Inc., Mullins, South Carolina, and thereby indirectly acquire Anderson Brothers Bank, Mullins, South Carolina.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Futurus Financial Services, Inc., Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Futurus Bank, N.A. (in organization), Roswell, Georgia.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Waumandee Bancshares, Ltd., Waumandee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Waumandee State Bank, Waumandee, Wisconsin.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Corpus Christi Bancshares, Inc., Corpus Christi, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, Bishop, Texas.

Board of Governors of the Federal Reserve System, March 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6136 Filed 3–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. SierraCities.com, Inc. (formerly known as First Sierra Financial, Inc.), Houston, Texas, and FSF of Delaware, Inc., Wilmington, Delaware, to retain all the voting shares of SierraCities Financial, Inc., First Sierra Receivables, Inc., First Sierra Receivables II, Inc., First Sierra Receivables III, Inc., First Sierra Receivables IV, Inc., all of Houston, Texas, and thereby engage in making, acquiring, brokering, or servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; and leasing personal or real property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6137 Filed 3–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 961 0050]

McCormick & Company Incorporated; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 7, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Willard Tom, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, have been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 8, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments on 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)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from McCormick & Company, Incorporated (''McCormick''), the world's largest spice company, that is designed to resolve claims, set forth in the accompanying Complaint, that McCormick discriminated in the pricing of its products to certain competing supermarket purchasers in violation of Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a). The Consent Order requires McCormick to refrain from unlawfully discriminating in the prices at which it sells its products to competing purchasers in the

supermarket channel. In addition, in those instances in which McCormick believes that its pricing is lawful because its prices were offered to meet competition from a competing supplier, the Consent Order requires McCormick, for a period of ten years, to contemporaneously document the information on which it bases its entitlement to the statutory meeting competition'' defense.

The proposed Consent has been placed on the public record for 30 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

McCormick's Business. McCormick, with its principal office and place of business in Sparks, Maryland, has been engaged for many years in the production, distribution and sale of spice and seasoning products for resale. Its products sold through supermarkets include core and gourmet spice lines, dry seasoning mixes, and so-called ''competitive seasonings'' such as meat tenderizers, monosodium glutamate (MSG), and garlic and other spice blends. Respondent sells these products under the brand names McCormick, Schilling, Fifth Seasons, Spice Classics, Select Seasons, Mojave, Spice Trend, Royal Trading, Crescent, McCormick Schilling, La Cochina De McCormick, McCormick Collection and Old Bay, among others. With 1998 retail sales of $623.7 million in the Americas, McCormick is the largest supplier of spice and seasoning products in the United States, and claims to be ''the world's largest spice company.''

Among those firms that supply core or gourmet spice lines for sale in supermarkets in the United States, McCormick is by far the leading firm, accounting for the majority of such sales nationally. Since the early 1990's, McCormick has faced competition in such sales from only one other national firm, Burns Philp Food Incorporated, and several much smaller independent regional or local firms. These circumstances, combined with the superior brand recognition of McCormick products, mean that supermarkets that purchase McCormick products have relatively few alternative sources for equivalent products from other suppliers at comparable prices and terms.

McCormick's Pricing. During the period pertinent to the Complaint, McCormick had a single national price list for its products sold to direct customers, whether retail supermarkets or wholesalers reselling to independent supermarkets. McCormick modified this price list from time to time, to reflect changes in McCormick's costs to manufacture particular products, among other reasons. However, relatively few McCormick customers paid the list price. Instead, McCormick commonly entered into written or unwritten supply agreements with customers that provided substantial discounts off the list prices. These discounts took a variety of forms, including cash payments at the commencement of the supply agreement, free goods, off-invoice discounts, cash rebates, performance funds and other financial benefits that effectively reduced the net price of McCormick's products. Typically, McCormick individually negotiated with particular customers the amount of discounts and payments; the aggregate percentage of discounts and benefits provided to a particular customer was commonly known as the ''allowance offer'' or the ''deal rate.'' McCormick's aggregate discounts and financial benefits to some customers were substantially greater than to some other competing customers.

