

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”):

1. 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. 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. “PepsiCo” or “Respondent” means PepsiCo, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by PepsiCo, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; after the Acquisition, PepsiCo includes PBG and PAS.
- B. “Acquisition” means the acquisition by PepsiCo of PBG and PAS.
- C. “Additional Firewalled PepsiCo Personnel” means those employees that are identified and approved pursuant to Paragraph II.C. of this Order
- D. “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.
- E. “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 PepsiCo as a Bottler.

- F. “Commission” means the Federal Trade Commission.
- G. “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, PepsiCo and DPSG are Concentrate Companies.
- H. “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 PepsiCo.
- I. “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.
- J. “DPSG Beverages” means carbonated soft drink products sold by PepsiCo in the Territories 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 PepsiCo in the Territories.
- K. “DPSG Bottler Functions” means Bottler Functions related to DPSG Beverages.
- L. “DPSG Commercially Sensitive Information” means all information provided, disclosed, or otherwise made available by DPSG to PepsiCo 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.
- M. “DPSG Concentrate-Related Functions” means Concentrate-Related Functions related to DPSG Beverages.

- N. “DPSG Information Relating to Bottler Functions” means DPSG Commercially Sensitive Information Relating to DPSG Bottler Functions; 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.
- O. “DPSG Information Relating to Concentrate Functions” means DPSG Commercially Sensitive Information relating to DPSG Concentrate-Related Functions.
- P. “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 PepsiCo Beverages.
- Q. “DPSG National Accounts” means 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 PepsiCo in the Territories.
- R. “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.
- S. “License Transaction” means the agreement between PepsiCo and DPSG containing a license to produce, distribute, market, price, and sell DPSG Beverages in the United States, dated on or about December 7, 2009.
- T. “Monitor” means the person appointed by the Commission pursuant to Paragraph IV of this Order.
- U. “National Accounts Sales Team” means the PepsiCo 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 PepsiCo Beverages sold by PepsiCo in the Territories that do not include DPSG Beverages.
- V. “PAS” means PepsiAmericas, 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 4000 RBC Plaza, 60 South Sixth Street, Minneapolis, Minnesota 55402.
- W. “PBG” means The Pepsi Bottling 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 One Pepsi Way, Somers, New York 10589.

- X. “PepsiCo Beverages” means PepsiCo brands of carbonated soft drink products and all package sizes and flavors thereof; PepsiCo Beverages shall not include DPSG Beverages.
- Y. “PepsiCo Bottling Operations Personnel” means the persons, functions, or positions of or within PepsiCo that satisfy all of the criteria described in Paragraph II. of this Order; “PepsiCo 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 PepsiCo Bottling Operations Personnel shall be in accordance with the procedure described in Paragraph II. of this Order.
- Z. “Promotional Activities” means price promotions, end-aisle displays, and newspaper inserts.
- AA. “Territories” means those territories stipulated in the License Transaction.

II.

IT IS FURTHER ORDERED that:

- A. PepsiCo 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 PepsiCo Bottling Operations Personnel or to Additional Firewalled PepsiCo Personnel;
 - 3. PepsiCo 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 “PepsiCo 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 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 PepsiCo 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 PepsiCo 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;
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;
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 PepsiCo) are maintained as confidential until the earlier of five (5) years or when DPSG Commercially Sensitive Information becomes public through no act of PepsiCo; 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 PepsiCo.

- B. PepsiCo shall change the PepsiCo Bottling Operations Personnel only pursuant to the following procedures:
1. replacing 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 PepsiCo;
 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 PepsiCo 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 to the change within ten (10) days of its notification, PepsiCo shall be permitted to make the change.
- C. PepsiCo shall disclose DSPG Commercially Sensitive Information to Additional Firewalled PepsiCo Personnel only under the following conditions:
1. such Additional Firewalled PepsiCo Personnel:
 - a. are employees or agents of PepsiCo; and
 - b. are approved by DSPG, receive only the limited information approved by DSPG, for the time period approved by DSPG, all according to the procedure described in ¶ II.C.2. of the Order, below.
 2. PepsiCo shall comply with the following procedure in connection with Additional Firewalled PepsiCo Personnel:
 - a. PepsiCo shall submit the name, position, and function of any proposed Additional Firewalled PepsiCo Personnel to DSPG, the Monitor, and Commission staff, together with a statement of the reasons for the need to include such person, the specific DSPG 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. DSPG shall notify PepsiCo, the Monitor, 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, PepsiCo shall notify the Commission staff;
 - d. if Commission staff does not object within ten (10) days of its notification that DPSG does not object, the person shall be an Additional Firewalled PepsiCo Personnel; and
 - e. PepsiCo must obtain from each Additional Firewalled PepsiCo 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. PepsiCo 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;
 - b. disclosed only to PepsiCo Bottling Operations Personnel or to Additional Firewalled PepsiCo Personnel;
 - c. used solely for DPSG Bottler Functions in the Territories or Legal or Regulatory Functions 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 PepsiCo associated with its carbonated soft drink products; and
 - d. requiring that the PepsiCo Bottling Operations Personnel and the Additional Firewalled PepsiCo Personnel comply with the requirements of this Order.

III.

