

alloy has been affixed by an electrolytic process may be marked or described as gold electroplate or gold electroplated.

(6) Misrepresenting the carat fineness of the gold coating or surfacing of respondents' merchandise.

*It is further ordered,* That the amended initial decision, as herein modified, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That the respondents, Lifetime Cutlery Corp., Benjamin R. Berlin and Muriel Berlin, shall, within sixty (60) days after service upon them of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist as modified.

Commissioner Mills not participating.

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IN THE MATTER OF  
PILLSBURY MILLS, INC.

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

*Docket 6000. Complaint, June 16, 1952<sup>1</sup>—Decision, Dec. 16, 1960*

Order requiring the nation's second largest flour milling company to divest itself absolutely of two competitors it acquired: Ballard & Ballard, Louisville, Ky., purchased June 12, 1951, acquisition of which removed an important producer of family flour, flour-base home mix, and wheat flour milling products from the southeastern market and gave Pillsbury first place in that market in the sale of family flour; and Duff's Baking Mix Division of American Home Foods, Inc., Hamilton, O., selling its home mixes throughout the country, purchased in March of 1952.

INDEX

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	Page
PRELIMINARY STATEMENT.....	1277
FINDINGS OF FACT.....	1281
I. DESCRIPTION OF THE INDUSTRIES AND ACQUISITIONS INVOLVED...	1281
A. Family Flour Market in the Southeast.....	1281
1. Definition.....	1281
2. The Family Flour Market in the Southeast is a Declining Market.....	1281
3. Grades and Classification.....	1282

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<sup>1</sup> Amended and Supplemental Complaint, June 30, 1954.

## FINDINGS OF FACT—Continued

I. DESCRIPTION OF THE INDUSTRIES AND ACQUISITIONS INVOLVED— Continued	
A. Family Flour Market in the Southeast—Continued	Page
4. Chains and Supermarkets are Important Sales Outlets for Advertised Brands in Urban Areas.....	1283
5. Leading Advertised Brands Sold Through Chains and Supermarkets in 1951.....	1283
6. Unadvertised Brands of Premium Flour Sold Generally Below Advertised Brands.....	1284
7. Leading Mills Selling Family Flour in Rural Areas in the Southeast.....	1284
8. Total Family Flour Sales in Southeast Prior to Acquisition of Ballard.....	1288
B. The Flour-Base Home Mix Market.....	1289
1. Definition and Classification.....	1289
2. Leading Mix Manufacturers Prior to Acquisition of Ballard and Duff.....	1289
3. Chain Stores and Supermarkets Important Sales Outlets for Mixes in Urban Areas.....	1290
C. Description of Respondent and Corporations Acquired and their Acquisition.....	1290
1. The Respondent Pillsbury Mills, Inc.....	1290
2. Ballard and Ballard Company.....	1293
3. The Acquisition of Ballard.....	1295
4. Duff Baking Mix Division of American Home Foods, Inc.....	1296
5. The Acquisition of Duff.....	1297
6. Pillsbury's Disposition of the Duff Brand.....	1297
II. EFFECT OF BALLARD ACQUISITION UPON COMPETITION IN THE FAMILY FLOUR INDUSTRY IN THE SOUTHEAST.....	1298
A. Share of the Market.....	1298
1. Pillsbury Advanced from Fifth Place to First, Displacing General Mills.....	1298
2. Colorado Milling & Elevator Company Sales Declined....	1299
3. Dixie-Portland Flour Co. Sales and Share of Market Declined.....	1299
4. Other Important Flour Mills Whose Share of Market Declined.....	1300
5. Other Flour Mills Whose Sales Declined but Relative Positions Improved.....	1301
6. An Important Flour Mill, Shawnee Milling Company, Whose Sales and Percentage Increased in 1954 but Declined in 1956.....	1302
7. A Large Local Flour Miller, Roanoke City Mills, Inc., Increased Sales and Percentage in 1954 Although Sales Declined in 1956 from 1954.....	1303
8. Another Local Flour Miller, Statesville Flour Mills Co., Whose Sales Increased in 1954 and Declined in 1956....	1306
9. Tabulation of Certain Data Concerning 21 Major Flour Millers and Blenders in the Southeast.....	1308
10. Some Small Millers or Blenders in the Southeast Com- petitive with Pillsbury.....	1313

