

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of The Coca-Cola Company, FTC File No. 101-0107

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order from Respondent The Coca-Cola Company (“TCCC”) to address concerns in connection with TCCC’s acquisition of its largest bottler and the subsequent exclusive license from Dr Pepper Snapple Group, Inc. (“DPSG”), to bottle, distribute, and sell the Dr Pepper, Diet Dr Pepper, and Canada Dry carbonated soft drink brands of DPSG in certain territories. The Consent Agreement, among other things, requires that TCCC limit the persons within the company who have access to the commercially sensitive confidential information that DPSG may provide to TCCC to carry out the distribution functions contemplated by the license.

The DPSG-TCCC license agreement followed TCCC’s announced proposed acquisition of the North American business of its largest bottler, Coca-Cola Enterprises Inc. (“CCE”). CCE is licensed by TCCC and DPSG to bottle and distribute many of their carbonated soft drink brands. Following the acquisition, TCCC, through its subsidiary Coca-Cola Refreshments U.S.A., Inc. (“CCR”), will take on the bottling and distribution functions previously performed in the United States by CCE.

The Complaint alleges that TCCC’s access to DPSG’s commercially sensitive confidential marketing and brand plans, without adequate safeguards to ensure that TCCC will not misuse the information, could lead to anticompetitive conduct that would make DPSG a less effective competitor and/or facilitate coordination in the industry. The proposed Consent Agreement remedies this concern by limiting access to the DPSG commercially sensitive information to TCCC employees who perform traditional carbonated soft drink “bottler functions” formerly performed by CCE and not permitting access to TCCC employees involved in traditional “concentrate-related functions.”

II. Respondent The Coca-Cola Company

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 1 Coca-Cola Plaza, Atlanta, Georgia 30313. It is the world’s largest soft drink company and makes or licenses more than 3,000 drinks under 500 brand names in 200 countries. In 2009, TCCC’s worldwide revenues from the sale of all products were about \$31 billion.

III. Licensor Dr Pepper Snapple Group, Inc.

DPSG 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 5301 Legacy Drive, Plano, Texas 75024. Among other things, DPSG produces the concentrate for the DPSG carbonated soft drink brands that are distributed by its bottlers. Some of these brands are Dr Pepper, Diet Dr Pepper, Crush, Canada Dry, Schweppes, Vernor's, A&W Root Beer, 7-UP, RC Cola, Sunkist, and Squirt. In 2009, DPSG's net sales were about \$5.5 billion, and its United States net sales of carbonated soft drink concentrate were about \$1.1 billion. Dr Pepper Seven Up, Inc., will sign the license with TCCC.

IV. The Bottler

A. Coca-Cola Enterprises Inc.

CCE is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 2500 Windy Ridge Parkway Suite 700, Atlanta, Georgia 30039. It is the largest TCCC bottler in North America, spanning 46 states and the District of Columbia. In 2009, CCE's sales of carbonated soft drinks totaled about \$21 billion. CCE's North American business operations contributed 70% of this revenue. CCE accounts for about 75-80% of TCCC's North America bottler-distributed volume, and TCCC products represent over 90% of CCE's total volume.

V. The Transactions

A. The Bottler Acquisition

On February 25, 2010, TCCC reached an agreement with CCE to acquire the North American assets of CCE for \$12.3 billion. At the time of the agreement, TCCC owned about 34% of CCE. Post-acquisition, the North American operations of CCE will be subsumed within a new organization known as Coca-Cola Refreshments USA, Inc. ("CCR"). CCR's business will comprise CCE's current North American operations, and CCR also will have responsibility for the supply chain for still beverages and juices, fountain/Freestyle, and national key customer management. Post-acquisition, Coca-Cola USA will manufacture and supply concentrate and engage in consumer brand marketing and innovation with respect to new drinks and brands.

B. The DPSG-TCCC License Agreement

Following the agreement to acquire CCE, TCCC sought a license to continue to bottle and distribute the DPSG brands that CCE had distributed. (The DPSG license held by CCE was terminated by DPSG as a result of the proposed acquisition.) In the DPSG-CCR license agreement, TCCC agreed to bottle and distribute DPSG's Dr Pepper brand products and Canada Dry products in the former CCE territories, where CCE had been producing and distributing

these products. TCCC to agreed to pay DPSG \$715 million for a non-exclusive license to produce and an exclusive, twenty-year¹ license to distribute and sell those brands.

