UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of Philip Morris Companies, Inc., a corporation, and Nabisco Holdings Corp., a corporation.	Docket No. C-3987

COMPLAINT

Pursuant to the provisions of 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, having reason to believe that Philip Morris Companies, Inc. ("Philip Morris”) and Nabisco Holdings Corp. (“Nabisco”) have entered into an agreement in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that the terms of such agreement, were they to be implemented, would result in a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. § 18, 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. Respondent Philip Morris

1. Respondent Philip Morris is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 120 Park Avenue, New York, New York 10017-5592.

2. Respondent Philip Morris is, and at all times relevant herein has been, among other things, engaged in the production, sales, and distribution of food products to customers located throughout the United States.

3. Respondent Philip Morris, in 1999, had total worldwide sales of all products of approximately $79 billion, and United States sales of all products of approximately $48 billion.

4. Respondent Philip Morris is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

II. Respondent Nabisco

5. Respondent Nabisco 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 7 Campus Drive, Parsippany, New Jersey 07054-0311.

6. Respondent Nabisco is, and at all times relevant herein has been, engaged in the manufacture, sale, and distribution of food products to customers located throughout the United States.

7. Respondent Nabisco, in 1999, had total worldwide sales of all products of approximately $8.3 billion, and United States sales of all products of approximately $5.9 billion.

8. Respondent Nabisco is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

III. The Proposed Acquisition

9. On or about June 25, 2000, Respondents Philip Morris and Nabisco executed an agreement for Philip Morris to acquire Nabisco. The value of the proposed acquisition is approximately $19.4 billion.

IV. Trade and Commerce

A. Dry-Mix Gelatin

10. Dry-mix gelatin is a sugar-based or sugar-free, flavored, powdered gelatin product that, when combined with water, produces a flavored gelatin dessert.

11. Philip Morris, through its Kraft Foods Inc. subsidiary, produces and sells Jell-O brand dry-mix gelatin desserts.

12. Nabisco sells Royal and My-T-Fine brands of dry-mix gelatin desserts. The Royal and My-T-Fine dry-mix gelatin desserts are produced in Sheboygan, Wisconsin, for Nabisco by Enzo Pac, Inc., pursuant to a co-packing agreement.

13. Philip Morris and Nabisco are the only two significant sellers of branded dry-mix gelatin desserts in the United States.

14. Total United States sales (at wholesale) of all dry-mix gelatin desserts are about $212 million.

B. Dry-Mix Pudding

15. Dry-mix pudding is a sugar-based or sugar-free powder, typically made with flour, sweetener, and flavoring, that when combined with milk or water, produces a soft, thickened, dessert.

16. Philip Morris, through its Kraft Foods Inc. subsidiary, produces and sells Jell-O brand dry-mix pudding.

17. Nabisco sells Royal and My-T-Fine brands of dry mix pudding. The Royal and My-T-Fine dry-mix puddings are produced in Sheboygan, Wisconsin, for Nabisco by Enzo Pac, Inc., pursuant to a co-packing agreement.

18. Philip Morris and Nabisco are the only two significant sellers of branded dry-mix pudding in the United States.

19. Total United States sales (at wholesale) of all dry-mix pudding desserts are about $202 million.

C. No-Bake Desserts

20. No-bake desserts are three-stage dessert mixes (for a crust, filling, and topping) that, when combined with milk or water and butter or margarine, produce a cheesecake or other dessert.

21. Philip Morris, through its Kraft Foods Inc. subsidiary, produces and sells Jell-O brand no-bake desserts.

22. Nabisco sells the Royal brand of no-bake desserts. The Royal no-bake desserts are produced in Sheboygan, Wisconsin, for Nabisco by Enzo-Pac, Inc., pursuant to a co-packing agreement.

23. Philip Morris and Nabisco are the only two significant sellers of no-bake desserts.

24. Total United States sales (at wholesale) of all no-bake desserts are about $56 million.

D. Baking Powder

25. Baking powder is a leavening agent in making baked goods that consists of a carbonate, an acid substance, and starch or flour.

26. Philip Morris, through its Kraft Foods Inc. subsidiary, produces and sells the Calumet brand of baking powder.

27. Nabisco sells the Davis and Fleischmann’s brands of baking powder. Nabisco produces its baking powders in Exeter, Canada.

