tion, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent herein 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 this order.

IN THE MATTER OF

BEATRICE FOODS COMPANY

ORDER AND OPINION OF DISMISSAL, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

Docket 8814. Complaint, April 30, 1970—Decision, September 28, 1972.

Order and opinion dismissing a complaint alleging violation of Section 7 of the Clayton Act by a Chicago, Illinois, dairy company. The Commission concluded that the evidence is insufficient to support a finding that a violation of Section 7 has been shown in the "national market" of institutional dry foods wholesaling.

COMPLAINT

The Federal Trade Commission, having reason to believe that Beatrice Foods Co. has acquired John Sexton & Co., a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C., Section 18), and/or in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C., Section 45), hereby issues this complaint pursuant to Section 11 of the Clayton Act (15 U.S.C. Section 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C., Section 45(b)), stating its charges in that respect as follows:

I

DEFINITIONS

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

(a) *Dry Grocery Products* are processed packed foods, including all foods canned in tins or glass or preserved in a dry state, but excluding fresh or frozen products such as fresh or frozen meat, fruit, vegetables, fluid milk and bread.

(b) *Institutions* are organizations preparing and serving, or serving, food for consumption on or off the premises, or meals away from home, including but not limited to restaurants, cafeterias, hotels, schools, colleges, hospitals, nursing homes, industrial feeding concerns, automatic merchandising concerns, clubs, and air lines.

(c) *Wholesalers of Dry Grocery Products* are merchant middlemen who buy various dry grocery products from food processors, producers and manufacturers and sell such products to retail food and grocery stores.

(d) *Institutional Dry Grocery Wholesalers* are merchant middlemen who purchase various dry grocery products from food processors, producers and manufacturers and sell such products to institutions.

II

RESPONDENT

2. Beatrice Foods Company (Beatrice), a respondent herein, is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 120 South LaSalle Street, Chicago, Illinois.

3. Beatrice was founded in 1897 in Beatrice, Nebraska. Beatrice is engaged in the business of producing, processing and/or distributing dairy, grocery and confectionery products, among others, and the operation of refrigerated warehouses. During its fiscal year ending February 29, 1968, about 45 percent of Beatrice's net sales were derived from sales of dairy products, about 37 percent from grocery and confectionery products and about 10 percent represented rentals from its public refrigerated warehouses. Prior to December 20, 1968, Beatrice sold dry grocery products to John Sexton & Co. and it also sold and is now selling such products to other institutional grocery wholesalers, some of whom competed with John Sexton & Co. and compete now with Beatrice. Beatrice also sells other products to institutional wholesalers and directly to institutions.

4. During its fiscal year ending February 29, 1968—

(a) Beatrice's net sales totaled $1,052,431,480, exceeding one billion dollars for the first time. In conducting its business, Beatrice has over 23,000 employees, markets over 5,000 products, and operates about 500 plants and branches.

(b) Beatrice was the 46th largest national advertiser. Among its better known trade names and products are the following:

Dairy Division:

"Meadowgold" milk and frozen desserts
"Louis Sherry" ice cream
"Dannon" yogurt

Grocery Division:

"Bonds" pickles and relishes
"Ma Brown" pickles and relishes
"L&S" pickles and relishes
"Rainbo" pickles and relishes
"American" pickles and relishes
"Ma Brown" jellies and preserves
"L&S" jellies and preserves
"Ruby Bee" jellies and preserves
"Mario's" olives
"Fisher's" nut products
"Adams" snack foods
"Rudolph's" snack foods
"Pepis" snack foods
"Time-4" snack foods
"Treat" snack foods
"Pik-Nic" snack foods
"Kobey's" snack foods
"Liberty" maraschino cherries and glazed fruits
"La Choy" chinese foods
"Temple" chinese foods
"Gebhardt's" Mexican foods
"Rosarita" Mexican foods
"Shedd's" margarine and salad dressing
"Lambrecht" frozen foods
"G-W" pizza pies
"Lambrecht" pizza pies
"Burney Bros." baked foods
"Aunt Nellie's" glass packed vegetables and fruit drinks
"Lady Betty" glass packed vegetables and fruit drinks
"Murray" cookies
"Mother's" cookies
"Sugarine" artificial sweetener
"Miracle White" laundry products

Confectionary Division:

"Clark" candy bars
"Richardson" mints
"Holloway" milk duds and caramels
"Jolly Rancher" candy bars

(c) Substantially all of Beatrice's non-dairy business, and most of its dairy business, is the result of acquisitions made over a period of time. Since January 1, 1960, Beatrice has acquired among others the following non-dairy firms:

1960

M. J. Holloway & Co.
Gebhardt Chili Powder Co.
Mitchell Syrup & Preserve Co.
Grand Trunk Warehouse & Cold Storage Co.

1961

Adams Corp.
Pik-Nik Company
Rosarita Mexican Foods Co.
Liberty Cherry & Fruit Co.