Under the license agreement, CCR has agreed, among other things to, (a) distribute the Dr Pepper brand in all classes of trade based on certain TCCC brands; (b) grow the Dr Pepper brand based in some measure on certain sales criteria of other bottlers; and (c) advertise, promote, and market the Dr Pepper brand and provide sales support for such promotions, based in some measure on CCR's advertising, promotions, and marketing of certain TCCC brands.

C. The DPSG-CCR Freestyle Agreement

TCCC also will give Dr Pepper access to TCCC's new proprietary "Freestyle" fountain dispensing equipment. The Freestyle machine has a footprint comparable to a traditional lever-based fountain dispenser, but it allows users to create more than 120 custom-flavored beverages. DPSG values the Freestyle Participation Agreement at approximately \$115 million.

VI. The Proposed Complaint

The Commission's Complaint alleges that TCCC and DPSG are direct competitors in the highly concentrated and difficult to enter (a) branded concentrate and (b) branded direct-store-delivered carbonated soft drink markets. The concentrate market is national, and the branded soft drink markets are local. Total United States sales of concentrate is about \$9 billion, and total United States sales of carbonated soft drinks, measured at retail, is about \$70 billion.

To carry out the distribution activities currently undertaken by the bottler and contemplated under the license agreement, DPSG will need to provide commercially sensitive confidential information about its marketing plans to CCR, the newly created TCCC bottler subsidiary. DPSG currently provides this sort of information to CCE in order for it to perform its bottler or distribution functions. The Commission is concerned that TCCC's access to this information could enable it to use the information in ways that could impair DPSG's ability to compete and ultimately injure competition by weakening a competitor or facilitating coordination in the industry. The Complaint alleges that TCCC's access to DPSG's confidential information could eliminate competition between TCCC and DPSG, increase the likelihood that TCCC may unilaterally exercise market power, and facilitate coordinated interaction in the industry.

VII. The Proposed Consent Order

Under the proposed Consent Order, to remedy the alleged competitive concern associated with access to the DPSG commercially sensitive confidential information, TCCC will be required to set up a "firewall" to ensure that persons at TCCC who may be in a position to use

¹The license agreement is for an initial term of twenty (20) years, with automatic renewal for additional twenty (20) year periods, unless terminated pursuant to its terms.

the DPSG commercially sensitive information in ways that may injure DPSG and/or facilitate coordination will not be allowed access to such information. Persons at TCCC who are assigned to perform traditional “bottler functions”– the kinds of functions that CCE have historically performed for DPSG – will be permitted access to the DPSG information. Persons responsible for “concentrate-related functions”– the kinds of functions that TCCC engaged in as a competitor of DPSG when both had their brands distributed by CCE – will not be permitted access to the DPSG information.

The proposed Consent Agreement provides for the appointment of a monitor to assure TCCC’s compliance with the Consent Order. The monitor will have a fiduciary responsibility to the Commission. The monitor will be appointed for a five (5) year term, but the Commission may extend or modify the term as appropriate.

The proposed Consent Agreement contains a prior notice provision for subsequent acquisitions by TCCC of its franchised bottlers that also are licensed to distribute DPSG products. Under the order, TCCC will be required to give the Commission forty-five (45) advance notice of a proposed acquisition that is not subject to the Hart-Scott-Rodino Act and provide the Commission with all management documents relating to the proposed acquisition. If the 45-day period expires without Commission action, TCCC will be permitted to consummate the proposed acquisition and use DPSG confidential information in the territories of the newly acquired bottler as specified in this order. The standard Hart-Scott-Rodino procedures and time periods would continue to apply for Hart-Scott-Rodino reportable transactions.

The order, like the DPSG-TCCC license agreement, will have a term of twenty (20) years.

VIII. Opportunity for Public Comment

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement, as well as the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the Decision and Order.

By accepting the Consent Agreement subject to final approval, the Commission anticipates that the competitive problem alleged in the Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Consent Agreement. It is not intended to constitute an official interpretation of the proposed Consent Agreement, nor is it intended to modify the terms of the Decision and Order in any way.