EN

Case No COMP/M.2276 - THE COCA-COLA COMPANY / NESTLE / JV

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 27/09/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 27.09.2001
SG(2001)D/291583

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case No COMP/M.2276 – The Coca-Cola Company / Nestlé / JV
Notification of 24.08.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26.07.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of a Council Regulation (EEC) No 4064/89 by which the undertakings The Coca-Cola Company ("TCCC") and Nestlé SA ("Nestlé") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control over the existing JV Coca-Cola Nestlé Refreshments Company SA ("CCNR") in its new expanded format. The notification was declared incomplete on 13.08.2001, and became complete within the meaning of Article 10(1) of Council Regulation (EEC) No 4064/89 on 24.08.2001.

2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended 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

3. TCCC is a brand owner and a producer of concentrates and syrups, which it sells to bottling and canning operators to produce carbonated soft drinks ("CSDs") as well as other non-alcoholic beverages (together with CSDs referred to as "NABs"). TCCC also produces fountain soft drink syrups, which it sells to authorised wholesalers and some fountain retailers, and, in certain instances, finished beverages.

4. Nestlé is the ultimate parent of the Nestlé group of companies. The group's product range encompasses many sectors of nutrition. Nestlé owns shares in operating companies that manufacture and sell food products throughout the world, including instant drinks, liquid drinks, dairy products, infant food, dietetic products, culinary products, frozen food, pasta products, ice cream, refrigerated products, chocolate, confectionery products and pet food. Nestlé also engages in some non-food activities.

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II. THE OPERATION

5. The proposed transaction concerns the restructuring and expansion of CCNR. CCNR is currently jointly controlled by TCCC and Nestlé that hold 50% each of the issued share capital of CCNR. The shareholding of CCNR will remain the same following the restructuring.

6. CCNR was originally set up in 1991, and subsequently modified in 1995. The co-operative joint venture was duly notified to the Commission under Article 81 EC, and the parties have kept the Commission informed of all modifications.

7. The purpose of CCNR when it was originally set up in 1991 was primarily for the manufacture and distribution of Nestea (a Nestlé Iced Tea product), Iced Coffee and Iced Chocolate Beverages. In 1995 the Parties agreed to restructure CCNR to focus on the Iced Tea and Iced Coffee Businesses and terminate its responsibility for Iced Chocolate Beverages, with primary management responsibilities for the Iced Tea Businesses being delegated to TCCC and, similarly, the primary management responsibilities for Iced Coffee Businesses being delegated to Nestlé. Europe was not included in the CCNR's Iced Coffee territory.

8. Pursuant to the notified operation, CCNR will extend its activities to all the countries of the world except for Japan, the USA and Canada. Nestea is currently distributed, and will most likely continue being distributed under the new arrangements, through TCCC's distribution system. Within Europe, Nestlé will in addition now contribute to CCNR its Beltè Iced Tea business in Italy and its European Iced Coffee business. The product scope of CCNR will moreover be expanded to include functional beverages which use Iced Tea or Coffee as a carrier, though this expansion will not involve the contribution of existing products to the JV by either parent.

III CONCENTRATION

9. Under the current co-operative joint venture arrangements concerning CCNR, TCCC acts like a brand manager for Nestea, i.e. TCCC is responsible for preparing the annual business plans for the tea business that are presented to the Executive Committee[1].

10. Pursuant to the proposed operation, besides the changes mentioned in paragraph 8 above, the parties intend to make changes to the management and structure of CCNR, thereby enhancing its autonomy from its parents. The new arrangements are intended to give CCNR a focused and dedicated management team equipped to determine *inter alia* the

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1 Although the business models vary, including the extent of vertical integration, the supply of NABs to retail customers consists of a number of related activities that, for convenience, can be grouped under the following headings:
Brand ownership: This activity comprises the creation and promotional support of beverage brands, the supply of concentrate by the brand owner or its nominee and the authorisation of local bottlers to prepare, package, distribute and sell the beverages. As also the production of the concentrate can be subcontracted by the brand owner to third parties, the brand owner does not necessarily need production facilities to carry on its activities.
Bottling: The bottler is typically assigned a territory by the brand owner within which it is responsible for organising preparation, packaging, sales (including pricing), marketing and distribution to retail and wholesale customers. To varying degrees, bottlers may be permitted to sub-contract the packaging and distribution activities to third party suppliers of these services. A third party that prepares and packages beverages but that does not have any other responsibilities of a bottler (e.g. distribution) is known as a toll-packer. A company may be involved in bottling activities on behalf of more than one brand owner. Bottlers may also be vertically integrated – carrying out bottling activities in respect of brands that they themselves own or control.

best routes to market for CCNR's products, as well as deciding upon possible new sources of supply and methods for manufacturing and distribution. Following the concentration, therefore, CCNR will operate in the same way as a full-function brand owner.

