

Division Manager
Assistant Division Manager

IN THE MATTER OF

PEPSICO, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS
OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket 8903. Complaint, Nov. 15, 1972—Decision, Jan. 25, 1974

Consent order requiring PepsiCo, Inc., to divest within 18 months, as a package, the soft drink concentrate business, Flavette, it acquired as a result of its acquisition of Rheingold Corp., along with the soft drink bottling plant (Union Bottling Works, Inc.) owned and operated by a PepsiCo subsidiary in St. Louis, Mo. Excluding the seven leading firms from consideration, approval of a substantial soft drink bottler and/or soft drink concentrate manufacturer as a proposed acquirer would not be withheld. Further, PepsiCo is required to purchase soft drink concentrate from Flavette for its Los Angeles bottler for a period of three years; and for a ten-year period, PepsiCo is prohibited from acquiring any manufacturer or seller of concentrate without prior FTC approval.

Appearances

For the Commission: *Amy R. Richter, Ira S. Nordlicht, James Egan*

For the respondent: *Howrey, Simon, Baker & Murchison*, Wash., D.C. and *Mudge, Rose, Guthrie & Alexander*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that PepsiCo, Inc., sometimes hereinafter referred to as respondent or PepsiCo, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, (U.S.C. Title 15, Section 18) and the provisions of Section 5 of the Federal Trade Commission Act, as amended, (U.S.C. Title 15, Section 45) in the manner hereinafter more particularly designated and described, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to the provisions of the aforesaid

Clayton Act and Federal Trade Commission Act, stating its charges in this respect as follows:

I

DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

(a) *Soft drinks*—nonalcoholic carbonated beverages.

(b) *Concentrate*—the basic soft drink ingredient, principally containing flavors, and sometimes sweeteners, and sold to bottlers for use in combination with other ingredients, principally carbon dioxide, water, and sugar or another sweetener, to produce soft drinks.

(c) *Bottler*—any individual, partnership, corporation, association or other legal entity which processes soft drink ingredients into a finished product, packages the soft drink product, and distributes the packaged product primarily at wholesale.

II

PEPSICO, INC.

2. PepsiCo is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Delaware. In 1965, PepsiCo, Inc. adopted its present name, having formerly been known as Pepsi-Cola Company. It maintains its executive offices and principal place of business at Anderson Hill Road, Purchase, N.Y. Respondent had sales of \$1,225,398,000; net income, after taxes, of \$62,662,000; and assets of \$827,740,000, in 1971. In 1971, PepsiCo made domestic sales to approximately 350 bottlers located in every State of the United States and Puerto Rico.

3. The principal businesses of PepsiCo and its subsidiaries consist of the manufacture and distribution of concentrate for soft drink beverages, the bottling or canning and sale of soft drinks (primarily at wholesale), the manufacture and distribution of snack or convenience foods, the manufacture and merchandising of sporting goods, and the transportation of household goods and other property. The principal subsidiaries and divisions of PepsiCo are Pepsi-Cola Division, Frito-Lay Division, PepsiCo International Division, PepsiCo Transportation Division (includes North American Van Lines), and Wilson Sporting Goods Co. In 1972, PepsiCo entered into wine production and marketing by acquisition, and owns a non-controlling interest in a Spanish winery.

4. In fiscal 1971, beverage operations accounted for 45 percent of PepsiCo's net sales and revenues, and 60 percent of income, before taxes. In that year, food products accounted for 29 percent and 25

percent, transportation 11 percent and 7 percent, sporting goods, 10 percent and 7 percent, and leasing 5 percent and 1 percent, of net sales and revenues, and income, before taxes, respectively.

5. Franchises, issued by PepsiCo, license independent bottlers to produce and sell those soft drinks specified by the franchise and the use of the trade names and trademarks pertaining thereto in a specified territory and nowhere else. PepsiCo's wholly-owned bottlers serve about 20 percent of the total U.S. population, a larger portion of the nation than served by any of its independent bottlers.

6. Besides the long-established and well-known soft drink, "Pepsi-Cola" (and its low calorie counterpart, "Diet Pepsi-Cola"), PepsiCo has, since 1958, introduced several other soft drink concentrates which were either developed internally or obtained through acquisition. In 1959, PepsiCo first offered "Teem," a lemon-and-lime drink. In 1960, it offered the "Patio" line of concentrate flavors. In 1964, PepsiCo acquired the Tip Corporation of America, which was engaged in the manufacture and sale of concentrate for the soft drink "Mountain Dew." Currently, PepsiCo offers a complete flavor range of the concentrates used by bottlers.

7. In the course and conduct of its business, PepsiCo is, and has been, at all times relevant herein, engaged in selling its concentrate and soft drinks to numerous purchasers located in various States of the United States, and caused such products to be transported in a continuous flow of interstate commerce from its facilities in various States of the United States to such purchasers located in various other States of the United States. In so doing, PepsiCo is, and has been, engaged in "commerce" within the meaning of the Clayton Act, as amended, and the Federal Trade Commission Act, and has been continuously so engaged at all times relevant herein.

8. Except as to the extent limited by the acts, practices, and methods of competition, hereinafter more particularly defined and described, in the course and conduct of its business, PepsiCo has been, at all times relevant herein, and, is now, in competition with other corporations, firms, partnerships and persons engaged in the manufacture, distribution, and sale of soft drink concentrate in commerce.

III

RHEINGOLD CORP.

9. Rheingold Corp. (hereinafter referred to as Rheingold) is a corporation organized in 1928, and existing and conducting its business under and pursuant to the laws of the State of New York. It maintains its executive office and principal place of business at 41 East 42nd Street,

New York, N.Y. Rheingold had sales of \$230,228,040; net income after taxes of \$3,954,000; and assets of \$101,371,708 in 1971.

10. A management company, Rheingold, is engaged, through its subsidiaries, in the soft drink business and the beer business. In 1971, the soft drink business accounted for approximately 30 percent of Rheingold's total dollar sales volume, but approximately 75 percent of its profits.

11. As to the soft drink business, Rheingold has been engaged in manufacturing and distributing soft drinks in southern Calif., central Fla., Puerto Rico and Mexico. In southern Calif., Rheingold manufactures and distributes soft drinks, primarily PepsiCo products, in Los Angeles, Riverside, and San Bernardino Counties since 1946; and in Orange County since Jan. 1969. In Los Angeles, it also has the exclusive franchise from Crush International, Inc. to sell "Hires" root beer. In Dec. 1971, Rheingold acquired National Beverages, Inc. of Orlando, Fla., which holds the exclusive franchise to produce and sell PepsiCo products, as well as "Dr. Pepper" and "Seven-Up" in a combined 15-county area in central Fla. Since 1946, Rheingold has been the exclusive bottler of PepsiCo products in Puerto Rico. Rheingold is the nation's second largest independent bottler of PepsiCo products (serving approximately 5 percent of the total 1970 U.S. population), and is also the world's largest independent bottler of PepsiCo products by virtue of serving large parts of the Republic of Mexico since 1957.

12. The Flavette Corp., a subsidiary of Rheingold, produces concentrate for sale to over 100 franchised bottlers which use it to produce soft drinks sold under such Flavette-owned trademarks as "Grapette," "Orangette," "Lemonette," "Cherryette," "Lymette," "Old Red Eye," "Mr. Root Beer," "Sunburst," and "Dr. Wells." Flavette sells canned Flavette soft drinks, produced by contract canners, to its franchised bottlers for resale by them. Flavette-brand soft drinks are sold in regions of the United States containing 45 million people. Rheingold intends to extend the franchising of Flavette nationwide and to add new brands of soft drinks and, thereby, capture a substantial part of the soft drink concentrate market.

13. "Rheingold Malta," a non-alcoholic carbonated soft drink sold in bottles and cans, was introduced in late 1971 by Rheingold's subsidiary, Jacob Ruppert, Inc., and produced at its plant in New Bedford, Mass. Initial sales of "Malta" were made principally in Puerto Rico through Rheingold's subsidiary, Pepsi-Cola Bottling Co. of Puerto Rico; such sales totalled \$35,446, in 1971, and \$156,837, for the nine months ending Sept. 30, 1972. In the spring of 1972, sales of "Malta" commenced in the New York City area through independent distributors; in Aug., 1972, expanded to Chicago, Ill.; and in Oct. 1972, further expanded to the

entire State of New Jersey. Sales of Malta by Jacob Ruppert, Inc., through such distributors, were \$39,000 for the period ending Sept. 30, 1972. Jacob Ruppert, Inc. is not now and never has been a franchisee or distributor of any PepsiCo products.

