

Complaint

IN THE MATTER OF

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

Docket No. C-4305; File No.101 0107
Filed November 3, 2010 — Decision, November 3, 2010

The consent order addresses allegations that The Coca-Cola Company's ("Coca-Cola") acquisition of its largest bottler, Coca-Cola Enterprises, and an exclusive license from Dr. Pepper Snapple Group, Inc. ("DPSG") would eliminate competition in the U.S. branded concentrate and branded direct-store-delivered carbonated soft drink markets and increase the likelihood that Coca-Cola could unilaterally exercise market power and facilitate coordinated interaction in the industry. Further, the consent order addresses concerns that the acquisition will provide Coca-Cola with access to DPSG's marketing plans by requiring Coca-Cola to establish a "firewall" to ensure that its access to Dr. Pepper's commercially sensitive information is limited. The consent order further requires Coca-Cola to give the Commission 45 days' advance notice of subsequent acquisitions of its franchised bottlers that are licensed to distribute DPSG products.

Participants

For the *Commission*: Michelle Fetterman, Jill M. Frumin,
and Samuel Sheinberg.

For the *Respondent*: Elaine Ewing and Mark Leddy, Cleary
Gottlieb Steen & Hamilton LLP; Abbott B. (Tad) Lipsky, Jr.,
Latham & Watkins LLP; and Jonathan Jacobson, Wilson Sonsini
Goodrich & Rosati.

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

Complaint

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.

Complaint

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.

Complaint

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

Complaint

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.

Complaint

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.

Complaint

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 third day of November, 2010, issues its Complaint against Respondent TCCC.

By the Commission, Commissioner Ramirez recused.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by The Coca-Cola Company (“TCCC”), of the North American soft drink bottling business of Coca-Cola Enterprises, Inc. (“CCE”), and the subsequent proposed acquisition and associated agreements for TCCC to acquire rights to produce, distribute, market, and sell some of the carbonated soft drink brands of Dr Pepper Snapple Group, Inc. (“DPSG”), that had been distributed by CCE and TCCC, and TCCC (hereinafter sometimes referred to as “Respondent”) having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent 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; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

Decision and Order

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 One Coca-Cola Plaza, Atlanta, GA 30313.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “TCCC” or “Respondent” means The Coca-Cola Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by TCCC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; after the Acquisition, TCCC includes the North American soft drink bottling business of CCE acquired in the Acquisition.
- B. “CCE” means Coca-Cola Enterprises Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by CCE, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquisition” means the acquisition by TCCC of the North American soft drink bottling business of CCE.
- D. “Additional Firewalled TCCC Personnel” means those employees that are identified and approved pursuant to Paragraph II.C. of this Order

Decision and Order

- E. “Bottler” means an entity licensed by a Concentrate Company to produce, distribute, market, price, and sell carbonated soft drink products under the brands of that Concentrate Company.
- F. “Bottler Functions” means the following activities, and no others, of a Bottler, which are typical of a Bottler that no Concentrate Company owns or has a controlling interest in: (1) purchasing concentrate from one or more Concentrate Companies for use in the production of carbonated soft drinks, (2) producing carbonated soft drinks, (3) marketing, advertising, promoting, distributing, pricing, and selling carbonated soft drinks, (4) implementing the marketing, advertising, and promotional programs of the Concentrate Company, (5) determining and coordinating the amount or timing of funding of retail-related promotions of carbonated soft drinks for that retailer’s operations for the brands of carbonated soft drink products of more than one Concentrate Company, and (6) formulating and engaging in marketing, advertising, or promotional activities for the brands of carbonated soft drink products of more than one Concentrate Company within the Territories or across geographic areas broader than the Territories; *provided, however*, that no Concentrate-Related Functions are included in Bottler Functions. For the avoidance of doubt, for purposes of this Order, Bottler Functions include those of TCCC as a Bottler.
- G. “Commission” means the Federal Trade Commission.
- H. “Concentrate Company” means a company that formulates concentrate for the production of carbonated soft drink products and other beverages and sells the concentrate to Bottlers. For the avoidance of doubt, for purposes of this Order, TCCC and DPSG are Concentrate Companies.

Decision and Order

- I. “Concentrate-Related Functions” means the activities of a Concentrate Company that are typical of a Concentrate Company operating separately from and independently of any Bottler in which it may have an interest, including: (1) setting the price of the concentrate sold by the Concentrate Company and selling that concentrate, (2) making decisions with respect to formulating and introducing new brands and flavors to offer to Bottlers, (3) making decisions with respect to introducing new flavors and package sizes of existing brands, (4) formulating and designing marketing and advertising programs of the Concentrate Company, and (5) determining whether, to what extent, and when the Concentrate Company will fund Promotional Activities. For the avoidance of doubt, for purposes of this Order, Concentrate-Related Functions include those of TCCC.
- J. “DMA” means the Designated Market Areas or geographic areas defined by Nielsen Media Research Company.
- K. “DPSG” means Dr Pepper Snapple Group, Inc., 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.
- L. “DPSG Beverages” means carbonated soft drink products sold by TCCC in the United States under the DPSG brands and all package sizes and flavors sold under those brands, including fountain sales; DPSG Beverages also includes any new sizes and flavors introduced by DPSG and carried by TCCC in the Territories.
- M. “DPSG Bottler Functions” means (1) Bottler Functions related to DPSG Beverages, and (2) DPSG Freestyle Functions.

