



EUROPEAN COMMISSION
DG Competition

***Case M.8244 - THE
COCA-COLA
COMPANY / COCA-
COLA HBC /
NEPTŪNO
VANDENYS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2016

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EUROPEAN COMMISSION

Brussels, 21.12.2016
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir or Madam,

**Subject: Case M.8244 - THE COCA-COLA COMPANY / COCA-COLA HBC / NEPTŪNO VANDENYS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

- (1) On 17 November 2016, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings The Coca-Cola Company ("TCCC", United States) and Coca-Cola HBC AG ("CCH", Switzerland) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Neptūno Vandenyys UAB ("Neptūnas", Lithuania) by way of purchase of shares (hereinafter, the "Transaction").³
- (2) TCCC and CCH are hereafter collectively referred to as the "Notifying Parties". The Notifying Parties and Neptūnas are collectively referred to as the "Parties".

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C434 of 24.11.2016, p. 9.

1. THE PARTIES

- (3) TCCC is a brand owner and licensor of various trademarks used to market and sell non-alcoholic beverages. It administers Coca-Cola Bottlers' Agreements and is responsible for the consumer marketing of beverages sold under its trademarks. It also produces soft drink concentrate and syrup that it supplies to bottling and canning operators, as well as to fountain retailers. In certain instances, TCCC produces and sells finished beverages. No entity holds a shareholding in TCCC that is sufficient to control the company.
- (4) CCH, a publicly listed company, is an authorised bottler of TCCC that produces, markets and sells TCCC-branded and other beverages in the EEA and elsewhere in Eurasia and Africa. It operates in accordance with a Coca-Cola Bottler's Agreement and purchases soft drink concentrates and syrups from TCCC that it uses to produce finished beverages. The principal shareholders of CCH are Kar-Tess Holding, which holds approximately 23.2% of the outstanding ordinary shares, and TCCC, which indirectly holds approximately 23.1% of CCH's outstanding ordinary shares. TCCC and Kar-Tess are not party to any Shareholders' Agreement, so the possibility of joint control over CCH does not arise. The possibility that TCCC's minority shareholding could confer sole control may also be excluded, as TCCC has no right to veto decisions [that would give TCCC decisive influence over CCH's commercial behaviour].⁴ Therefore no entity holds a shareholding in CCH that is sufficient to control the company.
- (5) Neptūnas extracts, bottles, markets, and sells packaged and flavoured water in Lithuania under the Neptūnas brand. Neptūnas extracts water from an underground water well located on the edge of the Dzukija National Park in Lithuania. In April 2016, CCH acquired sole control of Neptūnas.⁵

2. THE CONCENTRATION

- (6) On 16 September 2016, TCCC and CCH entered into a Sale and Purchase Agreement ("SPA"), whereby TCCC acquires, indirectly via its wholly-owned subsidiary European Refreshments, 50% of the shares in Neptūnas from CCH (via its indirect subsidiary UAB Coca-Cola HBC Lietuva).

⁴ The rights attached to TCCC's shareholding do not give TCCC decisive influence over CCH and are limited to [governance matters that do not confer decisive influence over CCH's commercial behaviour].

⁵ CCH, through CCH Lietuva, acquired 100% of the shares in Neptūnas from Gintas Petrus and Milda Petrus, Lithuanian citizens, pursuant to a shares sale and purchase agreement dated 21 December 2015. This transaction was reviewed and cleared by the Lithuanian Competition Authority (Competition Council) in February 2016 (Annex 3.5 to the Form CO).