1962

Fisher Nut Co.
Cal-Compack Foods, Inc.

1963

G-W Food Products Corp.
Burney Bros., Inc.
Deppe-Vienna Baking Co.

1964

Southland Pecans
Liberty Baking, Inc.

Cincinnati Fruit & Extract Works, Inc.
The Sugarine Co.
Speciality Foods, Inc.
Bloomfield Industries
Regal By-Products Co.
Chicago Produce Terminal

1965

Chesterton Candy Co.
Aunt Nellie's Foods
Murray Biscuit Co.
Stiffel Co.
Stahl Finishing Co.
Vigortone Products
Colorado By-Products Co.

1966

Switzer Licorice Co.
Jolly Rancher, Inc.
Temple Frosted Foods
Knickerbocker Mills
Rudolf Foods
Mid-West Forging & Manufacturing Co.
Ross-Wells, Inc.
Geerpress Wringer Co.
Quincy Market Cold Storage Co.
Tampa Cold Storage Co.
Inland Underground Facilities, Inc.

1967

Mother's Cookies
Golden Cookie Co.
J. Warren Bowman, Inc.
Julian Bail Industries
South Georgia Pecan Co.
General Water Conditioning, Inc.
James H. Rhodes & Co.
Airstream, Inc.
Melnor Industries, Inc.
Tekni-Craft Inc.
Indiana Moulding & Frame Co.
Charmglow Products, Inc.
World Dryer Corp.
Imperial Oil & Grease Co., Inc.
Southeastern Reduction Co.
Lone Star Rendering Co.

1968

Buttercrust Bakeries
Oswald Jaeger Bakery
East Coast Foods
Farboil Co.
Hart Ski Manufacturing Co., Inc.
Morgan Yacht Corp.
Max H. Kahn Curtin Co.
Vogel-Peterson Co.
Hi-Temp, Inc.
Market Forge
San Angelo Bay Products Co.
Lubbock Rendering Co.

Pre-1960 acquisitions include but are not limited to D. L. Clark Co., Thos. D. Richardson Co., La Choy Food Products, Bond Pickle Co., Mario's Food Products, Squire Dingee Co., Tasty Foods, Inc., Shedd-Bartush Foods, Inc., A. F. Thibodeu Co., Detroit Refrigeration Co., and Lackawanna Cold Storage Co.

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

III

JOHN SEXTON & COMPANY

6. John Sexton & Company (Sexton) was, on December 20, 1968, a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business located at 4700

South Kilbourn Avenue, Chicago, Illinois. It is now operated as a division of Beatrice.

7. Sexton was originally established in 1883 in Chicago, Illinois and incorporated in 1898. It was on December 20, 1968, an institutional dry grocery wholesaler, distributing dry groceries to restaurants, clubs, hospitals, schools, colleges, hotels and other purveyors of prepared food services. It operated thirteen warehouses which served as distribution centers, servicing over 70,000 customers throughout the continental United States, in the West Indies and Hawaii. Nearly all the products distributed by Sexton were sold under its own trade names or brands and labels. About 27 percent of the products distributed by Sexton were manufactured or processed and packed, bottled, or canned by Sexton in its own plants. Sexton purchased other dry grocery products from food manufacturers, including Beatrice.

8. Sexton operated a laboratory for the systematic testing of "quality" in the products it produced, the products it distributed and for the development of new products. Sexton had developed, and placed on the market since July 1, 1967, a number of new convenience products including "Jet Set," an instant gelatin, canned "Chopped Chicken Livers" and "Spoon-Redi," a line of puddings to be spooned directly from the can into dessert dishes.

