

Complaint

IN THE MATTER OF

CONSOLIDATED FOODS CORPORATION

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

Docket 7000. Complaint, Dec. 18, 1957—Decision, Mar. 22, 1963

Order requiring a large integrated Chicago processor and distributor of a broad line of food products, to divest itself of a Los Angeles manufacturer of dried food seasonings—including onions, garlic, chili pepper, and paprika—acquired in April 1951, which had occupied a position of dominance in the onion and garlic dehydrating and processing industry; and to restore it as a going concern as in the order below in detail set forth.

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 Consolidated Foods Corporation is a corporation organized in 1941 and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 135 South La Salle Street, Chicago, Illinois.

Respondent Consolidated Foods Corporation, hereinafter referred to as Consolidated, is engaged, among other things in the business of processing, distributing, and retailing a broad line of food products. Its food operations are completely integrated in that it handles a wide variety of products from the raw stage in the field to retailing to the ultimate consumer.

During the period from July 1, 1950, to June 30, 1951, Consolidated's net sales were \$174,006,801. Its net sales for the period from July 1, 1955, to June 30, 1956, totaled \$268,252,695. As of June 30, 1951, Consolidated's assets totaled approximately \$60,000,000 and by June 30, 1956 its total assets increased to more than \$99,000,000.

The distribution of food products constitutes a principal part of Consolidated's operations. In connection with this distribution Consolidated purchases a substantial volume of food products from various suppliers, many of which use, or can use, the type of dried food seasonings produced by Consolidated's Gentry Division.

Prior to and since April 12, 1951, Consolidated has been and is now engaged in the purchasing, processing and distribution of food prod-

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ucts. Consolidated purchases, processes, and distributes such products in commerce, as "commerce" is defined in the Clayton Act and offers to sell, sells, and distributes said products in said commerce in several of the States of the United States to purchasers located in several of the States of the United States.

PAR. 2. Gentry, Incorporated, prior to April 1951, was a corporation organized in 1946 and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 837 North Spring Street, Los Angeles, California. Gentry, Incorporated, hereinafter referred to as Gentry was engaged in the business of manufacturing dried food seasonings including, among others, onions, garlic, chili pepper and paprika.

Gentry, prior to April 1951, in the regular course and conduct of its business, sold or offered for sale, and distributed products hereinabove described, in commerce, as "commerce" is defined in the Clayton Act.

PAR. 3. On or about April 12, 1951, the stockholders of Gentry approved the sale of Gentry to Consolidated. In accordance with this approval Consolidated acquired Gentry by exchanging one share of Consolidated stock for each five shares of Gentry stock.

Since its acquisition by Consolidated, Gentry has been operated as a division of Consolidated. Gentry's net sales for 1950 were \$2,629,910. For the period from July 1, 1954, to June 30, 1955, net sales for the Gentry Division amounted to \$5,061,989.

Prior to and at the time of the acquisition Gentry was one of the few firms of consequence and occupied a position of dominance in the onion and garlic dehydrating and processing industry. Subsequent to the acquisition the Gentry Division of Consolidated has maintained and now maintains a position of dominance in said industry.

PAR. 4. The effect of the aforesaid acquisition by Consolidated of Gentry may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce, as "commerce" is defined in the Clayton Act, in which Gentry was engaged and in which Consolidated's Gentry Division is now engaged.

More specifically the aforesaid effects include, among others, the actual or potential lessening of competition or a tendency to create a monopoly in that the acquisition of Gentry by Consolidated:

1. May substantially lessen competition in the nation as a whole or in various sections of the country by reason of the utilization of Consolidated's purchasing power in such a manner as to coerce or attempt to coerce food suppliers to purchase dried food seasonings from its Gentry Division by withdrawing or threatening to withdraw its patronage.

Initial Decision

2. May substantially lessen competition or tend to create a monopoly in the nation as a whole or in various sections of the country by the increase of the dominant position of Consolidated's Gentry Division in the dried food seasonings industry resulting from the utilization of Consolidated's purchasing power in such a manner as to coerce or attempt to coerce food suppliers to purchase dried food seasonings from its Gentry Division by withdrawing or threatening to withdraw its patronage.

PAR. 5. The foregoing acquisition, acts and practices of respondent Consolidated, as herein alleged, 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. Raymond L. Hays, Mr. Theodor P. von Brand, and Mr. Richard B. Smith for the Commission.

Hopkins, Sutter, Owen, Mulroy & Wentz by *Mr. Anderson A. Owen, Mr. Daniel Walker, and Mr. Edward W. Rothe*, of Chicago, Ill., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

DECEMBER 29, 1961

This proceeding is based upon a complaint charging the respondent, Consolidated Foods Corporation, a corporation, with violation of Section 7 of the Clayton Act, as amended and approved December 29, 1950, by reason of its acquisition of Gentry, Incorporated, a corporation. This proceeding is now before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence and proposed findings of fact and conclusions of law, together with briefs and reply briefs presented by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions of law submitted by both parties and briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner being now fully advised in the premises makes the following findings of fact, conclusions drawn therefrom, and order:

1. Respondent, Consolidated Foods Corporation (hereinafter referred to as Consolidated), is a Maryland corporation with its office and principal place of business located at 135 South La Salle Street, Chicago, Illinois. It was originally incorporated as Consolidated

Grocers Corporation and changed its name to Consolidated Foods Corporation in February 1954.

