IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA et al,
Plaintiff,

v.

TICKETMASTER ENTERTAINMENT, INC.
8800 West Sunset Boulevard
West Hollywood, CA 90069,

And

LIVE NATION, INC.
9348 Civic Center Drive
Beverly Hills, CA 90210,

Defendants.

Case: 1:10-cv-00139
Assigned to: Collyer, Rosemary M.
Assign. Date: 1/25/2010
Description: Antitrust
Date filed: 1/28/2010

Tunney Act Comments of Jack Orbin, President, Stone City Attractions, Inc. on the Proposed Final Judgment in the Ticketmaster/Live Nation Merger Matter

On January 24, 2010 the Antitrust Division of the Department of Justice ("DOJ") filed a complaint and proposed final judgment ("PFJ") with the United States District Court for the District of Columbia regarding the merger of Ticketmaster Entertainment, Inc. ("Ticketmaster") and Live Nation, Inc. ("Live Nation"), to create the merged company Live Nation Entertainment, Inc. ("LNE"). Without a reasonable doubt, the merger of Ticketmaster, the nation's largest ticketing company, and Live Nation, by far the nation's largest concert promoter, will further damage an already fragile live concert industry and should be disallowed. We are submitting these comments on behalf of Jack Orbin, founder and president of Stone City Attractions, one of the largest and innovative independent concert promoters in the country, to document how the PFJ fails to adequately protect competition in the live entertainment industry, specifically in the primary ticketing market for major concert venues, and to suggest more significant remedies that can be used to strengthen the PFJ.[1]

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[1] Jack Orbin is the founder and President of Stone City Attractions, Inc., a well-respected, family-owned independent regional concert promoter. Jack Orbin has promoted and produced events in the Southwest for the past 38 years. Over the past 38 years, Stone City Attractions has promoted nearly every major concert act, from pop and rock-n-roll to country and jazz in venues of all sizes.

Jack prides himself in the extent of his community involvement. Jack was named one of San Antonio's "Most Influential Top 100 Leaders" in Arts & Entertainment. Additionally, Jack is an active member of the San Antonio Alamodome Advisory Sub-Committee, and has been awarded their prestigious Humanitarian Award multiple times.

Any assessment of whether the PFJ adequately restores competition must begin with these simple facts:

- This proposed merger faced unprecedented opposition from consumer groups, Members of the United States Congress, ticket sellers, artists, managers, independent concert promoters, and actual consumers of live entertainment. The DOJ received over 25,000 direct consumer complaints urging the DOJ to block the merger.[2]

- Attached to these comments is a letter from 50 members of Congress to AAG Varney opposing the merger. The letter expresses concerns that the merger will eliminate the minimal competition in the ticketing market, leading to higher prices and less service. "Permitting Ticketmaster to merge with its most significant competitor effectively abandons any hope for the development of competition in the foreseeable future, and it would subject consumers to any exploitation, including higher ticket prices and fees, that the newly merged firm might wish to make of its monopoly power."[3]

- Congressman Bill Pascrell framed concerns of the merger in a December 16, 2009 press conference launching the merger opposition website, Ticketdisaster.org, that featured four members of Congress and a coalition of consumer groups, ticket sellers and concert promoters: "This merger represents the greatest and most urgent threat to music fans across the country, and if approved will have far-reaching, long-lasting negative consequences for concert goers and nearly everyone involved in the live music business."[4]

- The Justice Department decision to accept the PFJ was roundly criticized by the leading newspapers. The editorial board of the New York Times declared that "this kind of consolidation embodied by Live Nation Entertainment is tremendously worrisome." The Times raised significant concerns over the vertical aspects of the merger noting this merger has created "Live Nation Entertainment, a juggernaut that has it all. It will be tough for a band to tour without doing business with the new firm."[5]

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[2] Jason Schreurs, *25,000 Concertgoers Urge U.S. Justice Department to Block Ticketmaster/Live Nation Merger*, Exclaim News (January 20, 2010), available at http://www.exclaim.ca/articles/generalarticlesynopsfullart.aspx?csid2=844&fid1=43772.