Frequently the McCormick discounts included up-front cash payments that resembled the payments sometimes called ''slotting allowances'' in the supermarket industry. However, the McCormick discounts and payments typically were for all or a substantial part of the existing McCormick product line and typically were not incentives to accept new McCormick products. McCormick's supply agreements with customers commonly include provisions that, as is sometimes seen with slotting allowances, restrict supermarket customers' ability to deal in the products of competing spice suppliers. Such provisions commonly require that the customer allocate to McCormick the large majority (as much as 90%) of the shelf space devoted to spice products.

Price Discrimination. The complaint alleges that in the period from at least 1994 to the present, McCormick has on no fewer than five instances discriminated in price by providing different deal rates consisting of preferential up-front ''slotting''-type payments or allowances, discounts, rebates, deductions, free goods, or other financial benefits. Through such discriminatory terms of sale, McCormick sold its products to the favored purchasers at a lower net price than to the disfavored purchasers, in violation of section 2(a) of the Robinson–Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a).

The Complaint alleges that, in each instance of discrimination, McCormick made contemporaneous sales of McCormick products of like grade and quality to a favored and a disfavored purchaser; the disfavored purchaser competed with the favored purchaser which resold respondent's products at the same level of distribution; and at least one of the discriminatory sales by McCormick involved commodities that crossed state lines. The Complaint also alleges that each of the spice and seasoning products that make up McCormick's product line is a commodity within the meaning of the statute.

The Complaint alleges that McCormick's price discrimination threatened injury at the ''secondary line'' level of competition, that is, at the level of the favored and disfavored purchasers. It alleges that each instance of discrimination involved a substantial price difference over a substantial period of time between competing purchasers in markets where profit margins are low and competition is keen. These circumstances give rise to an inference of competitive harm within the meaning of the statute, pursuant to the reasoning of the Supreme Court in *Federal Trade Commission* v. *Morton Salt Co.,* 334 U.S. 37, 50–51 (1948), and subsequent cases. While that inference may not be sufficient by itself in some circumstances to warrant bringing a case, in this instance the inference is strengthened by McCormick's position as the largest supplier of spice and seasoning products in the United States and by the fact that McCormick typically demanded that customers allocate to McCormick the large majority of the space devoted to spice products—in some cases 90% of all shelf space devoted to packaged spices, herbs, seasonings and flavorings of the kinds offered by McCormick. As alleged in the Complaint, disfavored purchasers consequently had few, if any, alternative sources from which to purchase comparable goods at prices and terms equivalent to those which McCormick provided to the favored purchasers.

The Complaint also alleges that the favorable prices and terms McCormick provided to the favored purchasers were not justified by good faith attempts to meet the equally low price of a competitor; nor were the favorable prices justified by cost savings associated with doing business with the

favored retailer. The instances of price discrimination were therefore not within the scope of either the statutory ''meeting competition'' or ''cost justification'' defenses established by sections 2(a) and (b) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a) and (b).

The Order Provisions. The Consent Order provides relief for the violations alleged in the Complaint. The Order applies to McCormick's sale of products, broadly defined to include spices, seasonings and other products used to season or flavor foods, packaged for sale to consumers. The Consent Order does not apply to products packaged for sale to food service or industrial customers, which are beyond the scope of the conduct at issue in the Complaint. Order, ¶ I.B. The Order applies to McCormick's sales to persons or entities that purchase McCormick products for resale. Order, ¶ I.C.

The principal relief is contained in Paragraph II of the Consent Order, which requires that McCormick cease and desist from price-discriminating, within the meaning of section 2(a) of the Robinson-Patman Act, by selling its products to any purchaser at a net price higher than that charged to any competing purchaser, where the discrimination may cause competitive harm as contemplated by the statutory language. ''Net Price'' is defined as the list price of McCormick Products less advances, allowances, discounts, rebates, deductions, free goods and other financial benefits provided by McCormick and related to such products. Order, ¶ I.D.