## FINDINGS OF FACT—Continued

II. EFFECT OF BALLARD ACQUISITION UPON COMPETITION IN THE FAMILY FLOUR INDUSTRY IN THE SOUTHEAST—Continued	
A. Share of the Market—Continued	Page
11. Certain Metropolitan Areas in the Southeast where Pillsbury's Acquisition of Ballard was most Effective....	1314
B. Concentration in the Family Flour Industry.....	1325
1. In the United States.....	1325
2. In the Southeast.....	1326
C. Entries and Exits—Family Flour Millers in the Southeast...	1327
D. Competitive Practices Subsequent to 1951 by Pillsbury in the Family Flour Industry in the Southeast.....	1329
III. EFFECT OF ACQUISITION OF DUFF UPON COMPETITION IN THE FLOUR-BASE HOME MIX INDUSTRY IN THE UNITED STATES AND THE SOUTHEAST.....	1333
A. Share of the Market.....	1333
1. In the United States.....	1333
2. In the Southeast.....	1340
B. Concentration.....	1345
C. Exits and Entries—Mixes.....	1349
D. Competitive Practices of Pillsbury in the Mix Market Since 1952.....	1352
IV. THE EFFECT OF THE ACQUISITION OF BALLARD UPON COMPETITION IN THE BAKERY FLOUR INDUSTRY IN THE SOUTHEAST....	1355
V. THE EFFECT OF THE ACQUISITION OF BALLARD ON THE FORMULA FEED MARKET IN THE SOUTHEAST.....	1357
VI. THE EFFECT OF THE ACQUISITION OF BALLARD ON THE MIX MARKET IN THE SOUTHEAST.....	1359
VII. THE EFFECT OF THE ACQUISITION OF BALLARD BY PILLSBURY UPON THE REFRIGERATED DOUGH PRODUCTS INDUSTRY.....	1361
VIII. RESPONDENT'S PROPOSED FINDINGS.....	1361
A. As to Testimony of Mr. Wroe Alderson.....	1361
B. As to Testimony of Mr. G. R. Detlefsen.....	1365
C. As to Ballard's Financial Condition at Time of Acquisition by Pillsbury.....	1369
D. As to the Disqualification of the Commission.....	1376
CONCLUSIONS.....	1377
I. THE ACQUISITION OF BALLARD VIOLATED SECTION 7 OF THE CLAYTON ACT.....	1377
A. Relevant Markets.....	1379
1. Line of Commerce or Product Market.....	1379
2. The Section of the Country—the Geographic Market.....	1379
B. The Effect of the Acquisition.....	1379
1. Family Flour in Urban Markets.....	1380
2. Family Flour in Country or Rural Markets.....	1383
3. Increase in Economic Concentration Generally.....	1385
4. As to Bakery Flour.....	1385
5. As to Formula Feeds.....	1386
II. THE ACQUISITION OF DUFF ALSO VIOLATED SECTION 7 OF THE CLAYTON ACT.....	1386
III. REMEDIAL ACTION TO BE TAKEN.....	1387
ORDER OF DIVESTITURE.....	1388

*Mr. L. E. Creel, Jr., Mr. J. Wallace Adair and Mr. Eugene Kaplan* for the Commission.

*Mr. Joseph J. Smith, Jr., and Mr. E. Barrett Prettyman, Jr., of Hogan & Hartson, of Washington, D.C., and Mr. Terrance Hanold, of Minneapolis, Minn., for respondent.*

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

PRELIMINARY STATEMENT

The Commission on June 16, 1952, issued a complaint against Pillsbury Mills, Inc. (now The Pillsbury Company), sometimes hereinafter referred to as Pillsbury, charging it with violation of Section 7 of the Clayton Act as amended and approved December 29, 1950, through the acquisition on June 12, 1951, of the assets of Ballard and Ballard Company, sometimes hereinafter referred to as Ballard, operating a flour mill and feed mill located in Louisville, Kentucky, and on or about March 10, 1952, the assets of the Duff's Baking Mix Division of the American Home Foods, Inc., sometimes hereinafter referred to as American Home, a subsidiary of American Home Products Corporation, engaged in the manufacture of packaged food products, including flour-base home mixes, sometimes hereinafter referred to as mixes. It was alleged in the Commission's complaint and denied by respondent that both Pillsbury and American Home were, prior to March 10, 1952, leaders throughout the United States in the sale of mixes, and that both Pillsbury and Ballard prior to June 12, 1951, were leaders in the southeastern part of the United States in the sale of family flour, bakery flour and mixes. Finally it was alleged in the complaint and denied by respondent that the effect of the aforesaid acquisitions by Pillsbury of the assets of Ballard and Duff's Baking Mix Division of American Home

\* \* \* may be substantially to lessen competition, or to tend to create a monopoly in the lines of commerce, as "commerce" is defined in the Clayton Act, in which the acquired companies were engaged throughout various sections of the United States.

