

Memorandum

MT34/28496



COPY

Gibbs

Subject Frito-Lay's Proposed Acquisition of Assets of Eagle Snacks, Inc.: Recommendation to Close Investigation

Date April 21, 1996

60-2096-000

To J. Robert Kramer, II, Chief
Willie Hudgins, Asst Chief
Litigation II Section

From Patricia G. Chick
Joel A. Christie
Attorneys, Litigation II

Closed 2/26/96 per CK Robinson/jemy

For the reasons discussed below, we recommend that the Division close the captioned investigation [REDACTED]

Background

On February 7, 1996, Anheuser-Busch announced that it was closing down its Eagle Snacks business and selling four of the ESI plants to Frito-Lay, the company that had been its number one competitor.

[REDACTED]

Eagle Snacks was, until the February 7th announcement, the second largest seller of salty snacks in the U.S., and the only national brand other than Frito-Lay. It was a money loser for each of the years that it was in business, and had been publicly on the block since October of 1995. Had A-B sold the business as an ongoing concern to a purchaser who would continue to operate it as a national brand, Frito-Lay would have faced continued competition from Eagle. When A-B instead closed the business down, and sold four of the company's plants to Frito-Lay, that company's competitive posture changed dramatically.

On March 8, 1996, [REDACTED]

[REDACTED]

Investigation

We interviewed officials of both companies, obtained documents from and interviewed at length the investment bankers hired to sell ESI (Goldman-Sachs), [REDACTED]

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[REDACTED]

[REDACTED]

(b)(5)

(b)(4)

[REDACTED] It than publicly announced that the business was for sale, and retained Goldman-Sachs. [REDACTED]

[REDACTED]

[REDACTED]

(b)(5)

(b)(4)

[REDACTED]

(b)(4)

[REDACTED]

(b)(5)

[REDACTED]

b4

Recent Developments

On April 12, 1996, A-B reached an agreement to sell the Eagle brand name to Proctor & Gamble for \$5 million cash up front and a number of other contingent payments, total value estimated to be \$11 million.

[REDACTED]

(b)(5)

The other recent development that has come to our attention is that Joseph Alioto, a private antitrust attorney in California, is intending to file a private suit on behalf of a number of Eagle distributors to enjoin the transaction. While we do not know the exact timetable this may be imminent. We have talked to Alioto, who believes A-B had an obligation to offer ESI piecemeal, but does

not have any clients that he was prepared to say were interested in buying all or any part of it.

Conclusion

