

Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

THE NATIONAL SUGAR REFINING COMPANY

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

Docket 6852. Complaint, July 25, 1957—Decision, Feb. 1, 1962

Consent order requiring the nation's second largest domestic sugar refiner to sell within six months and so as to restore the former competitive standing, the assets including refinery and sugar mill at Reserve, La., of the seventh largest—fifth largest east of the Mississippi River—refiner, which it acquired in June 1956 for approximately \$6 million for the fixed assets and about \$8 million for accounts receivable, inventories, and manufacturing supplies.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (15 U.S.C. Title 15, Sec. 18), as amended, and approved December 29, 1950, hereby issues its complaint, charging as follows:

PARAGRAPH 1. Respondent, The National Sugar Refining Co. (hereinafter sometimes referred to as "respondent National"), is a corporation doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 100 Wall Street, New York, N.Y.

The present company was organized under the laws of the State of New Jersey on June 2, 1900, under the corporate name of The National Sugar Refining Company of New Jersey. In 1939 its corporate name was changed to its present form.

Upon its organization the respondent National acquired the stock of the New York Sugar Refining Company, Mollenhauer Sugar Re-

fining Company, and National Sugar Refining Company (a New Jersey corporation distinct from respondent National, and dissolved in 1938), and, through such stock ownership or by transfer thereafter, the sugar refineries of the above named companies, then situated respectively at Long Island City, New York; Brooklyn, New York; and Yonkers, New York.

Following the merger of the three companies the Mollenhauer plant was closed and operations were begun immediately at the Long Island City and Yonkers refineries.

In 1927 the respondent purchased the refinery of Warner Sugar Refining Company at Edgewater, New Jersey, and in 1931 the operations of the Yonkers refinery were terminated, leaving the respondent with two operating plants, its present refinery in Long Island City, New York, and the Edgewater, New Jersey refinery.

In January 1941, the trademark, good will and certain other assets, but not the refinery, of Arbuckle Brothers were purchased by Arbuckle Sugars, Inc., a wholly owned subsidiary of respondent National. This subsidiary was dissolved August 25, 1947, and its business continued under the name of Arbuckle Sugars Division of The National Sugar Refining Company.

In 1941 a newly incorporated subsidiary of respondent National, the Pennsylvania Sugar Company, acquired the sugar refinery, plants and refining business of the former Pennsylvania Sugar Company. Since 1947 this subsidiary has been operated as the Pennsylvania Sugar Division of The National Sugar Refining Company.

During 1943 and 1944 the respondent sold the machinery, refinery, and other property which it owned at Edgewater, New Jersey, and confined its sugar refining operations and those of its subsidiary to the Long Island City and Philadelphia refineries.

Respondent, directly and through its various subsidiaries, is engaged, among other things, in the business of refining cane sugar and refines and distributes under the trade names "Jack Frost", "Quaker", "Arbuckle's" and "Godchaux" over forty grades of cane sugars in a great variety of packing. It also has a line of hard, soft, and liquid cane sugars under the brand name "National", and also produces under the name "Krist-O-Kleen" nine grades of special liquid and semi-solid invert sugars adaptable for industrial use. Respondent National is the second largest domestic refiner of sugar in the United States, selling its products in 28 states and accounting for approximately 15% of the national output.

PAR. 2. Respondent National purchases raw sugar from suppliers located in various States of the United States. This raw sugar is

extracted from sugar cane which is grown in the United States, Cuba, Hawaii, Puerto Rico and the Philippine Islands. The refined sugar produced by respondent is offered for sale, sold, and distributed to purchasers thereof located throughout the United States and respondent is engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 3. Prior to June, 1956, Godchaux Sugars, Inc. (hereinafter sometimes called Godchaux), was a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the Carondelet Building, New Orleans, Louisiana. Godchaux was incorporated in New York on July 7, 1919. At that time it acquired all of the property of Godchaux Company, Inc., which had been incorporated in 1914 to succeed Leon Godchaux Co., Ltd., a business that was founded by Leon Godchaux in 1898 under a perpetual charter.

Godchaux was principally a planter, manufacturer and refiner of cane sugar and in 1955 ranked seventh in size among sugar refiners in the United States and fifth in size among sugar refiners operating east of the Mississippi River. The properties and assets of Godchaux were located in the Parishes of St. John the Baptist, St. Charles, Lafourche, Assumption, and St. Bernard, Louisiana. The real property consisted of approximately 32,000 acres of land in the heart of the cane growing district of Louisiana. The company had approximately 13,500 acres planted in sugar cane. These properties are on or near the Mississippi River and are an average distance of about 50 miles from New Orleans, Louisiana. The cane sugar produced from this acreage formed only a small part of the refined output of Godchaux. In addition to its own sugar the company's refinery handled a large amount of Cuban and Puerto Rican sugar imported through the port of New Orleans, Louisiana. Godchaux purchased this sugar from suppliers located in various States of the United States. The company owned and operated a refinery and mill at Reserve, Louisiana, as well as a sugar cane mill at Raceland, Louisiana. Products were distributed under the brand names "Godchaux" and "Raceland" through jobbers and wholesale grocers in 21 States, principally in the southern and central freight rate territories. These brand names had become well established over a long period of years.

Godchaux, while in the course and conduct of manufacturing, refining, selling and distributing its principal product, refined sugar, was in commerce, as "commerce" is defined in the Clayton Act.