14. Mason & Mason, Inc., acquired by Rheingold in Oct., 1972, was a manufacturer of concentrate which it sold to over 90 franchised bottlers located in 33 states. Such bottlers produced soft drinks under its trade name, "Mason's" root beer. Total sales by Mason & Mason, Inc., for 1971 are \$754,383. Rheingold's acquisition of Mason & Mason, Inc. was part of its expansion of its Flavette concentrate production and bottler franchising operations.

15. As to the beer business, Rheingold has, since 1964, been engaged in the manufacture and distribution of beer. Rheingold acquired Rheingold Breweries, Inc. (then known as Liebmann Breweries, Inc.) in 1964; and, in 1965, it acquired the trademarks and certain assets of the Jacob Ruppert beer business. It now manufactures beer in N.Y., N.J. and Mass. for sale by it in 18 states, Washington, D.C. and Puerto Rico. The major portion of its beer sales is made in the States of New York, New Jersey, and Connecticut. In those areas, Rheingold beer products have, for many years, maintained a significant share of the total beer market. Four brands of beer are produced: "Rheingold," "Ruppert-Knickerbocker," "Gablinger's," and "Esslinger." Although beer sales in 1971 represented about 70 percent of Rheingold's dollar volume, it accounted for only 25 percent of its profits.

16. Rheingold, in the course and conduct of its business, purchased concentrate and other ingredients and products from, and sells concentrate, soft drinks, beer and other products to, numerous corporations located in various States of the United States and, thereby, caused such products to be transported in a continuous flow of interstate commerce from corporations located in one state to those located in various other states, and in so doing, Rheingold is engaged "in commerce" within the meaning of the Clayton Act and the Federal Trade Commission Act.

IV

VIOLATION ALLEGED

17. On Oct. 24, 1972, PepsiCo, in furtherance of an attempt by it to purchase controlling ownership of Rheingold, filed with the Securities and Exchange Commission a Schedule 13D, pursuant to the Securities Act of 1934; and, on Oct. 25, 1972, caused to be widely published a tender offer to purchase 1,600,000 shares of common stock of Rheingold, with an announced view to gain control of Rheingold. As subsequently amended on Nov. 7, 1972, this offer to purchase by PepsiCo will expire

at 5:00 p.m. EST on Nov. 16, 1972, unless further extended, and now provides that all shares in excess of 1,600,000 will be purchased if more shares are tendered. Rheingold shareholders who tendered their shares pursuant to the offer to purchase, as amended, may withdraw their shares so tendered at any time prior to 5:00 p.m. EST on Nov. 16, 1972, or may withdraw such shares after Dec. 24, 1972, unless theretofore purchased by PepsiCo.

18. As hereinafter more particularly designated and described, the effect of such acquisition, pursuant to this offer to purchase by PepsiCo, may be substantially to lessen competition, tend to create a monopoly, and/or constitute an unfair method of competition in commerce, in violation of the provisions of Section 7 of the Clayton Act and/or Section 5 of the Federal Trade Commission Act. Consequently, this attempt by PepsiCo, as stated by its offer to purchase and related actions, constitutes an unfair method of competition in commerce and/or an unfair act or practice in commerce, in violation of Section 5 of the Federal Trade Commission Act.

A. The Soft Drink Concentrate Market.

19. The soft drink concentrate market consists of corporations which manufacture and sell concentrate to independent bottlers who purchase the concentrate and manufacture it into finished soft drinks, generally under the concentrate makers' trade names, for resale to retailers. The concentrate manufacturers generally restrict the areas in which their bottlers may sell the finished products. In 1967, sales of concentrate were \$353 million. In 1971, sales of concentrate were approximately \$450 million. The three largest concentrate companies—the Coca-Cola Company, PepsiCo, Inc. and Royal Crown Cola Co.—sell almost the entire assortment of concentrate types.

