Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Nestle Food Company, a corporation, File No. 941–0124.

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated and investigation of the proposed acquisition by Nestlé Food Company ("Nestlé"), a direct wholly-owned subsidiary of Nestlé Holdings, Inc., a wholly-owned subsidiary of Nestlé S.A., of certain assets of Allen Products Company, Inc., d/b/a ALPO PetFoods, and its subsidiaries ("Alpo"), a whollyowned subsidiary of Grand Metropolitan Incorporated ("Grand Metropolitan"), and it now appearing Nestlé, hereinafter referred to as proposed respondent, and Nestlé S.A. are willing to enter into an Agreement Containing Consent Order ("Agreement") to divest certain assets, to cease and desist from making certain acquisitions, and providing for other relief:

It Is Hereby Agreed By And Between Nestlé and Nestlé S.A. by their duly authorized officers and attorneys, and counsel for the Commission that:

- 1. Proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 800 North Brand Boulevard, Glendale, California 91203.
- 2. Nestlé S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its principal executive offices located at Avenue Nestlé 55, Ch-1800 Vevey, Switzerland.
- 3. Nestlé and Nestlé S.A. admit all the jurisdictional facts set forth in the draft of Complaint.
 - 4. Nestlé and Nestlé S.A. waive:
 - (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the

validity of the order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

6. This Agreement is for settlement purposes only and does not constitute an admission by Nestlé or Nestlé S.A. that the law has been violated as alleged in the draft of Complaint, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Nestlé S.A., (1) issue its Complaint corresponding in form and substance to the draft of Complaint and its Decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and decision containing the agreed-to Order to Nestlé's address as stated in this Agreement shall constitute service. Nestlé waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Nestlé and Nestlé S.A. have read the proposed Complaint and Order contemplated hereby. Nestlé understands that once the Order has been issued, it will be required to file one or more compliance reports showing that they have fully complied with the Order. Nestlé and Nestlé S.A. further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

A. "Respondent" or "Nestlé" means Nestlé Food Company, its parent Nestlé S.A., predecessors, subsidiaries, divisions, and affiliates and groups controlled by Nestlé Food Company, their directors, officers, employees, agents, and representatives, and their successors and assigns.

B. "Nestlé S.A." means Nestlé S.A., its predecessors, subsidiaries, divisions, and affiliates and groups controlled by Nestlé S.A., their directors, officers, employees, agents, and representatives, and their successors and assigns.

C. "Alpo" means Allen Products Company, Inc., its predecessors, subsidiaries, divisions, and affiliates and groups controlled by Allen Products Company, Inc., their directors, officers, employees, agents, and representatives, and their successors and assigns.

D. "Acquisition" means the acquisition by Nestlé from Alpo of certain assets of Alpo, as described in an Asset Purchase Agreement dated September 16, 1994.

E. "Commission" means the Federal Trade Commission.

F. The "assets to be divested" or "Fort Dodge Plant" means the following assets used in the manufacture of canned pet food, which assets are located at 2400 5th Avenue South, Fort Dodge, Iowa 50501:

 a. All buildings, machinery, fixtures, equipment, vehicles, storage facilities, furniture, tools, supplies, spare parts and other tangible personal property;

b. All rights, title and interest in and to real property, together with appurtenances, licenses, and permits;

 c. All rights under warranties and guarantees for equipment, express or implied;

d. All on site quality control equipment, including all supplies and technical information and drawings concerning the equipment; and

e. At the option of the Acquirer, to the extent such can be assigned to the Acquirer without third party consent, all rights, title, and interests in and to the contracts entered into in the ordinary course of business with suppliers, personal property lessors and