Board of Governors of the Federal Reserve System, December 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33333 Filed 12–19–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 971–0081]

Guinness Plc; Grand Metropolitan Plc; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 20, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H–374, Washington, DC 20580. (202) 326–2932. George S. Cary, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H–374, Washington, DC 20580. (202) 326–3741.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 15, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Guinness plc (''Guinness'') and Grand Metropolitan plc (''Grand Met'') an Agreement Containing Consent Order (''Proposed Consent Order''). The Proposed Consent Order remedies the likely anticompetitive effects arising from the proposed merger of Guinness and Grand Met in two relevant product markets. This agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the consent order in the agreement.

According to the draft of complaint that the Commission intends to issue, Guinness and Grand Met are competitors in the sale and distribution in the United States of premium Scotch and premium gin. The premium Scotch products of Guinness include Johnnie Walker Red and Dewar's White Label and the premium Scotch brands of Grand Met include J&B Rare, J&B Select, and The Famous Grouse. The premium gin brands of Guinness include Tanqueray gin and the premium gin brands of Grand Met are Bombay Original and Bombay Sapphire.

The Commission's draft of complaint states that Guinness and Grand Met entered into an agreement to merge their companies on May 11, 1997. The size of the transaction, measured in terms of the market capitalization of both parties, is about $36 billion.

The Commission is concerned that the proposed merger would eliminate substantial competition between Guinness and Grand Met, and increase concentration substantially, in the very highly concentrated premium Scotch and premium gin markets, resulting in higher prices. The Commission stated it has reason to believe that the proposed merger would have anticompetitive effects and violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

In the United States premium Scotch market, Guinness is the largest competitor with about 68% of all sales and Grand Met is the second largest competitor, with about 24% of sales. Together, the merged firm will control approximately 92% of all United States premium Scotch sales. The proposed merger would increase the Herfindahl-Hirschman Index (''HHI''), the customary measure of industry concentration, by over 3000 points and produce a market concentration of over 8000 points. In the United States premium gin market, Guinness is the largest competitor with about 58% of all sales and Grand Met is the third largest, and about 15% of sales. Together, the merged firm will control approximately 73% of all United States premium gin sales. The proposed merger would increase the HHI by over 1700 points and produce a market concentration of over 6000 points.

The Proposed Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the Proposed Consent Order, Guinness and Grand Met will be required to divest their Dewar's Scotch, Bombay Original gin, and Bombay Sapphire gin brands, worldwide, to one or two acquirers acceptable to the Commission. To insure an uninterrupted supply of Dewar's Scotch after the brand divestiture, Guinness will be required to divest additional assets, including Scotch distilling capacity, if the Commission should determine that these additional assets are necessary for the acquirer effectively to compete. Also, to insure an uninterrupted supply of Bombay Original and Bombay Sapphire gins, Guinness and Grand Met may be required to produce these gins for the acquirer, in England, should the independent third party that has been producing Bombay Original and Bombay Sapphire for Grand Met not wish to continue to do so for the acquirer.

Guinness and Grand Met will be required to complete the required divestitures within six (6) months from the date of the Commission's acceptance of the consent order for public comment. In the event Guinness and Grand Met do not divest Dewar's, Bombay Original, and Bombay Sapphire to an acquirer or acquirers acceptable to the Commission in the requisite time, procedures for the appointment of a trustee to sell the assets have been agreed to and will be triggered.

Accompanying the Proposed Consent Order is an Asset Maintenance Agreement. Under its terms, Guinness and Grand Met are required to preserve and maintain the competitive viability of all of the assets to be divested in order to insure that the competitive value of these assets will be maintained after the merger but before the assets are actually divested.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the compliant will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Consent Order. It is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms in any way.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Guinness PLC, File No. 971–0081

Today, the Commission accepts for public comment a consent order settling allegations that the merger of Guinness PLC and Grand Metropolitan PLC would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges as antitrust product markets: (1) ''premium Scotch,'' which is defined as ''blended Scotch whisky that is made and bottled in Scotland, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of the Johnnie Walker Red, Dewar's White Label, and J&B Rare brands,'' and (2) ''premium gin,'' which is defined as ''gin that is made and bottled in England, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of Tanqueray, Bombay Original, and Bombay Sapphire brands.'' I cannot support the complaint as written.

Although at first glance the markets may sound wacky (to use the vernacular), the complaint merits our careful attention. For reasons that are not apparent, the proposed product markets exclude brands not marketed throughout the United States, if there are any, that compete head to head with the national brands. By definition, the ''premium gin'' product market also excludes domestically bottled gin brands, if any, that are sold at prices comparable to Tanqueray and Bombay. I see no reason for these seemingly arbitrary exclusions.

More importantly, the price limitations in the product markets do not seem justifiable. As recognized in Commission precedent, competition occurs along a continuum of prices as brands compete with products above and below their prices. In Heublein, Inc., 96 F.T.C. 385 (1980), for example, the Commission dismissed the complaint based on findings in an ''all wine'' market and the table, dessert and sparkling wine submarkets. As then Commissioner Pitofsky stated in the Heublein opinion, although the competitive offerings of the wine industry were not altogether homogeneous, ''those diverse products nevertheless may 'appropriately be designated as a market' for antitrust analysis,'' 96 F.T.C. at 576 *quoting* Coca Cola Bottling Co. of New York, Inc., 93 F.T.C. 110 (1979).

Despite my disagreement with the allegations in the complaint, I find reason to believe that the merger of Guinness PLC and Grand Metropolitan PLC would violate the law on the basis of a broader market and that an order to remedy the lessening of competition in the broader market would be appropriate. The divestiture of the Dewar's Scotch and Bombay gin brands will have some remedial effect in the broader market, and for that reason, I have voted to accept the order for public comment. After the public comment period, I will revisit the question whether the order is sufficient or whether the Commission should reject the order and seek additional divestitures in an administrative proceeding.

[FR Doc. 97–33306 Filed 12–19–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1

Evaluation of the Proposed Cash and Counseling Demonstration—New—Cash and Counseling is a consumer directed care model for individuals with physical or developmental disabilities. A demonstration project utilizing this model has been proposed. The Office of the Assistant Secretary for Planning and Evaluation is planning to engage in an information collection for the purpose of evaluating this demonstration. Respondents: Individuals or Households; *Burden Information for Baseline Interview*—Number of Respondents: 15,250; Burden per Response: .62 hours; Total Burden for Baseline: 9,455 hours—*Burden Information for Four-Month Treatment Group Interview*— Number of Respondents: 7,245; Burden per Response: .5 hours; Total Burden for Four-Month Treatment Group Interview: 3,622 hours—*Burden Information for Eight-Month Treatment Group Interview*—Number of Respondents: 6,900; Burden per Response: .58 hours; Total Burden for Eight-Month Treatment Group Interview: 4,002 hours—*Burden Information for Nine-Month Followup Interview*—Number of Respondents: 13,800; Burden per Response: .75 hours; Total Burden for Nine-Month Followup: 10,350 hours—Total Burden for Project: 27,429 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: December 4, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–33355 Filed 12–19–97; 8:45 am]

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