persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Kroger and Winn-Dixie, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–31338 Filed 12–19–01; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 011 0083]

Nestle Holdings, Inc. and Ralston Purina Co.; 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 January 11, 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: Phillip L. Broyles, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2805.

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 December 11, 2001), on the World Wide Web, at *http://www.ftc.gov/os/2001/12/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

I. Introduction

The Federal Trade Commission (''Commission'') has issued a complaint (''Complaint'') alleging that the proposed merger of Nestle Holdings, Inc. (''Nestle''), and Ralston Purina Company (''Ralston'') (collectively ''Proposed Respondents'') 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, and has entered into an agreement containing consent orders (''Agreement Containing Consent Orders'') pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets (''Proposed Consent Order'') and an order that requires Proposed Respondents to maintain certain assets pending divestiture (''Asset Maintenance Order''). The Proposed Order remedies the likely anticompetitive effects arising from Proposed Respondents' proposed merger, as alleged in the Complaint. The Asset Maintenance Order preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Nestle Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. This subsidiary of Nestle S.A. is the U.S. corporation that will be purchasing all of the outstanding Ralston shares. Nestle SA, the largest food corporation in the world, manufactures, distributes, and sells dairy products, soluble coffee, roast and ground coffee, mineral water, beverages, breakfast cereals, coffee creamers, infant foods and dietetic products, culinary products (seasonings, canned foods, pasta, sauces, etc.), frozen foods, ice cream, refrigerated products (*e.g.*, yogurt, desserts, pasta, sauces), chocolate, food services, ophthalmological products, cosmetics, and pet foods. Nestle sells its pet food products in the U.S. through its Friskies division, including Alpo, Come ''N Get It, Mighty Dog, Friskies, Fancy Feast, Jim Dandy, and Chef's Blend. Nestle had worldwide sales of approximately 81.4 billion Swiss francs and United States sales of approximately $7.8 billion for all products in 2000.

Ralston is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri. Ralston is the world's leading producer of dry dog and dry and soft-moist cat foods. The brands that Ralston manufacturers, distributes, and sells include Dog Chow, Puppy Chow, Cat Chow, Kitten Chow, Purina Special Care, Meow Mix, Purina O.N.E., Purina Pro Plan, Fit & Trim, Clinical Nutrition Management, Alley Cat, Deli-Cat, Thrive, Tender Vittles, Happy Cat, Chuck Wagon Stampede, and Main Stay. Ralston had worldwide sales of approximately $3 billion and United States sales of approximately $2.36 billion for all products for fiscal year 2000.

Pursuant to a merger agreement dated January 15, 2001, Nestle agreed to purchase all of Ralston's outstanding shares of common stock in a transaction valued at $ 10.3 billion. Nestle intends to call the merged entity Nestle Purina Pet Care.

III. The Complaint

The complaint alleges that the market in which to analyze the competitive effects of the proposed transaction is the sale of dry cat food in the United States. Wet and dry cat foods constitute separate product markets. Wet cat food differs from dry cat food in production, ingredients, appearance, packaging, aroma, price, and convenience. Ralston's share of the dry cat food market across all channels of distribution is approximately 34%. Nestle has a market share of approximately 11% of the dry cat food market across all channels of distribution. The dry cat food market in the United States is moderately concentrated. The merger of Nestle and Ralston would substantially increase concentration in this market, raising the HHI level to more than 2400, an increase of more than 750 points. Entry would not be timely, likely, or sufficient to prevent anti-competitive effects in the relevant market.

The Complaint alleges that the merger of Nestle and Ralston would substantially lessen competition in the dry cat food market 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, as amended, 15 U.S.C. 45, in the following ways, among others: (a) By eliminating direct competition in the sale of dry cat food between Nestle and Ralston; and (b) by increasing the likelihood that the combination of Nestle and Ralston will unilaterally exercise market power; each of which increases the likelihood that prices will be higher with the acquisition than they would be absent the acquisition.

The Proposed Consent Order requires Proposed Respondents to divest the Meow Mix and Alley Cat brands of dry cat food to an up-front buyer, J.W. Childs Equity Partners II, L.P. (''Childs''), no later than 20 days after the Commission accepts the Proposed Consent Agreement for public comment or January 31, 2002, whichever is later, to remedy the Commission's concerns. Childs is a Boston-based investment firm founded in 1995. Structured as a limited partnership, Childs has total committed capital of $982 million. The Commission is satisfied that Childs' acquisition of the divested assets will restore the competition lost as a result of the proposed merger of Nestle and Ralston. Childs has a past history of successfully developing the business of consumer products companies. The designated CEO of the businesses that will produce and sell the brands to be divested has expertise in manufacturing dry pet foods. Childs also owns the Hartz Mountain Corporation (''Hartz''), a leading manufacturer and distributor of pet supplies in the United States. Hartz sells its pet supplies and treats in the same retail outlets as the brands to be divested.

