

Complaint

IN THE MATTER OF

DEUTSCHE GELATINE-FABRIKEN STOESS AG, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

*Docket C-4045; File No. 0110117
Complaint, April 17, 2002--Decision, April 17, 2002*

This consent order addresses the acquisition by Respondent Deutsche Gelatine-Fabriken Stoess AG (“DGF Stoess”), the largest world and United States producer of pigskin and beef hide gelatin – used particularly by the food industry (in products such as gelatin desserts, marshmallows, gummy candies and other confections) and the pharmaceutical industry (in products such as soft and hard capsules and tablet coatings) – of the gelatin business of Respondent Goodman Fielder Limited. The order, among other things, prohibits DGF Stoess from acquiring Goodman Fielder’s entire gelatin business, as initially proposed; rather, Goodman Fielder will retain its United States and Argentine gelatin assets, collectively representing approximately 40 percent of the original proposed acquisition. The order also prohibits DGF Stoess from buying any of the retained gelatin assets without prior Commission approval. In addition, the order prohibits Goodman Fielder from selling any of the retained gelatin assets to DGF Stoess – or to SKW, the third leading supplier worldwide of pigskin and beef hide gelatin – or from selling less than the complete package of retained assets to anyone without prior Commission approval. The order also requires Goodman Fielder to provide prior notice to the Commission of any other sale of the retained assets.

Participants

For the Commission: *James H. Holden, Jr., Jonathan S. Klarfeld, Jay C. Campbell, Ann Malester, Eric D. Rohlck, Elizabeth A. Piotrowski, Geary Gessler and Elizabeth Callison..*

For the Respondents: *Steven C. Sunshine, Shearman & Sterling, and Robert S. Schlossberg, Morgan, Lewis & Bockius.*

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COMPLAINT

Pursuant to 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 (“Commission”), having reason to believe that Respondent Goodman Fielder Limited (“Goodman Fielder”) and Respondent Deutsche Gelatine-Fabriken Stoess AG (“DGF Stoess”), both corporations subject to the jurisdiction of the Commission, have entered into an agreement whereby Respondent DGF Stoess would acquire the gelatin business of Respondent Goodman Fielder in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, 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. DGF STOESS

1. Respondent DGF Stoess is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Gammelsbacher Strasse 2, 69412 Eberbach, Germany. DGF Stoess’s principal subsidiaries in the United States, Kind & Knox Gelatine, Inc. and Dynagel, Inc., are located, respectively, in Sioux City, Iowa and Calumet City, Illinois.
2. Respondent DGF Stoess is engaged in, among other things, the manufacture and sale of gelatin.
3. Respondent DGF Stoess is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

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II. GOODMAN FIELDER

4. Respondent Goodman Fielder is a corporation organized, existing and doing business under and by virtue of the laws of New South Wales, Australia, with its office and principal place of business located at 75 Talavera Road, Macquarie Park NSW 2113, Australia. Goodman Fielder's principal subsidiary in the United States, Goodman Fielder (USA) Inc., has a manufacturing facility located in Davenport, Iowa.
5. Respondent Goodman Fielder is engaged in, among other things, the manufacture and sale of gelatin.
6. Respondent Goodman Fielder is, and at all times herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

7. In a purchase agreement dated February 14, 2001 ("Purchase Agreement"), DGF Stoess agreed to acquire the gelatin business of Goodman Fielder in a transaction valued at approximately \$170 million (the "Proposed Acquisition").
8. The Commission investigated the Proposed Acquisition and on January 15, 2002, authorized staff to seek a preliminary injunction in federal district court preventing Goodman Fielder and DGF Stoess from consummating the Proposed Acquisition.

IV. THE RELEVANT MARKET

9. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Proposed Acquisition is the manufacture and sale of pigskin and beef hide gelatin.

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10. For the purposes of this Complaint, the relevant geographic market within which to assess the competitive effects of the Proposed Acquisition is the United States.

V. THE STRUCTURE OF THE MARKET

11. DGF Stoess and Goodman Fielder are the two largest manufacturers and sellers of pigskin and beef hide gelatin in the United States and the world. If the Proposed Acquisition were to be consummated, DGF Stoess would have a market share in the United States of more than 50 percent, in a highly concentrated market.