9. During its fiscal year ending June 28, 1968, Sexton had net sales of $91,053,770 and net earnings of $2,000,945. Sexton was on December 20, 1968, the largest independent institutional dry grocery wholesaler in the United States and the only such wholesaler distributing nationwide and manufacturing a significant portion of its products. Sexton's position had in part been attained by the acquisition of a number of distributors and a food manufacturer including the following:

(a) In August 1943, J. C. Stewart Co., an institutional wholesaler located in Pittsburgh, Pennsylvania.

(b) In 1964, National Brands, Inc., Grocery Department, an institutional wholesaler then located in Miami, Florida.

(c) In 1965, Cincinnati Foods, Inc., an institutional wholesaler located in Cincinnati, Ohio.

(d) In January 1953, The Columbia Conserve Company, a food manufacturer located in Indianapolis, Indiana.

10. Sexton sold dry groceries to institutions located in over 150 Standard Metropolitan Statistical Areas (SMSA), as defined by the Executive Office of the President, Bureau of the Budget, and in over 60 other localities. Sexton had nationally a market share of approximately 5 percent in the institutional dry grocery wholesale industry,

and in a number of the SMSA's and other markets which it serves Sexton has market shares ranging from 10 percent to about 50 percent.

11. At all times relevant herein, Sexton sold and shipped products in interstate commerce throughout the United States; and on December 20, 1968 Sexton was engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

IV

TRADE AND COMMERCE

12. The institutional dry grocery wholesaling industry consists primarily of a number of small independent concerns operating in local or regional markets, generally from one warehouse or at most three or four warehouses, each concern selling for the most part products bearing its label. The industry is characterized, on the whole, by (a) the solicitations of orders by a street salesman, (b) the extension of credit by the wholesaler, and (c) the delivery of dry groceries to the premises of the purchaser, either by common carrier or in the truck of seller.

13. Since 1960 a merger trend has been developing in the institutional dry grocery wholesale industry. Among others, Sexton has acquired two institutional dry grocery wholesalers during that period, Consolidated Foods Corporation has acquired during this period at least three, and Food Corporation of America has acquired one.

14. In the Chicago SMSA, a number of institutional dry grocery wholesalers have entered, or are now planning to enter, the institutional frozen food wholesale industry. Prior to December 20, 1968, Beatrice was and is now an institutional frozen food wholesaler in the Chicago SMSA, and prior to December 20, 1968, Sexton had contemplated entry into the institutional frozen food industry and was a potential entrant in that industry.

V

ACQUISITION

15. On or about December 20, 1968, Beatrice acquired the business and assets of Sexton, exchanging therefor approximately 375,000 shares of Beatrice's preferred convertible preference stock valued at the time at about $37,500,000.

VI

EFFECTS OF ACQUISITION

16. The effect of the acquisition by Beatrice of Sexton may be to lessen competition substantially or to tend to create a monopoly or to restrain competition in the institutional dry grocery wholesale industry and/or in the institutional frozen food wholesale industry, in the United States, or sections thereof, in the following, among other ways:

(1) Actual and potential competition between Beatrice and Sexton in the manufacture of dry groceries and the direct or indirect distribution of dry groceries to institutional purchasers has been, or may be eliminated.

(2) Sexton has been eliminated as a substantial independent competitive factor.

(3) Sexton has been, or may be, foreclosed as a customer for independent packers of dry groceries.

(4) Beatrice has been, or may be, foreclosed or otherwise unavailable as a source of supply for other institutional dry grocery wholesalers.

(5) Sexton has been eliminated as a potential independent entrant into the institutional frozen food wholesale industry.

(6) Beatrice will be substituted for and take over Sexton's large institutional dry grocery wholesale market shares in individual SMSA's and other markets.

(7) The merger trend in the institutional dry grocery wholesale industry may be further accelerated.

(8) As a manufacturer of utensils and equipment for institutions, a seller of bakery and dairy products to institutions, and a public warehouse operator, Beatrice has, or may have, decisive competitive advantages over its competitors in the institutional dry grocery wholesale industry.

(9) Barriers to entry into the institutional dry grocery wholesale industry have been or may be heightened.

(10) Barriers to entry into the manufacturing of dry groceries for the institutional market and into the wholesaling of dry groceries to the institutional market may be heightened as a result of Beatrice's substantial financial resources, its advertising capabilities and the combining of the nationally known Beatrice Foods and Sexton names.

