

IN THE MATTER OF
THE COCA-COLA COMPANY

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

Docket C-3113. Complaint, Aug. 3, 1983—Decision, Aug. 3, 1983

This consent order requires a major soft drink manufacturer to timely divest Doric Foods Corporation to a Commission-approved buyer. Respondent is barred from acquiring any concern engaged in the manufacture of drinks, punches and ades, without prior Commission approval for a period of ten years.

Appearances

For the Commission: *Paul R. Zamolo* and *Bill W. Bourland*.

For the respondent: *Robert A. Keller*, in-house counsel, Atlanta, Ga.

COMPLAINT

Pursuant to the provisions of the Clayton Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Coca-Cola Company, a corporation subject to the jurisdiction of the Commission, has violated Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

1. For the purposes of this Complaint, *Coca-Cola* means The Coca-Cola Company, a Delaware corporation with its principal offices at 310 North Avenue, Atlanta, Georgia, as well as its directors, officers, agents and employees, and its divisions, subsidiaries, successors and assigns.

2. Respondent Coca-Cola is a Delaware corporation with its principal offices located at 310 North Avenue, N.W., Atlanta, Georgia.

3. Coca-Cola's total net sales for the year ending December 31, 1981, were approximately \$5.9 billion.

4. At all times relevant herein, Coca-Cola has engaged in activities in and affecting commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, and Section 4 of the Federal Trade Commission Act, as amended.

5. Doric Foods Corporation ("Doric") is a Florida corporation and wholly owned subsidiary of Associated Coca-Cola Bottling Co., Inc. ("Associated") with its principal offices at Robie Avenue, P.O. Box 986, Mount Dora, Florida.

6. Doric's total sales for the year ending December 31, 1981, amounted to \$54.9 million.

7. On May 10, 1982, Coca-Cola, Associated Coca-Cola Enterprises, Inc. ("Associated Coca-Cola"), a wholly owned subsidiary of Coca-Cola; Root Company, a Delaware Corporation; and Chapman S. Root, Chairman and Chief Executive Officer of Associated and the beneficial owner of all of the capital stock of Root Company, entered into a stock purchase agreement pursuant to which Associated Coca-Cola will purchase all of the shares of Associated beneficially owned by Root Company, representing approximately 57.5% of the shares outstanding. On May 28, 1982, Associated Coca-Cola commenced a tender offer to purchase any and all of the outstanding shares of Associated. By the terms of the stock purchase agreement, Root Company is obligated to tender all of the shares of Associated owned by it in response to this offer. On May 27, 1982, Associated Coca-Cola and Coca-Cola Bottling Transactions, Corp., a Delaware corporation ("Transactions Corp.") and a wholly owned subsidiary of Associated Coca-Cola, entered into a merger agreement providing for the merger of Associated and Transactions Corp., or another entity designated by Coca-Cola. Pursuant to the merger agreement, any shares of stock of Associated not acquired by Associated Coca-Cola pursuant to the tender offer, the stock purchase agreement, or otherwise, will be converted into the right to receive \$35.93 per share in cash, subject to dissent and appraisal rights.

8. Prior to Coca-Cola's acquisition of Associated, Coca-Cola and Doric were for many years direct and substantial competitors of one another.

9. The acquisition set forth in Paragraph 7 herein may have had the effect of substantially lessening competition or tending to create a monopoly in a line of commerce in a section of the country.

10. The acquisition by Coca-Cola of Doric, for the reasons set forth herein, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

Chairman Miller dissented.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the acquisition by The Coca-Cola Company of Associated Coca-Cola

Bottling Co., Inc., and its subsidiaries, including Doric Foods Corporation (hereinafter "Doric"), and The Coca-Cola Company having been furnished thereafter with a copy of a draft of the complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge The Coca-Cola Company with violations of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), arising out of the acquisition of Doric; and

The Coca-Cola Company, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by The Coca-Cola Company of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by The Coca-Cola Company 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 thereafter considered the matter and having determined that it had reason to believe that The Coca-Cola Company has violated the said Acts and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. The Coca-Cola Company is a Delaware corporation with its principal offices located at 310 North Avenue, Atlanta, Georgia.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of The Coca-Cola Company, and the proceeding is in the public interest.

ORDER TO DIVEST AND OTHER RELIEF

I.

