

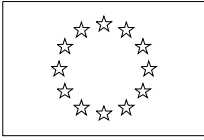
***Case No COMP/M.1683 -
THE COCA-COLA
COMPANY / KAR-TESS
GROUP (HELLENIC
BOTTLING)***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 07/02/2000

*Also available in the CELEX database
Document No 300M1683*



COMMISSION OF THE EUROPEAN COMMUNITIES

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, **07.02.2000**

SG (2000) D/101363

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Madam and Sir:

Subject: Case No. COMP/M.1683 – The Coca-Cola Company/Kar-Tess Group

Notification of 04/11/99 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 19 October 1999, the Commission was notified of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89 (Merger Regulation), as amended,¹ by which Hellenic Bottling Company S.A. (Hellenic), owned by the Kar-Tess Group, will acquire all the shares of Coca-Cola Beverages plc (CCB), owned by The Coca-Cola Company (TCCC).
2. On 25 October 1999, the notification was declared incomplete, as the notifying parties had failed to provide documentation to establish that the transaction would fall under the Merger Regulation. The parties provided the requested documents on 4 November 1999. Consequently, the notification was declared complete on 4 November 1999 and became effective on 5 November 1999. Subsequently, on 2 December 1999, the notification was declared incomplete, as the notifying parties had failed to provide information concerning certain vertical markets. The parties provided the requested documents on 15 December 1999. Consequently, the notification was declared complete on 15 December 1999 and became effective on 16 December 1999.
3. Following their renotification, the parties submitted commitments designed to eliminate the competition concerns identified by the Commission during the first part of the investigation, in accordance with Article 6(2) of the Merger Regulation. In light of these modifications, the Commission has concluded that the notified operation falls

¹ OJ L 395, 30.12.89, p.1; corrigendum OJ L 257 of 21.09.90, p.13; as last amended by Regulation (EC) No. 1310/97, OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17.

within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

A. The Coca-Cola Company (TCCC)

4. The Coca-Cola Company (TCCC), a US company, is a major brand owner and supplier of soft drink concentrates and syrups used to produce certain carbonated soft drinks (CSDs), including Coca-Cola, Coca-Cola Light, Fanta and Sprite, as well as other non-alcoholic beverages (NABs). In 1999, TCCC acquired the Cadbury Schweppes beverage brands in the United Kingdom, Ireland and Greece. TCCC is the parent of Coca-Cola Beverages plc (CCB), a UK-based company, which is a soft drinks bottler engaged in the preparation and packaging of CSDs and other NABs for distribution and sale. CCB primarily bottles TCCC products, as well as other soft drinks, and has activities in Austria, Italy and a number of Eastern European countries.

B. The Kar-Tess Group (Kar-Tess)

5. The Kar-Tess Group is a private holding company which controls Hellenic Bottling Company S.A. (Hellenic). Hellenic bottles and distributes TCCC products, and other branded NABs, in Greece, Ireland, Northern Ireland and certain Eastern European countries. Kar-Tess also controls two companies active in the production and distribution of cold display units for foods and beverages, Frigoglass S.A. (a Greek corporation), and Norcool Holdings ASA (a Norwegian-based operation).