VI. ENTRY CONDITIONS

12. Substantial and effective expansion by smaller competitors in the relevant market sufficient to deter or counteract the anticompetitive effects of the Proposed Acquisition is unlikely to occur.
13. New entry into the relevant market would not occur in a timely manner to deter or counteract the adverse competitive effects of the Proposed Acquisition because it would take over two years for an entrant to accomplish the steps required for entry and achieve a significant market impact.

VII. EFFECTS OF THE ACQUISITION

14. The effects of the Proposed Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

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- a. by eliminating actual, direct, and substantial competition between Goodman Fielder and DGF Stoess in the relevant market;
- b. by further consolidating an already concentrated market, thereby substantially increasing the likelihood that DGF Stoess will unilaterally exercise market power in the relevant market;
- c. by increasing the likelihood of collusion and coordinated interaction in the relevant market; and
- d. by increasing the likelihood that customers of pigskin and beef hide gelatin would be forced to pay higher prices.

VIII. VIOLATIONS CHARGED

- 15. The Purchase Agreement constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
- 16. The Proposed Acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of April , 2002, issues its Complaint against Respondents DGF Stoess and Goodman Fielder.

By the Commission, Chairman Muris not participating.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of the gelatin business of Goodman Fielder Limited (“Goodman Fielder”) by Deutsche Gelatine-Fabriken Stoess AG (“DGF Stoess”), and DGF Stoess and Goodman Fielder (collectively, “Respondents”) having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent DGF Stoess is a corporation organized, existing and doing business under and by virtue of the laws of

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Germany, with its office and principal place of business located at Gammelsbacher Strasse 2, 69412 Eberbach, Germany.

2. Respondent Goodman Fielder is a corporation organized, existing and doing business under and by virtue of the laws of New South Wales, Australia, with its office and principal place of business located at 75 Talavera Road, Macquarie Park NSW 2113, Australia.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, 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. “Goodman Fielder” means Goodman Fielder Limited, its directors, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Goodman Fielder Limited (including but not limited to Goodman Fielder (USA) Inc., Leiner Davis (USA) Inc., Leiner Davis Gelatin Corporation, Leiner Davis Gelatin Argentina SA, Maramba SRL and Leiner Davis Uruguay de Gelatinas SA), and the respective directors, employees, agents, representatives, successors, and assigns of each.
- B. “DGF Stoess” means Deutsche Gelatine-Fabriken Stoess AG, its directors, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Deutsche Gelatine-Fabriken Stoess AG (including but not limited to Kind and Knox Gelatine, Inc. and Dynagel, Inc.), and the respective directors, employees, agents, representatives, successors, and assigns of each.

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- C. “SKW” means the gelatin business of Degussa AG (commonly referred to as “SKW”); its directors, employees, agents, representatives, predecessors, successors, and assigns; its parents, joint ventures, subsidiaries, divisions, groups, and affiliates controlled by the gelatin business of Degussa AG (“commonly referred to as “SKW”), and the respective directors, employees, agents, representatives, successors, and assigns of each. Degussa AG is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located in Dusseldorf, Germany.
- D. “Respondents” means DGF Stoess and Goodman Fielder.
- E. The “Acquisition” means the proposed acquisition by DGF Stoess of the gelatin business of Goodman Fielder as set forth in Goodman Fielder’s and DGF Stoess’s Purchase Agreement dated February 14, 2001, and as subsequently amended.
- F. “Commission” means the Federal Trade Commission.
- G. “Person” means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.
- H. “American Gelatin Assets” means Leiner Davis (USA) Inc. (formerly known as Goodman Fielder (USA) Inc.), and all of its successors and assigns, joint ventures, subsidiaries, divisions, groups and affiliates, including but not limited to Leiner Davis Gelatin Corporation, and all of their respective businesses, assets, properties, rights and liabilities.
- I. “Argentinian Gelatin Assets” means Leiner Davis Gelatin Argentina SA and all of its successors and assigns, joint ventures, subsidiaries, divisions, groups and affiliates, including but not limited to Maramba SRL and Leiner Davis Uruguay de Gelatinas SA, and all of their respective businesses, assets, properties, rights and liabilities.

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- J. “U.S. Gelatin Business” means the American Gelatin Assets and the Argentinian Gelatin Assets.

II.