The inclusion of competitive harm language in Paragraph II ensures that the remedy established by the Consent Order is not over-broad and does not enjoin instances of price discrimination otherwise lawful under the statute. This paragraph also includes a proviso that makes applicable under the Order the statutory defenses set forth in sections 2(a) and (b) of the Robinson-Patman act, thus accomplishing explicitly what otherwise would be implicit pursuant to the Supreme Court's decision in *Federal Trade Commission* v. *Ruberoid Co.,* 343 U.S. 470, 475–478 (1952).

As further relief, Paragraph III orders that for each instance in which McCormick wishes to avail itself of the ''meeting competition'' defense of section 2(b) of the Robinson Patman Act, [1] McCormick is required to contemporaneously document all information on which it bases its entitlement to the defense, and to retain such documentation in its files for five years after the lower price made to meet competition is no longer effective. This provision is ''fencing-in'' relief [2] that should ensure the existence of a reliable evidentiary basis in future instances where McCormick invokes the defense.

In addition to these principal relief provisions, the Consent Order requires that McCormick distribute a copy of the Order to all officers, employees, brokers, and agents of its operating divisions involved in the sale of products covered by the order, and in the future to new employees, brokers, and agents. Order, ¶ IV. McCormick is required to inform the Commission of corporate changes that may affect its compliance obligations under the Order (Order, ¶ V), and to file reports concerning its compliance under the Order (*id.*, ¶ VI.) The term of the Order is twenty years (*id.*, ¶ VII); the obligations under ¶ III to document the ''meeting competition'' defense and under ¶ VI to file annual compliance reports extend for ten and five years, respectively.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson

The Analysis to Aid Public Comment fully describes the Commission action in this matter. Some comments by our dissenting colleagues, however, require a brief response.

The Commission has accepted for public comment a consent order from McCormick & Company Inc. (''McCormick'') in which the company has agreed to cease and desist granting discounts (partly in the form of up-front shelf-allocation payments) to large chains without making comparable payments available to other chains and independents that compete with the favored chains. Under the Supreme Court's controlling decision in *FTC* v. *Morton Salt Co.,* [1] injury to competition at the retailer (i.e., ''secondary'') level can be inferred where substantial and durable price discrimination exists between competing purchasers who operate in a market with low profit margins and keen competition.

McCormick is far and away the largest manufacturer and supplier of full lines of spices to grocery stores in the United States. In the early 1990s, it found itself in a price war with Burns-Philp Food Inc. (''Burns-Philp''), it only full-line competitor. Substantial discriminatory discounts were granted to favored chains, often accounting for many individual stores, and not to competing retailers.

In examining McCormick's discounts, the Commission did not simply apply the Morton Salt presumption in finding injury to competition, but examined other factors, including the market power of McCormick and the fact that discounts to favored chains were conditioned on an agreement to devote all or a substantial portion of shelf space to the McCormick line of products. Our dissenting colleagues applaud the fact that the Commission is willing to examine injury to competition by looking at factors beyond those narrowly described in the Morton Salt approach, but conclude that those factors do not justify a secondary-line price discrimination case here. We do not find their arguments persuasive.

1. The dissenting Commissioners observe that the discriminatory discounts were granted in the midst of, and possibly because of, a price war. But the Robinson-Patman Act limits on discriminatory pricing—including the rule that a seller can meet but not exceed prices offered by a competitor [2]—are not suspended during price wars.

