of such citrus shall consist of a mix of varieties grown in District III that is equal to the proportion that each such variety bears to Sunkist's total District III volume of those varieties.

(d) Sunkist's total seasonal or yearly obligation to offer to sell citrus to the acquirer shall be reduced by an amount equal to any amount of citrus the acquirer obtains in that season or year for processing at APD from any citrus packinghouse affiliated with Sunkist on the date this order becomes final and not affiliated with Sunkist at the time the citrus is obtained from the packinghouse. In calculating Sunkist's obligation to offer to sell citrus under this order, the amount of citrus purchased by the acquirer from such a

packinghouse shall be included in the total tons of Sunkist's product-grade citrus from District III computed on a yearly or seasonal basis, consistent with the acquirer's election referred to above.

(e) The amount of citrus which the acquirer agrees to buy from Sunkist shall be specified in a yearly contract. Sunkist shall make the citrus available in daily quantities of not less than 100 tons and not more than 600 tons until Sunkist has met its total requirements specified in the yearly contract. If Sunkist's District III tonnage on any day is less than 100 tons Sunkist shall make all its District III citrus tonnage available to the acquirer, and the acquirer shall give reasonable notice to Sunkist whether the acquirer will take such tonnage. The contract shall be in accord with usual and customary industry terms and conditions, including reasonable terms and conditions to assure timely removal of the citrus from Sunkist's affiliated packinghouses.

(f) To determine Sunkist's obligations in paragraphs II (a), (b) and (c) of this order, the seasonal crop projections of the Orange Administrative Committees for oranges, the Lemon Administrative Committee for lemons, and Sunkist's regular seasonal projections for grapefruit, tangerines and other varieties shall be used. If during the season or year the crop projection or the actual crop production for any season or year varies from the projections establishing Sunkist's initial requirements for that season or year, the total amount and mix of citrus that Sunkist must sell under its contract or offer to sell under this order shall be adjusted to conform to the revised projections or to actual production as appropriate.

(g) The price Sunkist shall charge the acquirer for the citrus shall be no less favorable than the price at which Sunkist makes comparable sales of that variety of product-grade citrus to any other processing customer. If Sunkist has no such sales to any other processing customer, then the price shall be the prevailing market price for comparable sales of that variety.

III

It is further ordered, That for a period of five (5) years after the divestiture of APD, if Sunkist uses a non-Sunkist processing plant to process the citrus of Sunkist growers packed in Yuma County, Arizona, it shall first offer to the acquirer the opportunity to process that citrus, provided the product will be processed to meet Sunkist's specifications and the charge for processing is commercially reasonable.

IV

It is further ordered, That for a period of ten (10) years from the date this order becomes final Sunkist shall not directly or indirectly acquire, without the prior approval of the Federal Trade Commission, any stock interest in or assets of any commercial citrus processing plant in the states of California or Arizona.

V

It is further ordered, That for a period of five (5) years from the date this order becomes final, there shall not be more than thirty-nine (39) commercial packinghouses affiliated with Sunkist unless prior approval of the Federal Trade Commission is obtained.

VI

It is further ordered, That for a period of five (5) years from the date this order becomes final, Sunkist shall not directly or indirectly acquire, without the prior approval of the Federal Trade Commission, any stock interest in or assets of any citrus packinghouse in the states of California or Arizona, except for an interest resulting from foreclosure by Sunkist, in which case Sunkist shall divest such interest in the packinghouse within one year of the foreclosure.

VII

It is further ordered, That within sixty (60) days after the date this order becomes final, and every sixty (60) days thereafter until Sunkist has fully complied with the provisions of paragraph I of this order, Sunkist shall submit to the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with or has complied with that provision. All compliance reports shall include, among other things that are required from time to time, a full description of contacts or negotiations with any party for the properties specified in paragraph I of this order and the identity of all such parties. Sunkist shall furnish to the Commission copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

On the date Sunkist divests APD and on every anniversary date of the divestiture thereafter for the following five years, Sunkist shall submit to the Commission a verified written report setting forth the

manner and form in which it is complying or has complied with paragraph II of this order.

On the first anniversary of the date this order becomes final and on every anniversary date thereafter for the following five years, Sunkist shall submit to the Commission a verified written report setting forth the manner and form in which it has complied with paragraphs III, V and VI of this order.

On the first anniversary of the date this order becomes final and on every anniversary date thereafter for the following nine (9) years, Sunkist shall submit to the Commission a verified written report setting forth the manner and form in which it has complied or is complying with paragraph IV of this order.

VIII

It is further ordered, That Sunkist notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation, including but not limited to changes in the corporate by-laws or membership contracts, which may affect compliance obligations arising out of this order.

Complaint

97 F.T.C.

IN THE MATTER OF
GODFREY COMPANY

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

Docket C-3066. Complaint, May 14, 1981—Decision, May 14, 1981

This consent order requires, among other things, a Waukesha, Wis. operator of a retail grocery chain to divest within six months to a Commission-approved acquirer or acquirers, seven specified retail grocery stores located in "The Milwaukee SMSA." The company is also prohibited, for a period of ten years, from making any acquisition in the retail grocery store business involving four or more stores without prior Commission approval.

Appearances

For the Commission: *David D. Laufer, Katherine Boland and Paul R. Zamolo.*

For the respondent: *James T. Halverson, Thomas P. Palmer and Gregory S. Bentley, Shearman & Sterling, New York City, and Robert J. Sugrue, Boodell, Sears, Sugrue, Giambalvo & Crowley, Chicago, Ill.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has 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:

DEFINITIONS

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

(a) *Retail grocery stores* means retail food stores classified under Bureau of Census Industry Classification No. 541, including supermarkets, convenience stores and delicatessens, which primarily sell a wide variety of canned or frozen foods, such as vegetables, fruits