

Complaint

112 F.T.C.

IN THE MATTER OF

COCA-COLA BOTTLING COMPANY
OF THE SOUTHWEST, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9215. Complaint, July 29, 1988—Decision, Dec. 20, 1989*

This consent order requires, among other things, that Dr Pepper take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against the Coca-Cola Bottling Company of the Southwest.

Appearances

For the Commission: *James E. Elliott, Joan Greenbaum and Constance M. Salemi.*

For the respondents: *Andy Berg and Owen Johnson, Akin, Gump, Strauss, Hauer & Feld, Washington, D.C. Philip D. Bartz, Morrison & Forester, Washington, D.C. Nelson A. Bangs, Dr. Pepper Company, Dallas, Tx. and Gregory S.C. Huffman and Frank L. Hill, Thompson & Knight, Dallas, Tx.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the respondent, Coca-Cola Company of the Southwest, a corporation, subject to the jurisdiction of the Commission, has acquired the Dr Pepper and the Canada Dry franchises and certain other assets from the San Antonio Dr Pepper Bottling Company, a wholly-owned subsidiary of the then Dr Pepper Company or DP Holdings, Inc., now respondent Dr Pepper/Seven-Up Company, a corporation, that may be in violation of the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and that said acquisition constitutes a violation of Section 5 of the Federal Trade Commission Act, 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 pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

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

a. "*CCSW*" means Coca-Cola Company of the Southwest and its subsidiaries, divisions, and groups controlled by CCSW and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

b. "*Dr Pepper*" means Dr Pepper/Seven-Up Company and its subsidiaries, divisions and groups controlled by Dr Pepper and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

c. "*San Antonio DPB*" means the San Antonio Dr Pepper Bottling Company and its subsidiaries, divisions and groups controlled by San Antonio DPB and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

d. "*Brand*" or "*brand name*" means the trademarked name of any type of soft drink product and includes warehouse, private label and house brands. For example, "*Dr Pepper*" and "*Diet Dr Pepper*" are each separate brands.

e. "*Bottler*" refers to a person that is engaged in bottling soft drinks or that has been granted an exclusive bottling appointment by any manufacturer of soft drink syrup or concentrate.

f. "*Bottles*", "*bottling*" or "*bottled*" means the process of putting syrup or concentrate and other ingredients together as a soft drink in a bottle or can, regardless of the sources of the syrup or concentrate.

g. "*Territory*" means an area for which a bottler has been granted an exclusive bottling appointment.

h. "*Soft drink*" means a carbonated soft drink, as classified under the four-digit Standard Industrial Classification industry code 2086.

II. THE PARTIES

2. CCSW is a privately-held corporation organized and existing under the laws of the State of Texas with its principal place of business located at No. 1 Coca-Cola Place, San Antonio, Texas.

3. In 1984, CCSW's net sales totaled approximately \$90 million.

4. Dr Pepper is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 5523 East Mockingbird Lane, Dallas Texas.

5. In 1985, Dr Pepper's net sales totaled approximately \$173 million.

6. CCSW and Dr Pepper are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

7. On or about September 1984, CCSW acquired from San Antonio DPB, a wholly-owned subsidiary of Dr Pepper, the Dr Pepper and the Canada Dry franchises and other assets which include, among other things, some of the San Antonio DPB delivery trucks, Dr Pepper-identified vending machines and a warehouse. CCSW paid approximately \$14.5 million for the franchises and other assets. At the time of the acquisition CCSW and San Antonio DPB bottled, distributed and sold soft drinks in the San Antonio area. After the acquisition the remaining portion of San Antonio DPB became the Big Red Bottling Company.

IV. TRADE AND COMMERCE

Relevant Line of Commerce

8. A relevant line of commerce in which to analyze CCSW's acquisition of the Dr Pepper and the Canada Dry franchises is no broader than all soft drinks.

Relevant Sections of the Country

9. Relevant sections of the country are approximately a ten-county area surrounding and including San Antonio, Texas. This area encompasses the territories of the Dr Pepper and the Canada Dry franchises acquired by CCSW. These counties may include, but are not limited to, Atascosa, Bandera, Bexar, Frio, Kendall, Medina, Wilson and parts of Blanco, Comal, and Karnes counties.

V. MARKET STRUCTURE

10. The production, distribution and sale of soft drinks is highly

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concentrated, whether measured by the Herfindahl-Hirshmann indices or two-firm and four-firm concentration ratios.

VI. ENTRY CONDITIONS

11. Entry into the relevant markets is difficult or unlikely.

VII. COMPETITION

12. CCSW and San Antonio DPB were actual competitors in the production, distribution and sale of soft drinks in the ten-county area.

VIII. EFFECTS

13. The effect of the acquisition may be substantially to lessen competition in the relevant line of commerce and the relevant sections of the country in the following ways, among others:

- a. By significantly weakening the Big Red Bottling Company, raising its costs and reducing its output;
- b. By reducing competition between Coca-Cola and other soft drink brands and the Dr Pepper and the Canada Dry soft drink brands;
- c. By increasing the likelihood of, or facilitating, actual or tacit collusion; or
- d. By increasing the likelihood that CCSW will unilaterally exercise market power.