Decision and Order

- N. “DPSG Commercially Sensitive Information” means all information provided, disclosed, or otherwise made available by DPSG to TCCC relating to DPSG Beverages that is not in the public domain, including but not limited to information related to the research, development, production, marketing, advertising, promotion, pricing, distribution, sales, or after-sales support of DPSG Beverages; DPSG Commercially Sensitive Information includes (1) DPSG Information Relating to Concentrate-Related Functions and (2) DPSG Information Relating to Bottler Functions.
- O. “DPSG Concentrate-Related Functions” means Concentrate-Related Functions related to DPSG Beverages.
- P. “DPSG Freestyle Functions” means the manufacture, sale, and supply of Freestyle Machine cartridges made from DPSG Beverage concentrate.
- Q. “DPSG Freestyle Information” means DPSG Commercially Sensitive Information Relating To DPSG Freestyle Functions.
- R. “DPSG Information Relating to Bottler Functions” means DPSG Commercially Sensitive Information Relating To DPSG Bottler Functions; with the exception of DPSG Information Relating to Bottler Functions that is DPSG Freestyle Information, DPSG Information Relating to Bottler Functions includes no more than the type of information that DPSG provided to its Bottlers in the Territories prior to the Acquisition; *provided, however,* that DPSG Information Relating to Bottler Functions may not necessarily include all such information.
- S. “DPSG Information Relating to Concentrate Functions” means DPSG Commercially Sensitive Information relating to DPSG Concentrate-Related Functions.

Decision and Order

- T. “DPSG Information Relating to Independent DPSG Promotions” means DPSG Commercially Sensitive Information relating to planned Promotional Activities for DPSG Beverages that are separate from and independent of planned Promotional Activities for TCCC Beverages.
- U. “DPSG National Accounts” means:
1. those retailers that sell DPSG Beverages in the Territories (or those retailers that do not sell DPSG Beverages in the Territories but that DPSG is calling on to persuade them to sell DPSG Beverages in the Territories) to which DPSG makes account calls in support of the DPSG Beverages sold by TCCC in the Territories; and
 2. those retailers that sell DPSG Beverages in Freestyle Machines (or those retailers that do not sell DPSG Beverages in Freestyle Machines but that DPSG is calling on to persuade them to sell DPSG Beverages in Freestyle Machines) to which DPSG makes account calls in support of the DPSG Beverages sold in Freestyle Machines.
- V. “Freestyle Machine” means TCCC’s proprietary Freestyle™ fountain machine.
- W. “Legal or Regulatory Functions” means activities necessary to comply with financial or other regulatory requirements, obtain or provide legal advice, or otherwise comply with applicable laws and regulations, including this Order.
- X. “License Transaction” means:
1. the agreement between TCCC and DPSG containing a license to produce, distribute, market, price, and sell DPSG Beverages in the United States, the form of which TCCC and DPSG agreed upon on June 7, 2010; and

Decision and Order

2. the Freestyle Participation Agreement in the form of which TCCC and DPSG agreed upon on June 7, 2010.
- Y. "MSA" means the Metropolitan or Micropolitan Statistical Areas or geographic areas defined by the U.S. Office of Management and Budget.
- Z. "Management Documents" means all electronic and computer files and written, recorded, and graphic materials of every kind, including copies of documents that are not identical duplicates of the originals, that were written by, addressed to, or delivered to, officials with managerial, oversight, or reviewing responsibilities.
- AA. "Monitor" means the person appointed by the Commission pursuant to Paragraph III. of this Order.
- BB. "National Accounts Sales Team" means the TCCC Bottling Operations Personnel who (1) call on DPSG National Accounts and (2) determine and formulate the level and timing of Promotional Activities in support of TCCC Beverages sold by TCCC in the Territories that do not include DPSG Beverages.
- CC. "Promotional Activities" means price and non-price promotions, in-store displays, and newspaper inserts.
- DD. "Relating To" means discussing, analyzing, summarizing, describing, or constituting, but not merely referring to.
- EE. "TCCC Beverages" means TCCC brands of carbonated soft drink products and all package sizes and flavors thereof; TCCC Beverages shall not include DPSG Beverages.
- FF. "TCCC Bottling Operations Personnel" means the persons, functions, or positions of or within TCCC that satisfy all of the criteria described in Paragraph II. of

Decision and Order

this Order; “TCCC Bottling Operations Personnel” as of the date the Agreement Containing Consent Order is executed shall include, but not be limited to, the names, functions, or positions described in Appendix A to this Order (“List”) and all people who report (directly or indirectly) to such names, functions, or positions; the List shall indicate those who have limited access under paragraph II.A; all changes to the TCCC Bottling Operations Personnel shall be in accordance with the procedure described in Paragraph II. of this Order.