[3] Letter to Assistant Attorney General Christine Varney from 50 members of the U.S. House of Representatives (July 27, 2009). Attached hereto as "Attachment A."

[4] Remarks of Congressman Bill Pascrell, Press Conference on Ticketmaster and Live Nation merger (December 16, 2009).

[5] Editorial, Music Gets Bigger, N.Y. Times (February 9, 2010). Attached hereto as "Attachment B."

- The Washington Post called the PFJ "a terrible precedent" observing that "the gradual retreat from antitrust enforcement over the past 30 years has led corporate executives and their lawyers to believe that there is no merger that cannot win approval if you're willing to make some relatively minor fixes." Permitting the vertical integration of the two dominant live entertainment companies leaves no doubt that "a ticket monopolist seeking to buy the dominant concert promoter and venue operator…[will certainly] bundle its services and force more focused competitors out of the market.[6]

- Further, the DOJ's own Competitive Impact Statement ("CIS") provides that "[t]he proposed transaction would extinguish competition between Ticketmaster and Live Nation and thereby eliminate the financial benefits…enjoyed during the brief period when Live Nation was poised to challenge Ticketmaster's dominance;" diminish innovation in primary ticketing services; and "result in even higher barriers to entry and expansion in the market for primary ticketing services."[7]

The theory that the PFJ here, by allowing the largest concert promoter (who operates at a major financial loss, to the tune of $800 million at the announcement of this merger) to combine with what is commonly known as the most despised of corporations by the ticket buying public, will restore competition in the primary ticket sales and concert promotion markets is nonsensical. The reality is that this merger further enforces the monopolistic hold of Ticketmaster on the live entertainment industry; and this merger will continue to increase ticket prices to consumers and continue to drive independent concert promoters out of business. AAG Varney stated, after the filing of the Complaint, that "we were prepared to litigate the case, and I told the parties that."[8] Yet, the DOJ did not litigate, and instead chose to identify a very limited set of competitive concerns in ticketing and proposed a limited set of remedies. The prohibitions proposed by the DOJ "will prove difficult to enforce. And there is nothing to stop anticompetitive bundling of tour management, concert promotions and venues."[9]

This merger results in LNE dominating the live entertainment industry with over an 80% market share for primary ticketing among major concert venues, and controlling 127 major concert venues in the United States, including amphitheaters and clubs. In spite of the substantial level of concentration resulting from this merger, the DOJ chose not to challenge the merger to remedy the impact on the independent concert promoters whose businesses will undoubtedly suffer as a result, nor to consider the impact to skyrocketing costs to consumers. The DOJ's enforcement action is inadequate in several respects:

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[6] Steven Pearlstein, *Ticketmaster and Live Nation Merger is a Raw Deal*, The Washington Post (January 29, 2010), available at http://www.washingtonpost.com/wp-dyn/content/article/2010/01/28/AR2010012803710.html.

[7] CIS at 11.

[8] Aruna Viswanatha, *Justice OKs Ticketmaster Live Nation -- With Conditions*, Main Justice (January 25, 2010).

[9] Editorial, Music Gets Bigger, N.Y. Times (February 9, 2010).

- It fails to secure relief for the consumer by eliminating competition of independent concert promoters;
- The relief fails to ensure adequate competition for primary ticket sales and for concert promotion, and is insufficient to allow entry into these markets;
- It fails to adequately prevent LNE from acquiring customer data from independent concert promoters.

As described herein, the DOJ enforcement action is insufficient to address the competitive concerns of the live entertainment industry highlighted by the widespread opposition. Because of the enormous effects on consumers and competitors that this merger will have, combined with the inadequate relief proposed in the PFJ, the DOJ should reconsider their position, amend the PFJ as suggested below, reopen the matter to fully address the competitive concerns raised by this merger, and ultimately block the merger.