IV. Terms of the Proposed Order

The Proposed Order resolves the Commission's antitrust concerns with the merger as discussed below.

A. Divestiture Provisions

Paragraph II.A. of the Proposed Order requires Proposed Respondents to divest to Childs all of Proposed Respondents' rights, titles, and interests in and to all assets relating to the Meow Mix and Alley Cat brands. The Meow Mix brand includes the original Meow Mix product and Meow Mix Seafood Middles. Specifically, Proposed Respondents must divest all interests in the research, development, manufacture, distribution, marketing, and sales of the Meow Mix and Alley Cat brands of dry cat food products anywhere in the United States and Canada. Proposed Respondents also must divest any and all trademarks, service marks, trademark and service mark registrations, and pending trademark and service mark registrations that relate exclusively to the Meow Mix or Alley Cat brand of dry cat food products outside of the United States and Canada. Proposed Respondents must further divest all inventories and supplies held by, or under their control; all intellectual property owned by or licensed to Proposed Respondents; copies of all customer lists and supplier lists; all rights of Proposed Respondents under any contract; all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Proposed Respondents, to the extent transferable; all rights of Proposed Respondents under any warranty and guarantee, express or implied; and copies of all relevant portions of books, records, and files held by, or under the control of, Proposed Respondents.

Paragraph II.C. further provides that if the Commission determines that Childs is not an acceptable purchaser of the assets to be divested, Proposed Respondents shall immediately terminate or rescind the sale of the assets to be divested to Childs and divest these assets at no minimum price to another purchaser that receives the prior approval of the Commission no later than 180 days from the date that this Proposed Order becomes final.

Paragraph II.D. of the Proposed Order requires that Proposed Respondents grant a patent license to Childs for the coating applied to Meow Mix products. The license covers current Meow Mix products as well as any pet product Childs chooses to manufacture in the future. Paragraph II.F. of the Proposed Order requires Proposed Respondents to provide Childs with a supply of Meow Mix and Alley Cat products for a period of up to two years from the date of the divestiture. Paragraph II.G. requires Proposed Respondents to provide technical assistance to Childs, as needed, for a period of up to two years from the date of divestiture, which includes expert advice, assistance, and training relating to the manufacture of the Meow Mix and Alley Cat brands.

Paragraph VI of the Proposed Order requires Childs, for a period of 5 years, to obtain the Commission's approval before selling all or substantially all of the United States assets acquired in the divestiture. The Commission does not routinely require acquirers of divested assets to obtain approval before subsequent sales. In cases, however, where the proposed acquirer's current plans indicate that there is a high probability that the assets will be resold, possibly within two-five years, it is appropriate for the Commission to include such a provision. *C.f., e.g.,* the Commission's final order in *Albertson's, Inc.,* Docket No. C–3986.

B. Monitor Trustee Provisions

Paragraph IV of the Proposed Order appoints a Monitor Trustee to monitor compliance with the terms of the Order. The Proposed Consent Order provides the Monitor Trustee with the power and authority to monitor the Proposed Respondents' compliance with the terms of the Proposed Consent Order, and full and complete access to personnel, books, records, documents, and facilities of the Proposed Respondents to fulfill that responsibility. In addition, the Monitor Trustee may request any other relevant information that relates to the Proposed Respondents' obligations under the Proposed Consent Order. The Proposed Consent Order precludes Proposed Respondents from taking any action to interfere with or impede the Monitor Trustee's ability to perform his or her responsibilities or to monitor compliance with the Proposed Consent Order.

The Monitor Trustee may hire such consultants, accountants, attorneys, and other assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Proposed Consent Order requires the Proposed Respondents to bear the cost and expense of hiring these assistants.

C. Other Terms

Paragraphs V and VII–X of the Proposed Consent Order detail certain general provisions. Paragraph V authorizes the Commission appoint a divestiture trustee in the event Nestle fails to divest the assets as required by the Proposed Consent Order. Paragraph VII requires Respondents to provide a copy of the Proposed Consent Order to each of their officers, employees, and agents with managerial responsibilities for any obligation under the Proposed Order. Paragraph VIII requires Proposed Respondents to provide the Commission with periodic reports of compliance with the Proposed Consent Order. Paragraph IX provides for notification to the Commission in the event of any changes in the corporate Proposed Respondents. Paragraph X requires Proposed Respondents to grant access to any authorized Commission representative for the purpose of determining or securing compliance with the Proposed Consent Order. Paragraph XI terminates the Proposed Consent Order after ten years from the date the Proposed Consent Order becomes final.