The foregoing acts and practices were alleged to be in violation of Section 7 of the Clayton Act as amended in 1950.

The taking of testimony in support of the allegations of the complaint was completed in January 1953. In April 1953 after oral argument, the examiner, without expressing an opinion as to whether or not Section 7 of the Clayton Act had been violated, issued an initial decision in which he granted a motion to dismiss on the grounds that the allegations of the complaint had not been sup-

ported by "reliable, probative and substantial" evidence in the record as required by the Administrative Procedure Act, and dismissed the complaint without prejudice. Counsel in support of the complaint on June 1, 1953, filed their appeal from this decision with the Commission.

During the course of the trial respondent had been served with a subpoena duces tecum to produce certain production and sales figures of the relevant products for the period of time before and after the respective dates of acquisition of the assets, which respondent had then declined to produce. The record did contain, however, actual production and sales figures for the respondent for the fiscal year 1949-50, which counsel for the respondent had furnished the Commission during the course of a preliminary investigation. The record at that time did not contain accurate figures with respect to the volume of sales of comparable products manufactured and sold by respondent after it acquired the assets of Ballard and Duff's Division of American Home. Furthermore it did not contain any authentic or reliable production or sales figures with respect to family flour and bakery flour or of mixes or commercial feeds of competitors of the respondent in the southeastern territory of the United States, and no attempt was made by Commission counsel to get such authentic sales figures from such competitors, counsel in support of the complaint relying upon estimates by respondent's officials and others in the trade and surveys made by newspapers and other independent agencies in specific market areas in the Southeast.

The Commission in an opinion rendered in December 1953, after reviewing the record in some detail, remanded the case to the hearing examiner for further consideration, being of the opinion that the principal evidence of the case which the hearing examiner refused to accept as reliable should be taken as prima facie evidence of the facts disclosed therein. This evidence consisted of several letters, hereinafter referred to as the Mintener letters, addressed to the Commission in which respondent through its Vice President and General Counsel, Bradshaw Mintener, set forth (1) its sales of the relevant products in the Southeast and in the nation, (2) the acquired companies' sales of the relevant products in the Southeast and in the nation, and (3) respondent's best estimates of its major competitors' shares of the relevant markets. It was pointed out by the Commission in its opinion written by Chairman Howrey that respondent's counsel did not object to the introduction of these letters as not being competent evidence but contended that there were no accurate, absolute figures available in the flour industry showing competitors' sales or total sales. The Commission then stated:

\* \* \* According to the testimony of respondent's market analyst, the best data available showing the market position and trend of sales of respondent and certain of its competitors in the flour industry are surveys prepared by the Market Research Corporation of America. This organization makes a random sample audit of retail stores which the witness described as the only random sample available which he considered projectionable. Respondent must have considered this information reliable enough [sic] for its own purposes inasmuch as it paid about \$50,000 per year for same.

\* \* \* \* \*  
The estimates were prepared by respondent and submitted to the Commission during the course of the preliminary investigation, and respondent asked the Commission to rely upon them in reviewing the case prior to the culmination of the acquisitions. Presumably respondent at that time, as an advocate, "put its best foot forward."

The Commission then in its opinion held that:

Under all the circumstances, it is believed that the "common sense" and "reasonable mind" tests have been met and the estimates are *prima facie* evidence of respondent's market position, the market position of the acquired companies and the market position of its major competitors.

The Commission then pointed out, however, that respondent when it puts in its case will have "full opportunity to rebut, explain or contradict".

The Commission in its order granting the appeal of counsel in support of the complaint in part and setting aside the hearing examiner's initial decision, also passed upon certain rulings of the hearing examiner wherein he had rejected certain surveys of newspapers and magazines. In one such ruling the examiner had excluded a Scripps-Howard newspaper survey which showed the brands of family flour and mixes on store shelves in a cross section of stores in twelve cities in 1950 and thirteen cities in 1951 as not having any bearing on sales. He also excluded a Good Housekeeping magazine survey consisting of the answers of 1,717 of its subscribers as to the brands of mixes they used, and also the survey of the New York World-Telegram showing the sales of mixes in 200 retail stores in the New York City area conducted in 1949 and 1950 as being too remote in time to be of any value in determining the effect of the acquisitions. The Commission was of the opinion that this evidence was erroneously excluded.

\* \* \* Market information for 1949 and 1950 is of value in determining the issues in this proceeding. Such surveys, if properly conducted, while certainly not conclusive are indicators of market trends and the existence of competitive products in the market surveyed. Such indicators, along with other information, may be of value in assisting the Commission in determining the actual market conditions.