No Relief in for Consumers due to the Elimination of Independent Concert Promoters

The fact here is simple: ticket prices have skyrocketed since the roll up of concert promoters into Live Nation's predecessors and ultimately Live Nation, and the ticketing monopoly created currently by Ticketmaster. The consumer has been taken advantage of by these two conglomerates. To believe for a moment that the combination of the two huge corporations will benefit consumers in better services or lower prices is fantasy, at best. Both Ticketmaster and Live Nation are beholden to their stockholders and those stockholders demand profits. It is safe to assume any savings from the actual integration will be swiftly swallowed by the drive for profit by these mega-conglomerates, leaving the consumer helpless. The PFJ provides no form of relief in terms of lower costs to consumers. In fact, AAG, Christine Varney, has said that the hope of the DOJ here is to provide competitive choice for venues, but "whether that'll mean lower prices for fans, we'll see."[10]

The promoter principally sets ticket prices and costs have not increased relative to the ticket price increases.[11] This is substantially a result of Live Nation overpaying for Artists to ensure that other promoters do not have a chance to compete with those Artists. Live Nation has "reinvented" itself numerous times to try to compensate for their disastrous financials. None of these reincarnations have been profitable, leading to this desperate act. Live Nation is currently being sued in various courtrooms, most of which allege anti-competitive practices and/or the inflation of ticket prices. Concerts have been used as loss leaders, not only to keep other promoters from competing, but requiring Live Nation then to try to make up some of those losses through other ancillary revenue streams, resulting in falsely inflating prices of merchandise, concessions, and parking. This merger then becomes simply Ticketmaster and Live Nation trying to complete their respective monopolies, vertically as well as horizontally. The rollup of Artist management, ticketing, venues, and concert promotion into a powerful monopoly precludes the

[10] David Segal, *Calling Almost Everyone's Tune*, N.Y. Times (April 23, 2010).

[11] The average price of a ticket to one of the top 100 tours jumped to $62.57 in 2009 from $25.81 in 1996, far outpacing inflation. Id.

consumer choices, as well as terminating permanently the potential of any significant entries, desperately needed, into the live concert industry.

As has been commonplace for decades, the strongest protection the consumer has had has been the power to say "no" to a ticket purchase. The only other protective force has been the fact that a handful of independent promoters could provide an alternative – ensuring ticket prices and service charges be competitive and reasonable. However, this merger, by combining the vertical powers of the industry predominantly into the hands of this combined mega-conglomerate, destroys any sense of competitive balance provided by the existence of independent promoters. The majority of independent promoters will be squeezed from being able to compete with the already predatory practices commonplace by these two dominant corporations, who post-merger will have even greater powers – anticompetitive bundling of Artists, fan clubs, venues, ticketing, etc. – incumbent in this merger. Thus, relatively soon after the completion of this merger, if permitted, the protection of the consumer by the independent promoters will disappear. It is small businesses that create the real alternative to the consumer through diversity and innovation and this merger dooms that option. Unfortunately, the PFJ does little here to protect the important role of the independent promoters. The DOJ must consider additional remedies to the PFJ to ensure competitive, non predatory pricing, designed to protect the consumer.

The PFJ Fails to Ensure Adequate Competition and Actually Enhances Barriers to Entry

The PFJ provides for extremely limited relief that supposedly will provide competition to the primary ticket sale and concert promotion markets. The limited relief here is insufficient to overcome the significant barriers to entry into both primary ticketing sales and concert promotion markets. LNE will control over 80% of the primary ticketing sales in the United States, yet the PFJ provides only for the divestment of Paciolan, a small ticketing platform that has been sublicensed to other primary ticket sellers barely representing 4% of the market; and for a 5-year ticket technology license to Anchutz Entertainment Group, Inc. ("AEG"), who represents about 8% of the capacity of U.S. concert venues. As the Washington Post observed troublesome here is that "in order to provide sufficient competition to a bigger and more vertically integrated Ticketmaster, the government has put itself in the position of playing midwife to two other vertical mergers -- one involving Anschutz, the other Comcast -- making it even more difficult for small venues and independent promoters to survive."[12] While Comcast may theoretically provide for broader competition and the DOJ believes that AEG may be the "company best positioned" to compete for the sale of primary ticketing,[13] these remedies are wholly inadequate.