20. The four leading concentrate manufacturers, including the Seven-Up Company, account for approximately 71 percent of all concentrate sales in 1971, and the eight largest had approximately 84 percent of concentrate sales in 1971. In 1965, the four largest concentrate manufacturers accounted for approximately 66 percent of all concentrate sales, and the eight largest had approximately 80 percent of concentrate sales.

21. Profits in the concentrate business are much higher than the average profits earned by United States manufacturers. In 1971, PepsiCo's profits expressed as a rate of return on stockholder's equity, after taxes, amounted to 16 percent, as compared to the 9.7 percent average for all United States manufacturers.

22. Barriers to entry into the concentrate business are quite high. Recently, a few large food manufacturers unsuccessfully attempted to

enter the concentrate market. One of the most significant barriers to entry is the inability of new entrants to find well-established bottlers which are willing to sell their products, since these bottlers already sell products of the leading concentrate manufacturers.

23. There are few small concentrate operations of the type which can be expanded into companies which could offer significant competition with the eight largest concentrate companies. Also, few companies have the capability, which Rheingold possesses as a large bottler in its own right, to expand such small concentrate operations.

24. PepsiCo had about a 16 percent share of the concentrate market in 1971, which made it the second largest manufacturer of concentrate.

25. In 1970, Rheingold acquired the business of the Grapette Company, including its several concentrate lines—"Grapette," "Orangette," and "Sunburst." Also, in that year, it acquired the "Dr. Wells" concentrate business. These companies served primarily the south and southwestern regions of the country. Since acquiring these companies, Rheingold has increased the number of independent active bottlers which handle such lines from 55 to 90 and also increased the geographic scope of its operations. Recently, in Oct., 1971, Rheingold acquired Mason & Mason, Inc., a concentrate manufacturer of "Mason's" root beer, which has 90 bottlers whose primary geographic area of operations is the midwestern and southwestern regions of the United States. Rheingold has plans to continue to expand the operations of its concentrate business both by increasing the geographic area of its existing operations and also by acquiring other small concentrate companies. Rheingold currently has about 2 percent of the concentrate market in the geographic areas which it serves, which encompasses about 45 million people.

26. Acquisition of Rheingold by PepsiCo will preclude Rheingold from expanding one of the few remaining small concentrate operations which could be developed into a competitive force capable of offering significant competition to the eight largest soft drink companies. In addition, the acquisition would foreclose other concentrate operations from selling to Rheingold's bottling operations in southern Calif., central Fla. and Puerto Rico and would raise barriers to entry into the concentrate market.

27. There has been a steady decline in the number of bottlers over the past 20 years from 5,400, in 1948, to 2,300 in 1971, as the result of bottler consolidations.

28. The largest concentrate manufacturers are also large bottlers and have been active acquirers of their own bottlers in recent years.

29. As of Dec. 31, 1957, PepsiCo operated bottling plants at the following locations: Long Island City, N.Y.; Boston, Mass.; New

Brunswick, N.J.; Jersey City, N.J.; Pittsburgh, Pa.; Teterboro, N.J.; Philadelphia, Pa.; Bronx, N.Y.; Milwaukee, Wis.; Brooklyn, N.Y.; Alexandria, Va.; and Phoenix, Ariz. These plants served areas whose 1970 population was approximately 24 million or 12 percent of the total 1970 U.S. population. These plants purchase concentrate almost exclusively from PepsiCo.

30. PepsiCo has acquired, and plans to continue to acquire, independent soft drink bottlers licensed to manufacture and sell PepsiCo brand name soft drinks. Subsequent to their acquisition, such bottlers have purchased concentrate almost exclusively from PepsiCo and thereby concentrate sellers, other than PepsiCo, are deprived of access to a significant segment of the market.