II. THE OPERATION AND THE CONCENTRATION

6. The notified transaction will be implemented through a "scheme of arrangement" pursuant to Section 425 of the English Companies Act 1985. The principal steps involved in the scheme of arrangement are (i) the cancellation of CCB's share capital, (ii) the issuing of new shares in CCB to a wholly-owned subsidiary of Hellenic and (iii) in consideration of steps (i) and (ii) the issuing by Hellenic of shares to TCCC. The first transaction will result in the acquisition of CCB by Hellenic. The second transaction will result in TCCC acquiring a stake of approximately 22% in the enlarged Hellenic, including CCB, in exchange for its 50.5% interest in CCB. The Kar-Tess Group currently holds the majority of Hellenic shares and will, after the transaction, hold approximately 38.4% of the enlarged company. The enlarged Hellenic will be recognised as an "anchor bottler" within the Coca-Cola system, a designation for certain bottlers in which TCCC holds a minority equity interest and which are committed to the strategic goals of the TCCC operations.
7. Pursuant to provisions in the Shareholders' Agreement, Hellenic's articles of association will be amended to include [certain ...] provisions which give joint veto rights to Kar-Tess and TCCC with respect to certain key business decisions, including appointment of senior management, approval of the annual business plan and annual budget, and major changes in the company's business. Inasmuch as such key business decisions can only be adopted jointly by Kar-Tess and TCCC, Kar-Tess' acquisition of joint control of the enlarged Hellenic group (including CCB), together with TCCC, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The combined aggregate world-wide turnover of the undertakings concerned exceeds 5 billion EUR (for 1998, TCCC (including CCB): EUR 22.4 billion; and Kar-Tess (including Hellenic): [...] (confidential Kar-Tess information)). TCCC and Kar-Tess each had Community-wide turnover in excess of 250 million EUR (for 1998, TCCC (including CCB): EUR 5 billion; and Kar-Tess: [more than EUR 250 million] (confidential Kar-Tess information), and they did not achieve more than two thirds of their aggregate Community-wide turnover in one and the same Member State. Therefore, this concentration has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

9. According to the parties, the markets primarily affected by this operation are at least as wide as those for (a) the supply of NABs in Greece, the Republic of Ireland, Northern Ireland (comprising Hellenic's bottling activities in the EEA), Austria and Italy (comprising CCB's bottling operations in the EEA); and (b) the supply of commercial refrigeration equipment in the EEA.
 1. The Supply of Carbonated Soft Drinks (CSDs)
10. For the purposes of the assessment of the present case, it can be left open as to whether the relevant product market is limited to the supply of carbonated soft drinks (CSDs), or to still narrower markets of individual flavours of CSDs, or whether instead the market is broader and includes other non-alcoholic beverages (NABs) as well, as suggested by the notifying parties. As discussed below, even on the basis of the narrower market definition, the operation would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.
11. According to the parties, the main impact of the proposed transaction is at the bottling level; specifically, the principal business of both Hellenic and CCB involves the bottling of TCCC-branded CSDs (and to a much lesser extent, other NABs) in certain Member States, as well as other European countries. The term "bottling" generally encompasses the preparation, packaging, marketing, sale and distribution of these beverages.
12. As the Commission has found in earlier cases,² the supply of CSDs to retail customers consists essentially of two interrelated activities: brand ownership and bottling. The brand owner creates and promotes the beverage brands, provides the supply of concentrate (or authorizes its production), and authorizes local bottlers to prepare, package, market, distribute and sell the beverages. A bottler is typically assigned a geographic territory by the brand owner within which it is responsible for these functions.

² See 97/540/EC, Case IV/M.794 – *Coca-Cola Enterprises, Inc./Amalgamated Beverages GB* (OJ L 218, 9.8.1997); and 98/327/EC, Case IV/M.833 – *The Coca-Cola Company/Carlsberg A/S* (OJ L 145, 15.5.1998).

13. Distribution of CSDs is carried out through various channels, which differ somewhat from country to country, depending upon market structure (including such factors as location of customer warehouses and retail outlets, and geographic dispersion of population). However, for purposes of assessing the proposed transaction, it is not necessary to make a separate assessment as to different channels in any of the Member States identified above, since the conclusions resulting from the analysis would be the same whether the channels were considered as separate relevant product markets or not. Consequently, the question of whether various channels are separate markets can be left open.
14. With respect to likely effects at the bottling level, the impact of the operation is examined with respect to possible changes in Hellenic's brand management as the current bottler of two CSD brands that are present only in the Greek market – the Vathypetros brand and Tuborg's branded mixers (including club soda and tonic water) – and the likely future bottler of Cadbury Schweppes branded CSDs, as discussed below.
15. The only CSD brand owned by Hellenic, Vathypetros, is a secondary regional brand bottled in Crete for local consumption (due to its historical popularity as a local brand) with production accounting for [less than 2 %] of total CSD sales in Greece. Hellenic also bottles CSD mixers under the Tuborg brand name (Tuborg club soda and tonic water) pursuant to a licensing agreement with Tuborg's parent, Carlsberg A/S. Finally, TCCC acquired the Cadbury Schweppes brand in Greece in 1999. As discussed below in the assessment of the proposed operation, Schweppes was taken off the market this year (after having only been re-introduced in Greece in 1995) [...].

