

during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

BERGEN BRUNSWIG CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2463. Complaint, Oct. 4, 1973—Decision, Oct. 4, 1973.

Consent order requiring a Los Angeles, California, wholesale distributor of druggists' sundries, among other things to cease knowingly inducing or receiving discriminatory payments. Respondent is further required to provide each person or organization invited to participate in its trade shows, a copy of this order for a period of five (5) years.

Appearances

For the Commission: *John E. Passarelli, Ronald J. Dolan and Daniel R. Kane.*

For the respondent: *Douglas Chadwick, Los Angeles, Calif. and Murray J. Laulicht, Lowenstein, Sandler, Brochin, Kohl & Fisher, Newark, N.J.*

COMPLAINT

The Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, having reason to believe that Bergen Brunswig Corporation, a corporation, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), 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 respect thereto as follows:

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Bergen Brunswig Corporation

PARAGRAPH 1. Respondent Bergen Brunswig Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office located at 1900 Avenue of Stars, Los Angeles, California.

PAR. 2. Respondent is now, and has been for many years, engaged in the wholesale distribution of, among other products, druggists' sundries with total sales of such products in excess of \$58 million for the fiscal year ended August 31, 1971.

Trade and Commerce

PAR. 3. Respondent, in the course and conduct of its business has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases a great variety of products from a large number of suppliers located throughout the United States and causes such products to be transported from various States in the United States to the warehouses of its twenty-four (24) sales divisions in other states for resale to retail drugstores located throughout the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent is now and has been in competition with other corporations, persons, firms and partnerships in the purchase, sale and distribution at wholesale of druggists' sundries.

COUNT I

Respondent's Trade Shows

PAR. 5. Respondent solicits suppliers of druggists' sundries to display their merchandise at respondent's trade shows which are held annually throughout the United States. Suppliers who wish to participate are required to rent booths from respondent for purposes of displaying such merchandise. A substantial number of respondent's suppliers participate in one or more of these trade shows and many rent more than one booth at each show. In 1971, suppliers who participated in respondent's trade shows paid respondent approximately \$178,152 to rent booths.

PAR. 6. During respondent's trade shows, agents, employees or representatives of the participating sundries suppliers also perform valuable services, specifically, staffing the booths rented by suppliers from respondent and demonstrating and promoting

the suppliers' products. In addition, some suppliers give door prizes.

PAR. 7. Respondent's trade shows are attended by many of its retail drugstore customers who purchase the displayed merchandise from or through respondent.

Violation

PAR. 8. Some of respondent's suppliers who participated in respondent's trade shows in 1971 did not offer and otherwise make available to all their customers competing with respondent in the sale and distribution of their respective products, payments, allowances, services, or other things of value, for advertising and promoting such products on proportionally equal terms to those granted respondent in connection with its trade shows.

PAR. 9. Therefore, respondent has induced and received or received from some of its suppliers, payments, as set forth in Paragraph 5 above, and services or facilities, as set forth in Paragraph 6 above, in connection with respondent's sale, or offering for sale, of products sold to respondent by such suppliers which respondent knew or should have known were not made available by such suppliers on proportionally equal terms to all other customers of such suppliers competing with respondent, including customers who do not purchase directly from such suppliers, in the sale and distribution of such products.

Such acts and practices constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45).

COUNT II

PAR. 10. The allegations of Paragraphs 1 through 7 are incorporated herein by reference.

PAR. 11. Respondent, in the normal course of business, provides volume discounts to its customers of druggists' sundries which, at customer's option, may be applied to the acquisition of points in respondent's Travelcade program under which accumulated points are applied to a vacation sponsored and paid for by respondent.

PAR. 12. In connection with respondent's 1971 trade shows respondent offered additional Travelcade points to customers making purchases at said trade shows based on their volume of purchases.

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PAR. 13. Respondent's offering or granting said Travelcade bonus points to attending trade show customers, as set out in Paragraph 12, may tend to foreclose respondent's competitors in wholesale distribution of druggist's sundries from competing for the business of retail druggists who attend respondent's trade shows. Such acts and practices, therefore, constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 with violation of the Federal Trade Commission Act; and

The respondent 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 the said 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings.

1. Respondent Bergen Brunswig Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office located at 1900 Avenue of Stars, Los Angeles, California.

2. The Federal Trade Commission has jurisdiction of the

subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, Bergen Brunswig Corporation, a corporation, and its officers, representatives, agents and employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of products for resale by the respondent, or in connection with any other transactions between respondent and its various suppliers involving or pertaining to the regular business of the respondent in purchasing, promoting, advertising, distributing and selling commodities and products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

1. Inducing and receiving, receiving or contracting for the receipt of anything of value from any supplier of druggists' sundries as compensation or in consideration for services and facilities furnished by or through respondent in connection with the processing, handling, sale or offering for sale of such supplier's products at respondent's trade shows, when respondent knows or has reason to know that such compensation is not affirmatively offered and otherwise made available by such supplier on proportionally equal terms to all of its other customers competing with respondent, including customers who purchase from intermediaries and compete with respondent in the resale of such supplier's products.

2. Inducing and receiving, receiving or contracting for the receipt of, the furnishing of services or facilities, including but not limited to inducing prizes or gifts awarded to retail druggist customers attending respondent's trade shows, connected with respondent's offering for sale or sale of such products so purchased, when respondent knows or has reason to know that such services or facilities are not affirmatively offered or otherwise made available by such supplier on proportionally equal terms to all of its customers who purchase from intermediaries and compete with respondent in the resale of such supplier's products.

It is further ordered, That respondent shall cease and desist from offering or providing to its customers, directly or indirectly,

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any material inducement, monetary or otherwise, to attend its trade shows whenever such customers' receipt of the inducement depends upon their purchases or volume of purchases of merchandise from respondent.

It is further ordered, That a copy of this order shall be delivered to each person or organization invited to participate in any trade show sponsored, organized or held by respondent, at the time such invitation is extended, for a period of five (5) years from the date of service of this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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 obligations arising out of the order.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating wholesale drug divisions.

It is further ordered, That respondent shall, within sixty (60) days of service 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 the order.

It is further ordered, That the effective date for compliance with this order shall commence September 1, 1973.

IN THE MATTER OF

URBAN REDEVELOPMENT, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2464. Complaint, Oct. 4, 1973—Decision, Oct. 4, 1973.

Consent order requiring a New Orleans, Louisiana, real estate developer, among other things to cease representing that structures, facilities, or other improvements are in existence on any of respondent's land, when, in fact, none exist.

