



## **DETERMINATION OF MERGER NOTIFICATION M/13/009 - European Refreshments/Fresh Trading**

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### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by European Refreshments of sole control of Fresh Trading Limited**

**Dated 17 April 2013**

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### **Introduction**

1. On 19 March 2013, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition whereby European Refreshments, which is an indirect wholly-owned subsidiary of The Coca-Cola Company ("TCCC"), would acquire sole control of Fresh Trading Limited ("Fresh Trading").

### **The Undertakings Involved**

#### ***The Purchaser***

2. European Refreshments, which is a company incorporated in Ireland is the acquisition vehicle for TCCC for the transaction referred to above and is a wholly-owned indirect subsidiary of TCCC.
3. TCCC is a company that is publicly listed on the New York Stock Exchange. It is the brand owner and licensor of various beverage trademarks. It is also a manufacturer, distributor and marketer of various non-alcoholic beverages ("NABs"), soft drink concentrates and syrups which it sells to bottling and canning operations, wholesalers and a number of retailers (e.g., McDonald's). TCCC is the "No. 1 provider of sparkling beverages, juices and juice drinks, and ready-to-drink teas and coffees globally."<sup>1</sup>
4. In the financial year ending 31 December 2012, European Refreshments' parent company, TCCC, achieved worldwide turnover of €[...]. Turnover in the State for the same period amounted to [...] million. TCCC's direct customers in the state are limited to [...] to whom it supplies soft drinks and [...] to whom it sells concentrate.
5. TCCC does not trade with retailers, publicans or consumers in the State. Bottling, distribution and sales of TCCC brands in Ireland are the responsibility of Coca-Cola Bottlers Ireland Limited (CCBI) and CCBI is part of the Coca-Cola Hellenic Bottling Company (CCHBC). TCCC holds a non-controlling 23.2% stake in CCHBC.<sup>2</sup>

#### ***The Target***

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<sup>1</sup> See <http://www.coca-colacompany.com/careers/who-we-are-infographic>

<sup>2</sup> The Kar Tess Group, a private holding company, also holds a non-controlling 23.3% in CCHBC.

6. Fresh Trading is a company incorporated under the laws of England and Wales<sup>3</sup>. It is currently owned by:
  - (a) European Refreshments which holds 60% of the ordinary issued share capital;
  - (b) the three founding individuals who own [...]; and,
  - (c) an Employee Benefit Trust [...].
7. The beverage products produced by Fresh Trading include: Innocent Smoothies, Innocent Fruit Juice, Innocent Kids Smoothies, and Innocent Kids Juicy Drinks. The Innocent brand is the No. 1 brand of Smoothies in the State<sup>4</sup> with approximately [60-70]% of the Juice and Nectars Smoothie market in 2011.
8. According to Canadean Soft Drinks Service, smoothies "comprise blended fruit puree and juice drinks with a thick, smooth texture, sometimes incorporating a dairy element (yogurt) and/or functional elements (eg aloe vera, ginkgo, ginseng):
  - Both chilled and ambient products can be found
  - Positioned as fresh and pure, most smoothies do not contain artificial flavours, additives or sweeteners
  - The definition includes packaged products and products made to order in on-premise outlets
  - Products with a 'smoothie' positioning can be found in the juice and nectars categories, depending on juice content and/or ingredients.  
. . . ."
9. In the financial year ending 31 December 2012, Fresh Trading had worldwide turnover of approximately [...]. Fresh Trading's turnover in the State for the same period was approximately [...].

### **The Acquisition**

10. In 2009 European Refreshments acquired an [15-20]% stake<sup>5</sup> in Fresh Trading with a put and call option to acquire up to an additional [40-50]% of the issued share capital of Fresh Trading exercisable within a two year period and a second put and call option to acquire the remaining [40-50]% exercisable (assuming the first put and call option was exercised) within five years. The parties reported this to the Competition Authority as an acquisition of joint control, and on 7 May 2009 the Authority issued a Determination approving TCCC's acquisition of joint control of Fresh Trading.<sup>6</sup>
11. In 2010 European Refreshments exercised the first put and call option giving it a total of 60% of the issued share capital in Fresh Trading but still having only joint control.

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<sup>3</sup> The subsidiaries of Fresh Trading include: [...].

<sup>4</sup> According to the Canadean Soft Drinks Service, Republic of Ireland Market Insights 2012 Cycle, Innocent accounted for [60-70]% of the Juice & Nectars Smoothie segment in 2011.

<sup>5</sup> See Determination of Merger Notification m/09/009 - European Refreshments / Fresh Trading.