- (7) Through various inter-company arrangements, the activities of Neptūnas will be restructured post-Transaction in the following manner:
- TCCC [...] will own Neptūnas's trademarks and related intellectual property rights;
 - CCH will retain ownership of Neptūnas's bottling and distribution assets [...];
 - Neptūnas will own its existing water wells [...].
- (8) Post-Transaction, TCCC and CCH will exercise joint control over Neptūnas. Each of them will hold a 50% interest in Neptūnas. All profits and losses of the Neptūnas water business [...] will be split evenly between the Notifying Parties.
- (9) Neptūnas will be jointly operated by the Parties. [...] all significant strategic matters for the Neptūnas water business [...] will be jointly determined by TCCC and CCH.
- (10) In more detail, [there will be equality in appointment of representatives to Neptūnas's Board.]. The Board will be responsible for the supervision and management of Neptūnas, and will decide on all principal matters associated with the conduct and operation of the Neptūnas water business [...]. Board decisions will be taken by majority vote and [...] matters of strategic importance, require approval from at least one Board member appointed by each of TCCC and CCH.
- (11) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (TCCC: EUR 39 922 million; CCH: 6 346 million; Neptūnas: EUR 5.6 million). The aggregate EU-wide turnover of each of TCCC and CCH is more than EUR 250 million (TCCC: EUR [...]; CCH: [...]; Neptūnas: EUR [...]). Neither TCCC nor CCH achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (13) The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

- (14) Neptūnas is active in the production of packaged water (including carbonated water and still water) and flavoured water in Lithuania. TCCC owns two water brands sold in Lithuania (Bonaqua and Römerquelle) and a number of non-water brands including Coca-Cola, Sprite, Fanta, Schweppes, Frisco, Kinley, Cappy, Moya Semya and Burn. The Transaction therefore results in horizontal overlaps

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

in the supply of (i) non-alcoholic beverages ("NABs"),⁷ (ii) packaged water, (iii) carbonated water, (iv) still water and (v) flavoured water in Lithuania. While packaged water includes carbonated water and still water, some market intelligence reports classify flavoured water under a separate category, different from packaged water, within NABs.⁸

- (15) In past cases, the Commission has concluded that the market for the supply of NABs consists of two interrelated activities: brand ownership (including creation and promotion of beverage brand together with production of concentrate and/or finished beverages) and bottling (including preparation, packaging, marketing, sale and distribution of beverages).⁹
- (16) TCCC and CCH operate at different levels of the non-alcoholic beverages sector – TCCC at the brand ownership level and CCH at the bottling level.¹⁰ The Commission notes that at the bottling level, the Transaction will not result in any change as TCCC is not active at this level of the supply chain and CCH already distributes Neptūnas pre-Transaction.¹¹ The Commission will therefore conduct its analysis at the brand-ownership level.

4.1. Product market definition

4.1.1. Notifying Parties' views

- (17) According to the Notifying Parties the relevant product market comprises NABs, including carbonated soft drinks ("CSDs"), packaged water, non-carbonated soft drinks ("NCSDs"), iced teas, fruit juices, sports drinks, and energy drinks.

4.1.2. Commission's assessment

- (18) In previous decisions, the Commission has considered that, within NABs, CSDs constitute a separate market from NCSDs.¹² In its past decisional practice the Commission also indicated that NCSDs could be segmented into packaged water, fruit juices, ready-to-drink teas and energy and sports drinks, although ultimately left the question on such segmentation open.¹³
- (19) Previously, in *Nestlé/Perrier*, the Commission had concluded that a distinction should be made between "bottled source water" (which includes at least mineral

⁷ Comprising carbonated soft drinks, packaged water, non-carbonated drinks, iced teas, fruit juices, sports drinks, energy drinks, etc.

⁸ Market research company report "Canadean, 2016 Soft Drinks Market Insights" (Form CO, Annex 7.1).

⁹ Commission decision of 27 September 2001 in case M.2276 – *The Coca-Cola Company/Nestlé/JV*, footnote 1; Commission decision of 9 November 2015 in case M.7763 – *TCCC/Cobega/CCEP*, paragraph 11.

¹⁰ Form CO, paragraphs 6.9-6.11.

¹¹ CCH already distributes the TCCC's brands Bonaqua and Römerquelle as well as Neptūnas pre-Transaction and will continue to do so post-Transaction.

¹² Commission decision of 26 October 2009 in case M.5633 – *Pepsico/ The Pepsico Bottling Group*, paragraphs 11 and 12; Commission decision of 11 September 1997 in case M.833 – *The Coca-Cola Company/Carlsberg A/S*, paragraph 42. Commission decision of 27 September 2001 in case M.2276 – *The Coca-Cola Company/Nestlé/JV* paragraph 17; Commission decision in case M.6924 – *Refresco Group/ Pride Foods*, paragraph 15.

¹³ Commission decision of 27 September 2001 in case M.2276 – *The Coca-Cola Company/Nestlé/JV* paragraph 17; Commission decision in case M.6924 – *Refresco Group/ Pride Foods*, paragraph 16.

and spring water) and other NABs. The Commission left the question open as to whether carbonated water and flavoured water should be included or excluded from the market for packaged (bottled) source water.¹⁴

- (20) In *Nestlé/San Pellegrino*, the Commission looked at the market for packaged water,¹⁵ comprising different types of still and carbonated waters, such as mineral water, spring water and treated water. Spring waters may be labelled as mineral water if they fulfil certain quality requirements, while treated water consists of purified tap water.¹⁶
- (21) The Commission has to date left open the question whether packaged water should be further segmented (including into still and carbonated water).
- (22) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the product market in the present case.¹⁷
- (23) In light of the above, for the purposes of the present decision, the exact scope of the relevant product market can be left open, since no serious doubts as to the compatibility of the Transaction with the internal market arise under any plausible alternative product market definition.

4.2. Geographic market definition

4.2.1. Notifying Parties' views

- (24) The Notifying Parties do not take a definitive position on the geographic definition of the relevant market, suggesting that it can be left open.

4.2.2. Commission's assessment

- (25) As regards the geographic scope of the relevant markets, the Commission has in the past found that the relevant geographic markets for NABs are national in scope due to differences in consumption patterns, logistics and distribution networks, marketing strategies, etc.¹⁸
- (26) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the geographic scope of the relevant market in the present case.¹⁹

¹⁴ Commission decision of 22 July 1992 in case IV/M.190 – *Nestlé/Perrier*, paragraphs 7, 19 and 20.

¹⁵ In *Nestlé/San Pellegrino*, this market was referred to as "bottled water".

¹⁶ Commission decision of 16 February 1998 in case No IV\M.1065 – *Nestlé/San Pellegrino*, paragraphs 7-16.

¹⁷ Responses to the request for information of 18 November 2016 to competitors and customers and minutes of conference calls held with competitors on 1 December 2016, 2 December 2016 and 5 December 2016.

¹⁸ Commission decision of 11 September 1997 in case M.833 - *The Coca-Cola Company/Carlsberg A/S*, paragraphs 44 and 49; Commission decision of 27 September 2001 in case M.2276 - *The Coca-Cola Company / Nestle / JV*, paragraph 23.

¹⁹ Responses to the request for information of 18 November 2016 to competitors and customers and minutes of conference calls held with competitors on 1 December 2016, 2 December 2016 and 5 December 2016.

- (27) For the purposes of the present decision, since the Transaction only concerns the territory of Lithuania, the exact scope of the geographic market can be left open, since no serious doubts as to the compatibility of the Transaction with the internal market arise under any plausible alternative geographic market definition.

5. COMPETITIVE ASSESSMENT

5.1. Introduction

- (28) **Table 1** below illustrates the horizontal overlaps resulting from the Transaction on the possible markets/market segments for NABs in Lithuania as well as the Parties' combined market shares by volume.²⁰
- (29) The Transaction gives rise to **horizontally affected** markets for: (i) the overall market for the supply of NABs in Lithuania, (ii) the possible market/segment for the supply of still water in Lithuania, and (iii) the possible market/segment for the supply of flavoured water in Lithuania. These possible markets/segments are discussed in section 5.2.

Table 1: Parties' market shares on the possible markets/market segments for the supply of NABs by volume in Lithuania for 2015.