Appearances

For the Commission: *Donald M. VanWart.*

For the respondent: *Benjamin B. Sannders, Huddleston & Davis, New Orleans, La.*

Complaint
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 Urban Redevelopment, Inc., a corporation, hereinafter 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:

PARAGRAPH 1. The respondent Urban Redevelopment, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at 225 Baronne Street, New Orleans, Louisiana.

PAR. 2. Respondent, using the name Chateau Estates, is now and for some time in the past has been engaged in the advertising, offering for sale and sale of real estate located in Kenner, Louisiana, to the purchasing public.

PAR. 3. In the course and conduct of its business, respondent has been, and is engaged in disseminating and causing to be disseminated in newspapers of interstate circulation, and in television broadcasts of interstate transmission, advertisements designed and intended to induce sales of its real estate. The amount expended by respondent upon such advertising is substantial.

PAR. 4. Among and typical, but not all inclusive of the statements appearing in the advertisements described in Paragraph Three are the following:

Chateau Estates is Renaissance, a rewarding experience. Majestic fountains and tumbling waterfalls play over a lush forest and gardens. Though only minutes away from central New Orleans, and many shopping areas, Chateau Estates is another world, where hurry and stress are unknown. 1973, July. A magnificent golf course, comparable to the world's most challenging fairways, offers eighteen holes surrounded by capricious hazards, lakes and sand entrapments. These grounds were constructed with the devoted player in mind by greens planner, Everett Alleman. David Nelson, the Resident Professional, already enjoys a high reputation among golfers. The glorious olympic pool gives plenty of elbow room to swimmers while at poolside, the perpetual golfer can leisurely line up practice shots on the putting green. Numerous tennis courts offer ample opportunity to achieve top form. After the gaming, luxurious spas are available with revitalizing saunas and massages for the weary sportsmen and their ladies. The spas also house enough exercise equipment for everybody to become beautiful. 1973, September. The Chateau's Country Club is French Renaissance in opulence and design, containing a palatial grand ballroom that recalls the lavish

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entertainment of the era. From the kitchen emanate tantalizing smells as the chef prepares delectable food. The diners of Chateau Estates will appreciate the swift, elegant service. Intimate dining rooms, banquet halls, the cocktail lounge and grill are all places of stimulating atmosphere. Full time catering delivers assorted delicacies to the door for private entertainment.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondent has represented, and is now representing, directly or by implication that:

1. Chateau Estates has existing fountains, existing waterfalls, and an existing forest and gardens.
2. Chateau Estates has an existing 18 hole golf course.
3. Chateau Estates has an existing olympic pool.
4. Chateau Estates has existing tennis courts.
5. Chateau Estates has existing saunas and spas.
6. Chateau Estates has an existing country club, containing an existing grand ballroom, an existing kitchen, and an existing cocktail lounge.

PAR. 6. In truth and in fact:

1. Chateau Estates does not have existing fountains and existing waterfalls, nor does it have an existing forest and gardens.
2. Chateau Estates does not have an existing 18 hole golf course.
3. Chateau Estates does not have an existing olympic pool.
4. Chateau Estates does not have existing tennis courts.
5. Chateau Estates does not have existing saunas and spas.
6. Chateau Estates does not have an existing country club containing existing grand ballroom, existing kitchen, and an existing cocktail lounge.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof, were and are false, misleading and deceptive.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and to enter into agreements to purchase substantial amounts of real estate by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the

public and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New Orleans Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent 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 the said 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 thirty (30) days, now in further conformity with the procedures prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Urban Redevelopment, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 225 Baronne Street, New Orleans, Louisiana.

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

It is ordered, That respondent Urban Redevelopment, Inc., a corporation, and respondent's agents, representatives, employees, successors and assigns, directly or through any corporation, sub-

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subsidiary, division or other device, in connection with the offering for sale, sale or distribution of real estate, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing by any means, directly or by implication that any structures, facilities or other improvements are presently in existence on any of respondent's land or in any of respondent's real estate developments when such structures, facilities or other improvements do not presently exist; *Provided however*, That this order shall not be construed to prevent the description of proposed and planned structures, facilities or other improvements where such description clearly and conspicuously discloses that such structures, facilities or improvements are not presently in existence and further, as part of the description, discloses the reasonably expected completion date for such structures, facilities or improvements.

It is further ordered, That respondent or its successors or assigns notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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 corporate respondent which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent distribute a copy of this order to all firms and individuals involved in the preparation, creation, or placing of advertising of respondent's real estate.

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 nature and form of its compliance with this order.

IN THE MATTER OF

GENERAL MILLS, INC.

DISMISSAL ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket 8836. Complaint, Feb. 16, 1971—Order & Opinion, Oct. 5, 1973.

Order dismissing complaint against a Minneapolis, Minn. producer of packaged consumer foods which was alleged to have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act,

by its acquisition of a processor and marketer of frozen packaged seafoods.

Appearances

For the Commission: *Joseph J. O'Malley, Murray L. Lyon and Harold G. Munter.*

For the respondent: *Davis Polk & Wardwell, New York, N.Y. and John Finn, Minneapolis, Minn.*

COMPLAINT

The Federal Trade Commission, having reason to believe that General Mills, Inc., has acquired the Gorton Corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C., Section 18), hereby issues this complaint pursuant to Section 11 of the Clayton Act (15 U.S.C., Section 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C., Section 45(b)), stating its charges in that respect as follows:

I

DEFINITIONS

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

(a) *Food Manufacturing* describes canning, dehydrating, refrigerating and freezing preserved packaged foods customarily sold to consumers through grocery stores and food service outlets.

(b) *Food Service Outlets* are those outlets involved in serving food away from home such as hotels, restaurants, drive-ins, schools and institutions.

(c) *Frozen Packaged Seafood* consists of seafood packed for distribution in one of various types of containers including cartons and preserved by freezing and including fish and shellfish.

(d) *Frozen Fish Sticks*: An elongated piece of frozen fish flesh (generally cut from a frozen block of fillets) weighing not less than $\frac{3}{4}$ of an ounce and not more than $1\frac{1}{4}$ ounces with the largest dimension at least three times that of the next largest dimension.

(e) *Frozen Fish Portion*: A frozen piece of fish flesh generally of uniform size and generally cut from a frozen block of fillets. It has a thickness, including the batter, of $\frac{3}{8}$ of an inch or more, and does not conform to the definition of a fish stick.

(f) *Frozen Fillet*: A flat slice of frozen fish flesh without bone.

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(g) *Frozen Steak*: A cross-section slice of a frozen fish.

(h) *Frozen Breaded Shrimp*: Frozen peeled shrimp coated with breading ingredients. The product may be identified as fantail (butterfly) and round with or without tail fins and last shell segments; and as portions, sticks, steaks, etc., when prepared from a composite unit of two or more shrimp pieces, whole shrimp or a combination of both without fins or shell.

