IN THE MATTER OF

GENERAL FOODS CORPORATION

DISMISSAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(a) OF THE CLAYTON ACT

Docket 9085. Complaint, July 14, 1976—Final Order, April 6, 1984

In this Final Order, the Commission denied complaint counsel's appeal against an ALJ's Initial Decision dated Jan. 25, 1982, sustained the ID for reasons set forth in its accompanying Opinion, and dismissed the Complaint charging a leading processed food manufacturer with violating Section 5 of the Federal Trade Commission Act and Section 2(a) of the Clayton Act, in connection with the marketing of Regular Maxwell House Coffee.

Appearances

For the Commission: *Edward J. Carnot, Michael Goldenberg, Jane Seymour, Wayne Kaplan* and *Richard F. Silvestri.*

For the respondent: *Paul C. Warnke, John F. Kovin, John G. Calender, Robert P. Reznick* and *Don Scott DeAmicis, Clifford & Warnke,* Washington, D.C. and *Robert Y. Fox,* in-house counsel, White Plains, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that General Foods Corporation is in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. 13(a)), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues its Complaint charging as follows:

DEFINITIONS

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

(a) *Regular coffee* is coffee processed from unroasted coffee beans by means of blending, roasting, and grinding into varying granular sizes and which must be heated and steeped in water before being consumed. It is generally packed and sold in vacuum tin containers and paper bags. It is to be distinguished from soluble (instant) coffee.

(b) *Consumer promotions* are discounts or other offerings to the consumer to encourage him to purchase the brand promoted.

(c) *Trade promotions* are discounts or other financial incentives to the grocer or wholesaler. [2]

RESPONDENT

2. General Foods Corporation (hereinafter "General Foods") is a Delaware corporation with its executive office located at 250 North Street, White Plains, New York.

3. Coffee is one of General Foods' principal product lines. Coffee sales make up approximately 29% of the total revenues of General Foods and regular coffee constitutes a substantial portion of such coffee sales.

4. In fiscal year 1975 General Foods had total sales of approximately $3.7 billion, in fiscal year 1974, $3.0 billion, in fiscal year 1973, $2.6 billion, in fiscal year 1972, $2.4 billion and in fiscal year 1971, $2.3 billion.

5. The Maxwell House Division of General Foods is principally responsible for the manufacture, distribution and sale of coffee. Sales volume for the Maxwell House Division approximated $900 million in fiscal year 1974, $763 million in fiscal year 1973, $703 million in fiscal year 1972 and $662 million in fiscal year 1971.

6. The relevant market is the production, distribution and sale of regular coffee packaged for sale at retail in Maxwell House Division's eastern region. Relevant geographic submarkets include the Cleveland and Pittsburgh market areas of Maxwell House Division's Youngstown, Ohio District, the Wilkes Barre and Philadelphia market areas of Maxwell House Division's Philadelphia, Pennsylvania District and each market area of Maxwell House Division's Syracuse, New York District.

7. Concentration of sales for regular coffee packaged for sale at retail in the United States has increased from approximately 66% for the four largest producers in 1971 to approximately 72% in 1974.

8. General Foods, through its Maxwell House Division, is the largest seller of regular coffee packaged for sale at retail in the United States. It accounted for approximately 31% of such sales in the United States in 1972, 34% in 1973, and 35% in 1974. [3]

9. The Maxwell House Division of General Foods was the dominant seller of regular coffee packaged for sale at retail in the relevant market and each relevant submarket during the years 1971 through 1975, accounting, in each year, for approximately 45% or more of sales of regular coffee packaged for sale at retail in the relevant market and approximately 50% or more of such sales in the relevant submarkets.

OFFENSES ALLEGED

10. General Foods, through its Maxwell House Division, has used and is using its dominant position, size and economic power to frustrate the growth of smaller regular coffee producers and to frustrate entry of other regular coffee producers into the relevant market and submarkets and to prevent, hinder or lessen competition in the production, distribution or sale of regular coffee packaged for sale at retail in the relevant market and submarkets.

More particularly, General Foods, through its Maxwell House Division, since at least October, 1971, has adopted and placed into effect and carried out various policies, acts, practices, or methods of competition to foreclose entry and to lessen, restrain, eliminate or prevent the production, distribution or sale of regular coffee packaged for sale at retail by others engaged in the production, distribution or sale of such product in each market and submarket identified and alleged herein. Among such policies, acts, practices or methods of competition, General Foods, through its Maxwell House Division, has engaged in one or more of the following:

(a) Selling regular coffee packaged for sale at retail below cost or at unreasonably low prices;

(b) Using extensive consumer and trade promotions and advertising to forestall or foreclose market entry or to lessen competition; [4]

(c) Engaging in geographically discriminatory pricing and promotional and advertising practices to forestall or foreclose entry or lessen competition;

(d) Foreclosing and deterring new entry by increasing advertising and promotional expenditures in previously established marketing areas of the new entrant in retaliation for entry into the relevant market and submarkets.

(e) Using a fighting brand of regular coffee to forestall or foreclose entry or lessen competition.

EFFECTS

11. The aforesaid policies, acts, or practices have or may have the following effects in one or more of the relevant market and submarkets alleged herein, among other things:

(a) Monopolizing the production, distribution or sale of regular coffee packaged for sale at retail;

(b) Increasing entry barriers in the production, distribution or sale of regular coffee packaged for sale at retail;

(c) Preserving, maintaining, or furthering highly concentrated market structures;

(d) Hindering, restraining, foreclosing or frustrating competition in the production, distribution or sale of regular coffee packaged for sale at retail;

(e) Depriving consumers of the benefits of free and open competition.

JURISDICTION

12. The policies, acts and practices of General Foods' Maxwell House Division as alleged herein at all times relevant hereto have been in or have affected commerce within the meaning of the Federal Trade Commission Act. [5]

13. In the course and conduct of its business, General Foods' Maxwell House Division is now, and for many years past has been, engaged in commerce, as "commerce" is defined in the Clayton Act, in that it has sold and distributed, and is now selling and distributing, regular coffee packaged for sale at retail to purchasers thereof located in States other than the State of origin of shipments and has, either directly or indirectly, caused such products, when sold, to be shipped and transported from the State of origin to purchasers located in other States, as part of a constant course and flow of trade and commerce in such products between General Foods' Maxwell House Division in the State of origin and purchasers thereof located in other States and the District of Columbia.

General Foods, through its Maxwell House Division, has shipped and sold regular coffee packaged for sale at retail to purchasers with places of business located throughout the several States of the United States and the District of Columbia for resale to customers within the United States.

VIOLATIONS

14. In the relevant market and in one or more of the relevant submarkets, General Foods, through its Maxwell House Division, has maintained monopoly power over the production, distribution or sale of regular coffee packaged for sale at retail through all or some of the policies, acts and practices set out and alleged in Paragraph 10 in violation of Section 5 of the Federal Trade Commission Act.

15. In the relevant market and in one or more of the relevant submarkets, General Foods, through its Maxwell House Division, has attempted to monopolize the production, distribution or sale of regular coffee packaged for sale at retail through all or some of the policies, acts and practices set out and alleged in Paragraph 10 in violation of Section 5 of the Federal Trade Commission Act.

16. General Foods, through its Maxwell House Division, has engaged in a course and pattern of conduct which constitutes unfair

methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act. [6]

17. In the course and conduct of its business in commerce, General Foods, through its Maxwell House Division, has since October 1971 discriminated and is now discriminating in price in the sale of regular coffee packaged for sale at retail by selling such products of like grade and quality at different prices to different purchasers.