GG. “Territories” means, for each brand, those territories shown in Appendix B.

II.**IT IS FURTHER ORDERED** that:

- A. TCCC shall use DPSG Commercially Sensitive Information only under the following conditions:
 - 1. the DPSG Commercially Sensitive Information consists only of DPSG Information Relating to Bottler Functions;
 - 2. the DPSG Commercially Sensitive Information is provided, disclosed, or otherwise made available only to TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel;
 - 3. TCCC Bottling Operations Personnel shall include only those persons, functions, or positions that:
 - a. are responsible for Bottler Functions or Legal or Regulatory Functions only; *provided, however*, that persons, functions, or positions included within “TCCC Bottling Operations Personnel” because they are responsible for Legal or Regulatory Functions shall have access to and use of such DPSG Commercially Sensitive Information only to the extent such

Decision and Order

information is necessary to perform such Legal or Regulatory Functions;

- b. are not responsible for Concentrate-Related Functions, and if any such person, function, or position reports (directly or indirectly) to a person responsible for Concentrate-Related Functions, that person, function, or position shall not disclose, provide, or otherwise make available DPSG Commercially Sensitive Information to the person responsible (directly or indirectly) for Concentrate-Related Functions; and
 - c. do not receive bonus or other tangible benefits related to the marginal sale of TCCC Beverages as a disproportionate benefit to any bonus or tangible benefit related to the marginal sale of DPSG Beverages;
4. an executed non-disclosure agreement and a statement attesting that he or she has received a copy of this Order, will comply with its terms, and will take all reasonable steps to assure that employees that report to him or her will comply with its terms:
- a. shall be submitted to the staff of the Commission by each person specifically identified in Appendix A no later than twenty (20) days after Respondent executes the Agreement Containing Consent Order; and
 - b. by each TCCC Bottling Operations Personnel who replaces any of those specifically identified in Appendix A or who are given responsibilities comparable to those people specifically identified in Appendix A no later than ten (10) days after assuming those responsibilities;

Decision and Order

5. the DPSG Commercially Sensitive Information is used only in connection with DPSG Bottler Functions, or solely for the purpose of Legal or Regulatory Functions;
 6. the DPSG Commercially Sensitive Information is used only in the Territories; *provided, however*, that with respect to DPSG Information Relating to Bottler Functions that is DPSG Freestyle Information, such information may be used anywhere in the United States;
 7. the DPSG Commercially Sensitive Information is not used in connection with Concentrate-Related Functions in any way, such prohibition to include but not be limited to using the information even if the DPSG Commercially Sensitive Information is not itself revealed;
 8. all DPSG documents and copies of documents reflecting or containing DPSG Commercially Sensitive Information (whether in the form provided by DPSG or in a form created by TCCC) are maintained as confidential until the earlier of five (5) years or when DPSG Commercially Sensitive Information becomes public through no act of TCCC; and
 9. DPSG Information Relating to DPSG Independent Promotions shall not be provided to the National Accounts Sales Team any time prior to the disclosure of such information to any Bottler other than TCCC.
- B. TCCC shall change the TCCC Bottling Operations Personnel only pursuant to the following procedures:
1. replacing or adding individuals who report (directly or indirectly) to the people, functions, or positions specifically identified in Appendix A shall be in accordance with the usual and customary business practices of TCCC;

Decision and Order

2. replacing any of the people specifically identified in Appendix A or re-organizing functions or positions specifically identified in Appendix A shall be in accordance with the usual and customary business practices of TCCC after notification to the Monitor;
 3. adding new functions or positions that are not specifically identified in Appendix A shall require prior notification to the Monitor and staff of the Federal Trade Commission in accordance with the following:
 - a. the staff shall have ten (10) days from notification to consider the proposed change; and
 - b. if the staff does not object, in writing including its reasons for objecting, to the change within ten (10) days of its notification, TCCC shall be permitted to make the change.
- C. TCCC shall disclose DPSG Commercially Sensitive Information to Additional Firewalled TCCC Personnel only under the following conditions:
1. such Additional Firewalled TCCC Personnel:
 - a. are employees or agents of TCCC; and
 - b. are approved by DPSG, receive only the limited information approved by DPSG, for the time period approved by DPSG, all according to the procedure described in ¶ I.C.2. of the Order, below.
 2. TCCC shall comply with the following procedure in connection with Additional Firewalled TCCC Personnel:

