FEDERAL TRADE COMMISSION

[File No. 011 0117]

Deutsche Gelatine-Fabriken Stoess AG, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 8, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: James Holden, Jr., Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2963.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 7, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/03/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

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 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 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-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 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 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.

By direction of the Commission, Chairman Muris not participating.

Donald S. Clark,

Secretary.

[FR Doc. 02–5966 Filed 3–12–02; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 012 3182]

Interstate Bakeries Corp.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 8, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Mary Engle or Richard Kelly, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3161 or 326–3304.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 6, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/03/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Interstate Bakeries Corporation (IBC).

The proposed consent order 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 agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves allegedly unsubstantiated representations made on television and in Internet advertising about the effects of the calcium in Wonder Bread on children's memory and brain function. According to the FTC complaint, IBC made unsubstantiated claims that as a good source of calcium, Wonder Bread helps children's minds work better and helps children remember things.

The proposed consent order contains provisions designed to prevent IBC from engaging in similar acts and practices in the future. Part I of the proposed order prohibits IBC from making any unsubstantiated claim (a claim lacking competent and reliable scientific evidence) that as a good source of calcium, Wonder Bread helps children's minds work better, or as a good source of calcium, Wonder Bread helps children remember things.

Part II of the order requires IBC to have competent and reliable scientific evidence for any claim that any of its breads, bread products, rolls or muffins or any of their ingredients, helps brain function or memory, or can treat, cure or prevent any disease or related health condition. Part II also provides that a mere statement that a product contains a particular vitamin or mineral will not, without more, be considered for purposes of this order a representation that the product can treat, cure or prevent any disease or related health condition.

Part IV of the order states that the order does not apply to any label or labeling printed before the order is served on IBC and shipped by IBC's bakeries to distributors or retailers within nine months after the order is issued.

Part III of the order notes that this order does not prohibit IBC from making any claim that is specifically permitted in labeling pursuant to the Nutrition Labeling and Education Act of 1990. Parts V through VIII of the order require IBC to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file a compliance report with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

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

By direction of the Commission, Commissioner Anthony recused.

Donald S. Clark,

Secretary.

[FR Doc. 02–5967 Filed 3–12–02; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 002 3332]

Palm, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment