

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1969, TO
JUNE 30, 1969

IN THE MATTER OF

BURLINGTON INDUSTRIES, INC.

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

Docket C-1473. Complaint, Jan. 2, 1969—Decision, Jan 2, 1969

Consent order requiring the Nation's largest textile manufacturer with headquarters in Greensboro, N.C., to cease acquiring any textile mill product corporation for a period of 10 years without prior approval of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18) and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I

Definitions

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

(a) "Textile mill product" means any of the following named products at any stage of processing, dyeing, finishing, treating, fabrication, or manufacture: (1) yarn, (2) thread, (3) braids, (4) twine, (5) cordage, (6) broad woven fabric (fabric over 12 inches in width), (7) narrow woven fabric (fabric of 12 inches or less in width), (8) knit fabric, (9) carpets and rugs, (10) felt goods, (11) lace goods, (12) bonded fabrics, or (13) miscellaneous products manufactured from fiber by knitting, weaving, braiding or tufting.

(b) "Textile mill products industry" means those business enterprises which process or manufacture and sell one or more textile mill products, as defined above, and in addition, those business enterprises known as "converters," which buy one or more textile mill products in the gray, have such products finished on contract, and sell such products at wholesale.

II

Respondent Burlington Industries, Inc.

2. Respondent Burlington Industries, Inc. (hereinafter referred to as "Burlington") is, and has been, a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located at 301 North Eugene Street, Greensboro, North Carolina.

3. Burlington is engaged in the manufacture and sale of a wide variety of textile mill products including, but not limited to, apparel fabrics, hosiery products, fabrics and products for the home (such as broadloom carpets and rugs, and sheets and pillowcases), yarns and industrial fabrics.

4. In the course and conduct of its business, as aforesaid, Burlington is engaged in commerce as "commerce" is defined in the Clayton Act and has been continuously so engaged under its present and prior names at least since 1950.

5. For the fiscal year ended September 30, 1967, Burlington had net sales of approximately \$1,364,552,000, substantially all of which consisted of sales of textile mill products. As of September 30, 1967, the total assets of Burlington amounted to approximately \$1,027,564,000.

6. Burlington's development has been characterized through the years by continuous growth. As the surviving corporation of variously-named predecessor corporations, Burlington's net sales increased from approximately \$27,196,000 for the year ended December 31, 1938, to approximately \$360,839,261 for the year ended October 3, 1953.

7. Since 1953, this growth has continued and has been accelerated by the acquisition of the stock and assets of corporations manufacturing and selling a variety of textile mill products.

8. Burlington is the world's largest and most diversified manufacturer of textile mill products. By the end of 1967, Burlington employed 74,000 people, operated 127 plants in the United States, and had international operations in nine foreign countries.

III

Erwin Mills, Inc., The Acquired Corporation

9. Prior to January 19, 1962, Erwin Mills, Inc. (hereinafter referred to as "Erwin") was a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business located at Durham, North Carolina.

10. Erwin owned and operated plants located in Durham, North Carolina, Erwin, North Carolina, Cooleemee, North Carolina and Stonewall, Mississippi.

11. Erwin was engaged in the manufacture and sale of a variety of textile mill products including finished cotton textile fabrics for work clothing, twills, sportswear, bedford cord fabrics and denims, and sheets and pillowcases.

12. In the course and conduct of its business, as aforesaid, Erwin was engaged in commerce as "commerce" is defined in the Clayton Act, and had been continuously so engaged at least since 1960.

13. For the fiscal year ended September 30, 1961, Erwin had net sales of approximately \$67,697,000 substantially all, if not all, of which consisted of sales of textile mill products. As of September 30, 1961, the total assets of Erwin amounted to approximately \$40,736,000.

14. Erwin's development had been characterized through the years by continuous growth. For the year ended December 31, 1949, Erwin had net sales of approximately \$49,097,000. For the year ended September 30, 1961, its net sales amounted to approximately \$67,697,000.