Decision and Order

- a. TCCC shall submit the name, position, and function of any proposed Additional Firewalled TCCC Personnel to DPSG, the Monitor, and Commission staff, together with a statement of the reasons for the need to include such person, the specific DPSG Information Relating to Bottler Functions that is necessary to be shared, and the time period during which the information is intended to be shared;
 - b. DPSG shall notify TCCC, the Monitor (if so appointed), and Commission staff within twenty (20) days whether or not it objects to the proposal;
 - c. if DPSG does not object within twenty (20) days of receiving notification of the proposal, TCCC shall notify the Commission staff;
 - d. if Commission staff does not object, in writing including its reasons for objecting, within ten (10) days of its notification that DPSG does not object, the person shall be an Additional Firewalled TCCC Personnel; and
 - e. TCCC must obtain from each Additional Firewalled TCCC Personnel an executed non-disclosure agreement and a statement attesting that he or she has received a copy of this Order and will comply with its terms.
- D. TCCC shall develop and implement procedures with respect to DPSG Commercially Sensitive Information, with the advice and assistance of the Monitor, to comply with the requirements of this Order.
1. such procedures shall assure, without limitation, that DPSG Commercially Sensitive Information is:
 - a. disclosed only if it is DPSG Information relating to Bottler Functions;

Decision and Order

- b. disclosed only to TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel;
 - c. used solely for DPSG Bottler Functions or Legal or Regulatory Functions in the Territories, or with respect to DPSG Information Relating to Bottler Functions that is DPSG Freestyle Information anywhere in the United States; and not for Concentrate-Related Functions; and
 - d. maintained confidentially;
2. such procedures shall include, without limitation:
- a. monitoring compliance;
 - b. enforcing compliance with appropriate remedial action in the event of non-compliant use or disclosure;
 - c. distributing information regarding the procedures annually to all employees of TCCC associated with its carbonated soft drink products; and
 - d. requiring that the TCCC Bottling Operations Personnel and the Additional Firewalled TCCC Personnel comply with the requirements of this Order.

III.**IT IS FURTHER ORDERED** that:

- A. At any time after TCCC signs the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that TCCC complies with all obligations and performs all responsibilities required by this Order.

Decision and Order

- B. The Commission shall select the Monitor, subject to the consent of TCCC, which consent shall not be unreasonably withheld. If TCCC has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to TCCC of the identity of any proposed Monitor, TCCC shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, TCCC shall execute an agreement that, subject to the prior approval of the Commission, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor TCCC's compliance with the requirements of this Order.
- D. If a Monitor is appointed by the Commission, TCCC shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor TCCC's compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the underlying purpose of this Order and in consultation with the Commission. In carrying out its functions, the Monitor is authorized (among other appropriate things) to provide specific information to Commission staff as to whether:
 - a. DPSG Commercially Sensitive Information provided to TCCC is DPSG Information Relating to Bottler Functions;
 - b. DPSG Information relating to Bottler Functions is conveyed only to TCCC Bottling Operations

Decision and Order

Personnel or to Additional Firewalled TCCC Personnel; and

- c. DPSG Information Relating to Bottler Functions that is conveyed to the TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel is used solely for the purpose of carrying out DPSG Bottler Functions or Legal or Regulatory Functions.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve until five (5) years after the License Transaction is effective; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purpose of this Order.
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to TCCC's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to TCCC's compliance with its obligations under this Order. TCCC shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor TCCC's compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of TCCC, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of TCCC, such consultants, accountants, attorneys and other representatives and assistants as are reasonably

Decision and Order

necessary to carry out the Monitor's duties and responsibilities.

6. TCCC shall indemnify the Monitor and hold the Monitor harmless against all losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. TCCC shall report to the Monitor in accordance with the requirements of this Order. The Monitor shall evaluate the reports submitted to the Monitor by TCCC. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by TCCC of its obligations under this Order.
8. TCCC may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor (and its representatives) from providing any information to the Commission.
9. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

Decision and Order

10. In the event the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
11. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

IV.

IT IS FURTHER ORDERED that, for the term of this Order, if TCCC intends to acquire a Bottler that is licensed to distribute TCCC Beverages anywhere in the United States and is also licensed to distribute DPSG Beverages in geographic areas outside of the Territories (“To-Be-Acquired Bottler”), TCCC may use DPSG Commercially Sensitive Information relating to the specific brand or brands in the geographic areas covered by the To-Be-Acquired Bottler’s license for the DPSG Beverages, after TCCC’s acquisition of the To-Be-Acquired Bottler, as long as TCCC complies with the obligations of Paragraph II.A. 1. - 5., and 7. - 9. of this Order, and satisfies the following additional conditions:

- A. TCCC shall comply with the obligations of this Order with respect to that DPSG Commercially Sensitive Information;
- B. For acquisitions of To-Be-Acquired Bottlers that are subject to Section 7A of the Clayton Act, 15 U.S.C. § 18a (“HSR Act”), TCCC shall also comply with the reporting and waiting obligations of the HSR Act and the rules promulgated thereunder, 16 C.F.R. § 800 et seq.;
- C. For acquisitions of To-Be-Acquired Bottlers that are not subject to the HSR Act:

