



EUROPEAN COMMISSION  
DG Competition

***Case M.10435 - REFRESCO GROUP /  
HANSA-HEEMANN***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 24/01/2022

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EUROPEAN COMMISSION

Brussels, 24.01.2022  
C(2022) 491 final

## PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Refresco Holding B.V.  
Fascinatio Boulevard 270, Brainpark III,  
The Mark  
3065 WB Rotterdam  
The Netherlands

**Subject: Case M.10435 – REFRESCO GROUP / HANSA-HEEMANN  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic  
Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 9 December 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Refresco Deutschland Services & IT GmbH & Co. KG (Germany), a company wholly owned by Refresco Holding B.V., the Netherlands (“**Refresco**”), jointly controlled by PAI Partners SAS (“**PAI**”, France) and British Columbia Investment Management Corporation (“**BCI**”, Canada), acquires sole control over Hansa-Heemann AG and its subsidiaries (“**Hansa-Heemann**” or the “**Target**”, Germany), (the

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

“**Transaction**”).<sup>3</sup> In this Decision, Refresco is referred to as “the **Notifying Party**”, and, together with the Target, referred to as the “**Parties**”. The entity that would result from the Transaction is referred to as the “**Merged Entity**”.

## 1. THE PARTIES

- (2) Refresco is active in the worldwide production and bottling of a large variety of non-alcoholic beverages (“NABs”) for private label brands (“PLB”) belonging to retailers, and for brand-owners under contract manufacturing (“branded products”).<sup>4</sup> Refresco also produces and bottles NABs under its own brands as a manufacturer. It also produces and bottles, very marginally, beers, ciders and some other carbonated alcoholic mix drinks (e.g. pre-mixed gin and tonic) in cans for retailers in PLB and for brand owners under contract manufacturing.
- (3) Hansa-Heemann is active in the production and bottling of NABs, more specifically carbonated soft drinks (“CSD”, including carbonated sports and energy drinks), packaged mineral water and, to a lesser extent, other types of non-carbonated soft drinks (“NCSD”). Hansa-Heemann produces and bottles for its own brands, for retailers under PLB, and for brand-owners under contract manufacturing . Hansa-Heemann’s activities are almost exclusively circumscribed to the German market, where all of its production assets are located, with minor residual activities in the Netherlands, Belgium, Denmark, France and Poland.

## 2. THE OPERATION

- (4) Pursuant to a Sales Purchase Agreement signed on 7 July 2021, Refresco will acquire 100% of the Target’s shares. Upon completion of the Transaction, Refresco would solely control the Target.
- (5) Therefore, the Transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

## 3. UNION DIMENSION

- (6) The combined aggregate worldwide turnover of the Parties is more than EUR 5 000 million (PAI: EUR [...]million; BCI: EUR [...]million; Hansa-Heemann: EUR [...] million) and the aggregate Union-wide turnover of each of the Parties is more than EUR 250 million (PAI: EUR [...]million; BCI: EUR [...]; Hansa-Heemann: EUR [...]million). Only Hansa-Heemann achieves more than two-thirds of its Union-wide turnover within one and the same Member State (Germany). The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.
- (7) Following a reasoned request by the Parties pursuant to Article 4(4) of the Merger Regulation, on 28 October 2021 the Commission partially referred the Transaction to

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<sup>3</sup> Publication in the Official Journal of the European Union No C 509, 17.12.2021, p. 22–22.

<sup>4</sup> “Private label brands” are retailer labels and brands that are owned by retailers and that are sold on the same shelf next to other branded products.