IT IS FURTHER ORDERED that:

- A. Goodman Fielder shall not sell, transfer, or otherwise convey, directly or indirectly, any ownership, leasehold, or other interest, in whole or in part, in the U.S. Gelatin Business (excluding transactions in the ordinary course of business such as sales of manufactured product) to DGF Stoess in connection with the Acquisition.
- B. DGF Stoess shall not acquire, directly or indirectly, any ownership, leasehold, or other interest, in whole or in part, in the U.S. Gelatin Business (excluding transactions in the ordinary course of business such as purchases of manufactured product) in connection with the Acquisition.

III.

IT IS FURTHER ORDERED that, for a period commencing on the date this Order becomes final and continuing for ten (10) years, DGF Stoess shall not, without the prior approval of the Commission, acquire, directly or indirectly, any ownership, leasehold, or other interest, in whole or in part, in the U.S. Gelatin Business (excluding transactions in the ordinary course of business such as purchases of manufactured product).

IV.

IT IS FURTHER ORDERED that, for a period commencing on the date this Order becomes final and continuing for ten (10) years, Goodman Fielder shall not, without the prior approval of the Commission, sell, transfer, or otherwise convey, directly or indirectly, any ownership, leasehold, or other interest, in whole or in part, in the U.S. Gelatin Business (excluding transactions in the

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ordinary course of business such as sales of manufactured product) to DGF Stoess.

V.

IT IS FURTHER ORDERED that, for a period commencing on the date this Order becomes final and continuing for five (5) years, Goodman Fielder shall not, without the prior approval of the Commission, sell, transfer, or otherwise convey, directly or indirectly:

- A. any ownership, leasehold, or other interest, in whole or in part, in the U.S. Gelatin Business (excluding transactions in the ordinary course of business such as sales of manufactured product) to SKW; or
- B. parts of, or the whole of, either (1) the American Gelatin Assets, or (2) the Argentinian Gelatin Assets (excluding transactions in the ordinary course of business such as sales of manufactured product) to a Person other than DGF Stoess or SKW.

VI.

IT IS FURTHER ORDERED that, for a period commencing on the date this Order becomes final and continuing for five (5) years, Goodman Fielder shall not, without prior written notification to the Commission, sell, transfer, or otherwise convey, directly or indirectly, the U.S. Gelatin Business as a whole to a Person other than DGF Stoess or SKW.

The prior notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the "Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States

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Department of Justice, and Notification is required only of Respondent Goodman Fielder and not of any other party to the transaction. Respondent Goodman Fielder shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Goodman Fielder shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission’s Bureau of Competition. PROVIDED, HOWEVER, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VII.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days after the date this Order becomes final, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied and are complying with this Order; and
- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

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VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in corporate Respondents 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 this Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, employees, agents or independent contractors of Respondents, who may have counsel present, relating to any matters contained in this Order.

By the Commission, Chairman Muris not participating.

Analysis

**Analysis of Agreement Containing Consent Order to Aid
Public Comment**

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Deutsche Gelatine-Fabriken Stoess AG (“DGF Stoess”) and Goodman Fielder Limited (“Goodman Fielder”) which is designed to remedy the anticompetitive effects resulting from Goodman Fielder’s sale of its gelatin business to DGF Stoess. Under the terms of the Consent Agreement, DGF Stoess will not be allowed to acquire Goodman Fielder’s entire gelatin business as initially proposed; rather, Goodman Fielder will retain its United States and Argentine gelatin assets, which, collectively, represent approximately 40 percent of the original proposed acquisition. Moreover, Goodman Fielder will face limitations on any subsequent divestiture of those retained assets, including requirements that Goodman Fielder seek prior approval from the Commission or provide prior notice to the Commission, depending on certain relevant considerations.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by 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 the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order.

Pursuant to a purchase agreement dated February 14, 2001, DGF Stoess proposed to acquire Goodman Fielder’s entire worldwide gelatin business (the “Proposed Acquisition”). The total value of the Proposed Acquisition is approximately \$170 million. 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, in

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the United States market for the manufacture and sale of pigskin and beef hide gelatin.

II. The Parties

Headquartered in Eberbach, Germany, DGF Stoess is the largest supplier of pigskin and beef hide gelatin in the United States and the world. DGF Stoess produces pigskin and beef hide gelatin at seven manufacturing plants worldwide. Two of the plants are located in the United States (Kind & Knox, in Sioux City, Iowa, and Dynagel, in Calumet City, Illinois), one plant is in Brazil, one plant is in Sweden, and three plants are in Germany.