VII

VIOLATION

17. The acquisition of Sexton by Beatrice, as alleged above, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. 18) as amended, and/or a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as amended.

Mr. Carl J. Batter, Jr., Mr. Lewis F. Parker, and *Mr. William M. Sexton*, supporting the complaint.

Mr. Edward L. Foote, Mr. Terry M. Grimm, Mr. John C. Malugen, of *Winston, Strawn, Smith & Patterson*, and *Mr. John P. Fox, Jr.*, Chicago, Illinois, for respondent.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

MAY 14, 1972

STATEMENT OF PROCEEDINGS

On April 30, 1970, the Commission issued its complaint against respondent charging it with violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. Section 45).

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

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

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

FINDINGS OF FACT

Jurisdictional Facts [1]

1. Beatrice Foods Company (Beatrice) is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 120 South LaSalle Street, Chicago, Illinois.

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

3. John Sexton & Company (Sexton) was on December 20, 1968, a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business located at 4700 South Kilbourn Avenue, Chicago, Illinois. It is now operated as a division of Beatrice.

4. At all times relevant to this proceeding, Sexton sold and shipped products in interstate commerce throughout the United States; and on December 20, 1968, Sexton was engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

5. On or about December 20, 1968, Beatrice acquired the business and assets of Sexton, exchanging therefor approximately 375,000 shares of Beatrice's preferred convertible preference stock valued at the time at about $37,500,000.

Beatrice

6. Beatrice is engaged in the business of producing, processing and distributing dairy products and specialized food products sold through its Grocery Products Division primarily to retail grocers, and also operates cold storage or refrigerated warehouses. Its sales to the retail grocery trade are made primarily through food brokers, of which it has 1400 throughout the United States, and it is one of the largest suppliers of dairy and grocery products to this trade. Based upon 1959–1960 data, the Commission found in 1965 that Beatrice was the third largest dairy company in the United States and a large supplier of other food products, *Beatrice Foods Co.*, Docket 6653 (Dec. April 26, 1965) [67 F.T.C. 473]. It has over the years enjoyed a substantial growth, more than tripling its net sales between 1961 and 1970. During its fiscal year ending February 29, 1968, about 45 percent of Beatrice's net sales were derived from sales of dairy products,

[1] The complaint alleges and the answer admits the essential juridictional facts.

about 37 percent from grocery and confectionery products and about 10 percent represented rentals from its public refrigerated warehouses. In 1970, dairy products accounted for 31 percent of its total sales, and grocery and confectionery products amounted to 31 percent of its net sales in 1970. Its Warehouse Division owns and operates 22 refrigerated and three dry storage warehouses in major cities of the United States. Revenue from this operation amounted to 4 percent of net sales in 1970. Beatrice also has an agri-products, chemical and manufacturing and international divisions which accounted for 34 percent of its sales in 1970. Beatrice's net sales for fiscal year ending February 29, 1968 were $1,052,431,480. In 1970 Beatrice's total sales were $1,576 million with total assets of nearly $632 million. Beatrice was ranked 83rd in a list of 500 largest industrial corporations in 1969 (CX 40E, 126). In conducting its business, Beatrice has over 23,000 employees, markets over 5,000 products, and operates about 500 plants and branches.

7. The Beatrice Grocery Products Division, of which Sexton became a part, was created by acquiring specialty food processors with relatively high margins of profit compared to the Beatrice Dairy Division. Beatrice in the pleadings admitted that the acquisitions set forth in Paragraph 4 of the complaint in fact occurred and are responsible for the development of the Grocery Products Division.[2]

8. In addition to its principal sales to the retail grocery trade, Beatrice packs many of its grocery products in the larger institutional sizes and sells these products through its brokers to the institutional trade either direct to the institutions or through institutional grocery wholesalers. These sales in 1967 amounted to approximately $13 mil-

