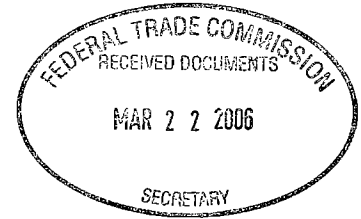


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
Nestle Holdings, Inc.,)
a corporation)
)
and)
)
Ralston Purina Company,)
a corporation)

Docket No. C-4028

**PETITION OF THE CYPRESS GROUP, LLC FOR
PRIOR APPROVAL OF THE SALE OF
THE MEOW MIX COMPANY TO DEL MONTE FOODS**

Pursuant to Section 2.41(f) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph VI of the Commission’s Order *in the matter of* Nestle Holdings, Inc. and Ralston Purina Company (Dkt. No. C-4028), The Cypress Group, LLC (“Cypress”) respectfully requests that the Commission approve the sale of The Meow Mix Company (“TMMC”) to the Del Monte Corporation (“Del Monte”).

Background

By Order issued in connection with the acquisition of Ralston Purina Company by Nestle Holdings, Inc., the Commission required divestiture of the Meow Mix and Alley Cat brands and related assets to J.W. Childs Equity Partners II, L.P. (“J.W. Childs”). (Order, *In the matter of Nestle Holdings, Inc. and Ralston Purina Company*, Docket No. 4028, Paragraph VI.) The Order further provided that any subsequent sale of the divested assets before February 4, 2007, by J.W. Childs required the Commission’s prior approval. (Id.) Pursuant to petition filed by

J.W. Childs, the Commission on October 7, 2003, notified J.W. Childs that the Commission had granted its approval to sell the business to Cypress, with the proviso that Cypress “shall assume the remainder of Childs’ obligation” regarding resale of the business before February 4, 2007. (Letter from Donald S. Clark, Secretary, to Claudia R. Higgins, counsel for J.W. Childs Equity Partners II, L.P., (October 7, 2000 (sic)).) Cypress now seeks the Commission’s prior approval for sale of The Meow Mix Company to Del Monte.

The Commission’s approval of the sale is appropriate. The proposed transaction will add marketing opportunities for more advantageous shelf placement in retail grocery stores and other outlets by combining related complementary brands in the pet food category and will provide the combined company important purchasing, distribution and marketing synergies not available to either alone. In addition, transferring TMMC at this juncture will not disrupt the competitive viability of the company. Moreover, in each plausible relevant market, the combination of Del Monte with TMMC raises no potentially anticompetitive concerns. On the contrary, the transaction will create a stronger and more efficient competitor to Nestle Purina, and thus benefit consumers.

Request for Confidential Treatment

This petition contains highly confidential and competitively sensitive commercial material. The disclosure of this confidential information would be likely to harm the business interests of TMMC, Cypress, and Del Monte and would likely contravene the Commission’s stated interest in preserving the competitive potential of the assets subject to its order. Therefore, both Cypress and Del Monte respectfully request that the confidential information contained in this petition not be disclosed to the public and that this petition be accorded confidential

treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice, 16 C.F.R. § 4.10(A)(2). For the purpose of obtaining public comment relating to this petition, Cypress has created, and is filing with this petition, a public version by redacting confidential information.

Description of the Proposed Transaction

On March 2, 2006, Cypress entered into a Stock Purchase Agreement with Del Monte providing that, subject to Commission approval and other conditions, Del Monte will acquire TMMC for approximately \$705 million. Because TMMC is a self-contained business unit among Cypress' several portfolio enterprises, the proposed transaction encompasses all of the business operations and assets related to Meow Mix and Alley Cat product lines. A copy of the executed Stock Purchase Agreement, including all attachments and exhibits pertaining thereto, is attached to this petition as Confidential Exhibit A. [No copy attached to Public Version.]

Cypress and Del Monte filed a Premerger Notification and Report Form with the Premerger Notification Office of the Federal Trade Commission and the Antitrust Division of the Department of Justice on . Upon consummation of the planned transaction, Del Monte intends to integrate the Meow Mix and Alley Cat brand product lines into its well-respected portfolio of branded products.

The Sale of TMMC to Del Monte Will Neither Disrupt TMMC's Operations Nor Threaten Its Competitive Viability

The purpose of the Commission's Order will be well-served by the proposed transaction. TMMC's business will be transferred seamlessly to Del Monte, and the robust strength of the Meow Mix and Alley Cat brands will be maintained and enhanced under new leadership. The transaction will not disrupt research and development, manufacturing, sales and promotion or

distribution. Indeed, Del Monte's resources and expertise in these areas, including with dog food brands in competitive positions similar to the Meow Mix brands, will improve on Meow Mix's already strong performance.

From two brand names and a co-packing agreement, assets that were neither a cohesive unit nor a stand-alone business in 2001 when sold to J.W. Childs for _____, the proven management team of TMMC transformed the company into a competitive business. With strong financial backing, the managers established research and development for new product introduction, efficient manufacturing and distribution systems and facilities, and a robust sales and marketing force that have carried the company from those beginnings to the business that was sold intact to Cypress for more than \$400 million in 2003 and which is now to be sold to Del Monte for \$705 million. The growth in purchase price alone tells much of the story of TMMC's competitive vitality.

TMMC will thrive within Del Monte. Del Monte's brands include not only cat and dog foods and treats – *e.g.*, 9 Lives, Cycle, Gravy Train, Kibbles 'N Bits, Nature's Recipe, Reward, Skippy, Meaty Bone, Snausages, Pup-Peroni and Pounce – but also span a wide range of other well-recognized supermarket offerings: Del Monte-branded vegetables, tomatoes and fruit; Contadina Italian tomato products; College Inn Broths; and StarKist brand tuna. Del Monte's expertise and infrastructure can supplement the healthy company that TMMC has become. In combination with Del Monte's complementary brand portfolio, the Meow Mix and Alley Cat lines will be able to command better shelf-space positioning resulting from being part of a family of brands important to every grocer. The Meow Mix and Alley Cat brands are considered highly compatible with Del Monte's Kibbles 'N Bits and Gravy Train dog food brands, respectively,

which will allow for efficient distribution and marketing to grocers, enabling them to better serve consumers who own both cats and dogs. In addition, becoming part of the Del Monte family will provide opportunities for more efficient distribution through Del Monte's 18 strategically located distribution centers in North America, and greater state-of-the-art food and pet food research facilities.

**The Combination of Del Monte and TMMC Raises
No Competitive Concerns Under Section 7 of the Clayton Act**

The cat food category is populated by several major companies, with Nestle Purina Pet Care commanding approximately half of the dollars in the industry and private-label products accounting for approximately 10 percent share. Masterfoods (owned by Mars, Incorporated), Procter & Gamble, Hills, and Nutro are all significant participants along with Del Monte, TMMC and various private-label brands. Market shares alone provide ample basis to conclude that an acquisition of TMMC by Del Monte will not pose a competitive threat.

In its complaint issued in connection with the merger of Nestlé and Ralston, the Commission determined that the sale of dry cat food products distributed nationally through retail channels of distribution including supermarkets, mass merchants, club stores and pet specialty stores was a relevant product market for antitrust analysis. (Complaint at ¶s 11, 12 and 13.) We believe that the market conditions that led the Commission to conclude that dry cat food represented its own product market remain equally valid today, and also support a finding of relevant product markets for wet cat food and cat treats. TMMC and Del Monte compete in the sale of dry cat food, wet cat food and cat treats, and below we present market share information about each.

The cat food market shares, based upon IRI Consumer Panel Data¹ for the 52 weeks ending 2/19/06, show the following market shares, by brand, for dry cat food (exclusive of private label):

| | Dollar Share of Type |
|--|----------------------|
| NPPC | |
| CAT CHOW | |
| PURINA ONE | |
| FRISKIES | |
| CHEFS BLEND | |
| FANCY FEAST DRY | |
| KIT N KABOODLE | |
| KITTEN CHOW | |
| PURINA (Purina, Purina Veterinary Diets) | |
| PURINA PRO PLAN | |
| DELI CAT | |
| FRISKIES ALPO | |
| Meow Mix | |
| MEOV MIX | |
| MEOV MIX KITTEN | |
| ALLEY CAT | |
| P&G | |
| IAMS | |
| IAMS KITTEN | |
| EUKANUBA | |
| EUKANUBA KITTEN | |
| Hills | |
| HILLS SCIENCE DIET | |
| FELINE | |
| NATURE'S BEST | |
| NATURE'S BEST KITTEN | |
| Masterfoods | |
| WHISKAS | |
| Del Monte | |
| 9 LIVES | |
| NATURES RECIPE | |
| PUSS N BOOTS CHOICE BLEND | |
| Nutro | |
| NUTRO MAX | |
| NUTRO MAX CAT GOURMET CLASSICS | |
| NUTRO MAX KITTEN | |
| NUTRO NATURAL CHOICE | |

Data Source: IRI Consumer Panel Network
 Total US All Outlets
 52 Weeks Ending 2/19/06

¹ Market share information for the relevant product markets is not available from supermarket scanner data, because neither of the providers of that data, IRI and Nielsen, include the other channels of distribution in those data sets. By some estimates, the alternative distribution channels to supermarkets may represent as much as half of the pet food category sales. Thus, to provide market share information for this petition, we rely upon IRI Consumer Panel Network data, which represents data from across all outlets, including supermarkets, mass merchandisers (such as Wal-Mart), club stores (such as Costco), and pet specialty stores (such as PetSmart). TMMC believes IRI Consumer Panel Data Provides reliable market share information, and the company relies upon it in the normal course of its business.

Out of 30 brands marketed currently, Meow Mix holds the fourth highest share and Del Monte's 9 Lives is eighth, which Nestlé holding the first, second and fifth largest of all brands.

By company, while Nestlé maintains a dominant position, five other competitors would remain postmerger along with a substantial "others" category that is largely made up of private label sales:

| COMPANY | DOLLAR SHARE | HHI | |
|---|-----------------|------------------|------------|
| | | Premerger | Postmerger |
| Nestlé Purina | | | |
| Procter & Gamble | | | |
| The Meow Mix Company | | | |
| Hills | | | |
| Masterfoods (Mars) | | | |
| Del Monte | | | |
| Nutro | | | |
| Others (including private label) ² | | | |
| -- combined MM and DM (12.8%) | | | |
| | | | |
| | | HHI delta | |

Meow Mix currently has the third largest sales in the market, behind Nestlé and Procter & Gamble. Post-merger, the combined Del Monte and TMMC will move up to second place. Even so, however, Nestlé's share will continue to dwarf all the other companies in the industry, still more than three times the size of Del Monte/TMMC.

² HHI calculations in the "Others" category assume equal distribution of shares, at a level just below the next largest competitor.

In the market for wet cat food, where Meow Mix holds only a small (percent share),

Nestlé’s dominance is even more striking, both by brands and by companies:

| | Dollar Share of Type |
|---|----------------------|
| NPPC | |
| FANCY FEAST | |
| FRISKIES ALPO | |
| FRISKIES | |
| PURINA (Purina, Purina Cat Chow, Purina Veterinary Diets) | |
| PURINA PRO PLAN | |
| Meow Mix | |
| ALLEY CAT | |
| MEOOW MIX | |
| Del Monte | |
| 9 LIVES | |
| NATURES RECIPE | |
| PUSS & BOOTS | |
| Masterfoods | |
| CESAR | |
| KAL KAN OPTIMUM | |
| SHEBA | |
| WHISKAS | |
| P&G | |
| ELKANUBA | |
| IAMS | |
| IAMS WET POUCH | |

Data Source: IRI Consumer Panel Network
 Total US All Outlets
 52 Weeks Ending 2/19/06

| COMPANY | DOLLAR SHARE | HHI Calculation | |
|---|--------------|-----------------|------------|
| | | Premerger | Postmerger |
| Nestle Purina | | | |
| Del Monte | | | |
| Masterfoods (Mars) | | | |
| P&G | | | |
| The Meow Mix Company | | | |
| Others (including private label) ³ | | | |
| -- combined MM and DM (15.7 %) | | | |
| | | | |
| | | delta | |

³ HHI calculations in the “Others” category assume equal distribution of shares, at a level just below the next largest competitor.

Meow Mix recently launched a cat treats product, which has only a percent share of the market. The change in HHI post-merger would be only , therefore.

| <u>NPPC</u> | Dollar Share of Type |
|---|-----------------------------|
| PURINA WHISKER LICKINS | |
| FRISKIES | |
| PURINA AQUARI YUMS | |
| PURINA (Purina, Purina Essentials, Purina Pro Plan) | |
| KITTY TEAZER | |
| <u>Meow Mix</u> | |
| MEOW MIX TREATS | |
| <u>Masterfoods</u> | |
| WHISKAS TEMPTATIONS | |
| KAL KAN WHISKAS ULTRAMILK | |
| <u>Del Monte</u> | |
| POUNCE TREATS | |
| 9 LIVES TREATS (9 Lives Cat Nippers, 9 Lives Meaty Morsels) | |
| NATURES RECIPE | |

Data Source: IRI Consumer Panel Network
 Total US All Outlets
 52 Weeks Ending 2/19/06

In addition to this market share information, and consistent with it, pricing and other market conditions show that the Meow Mix and Del Monte cat food brands are not considered close substitutes for one another. Meow Mix’s dry cat food makes up the majority of its business while its wet food and snacks are relatively small. Del Monte’s product mix is the reverse. In dry cat food, Nestle Purina brands Friskies and Cat Chow, among others, are considered more significant competitors to 9 Lives than is Meow Mix, and vice versa. Alley Cat is a lower-priced “value” brand than is 9 Lives. In wet cat food, Meow Mix offers “super premium” 3.3-ounce cans, a segment dominated by Nestlé Purina’s Fancy Feast in which 9 Lives does not compete significantly. Thus, by combining largely complementary brands, the transaction will enhance, not harm, competition.

**The Sale of TMMC to Del Monte Is Consistent
With The Purpose of the Commission's Order**

Del Monte's proposed acquisition of TMMC will appropriately continue to check the harm that the Commission alleged would otherwise result from the merger of Nestlé and Ralston. According to the complaint, without the required divestiture, the combined Nestle/Ralston company would have held approximately percent of the dry cat food market, and the merger would have raised the HHI level by more than points to above , raising the specter of both unilateral and coordinated competitive effects. (Nestlé S.A. / Ralston Purina Co., Dkt. No. C-4028, Analysis to Aid Public Comment and complaint at ¶ 17).

Neither Cypress nor Del Monte can provide detailed information about the competitive harm that the Commission foresaw in the Nestle/Ralston merger because neither is privy to the confidential information considered by the Commission or its legal and economic analyses. Del Monte became a participant in the cat food market only after the Commission's Order, through its acquisition of Heinz pet food products in December 2002. Even with only general market information, however, it is apparent that Del Monte, with its current product portfolio and demonstrated experience of today, better fits the profile of a desirable buyer, from the FTC's perspective, than did either J.W. Childs or Cypress. Indeed, when Nestle proposed that J.W. Childs be allowed to acquire the divestiture package, Commissioner Thompson expressed some reservation about the deal, pointing out that the Commission had been "presented with a buyer that does not have a record of experience in the market in question, [and] therefore historical indicia of market competitiveness were not available for the Commission's review." (Nestlé

S.A. / Ralston Purina Co., Dkt. No. C-4028, concurring Statement of Commissioner Mozelle W. Thompson.)

In addition, Commissioner Anthony expressed concern that “investment firms may have quite different incentives and goals in operating a business, ” as an investment firm’s “business plan often involves selling the acquired business within a relatively short period of time.”

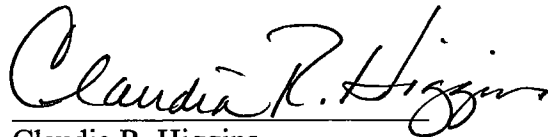
(Nestle S.A. / Ralston Purina Co., Dkt. No. C-4028, statement of Commissioner Sheila F.

Anthony.) She went on to explain that, “I would prefer to see divested assets go to a company with a stronger likelihood of operating the business for the long term.” Del Monte has no current plans to sell the acquired business, and intends to operate it for the long term, applying its expertise in various pet food markets to continue to develop the acquired brands. Del Monte is thus a strong fit with the FTC’s considerations.

Conclusion

Together with Del Monte's brands, Meow Mix and Alley Cat products will be able to continue their impressive growth. Because the transaction brings together complementary branded products under the umbrella of a proven corporate entity, and therefore generates substantial synergies and cost savings, the brands are likely to perform even more robustly than otherwise would be possible. Market shares and the number of competitors in each relevant market, among other factors, show that the transaction would not be likely to raise anticompetitive concerns, and is in fact procompetitive. For the foregoing reasons, therefore, Cypress respectfully requests that the Commission approve the proposed sale of TMMC as soon as practicable after expiration of the public comment period.

Respectfully submitted,



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