IT IS FURTHER ORDERED that:

- A. At any time after PepsiCo signs the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that PepsiCo complies with all obligations and perform all responsibilities required by this Order.
- B. The Commission shall select the Monitor, subject to the consent of PepsiCo, which consent shall not be unreasonably withheld. If PepsiCo 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 PepsiCo of the identity of any proposed Monitor, PepsiCo 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, PepsiCo 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 PepsiCo’s compliance with the requirements of this Order.
- D. If a Monitor is appointed by the Commission, PepsiCo 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 PepsiCo’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 PepsiCo is DPSG Information Relating to Bottler Functions;
 - b. DPSG Information relating to Bottler Functions is conveyed only to Pepsico Bottling Operations Personnel or to Additional Firewalled PepsiCo Personnel; and
 - c. DPSG Information Relating to Bottler Functions that is conveyed to the PepsiCo Bottling Operations Personnel or to Additional Firewalled PepsiCo 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 PepsiCo'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 PepsiCo's compliance with its obligations under this Order. PepsiCo 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 PepsiCo's compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of PepsiCo, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of PepsiCo, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
6. PepsiCo 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. PepsiCo shall report to the Monitor in accordance with the requirements of this Order. The Monitor shall evaluate the reports submitted to the Monitor by PepsiCo. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by PepsiCo of its obligations under this Order.
8. PepsiCo 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.

10. In the event the Commission determines that the Monitor has ceased to act or failed diligently to act, 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:

- A. Within thirty (30) days after this Order becomes final, PepsiCo 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. PepsiCo 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, PepsiCo 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.

V.

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

- A. Any proposed dissolution of PepsiCo;
- B. Any proposed acquisition, merger, or consolidation of PepsiCo;
- C. Any other change in PepsiCo 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.

VI.

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 PepsiCo made to its principal United States offices, registered office of its United

States subsidiary, or headquarters address, PepsiCo shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of PepsiCo 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 PepsiCo related to compliance with this Order, which copying services shall be provided by PepsiCo at the request of the authorized representative(s) of the Commission and at the expense of PepsiCo.
- B. The opportunity to interview officers, directors, or employees of PepsiCo, who may have counsel present, related to compliance with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

APPENDIX A

PepsiCo Bottling Operations Personnel

(Dated as of XXXXXXXXXXXXXXXX)

CEO, Pepsi Beverages Company, who at the time of the closing of the Acquisition will be Eric Foss:

- 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 PepsiCo Bottling Operations, referred to as “Pepsi Beverages Company” by Respondent; all will have only Bottling Functions and no Concentrate-Related Functions.
- CEO will report to the CEO of PepsiCo (who at the time of the closing of the Acquisition is Indra Nooyi).

President, North America Field Operations, who at the time of the closing of the Acquisition will be Mike Durkin:

- This position will be responsible for operations in the U.S., Canada, and Mexico.
- This position will oversee Pepsi Beverages Company’s day-to-day field operations with responsibility for developing and delivering the annual operating plan of Pepsi Beverages Company.
- This position will report directly to CEO, Pepsi Beverages Company.

Executive Vice President and Chief Commercial Officer, who at the time of the closing of the Acquisition will be Tom Greco:

- This position will lead the retail selling efforts across the U.S. and Canada.
- This position will have responsibility for national accounts, channel strategy, shopper insights, field marketing and category management for the bottling organization.
- This position will manage sales for the warehouse-delivered beverages.
- This position will have a dual reporting relationship to CEO of Pepsi Beverages Company and to CEO of PepsiCo Beverages Americas (PBA), who at the time of the closing of the Acquisition is Massimo d’Amore, for other PepsiCo products, such as Tropicana and Gatorade. There will be a firewall between this position and the CEO of PBA.

Executive Vice President, Supply Chain and System Transformation, who at the time of the closing of the Acquisition will be Victor Crawford:

- This position will be responsible for manufacturing and warehouse, transportation and logistics, selling and delivery and information technology.
- This position will report directly to CEO, Pepsi Beverages Company.

Senior Vice President of Human Resources and Integration, who at the time of the closing of the Acquisition will be John Berisford:

- This position will be responsible for all aspects of Pepsi Beverages Company's human resources function, including talent management, compensation and benefits, labor relations, diversity and communications.
- This position will report directly to CEO, Pepsi Beverages Company.

Chief Strategy Officer of Pepsi Beverages Company, who at the time of the closing of the Acquisition will be Eric Liopis:

- This position will be responsible for identifying local market opportunities, and seeking strategic distribution opportunities.
- This position will report directly to CEO, Pepsi Beverages Company.

Senior Vice President of Global Bottling Capabilities and Best Practices, who at the time of the closing of the Acquisition will be Jim Rogers:

- This position will be responsible for identifying best practices in the areas of supply chain, sales execution, and service and support tools and capabilities, and bringing these practices and initiatives throughout the broader global PepsiCo organization.
- This position will report directly to CEO, Pepsi Beverages Company.

General Counsel of Pepsi Beverages Company, who at the time of the closing of the Acquisition will be Dave Yawman:

- This position will be responsible for overseeing Pepsi Beverages Company's legal, regulatory and legislative affairs and manage both internal and external counsel.
- This position will report directly to CEO, Pepsi Beverages Company.

Senior Vice President and Chief Financial Officer, who at the time of the closing of the Acquisition will be Cindy Swanson:

- This position will be responsible for leading the integration of the finance functions of PBG and PAS - as public companies - into the larger PepsiCo organization.
- This position is also responsible for analyzing and refining financial algorithms to help plan for overall system transformation and long-term performance.
- This position will report directly to CEO, Pepsi Beverages Company.