ANALYSIS OF AGREEMENT CONTAINING 5

an Agreement Containing Consent Order from Respondent PepsiCo, Inc. (“PepsiCo”), to address concerns ... carbonated soft drink ... PepsiCo's ... DPSG ... bottlers ... TDnd theTjbsequ TD(t87.5 0.0000 TD(“)Tjt0.

The Consent Agreement requires, among other things, that PepsiCo limit the persons within the company who have access to commercially sensitive confidential information that DPSG will provide to PepsiCo to enable PepsiCo to carry out the distribution functions contemplated by the license.

The DPSG - PepsiCo license agreement followed PepsiCo’s announced proposed acquisitions of its two largest bottler-distributors, Pepsi Bottling Group, Inc. (“PBG”), and PepsiAmericas, Inc. (“PAS”). These two bottler-distributors had been licensed by PepsiCo and by DPSG to bottle and distribute many of their carbonated soft drink brands. Following the acquisitions, PepsiCo will take on the bottling and distribution functions previously performed by PBG and PAS.

The Complaint alleges that, as a result of PepsiCo’s acquisition of PBG and PAS, PepsiCo will have access to DPSG’s commercially sensitive confidential marketing and brand plans. Without adequate safeguards, PepsiCo could misuse that information, leading to anticompetitive conduct that would make DPSG a less effective competitor or would facilitate

access to the DPSG commercially sensitive information. It prohibits PepsiCo employees involved in traditional “concentrate-related functions” from seeing that information.

II. Respondent PepsiCo, Inc.

PepsiCo is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577. PepsiCo in 2009 had total worldwide revenues from the sale of all products of about $43 billion. PepsiCo’s United States sales in 2009 of carbonated soft drink concentrate totaled about $3 billion. United States sales of all of PepsiCo’s carbonated soft drink brands are over $20 billion.

PepsiCo is a food and beverage company that includes PepsiCo Americas Beverages (a beverage arm), Frito-Lay (a snack food arm), and Quaker Foods (a cereal arm). Among other

ccepted, subject to final approval.

products, PepsiCo produces the concentrate for the PepsiCo carbonated soft drink beverage brands that are distributed by its bottlers. Some of those brands are Pepsi-Cola, Diet Pepsi, Mountain Dew, Diet Mountain Dew, Sierr

V. The Two Transactions

A. The Bottler Acquisitions

On August 3, 2009, PepsiCo entered into agreements with PBG and PAS, the two largest independent bottlers and distributors of its carbonated soft drink brands, to acquire all of their remaining outstanding voting securities. The total value of the acquired shares for both bottlers would be approximately $7.8 billion. At the time of the agreements, PepsiCo owned about 40% of PBG and about 43% of PAS. Together, PBG and PAS have been responsible for about 75% of all United States bottler-distributed sales of PepsiCo carbonated soft drink brands and about 20% of all United States bottler-distributed sales of DPSG carbonated soft drink brands.

B. The DPSG-PepsiCo License Agreement

Following the agreements to acquire PBG and PAS, PepsiCo sought a license to continue to bottle and distribute the DPSG brands that the bottling companies had distributed. (The DPSG licenses held by PBG and PAS were terminated by DPSG as a result of the proposed acquisitions.) In the DPSG-PepsiCo license agreement, dated December 7, 2009, PepsiCo agreed to bottle and distribute DPSG's Dr Pepper, Crush, and Schweppes carbonated soft drink brands in the former PBG and PAS territories, where those bottlers had been producing and distributing those products. PepsiCo agreed to pay DPSG $900 million for a non-exclusive license to produce[1] and an exclusive, twenty-year[2] license to distribute and sell those brands.

Under the license agreement, PepsiCo has agreed, among other things, to (a) distribute the Dr Pepper brand in all classes of trade based on the Pepsi brands; (b) grow the Dr Pepper brand based on the sales of other carbonated soft drink brands; (c) promote the DPSG beverages and provide sales support for such promotions, based on PepsiCo's promotions of its other soft drink beverages, and (d) in connection with price-off promotions and media advertising, promote and advertise the Dr Pepper brand based on rates of promotion and advertising of the PepsiCo brands.

VI. The Proposed Complaint

The Commission's Complaint alleges that PepsiCo and DPSG are direct competitors in the highly concentrated and difficult to enter markets for (a) branded concentrate and (b) branded and direct-store-door delivered carbonated soft drinks. The concentrate markets are both national and local, and the branded carbonated soft drink markets are local. Total United

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[1]The production right is not exclusive to allow DPSG to produce carbonated soft drinks in the former PBG and PAS territories for sale by DPSG outside those territories.

[2]The license agreement is for an initial term of twenty (20) years, with automatic renewal for additional twenty (20) year periods, unless terminated pursuant its terms.

By accepting the Consent Agreement subject to final approval, the Commission