II

RESPONDENT

2. General Mills, Inc., (GMI), respondent herein, is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 9200 Wayzata Boulevard, Minneapolis, Minn.

3. GMI, incorporated in Delaware in 1928, is a leading producer of packaged consumer foods, preselling customers, principally housewives, through intensive advertising and promotional efforts. GMI produces such consumer items as ready-to-eat breakfast cereals, snacks, prepared mixes and family flour, which are primarily distributed through self-service food stores under the "Big G" label.

4. GMI manufactures a number of bakery mixes and other items which are marketed to members of the food service trade such as wheat gluten, wheat starch, guar and locust bean gums, wheat germ oil, spice base and multi-vitamin enrichment compounds. It also engages in grain merchandising and manufactures and markets a number of ingredient products for the dairy and other segments of the food manufacturing industry. At the same time it operates facilities to supply its own flour requirements and for sale of flour to commercial users.

5. GMI operates eight flour mills, having an aggregate daily capacity of approximately 59,100 hundredweights of flour; a food service mix plant with a daily capacity of about 160,000 pounds; seven prepared cereal mix and other packaged consumer food product plants having an aggregate daily capacity of about 5,500,000 pounds; six plants for the manufacture of specialty chemical products with floor space of about 420,000 square feet; five terminal grain elevators and a number of warehouses. Its subsidiary, the Gorton Corporation, operates plants and warehouses in ten states and Canada with total floor space of about 514,000

square feet. As of May 25, 1969, GMI employed approximately 19,700 employees.

6. For the year ended May 31, 1963, GMI and its subsidiaries' total assets were \$220,350,237, sales totaled \$523,946,000, and net earnings were \$14,912,196. For the year ended May 25, 1969 GMI and its subsidiaries' total assets were \$622,357,000, sales \$885,242,000 and net earnings \$37,547,000. During this same period the company's consumer foods products sales increased from about \$288 million to approximately \$600 million in annual sales. Between 1963 and 1969 the relative change in General Mills' consumer food products sales increased from 55 percent to 67.7 percent of total company sales.

7. GMI, directly and through various completely owned subsidiary corporations, ranks among the nation's leading manufacturers of brand differentiated food products. It is one of the largest flour milling companies in the United States, and is a leading producer of commercial flour. In packaged consumer foods, it ranks among the three largest companies in sales of breakfast cereals. GMI believes itself to be among the leaders in sales of cake mixes and other packaged convenience foods and is first by a considerable margin in sales of family flour. Its packaged food products are marketed largely through grocery stores and food service outlets.

8. As a multi-product producer, GMI enjoys substantial advantages in advertising and sales promotions. It features several products in its promotions, reducing the printing, mailing and other costs for each product. GMI purchases network programs on behalf of several products, enabling it to give each product network exposure at a fraction of the cost per product that a single-product firm would incur.

9. In 1968, GMI was ranked the sixteenth largest national advertiser and the third largest national advertiser of food. GMI's total advertising expenditures in 1968 totaled approximately \$58 million, of which about 73 percent was spent on television advertising.

10. GMI has developed, introduced and marketed successfully several packaged food products sold under the "Big G" label which include the ready-to-eat cereal brands "Cheerios" and "Wheaties," snack product brands "Whistles" and "Bugles," "Betty Crocker" prepared mixes and "Gold Medal" flour for home use. A new ready-to-eat cereal, "Lucky Charms," was claimed by GMI to be one of the fastest growing established brands in the

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industry in 1969. At the beginning of fiscal 1969-70, GMI introduced nationally a presweetened vitamin and iron fortified cereal named "Kaboom."

Among GMI's better known trade names and consumer products are the following:

Betty Crocker Bake and Other Food Products—

Cake Mixes	Muffin Mixes
Pie Crust Mixes	Potato Buds
Brownie Mixes	Noodles Romanoff
Cooking Mixes	Pancake Mixes
Frosting Mixes	Gingerbread Mix
Pound Cake	SAFF-O-LIFE Safflower Oil
Biscuit Mixes	

Bisquick Mix

Snacks—

Bugles	Buttons
Whistles	Bows
Daisys	Pizza Spins
Hotchas	

Breakfast Cereals—

Wheaties	Twinkles
Cheerios	Lucky Charms
Kix	Stax
Trix	Clackers
Jets	Country Corn Flakes
Frosty O's	Cocoa Puffs
Total	Goodness Pack
Kaboom	

Flour—

Gold Medal	White Deer
Softasilk	Red Band
Purasnow	La Pina
Sperry Drifted Snow	Red Star

Sponges—

O-Cel-O

11. GMI was formed for the purpose of acquiring several flour milling companies. Since that time acquisitions and development of new products have played essential roles in the company's growth.

Since 1963, GMI has entered into the production and sale of additional food products through a series of acquisitions of existing food manufacturers. Among such domestic acquisitions in recent years have been the following:

Year	Company	Complaint	Product or Activity
1964	Morton Foods, Inc.		Potato chips, corn chips, and other snack foods. (GMI sold most of Morton in May, 1970 keeping its pickle operation and some real estate.)
1966	Tom Huston Peanut Co.		Potato chips, corn chips, peanuts, confectionery products and other snack foods.
1967	Cherry-Levis Food Products Corp.		Sausages and pickled meat products.
1968	Jesse Jones Sausage Company		Meat Processor.
1968	The Gorton Corporation		Frozen Seafood
1969	The Donruss Co.		Bubble Gum

GMI has also diversified into other consumer related businesses by recently acquiring firms in the crafts, games, toys and clothing industries.

12. For many years prior to 1968, GMI sought entry into the frozen foods industry which is a large and expanding field. Entry into processing and marketing frozen food products is a natural evolution of GMI's steps for greater convenience to consumers, a process characterized by earlier development of prepared baked goods mixes, canned, dehydrated and refrigerated foods. GMI's leading Betty Crocker brand differentiated food products are vulnerable to inroads from frozen baked goods, entrees and convenience frozen foods. In recent years research and development in frozen and refrigerated foods has been one of the most important programs within GMI's Central Research Laboratories. New products to be developed included frozen entrees in meat, seafood and poultry.

13. At all times relevant herein, GMI sold and shipped and is now selling and shipping, products in interstate commerce throughout the United States; hence GMI was at the time of the acquisition challenged herein, and is now, engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

III

THE GORTON CORPORATION

14. Prior to August 16, 1968 when it was acquired by GMI, the Gorton Corporation ("Gorton"), was a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 327 Main Street, Gloucester, Mass.