<sup>6</sup> Determination of Merger Notification m/09/009 - European Refreshments / Fresh Trading

12. Under the current proposed transaction, TCCC/European Refreshments is seeking to exercise the second put and call option referred to above for the acquisition of the remaining 40% of the issued share capital.
13. On completion of transaction, Fresh Trading will issue a number of shares, [...], to the three individuals who founded Fresh Trading. [...]. TCCC would therefore as a result of this transaction move from having joint control to having sole control over Fresh Trading.

#### **Rationale for the Acquisition**

14. The parties state that "[...]"

#### **Third Party Submissions**

15. No submission was received.

#### **Competitive Analysis**

16. In its 2009 Determination, the Authority approved TCCC's acquisition of joint control of Fresh Trading. The question before the Authority now is whether or not market conditions have changed sufficiently such that the currently-proposed acquisition – to go from 60% shareholding and joint control to 100% shareholding and sole control – will substantially lessen competition.
17. The parties submit that TCCC (the purchaser) does not sell directly to retailers or publicans in the State and that it is CCBI/CCHBC, which is not involved in the proposed transaction, that sells to retailers and publicans. Consequently the parties argue that there is no competitive overlap between the purchaser and the target in the State.
18. While it is accepted that TCCC has a non-controlling shareholding in CCHBC it is nevertheless the case that TCCC does exert considerable influence over CCHBC given its position as: (i) the brand owner (i.e. it licences the rights to use the brand names); and (ii) concentrate owner, i.e. it owns the formula for producing the concentrate/essence, which forms the base for the various beverages which are produced, packaged, marketed, distributed and sold by CCHBC.
19. Consequently in the analysis that follows the Authority will assume that TCCC and CCHBC act as single entity in the market for non alcoholic beverages (NABs). For the avoidance of doubt the Authority is not attempting to claim that TCCC and CCHBC are in fact the same entity but in trying to assess the competitive impact of TCCC it would be prudent to include the activities of CCHBC in its analysis.
20. The TCCC/CCHBC product portfolio in the State comprises the following beverages and their associated brands:
  - packaged carbonated and still water (under the *Deep River Rock* and *Vittel* brands<sup>7</sup>);
  - carbonated soft drinks (under brands such as *Coca-Cola*, *Diet Coke*, *Fanta* and *Sprite*);

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<sup>7</sup> These are CCHBC brands.

- juice beverages, i.e., non-carbonated drinks with fruit-based juice content: juice drinks (*Fruice*<sup>8</sup>), nectars (*Fruice*) and still drinks (*Fruice* and *Oasis*)<sup>9</sup>;
- concentrates: squashes/syrups (*Rose's* and *Kia-Ora*);
- ice/ready to drink tea drinks (*Nestea*);
- sports drinks (*Powerade*); and,
- energy drinks (*BPM Energy*, *Burn*).

### Product Market

21. In the soft drinks sector there are a number of potential product markets which could be considered as the relevant product market for this transaction ranging from the widest possible market of all non alcoholic beverages (NABs) to the narrowest market of smoothies only<sup>10</sup>. The possible product markets include:
- NABs - carbonated soft drinks, packaged water, non-carbonated drinks, iced teas, fruit juices, waters, sports and energy drinks, dairy and hot tea and coffee;
  - NARTDs – All NABs excluding dairy, hot beverages squash and syrups;
  - All Juices – 100% juices, nectars and still drinks with some juice content;
  - All Juices and Nectars – excludes still drinks with some juice content;
  - 100% juices – excludes nectars;
  - Smoothies
22. The parties submit that in this case the relevant product market should be the wide NAB market. In M/09/009, the Authority's view was that for purpose of examining that transaction, it was not necessary to make a finding on the relevant product market(s) since the transaction was unlikely to give rise to any competition concerns in any market in the State.<sup>11</sup> This continues to be the view of the Authority.

### Horizontal Overlap

23. The area of horizontal overlap between the parties concerns the production and distribution of soft drinks and in particular juices and smoothies.

<sup>8</sup> *Fruice* is a CCHBC brand. [...].

<sup>9</sup> "Juice" is generally drinks with 100% juice content with no added ingredients, except permitted minerals and vitamins; "nectars" have between 25% - 99% juice content and the rest is water and sugar; and other juice drinks are called "still drinks" with juice content of less than 25%. See Canadean Soft Drinks Service, Republic of Ireland Market Insights 2012 Cycle, Research Methodology Section p8-9.

<sup>10</sup> Smoothies tend to be included within the "All Juice" and the "Juices and Nectars" segments of the market by market analysts such as Canadean and AC Nielsen.