Included in, but not limited to, the discriminations in price as above alleged, respondent has discriminated in price in the sale of said products to retailers and other purchasers in the Cleveland and Pittsburgh market areas of its Youngstown, Ohio District and in the Wilkes Barre and Philadelphia market areas of its Philadelphia, Pennsylvania District, and in each market area of its Syracuse, New York District by charging said retailers and other purchasers substantially lower prices than charged by said respondent for the sale of said products of like grade and quality to retailers and other purchasers located in other of respondent's trading areas throughout the nation, including at times other of the market areas described herein.

The effect of such discriminations in price by respondent in the sale of regular coffee packaged for sale at retail has been or may be substantially to lessen competition or to tend to create a monopoly in the line of commerce in which said respondent is engaged, or to injure, destroy or prevent competition between respondent and its competitors in the production, distribution or sale of such products.

The discrimination in price as herein alleged violate subsection 2(a) of the Clayton Act, as amended.

Initial Decision by

Lewis F. Parker, Administrative Law Judge

January 25, 1982

I. History of the Proceeding

The Commission issued its complaint in this case on July 14, 1976. It charges General Foods Corporation with violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45 and Section 2(a) of the Robinson-Patman Act, 15 U.S.C. 13(a).

The complaint alleges that General Foods, through its Maxwell House Division, has used and is using its dominant position in regular coffee and its size and economic power to frustrate the growth of smaller regular coffee producers, to frustrate the entry of other regular coffee producers into certain relevant markets, and to prevent, hinder or lessen competition in the production, distribution or sale of regular coffee packaged for sale at retail in the relevant markets. The complaint claims that General Foods achieved these results by selling regular coffee below cost or at unreasonably low prices, [2] by using extensive consumer and trade promotions and advertising to forestall or foreclose market entry or to lessen competition, by engaging in geographically discriminatory pricing, promotional and advertising practices, by increasing advertising and promotional expenditures in previously established marketing areas of a new entrant to deter its entry into the relevant markets, and by using a fighting brand to forestall or foreclose entry or lessen competition.

According to the complaint, the effects of these practices have been the monopolization of the production, distribution or sale of ground coffee packaged for sale at retail, the increase of entry barriers, the preservation of highly concentrated market structures, the hindering of competition and the deprivation to consumers of the benefits of free and open competition.

After extensive discovery, hearings began on August 20, 1979. They ended on June 19, 1981. Over twelve thousand pages of testimony were recorded and several thousand pages of documents were received in evidence. The record was closed on June 26, 1981. Complaint counsel filed their proposed findings of fact and conclusions of law on August 27, 1981. General Foods filed its answer to the findings on October 26, 1981 and complaint counsel filed their reply on December 2, 1981. At my request, the Commission granted me an extension of time to January 26, 1982 to file this initial decision.

This decision is based on the transcript of testimony, the exhibits which I received in evidence, and the proposed findings of fact and answers thereto filed by the parties. I have adopted verbatim several findings proposed by complaint counsel and counsel for General Foods. Others have been adopted in substance. All other findings are rejected either because they are not supported by the record or because they are irrelevant.

II. Findings of Fact

A. *General Foods Corporation*

1. General Foods Corporation is a Delaware corporation with its principal executive offices located at 250 North Street, White Plains, New York (Complaint ¶2, Answer ¶3). It is one of the world's leading processors of packaged grocery products and [3] markets a variety of these products in the United States under more than thirty major

brand names (CX 438B).[1]

2. In fiscal year 1972 (year ending April 1, 1972),[2] General Foods had net world-wide sales of over $2.5 billion and net earnings (from continuing operations) of approximately $113 million. In fiscal year 1976, General Foods had net world-wide sales of approximately $4 billion and net earnings of over $150 million (CX 438F).

