

***Case No COMP/M.4124
- COCA COLA
HELLENIC
BOTTLING COMPANY
/ LANITIS BROS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 22(3)
Date: 24/02/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24/02/2006

SG-Greffe(2006) D/ D200836

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 22(3) DECISION

Commission for the
Protection of Competition
Attn. Mr. George On. Christophides
Chairman
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4th floor
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Dear Sir,

Subject: Case No COMP/M.4124 – Coca-Cola Hellenic Bottling Company/ Lanitis Bros

Request for referral by the Commission for the Protection of Competition of the Republic of Cyprus to the Commission pursuant to Article 22(1) of the EC Merger Regulation

Ref.: Letter of 16 January 2006 (received 18 January 2006) by Mr. George On. Christophides, Chairman of the Commission for the Protection of Competition of the Republic of Cyprus, to Mr Philip Lowe, Director General DG Competition

I. INTRODUCTION

- (1) With the above-mentioned letter your Authority (“the Cypriot Competition Authority”) formally requests the Commission to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004 (“the EC Merger Regulation”), the concentration whereby the Greek undertaking Coca Cola Hellenic Bottling Company (“CCHBC”) acquires sole control of the Cypriot undertaking Lanitis Bros Public Co. Ltd. (“Lanitis Bros”) by way of a public bid announced on 3 January 2006.

- (2) Pursuant to Article 22(1) of the EC Merger Regulation, one or more Member States may request the Commission to examine any concentration, as defined in Article 3 of the Regulation, that does not have a Community dimension within the meaning of Article 1 of the Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days of the date of the notification of the concentration. Pursuant to Article 22(2) of the EC Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request.
- (3) On 4 January 2006 CCHBC notified the above mentioned concentration to the Cypriot Competition Authority. On 18 January 2006, the Commission received a referral request pursuant to Article 22(1) of the EC Merger Regulation from the Cypriot Competition Authority. The Cypriot Competition Authority has thus made the referral request within 15 working days of the date of the notification as foreseen in Article 22(1) of the EC Merger Regulation.
- (4) The Commission informed, in accordance with Article 22(2) of the EC Merger Regulation, the competent authorities of the other Member States on 20 January 2006 and the undertakings concerned on 23 January 2006 of the request made by the Cypriot Competition Authority.
- (5) No other Member State has joined the request within the time limit foreseen in Article 22(2) of the EC Merger Regulation.

II. THE PARTIES AND THE OPERATION

- (6) CCHBC is a public company listed on the Athens Stock Exchange and other securities markets. It is jointly controlled by The Coca Cola Company ("TCCC"), which owns [20-30%] of its share capital, and the Kar-Tess group with a [25-35%] stake. CCHBC produces and distributes carbonated soft drinks (under license from TCCC) as well as other non-alcoholic beverages such as fruit juice or mineral water, beer and dairy products (under license from TCCC, other licensees or under own brands) in a number of countries across Europe, in particular Greece, Ireland and many Central and Eastern European countries.
- (7) Lanitis Bros is a public company listed on the Cyprus Stock Exchange. It produces and sells a number of carbonated soft drinks under license from TCCC, as well as fruit juices and dairy products under its own brand. Furthermore, Lanitis Bros imports and distributes certain brands of non-alcoholic beverages and beer under license from various licensees such as Schweppes, Nestlé, Heineken or Amstel, as well as some dairy products made by the Greek company FAGE. Lanitis Bros operates mainly in Cyprus, exports of TCCC-licensed products to other Member States amounted to EUR [...] in 2004 and EUR [...] in 2005.
- (8) CCHBC intends to acquire the whole of the share capital and, hence, sole control of Lanitis Bros. Therefore the operation is a concentration within the meaning of Article 3 of the EC Merger Regulation. The concentration does not appear to have Community dimension.

III. ASSESSMENT OF THE REFERRAL REQUEST

- (9) Pursuant to Article 22(3) of the EC Merger Regulation, the Commission may decide to examine the concentration if it considers that (i) it affects trade between Member States and (ii) it threatens to significantly affect competition within the territory of the Member State or States making the request. It follows that if these two legal requirements are met, the Commission may exercise a discretion with regard to whether or not it is appropriate that the concentration is examined by the Commission. The Commission has, in its relevant Notice on Case Referral in respect of concentrations (“the Referral Notice”)¹, set out in a general manner its understanding regarding the appropriateness of particular cases or categories of cases for referral.
- (10) In the following paragraphs the Commission will evaluate whether it should examine the concentration, examining first the legal requirements laid down in Article 22(3) of the EC Merger Regulation and then the appropriateness of the referral.