First, the divestment of Paciolan to Comcast fails to secure any relief in the primary ticket sales market. Paciolan now is only sub-licensed by Ticketmaster to roughly 4% of the market for primary ticketing. Assuming that the 4% benchmark is maintained under Comcast

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[12] Steven Pearlstein, *Ticketmaster and Live Nation Merger is a Raw Deal*, The Washington Post (January 29, 2010), available at http://www.washingtonpost.com/wp-dyn/content/article/2010/01/28/AR2010012803710.html.

[13] CIS at 13.

ownership, Paciolan will only be used in another 2% of concert venues which Comcast provides ticketing to.

Second, the merger and the PFJ transform the structure of the ticketing and promotion marketplace to effectively require vertical integration in order for any firm to effectively participate in the market in the future. The merger combines the largest ticketing firm with the largest concert promoter. Although the parties may assert that vertical integration is efficient, the DOJ appropriately rejected those claims.[14] Yet the DOJ then relied on AEG to attempt to restore competition, significantly increasing the level of vertical integration in the market. Post-merger if any firm would seek to enter the ticketing market in the future, it now will effectively be forced to simultaneously enter into concert promotion. Typically the antitrust enforcement agencies challenge vertical mergers because they may require two-level entry for future entrants;[15] in this case the PFJ causes the anticompetitive effect the DOJ is supposed to try to prevent. In this case the PFJ enhances barriers to entry rather than reducing them.

Third, we are very skeptical that AEG can fully restore competition through the complex limited licensing arrangement with Ticketmaster. AEG will be fully beholden and dependent on Ticketmaster. Licensing of Ticketmaster's ticketing platform to AEG would be insufficient to prevent the destruction of any remaining consumer protections, and any competitors, in its wake as well. AEG with 30 concert venues, trails far behind with the control of LNE's 127 venues. Moreover, the licensing of the ticketing platform still provides LNE with royalties based on each ticket sold by AEG, meaning Ticketmaster will have its hand in AEG's pot.

Fourth, even with the relief offered by the PFJ, LNE will still control over 80% of the primary ticketing and control most of the major concert venues in the United States, resulting in significant barriers to entry into these markets. Independent promoters will have to compete to book shows in LNE owned venues. And Independent promoters will most likely be forced to continue to utilize Ticketmaster for the majority of their shows (allowing Ticketmaster to keep its hands inside the promoters' pockets.) Moreover, with LNE possessing majority control of venues, coupled with Ticketmaster's ownership of Front Line Management, the barriers to entry are significant, and will become more significant post-merger. Moreover, the fact that the next largest competitors to Ticketmaster and Live Nation only represent roughly 4% of primary ticket sales and 8% of major concert venues is telling of the dominance LNE will have, and of the considerable barriers that will exist post-merger.

This merger dooms any real diversity in the live concert industry. As the Editorial Board of the New York Times warned: "Live Nation could easily shut out independent promoters – who don't have their own venues and ticket services. This could reduce diversity in the music market. The cost savings that are supposed to flow from these mergers never seem to accrue to

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[14] In the Competitive Impact Statement the DOJ noted that a "vertically integrated monopoly is less likely to spur innovation and efficiency than competition between vertically integrated firms, and a vertically integrated monopoly is unlikely to pass the benefits of innovation and efficiency onto consumers." CIS at 12. We respectfully suggest that a vertically integrated duopoly is far less likely to spur innovation than several nonintegrated firms.