3. Coffee is one of General Foods' principal product lines (Complaint ¶3; Answer ¶4). From April 1971 through April 3, 1976, General Foods' domestic coffee sales made up from 26% to 30% of its consolidated net sales (CX 438B). Regular coffee (coffee processed from unroasted coffee beans, as distinguished from soluble (instant) coffee) (Complaint ¶11(a); Answer ¶2) constituted a substantial portion of such coffee sales (Complaint ¶3; Answer ¶4). The sales volume of the regular coffee products sold by General Foods' Maxwell House Division approximated $380 million in fiscal year 1971, $386 million in fiscal year 1972, $433 million in fiscal year 1973, $504 million in fiscal year 1974, $529 million in fiscal year 1975, $567 million in fiscal year 1976, and $900 million in fiscal year 1977. In these years, earnings before taxes for all ground coffee products approximated: $26 million in 1971, $24 million in 1972, $13 million in 1973, $17 million in 1974, $5 million in 1975, $25 million in 1976, and $51 million in 1977 (CX 991A–N).

4. General Foods' largest selling regular coffee brand during the relevant time period was Regular Maxwell House. For the following fiscal years, the sales volume and earnings before taxes (in parentheses) for that brand approximated: $303 [4] million ($21 million) in 1971, $293 million ($19 million) in 1972, $300 million ($9 million) in 1973, $351 million ($4 million) in 1974, $369 million (loss of over $1 million) in 1975, $395 million ($22 million) in 1976, and $654 million ($35 million) in 1977 (CX 991A–N).

B. *Interstate Commerce*

5. In the conduct of its business, General Foods' Maxwell House Division distributes regular coffee packaged for sale at retail to purchasers located in states other than the state in which the shipments originated as part of a constant course of trade and commerce in

[1] The following abbreviations are used in this decision:

CX	–	Commission Exhibit
RX	–	Respondent's Exhibit
Tr.	–	Transcript of testimony
CPF	–	Complaint counsel's proposed findings
CLA	–	Complaint counsel's legal argument
RPF	–	Respondent's proposed findings
RLA	–	Respondent's legal argument
CRF	–	Complaint counsel's reply findings
CRLA	–	Complaint counsel's reply legal argument

[2] General Foods' fiscal years run from April through March of the following year (CX 438B).

regular coffee between the state of origin and purchasers located in other states and the District of Columbia (Complaint ¶13; Answer ¶14).

6. General Foods produces its regular coffee products in four plants in the United States: Hoboken, New Jersey; Jacksonville, Florida; Houston, Texas; and San Leandro, California. Its products are shipped from these plants to locations throughout the United States (CX's 387–94; Tr. 5123–25).

C. *Regular Coffee Producers*

7. Green coffee beans constitute the principal cost component in the production of regular coffee packaged for sale at retail (CX 438B). These beans are all imported into the United States (Tr. 4772).

8. Regular coffee is manufactured by roasting the green beans, grinding and blending different types of roasted beans to achieve certain taste characteristics, and then packing the product in vacuum packed cans or in bags for distribution (Tr. 4828). The manufacture of ground coffee is not a capital intensive industry (Tr. 129).

9. Regular coffee is marketed in three pack sizes—one pound, two pound and three pound (Tr. 1627) and comes in different grinds—regular, drip, fine, and all purpose, as well as grind or blend variations suited for use in electric percolators and in automatic drip coffee makers. There are decaffeinated regular coffee products, coffee products that contain chicory or other extenders, coffees that are "premium blends," and expresso coffees. Coffee is also marketed in premeasured filter rings or pouches. Recently, manufacturers [5] have introduced increased cup yield coffees which deliver increased cup extraction as a result of different roasting and grinding processes (Tr. 4837–49).

10. There are several large firms currently operating in the regular coffee industry in the United States: General Foods Corporation; The Procter & Gamble Co., which markets the Folger's and High Point brands; The Coca-Cola Co., which markets the Maryland Club and Butternut brands; Nabisco Brands, formerly Standard Brands, which markets the Chase & Sanborn brand; The Hills Bros. Coffee Co., Inc., a wholly-owned subsidiary of Copersucar, a Brazilian conglomerate; and The MJB Coffee Co. (Tr. 2122, 3224, 4496, 10,541).