A. On the legal requirements of Article 22(3) of the Merger Regulation

Effect on trade between Member States

- (11) Pursuant to the first criterion laid down in Article 22(3) of the EC Merger Regulation, the concentration in question must affect trade between Member States.
- (12) According to the Cypriot Competition Authority, this criterion is met for two reasons. First, Lanitis Bros exports some of its products (EUR [...], for a turnover of nearly EUR [...]), mainly to Greece. Second, the operation is part of a strategy of CCHBC to stop TCCC licensees to export Coca-cola in other Member States, thereby foreclosing competition in other parts of the EU.
- (13) According to CCHBC, the minimal horizontal overlap between the parties' activities in the juice sector does not appear sufficient to establish the requisite effect on trade, and Lanitis Bros' sales in Greece appear to be far below the threshold where they could have any appreciable effect on Greek markets.
- (14) According to paragraph 43 of the Referral Notice, a concentration fulfils the criterion of effect on trade between Member States laid down in Article 22 ECMR if it is liable to have some discernible influence on the pattern of trade between Member States; the Notice also refers by analogy to the Commission Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty². In view of the current exports of Lanitis Bros' products to Greece, as well as the fact that each of the parties may be regarded as a potential competitor of the other party in their respective home markets³, it appears that the present

¹ OJ C 56, 5.3.2005, p. 2.

² OJ C 101, 27.4.2004, p. 81.

³ As products sold both in Greece and Cyprus are labelled in Greek, these two countries are obvious candidates for parallel imports of Coca Cola or other branded products into the respective other country.

concentration may at least potentially have a discernible influence on the pattern of trade between Cyprus and other Member States within the meaning of the above mentioned Commission notices and the relevant case law of the Community courts to which they refer.

Significant effect on competition within the territory of the Republic of Cyprus

- (15) Pursuant to the second criterion laid down in Article 22(3) of the EC Merger Regulation, the concentration in question must threaten to significantly affect competition within the territory of the Member State or States making the request.
- (16) According to the Cypriot Competition Authority, the transaction will eliminate competition from CCHBC in the Cypriot market with regard to TCCC products. In that regard, the Cypriot request refers to “oral information” according to which there are parallel imports of CCHBC products.
- (17) CCHBC points out that the present operation does not lead to (i) the acquisition of control by TCCC of a previously independent bottler, (ii) foreclosure/collusion effects in respect of third party brand owners that have existing relationships with the acquired business, (iii) the combination of a Coca Cola bottler's distribution system with the distribution system of a non-carbonated soft drinks producer in the same geographic market or (iv) possible creation of buyer power in respect of important imports. Therefore, according to the principles established by the Commission in previous merger cases regarding Coca Cola products⁴, no competition concerns can be established in the present case.
- (18) According to paragraph 44 of the Referral Notice, a referring Member State is required in essence to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse effect on competition and thus deserves close scrutiny, without prejudice to the outcome of a full investigation.
- (19) For the purpose of the present decision it may be left open whether the concentration threatens to significantly affect competition within the Republic of Cyprus within the meaning of Article 22(3) of the EC Merger Regulation, since in any event the Commission considers it not appropriate for it to examine the present concentration for the reasons set out hereafter.

B. On the appropriateness of a referral of the present case to the Commission

- (20) Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should normally be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at the Community level. The categories of cases normally most appropriate for referral under Article 22 ECMR are accordingly:

⁴ See cases IV/M.794 – Coca-Cola Enterprises / Amalgated Beverages Great Britain, decision of 22 January 1997; IV/M.833 – The Coca-Cola Company / Carlsberg A/S, decision of 11 September 1997; IV/M.1683 – The Coca-Cola Company / Kar-Tess Group, decision of 7 February 2000.

- 1) cases giving rise to serious competition concerns in one or more market wider than national, or where some of the potentially affected markets to which the main economic impact of the concentration is connected are wider than national, or
 - 2) cases giving rise to serious competition concerns in a series of national or sub-national markets located in a number of Member States if a coherent treatment of the case is desirable, and where the main economic impact of the concentration is connected to these markets.
- (21) In the present case, the main competitive impact of the operation appears to be in Cyprus with regard to the markets of cola drinks, fruit juices, beer and dairy products. The geographic scope of these markets has been considered not wider than national by the Commission in previous cases⁵. Therefore, if serious competition concerns could be identified, the present case does not appear to belong to the first category of cases referred to in the Notice.
- (22) With regard to the second category of cases, the present case does not appear to meet the cumulative criteria set out therein. Indeed, it is not established that the transaction could give rise to serious competition concerns in a number of Member States, in this case specifically in Greece. Moreover, no other Member State has joined the referral request made by Cyprus. Consequently, even if the operation were considered to give rise to serious competition concerns in Greece or any other Member State, the Commission's jurisdiction would still be limited to assessing the effects of the transaction in the Cypriot market. Therefore, there would be no added value in the case being examined at Community level.
- (23) On the basis of these elements, the Commission considers that it would not be better placed than the Cypriot Competition Authority to assess the impact of the transaction.
- (24) Therefore, the case does not appear to be an appropriate candidate for referral to the Commission pursuant to Article 22 of the EC Merger Regulation.

IV. CONCLUSION

- (25) For the above mentioned reasons, the Commission has come to the conclusion that in the present circumstances the Commission is not better placed than the Cypriot Competition Authority to examine the effects of the concentration in the Cypriot markets.
- (26) The Commission has consequently decided not to examine the concentration notified to the Cypriot Competition Authority.

For the Commission, signed,
Neelie KROES
Member of the Commission

⁵ See e.g. case IV/M.794 Coca-Cola Enterprises / Amalgamated Beverages Great Britain, decision of 22 January 1997, at paragraph 95.