11. In particular, with a view to giving CCNR management greater autonomy, the Executive Committee, which currently manages CCNR, will be abolished. Instead, CCNR will be managed by a chief executive officer in accordance with the long-term and annual business plans. A general manager will manage the day to day affairs of the business.

12. CCNR will have a board of directors consisting of an even number of directors, but not more than ten, with an equal number appointed by each of TCCC and Nestlé. No action of the board shall be authorised unless at least a majority of the directors nominated by both shareholders and present at the meeting vote affirmatively on such action. Certain major actions may not be taken by the chief executive officer without the prior approval of the board of directors or the shareholders.

13. Instead of TCCC and Nestlé separately preparing the business plans for the Tea Business and the Coffee Business respectively, CCNR's business plans will now be prepared by CCNR's Chief Executive Officer and submitted in writing to the CCNR's Board for approval prior to the commencement of each new fiscal year. Moreover, CCNR's management will have the authority to borrow in the ordinary course of business under revolving lines of credit approved by the Board, as long as such borrowings are in accordance with the budget previously approved by the Board.

14. Finally, given its greater autonomy, CCNR will recruit and employ a dedicated management team to manage the tea, coffee and functional beverages businesses It results from the above that, following the proposed operation, CCNR will enjoy commercial and operational independence vis-à-vis its parents and will have the assets and resources necessary to exercise that independence. On the basis of these elements, the new CCNR will be a full-function joint venture within the meaning of Article 3(2) of the Merger Regulation.

IV COMMUNITY DIMENSION

15. The concentration has Community dimension pursuant to Article 1(3) of Council Regulation (EEC) No. 4064/89 because the combined aggregate worldwide turnover of the undertaking concerned exceeds 5 billion Euro (in 2000 the worldwide turnover was: for TCCC, 22.237,4 million Euro; for Nestlé, 52.265 million Euro), the aggregated Community-wide turnover of each of at least two of the undertaking concerned is more than 250 million Euro (in 2000 the aggregated Community-wide turnover was: for TCCC, 4.018,5 million Euro; for Nestlé, 18.970 million Euro), and the undertakings concerned do not achieve each more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

V THE RELEVANT MARKET

Relevant product market

16. According to the parties, the relevant product market for the assessment of the concentration should be viewed as being at least as wide as the supply of NABs. As it

results from a number of Commission's precedents, however, such a definition, which would include a wide ranging variety of beverages such as CSDs, still drinks, fruit juices, packaged waters, coffee, tea and milk, is not appropriate[2].

17. From the Commission's precedents it appears, on the contrary, that CSDs are distinct from other NABs, such as coffee, tea, milk, juices and packaged waters; that a distinction may be made between different flavours of CSDs and, in particular, between cola and non-cola flavoured CSDs[3]; and that further distinctions may also be made between the remaining types of NABs[4].

18. In the present case, the investigations have shown that a separate product market for Iced Teas cannot be excluded, at least in most European countries, given the price differential between Iced Tea and other soft drinks and the fact that Iced Tea appears to be marketed mainly to appeal to adults, because of the image of healthy and natural product it carries as compared to other soft drinks.

19. The investigations have shown that a further segmentation of the products concerned might also be possible depending on whether it is on-trade (i.e.: sales to hotels, bars, cafés, etc) or off-trade (i.e.: sales to the retail sector), given that product offerings, packaging formats and sizes, profit margins, prizes and distribution systems tend to differ between the two distribution channels[5]. Supermarkets, for instance, tend to take central delivery, whereas the on-trade is serviced primarily by wholesalers.

20. As regards Iced Coffee, according to the parties this product is relatively new in Europe and it is still very much in a developing stage with most products being sold on a trial basis. However, from the investigations it appears, as for Iced Tea, that a separate product market for Iced Coffee cannot be excluded.