PAR. 4. In 1939 there existed 112 companies doing business in the sugar refining industry. In 1954 the number of companies doing

business in the industry was 88. This represents a decrease of 21%. In 1939 these companies produced 6,088,772 tons of refined sugar. In 1954 these companies produced 7,481,434 tons of refined sugar. This represents an increase of 23%. There has been little, if any, expansion in the sugar refining industry since 1939, and the aforementioned figures clearly indicate a tendency toward concentration of production facilities. Entry into the sugar refining industry is difficult for various reasons which are, among others, severe capital requirements due to the nature of manufacturing processes and heavy initial advertising expenditures in order to overcome public acceptance of entrenched well-known brands of a commodity for which the demand is fairly inelastic.

The sugar refining business consists of two basic products, refined cane sugar and refined beet sugar. The refined product of both beet and cane sugar is similar, with the exception of minor chemical differences and small price variations due to public preference for refined cane sugar. Respondent National and Godchaux are both refiners of cane sugar exclusively. For the purpose of this complaint, and the practices alleged to be illegal herein, refined beet sugar and refined cane sugar are considered identical.

PAR. 5. Respondent National and Godchaux were in competition prior to and during a part of 1956 in the sale of refined sugar products in substantially all of the States east of the Mississippi River and the States of Arkansas, Iowa, Louisiana, Missouri, and Oklahoma. In this area, in 1955, the five leading sugar refiners accounted for 58.3 percent of all refined sugar deliveries. The largest refiner in this area is the American Sugar Refining Company. In 1955 this company delivered 29.3 percent of the sugar in the area. Respondent National was the second largest refiner of sugar, delivering 821,080 tons of refined sugar which amounted to 13.4 percent of the industry total in the area in 1955. Godchaux was the fifth largest refiner of sugar, delivering 243,079 tons of refined sugar which amounted to 4 percent of the industry total in the area in 1955. The combined total of American Sugar, respondent National, and Godchaux gives these three producers 46.7 percent of the refined sugar delivered in the area.

In 1955 in the area embracing the five States of Illinois, Indiana, Kentucky, Michigan and Ohio, respondent National produced 11.8 percent of the refined sugar delivered and Godchaux produced 5.7 percent of the refined sugar delivered. The two companies produced a total of 17.5 percent.

In 1955 in the tri-state area of Indiana, Kentucky and Ohio, respondent National produced 22.5 percent of the total refined sugar delivered and Godchaux produced 8.3 percent of the total refined sugar delivered. The two companies produced a total of 30.8 percent.

In 1955 in the area embracing the States of Indiana and Ohio, respondent National produced 26.5 percent of the refined sugar delivered and Godchaux produced 5.7 percent of the refined sugar delivered. The two companies produced a total of 32.2 percent.

PAR. 6. On or about January 1956, Webb and Knapp, Inc., an organization engaged primarily in the business of investing and dealing in real estate, began buying stock in Godchaux through its corporate subsidiary, The 52026 Corporation, with the express purpose of gaining control of Godchaux and its approximately 32,000 acres of real estate in Louisiana. Effective control of Godchaux was acquired shortly thereafter.

During the last half of May 1956, Webb and Knapp, Inc., announced its intention to sell the Godchaux sugar refinery and the refining business at Reserve, La., to Respondent National. This sale was consummated in June 1956, when respondent National announced the purchase of the refinery and mill of Godchaux, together with the business, trade-mark, and goodwill of the Godchaux brand. The consideration for the transaction was approximately \$6,000,000 for the fixed assets, plus approximately \$8,000,000 for accounts receivable, inventories, and manufacturing supplies.

As of the date of the aforementioned sale to respondent National, the stockholders of Godchaux voted to change the name of the corporation to Gulf States Land and Industries, Inc., and said corporation is still a part of the sugar industry by virtue of its ownership and operation of the cane mill at Raceland, Louisiana, and all of its original cane growing operations. Approximately 31,000 of the 32,000 acres of land originally owned by Godchaux was retained by Gulf States Land and Industries, Inc.

PAR. 7. The aforesaid acquisition by respondent National of Godchaux may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of refined sugar in commerce, as "commerce" is defined in the Clayton Act.

More specifically, the aforesaid effects include the actual or potential lessening of competition and a tendency to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

Initial Decision

60 F.T.C.

(1) Godchaux has been permanently eliminated as one of the substantial independent producers of refined sugar and is no longer a competitive factor in the areas designated;

(2) By substantially increasing the competitive position of respondent National in the areas designated which may be to the detriment of actual and potential competition;

(3) Actual and potential competition between respondent National and Godchaux has been and will be eliminated in the production and sale of refined sugar in the areas in which they compete;

(4) Actual and potential competition generally in the production and sale of refined sugar may be substantially lessened and industry-wide concentration in the production of refined sugar has been and may be increased;

(5) The acquisition of Godchaux substantially increases respondent's overall position and gives respondent National the facilities, market position, and ability to monopolize or to tend to monopolize the refined sugar business in the designated areas;

(6) Substantially lessen competition by discouraging new entrants into the sugar refining business because of the monopolistic position of respondent National in certain areas and the further concentration of the industry as a whole.

PAR. 8. The foregoing acquisition, acts and practices of respondent, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended, and approved December 29, 1950.

Mr. Rufus E. Wilson and Mr. Ross D. Young for the Commission.
Cravath, Swaine & Moore, by *Mr. Albert R. Connelly and Mr. Grosvenor Blair*, of New York, N.Y., for the respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on July 25, 1957, issued its complaint herein, charging the respondent, The National Sugar Refining Company, a corporation, with having violated the provisions of § 7 of the Clayton Act (15 U.S.C., Title 15, § 18), as amended, and approved December 29, 1950; and respondent was duly served with process.

On December 27, 1961, there was submitted to the undersigned Hearing Examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Divest", together with its Appendices A and B, both attached thereto and by reference made a part of said agreement, which was entered into by respondent, its counsel, and counsel supporting the complaint on

