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UNITED STATES OF AMERICA
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The Commission having

related promotions of carbonated soft drinks for that retailer's operations for the brands of carbonated soft drink products of more than one Concentrate Company, and (6) formulating and engaging in marketing, advertising, or promotional activities for the brands of carbonated soft drink products of more than one Concentrate Company within the Territories or across geographic areas broader than the Territories; *provided, however,* that no Concentrate-Related Functions are included in Bottler Functions. For the avoidance of doubt, for purposes of this Order, Bottler Functions include those of PepsiCo as a Bottler.

- F. "Commission" means the Federal Trade Commission.
- G. "Concentrate Company" means a company that formulates concentrate for the production of carbonated soft drink products and other beverages and sells the concentrate to Bottlers. For the avoidance of doubt, for purposes of this Order, PepsiCo and DPSG are Concentrate Companies.
- H. "Concentrate-Related Functions" means the activities of a Concentrate Company that are typical of a Concentrate Company operating separately from and independently of any Bottler in which it may have an interest, including: (1) setting the price of the concentrate sold by the Concentrate Company and selling that concentrate, (2) making decisions with respect to formulating and introducing new brands and flavors to offer to Bottlers, (3) making decisions with respect to introducing new flavors and package sizes of existing brands, (4) formulating and designing marketing and advertising programs of the Concentrate Company, and (5) determining whether, to what extent, and when the Concentrate Company will fund Promotional Activities. For the avoidance of doubt, for purposes of this Order, Concentrate-Related Functions include those of PepsiCo.
- I. "DMA" means the Designated Market Areas or geographic areas defined by Nielsen Media Research Company.
- J. "DPSG" means Dr Pepper Snapple Group, Inc., 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 5301 Legacy Drive, Plano, Texas 75024.
- K. "DPSG Beverages" means carbonated soft drink products sold by PepsiCo in the Territories 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 a

or after-sales support of DPSG Beverages; DPSG Commercially

- W. “Monitor” means the person appointed by the Commission pursuant to Paragraph III. of this Order.
- X. “National Accounts Sales Team” means the PepsiCo Bottling Operations Personnel who (1) call on DPSG National Accounts and (2) determine and formulate the level and timing of Promotional Activities in support of PepsiCo Beverages sold by PepsiCo in the Territories that do not include DPSG Beverages.
- Y. “PAS” means PepsiAmericas, Inc., 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 4000 RBC Plaza, 60 South Sixth Street, Minneapolis, Minnesota 55402.
- Z. “PBG” means The Pepsi Bottling Group, Inc., 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 Pepsi Way, Somers, New York 10589.
- AA. “PepsiCo Beverages” means PepsiCo brands of carbonated soft drink products and all package sizes and flavors thereof; PepsiCo Beverages shall not include DPSG Beverages.
- BB. “PepsiCo Bottling Operations Personnel” means the persons, functions, or positions of or within PepsiCo that satisfy all of the criteria described in Paragraph II. of this Order; “PepsiCo Bottling Operations Personnel” as of the date the Agreement Containing Consent Order is executed shall include, but not be limited to, the names, functions, or positions described in Appendix A to this Order (“List”) and all people who report (directly or indirectly) to such names, functions, or positions; the List shall indicate those who have limited access under paragraph II.A; all changes to the PepsiCo Bottling Operations Personnel shall be in accordance with the procedure described in Paragraph II. of this Order.
- CC. “Promotional Activities” means price promotions, end-aisle displays, and newspaper inserts.
- DD. “Relating To” means discussing, analyzing, summarizing, describing, or constituting, but not merely referring to.
- EE. “Territories” means, for each brand, those territories shown in Appendix B.

- b. by each PepsiCo 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;
 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 using the information even if the DPSG Commercially Sensitive Information is not itself revealed;
 8. all DPSG documents and copies of documents reflecting or containing DPSG Commercially Sensitive Information (whether in the form provided by DPSG or in a form created by PepsiCo) are maintained as confidential until the earlier of five (5) years or when DPSG Commercially Sensitive Information becomes public through no act of PepsiCo; and
 9. DPSG Information Relating to DPSG Independent Promotions shall not be provided to the National Accounts Sales Team any time prior to the disclosure of such information to any Bottler other than PepsiCo.
- B. PepsiCo shall change the PepsiCo Bottling Operations Personnel only pursuant to the following procedures:
1. replacing individuals who report (directly or indirectly) to the people, functions, or positions specifically identified in Appendix A shall be in accordance with the usual and customary business practices of PepsiCo;
 2. replacing any of the people specifically identified in Appendix A or re-organizing functions or positions specifically identified in Appendix A shall be in accordance with the usual and customary business practices of PepsiCo after notification to the Monitor;
 3. adding new functions or positions that are not specifically identified in Appendix A shall require prior notification to the Monitor and staff of the Federal Trade Commission in accordance with the following:
 - a. the staff shall have ten (10) days from notification to consider the proposed change; and

- b. if the staff does not object to the change within ten (10) days of its notification, PepsiCo shall be permitted to make the change.