2. Our colleagues suggest that this is a primary-line case (i.e., injury at the producer level) masquerading as a secondary line (injury at the retailer level) enforcement action. But that kind of distinction between primary-line and secondary-line anti-competitive effects is unduly rigid and mechanical—particularly in light of the facts of this matter. It is true that part of the injury at the secondary level occurred because McCormick's behavior injured its only full-line competitor. But that is just one part of the secondary-line case. The fact remains that favored chain store buyers received from a dominant seller substantially better discounts than disfavored buyers, and they were injured, and competition at the secondary line was injured, as a result. Moreover, with Burns-Philp out of the picture as an aggressive competitor,

[1] Section 2(b) of the Robinson-Patman Act permits a seller to rebut a prima-facie case 2f price discrimination by showing that his lower price ''was made in good faith to meet an equally low price of a competitor.'' 15 U.S.C. 13(b).

[2] *See Federal Trade Commission* v. *National Lead Co.,* 352 U.S. 419, 430 (1957).

[1] 334 U.S. 37 (1948) (Morton Salt).

[2] See *Falls City Indus.* v. *Vanco Beverage, Inc.,* 460 U.S. 428, 446 (1983) (''a seller's response must be defensive, in the sense that the lower price must be calculated and offered in good faith to 'meet not beat' the competitor's low price.'')

chain stores and other retailers at the secondary level will be denied benefits of future competition.

3. The Commission was influenced in the decision to enforce the Robinson-Patman Act here because McCormick is a dominant seller. Our colleagues' conclusion—that market dominance by the discriminating seller should be irrelevant to secondary-line price discrimination—flies in the face of commentary by leading scholars such as Herbert Hovenkamp suggesting that the dominance of the seller is exactly the factor that should be examined in the exercise of prosecutorial discretion. [3]

The essential feature of Commission action here should not be lost in a quarrel over particular facts. As the Analysis to Aid Public Comment points out, there will be circumstances in which the Morton Salt presumption is appropriate and dispositive. There may be other market settings in which it makes sense for the Commission, as a matter of prosecutorial discretion, or the Commission and Courts, in the process of considering whether there has been a violation, to look past the Morton Salt factors to a broader range of market conditions to determine whether there has been real injury to competition. Taking those additional factors into account, the majority concluded that there was injury not just to the disfavored buyers, but to secondary-line competition generally.

Dissenting Statement of Commissioners Orson Swindle and Thomas B. Leary

We respectfully dissent from the Commission's decision to accept a consent agreement with McCormick & Company, Inc. (''McCormick'') to resolve allegations that the company violated the Robinson-Patman Act. We recognize that the majority sincerely believes that this case will clarify a controversial statute and property circumscribe its application. We are concerned, however, that this case will have precisely the opposite effect.

McCormick is the largest American supplier of species to grocery stores, with more than 2,000 contracts [1] that account for a majority of spice sales in the United States. (Complaint ¶–1A5). During the past decade, McCormick's main competitor has been Burns Philp Food Incorporated (''Burns Philp''). In the early 1990s, Burns Philp commenced a price war in which both it and McCormick offered increased discounts and other payments to try to win the business of grocery stores.[2] When the price war ended, McCormick remained the dominant spice supplier in the United States, and Burns Philp's ability to compete may have been impaired.[3]

A supplier may violate section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a), if it engages in price discrimination that causes so-called ''primary-line'' injury. Primary-line injury under the statute occurs when a difference in price causes harm to competition between suppliers. A case predicated on primary-line injury to Burns Philp or other suppliers of spices would require proof that the discriminatory prices that McCormick charged grocery stores were below cost and that McCormick had a reasonable prospect of recouping its losses. See *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp,* 509 U.S. 209 (1993). In other words, primary-line injury to suppliers is actionable only when there is a threat of ultimate injury to buyers. The Commission's complaint does not allege that McCormick engaged in price discrimination that caused primary-line injury to suppliers such as Burns Philp.

Instead, after more than three years of investigation and the commitment of substantial resources, the majority of the Commission has alleged that McCormick engaged in price discrimination that caused ''secondary-line'' injury, *i.e.,* harm to competition between buyers. Specifically, out of McCormick's more than 2,000 contracts, the complaint alleges that in five instances McCormick charged higher prices to certain grocery stores than it charged to their competitors. (Complaint ¶ 12). The higher prices that the disfavored grocery stores paid McCormick for spices allegedly harmed their ability to compete against other grocery stores for customers. (Id. ¶ 19).