On June 30, 1954, the Commission issued its amended and supplemental complaint in this proceeding in which it included an

allegation that respondent on or about December 21, 1953, had sold and transferred certain of its assets which had been acquired on March 10, 1952, from American Home to Duff Baking Mix Corporation, a New Jersey corporation organized on December 11, 1953, with its principal office and place of business in Newark, New Jersey.

\* \* \* Said assets sold, assigned and transferred by Pillsbury to Duff Corporation included the business of selling and distributing prepared baking mixes, such as waffle, hot muffin, corn muffin, hot roll, layer cake, devil food, spice cake and gingerbread mixes, under the trade name "Duff's," the going-concern value, goodwill, trade-marks, copyrights and patents incident to said business; and the formulae and manufacturing methods, processes and techniques used in connection therewith. Said sale by Pillsbury to Duff Corporation did not include, among other things, the physical property and equipment acquired by Pillsbury from American such as land, buildings and machinery.

It was alleged in this amended complaint that the sale by Pillsbury of a portion of the assets previously acquired by it from American Home, as set forth in the amended complaint, did not constitute such a disposition of said assets as to render moot the violations of Section 7 of the Clayton Act as charged in the original and amended complaints.

Following the mandate of the Commission the hearing examiner resumed the taking of testimony in this proceeding in July 1954, in Philadelphia, Pennsylvania, at which time counsel for the respondent began to offer testimony in opposition to the allegations of the complaint. The first witness was Mr. Wroe Alderson, a management consultant of the firm of Alderson and Sessions, consultants for business organizations and government organizations on problems of economics and marketing. He is recognized as a marketing expert. Mr. Alderson had made a study of the record in this case up to that time and was engaged by the respondent to give his views of the acquisition of Ballard and Duff from an economic standpoint. Since that time testimony, principally of representative flour millers and blenders, wholesalers, retailers, super-market and chain store operators relative to competitive conditions, has been taken in numerous cities in the Southeast and elsewhere. Alderson and Sessions also made a field study of the Birmingham and Louisville markets which was received in evidence. At the conclusion of the taking of such testimony counsel for respondent recalled Mr. Alderson for his opinion of the economic significance of the facts thus developed. Counsel for the respondent rested its case in June 1957. Thereupon rebuttal testimony was received until January 1958. A survey of the family flour market in the Southeast and of the mix market nationally and in the Southeast was made by the Economic Division of the Commission which was

received in evidence. Counsel in support of the complaint also called a prominent economist, Dr. Theodore J. Kreps, Professor of Economics at Stanford University, a recognized expert in the field of competition from the economic viewpoint, to testify as to the significance of the facts developed in the record. Proposed findings have been filed by counsel for the respondent consisting of 544 printed pages with lengthy appendices and a brief in support thereof. Counsel in support of the complaint have also filed proposed findings consisting of 340 pages and an appendix of nearly 100 pages.

Consideration has been given to the proposed findings and all the reliable, probative and substantial evidence in the record upon all material issues of fact, law or discretion. Each of those proposed findings which has been accepted has been, in substance, incorporated into this initial decision. All proposed findings not so incorporated are hereby rejected. Appropriate findings, conclusions and order are hereinafter set forth:

#### FINDINGS OF FACT

### I. Description of the Industries and Acquisitions Involved

#### A. *Family Flour Market in the Southeast*

1. *Definition.* Family flour is one of the products involved in this case. It may be defined as flour with a relatively low protein content, made from either soft or hard wheat or a blend of the two, packaged for use in the home—usually in 2-, 5-, 10- and 25-pound packages or bags; sometimes in 50- and 100-pound bags for rural trade. The most popular size of package sold in the urban trade is the 5- and 10-pound bags, whereas the 25-pound bag is most popular in many rural areas.

2. *The Family Flour Market in the Southeast is a Declining Market.* The market for family flour in the Southeast, that area south of the Potomac and Ohio Rivers and east of the Mississippi River, where Ballard sold its family flour, is gradually declining both in per capita consumption and in the aggregate sale and shipment of family flour. To quote from the Vice President and Director of Sales of General Mills, respondent's principal competitor in the sale of family flour and flour-base mixes in the United States as well as in the Southeast:

\* \* \* It is rather common knowledge that the production per capitawise is down for the past ten years, and the total tonnage is down for the past ten years. It is a shrinking market not only in the Southeast, but elsewhere in the family flour business. The decline, from our experience, has been slower in the Southeast than it has been on a national basis.<sup>2</sup>

<sup>2</sup> Tr. 28,263.



