IN THE MATTER OF

THE COCA-COLA COMPANY

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

Docket 9207. Complaint, July 15, 1986--Final Order, June 13, 1994

This final order requires Coca-Cola, for ten years, to obtain Commission approval before acquiring any part of the stock or interest in any company that manufactures or sells branded concentrate, syrup, or carbonated soft drinks in the United States.

Appearances

For the Commission: *Joseph S. Brownman, Ronald Rowe, Mary Lou Steptoe* and *Steven J. Rurka.*

For the respondent: *Gordon Spivack* and *Wendy Addiss, Coudert Brothers*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, The Coca-Cola Company, a corporation subject to the jurisdiction of the Federal Trade Commission, has entered into an agreement with DP Holdings, Inc., described in paragraph four herein, that, if consummated, would violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that said agreement and the actions of the respondent to implement that agreement constitute violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5 (b) of the Federal Trade Commission Act, 15 U.S.C. 45 (b), stating its charges as follows:

I. THE COCA-COLA COMPANY

1. Respondent, The Coca-Cola Company ("Coca-Cola"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Atlanta, Georgia.

2. For the year ending December 31, 1985, Coca-Cola had net sales of $7.9 billion.

3. Coca-Cola is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

II. THE ACQUISITION

4. Coca-Cola entered into an agreement to purchase 100 percent of the issued and outstanding shares of capital stock of DP Holdings, Inc., which in turn owns all of the outstanding shares of capital stock of Dr Pepper Company. Dr Pepper is engaged in the production, sale and distribution of concentrate (including syrup) used in the manufacture of carbonated soft drinks. The total value of the transaction is approximately $470 million. Coca-Cola and Dr Pepper are direct competitors in the carbonated soft drink industry.

III. TRADE AND COMMERCE

5. For purposes of this complaint, the relevant lines of commerce are:

a. The production, sale and distribution of concentrate (including syrup) used in the manufacture of carbonated soft drinks and narrower markets contained therein.

b. The production, sale and distribution of carbonated soft drinks and narrower markets contained therein.

6. For purposes of this complaint, the relevant sections of the country with respect to each of the relevant lines of are the United States and smaller areas within the United States.

IV. MARKET STRUCTURE

7. In 1985, approximately 7.28 billion case equivalents of carbonated soft drink concentrate and of carbonated soft drinks were produced in the United States. The carbonated soft drink, concentrate and carbonated soft drink markets are highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or by two-firm, four-firm and eight-firm concentration ratios.

V. BARRIERS TO ENTRY

8. Entry into the relevant markets is very difficult, risky and time-consuming.

VI. ACTUAL COMPETITION

9. Coca-Cola and Dr Pepper are actual competitors in the manufacture and sale of the relevant products.

VII. EFFECTS

10. The effect of the acquisition, if consummated, may be substantially to lessen competition in relevant product markets in relevant sections of the country in violation of Section 7, of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition between Coca-Cola and Dr Pepper;

b. By increasing the likelihood of, or facilitating, collusion where the acquisition would significantly increase already high concentration;

c. By increasing the likelihood that Coca-Cola will unilaterally exercise market power;

d. By increasing the difficulty of entry;

e. By raising the costs and reducing the competitiveness of other firms producing and selling concentrate or syrup used in the manufacture of carbonated soft drinks;

all of which increase the likelihood that firms will increase prices and restrict the output of carbonated soft drinks both in the near future and in the longer run.

VIII. VIOLATIONS CHARGED

11. The proposed acquisition of the stock of DP Holdings by Coca-Cola would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

12. The acquisition agreement set forth in paragraph four constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

13. The proposed acquisition of the stock of DP Holdings by Coca-Cola would, if consummated, violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.