---

[2] M. J. Holloway & Co., Gebhardt Chili Powder Co.; Mitchell Syrup & Preserve Co.; Grand Trunk Warehouse & Cold Storage Co.; Adams Corp.; Pik-Nik Company; Rosarity Mexican Foods, Co.; Liberty Cherry & Fruit Co.; Fisher Nut Co.; Cal-Compack Foods, Inc.; G–W Food Products Corp.; Burney Bros., Inc.; Deppe-Vienna Baking Co.; Southland Pecans; Liberty Baking, Inc.; Cincinnati Fruit & Extract Works, Inc.; The Sugarine Co.; Specialty Foods, Inc.; Bloomfield Industries; Regal By-Products Co.; Chicago Produce Terminal; Chesterton Candy Co.; Aunt Nellie's Foods; Murray Biscuit Co.; Stiffel Co.; Stahl Finishing Co.; Vigortone Products; Colorado By-Products Co.; Switzer Licorice Co.; Jolly Rancher, Inc.; Temple Frosted Foods; Knickerbocker Mills; Rudolf Foods; Mid-West Forging & Manufacturing Co.; Ross-Wells, Inc.; Geerpress Wringer Co.; Quincy Market Cold Storage Co.; Tampa Cold Storage Co.; Inland Underground Facilities, Inc.; Mother's Cookies; Golden Cookie Co.; J. Warren Bowman, Inc.; Julian Bail Industries; South Georgia Pecan Co.; General Water Conditioning, Inc.; James H. Rhodes & Co.; Airstream, Inc.; Melnor Industries, Inc.; Tekni-Craft Inc.; World Dryer Corp.; Indiana Moulding & Frame Co.; Charmglow Products, Inc.; Imperial Oil & Grease Co., Inc.; Southeastern Reduction Co.; Lone Star Rendering Co.; Buttercrust Bakeries; Oswald Jaeger Bakery; East Coast Foods; Farboil Co.; Hart Ski Manufacturing Co., Inc.; Morgan Yacht Corp.; Max H. Kahn Curtin Co.; Vogel-Peterson Co.; Hi-Temp, Inc.; Market Forge; San Angelo Bay Products Co.; Lubbock Rendering Co.; D. L. Clark Co.; Thos. D. Richardson Co.; La Choy Food Products; Bond Pickle Co.; Mario's Food Products; Squire Dingee Co.; Tasty Foods, Inc.; Shedd-Bartush Foods, Inc.; A. F. Thibodeu Co.; Detroit Refrigeration Co.; and Lackawanna Cold Storage Co.

lion. (See App. A.) Beatrice likewise is in a position to sell its dairy products direct to institutional buyers throughout the United States from its various dairy operations. In Chicago, Beatrice owns and operates Burney Bros. which is one of the largest bakery products manufacturers and distributors in Chicago. It sells both fresh and frozen bakery products in substantial volume to both the retail and institutional trade (Tr. 530–40). In Chicago Beatrice also owns Produce Terminal and Food Marketers, both of which distribute frozen foods in substantial amounts to the institutional trade. Consequently, Beatrice had institutional sales of approximately $12 to $13 million from these 3 wholly-owned operations in Chicago prior to acquiring Sexton, which had sales of $21 million from its Chicago warehouse. (CX 1, 174; Tr. 530–40) Other operations of Beatrice sell a wide variety of products ranging from house trailers to skis. (CX 40E, pp. 14, 15)

Sexton

9. On December 20, 1968, Sexton was and had been for many years in the food service industry distributing dry groceries to institutions *i.e.*, restaurants, cafeterias, clubs, hospitals, schools, colleges, hotels, in-plant feeders and other purveyors of prepared food to the public. Prior to its acquisition by Beatrice, it operated 13 warehouses which served as distribution centers throughout the continental United States.[3] Since the acquisition it has opened a new warehouse in Minneapolis. Nearly all the products distributed by Sexton were sold under its own trade names or brands and labels. During its fiscal year ending June 28, 1968, Sexton had net sales of $91 million and net earnings of $2,000,945. Sales during its last fiscal year ending February 1970 were approximately $100 million. Sexton operated and still operates food processing plants in Indianapolis, Indiana, and Englewood, New Jersey. The plant in Indianapolis processes food products which are sold exclusively by Sexton under its own labels. The principal products are soup, soup mixes, canned meats, jams, jellies and preserves, pickles and pickled products, mayonnaise, fruit juices, ready-to-mix desserts. (See App. B.) The Englewood, New Jersey, plant handles imported products, principally coffee, tea and spices (CX 6). Total sales of products from these plants to Sexton warehouses were approximately $11 million in 1963 and $16 million in 1967. Its own manufactured products are about 25 percent of total Sexton sales. (Complaint and Answer, Para. 7) The remainder of Sexton sales are of dry (canned) grocery products and other res-

