

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 otherwise any stock, assets, or other interest, either directly or indirectly, of or from defendant National Tobacco Company, L.P. (“National”), or its domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures; thereby maintaining the status quo during the pendency of an administrative proceeding, challenging defendant Swedish Match’s proposed acquisition of the loose leaf tobacco businesses of National, that will be commenced by

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 interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond

The Proposed Acquisition and the Commission's Response

7. Pursuant to an Asset Purchase Agreement dated February 10, 2000, Swedish Match proposes to acquire the loose leaf chewing tobacco brands and certain other assets of National for approximately \$165 million (the "Acquisition").

8. On June 22, 2000, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the Acquisition during the pendency of administrative proceedings.

9. The acquiring entity, Swedish Match, has assured the Commission that it will not consummate the Acquisition until the Court has ruled on Plaintiff's motion for a preliminary injunction.

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,” “J.D.’s Blend,” “Granger Select,” “Workhorse,” “Union Standard,” “Pay Car,” and “Red Horse” brand names. Red Man, the oldest chewing tobacco brand in the United States, is also the largest selling; Red Man Golden Blend is the fourth largest selling brand in the nation.

12. National is the third largest maker and seller of loose leaf chewing tobacco in the United States, with sales accounting for approximately 20% of the loose leaf chewing tobacco market. National sells loose leaf chewing tobacco under the “Beech-Nut,” “Beech-Nut Wintergreen,” “Havana Blossom,” “Trophy,” and “Durango” brand names. Beech-Nut, the second oldest chewing tobacco brand in the United States, is the third largest selling brand in the nation.

13. Swedish Match and National are direct and actual competitors in the sale of loose leaf chewing tobacco. They compete with each other on price by, among other things, offering discounts and other promotions on the sale of their loose leaf products. Swedish Match and

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 chewing tobacco in the United States, and as a result Swedish Match will have approximately 60% of the loose leaf chewing tobacco sales in the United States. The acquisition would substantially increase concentration in the loose leaf chewing tobacco market in the United States, would result in a highly concentrated market, would eliminate the existing substantial competition between Swedish Match and National, and would substantially reduce competition and tend to create a monopoly in the loose leaf chewing tobacco market in the United States.

Likelihood of Success on the Merits and Need for Relief

15. The Commission is likely ultimately to succeed in demonstrating, in administrative proceedings to adjudicate the legality of the Acquisition, that the Acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act. In particular, the Commission is likely ultimately to succeed in demonstrating, *inter alia*, that:

- a. The relevant product market in which the competitive effects of the proposed merger may be assessed is loose leaf chewing tobacco.
- b. The relevant geographic market within which to assess the competitive effects of the proposed merger is the United States.
- c. The effect of the Acquisition, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant market by, among other things, eliminating an effective competitor, and eliminating or reducing substantial actual competition between Swedish Match and National, thereby increasing the likelihood of

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

DEBRA A. VALENTINE
General Counsel

RICHARD G. PARKER
Director
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Respectfully submitted,

RICHARD LIEBESKIND
JOHN D. GRAUBERT
LESLIE R. MELMAN
STEVEN L. WILENSKY
JUDITH A. COLE
RHETT R. KRULLA
Attorneys
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

By:

JOHN D. GRAUBERT
Attorney for Plaintiff
District of Columbia Bar No. 370670
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-2186