14. Any or all of the above increase the likelihood that firms will increase prices and restrict output both in the near future and in the long term.

15. The acquisition by CCSW of San Antonio DPB's Dr Pepper and Canada Dry franchises and other assets violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18.

Commissioner Azcuenaga recused.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondents Coca-Cola Bottling Company of the Southwest and Dr Pepper/7-Up Companies, Inc. with 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, and respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent Dr Pepper/7-Up Companies, Inc., its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Dr Pepper/7-Up Companies, Inc. of all 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication as to respondent Dr Pepper/7-Up Companies, Inc. in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Dr Pepper/7-Up Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with principal offices at 8144 Walnut Hill Lane, Dallas, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent Dr Pepper/7-Up Companies, Inc., and the proceeding is in the public interest.

ORDER

I.

DEFINITIONS

For purposes of this order the following definitions shall apply:

A. "*Dr Pepper*" means Dr Pepper/Seven-Up Companies, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal place of business at 8144 Walnut Hill Lane, Dallas, Texas, and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns;

B. "*CCSW*" means Coca-Cola Bottling Company of the Southwest, a corporation organized, existing and doing business under and by

virtue of the laws of Delaware with its principal place of business at One Coca-Cola Plaza, San Antonio, Texas and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns;

C. "*Asset Purchase Agreement*" means the Asset Purchase Agreement Between San Antonio Dr Pepper Bottling Company, Dr Pepper Company and Coca-Cola Bottling Company of the Southwest, dated as of August 28, 1984;

II.

It is ordered, That Dr Pepper shall take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against CCSW in this proceeding to the extent that it prohibits CCSW from retaining any assets or business conveyed to CCSW under the Asset Purchase Agreement or to the extent that it orders CCSW to cease and desist from bottling or distributing any products pursuant to the Asset Purchase Agreement.

III.

It is further ordered, That for a period of ten years following the date of this order, for the purpose of determining compliance with this order, upon written request of the Federal Trade Commission, the Director or any Assistant Director of the Bureau of Competition or the Director of the Dallas Regional Office of the Federal Trade Commission made to Dr Pepper at its principal offices and subject to any legally recognized privilege, Dr Pepper shall permit duly authorized representatives of the Federal Trade Commission, of the Bureau of Competition or of the Dallas Regional Office:

A. Reasonable access during the office hours of Dr Pepper, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, reports and other records and documents in Dr Pepper's possession or control that relate to any matter contained in this order; and

B. An opportunity, subject to the reasonable convenience of Dr Pepper, to interview officers or employees of Dr Pepper, who may have counsel present, regarding such matters.

IV.

It is further ordered, That Dr Pepper shall cooperate in this proceeding by producing, at its own expense, information and documents in its possession, custody or control and individuals to provide deposition or hearing testimony as may be requested by complaint counsel in connection with this proceeding.

V.

It is further ordered, That, while paragraph III of this order is effective, Dr Pepper shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale, or acquisition resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, or any other change in the corporation which may affect compliance with the obligations arising out of this order.

VI.

It is further ordered, That, within sixty (60) days after service upon Dr Pepper of the Commission's final order against CCSW in this proceeding and at such other times as the Commission or its staff may request, Dr Pepper shall file with the Commission a verified written report setting forth in detail the manner and form in which Dr Pepper has complied with this order.

Commissioner Azcuenaga recused.

IN THE MATTER OF

SOCIETE NATIONALE ELF AQUITAINE, ET AL.

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

Docket C-3270. Complaint, Dec. 28, 1989—Decision, Dec. 28, 1989

This consent order requires, among other things, the corporation, based in Paris, to divest a chemical plant in New Jersey, to a Commission-approved acquirer, and to "hold separate" the entire fluorocarbon division, to eliminate antitrust concerns created by its acquisition of Pennwalt Corporation.

Appearances

For the Commission: *Howard Morse* and *Edward F. Glynn*.

For the respondents: *Wayne D. Collins, Shearman & Sterling*, New York City and *Stephen A. Stack, Jr., Dechert, Price & Rhoads*, Philadelphia, Pa.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents, Societe Nationale Elf Aquitaine, a corporation; Atochem S.A., a corporation; Elf Aquitaine, Inc., a corporation; Atochem North America, Inc., a corporation; Atochem, Inc., a corporation (collectively "Elf"), all subject to the jurisdiction of the Federal Trade Commission, propose to acquire substantially all of the common stock of respondent, Pennwalt Corporation ("Pennwalt"), a corporation, also subject to the jurisdiction of the Federal Trade Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Societe Nationale Elf Aquitaine ("SNEA") is a French corporation with its office and principal place of business at Tour Elf, 92078 Paris La Defense, France.