[15] PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 1011, at 196 (rev. ed. 1998) (citing the 1984 Merger Guidelines, §4.211).

consumers because the mergers leave so little competition."[16] That is why the PFJ should be rejected.

The PFJ Fails to Provide an Adequate Firewall

The PFJ attempts to limit the anticompetitive effects of the merger by imposing certain behavioral restrictions on LNE. Even though both Ticketmaster and LiveNation have been the subject of several antitrust and consumer protection lawsuits, the PFJ imposes extremely modest restrictions at best. Ticketmaster, after all, is no model corporate citizen – during the pendency of this merger it settled Federal Trade Commission charges that it engaged in fraud and deception in the sales of tickets for Bruce Springsteen concerts.[17] If Ticketmaster would engage in such brazen law violations during the pendency of a government merger investigation, certainly the most significant and iron-clad behavioral restrictions must be imposed to prevent any violations of the PFJ.

Yet the PFJ does not do that. It recognizes the importance of the confidential information of independent concert promoters, but imposes an extremely limited two-paragraph firewall – one far less significant than that used by the other federal antitrust enforcer – the Federal Trade Commission.

Customer data is the lifeblood of the concert promotion business. Concert promoters attract customers by producing more innovative and creative shows, promoting new artists, offering reasonable ticket prices, and knowing the tastes and interests of their community. Each independent concert promoter's list of customers is one of its most crucial assets. When an independent concert promoter puts on a show, he is able to collect customer information, including e-mail addresses, through ticket sales. This information is important for the purposes of advertising and gaining repeat customers.

By permitting this merger, the independent promoters are forced to contract for primary ticketing services via its largest concert promotion rival, LNE. LNE will have the incentive and ability to quickly exploit the information to dampen competition in both promotion and ticketing. LiveNation has used information in this fashion in the past. Vertical mergers of this sort often raise the concerns that by the merging parties having access to competitors' data, there is the potential for discrimination against competitors, or worse, exclusion of competitors from the market.

The PFJ attempts to create a firewall provision to prevent LNE from obtaining the ticketing data of its competitors and using this data in its non-ticketing businesses (concert promotion and ancillary services). As the Competitive Impact Statement notes, the PFJ seeks to protect competition among promoters and artist managers "by requiring that Defendants either refrain from using certain ticketing data in their non-ticketing businesses or provide that data to

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[16] Editorial, Music Gets Bigger, N.Y. Times (February 9, 2010).

[17] *See* Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief, *Federal Trade Comm'n v. Ticketmaster et al* , Case No. 1:10-cv-01093 (N.D. Ill. February 18, 2010).

other promoters and artist managers."[18] Yet, the PFJ seeks to limit misuse through a bare bones, two-paragraph firewall provision. To the detriment of independent concert promoters, this PFJ provision still permits a broad sharing of information among higher-level employees, including "any senior corporate officer, director or manager."[19] Additionally, the provision seems to lack any mechanism of policing this firewall. Moreover, the firewall does not adequately protect the independent concert promoters. These firewall provisions will not work as planned, especially for a firm like Ticketmaster that has such overwhelming vertical control and such a poor record of corporate compliance.

The inadequacy of the PFJ is clear when it is compared to the approach of the Federal Trade Commission ("FTC") in implementing a much stronger firewall in a vertical merger (*see* In the Matter of PepsiCo, Inc. (FTC File No. 091 0133, February 26, 2010)).[20] Pepsi acquired its two largest bottlers Pepsi Bottling Group and Pepsi Americas. Pepsi bottlers also distribute for PepsiCo's competitor, Dr. Pepper and Snapple Group (DPSG). This is a merger with similar vertical concerns to the Ticketmaster/Live Nation merger, in which the sharing of competitive information could be detrimental to competition. In a 14-page Consent Order the FTC lays out specific firewall provisions designed to prevent acquisition and misuse of confidential information and monitor, when necessary, the use of competitive information by the merged firm.