V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter as well as the Asset Maintenance Order. Comments received during this thirty day comment period will become part of the public record. After thirty days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make final the agreement's Proposed Consent Order.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Agreement, to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission, Chairman Muris recused.

Donald S. Clark,
Secretary.

Statement of Commissioner Sheila F. Anthony

Yesterday, the Commission accepted for public comment a proposed consent agreement in this case. The evidence developed during the Commission's investigation unequivocally demonstrates that, absent the proposed relief, the acquisition by Nestle of Ralston would violate the antitrust laws and likely would result in harm to consumers of dry cat food. The parties have agreed to divest Ralston's Meow Mix and Alley Cat brands to J.W. Childs, a private equity investment firm. While I have concurred in the Commission's decision, I write separately to express my concerns about some aspects of the divestiture proposal.

The assets to be divested consist of two proven cat food brands and little else. Standing alone, these brands do not constitute a complete, ongoing business. Rather, J.W. Childs will have to create a new competitor largely from whole cloth. In order to turn the divested assets into a viable business entity, J.W. Childs will need to develop, among other things, its own research and development program, manufacturing facilities, distribution system, and sales and marketing operations. Such a prospect is daunting even when the purchaser is a participant in the same or a closely related business—which is why divestitures of stand-alone businesses present the most successful formula for restoring competition.[1]

The risk to consumers is further heightened where, as here, the proposed purchaser is a financial buyer. When compared to dedicated industry participants, investment firms may have quite different incentives and goals in operating a business. For example, a financial buyer's business plan often involves selling the acquired business within a relatively short period of time.

In the end, I am convinced that this is a rather unique situation and that consumers will be adequately protected by the proposed relief. Manufacturing and distribution in this industry segment is routinely and economically contracted out through ''co-packing'' arrangements. Moreover, this particular financial buyer, J.W. Childs, is financially strong, has a proven track record of good management and growth of acquired firms, and has some experience in the pet industry with its Hartz Mountain line of pet care products. These factors have led me to conclude that J.W. Childs is very likely to restore lost competition and preserve choices for dry cat food consumers.

I wish to make it clear, however, that I remain skeptical of divestiture plans that require a purchaser to take brands alone, then build a competitive company from scratch. In addition, I will closely examine divestiture proposals where the buyer is a financial company. In most cases, I would prefer to see divested assets go to a company with a stronger likelihood of operating the business for the long term.

Concurring Statement of Commissioner Mozelle W. Thompson

The Commission today has voted to accept a Consent Order that remedies competitive concerns in the dry cat food market stemming from Nestle S.A.''s (''Nestle'') proposed acquisition of Ralston Purina Co. (''Ralston''). Pursuant to the proposed Consent Agreement and Order, Ralston would divest its top-selling Meow Mix brand and its Alley Cat brand to investment firm J.W. Childs Equity Partners II, L.P. (''Childs''), owners of the Hartz Mountain line of specialty pet care products. For me, this decision was difficult because the continued competitiveness of these brands is so important to consumers.

As always, the key issue facing the Commission in its analysis of the proposed remedy is whether or not the remedy will restore competition that would be lost as a result of the proposed merger. This is at its essence a factual inquiry, involving consideration of a multitude of factors, including the extent of the prospective buyer's industry know-how, its financial viability, its future marketing plans, and its capacity to research, develop, and make innovations to the relevant products.

Our analysis here was made all the more difficult in that we were presented with a buyer that does not have a record of experience in the market in question, therefore, historical indicia of market competitiveness were not available for the Commission's review. As such, the Commission undertook an extraordinarily rigorous analysis of Childs and its ability to be competitive with the assets in question. Ultimately, my primary reservation was not about Childs' ability to be competitive in the dry cat food marketplace, but rather that Childs, as a financial buyer, might in the near term re-sell the assets in question to a buyer who will operate the business

[1] See, e.g., Federal Trade Commission Bureau of Competition Staff, A Study of the Commission's Divestiture Process (1999).

poorly or not at all, thus defeating the purpose of the Commission's Order.

These concerns are addressed in Section VI of the proposed Order, which provides that Childs' will not sell the acquired assets within five years of the date of the Order without prior approval of the Commission. While generally I am cautious about including lengthy oversight provisions in such orders, it is appropriate in this case because these provisions ensure that in the event of a resale by Childs, the Commission will be able to assure that the prospective buyer is committed to enhancing the assets in question, thus maintaining the integrity of the Commission's Order.