2. Food and Beverage (F&B) Coolers

16. The Kar-Tess Group,³ through its subsidiaries Frigoglass and Norcool, produces and sells refrigeration units for the display and cooling of food and beverages, commonly called F&B coolers. There are four main types of F&B coolers: glass door coolers (by far the most popular of the four types), open top coolers, chest coolers with lids, and open front coolers without doors. These F&B coolers are primarily sold to both food and beverage companies, with a majority being sold to beverage companies. These products are typically used by soft drinks distributors (bottlers), wholesalers and retailers to display cooled soft drinks in retail grocery outlets and other outlets (e.g., petrol stations and small shops).
17. The notifying parties argue that F&B coolers do not constitute a separate product market, and instead, propose that the relevant market comprises all commercial refrigeration units. They state there is a degree of demand-side and supply-side substitutability – that F&B coolers comprise only a small part of the overall commercial refrigeration market, that many companies manufacture a broad range of refrigeration products, and that many individual customers also purchase a broad range of such products.

³ The Kar-Tess Group indirectly owns 66.5% of Frigoglass S.A. (Frigoglass), a manufacturer of coolers, PET resin, bottles/glass, crowns, and plastics, and Hellenic owns an additional 20% in Frigoglass. The company has production facilities in Greece, Romania and Yugoslavia. In the spring of 1999, Kar-Tess acquired Norcool (a manufacturer of coolers based in Norway).

18. However, information submitted in the market investigation indicates that the vast majority of F&B coolers produced in the EEA are manufactured for use by beverage companies. Competitors stated that while food companies may purchase a variety of refrigeration equipment outside the product line of F&B coolers, beverage companies rely almost exclusively on F&B coolers for displaying and cooling their products. Indeed, F&B cooler producers estimated that the percentage of F&B units going to beverage companies ranged as high as 90% to 95% of total sales of such units. Producers noted that beverage companies considered F&B coolers both effective and efficient as marketing tools for the sales of their beverage products. The parties concede that each type of F&B cooler has applications for which it is best suited, and that there is a certain degree of demand-side substitutability across the four different types.
19. Moreover, the competitors noted that their customers have specialized requirements. They pointed to the fact that their beverage customers have specifications that are commonly established by centralized buying operations (as in the case of TCCC), and thus they must be approved as a “preferred” or “key” supplier before they can qualify as a potential supplier. Further, they pointed to the need to establish long-term customer relationships in the globalizing market, particularly because these customers had installed bases, and had substantial requirements for service and maintenance. Because the portion of the F&B market accounted for by beverage companies is so substantial in size, some competitors stated that if they could not qualify as a supplier to soft drinks companies, they would not have a sufficient scale of economy to remain viable.
20. Further, as to supply-side substitutability, of the companies identified by the notifying parties as competitors in F&B coolers, a large number are dedicated producers of coolers for F&B applications and did not offer other types of refrigeration equipment in their product line. They have dedicated equipment and there was not any significant degree of switching. To the extent that some also produce a line of freezers dedicated to ice cream producers, these production lines are technically different, and in fact are often in separate facilities. Accordingly, the majority of competitors who submitted information in the investigation supported the finding that F&B coolers were a separate market. Thus, in light of the factors discussed above, it appears that a relevant product market can be delineated as not wider than F&B coolers for purposes of assessing this case.

