

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Timothy J. Muris, Chairman**
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

DEUTSCHE GELATINE-FABRIKEN STOESS AG,
a corporation,

and

GOODMAN FIELDER LIMITED,
a corporation.

Docket No. C- 4045

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 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

IV.

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

V.

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.

VI.

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).

VII.

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

VIII.

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.

IX.

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 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.

X.

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.

XI.

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.

XII.

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.

Donald S. Clark
Secretary

SEAL:

ISSUED: April 17, 2002