Concurring Statement of Commissioner Orson Swindle

The Commission has accepted for public comment a consent agreement to resolve complaint allegations that the effect of Nestle S.A.''s (''Nestle'') acquisition of Ralston Purina Co. (''Ralston'') may be to substantially lessen competition in the market for the sale of dry cat food in the United States. To remedy these competitive concerns, the merging parties have entered into a consent agreement under which Ralston would divest its Meow Mix and Alley Cat brands to J.W. Childs Equity Partners II, L.P. (''J.W. Childs''), an investment firm that owns the Hartz line of pet care products. Because the divestiture to J.W. Childs is likely to replace the competition in the market for dry cat food that otherwise would have been lost due to the Nestle/Ralston merger, I have voted to accept the consent agreement for public comment.

One provision in the proposed consent agreement is unusual and may raise concerns, however. Paragraph VI of the Proposed Consent Order requires J.W. Childs, for a period of five years, to obtain Commission approval before selling all or substantially all of the assets acquired in the divestiture. The Analysis to Aid Public Comment explains that the Commission does not routinely impose such prior approval requirements, but it is appropriate to do so ''where the proposed acquirer's current plans indicate that there is a high probability that the assets will be resold, possibly within 2–5 years.'' The purpose of the prior approval requirement is to make certain that whoever buys the resold assets from J.W. Childs would be a sufficient competitor to remedy the lessening of competition from the Nestle/Ralston transaction alleged in the complaint. See Paragraph VI.F. of the Proposed Consent Order.

I agree that J.W. Childs warranted a hard look as a prospective buyer because it might resell the divested assets in the near future. It is possible that this close scrutiny would go for naught if J.W. Childs were promptly to resell the assets to a less qualified buyer. On the other hand, this risk is always present—even had the assets remained in Ralston's hands. I think that our approval of J.W. Childs as the buyer means that we have determined that, in spite of any possible resale plans, the company will develop and employ the assets as vigorously as Ralston would have done. Once we have made this determination, I question the need for imposing a prior approval requirement on J.W. Childs that we would not have imposed on a buyer that was less likely to resell the assets.

I also think that the prior approval requirement may require that the Commission make a difficult determination. For example, assume that J.W. Childs seeks prior approval to resell the assets four years after the Nestle/Ralston merger has been consummated. The Commission presumably will have to determine whether the prospective buyer of the resold assets will compete as effectively as Ralston would have competed in the absence of the Nestle/Ralston merger. Given the passage of four years since the merger and the dynamic nature of markets, it may be difficult for the Commission to make this determination with a high degree of confidence.

I welcome public comments on the prior approval provision included in Paragraph VI of the Proposed Consent Order, including any suggestions for distinguishing between situations where the additional relief may be justified and those where it is not.

[FR Doc. 01–31339 Filed 12–19–01; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Secretary's Advisory Committee on Regulatory Reform; Notice of Meeting

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting by the Department of Health and Human Services (HHS) Secretary's Advisory Committee on Regulatory Reform. As governed by the Federal Advisory Committee Act in accordance with section 10(a)(2), the Secretary's Advisory Committee on Regulatory Reform is seeking guidance for the Department's efforts to streamline regulatory requirements. The Advisory Committee will advise and make recommendations for changes that would be beneficial in four broad areas: health care delivery, health systems operations, biomedical and health research, and the development of pharmaceuticals and other products.

All meetings and hearings of the Committee are open to the general public. During each meeting, invited witnesses will address how regulations affect health-related issues. Meeting agendas will also allow time for public comment. Additional information on each meeting's agenda and list of participating witnesses will be posted on the Committee's Web site prior to the meetings *(http://www.regreform.hhs.gov).*

DATES: The first meeting of the Secretary's Advisory Committee on Regulatory Reform will be held on Monday, January 7, 2002, from 9 a.m. to 5:30 p.m. and on Tuesday, January 8, 2002, from 8 a.m. to 1 p.m.

ADDRESSES: The Secretary's Advisory Committee on Regulatory Reform will meet on Monday, January 7, in the Ross Auditorium at Providence Hospital, 1150 Varnum Street NE., Washington, DC 20017. On Tuesday, January 8, the Committee will meet in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Christy Schmidt, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 801, Washington, DC 20201, (202) 401–5182.

SUPPLEMENTARY INFORMATION: Providence Hospital and the Hubert H. Humphrey Building are in compliance with the Americans with Disabilities Act. Anyone planning to attend the meeting who requires special disability-related arrangements such as sign-language interpretation should provide notice of their need by Friday, December 31, 2001. Please make any request to Michael Starkweather '' phone: 301–628–3141; fax: 301–628–3101; email: *mstarkweather@s-3.com.*

On June 8, 2001, HHS Secretary Thompson announced a Department-wide initiative to reduce regulatory burdens in health care, to improve patient care, and to respond to the concerns of health care providers and industry, State and local Governments, and individual Americans who are affected by HHS rules. As part of this initiative, the Department is establishing the Secretary's Advisory Committee on