B. Relevant Geographic Markets

1. The Supply of CSDs

21. The Commission has in the past⁴ viewed the relevant geographic market for CSDs and other soft drinks as not larger than national, for a variety of reasons, including limited trade flows and high transport costs. Information submitted in this investigation supports this view. Moreover, the bottlers in question have been licensed by brand owners to sell their product within the limits of a national geographic territory. The merged entity (Hellenic Bottling) will continue to market the same drinks as before; however, there is no geographic overlap at the bottling level, as the two companies operate in different countries.

2. F&B Coolers

22. The parties state that the major manufacturers of F&B coolers sell their products on a worldwide or at least on an EEA-wide basis. They note that Norcool and Frigoglass supply F&B coolers throughout the EEA, with a significant presence in 12 EEA member countries from only five plants in Europe (for Norcool: in Norway, Poland, the Republic of Ireland, and Spain; and for Frigoglass: in Greece). Information submitted by third parties in the investigation also shows that other European producers of F&B coolers supply customers throughout the EEA from a small number of European locations.
23. Bottlers of TCCC brand beverages within the EEA purchase F&B coolers both from sellers with production sites located within the EEA and, to a limited extent, outside the EEA. Furthermore, the pricing of F&B coolers is substantially uniform throughout the EEA. In conclusion, market information provided by both the parties and third parties indicates that, for the purposes of this decision, the relevant geographic market for F&B coolers, given current conditions in the sector, seems to be EEA-wide.

C. Assessment

1. The Supply of CSDs

24. The main impact of the proposed merger is at the bottling level, as it essentially consists of the consolidation of the bottling operations of Hellenic and CCB. As noted earlier, at the bottling level, there is no geographical overlap of the existing CCB and Hellenic businesses.
25. With respect to Hellenic's bottling and distribution of its own brand of CSDs in Crete, Vathypetros, it should be noted that in Greece there are a small number of regional brands of CSDs produced locally (on various islands), all of which have small sales volumes but meet local demands. Indeed, Vathypetros' market share of [less than 2 %] of total CSD sales in Greece clearly reflects the limited extent of its presence. Until now, despite the fact that TCCC's products accounted for the vast majority of Hellenic's output, the Vathypetros product has been co-produced alongside the TCCC products. While the parties have not elaborated any future plans for the Vathypetros

⁴ See *Amalgamated Beverages and Carlsberg A/S, op.cit.*; see also 92/553/EEC, Case IV/M. 190 – *Nestlé/Perrier* (OJ L 356, 5.12.1992).

brand, there is no evidence to suggest that production would not be continued to the extent that this small brand continues to meet the local demand.

26. With respect to Hellenic's bottling and distribution of the Tuborg brand of mixers under a license agreement with Carlsberg, the following factors should be considered. Hellenic's licensing agreement expires in [...] and Hellenic initially obtained this license to meet a particular demand in the Greek market, that is, the demand for CSD mixers, particularly club soda and secondarily, tonic water. In fact, according to Carlsberg, the Tuborg brand of mixers is only sold in Greece and a few countries in Africa, but not elsewhere in the EEA. Unlike other countries in Europe, the most important mixer in Greece is club soda, not tonic water. According to market information submitted in this investigation, club soda outsells tonic water by a ratio of 10 to 1. Moreover, club soda is not only used as a mixer (a traditional drink in tavernas is soda mixed with wine), but also substitutes as a carbonated water drink, because there is not a well-developed carbonated water market in Greece.
27. The Tuborg club soda brand has the highest market share in the sales of club soda in Greece.⁵ TCCC's acquisition this year of the Cadbury Schweppes brands in certain countries, including Greece, means that future bottling rights for Cadbury's leading tonic water brand would also be in the hands of the enlarged Hellenic. It should be noted that in Greece Cadbury Schweppes has only produced mixers and not other flavours of CSDs. Moreover, while it was present in Greece, it did not even market club soda. To date, Cadbury Schweppes has had a very limited presence in the Greek market, with sales of its CSD mixers actually declining for each of the last three years. Its market share in the sales of mixers accounted for: in 1996: [less than 5 %]; in 1997: [less than 5 %]; and in 1998: [less than 2 %].⁶ (Source: Canadean market research.) In fact, due to unsuccessful sales, Schweppes was discontinued in Greece in the middle of 1999. As Canadean noted, "Schweppes returned to the Greek market in 1995, but did not get off the ground."
28. While TCCC will be in the position to promote the Cadbury brand at the expense of the Tuborg brand, the time frame for such market penetration, and the extent of such potential sales is difficult to quantify at this time. In any event, Cadbury Schweppes is not a vigorous competitor at the present time, and thus the extent of lost potential competition between mixers sold under the Cadbury and Tuborg brands, respectively, is speculative.
29. In the initial stages of this investigation, some concerns were raised regarding the possibility that TCCC, as parent of Hellenic, could use its leverage in the Tuborg brand to increase the range and thus the power of its product portfolio. As a result, it was claimed that there was a chance that TCCC could accordingly increase market power at the bottling level as well as enjoying its current strength at the brand level. Were this to be the case, then serious doubts could arise regarding the compatibility of the proposed concentration with the common market.

⁵ Based on Canadean data, in 1998, Tuborg mixer sales (primarily club soda) accounted for an estimated [60 % to 70 %] of total mixer sales in Greece, followed by PepsiCo's IVI brand with approximately [20 % to 30 %].

⁶ In Greece, Cadbury Schweppes has not bottled its own products, but has used PepsiCo-IVI as its bottler and Cambas S.A. as its distributor.

30. However, industry members stated that they found it “highly questionable” that the brand management of Tuborg club soda in the enlarged Hellenic could or would be substantially different from the present situation, considering the vastly larger volumes of TCCC CSDs (that is, Coca-Cola, Coca-Cola Light, Fanta, and Sprite) sold by Hellenic. They saw no persuasive arguments to support the idea that Tuborg club soda could add any significant value or volume to the portfolio of Hellenic. [...]. This assessment is supported by Canadean market research which calls cola CSDs the “real market driver.”
31. In conclusion, the notified operation does not raise significant competition concerns with respect to carbonated soft drinks.

2. F&B Coolers

32. Currently, the Kar-Tess Group holds a controlling interest in Frigoglass (which in turn owns 100% of Norcool through a holding company), while Hellenic Bottling Company owns a 20% stake. TCCC will, in turn, acquire an equity interest in Hellenic and will thus participate in Frigoglass’ profits. To the extent that bottlers and retail customers of TCCC beverages collectively account for [a very substantial] share of F&B cooler purchases in the EEA, concerns were raised that competitors of Frigoglass and Norcool might be foreclosed from selling F&B coolers to bottlers who distribute TCCC products, because TCCC would be likely to exert influence on its bottlers in the EEA to buy F&B coolers only from Frigoglass.
33. Together, Frigoglass and Norcool manufacture all types of F&B coolers (excluding open top coolers), although glass door coolers account for [the vast majority] of their current sales. There is no publicly available data available regarding sales in F&B coolers. Based on internal estimates, Frigoglass and Norcool conservatively estimate that their joint share of the F&B cooler market in 1998 on an EEA-wide basis was approximately [20-30 %], but could be as low as [10-20 %].⁷ They further point out that even if the analysis were limited to glass door coolers, which they contend is too narrow a segmentation to constitute a market, their combined market share would be approximately [25-35 %]. The sales of other suppliers of F&B coolers on an EEA-wide basis have been estimated as follows: Caravell ([...]%); Electrolux/Zanussi ([...]%); Helkama ([...]%); Iarp ([...]%); Liebherr ([...]%); Quest ([...]%); and True ([...]%).
34. The parties estimate that Hellenic accounted for approximately [...] % of EEA cooler demand in 1998 [...] and that CCB’s share of cooler purchases in the EEA was around [...] %. Thus, the parties contend that any direct foreclosure effect of the transaction would be minimal, even assuming that CCB were to source the bulk of purchases from Frigoglass after the transaction. The parties concede that other bottlers of TCCC beverages in the EEA are also significant purchasers of F&B coolers. They point out, however, that TCCC does not itself purchase F&B coolers, but rather it assists bottlers in arranging equipment and supply purchases, including F&B coolers, as is the typical industry practice. They state that these arrangements are entirely voluntary – and bottlers can choose to negotiate purchases on their own and often do so.

