Analysis of the Agreement Containing Consent Orders to Aid Public Comment
In the Matter of McCormick & Company, Incorporated,
File No. 081-0045, Docket No. C-4225

I. Introduction

The Federal Trade Commission ("Commission") has accepted subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from McCormick & Company, Incorporated ("McCormick" or "Respondent"), which is designed to remedy the anticompetitive effects that would otherwise result from McCormick's proposed acquisition of Unilever's Lawry's and Adolph's brands of seasoned salt products. Under the terms of the proposed Consent Agreement, McCormick is required to divest its entire Season-All business to an up-front buyer, Morton International, Inc ("Morton" or "Purchaser").

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order ("Order").

Pursuant to an Asset Purchase Agreement dated November 13, 2007 (the "Acquisition Agreement"), McCormick proposes to acquire the Lawry's and Adolph's brands of marinades, spice, and seasoning products ("Lawry's") from Unilever N.V., a Netherlands corporation, for approximately $605 million in cash. The Commission's complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for branded seasoned salt in the United States.

II. Description of the Parties

McCormick is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland. The company manufactures, markets, and sells spices, seasonings, and flavors to grocery retailers and the food industry. In 2006, McCormick's sales were approximately $2.7 billion.

Unilever N.V., a Netherlands corporation, is an international manufacturer of leading brands in the food, home care, and personal care industry, including Lawry's and Adolph's. In 2006, Lawry's and Adolph's brands combined sales were approximately $153 million.

III. Branded Seasoned Salt

The relevant product market in which to assess the competitive effects of the proposed Acquisition is the manufacture and sale of branded seasoned salt products. Branded seasoned salt products include several different types of spices, including seasoned salt, garlic salt, and reduced sodium varieties. The evidence indicates that consumers, if faced with a five to ten percent increase in the price of branded seasoned salt, would not switch to other spice blends or seasoning products.

The relevant geographic market in which to assess the impact of the Proposed Acquisition is the United States. Brand equity plays a critical role in determining the competitive strength of a seasoned salt product. Consistent with Commission findings in previous branded consumables cases, the need for distribution, infrastructure, and a U.S. sales force creates significant impediments to the ability of foreign firms to successfully and competitively sell branded seasoned salt into the United States.

The United States market for branded seasoned salt is highly concentrated. Today, this approximately $100 million market consists of two significant branded products: Lawry's line of seasoned salt products and McCormick's Season-All products. The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the only two significant suppliers of branded seasoned salt products in the United States. As a result of the acquisition, McCormick would account for nearly 80% of the sales of branded seasoned salt products in the United States.

Consumers have benefitted from the competition between McCormick and Lawry's on pricing, discounts, promotional trade spending, and product innovation. Thus, unremedied, the proposed acquisition likely would cause significant anticompetitive harm by enabling McCormick to profit by unilaterally raising the prices of one or both products above pre-merger levels, as well as reducing its incentives to innovate and develop new products.

IV. Entry

Entry into this market would require the investment of high sunk costs to, among other things, develop products, establish a brand name, and provide promotional funding and advertising to support the product(s), which would be difficult to justify given the market structure and sales opportunities in the affected markets. Even if a new entrant were willing to take on such investments, it would also face the difficult task of convincing retailers to carry its products. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

V. The Terms of the Agreement Containing Consent Orders

The proposed Consent Agreement will remedy the Proposed Acquisition's anticompetitive effects in the relevant market. The Consent Agreement preserves competition in the branded seasoned salt market by requiring McCormick to divest its Season-All (seasoned salt spice blends) business to an up-front buyer, Morton. The Season-All assets include: Season-All seasoned salt, Garlic Season-All seasoned salt, Pepper Season-All seasoned salt, Spicy Season-All seasoned salt, 25% Less Sodium Season-All seasoned salt, and Season-All coating mix.

The Commission is satisfied that Morton is a well-qualified acquirer of the Season-All business. Morton supplies an extensive variety of salt products to the food service industry. These products currently include table salt, kosher salt, French fry salt, as well as disposable shakers, portion packets, water softening salts, and ice control salts. Morton has the resources, technical skills, and experience to ensure the continued success of the Season-All business.

The proposed Consent Agreement requires that the divestitures occur no later than ten (10) business days after the acquisition is consummated. However, if McCormick divests the Season-All business to Morton during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Respondent that Purchaser is not an acceptable acquirer or that the asset purchase agreement with Purchaser is not an acceptable manner of divestiture, then Respondent must immediately rescind the transaction in question and divest those assets to another buyer within three (3) months of the date the order becomes final. At that time, Respondent must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The proposed Consent Agreement also enables the Commission to appoint a trustee to divest any assets identified in the order that Respondent has not divested to satisfy the requirements of the order. In addition, the order enables the Commission to seek civil penalties against Respondent for non-compliance with the order.

The proposed Consent Agreement further requires McCormick to maintain the viability of the assets identified for divestiture. Among other requirements related to maintaining operations of the assets, the proposed Consent Agreement requires McCormick to: (1) maintain the viability, competitiveness, and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair the assets' marketability or viability; (4) maintain the assets consistent with past practices; (5) use best efforts to preserve the assets' existing relationships with suppliers, customers, and employees; and (6) keep and maintain the assets at inventory levels consistent with past practices.

The proposed Consent Agreement prohibits McCormick, for ten (10) years, from acquiring, without providing the Commission with prior notice, any other seasoned salt product, or any interest in any other spice blends business. The provisions regarding prior notice are consistent with prior Orders. The proposed Consent Agreement does not restrict McCormick from expanding its line of spices.

McCormick is required to file compliance reports with the Commission, the first of which is due within thirty (30) days of the date on which Respondent signed the proposed Consent Agreement, and every thirty (30) days thereafter until the divestitures are completed, and annually for ten (10) years.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order and the Order to Maintain Assets, or to modify their terms in any way.