



## **DETERMINATION OF MERGER NOTIFICATION M/09/009 - EUROPEAN REFRESHMENTS / FRESH TRADING**

---

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

#### **Proposed partial acquisition by European Refreshments of [...] Fresh Trading Limited**

**7 May 2009**

---

#### **Introduction**

1. On 8 April 2009, in accordance with section 18(1) of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby The Coca Cola Company ("TCCC"), through its wholly-owned indirect subsidiary European Refreshments ("European Refreshments"), would acquire [a minority shareholding in]<sup>1</sup> of Fresh Trading Limited ("Fresh Trading") [...]<sup>2</sup>, through the purchase of [15-20]% stake in Fresh Trading<sup>3</sup>.
2. Both TCCC and Fresh Trading are active in the non-alcoholic beverages sector with Fresh Trading primarily involved in the production of fruit-based juice drinks such as smoothies.

#### **The Undertakings Involved**

##### *The Acquirer*

3. European Refreshments is a company incorporated under Irish law. TCCC, the parent company of European Refreshments, is incorporated under the laws of the State of Delaware, U.S.A., and is a publicly listed company.
4. TCCC is a major world-wide beverage company. It is the brand owner and licensor of beverage trademarks including *Coca Cola*, *Diet Cola*, *Sprite*, *Fanta* and *Minute Maid*. TCCC is a manufacturer, distributor and marketer of non-alcoholic beverages, soft drink concentrates and syrups which it sells to bottling and canning companies, fountain wholesalers and some fountain retailers<sup>4</sup>. In certain instances, it sells finished beverages. However, it does not directly sell to grocery retailers or end-users in the State.
5. In the State TCCC sells its concentrates and syrups to [...]:

---

<sup>1</sup> [...].

<sup>2</sup> Currently, Fresh Trading is owned by the three founding individuals (Adam Balon, Jonathan Wright and Richard Reed) who collectively hold approximately 70% of the ordinary issued share capital, two individual minority investors and an employee benefit trust.

<sup>3</sup> This involves a subscription for new shares. [...]

<sup>4</sup> Fountain products (e.g., syrups) are sold to fountain wholesalers (e.g., bottlers) and fountain retailers (e.g., restaurants, fast-food chains like McDonalds) which, at the time of purchase, use dispensing equipment to mix the fountain products with sparkling or still water in order to produce finished beverages that are served in cup or glass for immediate consumption.

- [...]; and,
  - Coca-Cola Bottlers Ireland Limited ("CCBI"), which is the authorised bottler and seller of TCCC brand products in the State.
6. CCBI is a wholly-owned subsidiary of Coca-Cola Hellenic Bottling Company ("CCHBC"), which is one of the largest bottlers and vendors of TCCC brand products in the world. As of January 2009, TCCC is one of the major shareholders of CCHBC with a 23% stake<sup>5</sup>.
  7. CCBI produces and distributes the TCCC product portfolio and CCHBC brand products (collectively, the "CCBI product portfolio") to grocery retailers, grocery wholesaler-franchisors and other customers (e.g., restaurants) in the State. CCBI has a bottling and distribution facility in Dublin along with regional distribution depots located at Cork, Killarney, Tuam and Tipperary.
  8. The CCBI 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>6</sup>);
    - carbonated soft drinks (under brands such as *Coca-Cola*, *Diet Coke*, *Fanta* and *Sprite*);
    - juice beverages, i.e., non-carbonated drinks with fruit-based juice content: juice drinks (*Fruice*<sup>7</sup>), nectars (*Fruice*) and still drinks (*Fruice* and *Oasis*)<sup>8</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*).
  9. The products of the CCBI portfolio are distributed through grocery wholesalers and vertically-integrated retailers, and directly to retail outlets.

---

<sup>5</sup> The Kar-Tess Group represents the other major shareholder of CCHBC with a 30% ownership stake.

<sup>6</sup> These are CCHBC brands.

<sup>7</sup> *Fruice* is a CCHBC brand. [...].

<sup>8</sup> "Juice drinks" are 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%.

### *The Target*

10. Fresh Trading is a company incorporated under the laws of England and Wales. Fresh Trading is a producer of fruit-based juice drinks (i.e., drinks with 100% juice content) including smoothies<sup>9</sup>, thickies<sup>10</sup> and, more recently, orange juices. Fresh Trading also manufactures vegetable pots. The Fresh Trading products are marketed under the *Innocent* brand.
11. Fresh Trading has no manufacturing or bottling facilities in the State. Fresh Trading uses third parties to distribute its products to grocery retailers (e.g., Dunnes Stores, Superquinn, Tesco Ireland and Londis), grocery wholesalers (e.g., Musgrave) and coffee shops like O'Briens. Innocent Limited, a wholly-owned UK subsidiary of Fresh Trading, is responsible for Irish sales and marketing operations.

### **The Rationale of the Proposed Transaction**

12. The parties submitted that the proposed transaction is in line with TCCC's strategic [...]. The parties also submitted that the proposed transaction will provide a strategic partner to Fresh Trading that will help it to grow its business and brand.

