licensors, pertaining solely to the operation of the Fort Dodge Plant.

[^]Provided, however, that excluded from the assets to be divested are: (i) Meat chunk sizer equipment that is proprietary to Nestlé and/or Nestlé S.A., and (ii) all inventory of finished goods, work in progress, raw materials and supplies used only in the production of finished goods.

G. "Fort Dodge Plant Employees" means all Nestlé employees based at the Fort Dodge Plant location as of the date of divestiture.

H. "Optional Assets" means any or all of Alpo's recipes for private label canned pet food that may be licensed without the consent of any third party and that were in existence as of September 16, 1994.

II

It Is Further Ordered that:

A. Nestlé shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Fort Dodge Plant.

B. Nestlé shall divest the Fort Dodge Plant only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Fort Dodge Plant is to ensure the continued use of the Fort Dodge Plant in the manufacture and production of canned cat food and to remedy the lessening of competition alleged in the Commission's complaint.

C. Pending divestiture of the Fort Dodge Plant, Nestlé shall take such actions as are reasonably necessary to maintain the viability and marketability of the assets to be divested and to prevent the destruction, removal, wasting, deterioration, or impairment of any assets that are subject to divestiture pursuant to this Order except for ordinary wear and tear.

D. Nestlé shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as Nestlé has divested all of the assets to be divested.

E. Nestlé shall facilitate and not interfere with the Acquirer's hiring of any Fort Dodge Plant Employees as may desire to undertake such employment.

III

It Is Further Ordered that:

A. If Nestlé has not divested, absolutely and in good faith and with the Commission's prior approval, the Fort Dodge Plant within twelve (12) months of the date this Order becomes

final, the Commission may appoint a trustee to divest the assets to be divested. The trustee shall also have the authority, with the prior approval of the Commission, to license the Optional Assets on a non-exclusive basis to the Acquirer for a period not to exceed five (5) years from the date of the divestiture of the Fort Dodge Plant. In the event the Commission or the Attorney General brings an action pursuant to section 5(l)of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Nestlé shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other available relief, including a courtappointed trustee, pursuant to section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Nestlé or Nestlé S.A. to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Nestlé shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Nestlé, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisition and divestitures of manufacturing facilities. If Nestlé has not opposed, in writing, the selection of any proposed trustee within ten (10) days after its receipt of notice by the staff of the Commission to Nestlé of the identity of any proposed trustee, Nestlé shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Fort Dodge Plant and have the authority to grant to the Acquirer a nonexclusive license of Optional Assets, as described in Paragraph III.A.; for a period not to exceed five (5) years from the date of the divestiture of the Fort Dodge Plant, to facilitate the divestiture.

3. Within ten (10) days after appointment of the trustee, Nestlé shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers reasonably necessary to permit the trustee to effect the divestiture required by this Order, and, if appropriate, the license of Optional Assets.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.(3) to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that the divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the court in the case of a courtappointed trustee; provided, however, the Commission may only extend the divestiture period two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records (to the extent not prohibited by law) and facilities related to the Fort Dodge Plant, the Optional Assets, or to any other relevant information, as the trustee may request. Nestlé shall develop such financial or other information as such trustee may request and shall cooperate with any request of the trustee. Nestlé and Nestlé S.A. shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Fort Dodge Plant or the license of the Optional Assets. Any delays in divestiture caused by Nestlé or Nestlé S.A. shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or by the court for a court-appointed trustee.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Nestlé, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Nestlé, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary, and at reasonable fees, to carry out the trustee's