⁷ The parties estimate that the F&B cooler segment (open front coolers excluded) is not less than [...] units, and they believe that the true size may be as high as [...] units.

35. However, TCCC's standard bottling agreement with its EEA bottlers provides, *inter alia*, that TCCC has to approve [promotional and advertising plans ...]. The Commission considers that by virtue of these rights TCCC is in a position to strongly influence, within the EEA, its bottlers' choice of coolers used to display TCCC's beverages in favour of Frigoglass and to the detriment of other suppliers of F&B coolers.
36. Third party competitors estimated that total purchases by the TCCC group of bottlers could range as high as [around half] of total F&B cooler sales in the EEA, thus raising foreclosure concerns. The data submitted to the Commission in the investigation indicates that the TCCC group's total purchases account for [less than third-party estimates that were provided] of total F&B sales (including both those made under the joint arrangements described above and those made independently by individual bottlers). This range of purchases is sufficient to create the concern that if TCCC were, in fact, to favour Frigoglass/Norcool in its bottlers' F&B cooler purchases, this could foreclose other F&B cooler suppliers from a significant part of the EEA market, leading to dominance by Frigoglass/Norcool.
37. In light of the proportion of F&B cooler sales that would be accounted for by the TCCC group's purchases, the Commission concludes that serious doubts would arise regarding the compatibility of the proposed concentration with the common market.

V. COMMITMENTS SUBMITTED BY THE PARTIES

38. In order to remove the serious doubts with respect to the market for the supply of F&B coolers in the EEA, the notifying parties submitted on 11 January 2000 an irrevocable commitment that Hellenic will sell its entire shareholding interest in Frigoglass SA. The text of the undertaking is contained in **Annex I**.
39. In summary, the parties will ensure that Hellenic will divest its entire shareholding interest in Frigoglass SA to a third party that is not connected with TCCC within an agreed time period from completion of the notified concentration. The parties agree to appropriate monitoring mechanisms, including the appointment of a trustee, through which the Commission can ensure that divestment is made to an entity that is not connected with TCCC.
40. The proposed commitments appear to address the competition concerns discussed above by eliminating the direct links between TCCC and the F&B cooler operations of Frigoglass SA.

VI. CONCLUSION

41. For the above reasons, the Commission concludes that the undertaking given is sufficient to address the competition concerns raised by this concentration. Accordingly, subject to full compliance with the commitments proposed by the parties, it has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No. 4064/89, as amended.

For the Commission,

Annex I

Undertaking of The Coca-Cola Company and the Kar-Tess Group

Case No. COMP/M.1683 - The Coca-Cola Company/Kar-Tess Group

1. In accordance with Article 6(2) of Regulation 4064/89, as amended, the parties offer the following commitments (referred to hereinafter as the “Undertaking”) with respect to the above-referenced notification. Incorporated by reference and included as an integral part of this Undertaking are letters signed by duly authorized representatives of The Coca-Cola Company and the Kar-Tess Group, respectively.

