

**IX**

It is further ordered that:

A. Within thirty (30) days after the date this order becomes final and every sixty (60) days thereafter until the Supply Agreement is terminated, Respondents shall submit to the Commission a verified written report setting forth in detail the steps taken to comply with Paragraph II of the order; and

B. One year (1) 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 each has complied and is complying with the provisions of this order.

**X**

It is further ordered that each of the Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in such Respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in such Respondent that may affect compliance obligations arising out of the order.

**XI**

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 and on reasonable notice to Respondents, each of the Respondents shall permit any duly authorized representative of the Commission.

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such Respondent relating to any matters contained in this order; and

B. Upon five days' notice to such Respondent and without restraint or interference from it, to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

**Analysis To Aid Public Comment on the Provisionally Accepted Consent Order**

The Federal Trade Commission ("the Commission") has accepted for public comment from Del Monte Foods Company, Del Monte Corporation ("Del Monte"), and Pacific Coast Producers ("PCP") and agreement containing

consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty 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 order.

The Commission's investigation of this matter concerns a supply agreement between Del Monte and PCP that commenced in July of 1992. The effect of the supply agreement was that Del Monte acquired the business of PCP, and PCP was no longer a competitor in the market for canned peaches, pears, fruit cocktail, and fruit mix ("canned fruit"). The supply agreement also contained an option agreement by which Del Monte had the right to purchase PCP outright. The agreement containing consent order would, if finally accepted by the Commission, settle charges alleged in the Commission's complaint that the supply agreement and option agreement substantially lessened competition in the sale of canned fruit in the United States and that Del Monte entered into such agreements with the effect of restraining, lessening, or eliminating competition, or acquiring or maintaining market power in the same market. The Commission's complaint further alleges that such agreements had and will have anticompetitive effects and that, in entering into such agreements, respondents violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The order accepted for public comment contains provisions that would require that Del Monte and PCP terminate the supply agreement in June of 1995 and terminate the option agreement and certain provisions of the supply agreement within three days after the date the order becomes final. The provisions of the supply agreement that would require termination within three days relate to planning for the 1995 canning season. The purpose of the delay in terminating the entire supply agreement is to assure the orderly return of PCP to the market as a viable operation engaged in the sale of canned fruit in the United States. The delay permits PCP time to plan for the manufacture of fruit for the 1995 canning season and obtain customers for that fruit, without the pressure of marketing last year's inventory.

For a period of ten years from the date the order becomes final, the order would also prohibit Del Monte from

acquiring, without prior Commission approval, stock in or assets of an entity engaged in the manufacture of any type of canned fruit in the United States. Acquisitions, for investment purposes only, of less than 1% of the outstanding stock of a publicly-traded company would be exempt from the prior approval provision.

Acquisitions of certain assets valued at less than \$1.5 million would also be exempt from the prior approval provision, but the order would require that Del Monte give 30 days' notice to the Commission before consummating the acquisition.

For a period of ten years from the date the order becomes final, the order would also prohibit Del Monte, without obtaining prior Commission approval, from entering into an agreement to buy canned fruit from, or market canned fruit for, a person engaged in the manufacture of canned fruit in the United States. Del Monte would not, however, have to obtain prior Commission approval for purchases made on the spot market.

For a period of ten years from the date the order becomes final, the order would also prohibit Del Monte, without obtaining prior Commission approval, from having canned fruit packed on Del Monte's behalf ("co-pack") by Tri Valley Growers or PCP. Tri Valley Growers is a large manufacturer of canned fruit. Del Monte and PCP may enter into a co-pack agreement for canned fruit, without obtaining prior Commission approval, if the following conditions are met: (1) The amount of PCP's peaches used in the co-pack for Del Monte does not exceed 8,000 tons in any year; (2) the amount or retail sizes packed under the co-pack does not exceed 10% of PCP's output; (3) the total amount of the co-pack does not exceed 40% of PCP's output in each of the first two years after the order becomes final and 30% of PCP's output in each year thereafter. Prior to entering into the supply agreement that is the subject of this compliant, PCP co-packed canned fruit for Del Monte.

For a period of five years from the date the order becomes final, the order would also prohibit Del Monte, without obtaining prior Commission approval, from having canned fruit packed on Del Monte's behalf ("co-pack") by any entity engaged in the manufacture of canned fruit. In years six through ten, Del Monte would have to provide prior notice to the Commission of such a co-pack, but would not need to obtain prior approval.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of