21. According to the notification, CCNR will engage in the research, development and future marketing of functional beverages using Iced Tea or Iced Coffee as a carrier. On the basis of the information provided by the parties, CCNR' functional beverages do not seem to belong to a distinct market segment, as the only peculiarity of these products would be that some additional ingredients (such as calcium, and herbs) are added to otherwise ordinary Iced Tea or Iced Coffee[6]. The expression "functional beverages", therefore, is an expression of how the parties want CCNR to explore more ways of using tea and coffee to offer more choice to consumers and is a commercial (marketing) response to the consumer interests of the moment.

22. In the present case, the precise product market definition can be left open given that, in any event, the concentration is not liable to create or strengthen a dominant position under any of these possible product market definitions.

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2 See, *inter alia*, Commission decisions in Case No IV/M.1065–Nestlé/San Pellegrino, in Case No IV/M.833 – The Coca-Cola Company/Carlsberg A/S, and in Case No IV/M.794–Coca-Cola/Amalgamated Beverages GB.

3 See, in particular, Case No IV/M.833 – The Coca-Cola Company/Carlsberg A/S.

4 See, in particular, Case No IV/M.1065 – Nestlé/San Pellegrino.

5 See also the Commission decisions in Case No IV/M.938 – Guinness/Grand Metropolitan, and in Case No IV/M.794 – Coca-Cola/Amalgamated Beverages GB.

6 In France, for instance, CCNR is already marketing Nestea Tonicithé (with lime and ginseng) and Nestea Rehydrating (with Passion Fruit/Blackcurrant and minerals). These product are treated as part of the Iced Tea segment and are reported by third party sources (e.g. Canadean) as such with their volume included with the other Iced Tea products.

Relevant geographic market

23. In past cases concerning packaged beverages[7], the Commission has considered the relevant geographical markets to be essentially national in scope due to differences in consumption patterns, logistic and distribution networks, marketing strategies, etc. This market definition has been confirmed by the investigation.

VI COMPETITIVE ASSESSMENT

Iced coffee

24. Despite past attempts by CCNR and other competitors to stimulate markets for Iced coffee in Europe, it is currently still a virtually unknown product there, and the re-structured JV is therefore unlikely to give rise to competition concerns in any such market for the foreseeable future.

Iced Tea, cola-flavoured and non-cola-flavoured CSDs

25. As regards Iced Tea, cola and non-cola-flavoured CSDs, it appears from the information provided by the parties that the possible effects of the concentration should be assessed only with regard to Italy, Spain, and Denmark.

26. With regard to the other EEA countries, the concentration does not raise any doubt of compatibility because there is no horizontal overlap (in these countries TCCC is not active, except through CCNR, in the production and sale of Iced Tea) and because either Nestea is not marketed at all (as in Norway, Sweden, Finland, Ireland, the UK, and Austria) or its estimated share of sales by volume is well below 15% ([5-15%] in France; [0-10]% in Belgium and Luxembourg; [0-10%] in Germany; [0-10%] in the Netherlands, and [0-10%] in Portugal), with the strong presence of leading brands such as Unilever's Lipton Iced Tea[8] and a number of other competitors.

27. In Greece, Nestea has estimated share of sales in value terms of [15-25%] in the on-trade channel and [5-15%] in the retail channel, but the leading competitor is by far Lipton, with an estimated share of sales in value terms of over 70% in both the on-trade and retail channels.

Italy

28. In Italy the concentration could be liable to lead to a horizontal overlap. Currently, in fact, Nestlé markets through its own distribution network three Iced Tea brands: Beltè, B.B. The, and Pejo, while the Nestea brand is marketed, under the current CCNR co-operative arrangements, through TCCC's distribution network and under TCCC's management. Pursuant to the notified concentration, in Italy Nestlé will contribute the Beltè brand to CCNR, with the consequence that both the Nestea brand and the Beltè brand will be managed by CCNR.

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7 See Commission decision in Case No IV/M.833 – The Coca-Cola Company/Carlsberg A/S.

8 According to the parties, Lipton has an estimated share of sales in volume of about 60% in France; 70% in Belgium; about 45% in the Netherlands; and about 75% in Portugal.

29. According to the parties' internal estimates, in Italy Nestea has a share of sales by value of about [10-20%], Beltè of about [0-10%], San Benedetto's brands (Tè Guizza and Tè San Benedetto) of about 30%, Ferrero's brand Esthatè of about 17,4%, and Unilever's brand Lipton of about 13,6%, with a number of other smaller competitors accounting for the rest of the market[9].