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15. For many years Gorton has been an established and respected New England seafood company whose brand names "Gorton's of Gloucester" and/or "Gorton's" are among the oldest seafood brands in the United States and are virtually synonymous with seafood products. Gorton was successful and growing. Its sales increased from approximately \$12 million in 1958 to approximately \$72 million in 1968. In 1968, Gorton earned over \$1.5 million net and had assets of about \$30 million.

16. Gorton processed and marketed frozen packaged foods nationally, principally fish portions, sticks and breaded shrimp, pre-selling customers, largely housewives, through advertising and other promotional efforts. Its products were marketed through retail outlets and food service outlets.

17. In 1967, Gorton ranked first among the independent companies in frozen packaged seafoods. In 1968, Gorton was the leading firm by a significant margin in the production of frozen packaged fish sticks and frozen packaged fish portions, major segments of the frozen packaged seafood industry.

18. Gorton had attained the position of largest independent producer in the frozen packaged fish and other seafood industry through the acquisition of a number of established manufacturers of branded seafood products including among others:

(a) Fishery Products, Inc. (now Blue Water Seafood, Inc.), Cleveland, Ohio, owner of "Blue Water," the leading seafood brand in the food service industry;

(b) Red L Foods Corporation, Providence, Rhode Island, owner of "Red L" a leading brand of frozen prepared foods and seafood dinners;

(c) Fulham Brothers, Inc., Boston, Massachusetts, owner of a full-line dominant brand of seafood, "Four Fishermen;"

(d) Florida Frozen Food Processors Inc., Miami, Florida, owners of the outstanding "Tropic Fair" brand in the institutional breaded shrimp market;

(e) Bayou Foods, Inc., Mobile, Alabama, owner of the leading "Bayou" brand of frozen crab specialties;

(f) Trans World Seafood, Inc., New York, New York, a leading importer of seafood products;

(g) Point Chehalis Packers, Inc., Westpoint, Washington, an established producer of canned and frozen crab and salmon.

19. Gorton began diversifying outside the seafood industry in 1966 with the acquisition of Freeborn Farm, Inc., a producer of

puff-pastry hors d'oeuvre products. This acquisition was the first step towards the formation of a nucleus for the development of a line of convenience foods. In 1968, in the second step toward becoming a significant diversified food products manufacturer, Gorton acquired B. B. Foods Corporation of Kentucky and B. B. Foods Corporation, Paducah, Kentucky, and Akron, Ohio, respectively, producers of frozen onion rings and frozen mushrooms.

20. Gorton was a substantial purchaser of flour products for use in its manufacturing processes. In 1967 purchases of wheat flour alone amounted to a total of 8.8 million pounds valued at approximately \$500,000.

21. At all times relevant herein, Gorton sold and shipped, and is now selling and shipping, products in interstate commerce throughout the United States; hence Gorton was at the time of the acquisition challenged herein, and is now, engaged in commerce as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act.

IV

TRADE & COMMERCE

A. Generally.

22. The food manufacturing industry consists of manufacturers primarily engaged in processing and packaging food for distribution and sale through retail outlets, such as grocery stores, and/or food service outlets. Consumers spent approximately \$120 billion for food in 1969, or roughly one of every five dollars of consumer disposable income. At manufacturing levels, food sales were about \$97 billion in 1969.

Concentration in food manufacturing has been increasing for almost two decades with the fifty largest food manufacturers accounting for approximately 52 percent of all assets of food manufacturers in 1966 as compared with 42 percent in 1950, an increase of almost 24 percent. This trend toward concentration accelerated between 1966 and 1969 when approximately 225 acquisitions were made in the food industry. These acquisitions represent approximately one third of the more than 700 food industry mergers reported since 1958.

23. This merger movement has affected entry variables in food manufacturing in several ways. Conglomerate power of large food manufacturers may tend to discipline the competitive behavior of their smaller competitors. Entry barriers associated with brand

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differentiation have been or may be increased or entrenched. Cumulatively, the continued merger movement with its attendant effects on structure has contributed to increasing concentration of various segments of the food industry into the hands of a few large firms.

B. Frozen Packaged Seafood.

24. The frozen packaged seafood industry consists of manufacturers primarily engaged in processing frozen seafood for distribution and sale through retail outlets and food service outlets. The value of industry shipments was about \$384 million in 1967, of which the principal frozen products were fish portions, fish sticks and breaded shrimp.

25. (a) High levels of concentration prevail in segments of the frozen packaged seafood industry. In frozen breaded shrimp, the four and eight largest firms held 43.8 percent and 66.7 percent respectively of 1968 production; in frozen fish sticks the four and eight largest firms held 51.1 percent and 69.2 percent respectively of 1968 production; and in frozen fish portions, the four and eight largest firms held 53 percent and 70.8 percent respectively of 1968 production. Gorton ranked first in frozen fish stick and portion production and ranked among the eight largest firms in production of frozen breaded shrimp.

25. (b) At least fifteen mergers and one joint venture involving major seafood companies occurred since 1960. The impact of this merger movement and increased expenditures for product differentiation tend cumulatively to increase and entrench high levels of concentration.

V

THE ACQUISITION

26. On or about August 16, 1968, the Gorton Corporation was merged into GMI completing a transaction obligating GMI to issue 544,672 shares of common stock and pay a cash consideration of about \$9.5 million. The value of this transaction, at the time, was approximately \$30 million.

VI

EFFECTS OF ACQUISITION

27. The effect of the merger of Gorton into GMI has been or may be substantially to lessen competition or to tend to create a

monopoly in the manufacture, distribution and sale of frozen packaged seafood, or segments thereof, in the United States or sections thereof, separately and as a part of the cumulative tendencies toward increasing concentration in food manufacturing described in Section IV of this complaint, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C., Section 18), in the following, among other ways:

(1) GMI, a firm which possesses the capability to become a significant competitor and has demonstrated its intention and ability to expand its position in the manufacture and sale of frozen packaged seafood, has been eliminated as a potential competitor in the manufacture and sale of frozen packaged seafood.

(2) The dominant position of Gorton in the frozen packaged seafood industry has been, or may be further strengthened and entrenched *vis-a-vis* its competitors with the result that the likelihood of any reduction in such dominant position is remote.

(3) The already high levels of concentration in the manufacture and sale of food in general and frozen packaged seafood in particular have been further increased.

(4) Gorton has been eliminated as an independent user of raw materials, supplies and equipment used in processing and producing frozen packaged seafood.

(5) Members of the consuming public have been or may be denied the benefits of free and open competition in the manufacture and sale of frozen packaged seafood by the substitution of the large multi-product food manufacturer, GMI, for the single product Gorton.