11. Many major retail chain grocery stores produce or have produced for them their private brands of coffee which are sold in their stores in competition with brands sold by independent coffee manufacturers (CX 437F; Tr. 12,335). Some of the larger chains selling their own brands of coffee are The Kroger Co., the Great Atlantic and Pacific Tea Company ("A&P"), Safeway, and First National/Pick 'N Pay (Tr. 1641, 6276, 9538).

12. There are also a substantial number of smaller roasters, many of whom are significant factors in their areas of distribution: Chock Full O'Nuts Co.; American Maize Co., which markets the Savarin brand; J. Lyons & Co., which markets the Martinson's brand; and the JFG Coffee Co. (Tr. 4278–82, 8338, 10,527).

D. *The Consumption Of Regular Coffee*

1. The Use Of Regular Coffee As A Traffic Builder

13. During an average three-month period, 80% of households in the United States purchase regular coffee at least once. During a 13-week period, these households purchase, on average, 7 1/2 pounds of coffee (CX 190B).

14. Retailers who sell ground coffee recognize that their customers are very sensitive to its retail price. Mr. Theodore Engel of the Kroger Co. testified that it regards regular coffee as a "board item," a term used to identify "the basic items we feel from experience are the most price-sensitive items that we carry . . ." (Tr. 1707).

15. Maxwell House Division documents also disclose the importance of price to regular coffee consumers: **[6]**

> Consumers have been educated to buy ground coffee on price. Ground coffee shares are dramatically responsive to changes in price levels vs. competition. Many people buy every week or two (CX 20Z–38).

> Retail price is an extremely important factor in the ground coffee industry affecting both coffee market trend and shares of individual brands within it (CX's 38Z–30, 39Z–17, 40S).

16. This sentiment was echoed in a May 1973, Procter & Gamble memorandum:

> [a]ll our experience in the coffee business tells us that it is extremely responsive to pricing; and pricing equity is regarded as a necessity even in areas where we have a strong leadership share position (CX 524).

17. Because of this consumer attitude toward regular coffee, it has "historically been an actively merchandised category by the Grocery Trade—promoted as a 'traffic builder' or a 'loss leader' " (CX 190B), and this attitude has "led to the use by retail grocers, of coffee as a trade building item" (CX 205A).

18. Louis Epstein, president of Golden Dawn Foods, Inc., a company that wholesales groceries to a voluntary group of supermarkets in western Pennsylvania and eastern Ohio, has purchased ground coffee from manufacturers since 1970 (Tr. 12,157–60). According to Mr. Ep-

stein, it is a "common practice" in the grocery business to sell a highly desirable item such as coffee at a reduced price to attract consumers:

> [T]he assumption being that if a consumer walks into the store for the reason of buying that product at a very low price, she will buy the rest of the order there and then you will balance out and make money on the balance of the order. That is loss leader selling and it's a common practice in the industry (Tr. 12,187; *see also* Tr. 2881, 5753, 5818, 5938, 6611). [7]

19. David Graham, who had extensive experience first in the marketing of ground coffee brands produced by General Foods, and was thereafter vice president and general manager of the Martinson Division of the Squibb Corporation, responsible for the marketing of Martinson's and Beechnut coffee brands, and who later participated at Standard Brands in major management decisions affecting the Chase & Sanborn brand of coffee, testified that coffee is an "extremely competitive" industry. Certain characteristics make it particularly competitive. It is a large category in terms of physical volume and dollar sales, and represents a "very meaningful part" of the total revenue of grocery store sales. It is a product which is widely consumed and purchased frequently, and it is used by grocers to draw people into their stores (Tr. 10,536–37).