30. In the retail channel Nestea has a share of sales of only about [0-1%], Beltè of about [10-20%], San Benedetto's brands of about 17%, Esthatè of about 28%, and Lipton of about 9%. In the on trade channel, Nestea has a share of sales of about [15-25%], Beltè of only about [0-10%], San Benedetto's brands of about 33%, Esthatè of about 14%, and Lipton of about 15%

31. Following the concentration, CCNR's estimated combined share of sales in Italy will be, in value terms, of about [20-30%] (Nestea: [10-20%], and Beltè: [0-10%])[10]. In the on-trade channel, Nestea and Beltè will have a combined market share in value terms of about [10-20%] (Nestea [15-25%] + Beltè [0-10%])[11]. In the retail channel, Nestea and Beltè will have a combined market share in value terms of about [10-20%] (Nestea [0-1%] + Beltè [10-20%])[12].

32. The concentration does not raise competition concerns in any possible relevant market for Iced Tea in Italy. As regards the overall Iced Tea segment, the increase of CCNR's share of sales from [15-25%] to [20-30%], resulting from Nestlé's contribution of Belté to CCNR, will not create or strengthen any dominant position, given the existence of San Benedetto's leading brands, and the existence of other strong competitors' brands such Estathè and Lipton.

33. As regards the segmentation by distribution channels, the respective market shares of Nestea and Beltè reveal that the former is strongly present in the on-trade distribution channel, and virtually absent in the retail channel, while the latter is strongly present in the retail channel, and virtually absent in the on-trade channel. As a result, in the retail channel the concentration cannot create or strengthen any dominant position, given to the practically unchanged CCNR's Iced Tea share of sales, and given to the presence of a number of both strong and small competitors. As regards the on-trade channel, the concentration will equally be unable to create or strengthen any dominant position as Beltè's share of sales is negligible, there are a number of strong competitors, and Nestea's share of sales has remained almost unchanged over the past three years.

Spain

34. In Spain, Nestea has a market share in value terms of [85-95%][13]. Breaking these figures down by channel, Nestea has a market share in value terms of about [85-95%][14] in the on-trade channel, and of about [80-90%][15] in the retail channel.

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9 Nestlé's other two brands B.B. The, and Pejo have negligible shares of sales (below 0,5% in volume terms). Furthermore, B.B. The will be discontinued by the end of 2001, and Pejo has already been discontinued at the end of 2000.

10 Source: Nielsen and TCCC estimate.

11 Source: Nielsen and TCCC estimate.

12 Source: Nielsen and TCCC estimate.

13 Source: Nielsen.

14 Source: Nielsen.

35. As regards CSDs in Spain, TCCC's estimated market share by value is of about [65-75%] and [60-70%] in the retail and on-trade channels, respectively. In the cola-flavoured CSDs, TCCC's estimated market share is of about [80-90%] in the retail channel and [85-95%] in the on-trade channel. In non-cola flavoured CSDs, TCCC's estimated market share is of about [30-40%] in the retail channel and [25-35%] in the on-trade channel[16].

36. The concentration will not lead to any horizontal overlap in Spain where Nestea is the only Iced Tea activity of the joint venture and its parents. Furthermore, even if it were considered that the concentration confers *ex novo* control to TCCC over Nestea, no competitive concerns would arise from this aspect in either the Iced Tea or the CSDs/cola-flavoured segments in Spain for the following reasons.

37. No portfolio effects in favour of TCCC's CSDs/cola-flavoured products would arise from the concentration as Iced tea is far from being a "must stock" product in Spain, being still a novel product in that country with volumes very small compared to other soft drinks and other countries. Pursuant to the information provided by the parties, in 2000 annual per capita consumption in Spain was 1.1 litres (compared to 8 litres in Portugal and 10 litres in Austria), equivalent to a total a size of 45.1 million litres, which amounts to just 0.3% of the total NABs consumption in Spain in the same year. As a result, the inclusion of Nestea in TCCC's portfolio is not capable to produce significant foreclosure effects on TCCC's CSDs/cola competitors

38. Similarly, no portfolio effects in favour of the Nestea brand will result from the concentration. The relatively high Nestea's market share in Spain is explained by the fact that Nestea was among the first Iced Tea brands launched in Spain, and up to 2000 the only brand to make significant marketing investment. The presence in Spain of other brands such as Don Simon, Lipton, The Radical Fruit, Okey, and Trina Te, shows that Nestea's distribution through TCCC's bottlers has not prevented other brands to enter the Spanish market. Furthermore, according to the parties, the competitive framework in Spain will change substantially over the next years, as a number of new brand and products are expected to be launched during 2001/2002[17]. Included in the new brands to be launched are major brands already available in other EU countries. In addition, the Lipton brand will, in future, be distributed by Pepsi/KAS, the latter's distribution network being stronger than that of Lipton's current distributor. The expectation is that over the coming years the total segment will grow and the choice of brands available will increase.