(6) The strong position of Gorton and GMI in various segments of the food industry offer the opportunity to GMI-Gorton to tie the sale of various products to the sale of other products sold or distributed by GMI-Gorton.

(7) Barriers to entry into the frozen packaged seafood industry, or segments thereof, may be heightened due to the strong market position, the substantial financial resources, the established or anticipated brand differentiations, the advertising capabilities and the combining of nationally known trade names, the elimination of potential competition, the ability to cross subsidize, the ability to tie-in products, and decisive competition advantages resulting from the size of the combined GMI-Gorton achieved in major part through acquisition and merger.

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VII

VIOLATION

28. The acquisition of Gorton by GMI as alleged above, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

INITIAL DECISION BY ANDREW C. GOODHOPE
ADMINISTRATIVE LAW JUDGE
FEBRUARY 16, 1973

STATEMENT OF PROCEEDINGS

On February 16, 1971, the Commission issued its complaint against respondent charging it with violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. Section 45).

A copy of the complaint and notice of hearing was served upon respondent, and respondent thereafter appeared by its counsel and filed an answer admitting certain of the allegations of the complaint but denying that it had violated Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act.

Hearings were thereafter held, at which time testimony and documentary evidence were offered in support of and in opposition to the allegations of the complaint. At the close of all the evidence and pursuant to leave granted by the administrative law judge, proposed findings of fact, conclusions of law, briefs and proposed orders were filed by counsel supporting the complaint and counsel for the respondent.

Proposed findings not herein adopted either in the form or substance proposed are rejected as not supported by the evidence or as involving immaterial matters. Having reviewed the entire record in this proceeding, including the proposed findings and briefs, the administrative law judge, based upon the entire record, makes the following:

FINDINGS OF FACT

Jurisdictional Facts¹

1. General Mills, Inc. (GMI), respondent herein, is a corporation organized and existing under the laws of the State of Dela-

¹ The complaint alleges and the answer admits the essential jurisdictional facts. Hereafter CPF refers to complaint counsel's proposed findings and RPF to respondent's.

ware, incorporated therein in 1928, with its office and principal place of business at 9200 Wayzata Boulevard, Minneapolis, Minn.

2. Prior to August 16, 1968, when it was acquired by GMI, the Gorton Corporation (Gorton) was a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 327 Main Street, Gloucester, Mass. It was originally incorporated in Massachusetts in 1923 as the successor to Gorton-Pew Fisheries Company, and was reincorporated under Delaware law in 1966.

3. At all times relevant to this proceeding, GMI sold and shipped, and is now selling and shipping, products in interstate commerce throughout the United States; hence GMI was, and is, engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

4. At all times relevant to this proceeding, Gorton sold and shipped products in interstate commerce throughout the United States; and on August 16, 1968 and prior thereto Gorton was engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

5. On or about August 16, 1968, the Gorton Corporation was merged into GMI completing a transaction obligating GMI to issue 544,672 shares of common stock and pay a cash consideration of about \$9.5 million. The value of this transaction at the time was approximately \$30 million.

General Mills, Inc.

6. General Mills, Inc., was formed in 1928 to acquire several flour milling companies, including the Washburn Crosby Company, predecessors of which had been engaged in flour milling since 1866. GMI entered the packaged consumer foods business in the 1920's with the introduction of pancake flour, cake flour and a wheat flake breakfast food known as "Wheaties," but as late as 1934 the company was still basically a commodity company with some 95 percent of its sales consisting of flour milling and commercial food for livestock. (McFarland 1384-85; CX 5, p. 7; CPF 6)

7. In subsequent years, but especially in the post-World War II period, GMI expanded in the packaged consumer goods area, concentrating on ready-to-eat cereals and cake mixes. In the 1950's GMI added more dry, packaged convenience items, such as casseroles, cookie mixes and cake mixes to its line. Over the years, General Mills has developed a strong consumer franchise for its

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branded breakfast cereals, and other products under the "Big G," and "Betty Crocker" labels. (complaint and answer, Par. 3; CX 5, p. 9; CPF 2)

8. GMI has supported some of its consumer products with substantial mass media advertising, especially television advertising. By the time of the subject merger in 1968 GMI was primarily producing dry packaged consumer foods such as breakfast cereals and cake mixes, which it presold to consumers through intensive advertising. These products are primarily distributed through self service retail "supermarkets" under the Betty Crocker and Big G labels. (complaint and answer, Par. 3; CX 5, p. 8; CPF 2)

9. In packaged consumer foods, GMI ranks among the three largest companies in sales of breakfast cereals, and believes itself to be among the leaders in sales of cake mixes and other packaged convenience foods. On certain of its dry grocery products GMI uses the Betty Crocker label and a pictorial representation of Betty Crocker. On other dry grocery products it uses the Big "G" symbol or the Gold Medal "Kitchen - tested" trademark. (complaint and answer, Par. 7; CX 2, p. 11; CX 5, p. 10; CX 6, p. 16; see CPF 3)

10. For the fiscal year ended May 31, 1963, GMI's and its subsidiaries' total assets were \$220,350,237, sales totaled \$523,946,000 and net earnings were \$14,912,196. For the year ended May 25, 1969, GMI's and its subsidiaries' total assets had become \$622,357,000, sales \$885,242,000 and net earnings \$37,547,000. During this same period the company's annual sales of consumer foods products had increased from about \$288 million to approximately \$600 million. (complaint and answer, Par. 6; CPF 11) For the last fiscal year prior to its acquisition of Gorton, GMI ranked 151st on the Fortune Magazine list of the 500 largest industrial corporations. As a result of its acquisition of Gorton, GMI moved to 130th on the next Fortune 500 list. (CX 144, p. 188)

11. Until 1966 the company was one of the country's largest producers of commercial flour. However, margins in the commercial flour business had been unsatisfactory. In consequence, the company closed nine of its seventeen flour mills in 1966. As a result of the sale, GMI dropped to sixth place among flour milling companies in the United States. Most of its production of flour now is for use in its own products. The reduction in activities in the commercial flour business was part of a policy to concentrate the company's manpower and financial resources in consumer

food products where profit and growth potentials for the company were greater. In line with this policy the company withdrew from the formula animal feed business in 1962, from the electronics and oilseed businesses in 1964 and from the refrigerated foods business in 1966. (McFarland 1475; CX 2, p. 11; CX 5, p. 7)

12. In order to replace the volume lost as a result of the withdrawal from its flour, refrigerated and feed businesses, GMI diversified into several new areas of consumer foods. In particular, GMI sought to add more highly prepared convenience products to its line. In pursuance of this policy GMI acquired (CX 3, p. 6):

1964	Morton Foods, Inc.	Potato chips, corn chips, and other snack foods. (GMI sold most of Morton in May, 1970, keeping some real estate.
1966	Tom Houston Peanut Co.	Potato chips, corn chips, peanuts, confectionery products and other snack foods.
1967	Cherry-Levis Food Products Corp.	Sausages and pickled meat products.
1968	the Gorton Corporation	Frozen Seafood.
1969	the Donruss Co.	Bubble Gum.