Germany,<sup>5</sup> where all of Hansa-Heemann’s production assets are located and where it achieved about [90-100]% of its EEA-wide turnover in 2020.<sup>6</sup> Following the referral, the Commission retains jurisdiction to assess the effects of the Transaction outside Germany, more specifically in the Netherlands, Belgium, Denmark, France and Poland. On 13 December 2021, the Bundeskartellamt unconditionally cleared Refresco’s acquisition of Hansa-Heemann in relation to the German market.<sup>7</sup>

#### 4. MARKET DEFINITION

- (8) The Transaction gives rise to **horizontal overlaps** between Refresco’s and Hansa-Heemann’s activities in the production and bottling of:<sup>8</sup>
- (a) PLB packaged water in PET packaging<sup>9</sup> in the Netherlands, Belgium and Poland;
  - (b) branded packaged water in PET packaging in the Netherlands;
  - (c) PLB CSDs in PET packaging in the Netherlands, France and Poland;
  - (d) branded CSDs in PET packaging in the Netherlands; and
  - (e) PLB and branded NCSDs excluding water in PET packaging in the Netherlands.
- (9) This Section examines the product and geographic market definitions for all products in relation to which the Parties’ activities overlap horizontally.

#### 4.1. Production and bottling of NABs

##### 4.1.1. Product market

##### 4.1.1.1. The Commission’s decisional practice

- (10) The production and bottling of non-alcoholic beverages (“NABs”), including juices, is a service used by brand owners (for branded beverages) and retailers (for beverages sold under PLB).

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<sup>5</sup> See [https://ec.europa.eu/competition/mergers/cases1/202151/M\\_10435\\_8075424\\_175\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/202151/M_10435_8075424_175_3.pdf).

<sup>6</sup> Form CO, paragraphs 13, 21 and 66.

<sup>7</sup> See

[https://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Fallberichte/Fusionskontrolle/2021/B2-92-21.pdf?\\_\\_blob=publicationFile&v=2](https://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Fallberichte/Fusionskontrolle/2021/B2-92-21.pdf?__blob=publicationFile&v=2).

<sup>8</sup> For the sake of completeness, the activities of the Parties also technically give rise to very minor vertical links, in relation to Hansa-Heemann’s production and bottling of CSD and NCSD in the Netherlands and France and the following activities of two of the portfolio companies of PAI: (i) La Compagnie des Pruneaux’s negligible activities in the upstream market for the production and sale of fruit juice raw material in France; and (ii) Ecotone’s negligible downstream sale of branded CSD and NCSD in the Netherlands. These vertical overlaps are minimal due to the very limited sales of, on the one hand, La Compagnie de Pruneaux and Ecotone and, on the other hand, Hansa-Heemann in each of the abovementioned markets. In light of the above, and given that these vertical overlaps do not give rise to affected markets under any plausible market, as defined below, they will not be further analysed in this decision.

<sup>9</sup> Polyethylene terephthalate (PET) is a polymer material.

- (11) The Commission has previously found that the market for the production and bottling of NABs was further segmented into the production and bottling of carbonated soft drinks (“CSDs”) and non-carbonated soft drinks (“NCSDs”), which were found to constitute two separate product markets. The Commission has not envisaged further potential segmentations within CSDs.<sup>10</sup>
- (12) Within NCSDs, the Commission has considered that water and ready-to-drink (“RTD”) teas belong to separate product markets.<sup>11</sup> The Commission has considered further potential segmentations within NCSDs (namely fruit juices, energy and sport drinks), but has ultimately left this question open.<sup>12</sup>
- (13) Moreover, the Commission has distinguished separate product markets according to (i) the type of packaging (between carton and aseptic PET); and (ii) the production process (between aseptic and non-aseptic, as well as between ambient and chilled).<sup>13</sup> The Commission has also envisaged a potential segmentation between the production and bottling of organic and non-organic NABs, while ultimately leaving the market open.<sup>14</sup> However, the Commission has considered that it is not relevant to distinguish between different sizes of packaging.<sup>15</sup>
- (14) Finally, the Commission previously considered that the production and bottling of PLB NCSDs for retailers and the contract manufacturing of branded NCSDs for brand-owners belong to separate product markets.<sup>16</sup>

#### 4.1.1.2. The Notifying Party’s view

- (15) The Notifying Party agrees with the Commission’s past practice to consider that the production and bottling of CSDs and NCSDs constitute separate product markets.<sup>17</sup>
- (16) The Notifying Party indicated that NCSDs should be further segmented only for RTD teas and water.<sup>18</sup>
- (17) On the other hand, the Notifying Party does not consider that the product market should be segmented according to types of packaging, in particular between PET and glass, since it submits that NABs intended for retailers are mainly packaged in PET.<sup>19</sup>
- (18) The Notifying Party does not consider it appropriate to segment the relevant market according to (i) aseptic/non-aseptic production process or (ii) organic/non-organic

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<sup>10</sup> Case M.9369 - PAI Partners/Wessanen, (2019), paragraph 104; Case M.6924 - Refresco Group/ Pride Foods, (2013), paragraph 13.