39. In the above light, it is excluded that the concentration will create or strengthen a dominant position in any of the possible relevant markets in Spain.

Denmark

40. In Denmark, Nestea has an estimated market share in the on-trade channel in value terms, of about [60-70%][18], Unilever's Liptonic of about 15%, and San Benedetto of about 15%.

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15 Source: Nielsen.

16 Source: Nielsen.

17 According to the parties, the Nestea share of sales is already declining, as from a figure of [75-85%] by volume quoted by Canadean for end 2000, it is estimated by Nielsen to be at [55-65%] at end July 2001. This decline is across all segments of the business, including the on-trade channel.

18 Source: Nielsen and TCCC estimate.

In the retail channel, Nestea has an estimated market share in value terms of about [40-50]%[19], Rynkeby of about 19%, Unilever's Liptonic of about 18%, and San Benedetto of about 10%, with a number of other private labels accounting for the rest of the market.

41. As regards CSDs in Denmark, TCCC's estimated market share by value is of about [40-50%] and [65-75%] in the retail and on-trade channels, respectively. In the cola-flavoured CSDs, TCCC's estimated market share is of about [60-70%] in the retail channel and [65-75%] in the on-trade channel. In non-cola flavoured CSDs, TCCC's estimated market share is of about [10-20%] in the retail channel and [65-75%] in the on-trade channel[20].

42. Like in Spain, the concentration will not lead to any horizontal overlap in Denmark where Nestea is the only Iced Tea activity of the joint venture and its parents. Furthermore, even if it were considered that the concentration confers *ex novo* control to TCCC over Nestea, no competitive concerns would arise from this aspect in either the Iced Tea or the CSDs/cola-flavoured segments in Denmark for the following reasons.

43. As regards possible portfolio effects in favour of TCCC's CSDs/cola-flavoured products, they can be excluded as, like in Spain, also in Denmark Iced Tea is a very new product (and certainly not a "must stock" product), with very low sales volumes if compared with other soft drink products in Denmark or with Iced Tea sales in other European countries. Pursuant to the information provided by the parties, annual consumption per capita in Denmark was in 2000 of 1.6 litres (compared to 8 litres in Portugal and 10 litres in Austria), for a total of 8.4 million litres, amounting to just 0.3% of the NABs consumption in Denmark. As a result, the inclusion of Nestea in TCCC's portfolio is not likely to produce significant foreclosure effects on its CSDs/cola competitors.

44. Similarly, no portfolio effects in favour of the Nestea brand will result from the concentration. In the retail channel, the presence of a number of strong competitors such as Rynkeby, Unilever, San Benedetto, and of other private labels, shows that Nestea's distribution through TCCC's bottlers has not prevented other brands to enter the Danish market, where competition is constantly increasing together with the growth of Iced Teas sales[21]. As regards the on-trade channel, Nestea was one of the first brands to make an investment in the Iced Tea segment in Denmark in 1996 and demand in this channel is still negligible[22].

45. In the above light, the concentration is unable to create or strengthen any dominant position in ether the retail or the on-trade Iced Tea channels in Denmark.

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19 Source: Nielsen and TCCC estimate.

20 Source: Nielsen and TCCC estimate.

21 According to the parties, between 1999 and 2000 total volumes of Iced Tea increased by 15.2% in Denmark. Whilst Nestea's share of sales of total Iced Tea decreased, its total volume increased by [1-10%], Rynkeby's volume increased by 150%, Lipton's by 14.3% and San Benedetto's by 166.7%.

22 Canadean does not even record any on-trade volume. TCCC estimates that in 2000 on-trade sales of Nestea amounted to [0-1] million litres out of the total Iced Tea volume of 8.4 million litres in 2000.

VII CONCLUSION

46. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted pursuant to Article 6(1)(b) of Council Regulation (EEC) No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission
Michaele SCHREYER
Member of the Commission