## Findings

57 F.T.C.

Official reports of the United States Bureau of Census support the opinion of this witness. In 1930 the per capita consumption of wheat flour was established to have been about 172 pounds. By 1940 this estimated per capita figure was down to 153 pounds and by 1950 it had declined to about 133 pounds. One of the reasons assigned for this decline is the increase in manufactured bakery flour and the consumption of bakery products. Another is the increased popularity of flour-base home mixes.

There has been a decline in the number of flour mills throughout the United States and also within the Southeast. For instance in 1939 there were 989 flour mills reporting in the 11 southeastern states. By 1945 there were 805 such mills and by 1953 only 412 mills were listed for these southeastern states. This decline has been most marked among the small and medium sized mills.

3. *Grades and Classification.* Family flour is offered on the market in the Southeast in three distinct quality grades; namely, premium, standard and "clears" or "cut offs". Premium flour is the most highly refined and the highest priced. Standard flour is less highly refined and uses more of the wheat grain. It regularly sells at a differential under the price of the premium grades. The "clears" or "cut offs", a low grade flour, which, in addition to being sold as a family flour, is also often sold as a bakery flour or for use in manufacturing crackers; also, in prepared mixes or for the manufacture of glue.

Premium flours fall into two distinct classes which are of real competitive significance—the advertised brands and the unadvertised brands. In the Southeast many of the unadvertised brands are sold by the miller to jobbers or wholesalers on an exclusive basis as an inducement to the jobber to push the sale of that brand.

The following methods of distribution are used by family flour millers and blenders in the Southeast:

- (a) Small local miller to retail outlets in the immediate community.
- (b) Medium-sized local miller to retail trade within a radius of 50 to 100 miles of mill, the distance a truck can make deliveries and return in one day.
- (c) Large local or regional miller in addition to local retail trade sells and ships to jobber or own warehouses beyond their trucking area. Ballard was such a miller.
- (d) Western millers shipping family flour into the Southeast, selling nationally-advertised brands principally to large retailers and chains in urban areas and through jobbers to retailers in rural areas. General Mills and Pillsbury were such millers.

(e) Western millers shipping unadvertised brands principally to jobbers on an exclusive basis, who in turn sell mostly to retail trade in rural areas. Colorado Milling & Elevator Company was such a miller.

4. *Chains and Supermarkets Are Important Sales Outlets for Advertised Brands in Urban Areas.* In the Southeast as elsewhere in the United States, chains and supermarkets have become of increasing importance as volume retail outlets for family flour. They operate chiefly in urban and suburban centers so that the shifts of population from rural areas to cities and their suburbs have further increased their importance. These outlets give shelf space only to fast moving items and brands of merchandise. In family flour such outlets will stock only the heavily nationally-advertised premium brands such as Gold Medal, Pillsbury's Best, and one or two popular local or regional brands, and in most instances a private brand which is always a standard grade of flour. The competitive position of any particular family flour in the Southeast depends on its ability to gain access to the consumer market. Any brand that is not in a chain store or supermarket cannot always be considered to be competitive with brands that are on the shelves of chains or supermarkets. This is true even if such a brand is found in some of the smaller stores in the same general metropolitan area or its environs.

In the Southeast market, the nationally advertised premium brands of family flour, such as Pillsbury's Best and General Mills' Gold Medal, were the most aggressively promoted and therefore set the price standard in that area. Other regionally or locally advertised premium flours maintaining approximately the same prices although sometimes lower were Ballard's Obelisk (now owned by Pillsbury), the White Lily brand of J. Allen Smith & Company, Knoxville, Tennessee, and the Omega brand of H. C. Cole Milling Company of Chester, Illinois.

5. *Leading Advertised Brands Sold Through Chains and Supermarkets in 1921.* Prior to 1951 the principal and leading premium brands of family flour sold throughout the Southeast area through the chain stores and supermarkets were General Mills' Gold Medal, Pillsbury's Best and Ballard's Obelisk. However, J. Allen Smith's White Lily brand, a soft wheat flour, was one of the leading brands in the Knoxville area and in Atlanta where the brand was advertised in newspapers and on the radio. The Roller Champion brand, a premium flour, manufactured by the Valley City Milling Company, a division of Russell Miller Milling Company of Minneapolis, Minnesota, was advertised and sold in a few of the metropolitan areas in the Southeast. Capitola, a premium brand of the Atlanta

## Findings

57 F.T.C.

Milling Company, a blender, priced from 20 to 25 cents per hundredweight below the Pillsbury's Best and Gold Medal prices was advertised and sold in Atlanta and Macon, Georgia. The Martha White brand of the Martha White Mills was a leading brand in Nashville, Tennessee. The Omega brand of H. C. Cole, the leading brand sold in Memphis, Tennessee, was advertised and promoted in the metropolitan area of Memphis. The Metropolitan brand of the Roanoke City Mills, Roanoke, Virginia, was a premium flour sold in and around Roanoke at 15 to 25 cents under the Pillsbury's Best and Gold Medal prices.