Goodman Fielder is a diversified food products company based in Sydney, Australia. Through its Leiner Davis Gelatin subsidiary, and other related subsidiaries, Goodman Fielder is the second largest supplier of pigskin and beef hide gelatin in the United States and the world. Goodman Fielder owns and operates eight gelatin manufacturing plants of varying sizes worldwide – one each in the United States (Davenport, Iowa), Mexico, South Africa, Australia, New Zealand and Argentina, and two in Brazil. Of Goodman Fielder's gelatin manufacturing facilities, only the plants in the United States and South America compete for gelatin sales in the U.S. market.

III. The Pigskin and Beef Hide Gelatin Market

Pigskin and beef hide gelatins are versatile products obtained from the partial hydrolysis of collagen, a protein that is the principal constituent of pigskins and beef hides. Pigskin and beef hide gelatins have many functions and are a critical component of a wide variety of products, particularly in the food industry (in products such as gelatin desserts, marshmallows, gummy candies and other confections) and the pharmaceutical industry (in products such as soft and hard capsules and tablet coatings). Although other types of products (e.g., starch, carrageenan, pectin, etc.) can provide some of the qualities of gelatin, no other product provides the full range of performance of gelatin, or is sufficiently

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cost-effective to replace gelatin in edible and pharmaceutical applications.

If the Proposed Acquisition were to be consummated, DGF Stoess would have a U.S. market share of over 50 percent of pigskin and beef hide gelatin sales and would be more than two and one-half times the size of its nearest competitor. Prior to the acquisition, DGF Stoess and Goodman Fielder (through its Leiner Davis Gelatin subsidiary) competed vigorously against each other for gelatin business, and this competition benefitted gelatin customers. By eliminating competition between the two largest gelatin suppliers, and creating a firm with a market share of over 50 percent, the Proposed Acquisition would allow the combined firm to exercise market power unilaterally, as well as increasing the likelihood of coordinated interaction among gelatin manufacturers. As a result, the Proposed Acquisition would increase the likelihood that purchasers of pigskin and beef hide gelatin would be forced to pay higher prices and that innovation, service levels, and product quality in this market would decrease.

There are significant impediments to both expansion by existing manufacturers, as well as new entry, in the pigskin and beef hide gelatin market. First, the gelatin industry is operating at or very near full capacity, as is required for the efficient operation of gelatin manufacturing facilities. Second, even under normal conditions, the raw materials for pigskin and beef hide gelatin production are a finite resource often in short supply. Third, recent outbreaks of foot and mouth disease and “mad cow” disease around the world have further limited the normally tight supply of raw materials for the gelatin industry, thus diminishing the likelihood of significant and timely expansion. Finally, even if raw materials were available, significant capacity expansions (beyond the limited available excess capacity) can take years to complete, and more modest expansions are generally viewed as economically inefficient.

New entry is an even more remote possibility because a new entrant, beyond facing the same limited raw material supply, would need to build a plant – a difficult, expensive and time-

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consuming process. It would take a new entrant over two years to accomplish the necessary steps for entry and achieve a significant market impact. Indeed, because many gelatin customers impose stringent supplier qualification requirements that (even if all goes well) can take years to complete, a new entrant is highly unlikely to achieve a significant market impact within two years. New entry also is unlikely because the costs of building a new plant and entering the market are high relative to the limited sales opportunities available to new entrants.

IV. The Consent Agreement

The Commission initiated its investigation of the Proposed Acquisition shortly after being notified of the transaction in March 2001. In response to competitive concerns raised by the Commission which came to light during the course of the Commission's investigation, DGF Stoess and Goodman Fielder proposed to divest one of Goodman Fielder's gelatin plants – a large pigskin gelatin plant located in Davenport, Iowa. After careful consideration, that proposal was ultimately deemed insufficient to remedy the anticompetitive effects of the Proposed Acquisition. On January 15, 2002, the Commission authorized its staff to seek a preliminary injunction in federal district court preventing DGF Stoess and Goodman Fielder from consummating the Proposed Acquisition. The Consent Agreement arose out of subsequent discussions between the Commission, DGF Stoess and Goodman Fielder. In those discussions, the parties proposed to amend the Purchase Agreement such that Goodman Fielder would not sell its entire gelatin business to DGF Stoess, but rather would retain two of its plants – a pigskin gelatin manufacturing plant in Davenport, Iowa, and a beef hide gelatin plant located in Santa Fe, Argentina – along with all of the ancillary assets and infrastructure (e.g., production personnel, sales operations, etc.) required to operate those plants together as an ongoing business.