Market (brand owner level)	TCCC	Neptūnas (CCH)	Combined
Non-alcoholic beverages (NABs)	[10-20%]	[5-10%]	[20-30%]
Carbonated soft drinks (CSDs)	[40-50%]	0%	[40-50%]
Packaged water (still + carbonated)	[0-5%]	[10-20%]	[10-20%]
Carbonated water	[0-5%]	[5-10%]	[5-10%]
Still water	[0-5%]	[30-40%]	[30-40%]
Flavoured water	[0-5%]	[30-40%]	[30-40%]

Source: Market research company report "Canadean, 2016 Soft Drinks Market Insights" (Form CO, Annexes 7.1 and 7.3)

- (30) The Commission considers that **no vertical effects arise** from the Transaction as neither TCCC nor CCH is active in any of the markets which are upstream or downstream to the markets where Neptūnas is active.²¹
- (31) Finally, the Commission considers that the Transaction does not give rise to conglomerate effects because at the bottling level, where decisions concerning pricing, distribution and marketing of packaged water are made, the range of beverages sold by CCH in Lithuania will remain unchanged post-Transaction.²²

²⁰ Neither TCCC nor CCH is in a position to estimate value-based shares as they submit they do not know the prices at which their competing beverages are sold. According to the Notifying Parties, value-based shares are, however, thought to be broadly similar to volume-based shares.

²¹ The Notifying Parties submit that the relevant upstream markets include raw materials used in bottles and other packaging used in the bottling of packaged or flavoured water. Neither TCCC nor CCH is active in any of these areas. According to the Notifying Parties the relevant downstream markets include retail outlets, wholesalers, restaurants, and other outlets where packaged water is sold. Neither TCCC nor CCH is active in any of these areas (Form CO, paragraphs 6.9-6.11).

²² Form CO, paragraph 6.7.

The market investigation did not reveal any specific concerns in relation to possible conglomerate effects arising from the Transaction.²³

5.2. Horizontal assessment

- (32) As regards the overall market for the supply of NABs, the Commission notes that the combined market share of the Parties is limited to [20-30%] which is below the 25% threshold which, according to paragraph 18 of the Horizontal Merger Guidelines, is an indication that, by reason of the market shares of the undertakings involved, concentrations are not liable to impede effective competition.
- (33) In any event, there will be significant number of rival suppliers of NABs active in Lithuania post-Transaction which will continue to compete with the Parties: Birstono Mineraliniai Vandenyai with a market share of [10-20%], Druskininku Rasa with a market share of [10-20%], Carlsberg Group and Royal Unibrew with [5-10%] and [0-5%] respectively along with a range of smaller competitors accounting for the remaining [40-50%] of the market in Lithuania.
- (34) As regards the possible markets/market segments for still water and flavoured water the increment brought about by the Transaction is insignificant (less than [0-5%]) and the HHI delta is significantly below both the 150 and 250 thresholds outlined in paragraph 20 of the Horizontal Merger Guidelines as initial indicator of the absence of competition concerns (about 44 for still water and 45 for flavoured water).
- (35) Similarly to the market for the supply of NABs, a number of strong competitors with sizeable market share will continue to exert competitive pressure on the Parties post-Transaction: Birstono Mineraliniai Vandenyai with a market share of [20-30%] for still water and [10-20%] for flavoured water, Druskininku Rasa with [10-20%] for still water, Gelsva with [10-20%] for still water, Carlsberg with [5-10%] for still water and [40-50%] for flavoured water. A range of smaller competitors accounting for [5-10%] in still water and [0-5%] in flavoured water will also continue to compete after the merger.
- (36) During the market investigation of the present case no merger-specific concerns were raised by market participants in relation to the supply of NABs, still water and flavoured water in Lithuania.²⁴
- (37) Based on the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of NABs, still water and flavoured water in Lithuania.

²³ Responses to the market investigation of 18 November 2016 with competitors and customers and minutes of conference calls held with competitors on 1 December 2016, 2 December 2016 and 5 December 2016.

²⁴ Responses to the request for information of 18 November 2016 to competitors and customers and minutes of conference calls held with competitors on 1 December 2016, 2 December 2016 and 5 December 2016.

6. CONCLUSION

- (38) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(signed)

Margrethe VESTAGER

Member of the Commission