It is ordered, That for purposes of this Order the following definitions shall apply:

A. *Coca-Cola* means The Coca-Cola Company, a Delaware corporation with its principal offices located at 310 North Avenue, Atlanta, Georgia, as well as its directors, officers, agents and employees, and its divisions, subsidiaries, controlled affiliates, successors and assigns.

B. *Doric* means Doric Foods Corporation, a Florida corporation and

wholly owned subsidiary of Associated Coca-Cola Bottling Co., Inc., with its principal offices at Robie Avenue, P.O. Box 986, Mount Dora, Florida, as well as its directors, officers, agents and employees, and its divisions, subsidiaries, successors and assigns.

C. *Drinks, punches and ades* means non-carbonated, ready to serve, naturally or artificially flavored fruit drinks, fruit punches or fruit ades which contain 50% or less fruit juice and are customarily sold under refrigeration to the consumer.

II.

It is further ordered, That within one year from the date on which this Order becomes final, Coca-Cola shall divest itself absolutely and in good faith of all of its right, title and interest in Doric including any additions to Doric that may have occurred since its acquisition by Coca-Cola. Divestiture shall be made only to an acquiror approved in advance by the Federal Trade Commission. The purpose of the divestiture required by this paragraph is to assure the continued operation of Doric as a drink, punch and ade manufacturer. Pending divestiture, Coca-Cola shall take all measures necessary to maintain Doric in its present condition and prevent any deterioration except for normal wear and tear of any of the assets to be divested which may impair their present operating abilities or market value.

III.

It is further ordered, That for a period of ten (10) years from the date on which this Order becomes final, Coca-Cola shall not acquire, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock or assets of, or any other interest in, any individual, firm, partnership, corporation or other legal or business entity which is engaged directly or indirectly in the manufacture and sale of drinks, punches and ades.

IV.

It is further ordered, That within ninety (90) days from the date on which this Order becomes final and every ninety (90) days thereafter until the divestiture required by paragraph II of this Order is completed, Coca-Cola shall submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which Coca-Cola intends to comply, is complying, and has complied with the terms of this Order and such additional information relating thereto as may from time to time be required. All compliance reports shall

include, among other things that may be required, a summary of all contacts and negotiations with potential acquirors, the identity of all such potential acquirors, and copies of all documents reflecting communications to and from such potential acquirors. In addition, Coca-Cola shall submit annual reports in writing with respect to the other requirements of this Order.

V.

It is further ordered, That Coca-Cola notify the Federal Trade Commission at least thirty (30) days prior to any proposed corporate changes, 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 with the obligations arising out of this Order.

Chairman Miller dissented.

IN THE MATTER OF
XEROX CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8909. Consent Order, July 29, 1975—Modifying Order, Aug. 22, 1983

This order reopens the proceeding and modifies paragraph XVI of the Commission's order issued on July 29, 1975 (86 F.T.C. 364, *modified*, 91 F.T.C. 728, *modified further*, 100 F.T.C. 455), by deleting provisions that prohibited the company from promoting or taking orders for the sale or lease of any new office copier more than 3 months before its commercial availability.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED ON JULY 25, 1975

By a petition filed on April 22, 1983, respondent Xerox Corporation ("Xerox") requests that the Commission reopen the proceeding in Docket No. 8909 and modify Paragraph XVI of the order issued in this case to terminate approximately two years early its prohibition against Xerox promoting new copiers more than three months before their commercial availability. Paragraph XVI presently is scheduled to expire on July 29, 1985. Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comments. No comments were received.

Upon consideration of Xerox's request and supporting materials, and other relevant information, the Commission finds that the public interest warrants reopening and modification of the order.

In view of the changes that have taken place in the United States copier industry over the last decade, including the entry of numerous new competitors and Xerox's diminished market position, the order's prohibition against advance product announcement and promotion by Xerox is no longer needed to assure competition in the United States copier market. Advance new product announcements by Xerox, in light of these industry changes, no longer pose any danger of allowing Xerox to gain or perpetuate a monopoly or otherwise limit competition in the relevant market. Moreover, continuation of the order's prohibition against advance product announcement and promotion by Xerox appears to hamper Xerox's ability to compete and, consequently, reduces interbrand competition and deprives buyers of the opportunity to make informed decisions concerning their copier needs.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and