13. As of 1968, GMI's packaged consumer foods consisted principally of ready-to-eat breakfast cereals; prepared mixes such as cake, frosting, cookie and biscuit mixes; snacks; packaged casseroles; potato products, and family flour. (CX 5, p. 7; CPF 23)

14. As of 1969, "Big G" ready-to-eat cereals were GMI's most important single business. It maintained a number two position nationally, with more than 20 percent of total sales. GMI brands include "Cheerios," the nation's leading children's cereal, "Wheaties," GMI's second largest brand, "Total," and "Trix." (CX 3, p. 6; CX 4, p. 6; CPF 24)

15. Betty Crocker dessert mixes are an industry leader in a retail market approaching 500 million dollars. As of 1969, Betty Crocker cake, frosting, brownie, cookie and other specialties were No. 1 or No. 2 in every category, and were growing stronger. Major gains have been made in the ready-to-spread canned frost-

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ings market, in which GMI is also the leading firm. (CX 3, pp. 7-8; CPF 25)

16. GMI specialty baking products, which include Betty Crocker muffin and pie crust mixes, Softasilk Cake Flour, and Bisquick, have demonstrated growth in a market where GMI has a leading position. (CX 3, p. 8; CX 4, p. 8; see CPF 26)

17. As of 1968, GMI ranked first by a considerable margin in sales of family flour in the United States (CX 5, p. 10), selling primarily under the "Gold Medal" label. (CX 3, p. 7) Its share of this market was increasing, despite the fact that the total market for family flour had shown a declining trend in recent years. (CX 3, p. 7; Tr. 1368) It was for this reason that the company expected its flour business to remain a strong profit contributor. (CX 3, p. 7; CPF 27)

18. GMI entered the snack food business both through acquisition and through internal development of new snack food products. (CX 5, p. 7) In 1964 the company acquired Morton Foods, Inc., makers of potato chips and snack items (CX 3, p. 7; CX 5, p. 7), and in 1966 the Tom Houston Peanut Company, also makers of a broad line of snack foods, was acquired. (CX 5, p. 7) In 1969 GMI acquired the Donruss Co., a bubble gum company. (CX 3, p. 7; CPF 28)

19. Through intensive research efforts and extensive test marketing GMI has marketed several corn-based snack products packaged like ready-to-eat cereals, including "Bugles," "Whistles" and "Daisys." (CX 5, p. 8) A new chip product, "Wheat Chips," was introduced nationally in late 1968, and other products have been test marketed. (CX 4, p. 7; CPF 29)

20. GMI uses a variety of trade names on its consumers' food products. (CPF 30; complaint and answer, Par. 10)

Among these trade names are:

Betty Crocker Bake and Other Food Products—

Cake Mixes	Muffin Mixes
Pie Crust Mixes	"Potato Buds"
Brownie Mixes	Noodles Romanoff
Cookie Mixes	Pancake Mixes
Frosting Mixes	Gingerbread Mix
Pound Cake	"SAFF-O-LIFE" Safflower Oil
Biscuit Mixes	

Bisquick Mix

Snacks—

Bugles	Buttons
Whistles	Bows
Daisys	Pizza Spins
Hotchas	

Breakfast Cereals—

Wheaties	Twinkles
Cheerios	Lucky Charms
Kix	Stax
Trix	Clackers
Jets	Country Corn Flakes
Frosty O's	Cocoa Puffs
Total	Goodness Pack
Kaboom	

Flour—

Gold Medal	White Deer
Softasilk	Red Band
Purasnow	La Pina
Sperry Drifted Snow	Red Star

Sponges—

O-Cel-O

21. GMI manufactures a number of bakery mixes and other items which are marketed to members of the food service trade, such as wheat gluten, wheat starch, food grade gums, and wheat germ products.

22. GMI's total institutional business is in the neighborhood of \$20 million, much of it in flour-based items such as muffin mixes, cake mixes, cookie mixes, etc. (McFarland 1446) This constituted only 2 percent of its total sales in the fiscal year ending May 31, 1970. (CPF 11) The total institutional food field is approximately \$15-16 billion. The institutional business is characterized generally by very low margins. (McFarland 1467)

23. Food processing, GMI's major operation, accounted for over \$800 million of its fiscal 1970 sales. Nearly two-thirds of total corporate sales (\$647.3 million) came from consumer foods. This was almost equally divided between cereals and snacks (\$333 million) and mixes, family flour, seafoods, etc. (\$314 million). The only "seafood" sales were those of Gorton. (CX 4, p. 23; CPF 16)

24. The broad policies of GMI are set by the board of directors and chief executive officer with final responsibility for implementation of company policy resting with the chairman of the board and chief executive officer. (McFarland 1467; CPF 17)

25. Under General Mills' profit center operation each subsidiary or division is responsible for its profits, and the salaries of management are, to a great degree, dependent on the independent profits each subsidiary or division shows at the end of the year. (Kinney 1347)

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26. Corporate officers receive their salaries from the Minneapolis general office expenses. Executive vice presidents of divisions have a portion of their salaries allocated to divisions and subsidiaries under their jurisdiction.² The salaries of the president, chairman, some staff people and general counsel do not get allocated, although most of the legal department's total expenses are allocated directly to divisions and subsidiaries. (McFarland 1465-66; CPF 18)

27. Gorton operates autonomously and manages its own plans, programs and budgets with its own total responsibility for sales, profits and the carrying on of the business. (Kinney 1342-3)

The Gorton Corporation

28. For many years Gorton has been an established and respected New England seafood company, having produced and marketed fish and seafood in the United States for more than 100 years. (CX 35, p. 6) Its brand names "Gorton's of Gloucester" and/or "Gorton's" are among the oldest seafood brands in the United States and are virtually synonymous with seafood products. (complaint and answer, Par. 15; CX 31, p. 9) Gorton was successful and growing at the time of the acquisition. (CX 22A-F, 31, 32, 44) Its sales increased from approximately \$12 million in 1958 to approximately \$72 million in 1968. In 1968, Gorton earned over \$1.5 million net and had assets of about \$30 million. (complaint and answer, Par. 15)

29. Gorton processes and markets frozen packaged foods nationally, principally fish portions, fish sticks, fish fillets and steaks and breaded shrimp. Sales are almost equally divided between retail outlets and food service outlets. (Kinney 1318; RX 83; CPF 34)