- The FTC Order imposes a Monitor Trustee to monitor compliance with the order and the order is explicit that the Trustee is a fiduciary of the Commission.
- Additionally, The Monitor has full audit rights and is paid for by Pepsi. The Monitor is effectively an employee of the FTC.
- The Order designates a very limited set of Pepsi employees (the parent company) who can have access to the bottling information.
- The Order narrowly defines the type of information that Pepsi (the parent company) can have access to and narrowly defines the permissible use of the information it is allowed access to.
- The Order requires reorganization of personnel in both Pepsi and the bottling companies to comply with the Order.
- The Order requires Pepsi, within a certain time frame, to develop internal procedures to comply with the Order.

Of course, anyone can recognize that Dr Pepper and Snapple Group has far more power and resources to protect itself from anticompetitive conduct than the small independent concert promoters or venue owners the PFJ seeks to protect.

The DOJ should reconsider the PFJ, and short of blocking the merger, should adopt additional mechanisms to strengthen the firewall provisions, similar to the FTC. For example, a Monitor Trustee, being a neutral third-party or a fiduciary of the Division, should be required to

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[18] CIS at 17.

[19] Proposed Final Judgment at 4, 20.

[20] FTC Consent Order attached hereto as "Attachment C."

monitor compliance with the order; and to ensure compliance, provide the Monitor Trustee with full audit rights. Additionally, the DOJ should narrowly define the type of information that the non-ticketing businesses of LNE can have access to, and narrowly define the permissible use of the information. Finally, the DOJ should require LNE to develop internal procedures to comply with the order. The addition of such enforcement mechanisms will help strengthen what is an otherwise inadequate PFJ.

Conclusion

After an 11-month investigation of a merger which creates a dominant firm in the broken ticketing market, posing an unprecedented level of concern by consumers and competitors, the DOJ chose insufficient remedies to protect consumers and independent concert promoters. The remedies are inadequate to resolve the competitive concerns and the PFJ actually enhances barriers to entry. Moreover, the PFJ fails to adequately provide an effective firewall provision, which is the only provision to protect independent concert promoters and their customer base from the predatory practices of Ticketmaster and Live Nation.

It is a favorite phrasing of Live Nation and Ticketmaster executives to say the music industry is "broke." There is no doubt about that; however, it is these companies that have broken it. To solidify their market power makes no sense. As Congressman Pascrell declared "[t]here is little doubt that the result of this merger will be higher ticket prices, higher fees and chilling effects on consumers, business managers, artists, music fans, promoters in every state around the country."[21]

The PFJ should be rejected and the merger blocked. In the alternative, we strongly urge the DOJ to amend the PFJ with additional remedies to address these competitive concerns.

Respectfully Submitted,

Date: May 3, 2010

____/s/ David A. Balto____

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[21] Remarks of Congressman Bill Pascrell, Press Conference on Ticketmaster and Live Nation merger (December 16, 2009).

ATTACHMENT A

Congress of the United States
Washington, DC 20515

July 27, 2009

The Honorable Christine A. Varney
Assistant Attorney General for Antitrust
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Varney:

As Members of Congress, we wish to express our concern regarding the proposed merger between Ticketmaster Entertainment, Inc., and Live Nation, Inc. We urge the Justice Department to analyze this proposed transaction closely and with great skepticism. Such scrutiny is critical to ensure that consumers are not harmed by the creation, entrenchment, extension, or undue exploitation of market power in an industry that affects every state, and virtually every congressional district, in the country.

Ticketmaster Entertainment is the industry's overwhelmingly dominant ticket seller, its largest provider of talent management services, and its second largest reseller of tickets. Live Nation is the industry's largest promoter of live entertainment events, the second largest ticket seller, and the second largest owner/manager of entertainment venues. The transaction therefore would create an entity, Live Nation Entertainment, which would enjoy a virtual stranglehold over the live entertainment industry. Together, the two parties sold more than 100 million tickets domestically in 2008, and there are few artists, promoters, venue owners, or concertgoers that would not feel the impact of this merger. In our view, the merger should be prohibited.