I. Sale of HBC Cooler Interests

2. In order to achieve clearance of the notified concentration, the parties will ensure that the Hellenic Bottling Company SA (“HBC”) shall sell all shares in the capital of Frigoglass SA (“Frigoglass”) held by HBC (the “Divestment Shares”), on the terms and conditions set out below.
3. **Timing.** Without prejudice to the powers of the Trustee and/or the European Commission (the “Commission”) under this Undertaking, the parties will ensure that HBC shall complete the sale of the Divestment Shares [...], or such other longer period as may be agreed with the Commission as provided in paragraph 12 below.
4. **Purchaser.** HBC shall be free to determine in what form and in what time frame within the foregoing period the Divestment Shares are sold. Given that Frigoglass is a public company listed on the Athens Stock Exchange, HBC cannot feasibly control to whom the Divestment Shares are sold, except where HBC agrees to sell Frigoglass shares in block trades to the same purchaser, *i.e.*, a block of shares corresponding to five per cent (5%) or more of the total share capital of Frigoglass or exceeding GRD two hundred million (200,000,000) in value. The parties will ensure that HBC will make such block trades only to persons who, to the best of HBC’s knowledge, are independent of and unconnected to TCCC. The parties will notify the Commission of any such proposed block trade, with any such sale subject to approval by the Commission of the purchaser or purchasers. Notwithstanding the foregoing, HBC shall be free to sell the Divestment Shares to any other current shareholder of Frigoglass and/or any company controlled by such a shareholder.
5. **No exercise of voting rights.** Pending their final sale, the parties will ensure that HBC does not exercise any voting rights pertaining to the Divestment Shares. The parties will give prior notice to the Trustee provided for by this Undertaking of any and all General Meetings of Frigoglass, to allow the Trustee to attend such Meetings, and to provide the Trustee with a copy of the relevant minutes.

6. **Approvals.** It is understood that the terms of the sale(s) shall be subject to any requisite regulatory and other approvals. The parties will ensure that ownership of the Divestment Shares is transferred to the final buyer(s) no later than 1 month after all such approvals have been obtained and the above periods have elapsed (the "Final Date").

II. Implementation

7. **Reporting requirements.** Two months at the latest after the date of approval of the notified concentration by the Commission, and at two-month intervals thereafter until the final sale of the Divestment Shares is completed, the parties will provide a written report to the Commission on the discharge of the obligation to sell the Divestment Shares pursuant to this Undertaking. In particular, the parties will inform the Commission on (i) the status of the notified transaction and (ii) the progress HBC has made in selling the Divestment Shares, including the identity of any purchasers where their identity is known to HBC. The parties will substantiate their reports as appropriate.

With respect to all Trustee functions, as set out below, the Trustee will be responsible for submitting the relevant written reports to the Commission regarding (i) the commitment by the parties to ensure that HBC does not exercise any voting rights pertaining to the Divestment Shares; and (ii) a status report on all proceedings covered by the Trustee's mandate, including the progress HBC has made in selling Divestment Shares, and including the identity of any purchasers where their identity is known to HBC.

All reporting and notification obligations set out in this Undertaking may be fulfilled by the parties acting together or separately, or by HBC acting on behalf of the parties.

8. **Trustee appointment.** Immediately after the date of approval of this concentration the parties will ensure that HBC shall appoint, or cause the appointment of, a Trustee in accordance with the provisions of this paragraph to exercise the functions set out in paragraph 10 below.
- a) The parties will propose to the Commission, within seven working days of the Commission's decision approving this concentration, the names of at least two individuals or institutions, independent from HBC, the Kar-Tess Group, TCCC, and TCCC bottlers, either of whom HBC considers appropriate to be appointed as Trustee.
 - b) The Commission shall have the discretion to approve or reject one or both of the names submitted. If only one name is approved, the parties will ensure that HBC shall appoint or cause the individual or institution concerned to be appointed as Trustee. If more than one name is approved, the Trustee may be appointed from among the names approved.
 - c) If all the names submitted are rejected, the parties will ensure that HBC will submit the names of at least two further such individuals or institutions (the "Further Names") within seven working days of being informed of the rejection. If only one Further Name is approved by the Commission, the parties will ensure that HBC shall appoint or cause the individual or institution concerned to be appointed as Trustee. If more than one Further Name is approved, the Trustee may be appointed from among the names approved.

