

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

and soups; dry groceries, either packaged or in bulk, such as tea, coffee, cocoa, dried fruits, processed food, and non-edible grocery items. In addition, these stores often sell smoked and prepared meats, and fresh fish and poultry, fresh vegetables and fruits, and fresh or frozen meats.

(b) *Godfrey* means Godfrey Company, a corporation organized under the laws of Wisconsin with its principal executive offices at 1200 West Sunset Drive, Waukesha, Wisconsin and its directors, officers, agents and employees, and its subsidiaries, successors and assigns.

(c) *Milwaukee SMSA* means the Milwaukee Standard Metropolitan Statistical Area, consisting of the four Wisconsin counties of Milwaukee, Waukesha, Washington and Ozaukee.

GODFREY COMPANY

2. Respondent Godfrey Company (Godfrey) is a Wisconsin corporation with its principal executive offices at 1200 West Sunset Drive, Waukesha, Wisconsin.

3. In 1979, Godfrey was engaged in the distribution of food through a chain of 86 retail grocery stores operated under the name "Sentry." Forty-eight of the 86 Sentry grocery stores were owned and operated by Godfrey and 38 were operated by affiliated retailers pursuant to a franchise agreement with Godfrey. All 86 stores were located in the State of Wisconsin. In addition to its grocery stores and wholesale operations, Godfrey owns and operates a bakery, greenhouses, retail hardware stores, retail drug store, egg production facility, farm, and land development company.

4. Godfrey's total net sales for the year ending February 23, 1980 were approximately \$368,679,000.

5. In 1979, there were 42 Sentry retail grocery stores in the Milwaukee, Wisconsin SMSA of which 28 were corporately owned and 14 were franchised.

6. At all times relevant herein, Godfrey has engaged in activities in or affecting 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.

JEWEL COMPANIES, INC.

7. Jewel Companies, Inc. (Jewel) is a New York corporation with its principal office at 5725 East River Road, Chicago, Illinois.

8. In 1979 Jewel operated a chain of approximately 637 retail grocery stores located throughout the United States.

9. Jewel's total sales for the year ended February 2, 1980 amounted to \$3,764,266,000.

10. In 1979 Jewel operated 12 retail grocery stores in the Milwaukee, Wisconsin SMSA.

ACQUISITION AGREEMENT

11. On or about October 13, 1980, Godfrey and Jewel entered into an acquisition agreement under the terms of which Godfrey will acquire the assets of all Jewel's Wisconsin retail grocery stores and assume the leases of at least eleven and possibly twelve stores. Godfrey will assume the lease of the twelfth grocery store unless prohibited by the terms of the lease. The practical result of this agreement, if consummated, would be the acquisition of eleven and possibly all twelve of Jewel's Milwaukee SMSA stores by Godfrey.

TRADE AND COMMERCE

RELEVANT LINE OF COMMERCE

12. A relevant line of commerce in which to assess Godfrey's proposed acquisition of Jewel's Milwaukee SMSA stores is retail grocery store sales.

13. Concentration in the relevant line of commerce is high in the relevant section of the country alleged below.

RELEVANT SECTION OF THE COUNTRY

14. A relevant section of the country is the Milwaukee, Wisconsin SMSA.

15. Sales by grocery stores in the Milwaukee SMSA were \$930,147,000 in 1977 and approximately \$1,131,835,000 in 1979.

16. In 1979, Godfrey owned or franchised 42 retail grocery stores in the Milwaukee SMSA. Godfrey ranked as the second largest firm in that market with a market share of approximately 19% including sales by both corporately owned and franchised Sentry stores.

17. In 1979, Jewel operated 12 retail grocery stores in the Milwaukee SMSA; it ranked as the fourth largest firm in that market with a market share of approximately 7.4%.

18. Godfrey and Jewel have been for many years and were, until October 25, 1980 when Jewel closed its Milwaukee SMSA grocery stores, direct and substantial competitors of one another in the relevant line of commerce in the Milwaukee SMSA.

EFFECTS OF THE ACQUISITION

19. The effects of the proposed acquisition set forth in Paragraph 11 herein may be substantially to 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), 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 Godfrey and Jewel in the Milwaukee SMSA;
- b) increased concentration in the retail grocery store business in the Milwaukee SMSA;
- c) potentially weakening competition from independent retail grocery competitors of Godfrey and Jewel in the Milwaukee SMSA by impairing the ability of independent retail grocery store operators in the Milwaukee SMSA to compete; and
- d) the encouragement of further acquisitions and mergers by and among other leading firms in the retail grocery store business in the Milwaukee SMSA.

VIOLATION CHARGED

20. The acquisition by Godfrey of Jewel assets, if effected, 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).

21. By entering into the agreement which would give rise to the violation described in Paragraph 20, herein, Godfrey has violated Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisition by Godfrey Company of certain assets of Jewel Companies, Inc., and Godfrey Company having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent 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, as amended; and

Respondent Godfrey Company, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Godfrey Company of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Godfrey Company 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 respondents have violated the said Acts, and that the 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 sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Godfrey Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its principal executive offices located at 1200 West Sunset Drive, in the City of Waukesha, State of Wisconsin.

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 TO DIVEST AND OTHER RELIEF

I.

As used in this order:

(A) *Godfrey* means Godfrey Company, a corporation organized under the laws of Wisconsin with its principal executive offices at 1200 West Sunset Drive, Waukesha, Wisconsin and its directors, officers, agents and employees, and its subsidiaries, successors and assigns.

(B) *Jewel* means Jewel Companies, Inc., a corporation organized

under the laws of New York with its principal executive offices at 5725 East River Road, Chicago, Illinois.

(C) *Retail grocery stores* are retail food stores presently 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 and soups; dry groceries, either packaged or in bulk, such as tea, coffee, cocoa, dried fruits, processed food, and non-edible grocery items. In addition, these stores often sell smoked and prepared meats, and fresh fish and poultry, fresh vegetables and fruits, and fresh or frozen meats.

(D) *The Milwaukee SMSA* means the Milwaukee Standard Metropolitan Statistical Area, consisting of the four Wisconsin counties of Milwaukee, Waukesha, Washington and Ozaukee.

(E) *Godfrey stores* means those retail grocery stores in the Milwaukee SMSA owned by or operated by Godfrey.

(F) *Jewel stores* means those retail grocery stores in the Milwaukee SMSA owned or operated by Jewel.

(G) *The disposition stores* means the following Godfrey ("G") stores and Jewel ("J") stores:

1. G-427 (3045 S. 13th St., Milwaukee, WI.)
2. G-607 (6077 S. Packard Ave., Cudahy, WI.)
3. G-810 (3939 S. 76th St., Milwaukee, WI.)
4. J-1201 (1201 N. 35th St., Milwaukee, WI.)
5. J-729 (729 S. Layton Blvd., Milwaukee, WI.)
6. J-15182 (N81 W15182 Appleton Ave., Menomonee Falls, WI.)
7. J-6251 (6251 S. 27th St., Greenfield, WI.)

(H) *Acquisition, acquire, merger, or merge with* includes all other forms of arrangement by which Godfrey may obtain, directly or indirectly, all or any part of the stock or assets, both tangible and intangible, of any other retail grocery store or stores.

II.

It is ordered, That within six months from the date on which this order becomes final, Godfrey shall divest itself absolutely and in good faith of all of its right, title and interest in the disposition stores; *provided, however*, that Godfrey may, if so required by the lessor(s) of any one or more of the disposition stores, remain a party to its lease with such lessor(s) and may take possession of any of the disposition stores upon default under the lease or sublease for such store by the sublessee which acquired such disposition store from Godfrey. In the event of such reacquisition of any of the disposition

stores, Godfrey shall divest the reacquired disposition store in accordance with the terms of this order within six (6) months of the date of reacquisition of any such store. Until approval of divestiture, Godfrey shall continue to operate disposition stores G-427, G-607 and G-810 as retail grocery stores. Divestiture shall be made only to an acquirer or acquirers approved in advance by the Federal Trade Commission. The purpose of the divestiture required by this paragraph is to assure the continued operation of the disposition stores as retail grocery stores and their survival as viable competitors in the Milwaukee SMSA.

III.

It is further ordered, That for a period of ten (10) years from the date on which this order becomes final, Godfrey shall not merge with or acquire, or merge with or acquire and thereafter hold, as corporately operated or as franchised retail grocery stores, directly or indirectly through subsidiaries or in any other manner, without the prior approval of the Federal Trade Commission, the whole or any part of the stock or assets of any individual, firm, partnership, corporation or other legal or business entity which directly or indirectly owns or operates any retail grocery store, where such acquisition or merger involves four or more such retail grocery stores; *provided, however,* that nothing in this order shall be construed to prevent Godfrey from being or becoming a guarantor of lease obligations of any Godfrey franchisee.

IV.

It is further ordered, That within sixty (60) days from the date on which this order becomes final and every sixty (60) days thereafter until the divestiture required by paragraph II of this order is completed, Godfrey shall submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which Godfrey intends to comply, is complying, and has complied with the terms of this order and such additional information relating thereto as may from time to time be required. In addition, upon written request of the staff of the Federal Trade Commission, Godfrey shall submit such reports in writing with respect to the other requirements of this order as may from time to time be requested.

V.

It is further ordered, That Godfrey notify the Federal Trade

Commission at least thirty (30) days prior to any proposed corporate changes, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance with the obligations arising out of this order.

Complaint

97 F.T.C.

IN THE MATTER OF
HORIZON CORPORATION

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9017. Complaint, March 11, 1975—Final Order, May 15, 1981

This order requires, among other things, a Tucson, Arizona land sales company, one of the largest sellers of undeveloped land in the Southwest, to establish as specified in order, a \$14.5 million trust fund to be distributed to eligible past purchasers. The order also requires the firm to make prescribed disclosures regarding the risks involved in undeveloped land investment; provide purchasers with a cooling-off period in which to cancel their dealings; and furnish a "NOTICE TO BUYERS" that provides prospective purchasers with pertinent information regarding the property, roads, utilities and recreational facilities. Respondent is further prohibited from discouraging purchasers from consulting with a real estate specialist prior to purchase; using high pressure sales tactics; using state and federal property reports as endorsements and utilizing certain contractual provisions, including one whereby defaulting purchasers forfeit all payments made. Additionally, the firm is required to ensure that \$45 million is spent to improve certain properties over a 20-year period and establish and maintain a surveillance program designed to detect violations of the order.

Appearances

For the Commission: *Alan N. Schlaifer, S. Ricardo Narvaiz, Eugene Kaplan and Lemuel Dowdy.*

For the respondent: *Glenn A. Mitchell and David Fierst, Stein, Mitchell & Mezines, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Horizon Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

1. Respondent Horizon Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 4400 East Broadway, Tucson, Arizona.