6. *Unadvertised Brands of Premium Flour Sold Generally Below Advertised Brands.* The premium quality flours which are generally unadvertised by the manufacturers normally sell at various differentials under the Pillsbury's Best and Gold Medal prices. For instance, the White Silk brand of Dixie-Portland Flour Co. sold at 50 to 75 cents under the Pillsbury's Best and Gold Medal prices. Also, the Colorado Milling & Elevator Company sold its premium brands at 80 cents under such prices and General Foods sold its premium brand Swans Down \$1 per hundredweight under the Pillsbury's Best and Gold Medal prices.

7. *Leading Mills Selling Family Flour in Rural Areas in the Southeast.* The following mills in addition to General Mills, Ballard and Pillsbury, listed in the order of the importance of their deliveries of family flour in the Southeast, were, prior to the acquisition, selling premium flour in substantial quantities in the rural areas in the Southeast:

(a) The Colorado Milling & Elevator Company of Denver, Colorado. This company probably was one of the first of the western milling companies to begin selling family flour in the Southeast. By 1956 it was selling to more than 150 jobbers in rural areas, most of them on an exclusive basis. Although this mill sold a large number of brands of flour, 90% of the sales of the company were accounted for by 12 premium grades. The three principal brands were Kansas Maid, White Goose and Pike's Peak. Most of the premium brands were blended flour of soft wheat and hard wheat although some of them were exclusively of soft wheat. This firm has always catered to the country or rural trade selling most of its family flour in 25-pound bags rather than the smaller sizes demanded by the urban trade. The total sales of family flour of this firm in the Southeast in 1951 exceeded 1,400,000 hundredweights.

(b) Dixie-Portland Flour Co., Memphis, Tennessee. This company is engaged in the milling of family and bakery flour and distributes its family flour throughout the Southeast through wholesale grocers on an exclusive basis. It had mills located in Arkansas

City, Kansas; Higginsville, Missouri; and Chattanooga, Tennessee, and blending plants in Richmond, Virginia, and Memphis, Tennessee. It operated very similarly to the Colorado Milling & Elevator Company and its sales in 1951 exceeded 1,000,000 hundredweights.

(c) Martha White Mills, Inc., of Nashville, Tennessee. This company sold its principal premium brand of family flour, Martha White, most of which it blended at its blending plants in Tennessee, from both hard and soft wheat flour purchased in bulk from mills in Missouri, Indiana, Illinois, Michigan, Ohio, Kansas, Oklahoma and Nebraska. It distributed about 65% of its family flour by truck throughout rural Tennessee from the outskirts of Memphis to the outskirts of Knoxville principally through retailers. Its premium brands Falcon and Lily White were sold principally in the Chattanooga market. However, it also sold some to jobbers in parts of Kentucky, West Virginia, Mississippi, Alabama, Georgia and Florida on an exclusive basis. It sold its Martha White premium brand from 20 to 40 cents per hundredweight below Obelisk, which latter brand sometimes sold at a lower price than Pillsbury's Best and Gold Medal. Like Colorado Milling and Dixie-Portland this company sold its family flour principally in 25-pound bags to the country or rural trade.

(d) General Foods Corporation. This company with its flour mill at Clarksville, Tennessee, operated under its Iglehart Division; sold its family flour in the Southeast under several brands, but sold its leading premium brands, Swans Down and Tender Flake, principally to jobbers on an exclusive basis. Its flour was sold in Kentucky, Tennessee, Georgia and parts of Alabama, Mississippi, South Carolina, Virginia, North Carolina and Florida, mostly in rural areas, although it made some sales in the metropolitan area of Nashville.

(e) J. Allen Smith & Company, Knoxville, Tennessee. This company sold its principal premium brand of family flour, White Lily, at approximately the same price as Pillsbury's Best and Gold Medal throughout a number of the southeastern states. Although it concentrated its sales in the larger cities, as hereinbefore indicated, until recently it also sold in substantial quantities to jobbers in rural areas on an exclusive basis.

(f) International Milling Company, Minneapolis, Minnesota. This company sold its three premium brands of family flour—Robin Hood, Silver Mist and Town Crier—to jobbers on an exclusive basis principally in rural areas. It did some advertising—mostly signs on trees and telephone poles along the highways.