<sup>11</sup> Case M.6924 – Refresco Group/Pride Foods, paragraph 23.

<sup>12</sup> Case M.6924 - Refresco Group/ Pride Foods (2013), paragraph 13; Case M.5633-Pepsico/The Pepsico Bottling Group, paragraphs 12 and 14; Case M.1065-Nestle/San Pellegrino, paragraph 17.

<sup>13</sup> Case M.9369 - PAI Partners/Wessanen, (2019), paragraph 105.

<sup>14</sup> Case M.9369 - PAI Partners/Wessanen, (2019), paragraphs 111 and 114.

<sup>15</sup> Case M.6924 – Refresco Group/Pride Foods, paragraph 29.

<sup>16</sup> Case M.6924 – Refresco Group/Pride Foods, recital 45.

<sup>17</sup> Form CO, paragraph 96.

<sup>18</sup> Form CO, paragraph 121.

<sup>19</sup> Form CO, paragraphs 109 and 110.

NABs, as these segmentations are not relevant for the types of production processes where the Parties overlap.<sup>20</sup>

- (19) Regarding the segmentation between PLB and contract manufacturing of branded products, the Notifying Party considers that PLB and contract manufacturing of branded products are interchangeable from the retailer's perspective in terms of product characteristics, prices and intended use, and the market should therefore not be segmented between PLB and contract manufacturing of branded products.<sup>21</sup>

#### 4.1.1.3. The Commission's assessment

- (20) The Commission considers that, consistent with its past practice and absent indications to the contrary from the market investigation, potentially relevant product markets for the production and bottling of beverages can be defined according to the product categories referred to in paragraphs (10)-(14) above.
- (21) In any event, the precise product market definition can be left open as even under the narrowest possible market definition for the production and bottling of NABs no serious concerns arise as to the compatibility of the concentration with the internal market as regards the horizontal overlap between the Parties' activities in that market. For the purposes of this Decision and under a conservative approach, the Commission will factor into its assessment of the Transaction possible distinctions cumulatively based on: (i) the type of products (for the purpose of this Decision, CSD, NCSD excluding water and water); (ii) the type of packaging (for the purpose of this Decision, aseptic PET); (iii) the production process (for the purpose of this decision, aseptic, non-aseptic and ambient); (iv) organic and non-organic NABs; and (v) PLB and branded NABs.

#### 4.1.2. Geographic market

##### 4.1.2.1. The Commission's decisional practice

- (22) 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.<sup>22</sup> Concerning NCSDs, the Commission has further noticed that, while markets are national in scope, imports exert a competitive constraint.<sup>23</sup>

##### 4.1.2.2. The Notifying Party's view

- (23) The Notifying Party considers that the relevant markets are regional in scope or at most national, due to transport costs.<sup>24</sup>

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<sup>20</sup> Form CO, paragraph 132, 134, 135, 141 and 142.

<sup>21</sup> Form CO, paragraph 100.

<sup>22</sup> See Case M.8244 - *The Coca-Cola Company / Coca-Cola Hbc / Neptūno Vandenys*, para. 25.

<sup>23</sup> Case M.9369 - *PAI Partners/Wessanen*, para. 113-115.

<sup>24</sup> Form CO, paragraph 155.