IV

The Acquisition

15. On or about January 19, 1962, Burlington acquired a majority of the common stock of Erwin. Subsequently, through a tender offer, Burlington acquired substantially all of the remaining stock so that by December 4, 1962, Burlington had acquired approximately ninety-nine percent of the common stock of Erwin.

V

The Nature of Trade and Commerce

16. The textile mill products industry in the United States is

substantial in terms of total dollar sales, as well as in terms of extensive domestic end usage of its finished products and extensive intermediate usage by other industries.

17. Historically, the textile mill products industry in the United States has been characterized by a substantial number of small competitive entities performing a limited variety of functions in connection with a limited number of textile mill products.

18. Since 1950, a significant change in the structure of the textile mill products industry in the United States has been taking place in that a limited number of integrated enterprises processing and manufacturing a wide variety of textile mill products have been moving toward dominant positions in the industry.

19. This change has been contributed to, in substantial part, by numerous mergers and acquisitions of textile mill products companies.

20. Since 1950, there has been a substantial increase in concentration in the textile mill products industry in the United States which has been effectuated by the consolidation of all sizes and types of concerns in that industry.

22. In 1963, the year after the acquisition of Erwin, Burlington continued to rank first in the textile mill products industry in the United States with net sales of approximately \$1,085,000,000.

VI

Adverse Competitive Effects

23. The effect of the acquisition by Burlington of Erwin may be substantially to lessen competition or to tend to create a monopoly in the textile mill products industry in the United States, in the following ways, among others:

(a) Actual competition between Burlington and Erwin has been eliminated.

(b) Potential competition between Burlington and Erwin has been eliminated.

(c) A substantial independent factor has been eliminated.

(d) Competitive advantages over other members of the industry have been increased substantially.

(e) Concentration has been increased substantially.

(f) Barriers to entry have been increased substantially.

(g) The structure of the industry has been altered to the

actual or potential detriment of a substantial segment of the industry.

(h) A serious trend toward concentration through merger by industry segments may be accelerated.

VII

The Violation Charged

24. The acquisition by Burlington of the stock of Erwin constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

SEPARATE STATEMENT

JANUARY 2, 1969

BY MACINTYRE, *Commissioner*:

Commissioner MacIntyre noted for the attention of all concerned that the Commission's consideration of guidelines for the textile industry will receive further consideration of the Commission on January 22, 1969.

DISSENTING STATEMENT

JANUARY 2, 1969

BY JONES, *Commissioner*:

By acceptance of the consent order in this case the Commission has apparently concluded that Burlington's acquisition of Erwin Mills violates Section 7 of the Clayton Act, but that the anti-competitive consequences of this acquisition are not sufficient to require divestiture.

Yet the Commission has simultaneously concluded that concentration in the textile mill products industry which has resulted from the "large number of horizontal, vertical and product extension mergers undertaken by the leading firms" has become sufficiently anticompetitive to warrant what amounts to the imposition of a virtual ban on all future mergers in this industry at least when engaged in by the top four and perhaps by the top eight firms.¹

¹The Commission's guidelines identify the mergers which will be "examined" by the Commission. These include mergers between companies whose combined sales or assets exceed \$300 million and for which the sales or assets of the smaller firm exceed \$10 million. Also identified by the guidelines are those mergers in which the combined firms rank among the top four in the industry or have a combined market share in excess of 5 percent of any submarket in which the top four firms account for 35 percent.

The Commission asserted in its guideline statement that the concentration with which it is so concerned has been triggered by the acquisitions of the top four firms in the industry and to some extent by the top eight, establishing in turn, an increasing size disparity between the leading firms and other members of the industry. The Commission also asserted that the firms making the acquisitions have principally been those which have both the production and marketing knowhow and the resources necessary to enter industries by internal expansion. If the mergers described in the guidelines will give rise to possible anticompetitive consequences in the future when engaged in by the rest of the industry, all of whom rank well below Burlington in asset and sales value, I cannot understand how the Commission can conclude that identical mergers entered into by Burlington during the past decade do not also give rise to anticompetitive consequences or to the likelihood of such consequences.