(g) Yukon Mill & Grain Company, Yukon, Oklahoma. This company sold its principal brand of premium grade flour, Yukon's

Best, in all the states of the Southeast to jobbers on an exclusive basis. It also sold a number of standard grades. It did not advertise its family flour and its sales effort was directed at selling jobbers rather than consumers and the sales of these jobbers were made for the most part in rural territory. Yukon's Best although a premium flour was sold at a differential of approximately 50 cents per hundredweight under the Pillsbury's Best and Gold Medal prices.

(h) Nebraska Consolidated Mills Company, Omaha, Nebraska. This company with its mill operated by its Alabama Flour Mills Division at Decatur, Alabama, sold both family and bakery flour. It sold its premium brand of family flour, Mother's Best, to jobbers on an exclusive basis in the rural areas throughout Alabama, most of Tennessee, the northern part of Mississippi and in small areas in Kentucky, Georgia and western North Carolina. This brand was advertised and sold quite extensively in Birmingham; however, this mill sold a number of standard grade flours, which were not advertised, to jobbers on an exclusive basis in rural areas.

(i) The New Era Milling Company. This company, with its mill located at Arkansas City, Kansas, manufactures both bakery and family flour. It sold its family flour through its own sales force in the Southeast to jobbers on an exclusive basis. Practically all its family flour was sold under the brand name Polar Bear, a premium flour. It sold to at least 50 jobbers scattered throughout the Southeast with the exception of Mississippi, Louisiana and southern Florida. Its Polar Bear brand was sold at a retail differential from 30 to 50 cents per hundredweight under the Pillsbury's Best and Gold Medal prices. It catered to the country trade and did not advertise its family flour extensively relying upon the exclusive dealership to popularize its brands.

(j) Cosby-Hodges Milling Company, Birmingham, Alabama. This company was engaged in the blending and sale of family flour, as well as formula feed, which it distributed to retailers through its own warehouse system. It distributed its principal premium brand of family flour, White Tulip, throughout the area surrounding its warehouses located in Montgomery, Mobile, Dothan, Attalla and Decatur, Alabama; Pensacola, Florida; and Columbus, Georgia. It did some cooperative newspaper, billboard and radio advertising.

(k) The Buhler Mill & Elevator Co., Buhler, Kansas. This company sold its premium brand of family flour, Dixie Lily, to wholesalers on an exclusive basis, who in turn sold to retailers in Florida and scattered areas in Mississippi, Alabama, Tennessee, Georgia and North Carolina at prices from 70 to 80 cents per hundredweight under the Pillsbury's Best and Gold Medal prices.

(l) Shawnee Milling Company. This company with its principal mill at Shawnee, Oklahoma, is engaged in the milling of family and bakery flour. It shipped its family flour into the southeast where its premium grade of flour was sold mostly in 25-pound bags under the trade name Shawnee's Best on an exclusive basis to jobbers located principally in Mississippi, Alabama, southern Georgia, South Carolina and the southern part of North Carolina. Its sales were concentrated largely in rural areas.

(m) Harris Milling Company. This company with its mill located in Michigan sold its two principal premium brands of family flour, Famo and Cream, through brokers to jobbers in scattered areas in the Southeast in Tennessee, Georgia, Alabama and North Carolina on an exclusive basis. It did no advertising but depended upon the jobbers to promote the sale of its flour.

(n) Statesville Flour Mills Co. This company is located at Statesville, North Carolina, where it manufactures and distributes family flour, bakery flour and formula feeds. It sold and distributed its premium brands of family flour through its warehouses direct to jobbers and retailers including some chains located principally in North and South Carolina. The premium grades sold below the Pillsbury's Best and Gold Medal prices. It did not advertise its family flour.

(o) The Western Star Mill Co. This miller of Salina, Kansas, sold its principal premium grade brands of family flour to a few jobbers in the Southeast on an exclusive basis. These jobbers sold this flour principally in rural areas in northern Mississippi, western Tennessee, southern West Virginia and western Virginia.

(p) H. C. Cole Milling Company, Chester, Illinois. This company sold its premium grade of family flour Omega not only in the city of Memphis, as hereinbefore indicated, but also to wholesalers and retailers in other parts of the Southeast including the western third of Tennessee, the extreme western part of Kentucky, the states of Mississippi, Alabama, Florida and most of Georgia. This brand of flour was sold at approximately the same price as Ballard's Obelisk.

(q) The Abilene Flour Mills Company. This company with its mill located in Abilene, Kansas, sold four premium grade brands of flour, the principal one of which was Taste Biscuit, to wholesalers on an exclusive basis, and to a few chains and retailers scattered throughout the states of Mississippi, Alabama, Georgia, Florida, Tennessee, Kentucky, the western part of Virginia and West Virginia.