#### 4.1.2.3. The Commission's assessment

- (24) The preliminary investigation does not seem to contradict the Commission's past decisional practice. However, regarding PLB packaged water in PET, market participants active in the Netherlands have suggested that the geographic scope of the market might be wider than national, namely regional (including the Netherlands, Germany and Belgium).
- (25) The results of the market investigation regarding the geographic market for the production and bottling of NABs are consistent with the Commission's past decisional practice. The majority of competitors and bottling customers consider that the markets are national in scope, with competitive pressure from neighbouring countries.<sup>25</sup> One competitor noted that '*[t]he logistics costs limit competitiveness with increasing distance from the production site*',<sup>26</sup> while a customer submitted that it normally sources '*[p]referably as close as possible to the selling country as we have to deal with transport costs*'.<sup>27</sup>
- (26) In any event, the precise geographic market definition can be left open as no serious doubts arise as to the compatibility of the concentration with the internal market as regards the horizontal relationship between the Parties' activities in the production and bottling of NABs. For the purposes of this Decision and under a conservative approach, the analysis will be conducted on the basis of national markets.

## 5. COMPETITIVE ASSESSMENT

### 5.1. Analytical Framework

- (27) Under Article 2(2) and (3) of the Merger Regulation,<sup>28</sup> the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. Depending on the position of the parties in the supply chain, a concentration may entail horizontal and/or non-horizontal effects.
- (28) Horizontal effects arise when the parties to a concentration are actual or potential competitors in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the Horizontal Merger Guidelines.<sup>29</sup>
- (29) In the Horizontal Merger Guidelines a distinction is made between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

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<sup>25</sup> Replies to question 3 of Q1 – Questionnaire to competitors; Replies to question 3 of Q2 – Questionnaire to customers.

<sup>26</sup> Replies to question 3.1 of Q1 – Questionnaire to competitors.

<sup>27</sup> Replies to question 3.1 of Q2 – Questionnaire to customers.

<sup>28</sup> As regards the assessment in relation to the EEA, see also Annex XIV to the EEA Agreement.

<sup>29</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2014, p. 5).

- (30) In horizontal mergers, non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint that each party to the merger imposes on the other. As a result, the Merged Entity would have increased market power, without resorting to coordinated behaviour. In that regard, under the Horizontal Merger Guidelines, not only the direct loss of competition between the merging firms is taken into consideration, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.<sup>30</sup>
- (31) The Horizontal Merger Guidelines list a number of factors, which may influence whether or not significant non-coordinated effects are likely to result from a merger. In particular, the Horizontal Merger Guidelines refer to the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers or the fact that the merger would eliminate an important competitive force.<sup>31</sup> Not all these factors need to be present for significant non-coordinated effects to be likely. The list of factors is also not exhaustive.
- (32) Concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the internal market. An indication to this effect exists, in particular, where the market share of the undertakings concerned does not exceed 25% either in the internal market or in a substantial part of it.<sup>32</sup>

## **5.2. Horizontally affected markets**

- (33) As explained in paragraph (8), while the core of Hansa-Heemann's activities is in Germany (about [90-100]% of its total revenue in the EEA in 2020), the Parties' activities overlap to a limited extent in a number of potentially relevant markets in Belgium, France, the Netherlands and Poland.
- (34) More specifically, when considering the narrowest potentially relevant markets, the Transaction gives rise to the following horizontally affected markets in the Netherlands and, to an even more limited extent, in Poland:<sup>33</sup>
- the production and bottling of PLB packaged water in PET packaging in the Netherlands;
  - the production and bottling of PLB CSDs in PET packaging in the Netherlands and Poland, respectively;

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30 Horizontal Merger Guidelines, paragraph 24.

31 Horizontal Merger Guidelines, paragraph 26.

32 Horizontal Merger Guidelines, para 18.

33 Form CO, paragraph 191. The Transaction also gives rise to overlaps between the Parties' activities in (i) PLB packaged water in PET packaging in Belgium and Poland; (ii) PLB CSDs in PET packaging in France; (iii) PLB and branded NCSDs excluding water in PET packaging in Belgium and France. However, those overlaps do not give rise to affected markets and will therefore not be examined further in this Decision. In addition, the Parties have confirmed that no additional affected markets would result from a further segmentation of the potentially relevant markets per production process (aseptic or non-aseptic, as well as ambient or chilled) or between organic and non-organic.