2. The Trend In Regular Coffee Sales And The Increase In Competitive Activity

20. In fiscal 1968, the consumption of regular coffee in the United States peaked at 122.4 million units, or 1.468 billion pounds (RX 1105B). In the next ten years, regular coffee consumption declined by almost one-third (Tr. 4335–36).

21. This decline in consumption has caused manufacturers of ground coffee to intensify their promotional activity in order to maintain their business (Tr. 5722). Any coffee company seeking business in new areas of distribution would have only one source for this business, from the other brands existing in that area (Tr. 4336). Hills Bros. recognized that Procter & Gamble's expansion of Folger coffee did not expand the ground coffee market, but that Folger's obtained its share by taking it from other brands (Tr. 2196).

22. Several Maxwell House Division documents indicate that as a result of this decline in consumption, producers have increased marketing expenditures in an attempt "to maintain volumes in a declining market" (CX 17T) and that trade promotion expenditures have increased because producers realized that it was necessary and more efficient to trade promote in order to utilize more capacity (CX 20Z–38). Local and regional roasters' reliance on trade dealing as their

single marketing tool is "reflective of incremental economies in an industry with idle capacity" (CX 190B).

23. The importance of this decline in consumption and attendant increased marketing expenditures was recognized within [8] the Division as a potential cause of increased competitive activity by roasters:

Folger, in quest of "at least" static volumes in a declining ground market, will continue to grow in their established markets with accelerated trade spending.

Hills, MJB and other competition will continue to lose share intensifying trade spending along the way.

In the HFNI, Savarin, CFON, C&S and Martinson's will continue to spend to solidify share (CX 16H; *See also* CX's 13M, 15D, 16Z–36).

24. This increase in competitive activity has not been limited to just a few of the Maxwell House Division's sales districts but is a nationwide phenomenon (CX's 659B, 670A, 672C, F, 673D, 677A, C; RX 1207A–C, F).

E. *The Marketing Of Regular Coffee By The Maxwell House Division*

1. Introduction

25. During the 1960's, its Maxwell House Division accounted for approximately 35% of General Foods' profits (Tr. 4495). The Division's major regular coffee brand is Regular Maxwell House; other brands sold by the Division are Maxim, a freeze-dried coffee, Sanka, which is produced in freeze-dried, regular and soluble form, Yuban, a premium coffee, Brim, a decaffeinated ground and freeze-dried coffee, and Master Blend, Electra-Perk, ADC, Mellow-Roast and Max-Pax, which are regular coffees (Tr. 4492–93, 4836–37, 4847–48, 4858).

2. The Marketing Mix

26. Prior to fiscal 1972, the Division's coffees were sold in 27 sales districts. In fiscal 1972, the Division's national sales manager reduced the districts from 27 to 20 and extended [9] the boundaries of the remaining sales districts. The districts contain 52 marketing areas. The Division's coffees are sold direct to retail grocers and to wholesalers. Of the 200,000 retailers in the United States, some 30,000 are sold direct; the remaining 170,000 buy their Maxwell House Division coffees from wholesalers (Tr. 5723, 7130–31, 7159). The Maxwell House Division (and other roasters) promotes its coffee products through a so-called "marketing mix" which consists of advertising, trade dealing and consumer promotions (Tr. 7115).

27. Advertising, or "media," consists of television programming,

magazines, newspapers, Sunday supplements, radio, and outdoor billboards. Television advertising is either network or spot. Network advertising is bought from the major networks, CBS, NBC and ABC, in New York City. Spot advertising is purchased from local television stations (Tr. 7820).

28. Trade deals consist of non-performance and performance allowances which are offered to the Division's retail customers (when the Division sells to wholesalers, these allowances are passed on to the wholesalers' customers) (Tr. 7130–31).

29. Non-performance allowances such as buying allowances are discounts from the list price for each case of coffee. The retailer is not required to perform in order to receive the allowance (Tr. 1374–75, 5754).