C. PepsiCo shall disclose DPSG Commercially Sensitive Information to Additional Firewalled PepsiCo Personnel only under the following conditions:

- 1. such Additional Firewalled PepsiCo Personnel:
 - a. are employees or agents of PepsiCo; and
 - b. are approved by DPSG, receive only the limited information approved by DPSG, for the time period approved by DPSG, all according to the procedure described in ¶ II.C.2. of the Order, below.
- 2. PepsiCo shall comply with the following procedure in connection with Additional Firewalled PepsiCo Personnel:

- a. PepsiCo shall submit the name, position, and function of any proposed Additional Firewalled PepsiCo Personnel to DPSG, the Monitor, and Commission staff, together with a statement of the reasons for the need to include such person, the specific DPSG Information Relating to Bottler Functions that is necessary to be shared, and the time period during which the information is intended to be shared;
- b. DPSG shall notify PepsiCo, the Monitor, and Commission staff within twenty (20) days whether or not it objects to the proposal;
- c. if DPSG does not object within twenty (20) days of receiving notification of the proposal, PepsiCo shall notify the Commission staff;
- d. if Commission staff does not object within ten (10) days of its notification that DPSG does not object, the person shall be an Additional Firewalled PepsiCo Personnel; and

- e. PepsiCo must notify DPSG, the Monitor, and Commission staff within ten (10) days of receiving notification of the proposal, and the Commission staff shall notify the Commission staff within ten (10) days of receiving notification of the proposal.

- a. disclosed only if it is DPSG Information relating to Bottler Functions;
 - b. disclosed only to PepsiCo Bottling Operations Personnel or to Additional Firewalled PepsiCo Personnel;
 - c. used solely for DPSG Bottler Functions in the Territories or Legal or Regulatory Functions and not for Concentrate-Related Functions; and
 - d. maintained confidentially;
2. such procedures shall include, without limitation:
- a. monitoring compliance;
 - b. enforcing compliance with appropriate remedial action in the event of non-compliant use or disclosure;
 - c. distributing information regarding the procedures annually to all employees of PepsiCo associated with its carbonated soft drink products; and
 - d. requiring that the PepsiCo Bottling Operations Personnel and the Additional Firewalled PepsiCo Personnel comply with the requirements of this Order.

III.

IT IS FURTHER ORDERED that:

- A. At any time after PepsiCo signs the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that PepsiCo complies with all obligations and performs all responsibilities required by this Order.
- B. The Commission shall select the Monitor, subject to the consent of PepsiCo, which consent shall not be unreasonably withheld. If PepsiCo has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to PepsiCo of the identity of any proposed Monitor, PepsiCo shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, PepsiCo shall execute an agreement that, subject to the prior approval of the Commission, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor PepsiCo’s compliance with the requirements of this Order.

6. PepsiCo shall indemnify the Monitor and hold the Monitor harmless against all losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. PepsiCo shall report to the Monitor in accordance with the requirements of this Order. The Monitor shall evaluate the reports submitted to the Monitor by PepsiCo. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by PepsiCo of its obligations under this Order.
8. PepsiCo 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*, that such agreement shall not restrict the Monitor (and its representatives) from providing any information to the Commission.
9. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
10. In the event the Commission determines that the Monitor has ceased to act or failed diligently to act, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
11. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

IV.

IT IS FURTHER ORDERED that, for the term of this Order, if PepsiCo intends to acquire a Bottler that is licensed to distribute PepsiCo Beverages anywhere in the United States and is also licensed to distribute DPSG Beverages in geographic areas outside of the Territories ("To-Be-Acquired Bottler"), PepsiCo may use DPSG Commercially Sensitive Information relating to the specific brand or brands in the geographic areas covered by the To-Be-Acquired Bottler's license for the DPSG Beverages, after PepsiCo's acquisition of the To-Be-Acquired Bottler, as long as PepsiCo complies with the obligations of Paragraph II.A. 1. - 5., and 7. - 9. of this Order, and satisfies the following additional conditions:

