Application of the Merger Guidelines: The Proposed Merger of Coca-Cola and Dr Pepper (1986)

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Overview

Introduction

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- February 20, 1986, the Coca-Cola Company announced its intentions to purchase the Dr Pepper Company.
- The Federal Trade Commission (FTC) decided that these mergers were likely to be anticompetitive and opposed them.

Industry Background

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Table: U.S. Retail Sales Shares of Producers of Carbonated Soft Drinks, 1985

Producer	Share
Coca-Cola Co.	37.4%
PepsiCo	28.9
Philip Morris(Seven-Up)	5.7
Dr. Pepper Co.	4.6
R. J. Reynolds (Sunkist, Canada Dry)	3.0
Royal Crown Cola	2.9
Procter & Gamble (Orange Crush, Hires Root Beer)	1.8
Others (Including supermarket brands)	15.7

The Parties' Arguments

FTC's Arguments

- **Market Definition:** Carbonated Soft Drink companies (CSD) in the United States.
- **Levels of Seller Concentration:** With the merger, HHI would rise by 341 to 2646, well above 1800 (Merger Guidelines' decision point).
- **Entry:** Difficult. Requires advertising. Bottlers require at least 10 to 20 percent of local market (from all its brands). Machines only have limited buttons.
- **Competitive Consequences:** Fewer promotions.

Coca-Cola's Arguments

- **Market Definition:** All beverages. Postmerger HHI would be 739 (well below decision point)
- **Entry:** Easy to use specialized "flavor houses". Many recent entrants.
- **Structural Characteristics of the Market:** Too many product types not to promote. When planned merger was announced, Pepsi sock went down (so market is competitive).
- **Efficiencies:** Consolidate operations. Improve efficiencies and reduce costs.

Judge Gesell's Opinion and Aftermath

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Aftermath:

- FTC successfully challenged the Coke-Dr Pepper merger (and Pepsi-Seven-Up).
- Other acquisitions happened (Cadbury-Schweppes bought Canada Dry and Sunkist from R J. Reynolds, etc.) and CSD market still became consolidated.

Judge Gesell's Opinion and Aftermath

Judge Gesell:

"At the preliminary injunction hearing economists, drawing on experience in this multi-faceted discipline, flatly disagreed as to the significance of the proposed acquisition upon competition in the market. These sincere professionals are theoreticians in an imprecise field. They have never sold a can of carbonated soft drink and indeed the principal economist for Coca-Cola Company frankly admitted he had little knowledge of the underlying facts.

The Court should not, in any event, rely on the economic testimony in reaching a conclusion about the probable effects of the proposed acquisition given the concentrated nature of the market just outlined. Section 7 of the Clayton Act was not designed to support particular economic theory; it was directed at what Congress in the exercise of its own common sense perceived."

The End