Throughout the last decade Burlington has had assets in excess of the guideline criterion of \$300 million. Indeed its industry sales reached \$1.3 billion for the year ending in October 1966 while its nearest competitor's sales were \$805 million. At least six acquisitions made by Burlington in the past ten years involved companies with assets in excess of \$10 million and hence on asset value alone would currently require "examination" under the Commission's Textile guidelines.² Moreover, one of these acquisitions gave Burlington a combined market share of 15 percent, and two of them moved Burlington into a position as one of the top four firms in each of the markets in which the acquired companies were active.³ Thus Burlington has made at least six mergers, two since 1960, which would violate the Commission's own guidelines.

² Burlington's 1954 acquisition of Pacific Mills put together Pacific, a manufacturer of cotton, rayon, cotton synthetic blend fabrics, and woolen and worsted fabrics with 1953 sales of \$121.2 million and assets of \$79.1 million, with Burlington whose 1953 pre-acquisition assets were \$300 million. Likewise its merger with Goodall-Sanford, also in 1954, added to Burlington's already guideline-"violating" asset figure of \$300 million a firm which produced mohair-blended fabrics for men's, boys', and women's wear, as well as miscellaneous lines, and had 1954 assets and sales of \$37.6 and \$49.7 million respectively, well in excess of the \$10 million guideline figure. Burlington's 1955 acquisition of Ely and Walker Dry Goods Company, a cotton fabrics manufacturer and dry goods seller, also "violates" the \$300 million-\$10 million guideline, as Burlington with pre-acquisition assets of \$382 million (and sales much higher) acquired Ely and Walker which had 1954 sales of \$117.4 million and assets of \$82.1 million. Burlington's 1962 acquisitions of Fabrex Corp., a textile fabric converter, "violates" the \$10 million acquired firm guideline as Fabrex had 1961 sales of \$35.5 million.

³ The James Lees merger gave Burlington 8.7 percent of a market in which it had previously enjoyed 1.75 percent, with top four industry concentration over 35 percent. The Erwin Mills Co. merger gave Burlington a 15 percent market share in an industry where the top four accounted for 55 percent of total 1963 sales.

It of course could be argued that these Burlington acquisitions did not have the same serious anticompetitive consequences at the time they were consummated that they would have if consummated now in an industry whose competitive atmosphere has darkened through overall increased concentration. However, in fact in publishing its textile guidelines, the Commission described structural characteristics which fit the Burlington acquisitions perfectly and, by positing that anticompetitive consequences are now likely to follow from such structural characteristics, has implicitly admitted that Burlington's past acquisitions are also *now* likely to have those same anticompetitive consequences. For example, the increased concentration in the overall textile mill products industry from 1958-1963 pointed out in the Commission's guideline statement indicates that the Fabrex, Lees and Erwin mergers (1960-62) took place in the self-same darkening atmosphere of increased concentration which posited the anticompetitive consequences which the Commission points to as constituting the major rationale for the industry guidelines.

Therefore, I cannot justify the Commission's apparently double enforcement standard being applied here—one standard for Burlington and another for the balance of the industry. There are seven other companies in this industry whose sales exceed \$300 million and whose mergers therefore will automatically be "examined" under the guideline criterion of size alone. To be safe, each of these companies must now plan its future expansion programs in terms of internal growth. Yet Burlington who ranks first in the industry is permitted by the Commission to keep the fruits of its merger expansion program by means of which it was enabled to become number one in the industry.

I realize that whenever the Commission determines that concentration in a given industry is showing anticompetitive potential, an attempt to deflect or arrest its future enhancement will have some inequitable impact as between those mergers already accomplished which contributed to the creation of the anticompetitive situation and those still in the planning stage or even as yet un contemplated. Nevertheless, to validate past mergers of the number one company in an industry and foreclose the merger path to growth on the part of its competitors strikes me as unfair and unjustified.

If the Commission's guidelines represent sound policy, then it seems to me that Burlington's acquisitions described above should have been challenged and divestiture sought. Instead the

