

## **FTC Closes Case In Nestle/Alpo Acquisition: Action Means Fort Dodge Plant Will Not Have To Be Sold**

June 7, 1995

**The Federal Trade Commission announced today that, based on evidence not available at the time it reached a settlement agreement with Nestle Food Company -- under which Nestle would have been required to divest an Iowa cat food plant -- the Commission has closed its investigation and will nullify the agreement.**

The Commission had announced the settlement for public comment in December 1994, seeking comments from people familiar with the industry and the plant in question. At that time, the Commission was concerned that Nestle's acquisition of Alpo Pet Foods could substantially reduce competition in the U.S. market for canned cat food.

In announcing the closing of the case, the Commission said that, since December, it had received new evidence casting substantial doubt on the evidentiary basis underlying its allegation that the transaction would violate antitrust laws. "The new evidence relates to the definition of the relevant product market, market concentration, and entry conditions," the Commission said.

FTC Bureau of Competition Director William J. Baer said this is "an example of the value of the comment period on Commission settlements," adding that while it is highly unusual that the Commission is alerted to new evidence after a settlement is reached, "the Commission considers such evidence very seriously and, where relevant, it can dramatically affect the conclusion of a case."

Nestle is based in Glendale, California and Alpo, a subsidiary of Grand Metropolitan Incorporated, is based in Allentown, Pennsylvania.

The Commission vote to close the matter was 4-1, with Commissioner Roscoe B. Starek, III, dissenting. In a statement, Starek said he is not persuaded that the "new evidence" undermines the Commission's original finding of a Section 7 violation. For example, he said, new evidence that the market is relatively unconcentrated was "demonstrably incomplete," and is contradicted by "relatively rigorous and comprehensive market concentration analysis...." Starek concluded by stating: "At worst, the record casts considerable doubt only on the efficacy of the proposed remedy. ...I believe that the correct reaction is not to abandon the case, but rather to consider alternative or additional steps to ensure that the new entrant succeeds."

Copies of Commission documents associated with this matter are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Statement of the Federal Trade Commission  
in the matter of Nestle Food Company  
(File No. 941 0124)

Since accepting the consent agreement for public comment in December 1994, the Commission has received new evidence casting substantial doubt on the evidentiary basis supporting the determination that there is reason to believe that the transaction violated Section 7 of the Clayton Act. The new evidence relates to the definition of the relevant product market, market concentration, and entry conditions. After considering the new evidence, the Commission has decided to reject the consent agreement and close the investigation.  
(FTC File No. 941 0124)