30. A fish stick is an elongated piece of fish flesh (generally cut from a block of fillets) weighing not less than $\frac{3}{4}$ of an ounce and not more than $1\frac{1}{4}$ ounces with the largest dimension at least three times that of the next largest dimension. Fish sticks are sold by the processor either in a cooked or uncooked state. (CX 124-A; Holas 941, 948; CPF 89)

31. A fish portion is a piece of fish flesh generally of uniform size and generally cut from a block of fillets. It has thickness, including the batter, of $\frac{3}{8}$ of an inch or more, and does not

² The GMI executive vice president in charge of Gorton has part of his salary allocated to GMI and part to Gorton. (Tr. 1466; CPF 18)

conform to the definition of a fish stick. Fish portions are sold by the processor in a breaded or unbreaded state and may be cooked or uncooked. (CX 127-A; CPF 89)

32. Fish fillets are sides of fish cut lengthwise from the backbone and are practically boneless. Fish steaks are cross section slices from large dressed fish, usually about $\frac{3}{4}$ inches thick. Fillets may be sold by the processor in a breaded or unbreaded state and may be cooked or uncooked. (CX 130-A)

33. Fish sticks and portions are cut from fish blocks. A fish block is a frozen mass of between 26 to 70 pieces of boneless fish flesh, *i.e.*, fillets, formed into a rectangular block-type shape. Each fish block is composed of fillets of a particular specie. Fish of that specie are gutted, deheaded and deboned, *i.e.*, filleted, and then placed into a carton which is put into a rectangular frame where it is put into a pressure plate freezer. Once put under such pressure, the albumin in the fish causes the pieces of flesh to pull together and adhere to form a cohesive mass which does not break apart. Fish blocks are made up by the catcher of the fish who ships the frozen blocks to processors such as Gorton. (Holas 942, 988; Hansson 436; CPF 88)

34. Gorton operated its main seafood processing plants in Gloucester, Massachusetts, Cleveland, Ohio, and Wilmington, California. (CX 36, p. 34) These plants were either new or recently renovated and expanded at the time of the acquisition. (CX 26-H) The capacity of the Gloucester plant was doubled in 1967, while the Wilmington plant was opened that same year. (CX 32, "Letter to the Stockholders") It also operated four additional domestic plants and three in foreign countries. (CX 36, p. 34; CPF 41) Gorton had substantial excess capacity at the time of the merger in 1968. (Gerlach 1238)

35. Two of Gorton's three major plants had cold storage capacity, at the time of the acquisition, for 22 million pounds of frozen products. (CX 26H) An adjacent public cold storage warehouse next to its seafood processing plant in Gloucester was able to hold up to nine million pounds of frozen products. The Miami and Cleveland processing plants had company owned freezer space with an aggregate capacity of six million pounds. (CX 36, p. 35) Gorton owned processing plants in other locations and leased public cold storage warehouse space in other areas to speed distribution by locating inventory near its customers. (CX 36, p. 35; CPF 43)

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36. At its fish processing plants, Gorton processes the frozen fish fillets or blocks it imports into fish sticks, fish portions, breaded fillets or seafood specialties such as sole in lemon butter and sole almondine. In those cases where the process starts with blocks, the blocks are sawed, still frozen, into slabs. These slabs are then conveyed into a chopping machine which cuts the slabs into the dimensions of a fish stick or fish portion. (Holas 989) The product is then placed on conveyor belts where it is battered or breaded, sometimes deep fried, and put in adjoining cold storage facilities for distribution (LoBello 1569; CX 36, p. 34; CPF 42)

37. In some instances raw frozen fillets are packaged into individual "snap out" fillets—a process which requires that thin sheets of separating material be wound between the individual fillets so that the housewife can separate one or more fillets without thawing the entire pack. In some cases the individual fillet is separately breaded and cooked in which instance it is virtually the same as a breaded portion. Some portions are cut in an elongated shape to resemble a fillet. The leading processor of retail portions refers to its portion as a "fillet," despite the fact that the product is made from fillet blocks rather than individual fillets. In some instances raw fillets or raw unbreaded portions are used to make up specialty items such as "sole almondine" or "sole in lemon butter." (Holas 956-47; Hansson 436-39; Kulber 484-85)

38. Gorton maintains distribution warehouses at two of its three fish processing plants and at its shrimp processing plant in Miami. Gorton also utilizes public cold storage warehouse facilities in Gloucester, Atlanta and Dallas. Since its products must be kept refrigerated throughout the distribution process. Gorton ships by refrigerated truck from its distribution facilities. Less than full load truck shipments are made possible through pooling arrangements with other manufacturers of frozen products. (LoBello 1522)

39. Gorton sells its products to both the retail and food service trade through brokers. Gorton's sales force in 1968 consisted of a network of approximately 65 retail brokers and 90 food service brokers. The brokers' activities are overseen by approximately 20 regional sales managers, divided evenly between retail and food service, employed by Gorton. (LoBello 1505, 1523; see CPF 44)

40. Over the years Gorton has enjoyed substantial growth both in sales and in the number of products which it offers for sale. A

substantial portion of this growth is accounted for by mergers. The principal merger was the purchase by Gorton of Fishery Products, Inc., of Cleveland, Ohio, in early 1961. This company owned the "Blue Water" label which is still used by Gorton. Blue Water was one of the earliest successful developers of breaded fish sticks and portions and was and still is today a substantial factor in the institutional food business, selling to customers such as drive-ins, schools, restaurants, hotels, motels, universities, hospitals and other types of prepared food operations. (Tr. 499-500, 950-951; CX 25D, 38, 53B)

Geographic Market

41. Both parties and the administrative law judge agree that the geographic market in which to judge the competitive impact of the acquisition of Gorton by GMI is the United States as a whole. GMI, being a national company which distributes its products nationally, was totally committed to entering the frozen food business, or any segments thereof, on a nationwide scale. Gorton, with a nationwide frozen food brokerage network, was the largest frozen fish processor in the country. (Tr. 1451-1453) It was GMI's intent to obtain a competitive advantage in any area of frozen foods by seizing this nationwide brokerage network. (Tr. 1421-1423) The major companies in the packaged frozen fish or other seafood business compete and distribute their products nationally. (Tr. 358, 448, 489, 525-527, 574)

Line of Commerce and the Relevant Markets

42. The relevant line of commerce concerned in this proceeding is the purchase, processing and selling of packaged frozen fish. The various producers in the industry also produce frozen shrimp in various forms. The record contains no meaningful statistics on shrimp and this product is not fundamentally involved in the proceeding. GMI and Gorton were never competitors before the acquisition and no GMI products prior to the acquisition are in any way involved. Packaged frozen fish is of course a segment of the overall food industry and also a segment of the frozen food industry. The record contains no figures on either of these overall industries, and they would be meaningless in any event since they are so broad. Both counsel in support of the complaint and for respondent appear to agree that the basic issue involved is whether GMI's entry into the frozen packaged fish industry by

purchasing Gorton had the effect proscribed by Section 7 of the Clayton Act.