<sup>11</sup> Determination of Merger Notification m/09/009 - European Refreshments / Fresh Trading, paragraph 10.

24. Using the product markets identified above the parties have provided market share data based on Canadean data<sup>12</sup> for 2011 and AC Nielsen data obtained by the parties<sup>13</sup>. These are reproduced in Table 1 below. Canadean Data (by volume) is provided in red and AC Nielsen data (by value) is provided in blue except where indicated.

Table 1 Market Share Data as a % (volume and value) for Different Possible Product Markets			
	TCCC/CCHBC Combined	Fresh Trading	Total for Merged Entity
NAB	[10-20]	[0-5]	[10-20]
NARTD	[30-40] [30-40]	[0-5] [0-5]	[30-40] [30-40]
Juice	[5-10]	[5-10]	[10-20]
Beverages	[5-10]	[10-20]	[20-30]
Juices and Nectars	[0-5]	[10-20]	[10-20]
100% Juices	[5-10]	[10-20]	[10-20]
Nectars	[5-10]	[0-5]	[5-10]
Still drinks with juice	[5-10]	[0-5]	[5-10]

Source: The Parties including data based on Canadean and Nielsen Data which in the case of Canadean have been corrected to allow for errors by Canadean when collecting the data. For the avoidance of doubt this correction provides an increased estimate of the market share in the State for the parties.

25. In Determination m/09/009 the Authority considered a possible separate product market for smoothies.<sup>14</sup> Fresh Trading is clearly the leading smoothie brand in Ireland and the UK, with a [60-70]% share in the state. What's more, some of the brands the Authority mentioned as providing competition (including Tropicana and MySmoothie) are no longer sold in the State. However, it continues to be the case that TCCC/CCHBC do not sell smoothies in the state. TCCC sells "Minute Maid" smoothies in the U.S., but the Authority does not view TCCC as an important potential entrant into the sale of smoothies in the State in light of, among other things, (a) "Minute Maid's" lack of presence in the State, (b) TCCC/CCHBC's absence from the chilled juices segment where Fresh Trading smoothies are sold, and (c) TCCC's 60% ownership of Fresh Trading.
26. The data indicates that those potential product markets where there might be a competitive concern from the proposed merger are either the 'All Juices' market, the 'Juice and Nectars' market or the '100 % Juices' market since these are the market segments where the greatest accretion of market share occurs as a result of the merger.

<sup>12</sup> From the Canadean Soft Drinks Service, Republic of Ireland Market Insights 2012 Cycle.

<sup>13</sup> Note that Canadean and AC Nielsen use different methodologies and market segments. Canadean produce only volume data while AC Nielsen produces both volume and value data. However AC Nielsen data does not include Dunnes Stores. The Authority's review of both sets of data confirms that while there are differences between them they are broadly consistent.

<sup>14</sup> Determination M/09/009 at paragraph 17.

27. Even though some of the combined shares are significant (and higher than to 10% referenced in M/09/009), the Authority does not believe that the change from joint control to sole control will substantially lessen competition regardless what market is considered, for several reasons:
- the merged entity will continue to face competition from a number of large and sophisticated competitors including: PepsiCo (Tropicana); Kerry Foods (Dawn); Valeo Foods (Squeez); Glanbia (Avonmore); Britvic (Britvic); and Danone who make and sell a range of juices, nectars, still drinks, yogurt drinks and/or smoothies;
  - private label brands offered by the large multiples (Tesco, Dunnes Stores and Musgrave) and the discounters (Aldi and Lidl) who are together a significant and growing competitive force accounting for 32.5% of the total juice market;
  - packaged smoothies in particular face competition from retailers that custom blend; and
  - in the current economic climate consumers appear to be becoming more price sensitive in this market<sup>15</sup>;
  - Since TCCC already owns 60% of Fresh Trading it is not likely that TCCC would be a potential competitor in this market segment.
28. In the light of the above, the Authority considers the proposed transaction will not raise competition concerns in any of the possible product markets identified.

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<sup>15</sup> "Smoothies continue to have a tough time with falling consumption for both ambient and chilled smoothies Consumers have become even more price conscious in the last year and these products being generally niche and premium priced in nature have been adversely affected by consumer cut backs in expenditure". Canadean Soft Drinks Service, Republic of Ireland Market Insights 2012 Cycle Section 3d, p3.

## **DETERMINATION**

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby European Refreshments would acquire sole control of Fresh Trading Limited will not be to substantially lessen competition in markets for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

### **For the Competition Authority**

**Stephen Calkins**

**Member of the Competition Authority**

**Director, Mergers Division**