30. A performance allowance is a discount from the list price for each case of coffee, with the requirement that the retailer engage in specified performance. Performance allowances include display allowances, advertising allowances, reduced price features and count and recount. A display allowance requires that the retailer display the coffee in a particular fashion. An advertising allowance requires that the retailer advertise the product in order to get credit for the allowance on all volume purchased. A reduced price feature requires the retailer to reduce the price of coffee to the consumer. A count and recount is an allowance based on cases moved from the trade's warehouse to the retail store serviced by that warehouse (Tr. 5846–47, 6655–56).

31. Consumer promotions take the form of coupons, of which there are two basic types: consumer coupons and retailer coupons (RECUs). Retailer coupons (RECUs) are coupons that a retailer runs in its newspaper advertisement which offer the consumer a discount on the purchase price of a particular brand. When the consumer buys the product and presents the coupon to the retailer, the consumer receives a price reduction equal to the face amount of the coupon. Upon submittal of the coupon to a manufacturer, the retailer receives an amount equal **[10]** to the price reduction from the manufacturer (Tr. 2009–10, 2505, 2747, 12,100–03, 12,183). Consumer coupons are redeemed like RECU's by the retailer, but they are either mailed direct to the consumer by the producer ("DMCU"), appear in newspapers or magazines ("NECU"), or are packed in the product ("PIC's") (Tr. 1601, 2013–14, 2505–06, 2725). RECU's are effective for a four-or-six-week period. During this period, a retailer can only participate once in the RECU offer and the RECU must expire within a week from the date of publication (Tr. 5846, 5998, 7123). Consumer coupons can be redeemed for an indefinite period (Tr. 4114).

F. *Folger's Entry Into The HFNI*

32. Although Regular Maxwell House is sold nationwide, the bulk of its volume has traditionally been sold in the "HFNI," an acroynm for "High Franchise Non-Infringement." The HFNI is the area of the United States east of the Mississippi River where Regular Maxwell House has been the leader in regular coffee sales. In the western part of the United States, the so-called "Low Franchise" area (CX 448A–C; Tr. 1398–99), Regular Maxwell House has been faced with competition from the leader in that area, the Folger Coffee Company (Tr. 2709–10, 4502).

33. The Maxwell House Division's major competitor has been and is the Folger Coffee Company. In 1963, Folger was acquired by the Procter & Gamble Company (Tr. 4506) and, until the fall of 1971, restricted its competitive activities, with minor exceptions (some sales in Indiana, Cincinnati, Ohio, and Florida), to the western United States (Tr. 2709–10, 4502).

34. In October 1971, Folger began selling its coffee in Cleveland, Ohio as a test market, with the intention, if its introduction into this market were successful, to expand into the balance of the eastern United States on an orderly schedule (Tr. 2710–11). After waiting for three months, the Maxwell House Division decided to respond to Folger's eastern thrust. It is this response to Folger's entry into Cleveland and other eastern areas and the consequent results which prompted the Commission to issue the present complaint.

G. *The Relevant Product Market*

35. The parties have agreed that the relevant product market is all regular coffee products packaged for sale at retail, including caffeinated, decaffeinated, and extended [11] ground coffee products (Prehearing Conference, April 12, 1978, Tr. 79–84).

H. *The Relevant Geographic Market*

1. Introduction

36. While Dr. Kenneth Elzinga, General Foods' major economic expert, agreed with few of the conclusions drawn from this record by Dr. H. Michael Mann, complaint counsel's main expert,[3] he and Dr. Mann agreed that a relevant market is an "area that encompasses the primary demand and supply forces which determine price" (Tr. 3528, 9415, 9456–57). However, as is not uncommon when economists (or lawyers) apply a simple principle to a concrete factual situation, the experts' conclusions differed: Dr. Elzinga testified that the relevant

[3] Dr. Elzinga is a professor of economics at the University of Virginia (Tr. 9401). Dr. Mann is a professor of economics at Boston College (Tr. 3515).