

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the matter of

Nestle Holdings, Inc.,
a corporation,
and

Ralston Purina Company,
a corporation.

Docket No. C-4028

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Nestle Holdings, Inc. (“Nestle”), and Ralston Purina Company (“Ralston”) have entered into an agreement in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that the terms of such agreement, were they to be implemented, would result in a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. Respondent Nestle

1. Respondent Nestle Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 383 Main Avenue, Norwalk, Connecticut 06851. Nestle Holdings, Inc., is a subsidiary of, and

controlled by, Nestle S.A., a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its principal executive offices located at Avenue Nestle 55, CH-1800 Vevey, Switzerland.

2. Respondent Nestle is, at all times relevant herein has been, among other things, engaged in the production, sales, and distribution of dry cat food products to customers located throughout the United States.
3. Respondent Nestle and its affiliates, in 2000, had total worldwide sales of all products of approximately \$81.4 billion Swiss francs and United States sales of all products of approximately \$ 7.8 billion. Respondent Nestle and its affiliates, in 2000, had total worldwide sales of all dry cat food products of approximately \$ 600 million, and United States sales of all dry cat food products of approximately \$ 200 million.
4. Respondent Nestle is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

II. Respondent Ralston

5. Respondent Ralston is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at Checkerboard Square, St. Louis, Missouri 63164.
6. Respondent Ralston is, at all times relevant herein has been, among other things, engaged in the production, sales, and distribution of dry cat food products to customers located throughout the United States.
7. Respondent Ralston, in 2000, had total worldwide sales of all products of approximately \$ 3 billion, and United States sales of all products of approximately \$ 2.36 billion Respondent Ralston, in 2000, had total worldwide sales of all dry cat food products of approximately \$ 752 million, and United States sales of all dry cat food products of approximately \$ 617 million.
8. Respondent Ralston is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

III. The Proposed Acquisition

9. On or about January 15, 2001, Respondents Nestle and Ralston executed an agreement for Nestle to acquire Ralston. The value of the proposed acquisition is approximately \$10.3 billion.

IV. Trade and Commerce

10. Dry cat food products consist of a mixture of meat, fish, and grains. Dry cat food products are formulated and produced to be consumed by cats, rather than dogs, who are attracted to different flavors and product attributes. Dry cat food products are sold in paper bags or plastic containers. Wet cat food products are sold in cans, which must be refrigerated after they are opened. Wet cat food products have a much stronger odor, which is unattractive to humans.
11. Total United States sales (at retail) of all dry cat food products are approximately \$ 2.2 billion. The parties sell dry cat food products through different retail channels of distribution, including supermarkets, mass merchants, club stores, and pet specialty stores.

V. The Relevant Product Market

12. The relevant product market in which it is appropriate to assess the effects of the proposed acquisition is the sale of dry cat food products, distributed through the channels of distribution described in paragraph 11 above.

VI. The Relevant Geographic Market

13. The relevant geographic market in which it is appropriate to assess the effects of the proposed acquisition is the United States.

VII. Concentration

14. The relevant market is moderately concentrated and the proposed acquisition, if consummated, will substantially increase that concentration, as follows.

(a) In the dry cat food products market, Nestle has approximately a 11.22% share across all channels. Ralston has approximately a 33.59% share across all channels.

(b) After the acquisition, Respondents will have a market share of approximately 44.81% of the dry cat food market identified in paragraphs 12 and 13 above.

(c) Across all channels, the acquisition raises the HHI from 1675 to 2429, an increase of 754 points.

VIII. Conditions of Entry

15. Entry into the relevant market would not be timely, likely, or sufficient to prevent the anti-competitive effects in the relevant market.

IX. Violations Charged

16. Nestle and Ralston compete in the sale of dry cat food in the United States.
17. The effect of the proposed acquisition, if consummated, may be to substantially lessen competition in the sale of dry cat food in the United States in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways, among others:
 - (a) by eliminating direct competition in the sale of dry cat food between Nestle and Ralston; and
 - (b) by increasing the likelihood that the combination of Nestle and Ralston will unilaterally exercise market power;

each of which increases the likelihood that prices will be higher with the acquisition than they would be absent the acquisition.
18. The Agreement entered into between Respondents Nestle and Ralston for Nestle to acquire Ralston constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Further, the agreement, if consummated, would be a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this tenth day of December, 2001 issues its Complaint against Respondents Nestle and Ralston.

By the Commission, Chairman Muris not participating..

Benjamin I. Berman
Acting Secretary

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