



*inter alia*, that CCSW's acquisition of the Dr Pepper franchise violated the FTC Act and the Clayton Act, and reversed the ALJ's initial decision. The Commission concluded that the relevant product market was branded carbonated soft drinks; that the relevant geographic market was the 10-county San Antonio area; that entry into the market was difficult; that the acquisition had raised CCSW's market share from 44.7% to 54.5%; that the market was highly concentrated; and that the acquisition substantially increased the likelihood of collusion among soft drink bottlers. For reasons differing from those of the ALJ, the Commission also concluded that CCSW's acquisition of the Canada Dry franchise did not violate the FTC Act or the Clayton Act.

In its decision, the Commission expressly rejected CCSW's contention that the legality of the transaction should be judged under the Soft Drink Interbrand Competition Act of 1980 ("SDICA"), 15 U.S.C. §§ 3501-3503. That Act provides that "[n]othing contained in any antitrust law shall render unlawful the inclusion and enforcement in any [soft drink] trademark licensing contract" of "provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area," so long as "such product is in substantial and effective competition with other products of the same general class in the relevant market or markets." 15 U.S.C. § 3501. The Commission concluded, however, that the SDICA was designed to establish the standard for judging the legality of a concentrate manufacturer's grant of exclusivity to a licensee, rather than to establish the legality of a bottler's acquisition of licenses to bottle competing soft drink brands. The Commission issued a Final Order requiring CCSW to divest the Dr Pepper license and related assets, and requiring CCSW to obtain prior Commission approval for future soft drink license acquisitions.

Following issuance of the Commission's opinion, CCSW filed a petition for review with the United States Court of Appeals for the Fifth Circuit. On June 10, 1996, the Fifth Circuit entered a decision vacating and remanding the Commission's decision. The Court of Appeals held that the standards of the SDICA governed the transaction, and hence that the Commission had used the

this one in which the manufacturer sells its wholly-owned bottling subsidiary and then enters the downstream market by licensing an independent distributor for the first time" (emphasis added). Given market conditions in the soft drink bottling industry, the circumstances described in the court's holding are not likely to present themselves in any future case. For this reason, the Court of Appeals's decision is highly unlikely to affect the Commission's future enforcement ott.42s t€0 r.8 7