### **Analysis**

13. The parties submitted that there is a limited overlap in their activities in the State even though TCCC and Fresh Trading are both active in the production of non-alcoholic beverages. TCCC is only indirectly involved through CCBI in the production of juice drinks (i.e., drinks with 100% juice content including smoothies). CCBI, however, is not involved in the production and sale of smoothies in the State.
14. Both the CCBI and Fresh Trading brands are available in grocery outlets, coffee shops or in other places for on-premises consumption. *Fruice* drinks are typically made from concentrate, stored in the ambient section of the retail outlets and available in bottle (as an impulse drink) or in carton (take-home version). On the other hand, *Innocent* drinks are not made from concentrate and are sold as chilled products available in bottled and carton format.
15. For the purposes of this determination, the parties submitted that the relevant market definition can be left open given that the proposed transaction is unlikely to lead to a substantial lessening of competition in the State regardless of how the market is defined. However, the parties considered that the relevant market comprises all non-alcoholic beverages in the State. The parties submitted that Fresh Trading accounts for no more than [0-5]% and [0-5]% by value and volume, respectively, of the non-alcoholic beverages market in the State<sup>11</sup>. Accordingly, the parties submitted that the increase in market share resulting from the proposed transaction will not substantially lessen competition in the market for non-alcoholic beverages. Also, the parties noted that a number of competitors such as Britvic, GSK and Danone will remain in the market.

---

<sup>9</sup> Smoothies are the product of squashed fruit in various flavours. Positioned as fresh and 100% pure fruit, smoothies are perceived as being a healthy product. Smoothies have a shorter shelf life than many juice beverages and they are often stored in the dairy area of retail outlets.

<sup>10</sup> Thickies are smoothies with some yoghurt content.

<sup>11</sup> AC Nielsen data for 2008.

16. Notwithstanding the above, the parties noted that the Authority took a narrower approach to product market definition in a previous merger determination concerning the non-alcoholic beverages sector<sup>12</sup>. Accordingly, the parties considered the impact on competition of the proposed transaction if narrower product markets are considered. In this regard, the parties submitted that no competition concerns would arise as a result of the proposed transaction since:
- If the product market is considered to be juice drinks only (i.e., all drinks with 100% juice content, including smoothies), then the combined market share of the parties is estimated to be around 10%<sup>13</sup>; and,
  - If the product market is considered to be all juice beverages (juice drinks, nectars, and still drinks)<sup>14</sup>, then the combined market share of the parties is estimated to be around 9%<sup>15</sup>.
17. The Authority agrees with the parties that, for purpose of examining the proposed transaction, it is not necessary to make a finding on the relevant product market(s) since the proposed transaction is unlikely to give rise to any competition concerns in any market in the State for the following reasons:
- If smoothies are considered to be a separate product market from other juice drinks, then there is no competitive concern since neither TCCC nor CCBI is involved in the production or sale of smoothies in the State<sup>16</sup>.
  - If smoothies are considered to be in the same product market as other juice drinks or the wider category of juice beverages (i.e., including nectars and still drinks), then the combined market share of CCBI and Fresh Trading would be no more than 10% in the State;
  - Irrespective of whether or not there is a single market for all juice beverages, a separate market for juice drinks or a separate market for each juice category (e.g., smoothies, nectars, etc.), the parties will continue to face competition from the presence of: (i) brands such as *Tropicana*, *Sqeez*, *Ribena* and *Dawn*<sup>17</sup> and the

---

<sup>12</sup> See Determination *M/07/27 Britvic plc /C&C Group plc*, August 2007, where the Authority concluded that the relevant product market for the purposes of assessing the competitive impact of the proposed transaction was the squashes market and not all non-alcoholic beverages, as argued by the parties to the transaction. The Determination is available at the Authority's website at: [http://www.tca.ie/MergersAcquisitions/MergerNotifications.aspx?selected\\_item=348](http://www.tca.ie/MergersAcquisitions/MergerNotifications.aspx?selected_item=348)

<sup>13</sup> Market share figures are taken from the Canadean report, *The Soft Drinks Service annual Report - 2008 Cycle Republic of Ireland*, provided by the parties in the notification. The data refers to 2007 and is based on volumes (million of litres), on-trade and off-trade. This data is based on the assumptions that: (a) TCCC and CCHBC are synonymous; and (b) *Fruice* is attributable to TCCC despite being a CCHBC brand.

<sup>14</sup> See footnote 8 for a definition of juice drinks, nectars and still drinks.

<sup>15</sup> See footnote 13.

<sup>16</sup> Despite being the market leader in the smoothies sector (source: *Checkout*, vol. 35 No. 3 March 2009, pages 72-73), *Innocent* drinks face competition from other brands and own-labels. Other brands include: *Sqeez Smoothie* (Batchelors), *Dawn* (Kerry Foods), *Tropicana Smoothie* (Pepsi) and *MySmoothie* (distributed by Richmond Marketing). In addition, the main grocery retailers (e.g., Dunnes Stores, Tesco Ireland) provide own-label smoothies and many convenience stores (e.g., Centra and Spar) have in-store smoothie concessions.

<sup>17</sup> According to AC Nielsen data, in 2008 the top five brands in the category of juice beverages were: *Tropicana*; *Sqeez*; *Innocent*; *Ribena* and *Dawn*. The top five brands accounted for 44% by value of the total category (source: *Checkout*, vol. 34 No. 8, August 2008, page 98.).

own-label offering of supermarket chains; and (ii) franchise juice bars like Zumo, Zoom and Juice Zone, which have established a significant presence in recent years in shopping centres, airports and other transit locations.

- Finally, other activities such as bottling/canning operations and distribution do not raise competition concerns since Fresh Trading does not own or operate bottling facilities in the State and contracts distribution to third parties.

### **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 The Coca Cola Company, through its wholly-owned indirect subsidiary European Refreshments, would acquire [a minority shareholding in] Fresh Trading Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

### **For the Competition Authority**

Dr Stanley Wong

Member of the Competition Authority