

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

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In the Matter of)	
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The Coca-Cola Company,)	Docket No. C-
a corporation.)	
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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by The Coca-Cola Company (“TCCC”), of the North American soft drink bottling business of Coca-Cola Enterprises, Inc. (“CCE”), and the subsequent proposed acquisition and associated agreements for TCCC to acquire rights to produce, distribute, market, and sell some of the carbonated soft drink brands of Dr Pepper Snapple Group, Inc. (“DPSG”), that had been distributed by CCE and TCCC, and TCCC (hereinafter sometimes referred to as “Respondent”) having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent TCCC is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Coca-Cola Plaza, Atlanta, GA 30313.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “TCCC” or “Respondent” means The Coca-Cola Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by TCCC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; after the Acquisition, TCCC includes the North American soft drink bottling business of CCE acquired in the Acquisition.
- B. “CCE” means Coca-Cola Enterprises Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by CCE, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquisition” means the acquisition by TCCC of the North American soft drink bottling business of CCE.
- D. “Additional Firewalled TCCC Personnel” means those employees that are identified and approved pursuant to Paragraph II.C. of this Order
- E. “Bottler” means an entity licensed by a Concentrate Company to produce, distribute, market, price, and sell carbonated soft drink products under the brands of that Concentrate Company.

- L. “DPSG Beverages” means carbonated soft drink products sold by TCCC in the United States under the DPSG brands and all package sizes and flavors sold under those brands, including fountain sales; DPSG Beverages also includes any new sizes and flavors introduced by DPSG and carried by TCCC in the Territories.
- M. “DPSG Bottler Functions” means (1) Bottler Functions related to DPSG Beverages, and (2) DPSG Freestyle Functions.
- N. “DPSG Commercially Sensitive Information” means all information provided, disclosed, or otherwise made available by DPSG to TCCC relating to DPSG Beverages that is not in the public domain, including but not limited to information related to the research, development, production, marketing, advertising, promotion, pricing, distribution, sales, or after-sales support of DPSG Beverages; DPSG Commercially Sensitive Information includes (1) DPSG Information Relating to Concentrate-Related Functions and (2) DPSG Information Relating to Bottler Functions.
- O. “DPSG Concentrate-Related Functions” means Concentrate-Related Functions related to DPSG Beverages.
- P. “DPSG Freestyle Functions” means the manufacture, sale, and supply of Freestyle

1. those retailers that sell DPSG Beverages in the Territories (or those retailers that do not sell DPSG Beverages in the Territories but that DPSG is calling on to persuade them to sell DPSG Beverages in the Territories) to which DPSG makes account calls in support of the DPSG Beverages sold by TCCC in the Territories; and
 2. those retailers that sell DPSG Beverages in Freestyle Machines (or those retailers that do not sell DPSG Beverages in Freestyle Machines but that DPSG is calling on to persuade them to sell DPSG Beverages in Freestyle Machines) to which DPSG makes account calls in support of the DPSG Beverages sold in Freestyle Machines.
- V. “Freestyle Machine” means TCCC’s proprietary.

DD. "Relating To" means discussing, analyzing, summarizing, describing, or constituting, but not merely referring to.