- A. PepsiCo shall comply with the obligations of this Order with respect to that DPSG Commercially Sensitive Information;
- B. For acquisitions of To-Be-Acquired Bottlers that are subject to Section 7A of the Clayton Act, 15 U.S.C. § 18a ("HSR Act"), PepsiCo shall also comply with the 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. PepsiCo 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 perf

- (a) all Nielsen, IRI, or similar data with respect to that MSA, DMA, city, or other geographic area; and
 - (b) all market share information, written or otherwise, with respect to that MSA, DMA, city, or other geographic area,

that PepsiCo has, and
- (2) for the most recent 12-month period for which PepsiCo has such information, sales in units (in constant case equivalents) and dollars, of
 - (a) PepsiCo 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 Respondent, 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, PepsiCo 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 PepsiCo 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 PepsiCo 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 fina

VI.

IT IS FURTHER ORDERED that PepsiCo shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of PepsiCo;
- B. Any proposed acquisition, merger, or consolidation of PepsiCo;
- C. Any other change in PepsiCo including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to PepsiCo made to its principal United States offices, registered office of its United States subsidiary, or headquarters address, PepsiCo shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of PepsiCo and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of PepsiCo related to compliance with this Order, which copying services shall be provided by PepsiCo at the request of the authorized representative(s) of the Commission and at the expense of PepsiCo.
- B. The opportunity to interview officers, directors, or employees of PepsiCo, who may have counsel present, related to compliance with this Order.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on September 27, 2030.
By the Commission, Commissioner Ramirez recused.

Donald S. Clark
Secretary

SEAL

ISSUED: September 27, 2010

APPENDIX A

PepsiCo Bottling Operations Personnel

(Dated as of September 27, 2010)

CEO, Pepsi Beverages Company, who at the time of the closing of the Acquisition will be Eric Foss:

- The CEO will be responsible for all bottler operations.
- The CEO, all of his direct reports, and the entire organization below them, will be part of the PepsiCo Bottling Operations, referred to as “Pepsi Beverages Company” by Respondent; all will have only Bottling Functions and no Concentrate-Related Functions.
- CEO will report to the CEO of PepsiCo (who at the time of the closing of the Acquisition is Indra Nooyi).

President, North America Field Operations, who at the time of the closing of the Acquisition will be Mike Durkin:

- This position will be responsible for operations in the U.S., Canada, and Mexico.
- This position will oversee Pepsi Beverages Company’s day-to-day field operations with responsibility for developing and delivering the annual operating plan of Pepsi Beverages Company.
- This position will report directly to CEO, Pepsi Beverages Company.

Executive Vice President and Chief Commercial Officer, who at the time of the closing of the Acquisition will be Tom Greco:

- This position will lead the retail selling efforts across the U.S. and Canada.
- This position will have responsibility for national accounts, channel strategy, shopper insights, field marketing and category management for the bottling organization.
- This position will manage sales for the warehouse-delivered beverages.
- This position will have a dual reporting relationship to CEO of Pepsi Beverages Company and to CEO of PepsiCo Beverages Americas (PBA), who at the time of the closing of the Acquisition is Massimo d’Amore, for other PepsiCo products,

Senior Vice President and Chief Financial Officer, who at the time of the closing of the Acquisition will be Cindy Swanson:

- This position will be responsible for leading the integration of the finance functions of PBG and PAS - as public companies - into the larger PepsiCo organization.
- This position is also responsible for analyzing and refining financial algorithms to help plan for overall system transformation and long-term performance.
- This position will report directly to CEO, Pepsi Beverages Company.

APPENDIX B

Appendix B includes the following maps:

1. PEPSI BEVERAGES COMPANY
DR PEPPER FOOTPRINT
8/4/10
2. PEPSI BEVERAGES COMPANY
7UP FOOTPRINT
8/4/10
3. PEPSI BEVERAGES COMPANY
A&W FOOTPRINT
8/4/10
4. PEPSI BEVERAGES COMPANY
CANADA DRY FOOTPRINT
8/4/10
5. PEPSI BEVERAGES COMPANY
CRUSH FOOTPRINT
8/4/10
6. PEPSI BEVERAGES COMPANY
SUNKIST FOOTPRINT
8/4/10
7. PEPSI BEVERAGES COMPANY
SQUIRT FOOTPRINT
8/4/10

8. PEPSI BEVERAGES COMPANY
SCHWEPPE'S FOOTPRINT
8/4/10

9. PEPSI BEVERAGES COMPANY
VERNORS FOOTPRINT
8/4/10