From an antitrust perspective, the proposed merger is problematic in three ways. First, the merger would reduce horizontal competition by combining the two leading firms in the market for primary ticket sales. According to the May 30, 2009 rankings by TicketNews.com, the transacting parties, if merged, would be over five times more powerful than their next eight rivals combined. Additionally, some of these rivals are operated by Ticketmaster or rely on software provided a Ticketmaster subsidiary, Paciolan. Tellingly, the parties announced this merger less than three months after Live Nation entered the ticket sales market, suggesting they would prefer to combine rather than compete. This is the essence of anticompetitive behavior.

The transaction would also exacerbate the already significant barriers to entering the ticket sales market. Today, Ticketmaster enjoys long-term, exclusive contracts with most of its clients, typically the venues where the events occur. Permitting Ticketmaster to merge with its most significant competitor effectively abandons any hope for the development of competition in the foreseeable future, and it would subject consumers to any exploitation, including higher ticket prices and fees, that the newly merged firm might wish to make of its monopoly power.

Second, the proposed merger would eliminate the possibility for one of the parties to enter the industry markets in which they don't presently compete. Fear of entry is often sufficient to curb the exploitation of existing market power. Both are large enough to enter related markets and have a clear history of doing so. For example, Live Nation recently entered the primary sales market on its own. Entry is healthy as it often leads to market deconcentration and heightened rivalry. Although the parties' future expansion plans are uncertain if the transaction is prohibited, it is certain that the merger, if permitted, will preclude each party from expanding into the industry markets where it currently does not compete.

Third, the proposed merger would create a vertically integrated entity whose power would extend across five of the industry's six main markets. An entrant or competitor in any of these markets would face the merged firm not only as a market rival, but also as a power in other critically related markets. A new promoter, for example, needs artists willing to perform and venues appropriate for staging the event. A new venue needs artists and promoters willing to book the facility. The vertically integrated firm can withhold these critical inputs, and its rival will suffer. To avoid such problems, an entrant would need to enter the industry on several levels at once, a burden that makes entry far more daunting and costly. The combined entity could therefore use its five-market vertical integration to restrain trade both by chilling entry and disciplining rivals.

We see little to commend this transaction. Ticketmaster Entertainment and Live Nation have offered no plausible efficiency justifications for the merger. To justify an anticompetitive merger such as this one, efficiency benefits must, according to DoJ/FTC Horizontal Merger Guidelines: arise specifically from the merger and not be attainable in other reasonable ways, be verifiable rather than merely speculative, and outweigh the transaction's competitive injury in every adversely-affected market. Ticketmaster Entertainment and Live Nation can achieve all the benefits they claim without the merger. Regardless, these benefits promise only speculative advantages, at best, and are almost surely insufficient to outweigh the merger's competitive harm in the ticketing and other industry markets.

Restructuring will not cure this transaction's competitive flaws. Live Nation could sell its primary ticketing business, but this enterprise is far less likely to be viable in other hands. The merged company could also be prohibited from using its vertical integration to discriminate against entrants or rivals in the marketplace. However, such strictures will be hard to enforce, as the prohibited conduct can easily be accomplished from within corporate walls or through veiled, well-placed hints.

Consumers, business managers, artists, independent promoters, and music fans in every state are likely to suffer if the merger is allowed to occur. We urge you to give this transaction the closest possible scrutiny and provide citizens the antitrust protection they deserve.

