

administrative proceeding by the Commission challenging the acquisition and until such proceeding is dismissed by the Commission. . . ."

The voluntary cessation of allegedly illegal conduct renders a motion for an injunction moot if it is "absolutely clear" that the conduct sought to be enjoined could not reasonably be expected to recur. Friends of the Earth, Inc. v. Laidlaw Env' Servs. (TOC), Inc., 120 S.Ct. 693, 708 (2000) (quotations omitted). In this case, a publicly held company has publicly abandoned merger plans after a unanimous appellate opinion as to which it did not seek further review. The government agency that opposed the merger has moved to dismiss the proceedings against it.¹ If Heinz and Beech-Nut were to rekindle their interest in one another at some later time, they would have to go through FTC pre-merger clearance procedures. United States v. Mercy Health Servs., 107 F.3d 632, 635-37 (8th Cir. 1997). It is hard to see how it could be any clearer that the Heinz-Beech-Nut merger cannot reasonably be expected to recur.

The claims of the FTC in this action are thus moot. The FTC has no warrant, in any event, to seek an injunction

¹ In federal civil practice, this would be a "nonsuit." See F. R. Civ. P. 41(a)(1), which requires no court order granting a voluntary dismissal, even after a responsive pleading has been filed, if everyone agrees to the dismissal.

maintaining the "status quo," when the status quo does not include merger plans. The motion for entry of a preliminary injunction will be denied, and the case will be dismissed.

An appropriate order accompanies this memorandum.

JAMES ROBERTSON
United States District Judge

Dated: _____

Copies to:

Richard B. Dagen
Paul J. Nolan
Gary H. Schorr
Thomas S. Respass III
Joseph Brownman
David A. Balto
James A. Fishkin
Federal Trade Commission
600 Pennsylvania Avenue,
N.W.
Washington, DC 20580

Counsel for Plaintiff

Edward R. Henneberry
Howrey & Simon
1299 Pennsylvania Avenue,
N.W.
Washington, DC 20004-2402

Counsel for Defendant H. J.
Heinz Company

Mark Kovner
Gerald F. Masoudi
David R. Pruitt
Kirkland & Ellis
655 15th Street, N.W.
12th Floor
Washington, DC 20005

Counsel for Defendant Milnot
Holding Corporation

David A. Bentley
Dewey Ballantine L.L.P.
1775 Pennsylvania Avenue,
N.W.
Washington, DC 20006-4605

Wayne A. Cross
Michael J. Gallagher
Michelle L. Wilhelm
Dewey Ballantine L.L.P.
1301 Avenue of the Americas
New York, NY 10019-6092

Counsel for Non Party Gerber

Copies to:

Richard B. Dagen
Paul J. Nolan
Gary H. Schorr
Thomas S. Respass III
Joseph Brownman
David A. Balto
James A. Fishkin
Federal Trade Commission
600 Pennsylvania Avenue,
N.W.
Washington, DC 20580

Counsel for Plaintiff

Edward R. Henneberry
Howrey & Simon
1299 Pennsylvania Avenue,
N.W.
Washington, DC 20004-2402

Counsel for Defendant H. J.
Heinz Company

Mark Kovner
Gerald F. Masoudi
David R. Pruitt
Kirkland & Ellis
655 15th Street, N.W.
12th Floor
Washington, DC 20005

Counsel for Defendant Milnot
Holding Corporation

David A. Bentley
Dewey Ballantine L.L.P.
1775 Pennsylvania Avenue,
N.W.
Washington, DC 20006-4605

Wayne A. Cross
Michael J. Gallagher
Michelle L. Wilhelm
Dewey Ballantine L.L.P.
1301 Avenue of the Americas
New York, NY 10019-6092

Counsel for Non Party Gerber