

Memorandum



Subject Request to Open Preliminary Investigation:
Acquisition of Eagle Snacks, Inc. by
Frito-Lay, Inc.

Date February 11, 1996

60-20961234

To J. Robert Kramer
Chief
Litigation II

From Joel A. Christie
Litigation II

Preliminary investigation authority is requested for the following matter:

Product(s): potato chips, corn chips,
and similar snacks
SIC Code(s): 2096, 2052
Potential defendants/parties: PepsiCo, Inc.

Anderson Hill Road
Purchase, NY 10577

Frito-Lay, Inc.
7701 Legacy Drive
Plano, TX 75024-4099

Anheuser-Busch Companies,
Inc.
One Busch Place
St. Louis, MO 63118

Eagle Snacks, Inc.
231 South Bemiston Avenue,
Suite 600

Clayton, MO 63105
Clayton Act, Section 7

Statute:

Description of Illegal Conduct: horizontal merger
Amount of Commerce: \$15 billion
Geographic Market: nationwide
Premerger Notification Transaction #: 96-1029

Pending FTC Clearance: X

FTC CLEARANCE GRANTED/DENIED: _____
PI AUTHORITY AUTHORIZED BY: _____
ON: _____
PI AUTHORITY DISAPPROVED BY: _____
ON: _____
NEW DOJ FILE NO: _____

Issues and Analysis:

Frito-Lay, Inc. ("Frito-Lay") is by far the nation's largest producer of salty snacks, a market of \$15 billion annually. It seeks to acquire the assets of four manufacturing facilities from Eagle Snacks, Inc. ("Eagle"), which is the only other national brand in the salty snacks market. Frito-Lay's dominance in this market, with over 50 percent market share currently in several categories, can only intensify with this acquisition.

We have received one citizen complaint [REDACTED] [REDACTED] 7D
[REDACTED] Articles in the trade press also indicate sentiment against the merger from large food retailers and regional competitors.

One major question we must answer quickly is whether Eagle meets the definition of a "failing firm" under the Merger Guidelines. An article in the Wall Street Journal on February 8, 1996 reported that Eagle "never made money during its 17 years in salty snacks" and may have lost \$25 million in 1995.

The Litigation II staff currently is conducting an investigation into the proposed merger of two producers of masa flour. [REDACTED] [REDACTED] (b)(5)

Past Investigations:

Proposed Acquisition of Certain Assets of Gruma S.A. de C.V. by the Archer-Daniels-Midland Company

In connection with its investigation of a proposed merger between the nation's two largest producers of masa flour, staff has [REDACTED] as well as numerous third-party CIDs. Moreover, staff has spoken on several occasions to counsel for Frito-Lay, and conducted interviews of Frito-Lay employees, competitors, and customers. Topics covered in these interviews included capacity, production lines, production costs, market entry and expansion. Currently, staff is working with Frito-Lay counsel to obtain affidavits on excess capacity and market entry.