The majority statement conveys the impression that there was actual secondary-line injury in this case. But the Commission does not rely on direct evidence of secondary-line injury to the disfavored grocery stores. Rather, the Commission relies on the so-called ''Morton Salt inference'' of competitive harm. (Id. ¶ 17). for more than 50 years, courts have used the Morton Salt inference that ''injury to competition is established prima facie by proof of a substantial price discrimination between competing purchasers over time.'' [4] In essence, the Morton Salt inference permits a court to infer injury to a disfavored purchaser from a persistent and substantial discriminatory price in a market where profit margins are low and competition is keen, and then to infer injury to competition from the injury to the disfavored purchaser.

We question whether the facts in this case support the application of the Morton Salt inference. The Robinson-Patman Act was primarily intended to prevent price discrimination in favor of large buyers at the expense of small buyers.[5] When a small buyers pay more than a large buyer for an item in an industry with low profit margins and keen competition, the Morton Salt inference may make sense. In such circumstances, it is reasonable to infer that the purchasing power of the large buyer will cause the price discrimination to be repeated across many items, with consequent competitive injury to the small buyer.

The complaint does not allege that the favored grocery stores were larger than the disfavored grocery stores [6] or that they purchased more spices from McCormick. Since the favored stores here were not necessarily purchasing larger quantities of spices than the disfavored stores, it is unlikely that McCormick granted lower prices to the favored grocery stores because of their buying power. In fact, the most plausible explanation for the lower prices granted in the five instances alleged in the complaint is that they were the almost fortuitous and incidental result of McCormick's responses during its price war with Burns Philp. If the favored stores were not accorded lower spice prices because

[3] See, e.g., Herbert Hovenkamp, Market Power and Secondary-Line Differential Pricing, 71 Geo. L.J. 1157, 1170 (1983) (''Systematic, long-term price discrimination can be achieved only by a seller with market power. If the seller does not have market power, purchasers asked to pay the higher price will purchase from another seller willing to sell at a more competitive price.'')

[1] See McCormick & Company, Inc., Press Release, McCormick Signs Settlement Agreement with the Federal Trade Commission at 2 (Feb. 3, 2000), (McCormick has ''more than 2,200 customer contracts'').

[2] Anthony Hughes, Burns Philp Was Inept, Says ASIC, The Age at 2 (Mar. 11, 1999).

[3] Id. ''Inadequate financial reporting to the board of directors and its failure to question overstated valuations were largely behind the near-collapse of the food group Burns Philp & Co., a report by the Australian Securities and Investments Commission has found.'').

[4] Falls City Indus., Inc. v. Vanco Beverage, Inc., 460 U.S. 428, 435 (1983) (citing Federal Trade Commission≤ v. Morton Salt Co., 334 U.S. 37, 46, 50–51 (1948)).

[5] In enacting the Robinson-Patman amendments, the Congress addressed the concern that large buyers could secure a competitive advantage over small buyers solely because of the large buyers' quantity purchasing ability. H.R. Rep. No. 2287, 74th Cong., 2d Sess. 7 (1936); S. Rep. No. 1502, 74th Cong., 2d Sess. 4–6 (1936).

[6] To the extent that the majority tries to suggest that the disfavored stores are ''mom-and-pop'' operations, in fact only one of the disfavored stores could be so characterized; the rest of the disfavored stores are all large or relatively large grocery store chains.

of their buying power, there is little reason to believe that the favored stores generally would receive lower prices from the suppliers of the thousands of products sold in the typical grocery store. It follows that it is unlikely that the ability of the disfavored grocery stores to compete with favored stores would be harmed—the underlying rationale for use of the Morton Salt inference.

