Memorandum

Subject Telephone Interview with [redacted]	Date May 7, 1996 60-2096-0002

To Nina B. Hale, Attorney
Transportation, Energy, and Agriculture Section

From William P. Jones, Paralegal Specialist
Transportation, Energy, and Agriculture Section

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On April 29, 1996 Nina Hale, Jill Ptacek and I spoke with [redacted]

GEOGRAPHIC MARKETS

[redacted] believes Frito owns a 70% national market share in the general US snack foods industry. He and the other callees define the "salty snack food industry" as

distribution: RWF, DNK, HALE, PTACEK, ALEXANDER - EAG, SWEENEY, JONES, CASE, CHRON, ARCHIVE

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including mainly corn-based snacks and potato chips, with tortilla items, pretzels and extruded cheese-based snacks such as "Cheetos;" each is a sub-category; as are peanuts and peanut-based snacks; but crackers are "slightly different" and fall outside the general salty snack generic category.

WHOLESALE CUSTOMER BASE

[redacted]

MEANS OF DISTRIBUTION

[redacted]

STAMPED PRE-PRICING

[redacted]

MARKET SHARE

[redacted]

MARKET REGIONS AND COMPETITOR DROPOUT

[redacted]

[redacted] PRODUCT TRANSPORT LIMITATIONS

[redacted]

MARKETING STRATEGY

[redacted]

SLOTTING FEES

[redacted] looks with disdain on the evolution of slotting fees/allowances, which, [redacted] says, began in the 1980's with Coca Cola and Pepsi creating a mega-beast. He adds that Eagle Snacks began with Safeway by paying the chain $150 per one foot of shelf space, and saw that cost climb to $500 for the same space in the San Francisco Safeway market before it left the snack foods industry. In southern California the cost today can reach $1,000 per section foot. Frito-Lay alone is capable of paying such a price or manipulating such costs to its own advantage. At $500 a foot, Frito can pay up and squeeze its smaller competitors totally off the shelf as prices escalates and space diminishes. [redacted]

In another case, a snack firm named [redacted] offered an unnamed grocer $500 for a comparable space but went defunct shortly afterward. Eagle Snacks then got [redacted] empty space for only [redacted] By then, however, it was spent. [redacted] emphasizes that even sympathetic retailers demand dollars for space. [redacted] independent distributors pay the retailer its slotting allowance in a process of bidding for space which the retailer orchestrates for a certain calender period. "Everyone puts his poker hand on..." and Frito always looms, with its deep pockets. When renegotiation time comes, many retailers push the ante up; this may happen four or more times a year and holiday periods have a special separate treatment. Often Frito will offer an advance rebate plan and bump its competitors from existing space while keeping its own space intact. It also pays for the "end cap" displays and stand-alone secondary displays that add much visibility and high sales in chain stores; it accomplishes this while outbidding [redacted] and others and grabbing their own section feet. [redacted]

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One critical fact, [redacted] asserts, is that [redacted] must spend [redacted] to stay "in the game" while Frito need spend only [redacted] times what Frito spends, just to stay in the same retail markets and "keep Frito at the table," as a competitor and not the controller of slotting practices in the snacks line. Should competition someday cease, Frito can merely walk away from retailer slotting demands. [redacted] So what does Frito pay, he asks. [redacted]

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cannot resist Frito-Lay [redacted] concludes, because there is no strong #2 competitor. All of the old competitors have been eliminated. [redacted] margin but Frito has things fairly well sewn up Someday, he says, Frito will pull its slotting allowance payments from store chains that it has gained a monopoly over but the chains don't see that coming; he adds, you (the retailer) need us to stimulate sales, because Frito's success will mean so-so sales for 6 months with small competitors getting maybe 40-50% of sales. In the long run, the retailer will suffer when the small competitor can no longer afford to survive. The grocer nowadays is in the business of selling space, the callees state, not cereal, canned goods and soap..... He sells milk, baby food and such items at cost to lure in the customer and makes his profit in strategically arranged parts of his store. Only beer, which is prohibited in many states by ABC laws from linkage with slotting fees or gifts received for display are not part of the manipulative slotting business.

[redacted] It gave the chain a [redacted] rebate and [redacted] has not seen the hard copy contract, and relies on the hearsay statements of his contacts for this information. He refers us to [redacted]

[redacted] Nearly all deals like the above are arranged with Frito-Lay or its competitors at retail main offices where food manufacturers negotiate for space and have slotting allowances extracted in various ways. At major chains like Kroger's, Albertson's and Safeway, (3 to 300 stores), slotting fees are the topic negotiated; at C-stores, exclusive dealing arrangements also happen; at box stores such as Sam's and Kosco's, as well as at drug stores, another kind of mass merchandiser, volume discount deals are struck and pricing and promotion arrangements are made along with slotting. Sometimes such retailers will decide to sell snacks and other items at or just above cost to stimulate traffic. [redacted] cites the example of a chain with a common display of 8 to 12 feet of shelf space which may carry 2 or 3 "players" in that spot.

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FRITO-LAY'S PRACTICES

Frito, as the snack foods giant, does many things to ensure its dominance, such as making certain it gains the primary position in the store from the retailer. Prime position sells the product, [redacted] states. Also, Frito "throw{s} potato chips on," for example, able to stagger promotions, moving from chips to pretzel, tortilla chips or whatever it likes, whenever it likes; competitors also pinpoint one product so they can avoid a head-to-head chips-versus-chips clash promotion at the display shelf. Frito focuses on acquiring end-caps, or walls of value; inside such space is what Farrell terms the "shocker bay," rich with attractive product, priced to sell. These displays "drive" the sales "volume" for a company in a retail chain. And Frito buys it all. It may pay a retailer $2,000 to $3,000 a year for a "banner end-cap. Frito also does big outlays in couponing as found in the Safeway chain which publishes a monthly booklet with selected products advertised at a discount. For this 4 week "ad" Frito has paid Safeway up to $50,000 a coupon. [redacted] explains that Frito uses its leverage to" bump" [redacted] Then it "dummied up" the new space it had taken but could not use by making it look full, when in fact the back echelons of the space had no bags for sale whatever. In one case, it manipulated the UPC computer bar code markers on snack shelf fronts to make it appear that sold-out products had occupied unneeded and unused "bump" space. If that space had been filled, the lack of sales would have revealed many unsold Frito products with expired sell-worthy dates, or death-dates. By visual checking, it was obvious, [redacted] states, that the 24 inch display had bags placed only 12 inch deep, and Frito's real goal was to eradicate the competition, not to build sales.

[redacted] says that Frito's tendency toward exclusive deals with grocers has not yet permeated the Northwest US market. However, it was Eagle that kept Frito "honest" on the West Coast. Some grocers have apparently studied the situation, considered the long-term consequences of Frito's monopoly bid, and have resisted them, unlike many C-stores who have discarded their #2-3 snack competitors for the up-front enticements of Frito money and rebates. [redacted] names a few traditional groceries in the west that are "in a pinch" with Frito due to Eagle's demise. [redacted]

Finally, [redacted] relates that one of Frito's typical practices is to "Bell-mark," or pre-price its small snack bags in Chicago at 75 cents but market the same product 30 miles north at 69 cents and a distance south of town drop the price to 50 cents (with a promotion attached), each price programmed to maximize Frito's profits. 70

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