Decision and Order

1. TCCC shall provide at least forty-five (45) days' advance written notification of the acquisition to the staff of the Commission, such notification to include:
 - a. the name, headquarters address, telephone number, and name of contact person of the To-Be-Acquired Bottler;
 - b. a description of the proposed acquisition and the assets to be acquired, and the acquisition price;
 - c. a copy of all existing and draft licenses and performance obligations entered into or anticipated to be entered into between DPSG, Respondent, and/or the To-Be-Acquired Bottler;
 - d. a description of the geographic areas in which the To-Be-Acquired Bottler is licensed, and in which TCCC is anticipated to be licensed, to produce, distribute, market, price, or sell TCCC Beverages, and, to the extent TCCC has such information, a description of the geographic areas in which the To-Be-Acquired Bottler is licensed to produce, distribute, market, price, or sell DPSG Beverages;
 - e. the date each license or anticipated license was, or is expected to be, entered into between DPSG, Respondent, and/or the To-Be-Acquired Bottler with respect to:
 - (1) TCCC Beverages and
 - (2) DPSG Beverages;
 - f. for the most recent 12-month period and for each MSA, DMA, city, or other geographic area in which the To-Be-Acquired Bottler

Decision and Order

bottles, distributes, or sells TCCC Beverages and/or DPSG Beverages,

(1) for any and all carbonated soft drinks:

(a) all Nielsen, IRI, or similar data with respect to that MSA, DMA, city, or other geographic area; and

(b) all market share information, written or otherwise, with respect to that MSA, DMA, city, or other geographic area,

that TCCC has, and

(2) for the most recent 12-month period for which TCCC has such information, sales in units (in constant case equivalents) and dollars, of

(a) TCCC Beverages, by brand, of the To-Be-Acquired Bottler, and

(b) concentrate, by brand, to the To-Be-Acquired Bottler;

g. all documents Relating To communications between TCCC, DPSG, and the To-Be-Acquired Bottler with respect to the acquisition of the To-Be-Acquired Bottler, the DPSG Beverage licenses, expected licenses, or performance obligations; and

h. all Management Documents Relating To the proposed acquisition;

2. Early termination of the 45-day period described in Paragraph IV.C.1. may be requested and, where appropriate, granted by letter from the Director of the Bureau of Competition; and

Decision and Order

3. If, after notification of the proposed transaction (including the information specified in Paragraph IV.C.1. a. - h.), representatives of the Commission make a written request for additional information or documentary material with respect to the acquisition of the To-Be-Acquired Bottler, TCCC shall respond expeditiously and submit all such additional information and documentary material and certify substantial compliance with the request;

provided, however, that a determination that TCCC has complied with the obligations contained in this Paragraph IV. in connection with its acquisition of a To-Be-Acquired Bottler shall not be construed as a determination by the Commission, or its staff, that the acquisition of the To-Be-Acquired Bottler does or does not violate any law enforced by the Commission; and provided further that nothing contained herein shall preclude the Commission or its staff from investigating the acquisition or proposed acquisition by TCCC of any Bottler, including a To-Be-Acquired Bottler, and seeking any relief available under any statute enforced by the Commission.

V.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after this Order becomes final, TCCC shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order.
 1. TCCC shall include in its report, among other information that may be required, a list of all Bottlers of TCCC Beverages that, at the time of submission of the list, also bottle DPSG Beverages; for each such Bottler, TCCC shall list:
 - a. each brand of TCCC Beverages that such Bottler is licensed to distribute, together with a description of the geographic areas in which each brand is licensed to be distributed; and

Decision and Order

- b. each brand of DPSG Beverages that such Bottler is distributing anywhere in each county within each geographic area described in Paragraph V.A.1.a. to the extent that TCCC has this information or can obtain it from industry publications to which it subscribes.
 2. TCCC shall at the same time also provide a copy of its report concerning compliance with this Order to any Monitor that may have been appointed.
- B. One (1) year after this Order becomes final, annually for the next nineteen (19) years on the anniversary of that date, and at other times as the Commission may require:
 1. TCCC shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied, and is complying, with this Order;
 2. TCCC shall also include in each of its annual reports:
 - a. any changes to the list of Bottlers of TCCC Beverages submitted under Paragraph IV.A. of this Order, including any deletions, additions, or other changes; and
 - b. for all To-Be-Acquired Bottlers acquired by TCCC during the previous year, a description of the geographic areas in which the To-Be-Acquired Bottler is licensed to produce, distribute, market, price, or sell each DPSG Beverage.

VI.