(r) Griffin Grocery Company, Griffin, Georgia. This company is a wholesale grocer, doing business as Happyvale Flour Mills, op-

## Findings

57 F.T.C.

erating a flour blending plant at Griffin, Georgia, and a small flour mill at Fort Valley, Georgia. It sold its own brands of family flour and the Hollyhock brand of the Colorado Milling & Elevator Company to retailers in rural areas throughout the state of Georgia and the suburban trade in and around Macon and Atlanta, Georgia.

Although there were a number of other small millers and blenders selling family flour in local communities in the Southeast in 1951, the foregoing mentioned mills accounted for approximately 70% of the total sales of flour mills in operation in the Southeast in 1952.

8. *Total Family Flour Sales in Southeast Prior to Acquisition of Ballard.* The record does not contain accurate production or sales figures of family flour for the Southeast for the period of time just prior to June 1951, the date of the acquisition of Ballard by Pillsbury, but there is in evidence a statement in one of the Mintener letters, hereinbefore mentioned, entitled "Statement Regarding Sales of Similar or Comparable Products in Southeast Area in which Ballard and Pillsbury Operate and Compete" as follows:

We estimate that in the said Southeast area, the following volumes of sales, and Ballard's and Pillsbury's respective shares thereof during the fiscal year 1949-1950 were as follows:

	Volume (cut.)	Share (percent)
Total family flour sold in area.....	20,000,000	
Ballard.....	930,000	4.65
Pillsbury.....	732,475	3.66
Combined Ballard and Pillsbury totals.....	1,662,475	8.31

<sup>1</sup> CX 85-N.

The same statement estimates that General Mills sold the largest volume of family flour in the Southeast area with sales between 1,500,000 hundredweights and 1,800,000 hundredweights or 7.50% to 9.0% of the total volume sold in the area. In presenting these figures to the Commission Mr. Mintener stated, "We do feel that the figures are reasonably accurate". It appears that these estimates were based on data furnished by the Market Research Corporation of America to Pillsbury and that they were prepared from what is known as the National Consumer Panel. The Commission tentatively accepted these figures at the time the Commission opinion was written. An attempt has been made by counsel for the respondent to discredit the said estimate, and new estimates have been prepared by Mr. Detlefsen, the Pillsbury accountant and statistician, in which he estimates that the total aggregate of family flour sales in the Southeast for the same period of time was approximately 27,093,000 hundredweights. This larger figure is

not accepted as it is not believed that the estimate made by Mr. Detlefsen is as reliable as the one made by the Market Research Corporation of America and furnished the Commission in the Mintener letters.

### B. *The Flour-Base Home Mix Market*

1. *Definition and Classification.* The prepared flour-base home mix industry is of a comparatively recent origin. At first there were two firms Pillsbury and Quaker Oats manufacturing pancake mixes. The modern flour-base home mixes, sometimes herein referred to as mixes, however, had their beginning about 1931 or 1933 when Duff and Dromedary began the manufacture and sale of cake mixes which included shortening, sugar, baking powder and other ingredients which required the addition of a liquid or liquid and eggs to form a batter. With these mixes the housewife could make a cake in a much shorter period of time than it would take to do so under the usual method of mixing the ingredients.

At first these two companies manufactured and sold a gingerbread mix and then later added a devils food mix the latter part of the 1930's and a white cake mix just before the Second World War at which time they discontinued both products because of the government sugar quotas. Subsequent to 1946 they resumed the manufacture of cake mixes. About 1946 General Foods, General Mills, Pillsbury and Quaker Oats began the manufacture of cake mixes in addition to the pancake mix which Pillsbury and Quaker Oats had been manufacturing prior to the War. The only other manufacturer of cake mixes prior to the War was Cinch Products, Inc., located in Los Angeles, California, which also resumed the manufacture of cake mixes after the War. It sold most of its products on the west coast and 90 to 95% in states west of the Mississippi River.

The principal types of mixes on the market in 1951 were cake mixes including white, chocolate, devils food and yellow. Other popular flavors have been added since that time such as angel food, spice cake, marble cake and orange cake. A second classification would include hot roll mixes, since they have yeast as a leavening. A third classification would include pie crust mixes, which have recently been made available in both powder and stick form. A fourth classification would include pancake and waffle mixes. There are numerous other mixes such as muffins, cookies, etc.

2. *Leading Mix Manufacturers Prior to Acquisition of Ballard and Duff.* Whereas the family flour market has been declining, the flour-base home mix market has been expanding, particularly in