- d) If all Further Names are rejected by the Commission, the Commission shall nominate a suitable Trustee whom the parties will ensure that HBC will appoint or cause to be appointed. The Trustee shall be an investment bank, accountancy firm, or law firm of international standing.
9. As soon as the Commission has given approval to one or more names submitted, or nominated a Trustee to be appointed, the parties will ensure that HBC shall appoint or cause the Trustee concerned to be appointed within seven working days thereafter. Immediately upon the Trustee's appointment, the parties will ensure that HBC shall enter into a mandate with the Trustee whose terms shall have previously been approved by the Commission and which shall be for the functions set out in paragraph 10 below.
10. ***Trustee functions.*** Immediately upon the Trustee's appointment, the Trustee shall act on the Commission's behalf in overseeing the parties' commitment to ensure HBC's commitment not to exercise any voting rights pertaining to the Divestment Shares and in ensuring that the Divestment Shares to be sold in accordance with the current Undertaking are held by HBC consistent with their status until final completion of the sale. If HBC fails to sell the Divestment Shares within the applicable time period as determined pursuant to paragraph 3 above, despite having used best efforts to do so, the parties will ensure that HBC shall inform the Trustee in writing ("the Request"). On receipt of the Request, the Trustee shall carry out the following functions:
- a) identify potential purchasers and conduct negotiations for the sale of the Divestment Shares;
 - b) ensure that the Divestment Shares to be sold in accordance with the current Undertaking are held by HBC consistent with their status until final completion of the sale;
 - c) ensure final completion of the sale of the Divestment Shares within such time extension as may be granted by the Commission as set forth in paragraph 12 below, in conformity with the obligations of the parties and of HBC under paragraphs 2 and 4-6 above and consistent with the Trustee's mandate;
 - d) provide regular reports as described above in paragraph 7; and
 - e) inform the Commission in writing of the final completion of the sale.
11. The parties shall provide the Trustee with all such reasonable assistance and information, including copies of all relevant documents, as the Trustee may require in carrying out its mandate, and shall ensure that HBC pays reasonable remuneration for the Trustee's services. [...].
12. The Commission may, upon the parties' request and upon the parties' showing good cause, extend the period granted to HBC for divestiture by [...] months. Such an extension shall not be unreasonably refused. In such case, the parties will ensure that HBC shall give the Trustee an irrevocable mandate to sell the Divestment Shares, on best possible terms and conditions, subject to the parties' absolute and unconditional obligation under their commitment to ensure that HBC will fully divest the Divestment Shares within this time period, provided,

however, that HBC shall remain free to identify a suitable purchaser for the Divestment Shares and sell the Shares to this purchaser during this time period, in conformity with the obligations of the parties and of HBC under paragraphs 2 and 4-6 above and consistent with the Trustee's mandate.

13. The parties shall be deemed to have complied with this divestiture undertaking if by the date provided for pursuant to paragraph 3, HBC has entered into a binding letter of intent or a binding contract for the sale of the Divestment Shares to a purchaser or purchasers approved by the Commission, provided that such a sale is completed within a reasonable time limit agreed by the Commission.
14. If the parties should announce that the notified concentration has been irrevocably abandoned, this Undertaking shall be deemed discharged and the Trustee's appointment shall be deemed to be terminated. At the latest by the Final Date of the last transfer of the Divestment Shares, the Trustee's mandate and the part of this Undertaking concerning the sale of the Divestment Shares shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated.
15. This Undertaking is subject to (i) the general duty of trust and good faith, including in regard to any relevant agreements relating to the Divestment Shares, in particular any agreements by which the parties and/or HBC are bound (collectively and each of them, the "Obligations"); and (ii) the Obligations to which also the exercise of the Trustee's functions shall be subject. Without prejudice to the parties' ensuring HBC's commitment not to exercise any voting rights pertaining to the Divestment Shares pursuant to paragraph 5 above, nothing in this Undertaking shall oblige HBC or authorize the Trustee to breach or otherwise fail to comply with HBC's Obligations.
16. The Trustee shall have due regard to the commercial interests of the parties and of HBC and, in particular, their interest in [certain safeguards...].