IT IS FURTHER ORDERED that TCCC shall notify the Commission at least thirty (30) days prior to:

Decision and Order

- A. Any proposed dissolution of TCCC;
- B. Any proposed acquisition, merger, or consolidation of TCCC;
- C. Any other change in TCCC including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to TCCC made to its principal United States offices, registered office of its United States subsidiary, or headquarters address, TCCC shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of TCCC and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of TCCC related to compliance with this Order, which copying services shall be provided by TCCC at the request of the authorized representative(s) of the Commission and at the expense of TCCC.
- B. The opportunity to interview officers, directors, or employees of TCCC, who may have counsel present, related to compliance with this Order.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on November 3, 2030.

By the Commission, Commissioner Ramirez recused.

Decision and Order

APPENDIX A

APPENDIX A**TCCC's Bottling Operations Personnel****(Dated as of September 16, 2010)**

CEO, Coca-Cola Refreshments USA, who at the time of the closing of the Acquisition will be Steve Cahillane:

- The CEO will be responsible for all bottler operations.
- The CEO, all of his direct reports, and the entire organization below them, will be part of the TCCC Bottling Operations, referred to as "Coca-Cola Refreshments USA" ("CCR") by Respondent; none will have Concentrate-Related Functions.
- CCR will be responsible for executing third-party brand distribution agreements in accordance with applicable information firewall requirements.
- The CEO will report to the CEO of TCCC (who at the time of the closing of the Acquisition is Muhtar Kent).

Position in Commercial Leadership, who at the time of the closing of the Acquisition will be Julie Francis:

- This position will be responsible for channel and customer strategies across all U.S. geographies, channels, and routes to market.
- This position will have responsibility for pricing, planning, and trade management capabilities and for capabilities in areas such as category management, sales execution, and e-commerce.
- This position will report directly to the CEO, CCR.

Position in National Retail Sales, who at the time of the closing of the Acquisition will be Mel Landis:

- This position will lead strategic relationships with national customers, serving as the lead representative of the Coca-Cola System with these key customers.
- This position will have customer management responsibilities across all categories and routes to market for bottle/can and fountain packaging.
- This position will report directly to the CEO, CCR.

Position in National Foodservice and On-Premise, who at the time of the closing of the Acquisition will be Chris Lowe:

- This position will be responsible for beverage solutions and sales, including strategic customer account management, with all national and regional Foodservice customers, across all beverage categories and package forms.
- This position will report directly to the CEO, CCR.

Decision and Order

APPENDIX A

Position in Regional Sales, who at the time of the closing of the Acquisition will be Glen Walter:

- This position will execute national, regional, and local Foodservice and Retail customer plans across multiple U.S. regions.
- This position will develop and execute regional and local programs to serve customers needs.
- This position will report directly to the CEO, CCR.

Position in Coca-Cola Refreshments Canada, who at the time of the closing of the Acquisition will be Kevin Warren:

- This position will be responsible for sales and operations leadership of business across all of Canada.
- This position will report directly to the CEO, CCR.

Position in Customer Care, who at the time of the closing of the Acquisition will be Michelle Guswiler:

- This position will lead customer contact centers, which manage product orders/issue resolution, equipment installation and servicing, parts fulfillment, and consumer inquiries/issue resolution.
- This position will provide strategic leadership, supply chain expertise, and support to key customer account teams.
- This position will report directly to the CEO, CCR.

Position in Product Supply System, who at the time of the closing of the Acquisition will be Brian Kelley:

- This position will lead the operations for all brands and packages, across all routes to market, including manufacturing, procurement, transportation, warehouse and direct store delivery.
- This position will lead efforts in areas such as quality, safety, environmental sustainability, and operational excellence.
- This position will operate the Odwalla business.
- This position will report directly to the CEO, CCR.

Position in Business Transformation Office (BTO), who at the time of the closing of the Acquisition will be Steve Jones:

- This position will steward business integration activities and the execution of integration plans after the close of the Acquisition.
- This position will manage transformational projects that fall outside ongoing business activities.
- This position will report directly to the CEO, CCR.

Decision and Order

APPENDIX A

Position in Finance, who at the time of the closing of the Acquisition will be Duane Still:

- This position will be accountable for overall financial stewardship, including centralized management and financial reporting, financial planning and forecasting, and report-to-record activities.
- This position will lead real estate activities and CCR business planning.
- This position will report directly to the CEO, CCR.

Position in Human Resources, who at the time of the closing of the Acquisition will be Laura Miller:

- This position will develop and execute human resource strategies and will lead development and implementation for all human resource initiatives and processes.
- This position will identify solutions for organizational capabilities, required competencies and skills, and future strategic objectives.
- This position will report directly to the CEO, CCR.

Position in Information Technology, who at the time of the closing of the Acquisition will be Tom Miller:

- This position will streamline and consolidate information technology applications across the North American business and ensure maintenance of a sustainable business system platform.
- This position will report directly to the CEO, CCR.

Position in Legal, who at the time of the closing of the Acquisition will be Ben Garren:

- This position will provide legal support and oversight of legal services.
- This position will report directly to the CEO, CCR.