2. Respondent was incorporated September 4, 1941, to take over C. D. Kenny, a wholesale grocery house. Subsequent to that time, there has been a series of acquisitions accounting for the rapid and steady growth of Consolidated, until it is now composed of a variety of divisions and subsidiaries engaged in producing and selling food products at wholesale and retail.

3. As of December 31, 1958, Consolidated had eight divisions and subsidiaries engaged in processing food products as follows:

(a) Coastal Foods Division, a processor of canned soups and vegetables at Cambridge, Maryland.

(b) Columbia Foods Division, a processor of vegetables, coffee, pickles, dressings and some fruits at plants in West Chicago, Illinois; Ellsworth, Michigan; Grundy Center, Iowa; Sugarland, Texas; Cambria, Wisconsin; Baltimore, Maryland; and Los Angeles, California. (Baltimore and Los Angeles packed coffee only and are now closed.)

(c) Kitchens of Sara Lee, Inc., which produced bakery goods at Chicago, Illinois.

(d) Ocoma Foods Company, a processor of frozen foods at six plants located in Nebraska, Iowa, and Arkansas.

(e) Orchard Hill Farms, Inc., a processor of frozen foods at Red Hook, New York.

(f) Union Sugar Division which produced beet sugar at Betteravia, California.

(g) U.S. Products Corp. Ltd., a processor of canned fruits and vegetables at San Jose and Santa Clara, California, and Salem, Oregon.

(h) Gentry Division, which produced dehydrated onion, dehydrated garlic and capsicums at Gilroy and Oxnard, California.

4. As of December 31, 1958, Consolidated had 12 units which sold products of Consolidated and other food processors at wholesale as follows:

(a) River Grove Division, which sold grocery products in the Chicago, Illinois, area.

(b) International Division, San Francisco, California, which sold grocery products to customers outside the United States.

(c) Lee Foods Division, which sold grocery products to institutional users in the Kansas City, Kansas, area.

(d) Morey Mercantile Division, which sold grocery products to independent retailers in the Denver, Colorado, area.

(e) Dannemiller Grocery Division, which sold grocery products out of branches in Canton, Cleveland and Akron, Ohio, to retailers and institutional users in the vicinity of each of those cities.

(f) E. A. Aaron and Bros., Inc., a wholesale frozen food distributor in Chicago, Illinois, which has since been liquidated.

(g) Western Grocer Division, which operated out of headquarters in Marshalltown, Iowa, with branches in Albert Lea, Minnesota; Davenport, Des Moines and Mason City, Iowa; and Manhattan, Kansas, and which sold to retailers and voluntary groups in the immediate area of each branch.

(h) Monarch Foods Division, which operated limited line branches in Minneapolis, Minnesota; Los Angeles and San Francisco, California; Houston, Texas; Jacksonville, Florida; and Somerville, Massachusetts, and which sold private label products of Consolidated almost exclusively to retailers and institutional users.

(i) Separate Monarch Foods branches, which operated independently of the Monarch Food Division and which were located at Roanoke, Virginia; Baltimore and Cumberland, Maryland; and Columbus, Ohio. These branches were not limited to Consolidated's private label products and sold to retailers, institutional users and voluntary groups.

5. As of December 31, 1958, Consolidated had three units which were engaged in the operation of retail stores as follows:

(a) Piggly-Wiggly Midwest Co., which operated about 50 retail supermarkets in northern Illinois, southern Wisconsin and eastern Iowa.

(b) Klein Supermarkets, Inc., which operated about 25 retail supermarkets in Minneapolis and St. Paul, Minnesota.

(c) Lawson Milk Division, which processed dairy and bakery products and sold them at retail with a very small line of other groceries, through small dairy-type stores in Akron, Canton and Cleveland, Ohio.

6. During the period from July 1, 1950, to June 30, 1951, the net sales of Consolidated were \$174,006,801. Its net sales for the period from July 1, 1955, to June 30, 1956, totaled \$268,252,695. As of June 30, 1951, the assets of Consolidated totaled approximately \$60,000,000 and by June 30, 1956, its total assets increased to more than \$99,000,000.

7. Prior to April 30, 1951, Gentry, Incorporated, was a California corporation with its office in Los Angeles, California. It was principally engaged in the production and sale of dehydrated onion and garlic. It also produced and sold capsicum spices, such as paprika, chili pepper, chili powder and hot peppers. Gentry was organized

in 1919 and was, successively, a sole proprietorship, a partnership and a corporation and its early business was that of a jobber, of chili and paprika and later dehydrated onion and garlic. In 1940, Gentry built a new plant in Gilroy, California, which it has used since that time for production of dehydrated onion and garlic. In 1946, Gentry built a plant in Oxnard, California, to which it transferred its capsicum operations.