28. Philip Morris and Nabisco are two of only three significant sellers of baking powder in the United States.

29. Total United States revenues of all baking powder are about $29 million.

E. Intense Mints

30. Intense mints are strong mint-flavored candies such as Altoids, Ice Breakers, and Cool Blasts, but not including traditional mint candies such as Life Savers.

31. Philip Morris produces and sells the Altoids brand of intense mints. Altoids are produced in the United Kingdom by Callard & Bowser - Suchard Inc., a division of Kraft Foods Inc., which is a subsidiary of Philip Morris.

32. Nabisco sells the Ice Breakers and Cool Blast brands of intense mints. The mix for Ice Breakers intense mints is pre-blended for Nabisco by Beacon Specialty, Grand Haven, Michigan. The mints are then pressed in Nabisco's Holland, Michigan, plant, and packaged for Nabisco by Packaging Coordinators, Philadelphia, Pennsylvania. Cool Blast intense mints are manufactured and packaged for Nabisco in Saltillo, Coahuila, Mexico, by Pissa, pursuant to a co-packing agreement.

33. Philip Morris and Nabisco are two of only three significant sellers of intense mints in the United States.

34. Total United States sales (at wholesale) of all intense mints are about $250 million.

V. <u>The Relevant Product Markets</u>

35. The relevant product markets in which it is appropriate to assess the effects of the proposed acquisition are as follows:

    (a) the distribution and sale of dry-mix gelatin;

    (b) the distribution and sale of dry-mix pudding;

    (c) the distribution and sale of no-bake desserts;

    (d) the distribution and sale of baking powder; and

    (e) the distribution and sale of intense mints.

VI. <u>The Relevant Geographic Markets</u>

36. The relevant geographic markets in which it is appropriate to assess the effects of the proposed acquisition, in each relevant market, are:

(a) the United States; and

(b) smaller areas within the United States.

VII. Concentration

37. The relevant markets are highly concentrated and the proposed acquisition, if consummated, will substantially increase that concentration, as follows:

(a) In the dry-mix gelatin market, Philip Morris has approximately an 86% share of the market and Nabisco has approximately a 6% share. After the acquisition, the Philip Morris share will increase to approximately 92% and it will control virtually all sales of branded product. The acquisition will increase the Herfindahl-Hirschman Index ("HHI") by more than 1000 points and result in market concentration of more than 8400 points.

(b) In the dry-mix pudding market, Philip Morris has approximately an 82% share and Nabisco has approximately a 9% share. After the acquisition, the Philip Morris share will increase to approximately 91% and it will control virtually all sales of branded product. The acquisition will increase the HHI by more than 1400 points and result in market concentration of more than 8300 points.

(c) In the no-bake desserts market, Philip Morris has approximately a 90% share and Nabisco has approximately a 6% share. After the acquisition, the Philip Morris share will increase to approximately 96%. The acquisition will increase the HHI by more than 1000 points and result in market concentration of more than 9200 points.

(d) In the baking powder market, Philip Morris has approximately a 27% share and Nabisco has approximately a 17% share. After the acquisition, the Philip Morris share will increase to approximately 44% and it will have only one other significant competitor of branded products. The acquisition will increase the HHI by more than 900 points and result in market concentration of more than 4800 points.

(e) In the intense mints markets, Philip Morris has approximately a 60% share and Nabisco has approximately a 15% share. After the acquisition, the Philip Morris share will increase to approximately 75% and it will have only one other significant competitor. The acquisition will increase the HHI by approximately 1800 points and result in market concentration of more than 5800 points.

VIII. Conditions of Entry

38. Entry into each relevant market would not be timely, likely, or sufficient to prevent the anticompetitive effects set forth in Paragraph 39, below.

IX. Effects

39. The proposed acquisition will eliminate competition between Philip Morris and Nabisco, and will enhance, increase, and facilitate the continued exercise by Philip Morris of its market power, as follows:

(a) By creating or increasing the likelihood that it will exercise unilateral market power; and

(b) By creating or increasing the likelihood that it will engage in coordinated interaction with its remaining competitors;

each of which increases the likelihood that prices will increase, or not decrease as rapidly or as much as they otherwise would, or that the various services and promotional activities associated with these products will decrease (or not increase as much as they otherwise would) but for the merger.

X. Violations Charged

40. The agreement entered into between Respondents Philip Morris and Nabisco for Philip Morris to acquire Nabisco constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Further, the agreement, if consummated, would be a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventh day of December, 2000, issues its Complaint against Respondents Philip Morris and Nabisco.

By the Commission.

Donald S. Clark
Secretary

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