The Analysis to Aid Public Comment emphasizes that the Commission is not relying on the Morton Salt inference by itself to support bringing a case. Analysis of Proposed Consent Order to Aid Public Comment at 4. The Analysis explains that the use of the Morton Salt inference in this case is particularly appropriate because McCormick is the largest supplier of spices in the United States and because the company typically demanded that grocery stores allocate to McCormick a large majority of the shelf space they devoted to spices. Id; see Complaint ¶¶ 6, 10, 18. Although we share the majority's apparent view that the public interest generally would be better served if the Commission did not bring Robinson-Patman cases based only on the Morton Salt inference, the majority has not identified additional facts that warranted bringing this case.

McCormick's alleged market power as a supplier and its alleged discriminatory prices may have harmed the ability of Burns Philp and other suppliers to compete with McCormick. But this does not make it any more plausible that McCormick's alleged discriminatory prices harmed the ability of the disfavored grocery stores to compete with the favored grocery stores. In the long run, if McCormick's pricing has harmed the ability of Burns Philp or other suppliers to compete, the loss of alternative suppliers would harm both the disfavored grocery stores and the favored grocery stores (once their present contracts with McCormick expire). A loss of alternative suppliers is a classic consequence of primary-line injury, but such a loss does not necessarily have a differential impact on buyers that will cause secondary-line injury—the relevant level of commerce in this case.[7]

We recognize that there has been much controversy over the years concerning the use of the Morton Salt inference and that the inference has not been uniformly applied.[8] Overall, the concern has been that the inference makes violations too easy to prove.[9] It is laudable that the majority has tried to limit the use of the Morton Salt inference. We do not believe, however, that evidence of supplier market power justifies bringing cases in which the Morton Salt inference is used as the basis to prove competitive harm among buyers.[10] Because the majority has no other basis on which to show secondary-line competitive injury in this case, we dissent.[11]

[FR Doc. 00–6231 Filed 3–13–00; 8:45 am]

BILLING CODE 6750–01–M

[7] We do not suggest that market power of the supplier is irrelevant in a Robinson-Patman Act case—in fact, it is likely to be present in all cases of economic price discrimination. However, supplier market power is not dispositive of whether secondary-line injury is likely to have occurred. Our agreement with the majority that McCormick is the dominant spice seller does not overcome the lack of proof of secondary-line injury in this case.

[8] See ABA Section of Antitrust Law, Antitrust Law Developments 450–51 (4th ed. 1997).

[9] See, *e.g.,* LaRue, Robinson-Patman Act in the Twenty-First Century: Will the Morton Salt Rule Be Retired?, 48 S.M.U.L. Rev. 1917 (1995).

[10] As noted above, McCormick's alleged discriminatory prices were offered during a price war with its main competitor. We assume without deciding that a ''meeting competition'' defense under the Robinson-Patman Act would not have insulated McCormick from liability.

[11] We do recognize that the proposed narrowly circumscribed order would be appropriate in a proper secondary-line case.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00C–0929]

Kraft Foods, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kraft Foods, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of sodium copper chlorophyllin to color citrus base dry beverage mixes.

FOR FURTHER INFORMATION CONTACT: Aydin Orstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 0C0270) has been filed by Kraft Foods, Inc., c/o Flamm Associates, 622 Beachland Blvd., Vero Beach, FL 32963. The petition proposes to amend the color additive regulations to provide for the safe use of sodium copper chlorophyllin to color citrus base dry beverage mixes.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 29, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–6121 Filed 3–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93F–0331]

Hoechst Aktiengesellschaft; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) in announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4397) proposing that the food additive regulations be amended to provide for the safe use of dioctadecyldisulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 15, 1993 (58 FR 53517), FDA announced that a food additive petition (FAP 3B4397) had been filed by Hoechst Aktiengesellschaft, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of dioctadecyldisulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers. Hoechst Aktiengesellschaft has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).