

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,)
600 Pennsylvania Avenue, N.W.)
Washington, D.C. 20580,)
)
Plaintiff,)

v.)

Civ. No.)

SWEDISH MATCH NORTH)
AMERICA INC.,)
6600 West Broad Street)
Richmond, Virginia 23230-1558,)
)
and)

COMPLAINT FOR
PRELIMINARY INJUNCTION
PURSUANT TO SECTION 13(b)
OF THE FEDERAL TRADE
COMMISSION ACT

NATIONAL TOBACCO)
COMPANY, L.P.)
257 Park Avenue South, 7th floor)
New York, N.Y. 10010-7304,)
)
Defendants.)

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys, petitions the Court, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), for a preliminary injunction enjoining defendant Swedish Match North America Inc. (“Swedish Match”), including its domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures, from acquiring through a merger or

the Commission pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21.

Jurisdiction and Venue

1. Jurisdiction is based on Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1337 and 1345. Venue is proper under Section 13(b) of the FTC Act; 28 U.S.C. § 1391(b) and (c); and Section 12 of the Clayton Act, 15 U.S.C. § 22.

The Parties

2. The Commission is an administrative agency of the United States Government established, organized, and existing pursuant to the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act and Section 5 of the FTC Act.

3. Defendant Swedish Match North America Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 6600 West Broad Street, Richmond, Virginia 23230-1558. Defendant Swedish Match North America Inc. is a wholly owned subsidiary of Swedish Match AB, a foreign corporation.

4. Defendant National Tobacco Company, L.P. is a limited partnership organized and existing under the laws of the state of Delaware, with its principal place of business at 257 Park Avenue South, New York, N.Y. 10010-7304. The general partner of National Tobacco Company, L.P. is Thomas F. Helms, Jr., a natural person.

5. Defendants are each engaged in commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

Section 13(b) of the FTC Act

6. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

(b) Whenever the Commission has reason to believe --

(1) that any person, partnership or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public --

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public

10. In authorizing the commencement of this action, the Commission determined that such an injunction is in the public interest and that it has reason to believe that the Acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act because the Acquisition may substantially lessen competition and/or tend to create a monopoly in the relevant market, *i.e.*, loose leaf chewing tobacco in the United States.

The Acquisition Would Substantially Lessen Competition

11. Swedish Match is the largest maker and seller of loose leaf chewing tobacco in the United States, with sales accounting for approximately 40% of the loose leaf chewing tobacco market. Swedish Match sells loose leaf chewing tobacco under the “Red Man,” “Red Man Golden Blend,” “Red Man Select,” “Southern Pride,” “

National each price and discount their products in response to each other's pricing, and in response to the pricing of the two other significant loose leaf tobacco sellers.

14. The Acquisition would combine the first and third largest sellers of loose leaf

anticompetitive activity in the relevant market once this acquisition is consummated.

16. The reestablishment of National as an independent viable competitor in the relevant market if the Acquisition were consummated would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore National's business as it originally existed. Furthermore, it is likely that substantial interim harm to competition would occur even if suitable divestiture remedies could be devised.

17. For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

WHEREFORE, the Commission requests that the Court:

1. Preliminarily enjoin defendant Swedish Match, and all its affiliates, from taking any further steps to consummate, directly or indirectly, the Acquisition of assets of National, or any other acquisition of stock, assets, or other interest, either directly or indirectly, of National;

2. Maintain the status quo pending the issuance of an administrative complaint by the Commission challenging such Acquisition, and until such complaint is dismissed by the Commission or set aside by a court on review, or until the order of the Commission made thereon has become final; and

3. Award such other and further relief as the Court may determine to be proper and just, including costs.

June 23, 2000

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