8. On April 30, 1951, Consolidated acquired the assets of Gentry, Incorporated, in exchange for 66,546 shares of the common stock of Consolidated, having a market value of approximately \$1,000,000. At the time of said acquisition both Consolidated and Gentry were engaged in interstate commerce. The assets so acquired had a net value at that time of \$1,600,000. Gentry distributed Consolidated stock to its shareholders and was dissolved. Its business was thereafter operated as a division of Consolidated.

9. At the time of its acquisition in 1951, Gentry had three domestic competitors engaged in the production and sale of dehydrated onion and garlic:

(a) Basic Vegetable Products, Inc., which has its plant in Vacaville, California, and has been engaged in the processing of dehydrated onion and garlic since 1933;

(b) Puccinelli Packing Company, which has plants at Turlock and Livingston, California, and has been engaged in the processing of dehydrated onion and garlic since 1946; and

(c) J. R. Simplot Company, Boise, Idaho, which has its processing division in Caldwell, Idaho. Simplot was engaged in the processing of dehydrated onion from 1940 to 1956 when all onion dehydration equipment was removed and the entire plant was converted to the production of frozen french fried and dehydrated potatoes.

10. Gentry, Basic, Puccinelli and Simplot comprised all of the processors of dehydrated onion and garlic in the United States at the time of the acquisition in 1951. Since that date, as noted above, one company has withdrawn from competition in the processing and sale of dehydrated onion and garlic, and a new company, Gilroy Foods, Inc., began production of dehydrated garlic in 1959 and dehydrated onion in 1960. In 1961, Gilroy was acquired by McCormick & Company of Baltimore, Maryland, a processor and distributor of a variety of spices, seasonings, condiments and other products.

11. Sales in pounds of dehydrated onion and dehydrated garlic by Basic, Gentry, Puccinelli and Simplot and their market shares in the domestic market for the period from 1948 through 1958, are as shown in the following tables:

Initial Decision

Sales of Dehydrated Onion by Members of American Dehydrated Onion and Garlic Association (1948-58)

Calendar year	Pounds sold				Percentage of total				
	Basic	Gentry	Puccinelli	Simplot	Total	Basic	Gentry	Puccinelli	Simplot
1948	4,495,097	1,737,641	202,954	824,678	7,260,970	62	24	3	11
1949	3,048,532	1,742,643	506,530	235,941	5,533,646	55	31	9	5
1950	4,693,360	2,158,880	523,971	425,948	7,802,159	60	28	7	5
1951	8,071,202	3,610,313	662,977	1,276,851	13,621,343	59	27	5	9
1952	6,976,146	3,253,113	894,107	726,293	11,849,659	59	27	8	6
1953	6,160,254	4,222,718	832,552	520,486	11,736,010	52	36	7	5
1954	7,154,546	3,135,354	500,047	55,774	10,845,721	66	29	4	1
1955	7,812,785	3,914,770	1,150,883	823,079	13,701,517	57	29	8	6
1956	8,474,046	4,840,238	1,262,155	36,190	14,612,629	58	33	9	—
1957	8,780,710	6,485,052	1,771,199	—	17,036,961	52	38	10	—
1958	10,420,944	6,259,171	1,467,092	—	18,147,207	57	35	8	—

NOTE: Percentages rounded off to nearer whole.

Sales of Dehydrated Garlic by Members of American Dehydrated Onion and Garlic Association (1948-58)

Calendar year	Pounds sold				Percentage of total			Initial Decision
	Basic	Gentry	Puccinelli	Total	Basic	Gentry	Puccinelli	
1948	457, 177	772, 061	No data	1, 229, 238	No data	No data	No data	8
1949	575, 038	790, 495	120, 495	1, 486, 028	39	53	8	13
1950	652, 050	922, 073	225, 386	1, 799, 518	36	51	13	11
1951	832, 030	972, 553	223, 323	2, 027, 906	41	48	11	12
1952	878, 879	1, 172, 308	289, 987	2, 341, 174	38	50	12	9
1953	1, 165, 629	1, 252, 876	222, 609	2, 641, 114	44	47	9	9
1954	1, 324, 951	1, 346, 701	249, 376	2, 921, 028	45	46	9	10
1955	1, 765, 204	1, 698, 176	413, 806	3, 877, 186	46	44	10	10
1956	1, 900, 149	1, 753, 211	385, 844	4, 039, 204	47	43	10	11
1957	1, 876, 214	2, 103, 000	537, 657	4, 516, 871	42	47	11	11
1958	2, 575, 041	1, 979, 834	572, 167	5, 127, 042	50	39	11	

NOTES:

1. Percentages rounded off to nearer whole.
2. Simplot did not produce dehydrated garlic.
3. Since Puccinelli data for 1948 is not available, the total for that year includes only Basic and Gentry.