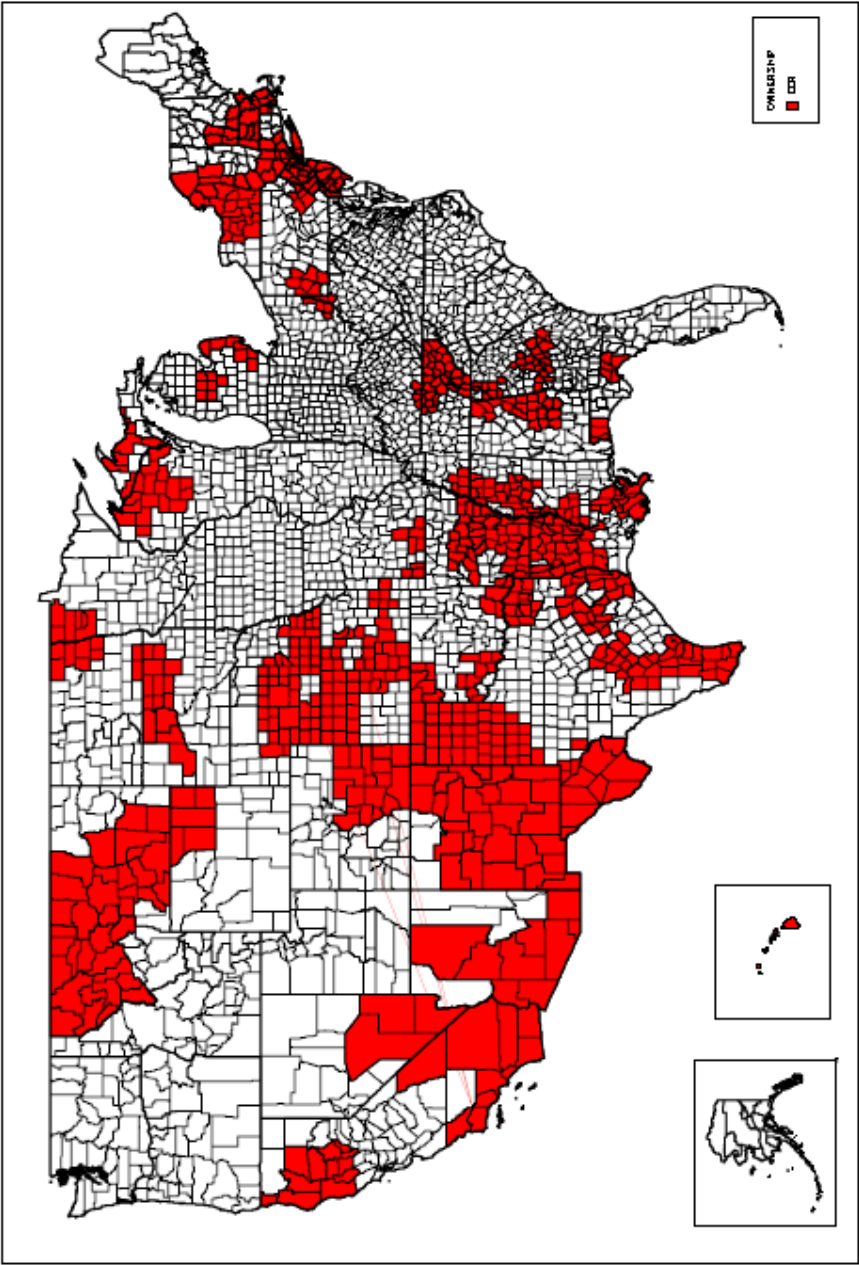
Position in Public Affairs and Communications, who at the time of the closing of the Acquisition will be Sonya Soutus:

- This position will be responsible for the development and execution of stakeholder engagement, communication, media, and government relations strategies and campaigns.
- This position will lead efforts in partnership with Marketing and business operations to support and enable growth while protecting and enhancing the reputation of TCCC and its brands.
- This position will report directly to the CEO, CCR.

