

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)
Department of Justice)
Antitrust Division)
325 7th Avenue, NW)
Suite 500)
Washington, DC 20530,)
Plaintiff,)
v.)
CONNORS BROS. INCOME FUND,)
669 Main Street)
Blacks Harbour, New Brunswick, Canada)
E5h 1K1)
and)
BUMBLE BEE SEAFOODS, LLC,)
9655 Granite Ridge Drive)
San Diego, CA 92123-2674)
Defendants.)

)

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendants Connors Bros. Income Fund (“Connors”) and Bumble Bee Seafoods, LLC (“Bumble Bee”), and complains and alleges as follows:

1. The United States brings this suit to prevent Connors from retaining a newly acquired near monopoly in sardine snack foods. On April 30, 2004, Connors consummated its acquisition of Bumble Bee. At the time of the transaction, Connors and Bumble Bee were the only two significant sellers of sardine snacks in the United States.

2. Unless remedied, the acquisition will eliminate substantial head-to-head rivalry between Connors and Bumble Bee. Consequently, the elimination of Bumble Bee as an independent significant competitor will substantially lessen competition for the sale of sardine snacks and result in higher prices to United States consumers. The acquisition, therefore, violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I. JURISDICTION AND VENUE

3. This Complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, in order to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

4. Connors and Bumble Bee sell sardine snacks in the flow of U.S. interstate commerce. Defendants' activities in producing and marketing that product also substantially affect interstate commerce. The Court has subject matter jurisdiction over this action, 28 U.S.C. §§ 1331, 1337(a) and 1345.

5. The defendants have consented to personal jurisdiction and venue in this judicial district.

II. THE DEFENDANTS

6. Connors Bros. Income Fund is a Canadian income trust with its headquarters in Blacks Harbour, New Brunswick, Canada.

7. Even before its acquisition of Bumble Bee, Connors was the largest canned sardine company in the United States. It also sold other canned seafood products such as kippered herring snacks, fish steaks, shrimp, anchovies and oysters, as well as fish meal and fish oil. Connors operates four canning and processing facilities, two in Maine and two in New Brunswick, Canada. It sells three of the top four sardine snack brands in the United States – Beach Cliff, Brunswick, and Port Clyde; and its total sales of sardine snacks exceeded \$43 million in 2003.

8. Bumble Bee Seafoods, LLC, is a Delaware limited liability corporation with its headquarters in San Diego, California. Bumble Bee became a wholly owned corporate subsidiary of Connors after Connors acquired it on April 30, 2004. Prior to its acquisition by Connors, Bumble Bee was a leading seller of canned seafood products. The Bumble Bee brand of sardine snacks was the third largest selling brand in the United States. In addition, Bumble Bee is one of the three largest sellers of tuna in the United States, and is a leading seller of other canned seafood products, such as premium sardines, salmon, mackerel and scallops. Bumble Bee reported U.S. sardine snack sales of approximately \$9 million in 2003.

III. BACKGROUND

9. Canned sardines are a processed fish product ready for immediate consumption by consumers. Sardine companies sell an array of canned sardine products, varying the fish, packaging, prices, and marketing.

10. Sardine snacks, sometimes referred to as “mainstream” sardines in the industry, are the principal sardine product in the United States, with revenues and unit volumes far in excess of any other sardine product. They typically consist of herring and other small varieties of fish that are caught off the coasts of the United States (primarily Maine), Canada, Poland, Morocco, Thailand and South America, and processed in those countries. They are consumed primarily as snacks and packed in snack-size 3.75 ounce and 4.4 ounce cans.

11. Other sardine products include premium and ethnic sardines. Premium sardines typically consist of brislings that are caught off the coasts of Norway and Scotland, and processed in those countries. They sell for about two and a half times as much as sardine snacks. Ethnic sardines typically consist of pilchards and lower quality herring. They are generally consumed as main courses, packed in 15 ounce cans, sell for less than half the price of sardine snacks, are marketed primarily to members of specific ethnic groups, and are often displayed exclusively in ethnic sections of grocery stores.

12. Brand recognition is an important factor in the marketing and sales of sardine snacks in the United States. Brands are generally used to distinguish different sardine products (*i.e.*, sardine snacks, premium sardines and ethnic sardines), and to distinguish the different sellers who compete to sell each of those products. Consumers of sardine snacks generally will restrict their purchases to brands that they know and trust.