[3] Atlanta, Boston, Chicago, Cincinnati, Dallas, Detroit, Los Angeles, New York, Orlando, Philadelphia, Pittsburgh, St. Louis and San Francisco.

taurant supplies, such as paper products, cleaning detergents and chemicals. These products are purchased from a large number of other manufacturers or processors, including other divisions of Beatrice (CX 15). The record indicates that the amount of sales made by Beatrice to Sexton was about $1 million a year or less (CX 15). These sales must have been and remain relatively small, since the record does disclose that Beatrice canners and processors sold primarily to the retail trade and only incidentally canned for the institutional trade (Tr. 1289–91, 1705). Sexton does not handle any fresh or frozen products of any kind in its business. Sexton sells its products by means of street salesmen who call upon the restaurants and other institutions, promoting Sexton products, taking orders for products which are then delivered to the institutions on Sexton trucks or by common carrier. (Tr. 1268, *et seq.*) In the early 1960's Sexton established a sales division to deal with a development in the institutional trade, the establishment of a considerable number of multi-unit institutional buyers. This division differed from the usual street salesman division since it was dealing with large volume buyers with feeding units scattered over a large area (city, state, several states, or even nationwide), but with a central buying office employing trained and sophisticated buyers, who required different types of services from its suppliers than that provided by a street salesman selling in a limited area. (RX 25; Tr. 1621) Sexton, with its 14 warehouses and its two manufacturing plants, was and is the largest institutional wholesaler in the United States. In its 1967 Annual Report (CX 41C, p. 4). Sexton reported to its stockholders:

There is a marked trend toward chain food service operations, this study reveals. Products of uniform quality, and their availability to every outlet across the country, are of prime importance to chain buyers. As the industry's only full-line national distributor selling exclusively to the institutional market, Sexton is in an ideal position to capitalize on this trend.

(See also CX 41C, p. 2; CX 41D, p. 8.)

The Merger

10. With regard to the background and purpose of the acquisition of Sexton by Beatrice the president of Beatrice, Mr. William G. Karnes, testified as follows (Tr. 1699):

Q. Now directing your attention, Mr. Karnes, to the Sexton Company, can you tell us briefly how you got interested in the Sexton Company and who you discussed it with in the company, in Beatrice Foods.

A. You mean who I discussed it with in Beatrice Foods?

Q. Yes.

A. Well, over a period of time we knew the Sexton people. I personally knew the officers of Sexton. In fact I was personally acquainted with three of the past presidents of Sexton. We put their figures together with ours and on a pro forma basis we could see that by joining with Sexton we would increase our earnings per share about four or five percent.

Q. Can you explain that, on a pro forma basis? What do you mean on a pro forma basis you would increase your earnings per share?

A. Well, we take our P&L and our earnings with the number of shares outstanding and we add it to, add their earnings in the last known fiscal year. We had their annual report. And on the basis of the stock we were going to offer them, which happened to be a convertible preferred stock, after paying the dividend on the convertible preferred, which was a fixed dividend, the remaining earnings of Sexton would be consolidated into Beatrice, and that consolidation of remaining earnings would raise all of our common shares outstanding at that time about four or five cents.

So it met that test that I mentioned earlier, that all these situations have to. I mean is it a good investment. We felt that Sexton was a good investment.

But going further, as we explored it, we were particularly interested because of the fast growing phase of their business which were the multifood units, food service units. I think they are referred to in the trade as the Mufso accounts. And we saw the tremendous growth of this type of account.

We are in the food business. We have been in the food business for a number of years. And this was a portion of the food business that we were not in and it was growing very rapidly. And as officers of a publicly owned company we felt we should be in this business. We discussed it with our economist, a man by the name of Eli Shapiro, who is at the present time a professor of finance at Harvard Graduate School of Business, and he, too, pointed out the fast growing business of the multi-units.

Now, it is true that Sexton only had a beginning in there. They weren't very large in it. Actually nobody is very large in this business. Sexton had a beginning in it. So it gave us a foothold in that very large growing segment of the food business.

We saw that Kraft was in it, Consolidated was in it, General Foods, Armour, almost anybody in the 500 Fortune Magazine group in the food business had entered it, and we found we weren't in it and it was an area of business we should be in.

Mr. Karnes also pointed out (Tr. 1703) that there were some disadvantages in acquiring Sexton since it would result in Beatrice sell-