- The production and bottling of PLB NCSDs excluding water in PET packaging in the Netherlands;
- the production and bottling of branded CSDs in PET packaging in the Netherlands; and
- the production and bottling of branded NCSDs excluding water in PET packaging in the Netherlands.

5.2.1. *Horizontally affected markets in the Netherlands*

(35) In the Netherlands, the Transaction gives rise to combined market shares in excess of 20% in five potentially relevant markets.

**Table 1 - Parties' volume market shares in potentially relevant production and bottling markets<sup>34</sup> for which combined shares (excluding captive sales) exceed 20% in the Netherlands<sup>35</sup>**

Country	Potentially relevant markets	Market shares in volume <sup>36</sup> (captive sales excluded) <sup>37</sup>		
		Refresco	Hansa-Heemann	Combined
The Netherlands	PLB packaged water in PET packaging	[20-30]%	[5-10]%	[30-40]%
	PLB CSDs in PET packaging	[60-70]%	[0-5]%	[60-70]%
	Branded CSDs in PET packaging	[30-40]%	[0-5]%	[30-40]%
	PLB NCSDs excluding water in PET packaging	[20-30]%	[5-10]%	[30-40]%
	Branded NCSDs excluding water in PET packaging	[30-40]%	[0-5]%	[30-40]%

Source: Form CO

(36) However, the market share estimates provided by the Parties for the Netherlands, and reported in Table 1 above, are likely to be overstated. Namely, Hansa-Heemann's market shares include sales to [customer information] which, rather than a downstream retailer, is a producer and wholesaler of beverages. In particular,

<sup>34</sup> The Parties have confirmed that further segmenting the potentially relevant markets per production process (aseptic or non-aseptic, as well as ambient or chilled) or between organic and non-organic would not have a material effect on their combined market shares and the market share increments brought about by the Transaction and would not give rise to additional affected markets in the Netherlands.

<sup>35</sup> The highlight corresponds to the markets affected by the Transaction should Hansa-Heemann's sales to [customer information] be excluded. Please see paragraph (38) in this respect.

<sup>36</sup> The Parties are not able to estimate their market shares in revenue terms as no public information seems to be available in this respect, due to the fact that the bottling industry generally relies on volumes data.

<sup>37</sup> Even if captive sales were included, the Transaction would still give rise to affected markets in the Netherlands for: (i) the production and bottling of PLB packaged water in PET packaging (combined market share of [20-30]% with a [0-5]% increment); (ii) PLB CSDs in PET packaging (combined market share of [40-50]% with a [0-5]% increment); (iii) PLB NCSDs excluding water in PET packaging (combined market share of [30-40]% with a [5-10]% increment); and (iv) branded NCSDs excluding water in PET packaging (combined market share of [20-30]% with a [0-5]% increment).

[customer information] operates in direct competition with the Parties for the same types of customers, but due to its lack of in-house production and bottling capabilities, it outsources its production and bottling needs to bottlers such as Hansa-Heemann. Consequently, the market shares in Table 1 are likely to overstate Hansa-Heemann's market position in the Netherlands, insofar as its sales to [customer information], which account for [50-60]% of Hansa-Heemann's sales in the Netherlands in 2020,<sup>38</sup> do not constitute sales to a downstream customer but rather horizontal sales to a competing producer, whose output is then sold on to actual downstream customers. Should Hansa-Heemann's sales to [customer information] be disregarded, the Parties' activities in the Netherlands would only overlap and give rise to affected markets in relation to **PLB packaged water in PET packaging** (combined market share of [30-40]% with a [0-5]% increment) and **PLB CSDs in PET packaging** (combined market share of [60-70]% with a [0-5]% increment).<sup>39</sup>