IV. TRADE AND COMMERCE

A. Relevant Product and Geographic Market

13. A small but significant increase in the price of sardine snacks would not cause enough consumers to switch to other products (including premium and ethnic sardines) to make

such a price increase unprofitable. Accordingly, the sale of sardine snacks is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

14. Both Connors and Bumble Bee sell sardine snacks throughout the United States. A small but significant price increase in sardine snacks would not cause a sufficient number of purchasers to switch to sardine snack brands not presently marketed in the United States to make the increase unprofitable. The relevant geographic market, therefore, within the meaning of Section 7 of the Clayton Act is no larger than the United States.

B. Anticompetitive Effects

15. The sardine snack market is highly concentrated, and the defendants are, by far, the largest sellers of those products in the United States. Connors and Bumble Bee both sell well established sardine brands. Brand recognition is important to consumers of sardines, and the transaction has combined the two owners of the four most successful sardine snack brands in the United States (Connors' Brunswick, Beach Cliff and Port Clyde brands, and Bumble Bee). Connors accounts for an approximately 63 percent market share and Bumble Bee's share is approximately 13 percent. Together, the two firms account for more than 75 percent of United States sales of sardine snacks, and the remaining sales are widely dispersed among numerous firms with small individual market shares.

16. The acquisition of Bumble Bee by Connors would substantially increase concentration and lessen competition in the United States sardine snack market. Using a measure of concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Exhibit A, combining Connors and Bumble Bee would substantially increase the already high

concentration in the market. The combination would increase the HHI from about 4200 to more than 5800, well in excess of levels that raise significant antitrust concerns.

17. The acquisition of Bumble Bee by Connors gives Connors the power profitably to increase prices unilaterally for one or more of its brands of sardine snacks, to the detriment of consumers.

D. Entry and Expansion

18. It is difficult to enter into the sale of sardine snacks in the United States, or to significantly expand sales of smaller brands. New entry or expansion requires years of effort and the investment of substantial sunk costs, including promotional expenditures and slotting allowances (for sales through grocery stores) to create brand awareness among consumers. Therefore, new entry or expansion would not be timely, likely or sufficient to thwart the anticompetitive effects of the acquisition.

V. VIOLATION ALLEGED

19. The effect of Connors' acquisition of Bumble Bee may be to substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

20. The combination will likely have the following effects, among others:

- a. Competition generally in the sale of sardine snacks in the United States would be substantially lessened;
- b. Actual and potential competition between Connors and Bumble Bee in the sale of sardine snacks in the United States would be eliminated; and

- c. Prices for sardine snacks sold in the United States likely would increase.

21. Unless restrained, the acquisition will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI. REQUESTED RELIEF

Plaintiff requests:

- 1. That Connors' acquisition of Bumble Bee be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;
- 2. That Connors be ordered to divest Bumble Bee, and defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of the defendants;
- 3. That plaintiff be awarded its costs of this action; and

4. That plaintiff receive such other and further relief as the case requires and the Court deems proper.

Dated: August 31, 2004

Respectfully submitted,

“/s/”
R. HEWITT PATE
D.C. Bar #473598
Assistant Attorney General

“/s/”
ROBERT L. McGEORGE
D.C. Bar # 91900

“/s/”
J. BRUCE McDONALD
Deputy Assistant Attorney General

“/s/”
MICHELLE J. LIVINGSTON

“/s/”
J. ROBERT KRAMER, II
Pa. Bar # 23963
Director of Operations
and Civil Enforcement

“/s/”
HILLARY L. SNYDER
Trial Attorneys
United States Department of Justice
Antitrust Division
Transportation, Energy and
Agriculture Section
325 7th Street, N.W.; Suite 500
Washington, DC 20530
Telephone: (202) 307-6351
Facsimile: (202) 307-2784

“/s/”
ROGER W. FONES
D.C. Bar #303255
Chief, Transportation, Energy
and Agriculture Section

“/s/”
DONNA KOOPERSTEIN
Assistant Chief, Transportation, Energy
and Agriculture Section

EXHIBIT A

DEFINITION OF "HHI"

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.