

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

_____		)	
	In the Matter of	)	
		)	
	H.J. HEINZ COMPANY,	)	
	a corporation;	)	
		)	
	MILNOT HOLDING CORPORATION,	)	Docket No. 9295
	a corporation;	)	
		)	
	and	)	
		)	
	MADISON DEARBORN CAPITAL	)	
	PARTNERS, L.P.,	)	
	a limited partnership.	)	
_____		)	

**RESPONDENT H.J. HEINZ COMPANY'S  
ANSWER TO THE COMPLAINT**

Respondent H. J. Heinz Company ("Heinz") answers the Federal Trade Commission's ("FTC") Complaint as follows:

Heinz admits that on or around February 28, 2000, it entered into an agreement to acquire all the voting securities of Milnot Holding Corporation. Heinz denies the remaining allegations in the introductory paragraph of the Complaint. Heinz specifically denies that the acquisition, if consummated, would violate Section 7 of the Clayton Act or would result in harm to competition. Rather, as held by the United States District Court for the District of Columbia in *FTC v. H.J. Heinz Company, et al.*, Civ. A. No. 00-1688 (October 18,2000), consummation of the acquisition will result in enhanced competition for the sale of baby food in the United States.

In response to all paragraphs of the FTC's complaint, Heinz denies each and every allegation except as expressly admitted herein.

### **THE PARTIES**

1. Heinz admits that it is a corporation organized and existing under the laws of the State of Pennsylvania, and that its principal place of business is at 1600 Grant Street, Pittsburgh, Pennsylvania. Heinz also admits that its worldwide sale of all products for fiscal year 1999 exceeded \$9 billion and that its worldwide sale of all infant feeding products was approximately \$1 billion. Heinz denies the remaining allegations in Paragraph 1 of the Complaint.

2. The allegations contained in Paragraph 2 of the Complaint relate to a respondent other than Heinz, and Heinz is without knowledge or information sufficient to form a belief as to the truth of these allegations. The allegations are therefore denied.

3. The allegations contained in Paragraph 3 of the Complaint relate to a respondent other than Heinz, and Heinz is without knowledge or information sufficient to form a belief as to the truth of these allegations. The allegations are therefore denied.

### **JURISDICTION**

4. Heinz admits the allegations in Paragraph 4 of the Complaint.

### **THE PROPOSED ACQUISITION**

5. Heinz admits the allegations in Paragraph 5 of the Complaint.

### **THE RELEVANT MARKETS**

6. Heinz denies the allegations in Paragraph 6 of the Complaint.

7. Heinz denies the allegations in Paragraph 7 of the Complaint.

### **MARKET STRUCTURE**

8. Heinz admits that Gerber, Heinz and Beech-Nut are the largest manufacturers of jarred baby food in the United States and that Gerber dominates the market. Heinz denies the remaining allegations in Paragraph 8 of the Complaint. By way of further response, Heinz specifically denies that HHI calculations reflect competitive conditions underlying sales of jarred baby food. Gerber dominates baby food sales: Gerber is sold in virtually 100% of all stores that

carry baby food, and has a nationwide share exceeding 70%. Heinz and Beech-Nut, on the other hand, are each sold in fewer than 50% of stores that sell baby food. Neither Heinz nor Beech-Nut have national distribution; instead, they are carried by stores as regional brands. Nor do Heinz or Beech-Nut directly compete on the store shelf. Most stores carry only Gerber, or Gerber and one other brand – either Heinz or Beech-Nut, depending on the region. In 85% of the regions where stores sell Beech-Nut, for example, Heinz has less than a 5% share. The only certain effect the FTC challenge to the proposed acquisition will bring, if successful, is a guarantee that a single company – Gerber – will continue to control baby food sales in the United States unchallenged, as it has for decades.

#### **ENTRY CONDITIONS**

9. Heinz denies the allegations in Paragraph 9 of the Complaint.

#### **ACTUAL AND POTENTIAL COMPETITION**

10. Heinz denies the allegations in Paragraph 10 of the Complaint.

#### **COMPETITIVE EFFECTS**

11. Heinz denies the allegations in Paragraph 11 of the Complaint and denies all allegations in sub-paragraphs (a) through (e) of Paragraph 11. By way of further answer, the merger of Heinz and Beech-Nut will inject competition into a stagnant market. It will result in a national brand, with national distribution, to compete with Gerber, the dominant brand, for the first time in decades, on every shelf, in every store, with any and every account anywhere in the United States. Equally important, the new brand will combine Beech-Nut's high quality recipes with the modern production efficiencies Heinz has developed over the past decade, resulting in a quality brand at a value price. Far from eliminating price competition, the merger will therefore create stronger and more vigorous price competition with Gerber. The merger will also present Heinz with the opportunity to innovate which has not been possible because of the lack of national distribution to date.

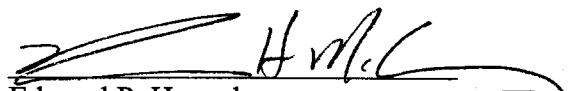
**VIOLATION CHARGES**

12. Heinz denies the allegations in Paragraph 12 of the Complaint.

Heinz denies that the FTC is entitled to any relief and denies all the allegations contained in the FTC's Notice of Contemplated Relief.

WHEREFORE, Respondent H.J. Heinz requests that the relief requested by the Federal Trade Commission be denied and judgment entered in this case for respondent Heinz, and this case dismissed accordingly.

Respectfully submitted,

  
Edward P. Henneberry

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Attorneys for Respondent  
H. J. Heinz Company

Dated: December 18, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Respondent H.J. Heinz Company's Answer to the Complaint was served by hand delivery, this 18<sup>th</sup> day of December 2000 upon:

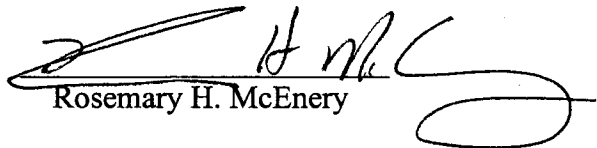
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