The parties' proposal, as reflected in the Consent Agreement, effectively remedies the Proposed Acquisition's anticompetitive effects in the United States market for pigskin and beef hide gelatin. By retaining two substantial gelatin plants in Davenport

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and Santa Fe, Goodman Fielder will have virtually the same U.S. presence as did DGF Stoess before the acquisition, and the concentration level of the U.S. market for pigskin and beef hide gelatin will remain nearly unchanged by the transaction. In addition, the package of assets retained by Goodman Fielder, a pigskin gelatin plant in the United States and a beef hide gelatin plant in Argentina, provides geographic scope and product diversity characteristic of the most competitive market participants.

Although Goodman Fielder's retention of the U.S. and Argentine plants largely remedies the anticompetitive effects of the Proposed Acquisition, some competitive questions remain because Goodman Fielder has expressed a desire to exit the gelatin business. Accordingly, the Commission has required additional provisions in the Consent Agreement in case Goodman Fielder chooses to dispose of the retained assets, to address three specific concerns. First, and most obviously, a subsequent sale of the retained assets to DGF Stoess would be problematic because such a sale would simply effectuate a two-step version of the Proposed Acquisition – a transaction that the Commission already believes to be anticompetitive. Second, a subsequent sale of the retained assets to SKW, the third leading supplier worldwide of pigskin and beef hide gelatin, would raise many of the same competitive issues raised by a sale of those assets to DGF Stoess. Third, any sale by Goodman Fielder that would split up the retained assets would raise a competitive concern, because it would eliminate the product and geographic diversity of the gelatin business retained by Goodman Fielder and likely would diminish the competitive significance of those assets in the U.S. market.

To address these problems, the proposed Consent Agreement provides that: (1) DGF Stoess may not buy any of the gelatin assets retained by Goodman Fielder without prior approval from the Commission; (2) Goodman Fielder may not sell any of the retained gelatin assets to DGF or SKW, or sell less than the complete package of retained assets to anyone, without prior approval from the Commission; and (3) Goodman Fielder must

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provide the Commission with prior notice of any other sale of the retained assets. The prior approval requirements ensure that the Commission will be able to address the three specific issues raised above. The prior notice requirement guarantees the Commission the benefits of the Hart-Scott-Rodino framework in evaluating all other possible sales of the retained assets, including those that might otherwise be unreportable. In short, the Consent Agreement preserves the current competitive situation, allows DGF Stoess and Goodman Fielder to complete a modified version of their transaction that does not harm competition, and provides Goodman Fielder with ongoing flexibility with respect to a disposition of the retained assets, even if market conditions change in the near future.

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

Complaint

IN THE MATTER OF

ELI LILLY and COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4047; File No. 0123214
Complaint, May 8, 2002--Decision, May 8, 2002*

This consent order addresses representations made by Respondent Eli Lilly and Company – a pharmaceutical company that manufactures, markets, and sells drugs such as the anti-depressant medication Prozac, and operates the Prozac.com Web site – through Lilly’s privacy policies, and during the sign-up process for Medi-Messenger, a service that enabled its subscribers to receive individualized email reminders from Lilly concerning their Prozac medication or other matters. The order, among other things, prohibits the respondent from misrepresenting the extent to which it maintains and protects the privacy or confidentiality of any personally identifiable information collected from or about consumers. The order also requires the respondent to implement a four-stage information security program designed to establish and maintain reasonable and appropriate administrative, technical, and physical safeguards to protect consumers’ personal information against any reasonably anticipated threats or hazards to its security, confidentiality, or integrity, and to protect such information against unauthorized access, use, or disclosure.

Participants

For the Commission: *Mamie Kresses, Dean C. Forbes, Heather Hipsley, Mary K. Engle, Louis Silversin, and Gerard R. Butters.*

For the Respondent: *Karen Silverman and J. Thomas Rosch, Latham & Watkins, and Rebecca O. Kendall and Stanley W. Crosley, Eli Lilly.*

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The Federal Trade Commission, having reason to believe that Eli Lilly and Company, a corporation (“respondent”) has violated the provisions of the Federal Trade Commission Act, and it