Federal Trade Commission
Protecting America's Consumers

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FTC Puts Conditions on PepsiCo's $7.8 Billion Acquisition of Two Largest Bottlers and Distributors

PepsiCo Agrees to Restrictions on Its Access to Competitively Sensitive Information of Dr Pepper Snapple Group

The Federal Trade Commission today announced that it will require carbonated soft drink company PepsiCo, Inc. to restrict its access to confidential business competitive information of rival Dr Pepper Snapple Group as a condition for proceeding with PepsiCo's proposed $7.8 billion acquisition of its two largest bottlers and distributors, which also distribute Dr Pepper Snapple Group carbonated soft drinks.

Under a settlement with the FTC, PepsiCo will set up a "firewall" to ensure that its ownership of the bottling companies does not give certain PepsiCo employees access to commercially sensitive confidential Dr Pepper Snapple marketing and brand plans. In a complaint filed with the settlement, the FTC charged that access to this information would have harmed competition in the U.S. market for carbonated soft drinks.

PepsiCo agreed on August 3, 2009, to acquire Pepsi Bottling Group and PepsiAmericas, Inc., its two largest independent bottlers and distributors, for approximately $7.8 billion. When the agreement was announced, PepsiCo already owned about 40 percent of Pepsi Bottling Group and about 43 percent of PepsiAmericas, which together account for about three-quarters of all U.S. sales of PepsiCo carbonated soft drinks, as well as 20 percent of all U.S. bottler-distributed sales of Dr Pepper Snapple carbonated soft drinks.

In a related deal, on December 7, 2009, PepsiCo agreed to continue bottling and distributing three Dr Pepper Snapple carbonated soft drink brands, Dr Pepper, Crush, and Schweppes, in the territories of the two bottlers. Under the exclusive licensing agreement, PepsiCo will pay Dr Pepper Snapple $900 million for a license to distribute and sell these brands for the next 20 years.

According to the FTC's complaint, PepsiCo and Dr Pepper Snapple are direct competitors in the highly concentrated and difficult-to-enter markets for branded soft drink concentrate and branded and direct-store-delivered carbonated soft drinks. In all, the total sales of soft drink concentrate in the United States are about $9 billion annually, and the total U.S. sales of carbonated soft drinks sold by retailers are about $70 billion.

Dr Pepper Snapple provides commercially sensitive information about its marketing plans to Pepsi Bottling Group and PepsiAmericas to help them bottle and distribute its beverages, the FTC's complaint states. Dr Pepper Snapple will continue to provide the same sensitive information to PepsiCo after the acquisitions to continue having its beverages distributed by PepsiCo, according to the complaint. The FTC is concerned that PepsiCo's access to this information could hurt Dr Pepper Snapple's ability to compete, and ultimately could harm consumers by eliminating competition between PepsiCo and Dr Pepper Snapple and/or facilitating coordinated interaction in the industry.

The FTC's proposed consent order is designed to remedy these potential problems by requiring PepsiCo to set up a "firewall" so that the sensitive information cannot be accessed by anyone at PepsiCo who may be in an position to use the information against Dr Pepper Snapple. The order, like the Dr Pepper Snapple-Pepsi license agreement, will expire in 20 years.

The FTC vote approving the complaint and proposed consent order was 4-0. The order will be published in the Federal Register shortly, and will be subject to public comment for 30 days, until March 26, 2010, after which the Commission will decide whether to make it final. Comments can be submitted electronically at the following link: https://public.commentworks.com/ftc/pepsico.

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of a complaint is not a finding or ruling that the respondent has violated the law. A consent order is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to $16,000.

Copies of the complaint, consent order, and an analysis to aid public comment are available from the FTC's Web site at http://www.ftc.gov and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Room 383, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read "Competition Counts" at http://www.ftc.gov/competitioncounts.

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Related Items:

***In the Matter of* PepsiCo, Inc.**
FTC File No. 091 0133

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