

File

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----x
 UNITED STATES OF AMERICA, :
 : Plaintiff, : Civil Action No. 197-872
 : v. :
 MARATHON ENTERPRISES, INC.; and: Filed: 12/14/72
 SABRETT FOOD PRODUCTS CORP., :
 : Defendants. :
 -----x

COMPLAINT

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

I

JURISDICTION AND VENUE

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

2. Each of the defendants is found and transacts business within the District of New Jersey.

II

THE DEFENDANTS

3. Marathon Enterprises, Inc. (hereinafter referred to as "Marathon") is made a defendant herein. Marathon is a

corporation organized and existing under the laws of the State of New Jersey with its principal place of business in East Rutherford, New Jersey. In 1971, Marathon had net sales of more than \$9 million and assets of more than \$5 million. Marathon is engaged in the manufacture and sale of frankfurters, hamburgers, frankfurter rolls and hamburger rolls, among other food products.

4. Sabrett Food Products Corp. (hereinafter referred to as "Sabrett") is made a defendant herein. Sabrett is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Jersey City, New Jersey. In 1971, Sabrett had net sales of more than \$10 million and assets of more than \$3 million. Sabrett is engaged in the manufacture and sale of frankfurters, hamburgers, frankfurter rolls, and hamburger rolls, among other food products.

III

DEFINITIONS

5. "All-beef casing frankfurters" are frankfurters formed inside an edible natural casing of sheep intestine, which comply with "all-beef" labeling requirements promulgated by the United States Department of Agriculture and also adopted by the States of New York and New Jersey.

6. "New York metropolitan area" refers to the City of New York, the Counties of Westchester, Rockland, Nassau, and Suffolk in the State of New York, and the portion of the State of New Jersey north of New Brunswick and the Raritan River.

IV

TRADE AND COMMERCE

7. Frankfurters are manufactured in the United States both in a skinless form and with a natural casing. Skinless frankfurters are produced inside a man-made casing which must be removed before the frankfurter is eaten. In contrast, the natural sheep intestine casing is edible and becomes an integral part of the casing frankfurter. Both types of frankfurters are manufactured with stuffing which contains one or more meats and which may also contain fillers.

8. Frankfurter manufacturers, operators of eating establishments, and the general public consider all-beef casing frankfurters a product which is distinct from other varieties of frankfurters. All-beef casing frankfurters are served by most street vendors, frankfurter stands, and delicatessens. They may also be served by other types of eating establishments or sold for home use. All-beef casing frankfurters differ in price from skinless frankfurters and not all-beef frankfurters. All-beef casing frankfurters have a distinctive taste and are more suitable for handling and service by certain types of eating establishments. Their production is labor intensive, and not adaptable to the highly-automated machinery generally used to manufacture skinless frankfurters. For a substantial class of customers, all-beef casing frankfurters are unduplicated by any other type of frankfurter product.

9. There is substantial concentration in the production of all-beef casing frankfurters sold in the New York metropolitan area. In 1971, the four largest producers of all-beef casing

frankfurters sold in the New York metropolitan area accounted for approximately 65 percent of such frankfurters sold therein. During that year, total sales of all-beef casing frankfurters in the New York metropolitan area were approximately \$23 million. In 1971, Marathon, the second largest manufacturer of all-beef casing frankfurters sold in the New York metropolitan area, had sales therein of approximately \$4.5 million, representing approximately 19 percent of the total sales of all-beef casing frankfurters in the New York metropolitan area. In 1971, Sabrett, the third largest manufacturer of all-beef casing frankfurters sold in the New York metropolitan area, had sales therein of approximately \$2.7 million, representing approximately 12 percent of the total sales of all-beef casing frankfurters in the New York metropolitan area. If the merger is consummated, Marathon-Sabrett will become the largest manufacturer of all-beef casing frankfurters sold in the New York metropolitan area; the four largest producers will account for approximately 73 percent of the all-beef casing frankfurters sold therein.

10. All-beef casing frankfurters and other food products manufactured by Marathon and Sabrett are routinely sold in interstate commerce. Such sales are made either to distributors or directly to eating establishments.

V

VIOLATION ALLEGED

11. On July 13, 1972, Marathon and Sabrett executed a Plan and Agreement of Merger. Pursuant to said Plan and Agreement, Sabrett will be merged into Marathon through Marathon's acquisition of the outstanding shares of Sabrett and the surviving firm will be named the Marathon-Sabrett Corporation.

12. The effect of the aforesaid merger, if consummated, may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) actual competition between Marathon and Sabrett in the manufacture and sale of all-beef casing frankfurters in the New York metropolitan area will be eliminated;
- (b) competition generally in the manufacture and sale of all-beef casing frankfurters in the New York metropolitan area will be lessened;
- (c) Marathon-Sabrett Corporation will achieve a position of dominance to the detriment of competition generally in the manufacture and sale of all-beef casing frankfurters in the New York metropolitan area; and
- (d) concentration in the manufacture and sale of all-beef casing frankfurters in the New York metropolitan area will be substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid merger of Sabrett and Marathon be declared to be illegal in violation of Section 7 of the Clayton Act.

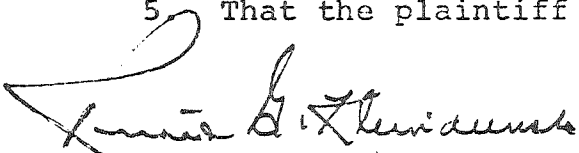
2. That a permanent injunction be issued against the defendants and all persons acting on their behalf, preventing and restraining them from carrying out the aforesaid merger agreement, or any similar plan or agreements, the effect of which

would be to merge, consolidate, or in any other way combine the businesses of said defendants.

3. That pending final adjudication of this complaint, a preliminary injunction be issued against the defendants and all persons acting on their behalf, preventing and restraining them from taking any action in furtherance of the agreement described in paragraph 12 hereof, or any similar agreement.

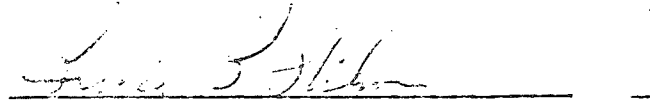
4. That the plaintiff have such other and further relief as the Court may deem just and proper.

5. That the plaintiff recover the costs of this action.



RICHARD G. KLEINDIENST
Attorney General

JUDITH S. ZISS



BRUCE B. WILSON
Acting Assistant Attorney General

MARK P. LEDDY

Attorneys, Department of Justice



BADDIA J. RASHID



ROBERT B. HUMMEL

NORMAN H. SEIDLER

Attorneys, Department of Justice

United States Attorney