31. Between 1958 and 1972, PepsiCo acquired the following bottlers:

<i>Date of Acquisition</i>	<i>Firm Acquired</i>
1958	Pepsi-Cola Bottlers of St. Louis, Inc.
1959	Dossin's Food Products
1960	Pepsi-Cola Bottling Co. of Las Vegas
1965	Westchester County Bottling Co., Inc.
1965	Berry's Beverages
1967	Pepsi-Cola Bottling Company of Plymouth, Inc.
1968	Pepsi-Cola Bottling Co. of Dallas
1968	Pepsi-Cola Bottling Co. of Lubbock
1969	Warwick Club, Inc.
1972	Pepsi-Cola Bottling Company of New Castle

32. In 1971, PepsiCo operated 18 wholly-owned bottling plants whose sales of bottled and canned soft drinks were 117,372,676 cases of 8 oz. case equivalents or 3 percent of total U.S. sales of bottled and canned soft drinks. The 1970 population of the areas served by such bottlers, excluding Rheingold, was approximately 41 million or 20 percent of the total 1970 U.S. population. All of the bottlers, whose acquisitions were described in Paragraph 31, have purchased concentrate almost entirely from PepsiCo since their acquisition by PepsiCo.

33. Bottling operations owned by concentrate producers, including Rheingold, accounted for over 15 percent of total U.S. soft drink sales in 1971. The policies of concentrate producers are to restrict the source of concentrate for their bottling operations to themselves, thereby foreclosing the concentrate purchases of such bottling operations to new or toe hold concentrate producers. The result of such policy is to raise the barriers to potential entrants and to lessen the possibility of future deconcentration in the production of concentrate. The acquisition by PepsiCo of Rheingold, if consummated, will raise even further the barriers to entry facing potential concentrate producers, and lessen the

possibility of future deconcentration of firms engaged in the production of concentrate.

B. Effects.

34. The effect of the proposed acquisition of Rheingold by PepsiCo may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of soft drink concentrate throughout the United States and in certain sections thereof. In particular, the effects of such violation have been and may be the following, among others:

(a) Actual competition between Rheingold and PepsiCo in the sale of soft drink concentrate in the areas in which both compete will be eliminated, prevented or lessened.

(b) Potential competition between Rheingold and PepsiCo throughout the United States will be eliminated, prevented or lessened.

(c) Concentration in the manufacture and sale of soft drink concentrate will be increased.

(d) Barriers to entry into the manufacture and sale of soft drink concentrate will be increased.

35. The effect of the proposed acquisition of Rheingold, may be substantially to lessen competition or tend to create a monopoly in the soft drink concentrate industry. In particular, the effects of such violation have been and may be to raise barriers to entry into the manufacture and sale of soft drink concentrate, and to restrict, restrain, hinder, lessen and eliminate competition in the manufacture and sale of soft drink concentrate. The acquisition of Rheingold, if consummated, therefore, constitutes a violation of Section 7 of the Clayton Act, as amended, and/or Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint together with a notice of contemplated relief; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provi-

sionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent PepsiCo, Inc., 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 Anderson Hill Road, Purchase, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent, PepsiCo, Inc., a corporation, its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns (hereinafter "PepsiCo") shall, within eighteen (18) months from the date of service upon it of this order, divest absolutely and in good faith to a single acquirer, subject to the approval of the Federal Trade Commission (hereinafter the "Commission"): (a) the soft drink bottling plant owned and operated by a PepsiCo subsidiary in St. Louis, Mo.; and (b) the soft drink concentrate business acquired by PepsiCo as a result of its acquisition of the stock of Rheingold Corp., including, but not limited to, the soft drink concentrate business conducted by Rheingold Corp. through its subsidiary, Flavette Corporation and its divisions, Mason & Mason and Beverage Developers. The St. Louis soft drink bottling plant to be divested hereunder shall consist of the land, buildings and soft drink bottling machinery and equipment owned and operated by Union Bottling Works, Inc., a subsidiary of PepsiCo, at 647 Tower Grove Avenue, St. Louis, Mo., together with all assets (subject to liabilities), properties, rights and privileges, tangible and intangible, associated with said plant, including, but not limited to, inventory, customer lists, route trucks, and good will (hereinafter the "St. Louis bottler"). The soft drink concentrate business to be divested hereunder shall consist of all assets (subject to liabilities), properties, rights and privileges, tangible and intangible, including, but not limited to, all machinery and equipment, inventory, customer lists, franchises, franchising rights, trade names, trademarks and good will owned and used by Rheingold Corp. in the production and sale of soft drink concentrate, together with all additions and improve-

ments to said operations since their acquisition by PepsiCo (hereinafter "Flavette").

