

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil Action No. C-72-382
 v.)
)
 THE FEDERAL COMPANY,) Filed: 11/13/72
)
 Defendant.)

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendant and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against defendant under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. §25), commonly known as the Clayton Act, in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 7 of that Act (15 U.S.C. §18).

2. Defendant, The Federal Company, transacts business and is found within the Western District of Tennessee, Western Division.

II

THE DEFENDANT

3. The Federal Company (hereinafter referred to as "Federal") is made the defendant herein. Federal is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Memphis, Tennessee.

4. Federal is the 392nd largest industrial concern in the United States with 1971 revenues of \$253,539,000. Federal engages in substantial interstate commerce in a wide variety of business activities throughout the United States including poultry processing, wheat flour milling, feed milling, and the production and sale of pet foods.

III

DEFINITIONS

5. As used herein:

- (a) the term "wheat flour" means flour milled from wheat for various uses including sale as bakery flour, family flour, prepared baking mixes, and millfeed;
- (b) the term "bakery flour" means wheat flour sold to wholesale bakers usually in bulk form for manufacture into bread, cookies, and cakes;
- (c) the term "family flour" means wheat flour distributed to grocery stores in packaged form for ultimate sale to consumers, usually for home baking; and

(d) the terms "Southeast" and "Southeastern" mean that part of the United States generally lying east of the Mississippi River and south of the Ohio and Potomac Rivers.

IV

TRADE AND COMMERCE

6. Federal is engaged in the production and sale of wheat flour, including bakery flour, family flour, prepared baking mixes, and millfeed through its wholly-owned subsidiary, Dixie-Portland Flour Mills, Inc. (hereinafter referred to as "Dixie"). It has flour milling plants in Arkansas City, Kansas; Chicago, Illinois; and Chattanooga, Tennessee. It sells its flour products in interstate commerce. In 1971 Dixie had wheat flour sales of \$72,600,000.

7. In the Southeastern section of the United States, the total daily wheat flour milling capacity of all firms operating mills was approximately 97,000 hundredweights ("cwts.") in 1970.

8. In the Southeastern section of the United States, 1971 family flour shipments were approximately 5,800,000 cwts. with a sales value of about \$60 million. Bakery flour shipments in this section of the country in 1971 were approximately 25,780,000 cwts. with a sales value of about \$161,700,000.

9. Before the acquisition hereinafter alleged, Great Western Foods Company (hereinafter referred to as "GWF") was engaged in the production and sale of

wheat flour, including bakery flour, family flour, prepared baking mixes, and millfeed. GWF operated a flour milling plant in Knoxville, Tennessee and sold flour products in interstate commerce in the Southeast region of the United States. In 1971 GWF had wheat flour sales of \$16,212,000. Approximately 35 percent of such sales were bakery flour and 38 percent were family flour. GWF has been a leading company in the production and sale of family flour in the Southeast region for many years.

10. Prior to the acquisition hereinafter alleged, Federal and GWF were substantial competitors in the production, distribution, and sale of wheat flour in the Southeastern region. In the Southeast region, Federal accounted for approximately 11 percent of the daily wheat flour milling capacity and GWF accounted for approximately 6 percent.

11. Prior to the acquisition hereinafter alleged, Federal and GWF were substantial competitors in the production, distribution, and sale of family flour in the Southeastern region and in various individual states and groupings of states within this region. In the Southeast region, as a whole, GWF accounted for approximately 9 percent of 1971 family flour shipments and Federal accounted for approximately 5 percent of such shipments. In the six-state grouping of Alabama, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee, for example, GWF's share of 1971 family flour shipments was 15⁴ percent and Federal's share was 6 percent.

In the two-state grouping of Georgia and Tennessee, GWF's share of 1971 family flour shipments was 28 percent and Federal's share was 7 percent.

12. Prior to the acquisition hereinafter alleged, Federal and GWF were substantial competitors in the production and sale of bakery flour in the Southeast region and in various individual states and groupings of states within this region. In the Southeast region, as a whole, Federal accounted for approximately 15 percent of 1971 bakery flour shipments and GWF accounted for approximately 3 percent of such shipments. In the four-state grouping of Georgia, Tennessee, North Carolina, and South Carolina, for example, Federal's share of 1971 bakery flour shipments was 32 percent and GWF's share was 7 percent. In the two-state grouping of Georgia and Tennessee, Federal's share of 1971 bakery flour shipments was 53 percent and GWF's share was 9 percent.

13. The markets for wheat flour, family flour, and bakery flour are concentrated, and have been subjected to a trend toward increased concentration in recent years.

V

VIOLATION ALLEGED

14. On or about January 31, 1972, defendant Federal, through its Dixie subsidiary, acquired the assets of GWF from the Great Western United Company. The effect of the aforesaid acquisition may be substantially to lessen competition or to tend to create a monopoly in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act, in the following ways, among others:

(a) actual and potential competition between Federal and GWF in the production and sale of

- (i) wheat flour,
- (ii) bakery flour, and
- (iii) family flour

in the Southeast region and in various individual states and groupings of states within the Southeast region has been permanently eliminated; and

(b) concentration in the production and sale of

- (i) wheat flour,
- (ii) bakery flour, and
- (iii) family flour

in the Southeast region and in various individual states and groupings of states within the Southeast region has been increased.

PRAYER

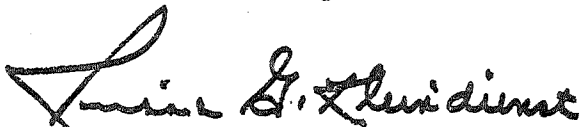
WHEREFORE, the plaintiff prays:

1. That Federal's acquisition of GWF be adjudged and declared to be unlawful in violation of Section 7 of the Clayton Act.
2. That Federal be required to divest itself of all its interests in and control over GWF.
3. That, for a period of ten years, Federal be enjoined from acquiring the stock or assets of any company engaged in the production and sale of wheat flour, bakery flour, or family flour in the Southeastern United States.

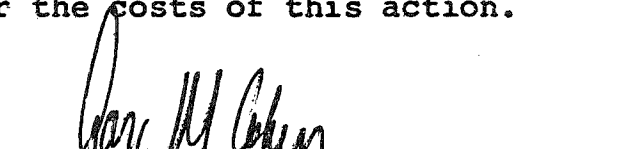
4. That the Court order such preliminary relief as will insure that, pending final adjudication of this litigation, the business and financial operations of GWF shall be maintained completely separate and independent from those of Federal, and that Federal shall take no action that would impair the ability of Federal to comply with any Court order that required divestiture, in whole or in part, of its interest in GWF.

5. That plaintiff have such other and further relief as the Court may deem just and proper.


6. That plaintiff recover the costs of this action.



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