- b. are not responsible for Concentrate-Related Functions, and if any such person, function, or position reports (directly or indirectly) to a person responsible for Concentrate-Related Functions, that person, function, or position shall not disclose, provide, or otherwise make available DPSG Commercially Sensitive Information to the person responsible (directly or indirectly) for Concentrate-Related Functions; and
 - c. do not receive bonus or other tangible benefits related to the marginal sale of TCCC Beverages as a disproportionate benefit to any bonus or tangible benefit related to the marginal sale of DPSG Beverages;
- 4. an executed non-disclosure agreement and a statement attesting that he or she has received a copy of this Order, will comply with its terms, and will take all reasonable steps to assure that employees that report to him or her will comply with its terms:
 - a. shall be submitted to the staff of the Commission by each person specifically identified in Appendix A no later than twenty (20) days after Respondent executes the Agreement Containing Consent Order; and
 - b. by each TCCC Bottling Operations Personnel who replaces any of those specifically identified in Appendix A or who are given responsibilities comparable to those people specifically identified in Appendix A no later than ten (10) days after assuming those responsibilities;
- 5. the DPSG Commercially Sensitive Information is used only in connection with DPSG Bottler Functions, or solely for the purpose of Legal or Regulatory Functions;
- 6. the DPSG Commercially Sensitive Information is used only in the Territories; *provided, however,* that with respect to DPSG Information Relating to Bottler Functions that is DPSG Freestyle Information, such information may be used anywhere in the United States;
- 7. the DPSG Commercially Sensitive Information is not used in connection with Concentrate-Related Functions in any way, such prohibition to include but not be limited to w the D Co Remmercialxecutes the Agre

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is authorized (among other appropriate

expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

7. TCCC shall report to the Monitor in accordance with the requirements of this Order. The Monitor shall evaluate the reports submitted to the Monitor by TCCC. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by TCCC of its obligations under this Order.
8. TCCC may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,*

reporting and waiting obligations of the HSR Act and the rules promulgated thereunder, 16 C.F.R. § 800 et seq.;

C. For acquisitions of To-Be-Acquired Bottlers that are not subject to the HSR Act:

1. TCCC shall provide at least forty-five (45) days' advance written notification of the acquisition to the staff of the Commission, such notification to include:
 - a. the name, headquarters address, telephone number, and name of contact person of the To-Be-Acquired Bottler;
 - b. a description of the proposed acquisition and the assets to be acquired, and the acquisition price;
 - c. a copy of all existing and draft licenses and performance obligations entered into or anticipated to be entered into between DPSG, Respondent, and/or the To-Be-Acquired Bottler;
 - d.

that TCCC has, and

- (2) for the most recent 12-month period for which TCCC has such information, sales in units (in constant case equivalents) and dollars, of
 - (a) TCCC Beverages, by brand, of the To-Be-Acquired Bottler, and
 - (b) concentrate, by brand, to the To-Be-Acquired Bottler;
 - g. all documents Relating To communications between TCCC, DPSG, and the To-Be-Acquired Bottler with respect to the acquisition of the To-Be-Acquired Bottler, the DPSG Beverage licenses, expected licenses, or performance obligations; and
 - h. all Management Documents Relating To the proposed acquisition;
2. Early termination of the 45-day period described in Paragraph IV.C.1. may be requested and, where appropriate, granted by letter from the Director of the Bureau of Competition; and
 3. If, after notification of the proposed transaction (including the information specified in Paragraph IV.C.1. a. - h.), representatives of the Commission make a written request for additional information or documentary material with respect to the acquisition of the To-Be-Acquired Bottler, TCCC shall respond expeditiously and submit all such additional information and documentary material and certify substantial compliance with the request;

provided, however, that a determination that TCCC has complied with the obligations contained in this Paragraph IV. in connection with its acquisition of a To-Be-Acquired Bottler shall not be construed as a determination by the Commission, or its staff, that the acquisition of the To-Be-Acquired Bottler does or does not violate any law enforced by the Commission; and provided further that nothing contained herein shall preclude the Commission or its staff from investigating the acquisition or proposed acquisition by TCCC of any Bottler, including a To-Be-Acquired Bottler, and seeking any relief available under any statute enforced by the Commission.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after this Order becomes final, TCCC shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order.
 - 1. TCCC shall include in its report, among other information that may be required, a list of all Bottlers of TCCC Beverages that, at the time of submission of the list, also bottle DPSG Beverages; for each such Bottler, TCCC shall list:
 - a. each brand of TCCC Beverages that such Bottler is licensed to distribute, together with a description of the geographic areas in which

