Federal Trade Commission
Protecting America's Consumers

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FTC Challenges Pernod Ricard's Proposed Acquisition of V&S Vin & Sprit

Consent Order Requires Pernod to Stop Distributing Stolichnaya Vodka, Implement Firewall Preventing it from Getting Information on Four Competing Beam Global Brands

The Federal Trade Commission today issued a complaint charging that Pernod Ricard's (Pernod) proposed $9 billion acquisition of Swedish spirits company V&S Vin & Sprit (V&S) would be anticompetitive and in violation of U.S. antitrust laws because it would effectively combine the two most popular brands of "super-premium" vodka sold nationwide, Absolut and Stolichnaya.
To eliminate the anticompetitive effects of the proposed transaction, the FTC will require Pernod to end its distribution agreement with the owners of Stolichnaya, Spirits International BV (SPI), within six months of acquiring V&S and the Absolut brand. This requirement is contained in a consent order agreed to by Pernod.

The consent order also addresses the FTC's competitive concerns in four other distilled spirits markets. In purchasing V&S, Pernod will assume V&S's role in Future Brands LLC, a distribution joint venture between V&S and Fortune Brands, Inc (Fortune). Fortune's subsidiary Beam Global Spirits & Wine, Inc. (Beam Global) owns brands that compete with Pernod brands in four markets - Cognac, domestic cordials, coffee liqueur, and popular gin. Pernod's participation in the joint venture would give Pernod access to competitively sensitive information about the competing Beam Global brands. The consent order preserves the competition between Pernod and Beam Global by imposing firewalls to prevent Pernod from acquiring and using competitively sensitive information about the Beam Global brands.

"The proposed acquisition would have brought together the two leading suppliers of super-premium vodka, and raised concerns about the exchange of information in four other distilled spirits markets," said Jeffrey Schmidt, Director of the FTC's Bureau of Competition. "The consent order announced today effectively addresses those concerns and ensures that the Absolut and Stolichnaya brands, and the Pernod and Beam Global brands, will continue to compete aggressively."

The Parties and the Proposed Transaction

Pernod is a société anonyme of the French Republic and operates in the United States through a wholly owned subsidiary, Pernod Ricard, USA, Inc., located in Purchase, New York. V&S is a corporation wholly owned by The Kingdom of Sweden, and does business under Swedish law. In the United States, V&S operates through a wholly owned subsidiary, the Absolut Spirits Company, Inc. (ASCI), located in New York, New York.

On March 30, 2008, Pernod and The Kingdom of Sweden entered into an agreement under which The Kingdom of Sweden agreed to sell all its shares in V&S to Pernod for a combination of euros, dollars, and interest payments. Including the assumption of debt, the deal is valued at approximately $9 billion.

The Commission's Complaint

According to the Commission's complaint, the transaction as proposed would violate Section 5 of the FTC Act and Section 7 of the Clayton Act, as amended. Pernod's acquisition of V&S would eliminate substantial competition between Pernod and V&S related to V&S's Absolut Vodka and Pernod's Stolichnaya Vodka, the two leading "super-premium" vodka brands sold in the United States. Because Absolut and Stolichnaya are the first and second choices for many consumers of "super-premium" vodka, the FTC contends that if Pernod were allowed to continue to market and sell Stolichnaya while also owning, marketing, and selling Absolut, it could profitably impose an anticompetitive price increase.

The complaint also alleges that the proposed transaction would substantially lessen competition in four other distilled spirits markets that are highly concentrated and difficult to enter - Cognac, domestic cordials, coffee liqueur, and popular gin. In each of these markets, Pernod has brands that compete with Beam Global brands through the Future Brands distribution joint venture between Beam Global and V&S. After acquiring V&S, Pernod would replace V&S's ASCI as a joint venture partner, and would have access to highly sensitive business information about Beam Global brands.

If Pernod were to use competitively sensitive information acquired from its partnership in the joint venture, all competitors in the markets for Cognac, domestic cordials, coffee liqueur, and popular gin could potentially raise prices - most likely through coordinated interaction. The complaint states this could occur as a result of Pernod's knowledge about future pricing and promotion plans of Beam Global products. Such knowledge could allow Pernod to harmonize its planned pricing and promotion activities with Beam Global, thereby facilitating coordination on pricing or promotional activity. Also, where Pernod already has a very high market share, knowledge about the future pricing or promotion plans of competing Beam Global products could allow Pernod unilaterally to price its products in an anticompetitive manner.

Terms of the Consent Order

The Commission's consent order is designed to remedy the alleged anticompetitive effects of the proposed acquisition in each of the five spirits markets. First, it requires Pernod to divest its distribution interest in Stolichnaya within six months of acquiring V&S. If Pernod does not successfully complete the divestiture within six months, the FTC may appoint a divestiture trustee to sell the newly acquired Absolut assets and business to a Commission-approved buyer.

The one exception to this divestiture requirement addresses the possibility that, in connection with ongoing litigation between SPI and others regarding the ownership of the Stolichnaya brand and trademark rights, Pernod may be prohibited from divesting its Stolichnaya distribution rights as required by the FTC order. In the unlikely event that the court orders Pernod to continue distributing Stolichnaya for the duration of the litigation, the FTC order would effectively require Pernod to divest the income stream it would otherwise receive from sales of Absolut, beginning 12 months after it acquires Absolut and continuing for as long as Pernod continues to distribute Stolichnaya.

In addition, to address the FTC's concerns regarding Pernod's access to and use of competitively sensitive information about competing Beam Global brands, Pernod will implement a firewall to keep competitively sensitive information about Beam Global brands from being transferred to Pernod employees inside the joint venture, and prevent those Pernod employees who need such information to ensure the joint venture continues to operate properly from sharing it with other Pernod employees. Finally, the order provides for an interim monitor to oversee the implementation of the firewall and hold separate provisions.

The consent order also contains an Order to Hold Separate, under which Pernod will be required to manage the Stolichnaya business separately from all of its other businesses, including the Absolut business, for the period of time that it will be allowed under the order to have an interest in both brands after acquiring V&S. As part of the agreement, Pernod must maintain and operate the Stolichnaya business in its current fashion to ensure it will be managed as a viable competitor to Absolut.

International Cooperation

The European Commission (EC) also reviewed this proposed transaction. During the course of their respective investigations, FTC staff and their EC counterparts communicated and cooperated with each other under the terms of their 1991 bilateral cooperation agreement and their 2002 Best Practices on Cooperation in Merger Investigations.

The Commission vote to accept the complaint and consent order was 4-0. The FTC will publish an announcement regarding the agreement in the Federal Register shortly. The complaint, consent order, and an analysis to aid public comment can be found on the Commission's Web site at http://www.ftc.gov/os/caselist/0810119/index.shtm.

The agreement will be subject to public comment for 30 days, beginning today and continuing through August 15, 2008, after which the Commission will decide whether to make it final. Comments should be addressed to the FTC, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form near the end of the public comment period be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $11,000.

Copies of the documents related to this matter are available from the FTC's web site at http://www.ftc.gov and the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read "Competition Counts" at http://www.ftc.gov/competitioncounts.

MEDIA CONTACT:

Mitchell J. Katz,
Office of Public Affairs
202-326-2161

STAFF CONTACT:

Joseph S. Brownman,
Bureau of Competition
202-326-2605

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Related Items:

***In the Matter of* Pernod Ricard S.A.**
FTC File No. 0810119

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