Sincerely,

cc: The Honorable Eric H. Holder Jr., Attorney General of the United States

Cosigners

The Honorable:

Bill Pascrell, Jr.
Todd Russell Platts
Jo Ann Emerson
Bob Filner
Tim Holden
Eddie Bernice Johnson
Raúl M. Grijalva
Michael F. Doyle
Michael A. Arcuri
John B. Larson
Brian Higgins
Bart Stupak
Anthony D. Weiner
Jared Polis
Barney Frank
Dennis J. Kucinich
Brian Baird
Lynn C. Woolsey
Daniel Lipinski
Zach Wamp
Brad Miller
Jim McDermott
Joe Courtney
Debbie Wasserman Schultz
Donald M. Payne
Mike Quigley

David Wu
Carolyn McCarthy
Steven R. Rothman
Nick J. Rahall II
Peter Welch
Rush D. Holt
Robert A. Brady
Stephen F. Lynch
Frank A. LoBiondo
Bennie G. Thompson
Peter J. Visclosky
Michael E. Capuano
James Langevin
Maurice D. Hinchey
Tammy Baldwin
Jerrold Nadler
John F. Tierney
Jim Cooper
John H. Adler
Lois Capps
James P. McGovern
Frank Pallone, Jr.
Albio Sires
Rosa L. DeLauro

ATTACHMENT B

The New York Times

February 9, 2010

EDITORIAL

Music Inc. Gets Bigger

President Obama has made a welcome break with the Bush administration's disregard for enforcing antitrust law. The Department of Justice and the Federal Trade Commission have become more aggressive about questioning mergers and challenging monopolies and anticompetitive behavior.

But antitrust regulation still suffers from an unwillingness to challenge "vertical integration," in which companies, suppliers and customers become intertwined and a few corporations can control all aspects of their industry. Such is the case in the merger of Ticketmaster and Live Nation, which was approved with some limitations by the Justice Department's antitrust division recently. Ideally, the merger should not have been.

Competition had been growing between the two. Live Nation, the country's biggest concert promoter that also owned and operated venues, established a ticketing subsidiary. Ticketmaster Entertainment, the biggest ticketing company, bought a tour management business for top artists. The merger created Live Nation Entertainment, a juggernaut that has it all. It will be tough for a band to tour without doing business with the new firm.

The Justice Department challenged the "horizontal" consolidation of the companies' overlapping ticketing businesses. But it was weaker when it came to dealing with the perils that arise from the emergence of a company that will operate on every level of its business.

It required Live Nation Entertainment to sell a ticketing subsidiary and license its ticketing software to a rival promoter, AEG Live, which will thus be able to compete across the business lines. It forbade Live Nation Entertainment from bundling ticketing with other parts of the business to keep rivals out, and it prohibited retaliation against venues that didn't use its ticket service. But these prohibitions will prove difficult to

enforce. And there is nothing to stop anticompetitive bundling of tour management, concert promotions and venues.

The Justice Department's trustbusters argue that there was little else they could do. They could be right. There was a risk that Live Nation would sell its ticket service if the merger was blocked and simply sign a contract with Ticketmaster. Moreover, courts have generally been skeptical of antitrust challenges to vertical integration because they provide so many cost savings to the merged companies.

But the kind of consolidation embodied by Live Nation Entertainment is tremendously worrisome. Live Nation could easily shut out independent promoters — who don't have their own venues and ticket services. This could reduce diversity in the music market. The cost savings that are supposed to flow from these mergers never seem to accrue to consumers because the mergers leave so little competition in their wake.

The mechanisms of antitrust regulation are not up to this challenge. The Department of Justice and the Federal Trade Commission must take a risk and take one of these mergers to court. Even a loss would be helpful. If antitrust legislation, as it stands, proves unable to stop the foreclosure of competition, maybe Congress will take notice and act to maintain a competitive playing field.

ATTACHMENT C

0910133

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

In the Matter of

PepsiCo, Inc.,
a corporation.

Docket No. C-

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent PepsiCo, Inc. ("PepsiCo" or "Respondent"), 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 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"):

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 DPSG 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 DPSG, receive only the limited information approved by DPSG, for the time period approved by DPSG, 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 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 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 XXXXXXXXXXXXXX)

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.