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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

In the Matter of	)	
	)	
PepsiCo, Inc.,	)	Docket No. C-4301
a corporation.	)	
	)	

agreements to acquire, and subsequently did acquire, the outstanding voting securities of three of its independent bottlers, Pepsi Bottling Group, Inc. ("PBG"), PepsiAmericas, Inc. ("PAS"), and Pepsi-Cola Bottling Co. of Yuba City, Inc. ("PYC"), and subsequently obtained a license agreement to continue to produce and distribute several carbonated soft drink brands of Dr Pepper Snapple Group, Inc. ("DPSG") that bottlers PBG, PAS, and PYC had produced and distributed, and that the agreements violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that the agreements and terms of such agreements, when car

18. PYC was responsible for a relatively small percentage of PepsiCo's and PDSG's United States bottler-distributed carbonated soft drink brands.

IV. PepsiCo's Acquisition of PBG, PAS, and PYC

19. On or about August 3, 2009, P

carbonated soft drinks. PepsiCo also acquired rights to distribute some DPSG brands in some of the Yuba City California, areas where PYC was a distributor of some PepsiCo carbonated soft drinks brands.

26. The DPSG-PepsiCo license agreement also provided, among other things, that (a) PepsiCo would acquire the exclusive right to sell and distribute the Dr Pepper, Crush, and Schweppes carbonated soft drink brands in the PBG and PAS territories, (b) the license agreement would have a term of twenty (20) years, with a provision that it be “automatically renewed for additional twenty (20) year successive periods” for “no additional payments,” (c) PepsiCo would acquire a non-exclusive right to produce the Dr Pepper, Crush, and Schweppes carbonated soft drink brands in the PBG and PAS territories, and (d) PepsiCo would pay

C. Conditions of Entry

31. Entry into each relevant market would not be timely, likely, or sufficient to prevent or mitigate any anticompetitive effect.

32. Effective (price constraining) entry requires that branded carbonated soft drinks be delivered by direct-store-door delivery. There are generally only three bottlers in the local carbonated soft drink markets that have exclusive rights to distribute their branded carbonated soft drink products, and they do so by direct-store-door delivery. Bottlers operate under flavor restrictions imposed upon them by concentrate companies PepsiCo, DPSG, and The Coca-Cola Company The bottlers therefore are not permitted to carry the new brand of an existing flavor without first dropping the brand of that flavor that they carry. For the cola flavor, the bottlers of PepsiCo and Coke are required to cary Pepsi-Cola and Coca-Cola, respectively, as well as no other cola flavored carbonated soft drink.

33. There is no market for branded concentrate other than for the production of branded carbonated soft drinks.

D. Market Structure

34. Each relevant market is very highly concentrated, whether measured by the Herfindahl-Hirschman Index (“HHI”) or by two-firm and four-firm concentration ratios.

35. The carbonated soft drink brands of PepsiCo and DPSG are first and second choices for a substantial number of consumers.

”) or by two-firm and four- entra

VIII. Violations Charged

37. PepsiCo's access to competitively sensitive confidential information from DPSG, provided in furtherance of the DPSG-PepsiCo license agreement and associated performance terms entered into between Respondent PepsiCo and DPSG for the sale and distribution by PepsiCo of DPSG's brands of carbonated soft drinks, could lead to anticompetitive conduct and constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and upon consummation, constituted a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15, U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of September, 2010, issues its Complaint against Respondent PepsiCo.

By the Commission, Commissioner Ramirez recused.

Donald S. Clark
Secretary

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