

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
PepsiCo, Inc.,	)	
a corporation.	)	File No. 091 0133
	)	
	)	
	)	

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Proposed Respondent PepsiCo, Inc. (“PepsiCo”) of carbonated soft drink bottlers Pepsi Bottling Group, Inc., (“PBG”) and PepsiAmericas, Inc., (“PAS”), and the subsequent proposed acquisition and associated agreements for PepsiCo 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 PBG and PAS, and it now appearing that Proposed Respondent is willing to enter into this Agreement Containing Consent Order (“Consent Agreement”) to cease and desist from certain acts and practices and providing for other relief;

**IT IS HEREBY AGREED** by and between Proposed Respondent, its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent PepsiCo is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577.
2. Proposed Respondent waives:
  - a. Any further procedural steps;
  - b. Any requirement that the Commission’s Decision and Order, attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
  - d. Any claim under the Equal Access to Justice Act.
3. Proposed Respondent shall submit an initial report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, no later than ten (10) days after it executes this Consent Agreement. Such report shall be signed by the Proposed Respondent and shall set forth in detail the manner in

which the Proposed Respondent has to date complied or has prepared to comply, is complying, and will comply with the Decision and Order. Such report will not become part of the public record unless and until the Consent Agreement and Decision and Order are accepted by the Commission for public comment.

4. In the above-described report, Proposed Respondent shall provide sufficient information and documentation to enable the Commission to determine independently whether Proposed Respondent is in compliance with this Consent Agreement and the Decision and Order. The report shall be verified by a notarized signature or sworn statement of the Chief Executive Officer or other officer or director of Proposed Respondent specifically authorized to perform this function, or self verified in the manner set forth in 28 U.S.C. § 1746. Section 2.41(a) of the Commission's Rules of Practice requires that an original and two copies of all compliance reports be filed with the Commission. Proposed Respondent shall file the original report and one copy with the Secretary of the Commission, and shall send at least one copy directly to the Bureau of Competition's Compliance Division.
5. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve Complaint and the Decision and Order, in disposition of the proceeding.
6. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft of Complaint, other than jurisdictional facts, are true.
7. Proposed Respondent acknowledges that neither the issuance of the Decision and Order and the Complaint nor anything contained in the Decision and Order or the draft of Complaint, shall preclude the Commission from monitoring the proposed acquisitions and associated agreements and taking such further action as the public interest warrants.
8. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to the Proposed Respondent: (1) issue and serve its Complaint corresponding in form and substance with the draft of Complaint here attached and its Decision and Order, and (2) make information public with respect thereto.
9. When final, the Decision and Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Complaint and the Decision and Order to Proposed Respondent by any means provided in

Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) – including, but not limited to, delivery to Proposed Respondent’s Counsel as identified in this Consent Agreement – shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. Proposed Respondent also waives any right it may otherwise have to service of any Appendices incorporated by reference into the Decision and Order that are in the possession of Proposed Respondent, and agrees that it is bound to comply with and will comply with the Decision and Order to the same extent as if it had been served with copies of the Appendices.

10. The Complaint may be used in construing the terms of the Decision and Order and no agreement, understanding, representation, or interpretation not contained in the Decision and Order may be used to vary or contradict the terms of the Decision and Order.
11. Proposed Respondent has read the draft Complaint and the Decision and Order contemplated hereby. By signing this Consent Agreement, Proposed Respondent represents and warrants that:
  - a. it can accomplish the full relief contemplated by the attached Decision and Order;
  - b. all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement and the attached Decision and Order are parties to this Consent Agreement and the attached Decision and Order and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and to the Decision and Order; and
  - c. Proposed Respondent shall interpret each requirement of the subsequent proposed acquisition and associated agreements for PepsiCo to acquire rights to produce, distribute, market, and sell some of the carbonated soft drink brands of DPSG in a manner that is fully consistent with all of the relevant provisions and the remedial purposes of the Decision and Order.
12. Proposed Respondent understands that once the Decision and Order has been issued, it will be required to file one or more compliance reports showing how it has complied and is complying with the Decision and Order.
13. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order from the date it signs this Consent Agreement; *provided, however*, that Proposed Respondent will have no obligation to comply with the terms of the proposed Decision and Order in the event the Commission withdraws its acceptance of this Consent Agreement. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.

**PEPSICO, INC.**

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Larry D. Thompson  
Senior Vice President, Government Affairs,  
General Counsel and Secretary

Dated: \_\_\_\_\_

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Michael N. Sohn, Esquire  
Deborah L. Feinstein, Esquire  
Arnold & Porter  
Attorneys for PepsiCo, Inc.

Dated: \_\_\_\_\_

**FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
Joseph S. Brownman  
Warren Stephen Sockwell, Jr.  
Attorneys  
Bureau of Competition

**Approved:**

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Joan L. Heim  
Deputy Assistant Director  
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Bureau of Competition

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Norman Armstrong  
Deputy Director  
Bureau of Competition

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Richard A. Feinstein  
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Bureau of Competition