

IN THE MATTER OF
CENTRAL SOYA COMPANY, 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 C-3303. Complaint, Aug. 27, 1990—Decision, Aug. 27, 1990

This consent order requires, among other things, a soy protein concentrate ("SPC") company based in Fort Wayne, Ind., to obtain FTC approval, for 10 years, before acquiring any interest in any SPC assets of any company engaged in manufacturing SPC within the United States.

Appearances

For the Commission: *Katharine B. Alphin.*

For the respondent: *Frederick Thompson*, Fort Wayne, IN. and *Linda R. Blumkin, Fried, Frank, Harris, Shriver & Jacobson*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Central Soya Company, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission 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 as follows:

DEFINITIONS

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

a. "*Central*" means Central Soya Company, Inc., its parent, its subsidiaries, divisions, and any groups and affiliates under its control,

and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

b. "*Staley*" means A. E. Staley Manufacturing Company, its subsidiaries and divisions, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

c. "*SPC*" means soy protein concentrate, a product manufactured by removing from dehulled soybeans most of the oil and water-soluble non-protein components, leaving a product that is approximately 70% protein.

2. Central is a wholly-owned subsidiary of SMRK Equity Holdings, Inc., a Delaware corporation, which is controlled by Beghin-Say S.A., a French corporation. Central is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal place of business being located at 1400 Fort Wayne Bank Building, Fort Wayne, Indiana.

3. Central is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and 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.

THE ACQUISITION

4. On February 10, 1986, Central purchased part of the assets that Staley used to produce SPC ("*Staley SPC assets*"). These assets included manufacturing equipment, patents, trademarks, technology, know-how, customer lists, and a small plant located in Muskogee, Oklahoma.

TRADE AND COMMERCE

Relevant Line of Commerce

5. A relevant line of commerce in which to analyze Central's acquisition of the Staley assets is no broader than the manufacture and sale of all SPC.

Relevant Section of the Country

6. The relevant section of the country is the entire United States.

MARKET STRUCTURE

7. The production, distribution and sale of SPC is extremely

concentrated, whether measured by the Herfindahl-Hirschmann Indices or two-firm and four-firm concentration ratios.

ENTRY CONDITIONS

8. Entry into the production, distribution and sale of SPC in the United States is difficult and further entry is unlikely.

COMPETITION

9. Central and Staley were actual competitors in the production, distribution and sale of SPC in the United States.

EFFECTS

10. The effect of the acquisition of the Staley SPC assets has been substantially to lessen competition in the relevant line of commerce in the relevant section of the country in the following ways, among others:

- a. By eliminating actual competition between Central and Staley;
- b. By increasing Central's ability to unilaterally exercise market power; and
- c. By increasing the likelihood of, or facilitating, actual or tacit collusion.

11. Any or all of the above effects increase the likelihood that firms have increased prices and restricted output or will increase prices and restrict output both in the near future and in the long term.

12. Central's acquisition of the Staley SPC assets violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent Central Soya Company, Inc., and the respondent having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; 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 aforesaid draft of 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated Section 5 of the Federal Trade Commission Act, and that 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, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

PARAGRAPH 1. Central Soya Company, Inc., is an Indiana corporation, with its executive offices located at 1400 Fort Wayne Bank Building, Fort Wayne, Indiana.

PAR. 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

I.

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

A. "*Central*" means Central Soya Company, Inc., its parent, its subsidiaries, divisions, and any groups and affiliates under its control, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

B. "*Commission*" means the Federal Trade Commission.

C. "*Person*" means any natural person or any corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity.

D. "*SPC*" means soy protein concentrate, a product manufactured by removing from dehulled soybeans most of the oil and water-soluble non-protein components, leaving a product that is approximately 70% protein.

E. "*SPC assets*" means assets used in the production of SPC exclusive of raw materials.

II.

It is ordered, That, for a period of ten (10) years from the date this order becomes final, Central shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Commission, any stock or share capital of, or any interest in, or any of the SPC assets of any person engaged in the manufacture of SPC within the United States. *Provided, however*, that this paragraph shall not be deemed to prohibit: (1) upon at least 30 days advanced notice to the Commission, the taking by Central from any person, of a non-exclusive license that contains no restrictions with respect to limiting entrants into the market for SPC; (2) purchases of SPC in the ordinary course of business that do not exceed five million (5,000,000) pounds total a year and that do not result in the elimination of a competitor; and (3) upon at least 30 days advanced notice to the Commission, the purchase of used equipment with a fair market value of less than fifty thousand dollars (\$50,000).

III.

It is further ordered, That, one year from the date this order becomes final and annually for nine (9) years thereafter, Central shall file with the Commission a verified, written report setting forth in detail the manner and form in which it is complying or has complied with this order, including but not limited to, a statement identifying each SPC purchase made, the person from whom each SPC purchase was made, and the date, quantity and price of each SPC purchase.

IV.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request and with reasonable notice to Central made to its executive offices, Central shall permit any duly authorized representative or representatives of the Commission:

A. Access, during office hours, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and

documents in the possession or under the control of Central relating to any matters contained in this order; and

B. Upon five (5) days' written notice to Central, and without restraint or interference from them, to interview officers or employees of Central regarding such matters.

V.

It is further ordered, That Central shall notify the Commission at least thirty (30) days prior to any change in its corporate structure that may affect compliance obligations arising out of this order, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, or any other change.

VI.

It is further ordered, That Central shall require, as a condition precedent to the closing of the sale or other disposition of all or a substantial part of its SPC assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of the order.

IN THE MATTER OF

JEEP EAGLE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3304. Complaint, Sept. 4, 1990—Decision, Sept. 4, 1990*

This consent order requires, among other things, the Highland park, Mi. successor to American Motors Corp. to conduct a computer search of its warranty claims files to implement a redress program to benefit original owners of new 1983, 1984 and 1985 model year Renault Alliance and Encore automobiles that experienced four or more documented repair visits to correct specific automatic transmission fluid or engine oil leaks or related problems.

Appearances

For the Commission: *Adrienne Williams* and *Lydia B. Parnes*.

For the respondent: *Christopher Smith, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Motors Corporation (hereinafter "AMC"), which has been succeeded by Jeep Eagle Corporation (hereinafter "Jeep Eagle"), has violated the provisions of the Federal Trade Commission Act, ("FTC Act"), 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH. 1. (a) Jeep Eagle is a Maryland corporation with its principal office and place of business located at 12000 Chrysler Drive, Highland Park, Michigan. Jeep Eagle is the successor corporation to American Motors Corporation.

(b) American Motors Corporation manufactured, distributed, offered for sale and sold through authorized dealers automobiles, including automobiles bearing the designations Renault Alliance ("Alliance") and Renault Encore ("Encore").

(c) American Motors Sales Corporation ("AMSC") was a subsidiary of American Motors Corporation.