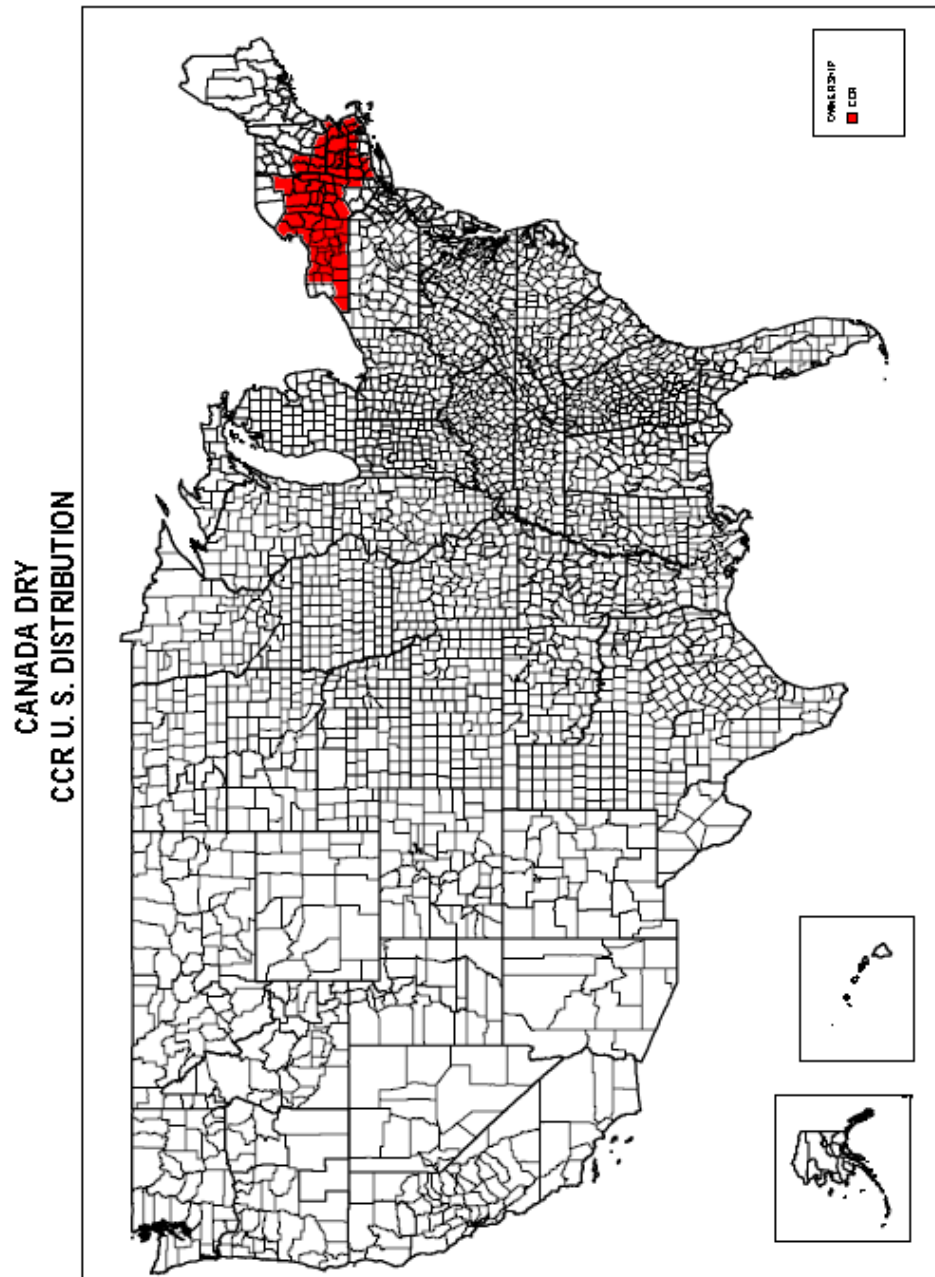
Decision and Order

APPENDIX B

**DR PEPPER
CCR U.S. DISTRIBUTION**



Decision and Order

APPENDIX B

Analysis to Aid Public Comment

**ANALYSIS OF AGREEMENT CONTAINING CONSENT
ORDER TO AID PUBLIC COMMENT****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.”

Analysis to Aid Public Comment

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 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.

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.

Analysis to Aid Public Comment

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 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.

Analysis to Aid Public Comment

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.

Complaint

IN THE MATTER OF

MARK DREHER, PH.D.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5(A) AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4306; File No. 082 3122
Filed November 4, 2010 — Decision, November 4, 2010

The consent order settles allegations that that Mark Dreher, Ph.D., as Vice President of Science & Regulatory Affairs of POM Wonderful LLC, disseminated or caused to be disseminated false or misleading advertisements and promotional materials for POM Juice and POMx products. Specifically, the complaint alleges that Mr. Dreher represented that clinical studies, research and/or trials prove that drinking eight ounces of POM Juice, taking one POMx Pill, or taking one teaspoon of POMx Liquid, daily, treats, prevents, or reduces the risk of heart disease or prostate cancer. The consent order prohibits Mr. Dreher from representing that any POM product is effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease, unless the FDA specifically approves such a claim. The consent order further prohibits Mr. Dreher from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or from misrepresenting the health benefits, performance, or efficacy of POM's products. The consent order also requires Mr. Dreher to keep copies of relevant advertisements and materials substantiating advertising claims and to notify the Commission of any changes in employment for the next 20 years.

Participants

For the *Commission*: *Tawana E. Davis, Janet M. Evans, Mary L. Johnson, Elizabeth Nach, Elise Whang, and Andrew Wone.*

For the *Respondent*: *William M. Hannay and Ron Safer, Schiff Harden LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Mark Dreher, Ph.D., individually, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: