



The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent GMI 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 Number One General Mills Boulevard, Minneapolis, MN 55426.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## **ORDER**

### **I**

**IT IS ORDERED** that, as used in this order, the following definitions shall apply:

A. "Respondent" or "GMI" means General Mills, Inc., its subsidiaries, divisions, and groups and affiliates controlled by General Mills, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. "Ralcorp" means Ralcorp Holdings, Inc., its subsidiaries, divisions, and groups and affiliates controlled by Ralcorp Holdings, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. "New Ralcorp" means New Ralcorp Holdings, Inc., an entity created by the Reorganization Agreement to acquire the Private Label cereal business and other businesses from Ralcorp.

D. "Commission" means the Federal Trade Commission.

E. "Ralston Purina Company" means Ralston Purina Company, a Missouri corporation, having its principal office in St. Louis, Missouri, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Ralston Purina Company, their successors and assigns, and their directors, officers, employees, agents, and representatives.

F. "Private Label" means a cereal product bearing the trade names or trademarks owned by a grocery retailer, a wholesaler, or broker, which entity is not a cereal producer or primarily in the cereal business, which trade names or trademarks are used by such entities to identify grocery products sold by such entities and in which New Ralcorp has no rights, except for the right to produce products utilizing such trade names or trademarks for such entities or their licensees, but which shall not, in any event, include trade names or trademarks described in sections 2(d)(I) and 2(d)(ii)(A) of the Trademark Agreement.

G. "Successor Party" means any entity which acquires (by way of asset transfer, stock transfer, merger, or otherwise), following the date of the acquisition of Ralcorp by GMI, all or substantially all of New Ralcorp's assets, title, properties, interests, rights, and privileges, tangible and intangible, to manufacture and sell cereals that are identical to or substantially similar in form or overall appearance to cereal products bearing the CHEX trademark, including any entity that is a subsidiary or affiliate of New Ralcorp, and any entity that is a subsequent transferee of such assets, title, properties, interests, rights, and privileges.

H. The "Relevant Geographic Market" means the United States.

I. "CHEX trademark" has the same meaning as any "CHEX trademark" identified in the Trademark Agreement.

J. "Agreement and Plan of Merger" means the Agreement and Plan of Merger by and among Ralcorp, GMI, and General Mills Missouri, Inc., dated August 13, 1996.

K. "Reorganization Agreement" means the Reorganization Agreement attached as Exhibit A to the Agreement and Plan of Merger.

L. "Technology Agreement" means the Technology Agreement attached as Exhibit 6.2(c) to the Reorganization Agreement.

M. "Trademark Agreement" means the Trademark Agreement attached as Exhibit 6.2(b) to the Reorganization Agreement.

N. "Supply Agreement" means the Transition Services -- Supply Agreement attached as Exhibit 6.2(d) to the Reorganization Agreement.

## II

### **IT IS FURTHER ORDERED** that:

A. Respondent shall, before consummating the Agreement and Plan of Merger, include in its agreements with Ralcorp and New Ralcorp provisions that will permit the transfer to any Successor Party of the right to manufacture and sell in the Relevant Geographic Market

Private Label cereals that are identical to or substantially similar in form or overall appearance to cereal products bearing the CHEX trademark. These provisions shall permit the Successor Party to manufacture and sell these Private Label cereals without further authorization or approval from GMI or Ralston Purina Company.

B. Respondent shall not enter into, enforce or attempt to enforce any agreement that prohibits or delays New Ralcorp, as long as it retains the rights referred to in II.A., *supra*, or a Successor Party thereafter, from manufacturing and selling in the Relevant Geographic Market any Private Label cereals that are identical to or substantially similar in form or overall appearance to cereal products bearing the CHEX trademark upon consummation of the Agreement and Plan of Merger.

C. Respondent shall not enforce any provision in the Technology Agreement, the Reorganization Agreement, the Trademark Agreement, the Agreement and Plan of Merger, or any other agreement with Ralcorp that would prevent the transfer to any Successor Party, of the right to manufacture and sell in the Relevant Geographic Market Private Label cereals substantially similar in form or overall appearance to cereal products bearing the CHEX trademark, provided, however, that nothing in this paragraph shall be construed to interfere with General Mills' rights to enforce the provisions of the Supply Agreement.

### III

**IT IS FURTHER ORDERED** that:

A. Within sixty (60) days after consummating the Agreement and Plan of Merger, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraph II. A. of this order.

B. One year (1) from the date this order becomes final, annually for the next three (3) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. B., and C., and III of this order.

### IV

**IT IS FURTHER ORDERED** that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or

dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

**V**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

**VI**

**IT IS FURTHER ORDERED** that this order shall terminate on May 16, 2017.

By the Commission, Commissioner Starek dissenting.

Donald S. Clark  
Secretary

SEAL

ISSUED: May 16, 1997

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

|                      |   |                   |
|----------------------|---|-------------------|
| In the Matter of     | ) |                   |
|                      | ) |                   |
| GENERAL MILLS, INC., | ) | File No. 961-0101 |
| a corporation,       | ) |                   |
|                      | ) |                   |
|                      | ) |                   |

**INTERIM AGREEMENT**

This Interim Agreement is by and between General Mills, Inc., a corporation organized and existing under the laws of the State of Delaware ("General Mills") and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (the "Commission").

**WHEREAS**, General Mills has proposed to acquire Ralcorp Holdings, Inc.'s ("Ralcorp") branded ready-to-eat ("RTE") cereal and snack businesses pursuant to an Agreement and Plan of Merger dated August 13, 1996 ("the proposed Acquisition"); and

**WHEREAS**, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

**WHEREAS**, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and,

**WHEREAS**, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm, and relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

**WHEREAS**, the entering into this Interim Agreement by General Mills shall in no way be construed as an admission by General Mills that the proposed Acquisition constitutes a violation of any statute; and

**WHEREAS**, General Mills understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

**NOW, THEREFORE**, General Mills agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public record comment, it will grant early termination of the Hart-Scott-Rodino-waiting period, as follows:

1. General Mills agrees to execute the Consent Agreement and be bound by the terms of the Order contained in the Consent Agreement, as if it were final, from the date General Mills signs the Consent Agreement.

2. General Mills agrees to submit, within twenty (20) days of the date the Consent Agreement is signed by General Mills, and every thirty (30) days thereafter until respondent has fully complied with the provisions of Paragraph II.A. of the Consent Agreement, written reports, pursuant to Section 2.33 of the Commission's Rules, signed by General Mills setting forth in detail the manner in which General Mills will comply or has complied with Paragraph II.A. of the Consent Agreement.
3. General Mills agrees that, from the date it signs the Consent Agreement until the first of the dates listed in subparagraphs 3.a and 3.b, it will comply with the provisions of this Interim Agreement:
  - a. ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or
  - b. the date the Order is final.
4. General Mills waives all rights to contest the validity of this Interim Agreement.
5. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request, and on reasonable notice, General Mills shall permit any duly authorized representative or representatives of the Commission:
  - a. access, during the office hours of General Mills and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under



the control of General Mills relating to compliance with this Interim

Agreement; and

b. upon five (5) days notice to General Mills and without restraint or interference from it, to interview officers, directors, or employees of General Mills, who may have counsel present, regarding any such matters.

6. Should the Federal Trade Commission seek in any proceeding to compel General Mills to divest itself of Ralcorp, or any other assets that it may hold as a result of the proposed Acquisition, or to seek any other injuncti

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7. This Interim Agreement shall not be binding until accepted by the Commission.

Dated: December 24, 1996

FEDERAL TRADE COMMISSION

GENERAL MILLS, INC.

By: \_\_\_\_\_  
Stephen Calkins  
General Counsel

\_\_\_\_\_ James F. Rill  
Counsel for General Mills, Inc.