II.

It is further ordered, That approval of a proposed divestiture hereunder shall not be withheld solely on the ground that the proposed acquirer is a substantial soft drink bottler and/or a soft drink concentrate manufacturer; *Provided, however,* That PepsiCo shall not divest any of the above-described assets to any of the following companies: the Coca-Cola Co.; Royal Crown Cola Co.; Seven-Up Co.; Dr. Pepper Co.; Canada Dry Corp.; Cott Corp.; Crush International Ltd.

III.

It is further ordered, That pending divestiture of the St. Louis bottler and Flavette, and for a period of three (3) years following divestiture, PepsiCo will purchase from Flavette soft drink concentrate sufficient to enable the Pepsi-Cola Bottling Company of Los Angeles to produce soft drinks under one or more of the Flavette trademarks or trade names at a level at least equal to the sales of such products (measured in cases of twenty-four (24) eight (8) ounce equivalents) by said company during the twelve (12) months ending Dec. 31, 1972, and further, at a level sufficient to increase such sales at a cumulative annual rate at least equal to the rate of growth of the national soft drink industry in the preceding year, as reported by the National Soft Drink Association. PepsiCo will use its best efforts to effect such sales by the Pepsi-Cola Bottling Company of Los Angeles.

IV.

It is further ordered, That pending divestiture pursuant to this order, PepsiCo shall make no changes in the St. Louis bottler and Flavette which would impair their respective capacities for the production and sale of soft drinks and soft drink concentrate, unless such capacity is restored prior to divestiture; *Provided, however,* That nothing in the order shall prevent PepsiCo from exercising good faith business judgment with respect to the operation and management of the St. Louis bottler and Flavette.

V.

It is further ordered, That the St. Louis bottler and Flavette shall not be sold or transferred, directly or indirectly, to any acquirer who, at the time of divestiture, is an officer, director or employee, or under the control of PepsiCo or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of PepsiCo's common

stock; *Provided, however*, That nothing herein shall preclude divestiture to an acquirer who is an independent PepsiCo franchised bottler so long as such bottler does not own or control, directly or indirectly, more than one (1) percent of the outstanding shares of PepsiCo's common stock.

VI.

It is further ordered, That if PepsiCo is unable to sell or dispose of the St. Louis bottler and Flavette entirely for cash, nothing in this order shall be deemed to prohibit PepsiCo from retaining, accepting and enforcing in good faith any security interest therein for the sole purpose of securing to PepsiCo full payment of the price, with interest, at which the St. Louis bottler and Flavette are sold or disposed of; *Provided, however*, That if, after a good faith divestiture pursuant to this order, the acquirer fails to perform its obligations and PepsiCo regains ownership and control by enforcement of any such security interest, PepsiCo shall redinvest within one (1) year.

VII.

It is further ordered, That for a period of ten (10) years from the date of service upon it of this order, PepsiCo shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Commission, the whole or any part of the stock or share capital of any concern engaged at the time of such acquisition in the manufacture and/or sale of soft drink concentrate in the United States, or the assets of any such concern (other than assets purchased or sold in the ordinary course of business) which are related to the manufacture and/or sale of soft drink concentrate in the United States.

VIII.

It is further ordered, That PepsiCo shall, within ninety (90) days from the date of service upon it of this order, and every ninety (90) days thereafter until the divestiture required by Paragraph I of this order has been completed, submit in writing to the Commission a report setting forth in detail its plans, actions and progress in complying with the divestiture required by Paragraph I of this order. Such compliance reports shall include, in addition to such other information and documentation as may hereafter be required to show compliance with this order, a summary of all discussions and negotiations with prospective acquirers of the assets involved, the identity of all such prospective acquirers, and copies of all written communications to and from such persons. PepsiCo shall, within one (1) year from the date of service upon it of this order, and every year thereafter, submit in writing to the

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Commission a report setting forth in detail the manner and form in which it has complied and is complying with Paragraphs III and VII of this order.

IX.

It is further ordered, That PepsiCo shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

IN THE MATTER OF