43. Counsel in support of the complaint emphasize the overall position of Gorton in the packaged frozen fish industry, but do recognize that the total market for such products is made up of two classes of customers, retail and institutional. As a result, their statistics emphasize Gorton's share or position in the important product lines involved, fish sticks, fish portions, fish fillets and fish steaks in the overall market. Counsel for respondent urge that the two markets, retail and institutional, must be assessed independently as to the effect which GMI's entry might have on either market, since there are substantial differences in the way each market is sold, both in technique of selling and products sold. These differences between counsel, while recognized, are not considered fundamental.

Institutional and Retail Markets

44. Frozen packaged fish and other frozen seafood are sold to retail stores for resale to consumers and to hospitals, schools, fast food service chains and other institutions. (Tr. 782-784, 440-443, 516, 587, 351)

45. Method of sale to each of the two groups differs. While almost all frozen fish is sold through frozen food brokers, the sale of the product by brokers is usually divided between retail and institutional sales persons. The basic approach to retail stores is packaging and promotion. The price must be competitive to similar products and the promotions are generally in the form of a reduction in price to the consumer which is attractive to the retail buyer. The institutional buyer is more interested in the quality and price of the product. (Tr. 356, 486-488, 493-494, 512, 513, 516, 530, 573, 762-763, 860, 928-929, 962, 970, 977, 1326; CX 53Z10-12, 55U, 56H)

46. There is no difference in source of supply, type of fish or processing between retail and institutional fish producers. The differences are in packaging equipment needed to pack at retail which requires a minimum investment; and the need for research, promotion and advertising, which requires a substantial and sustained effort.

47. The institutional and retail markets are further distinguished by type of product. Although both fish sticks and fish portions are sold in both markets, fish sticks are primarily a

retail item, while fish portions are preferred by the institutional buyer. (Tr. 511, 665, 1016; CX 53R, 56D; CPF 93, 101)

48. Of the twelve largest producers of fish sticks and fish portions, five: Coldwater, Iceland, Dolly Madison (Sea Pass), Dolphin and Frionor are almost entirely in institutional sales (Tr. 440-441, 482, 564-566, 665, 949, 952; CX 124F, 127F); seven are in both retail and institutional sales. Gorton is the largest firm in either market. (CX 124F, 127F) Only Mrs. Paul's sells fish solely at retail. (Tr. 353)

49. There is a slight overlap between institutional and retail frozen packaged fish. Recently, many supermarkets have been purchasing large institutional packages of fish and either (1) selling them as is, or (2) repackaging the fish in store tray packs. (Tr. 449, 764-765, 957)

50. Every fish processor has a production capability of entering the institutional or retail markets; six of the largest fish stick and fish portion producers are already large producers in both markets (CX 124F, 127F) and with a small investment, many of those selling institutional fish could co-pack for a firm such as GMI, desiring to enter the retail area *de novo*. (Tr. 519)

51. The retail market, nationally, is serviced in most regions of the country by only: Mrs. Paul's, Gorton, O'Donnell-Usen (Taste O'Sea), Sea-Pak, and possibly Booth's Fisheries (Consolidated Foods). (Tr. 351-353, 355-358, 525-527, 948-949)

52. The institutional market is serviced by: Gorton (Blue Water), Coldwater, Iceland, Sea Pass, Dolphin, Sea Pak, O'Donnell-Usen and Frionor. The record indicates that no new firm has entered the national market since 1967, at the latest. (Tr. 435, 441, 448, 490, 574, 948-949)

53. There has been no significant new entry into the retail frozen packaged fish market on a national scale since before the GMI acquisition of Gorton. (CX 124A-F, 127A-F) The only new entrant into retail competition nationally shown by the record in this case is Mrs. Paul's. It entered the fish stick and portion business shortly after World War II. (Tr. 349)

54. Advertising on the retail side of the packaged frozen fish market is not used extensively by any of the suppliers with the exception of Mrs. Paul's which sells fish only at retail. (Tr. 353) The total figure for advertising to sales for the entire frozen packaged seafood industry is less than 2 percent. (RX 165B) And even in the instance of Mrs. Paul's, most of its advertising is directed to nonseafood products in its line. (RX 165E) The rec-

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ord is clear that there are not sufficient margins of profit on the retail side to warrant large advertising expenditures. (Tr. 359, 821, 792, 910, 965, 1017, 1025, 1330, 1542) Early in the fish stick and portion business, private labels became an important factor. As soon as the products became popular, private label brands, such as Captain John's (A&P), Captain's Choice (Safeway), Fresh Store (Kroeger) and A&P Tea Co. appeared. (Tr. 945) The private label products are displayed in the frozen food cabinet along with whatever other company's products are carried and the products are indistinguishable except for the packaging. Consequently, prices must be competitive. (Tr. 547, 1329, 804) Advertising on the institutional side of the market is minimal and consists primarily of ads in trade journals with distribution to the institutional type of buyers. (Tr. 460, 498, 977)

Market Data

55. Appendices 1 through 12, attached hereto and made a part hereof, give an accurate picture of Gorton's position in the packaged frozen fish industry by product, in both pounds sold and dollar value received, as well as Gorton's position in the overall packaged frozen fish industry. Also shown is production by the top four and top eight companies in the industry and Gorton's share compared with these market leaders. (App. 1-9) Appendices 10, 11 and 12 also show Gorton's share and trends in the retail and institutional markets separately. All of the statistics included in the appendices are based upon data submitted by counsel in support of the complaint through their economist. These figures are taken as accurate and represent a true picture of the packaged frozen fish industry. Numerous arguments are advanced by counsel in support of the complaint that these figures are understatements and very conservative; and that they are not reliable since they are overstatements or do not include imports of fillets and steaks proposed by counsel for respondent. These arguments are rejected and the figures are considered to be accurate and a representative picture of the packaged frozen fish industry.

56. Respondent's witness, Dr. Markham, testified that the weighted average of top four firms concentration in all 4 digit SIC manufacturing industries is 37 percent. (Tr. 1693³) He also testified that one could expect a higher average the more nar-

³ Commission economic witness Glassman apparently adopted a 55 percent level of top 4 concentration as the "critical" level of concentration. (Tr. 674)

