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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 **The Coca-Cola Company,** a corporation.	)	**Docket No. C -**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Respondent The Coca-Cola Company ("TCCC"), a corporation, has entered into agreements to acquire the outstanding voting securities of one its independent bottlers, Coca-Cola Enterprises Inc. ("CCE"), and subsequently obtained a license agreement to continue to produce and distribute carbonated soft drink brands of Dr Pepper Snapple Group, Inc. ("DPSG"), that bottler CCE has 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 consummated or satisfied, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. Respondent The Coca-Cola Company

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 1 Coca-Cola Plaza, Atlanta, Georgia 30313.

2. TCCC is a beverage company that includes Coca-Cola North America ("CCNA"), the company's North American operating company. TCCC produces the concentrate (or flavor ingredient) for the TCCC carbonated soft drink beverage brands that are distributed by its

independent bottlers. One of those independent bottlers is CCE. Some of TCCC's carbonated soft drink brands distributed by CCE are Coke, Diet Coke, and Sprite.

3. TCCC in 2009 had net revenues of about $31 billion. Most of TCCC's revenues are based on concentrate sales.

4. TCCC is, and at all times relevant herein has been, engaged in commerce or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

II. Third Party Dr Pepper Snapple Group, Inc.

5. 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.

6. Among other things, DPSG produces concentrate for the DPSG carbonated soft drink beverage brands that are marketed, distributed, and sold by independent bottlers. One of those independent bottlers is CCE. Some of the DPSG carbonated soft drink brands distributed by CCE, in at least some territories, are Dr Pepper, Canada Dry, Schweppes, and Squirt.

7. DPSG in 2009 had net revenues from the sales of all products of about $5.5 billion. In 2009, DPSG's net sales in the United States and Canada of carbonated soft drink concentrate were about $1.5 billion.

8. DPSG is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

III. Coca-Cola Enterprises Inc.

9. CCE 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 2500 Windy Ridge Parkway Suite 700, Atlanta, Georgia 30039.

10. CCE is the largest independently owned bottler of the carbonated soft drink brands of TCCC. CCE's North American business contributed 70% of CCE's total sales in 2009 of about $21 billion. CCE accounts for approximately 75% of the United States sales of TCCC's brands of bottled and canned carbonated soft drinks and about 14% of the United States sales of DPSG's brands of carbonated soft drinks.

11. The geographic areas or territories in which CCE is licensed to distribute the carbonated soft drink brands of TCCC include all or a portion of 46 states and the District of Columbia. The principal geographic areas or territories in which CCE is licensed to distribute

some of the carbonated soft drink brands of DPSG include North Texas (Dallas/Fort Worth area); Southern California; Northern California; New York; Arizona; New Mexico; and Nevada.

IV. TCCC's Acquisition of CCE

12. On or about February 25, 2010, TCCC entered into an agreement to acquire 100% of CCE's North American operations. Following the acquisition, TCCC will create a new organization known as Coca-Cola Refreshments USA, Inc. ("CCR"), that will take on the bottling and distribution functions previously performed by CCE.

13. At the time of the agreement, TCCC held about a 34% equity interest in CCE.

14. Under the terms of the license agreements that DPSG (or its predecessor companies) entered into with CCE, a change of ownership of the bottler would, depending on the brand and/or territory involved, either automatically trigger the termination of the license or require that DPSG consent to the acquisition of the license by the bottler's new owner.

15. The proposed acquisition by TCCC of 100% of CCE's North American assets would give TCCC control over CCE. This prospective change in control is the kind of change in ownership of CCE that, upon consummation, would either trigger the automatic termination clause of the license agreement with DPSG or require that DPSG consent to the change.

16. For brand Dr Pepper, DPSG did not consent to the transfer to TCCC of the licenses held by CCE. For certain other DPSG brands, the proposed change in ownership of CCE would, upon consummation of the ownership change, automatically terminate the DPSG licenses.

V. TCCC's Acquisition of DPSG Licenses

17. On or about June 7, 2010, in anticipation of the termination of the DPSG-CCE agreement upon the acquisition by TCCC of CCE, TCCC and DPSG entered into an agreement for TCCC, upon acquiring CCE, to obtain a license to distribute the Dr Pepper and Canada Dry carbonated soft drink brands of DPSG in the former CCE territories. The license agreement will be signed by Dr Pepper-Seven Up, Inc. ("DPSU"), an operating company of DPSG, and CCR.

18. The DPSG-CCR license agreement provides, among other things, that (a) CCR will acquire the exclusive right to sell and distribute the Dr Pepper and Canada Dry carbonated soft drink brands in CCE territories, (b) the license agreement will 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) CCR will acquire a non-exclusive right to produce the Dr Pepper and Canada Dry carbonated soft drink brands in the CCE territories, and (d) TCCC will pay DPSG $715 million.

19. Pursuant to the DPSG-CCR license agreement, CCR and DPSG entered into additional, associated terms, whereby CCR has undertaken performance obligations to, among

other things, (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.

20. The DPSG-CCR license agreement will not provide adequate safeguards against the access by TCCC to competitively sensitive and confidential information regarding DPSG carbonated soft drink brands provided to CCR by DPSG pursuant to the license.

VI. Trade and Commerce

A. Relevant Product Markets

21. The relevant product markets in which to assess the effects of the license between DPSG and CCR and the associated performance terms are (a) branded, direct-store-delivered carbonated soft drinks and (b) the branded concentrate used to produce branded, direct-store-delivered carbonated soft drinks.

B. Relevant Geographic Markets

22. The relevant geographic markets in which to assess the effects of the DPSG-CCR license agreement and the associated performance agreement terms are (a) in the branded concentrate relevant product market, the United States as a whole, and (b) in the branded, direct-store-delivered carbonated soft drinks product market, local areas in the CCE territories.

C. Conditions of Entry

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

24. Effective (price constraining) entry requires that branded carbonated soft drinks be delivered by direct-store 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 delivery. Bottlers operate under flavor restrictions imposed upon them by concentrate companies TCCC, DPSG, and PepsiCo, Inc. 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 licensed by TCCC and PepsiCo, Inc., are required to carry Coke and Pepsi, respectively, and no other cola-flavored carbonated soft drink.

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

D. Market Structure

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

27. The carbonated soft drink brands of TCCC and DPSG are the first and second choices for a substantial number of consumers.

VII. Effects of the Acquisition

28. TCCC's access to competitively sensitive confidential information provided by DPSG to CCR in furtherance of the DPSG-CCR license agreement, or the use by CCR of competitively sensitive information passed to it by DPSG in furtherance of the DPSG-CCR license agreement, may substantially lessen competition in the relevant markets in some or all of the following ways,

(a) by eliminating direct competition between TCCC and DPSG,

(b) by increasing the likelihood that TCCC may unilaterally exercise market power or influence and control DPSG's prices, and

(c) by increasing the likelihood of, or facilitating, coordinated interaction;

each of which may result in higher prices to consumers.

VIII. Violations Charged

29. TCCC's access to competitively sensitive confidential information of DPSG, provided in furtherance of the DPSG-CCR license agreement entered into between Respondent TCCC and DPSG for the sale and distribution by CCR 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, would constitute 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 ______ day of _____________, 2010, issues its Complaint against Respondent TCCC.

By the Commission.

Donald S. Clark
Secretary

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