- (37) Notwithstanding this, the following assessment is based on the cautious approach that the Transaction gives rise to the five affected markets in the Netherlands outlined in Table 1.
- (38) While the combined market shares of the Parties result in five affected potentially relevant markets for the production and bottling of NABs in the Netherlands, it is unlikely that the Transaction would give rise to anticompetitive horizontal non-coordinated effects for the following reasons.
- (39) **First**, the market share increments brought about by the Transaction are typically limited to [0-5]% or less. The only exceptions relate to the market for PLB packaged water in PET packaging in the Netherlands, excluding captive sales ([5-10]% increment) and the market for PLB NCSDs excluding water in PET packaging in the Netherlands, excluding captive sales ([5-10]% increment). Despite those higher increments, the Parties' combined market shares in those two affected markets remain moderate, below [30-40]%.
- (40) **Second**, a number of competitors of the Parties seem to be active in the affected markets, namely:
- (a) Production and bottling of PLB packaged water in PET packaging: In response to the market investigation, six market participants established in the Netherlands, France, Germany and Belgium have reported to be active in this potentially relevant market.<sup>40</sup> In addition, market participants have also identified Konings, Riedel and Altmühltaler Mineralbrunnen as alternative suppliers in this potentially relevant market.<sup>41</sup>
  - (b) Production and bottling of PLB CSDs in PET packaging: In response to the market investigation, five market participants established in the Netherlands, Germany, Belgium and Poland have reported to be active in this potentially relevant market.<sup>42</sup> In addition, market participants have also identified United

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<sup>38</sup> Form CO, paragraph 306.

<sup>39</sup> Form CO, paragraph 186.

<sup>40</sup> Replies to question 2 of Q1 – Questionnaire to competitors.

<sup>41</sup> Replies to questions 4.1 and 8.1 of Q1 – Questionnaire to competitors; replies to question 4.1 of Q2 – Questionnaire to customers.

<sup>42</sup> Replies to question 2 of Q1 – Questionnaire to competitors.

Soft Drinks, Alma or Konings as alternative suppliers in this potentially relevant market.<sup>43</sup>

- (c) Production and bottling of branded CSDs in PET packaging: Market participants have identified Vrumona and Konings<sup>44</sup> as alternatives to the Parties in this potentially relevant market. Moreover, it also appears that a number of alternative suppliers would remain available post-Transaction, including Topbronnen<sup>45</sup> or United Soft Drinks through its London Drinks brand.<sup>46</sup>
  - (d) Production and bottling of PLB NCSDs excluding water in PET packaging: In response to the market investigation, five market participants established in the Netherlands, Germany and Belgium have reported to be active in this potentially relevant market.<sup>47</sup> In addition, market participants have also identified United Soft Drinks, Alma, Riedel, Konings and Britvic as alternative suppliers in this potentially relevant market.<sup>48</sup>
  - (e) Production and bottling of branded NCSDs excluding water in PET packaging: Market participants have identified Vrumona and AMC Juices as alternatives to the Parties in this potentially relevant market.<sup>49</sup> The Parties have also identified SPA and United Soft Drinks as alternatives for branded NCSDs excluding water in PET packaging in the Netherlands.<sup>50</sup> Moreover, it also appears that a number of alternative suppliers would remain available post-Transaction, including riha WeserGold<sup>51</sup>, Konings,<sup>52</sup> Riedel,<sup>53</sup> Valensina<sup>54</sup> and Gropper.<sup>55</sup>
- (41) **Third**, it appears that Hansa-Heemann does not currently exert any significant competitive constraint in the Netherlands.
- (42) In the first place, Hansa-Heemann currently only has [customer information] in the Netherlands for PLB and branded water, CSD and NCSD excluding water, namely [customer information] (which, as explained in paragraph (36), is more akin to a competitor and accounts for [50-60]% of Hansa-Heemann's sales in the

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43 Replies to question 4.1 of Q1 – Questionnaire to competitors; replies to questions 4.1 and 6.1 of Q2 – Questionnaire to customers.

44 Replies to questions 1.1 and 4.1 of Q1 – Questionnaire to competitors.

45 See <https://topbronnen.be/en/products/top-bronnen/>.

46 See <https://www.london-drinks.com/fr/>.

47 Replies to question 2 of Q1 – Questionnaire to competitors.

48 Replies to question 4.1 of Q1 – Questionnaire to competitors; replies to question 4.1 of Q2 – Questionnaire to customers.

49 Replies to questions 1.1 and 4.1 of Q1 – Questionnaire to competitors; replies to question 4.1 of Q2 – Questionnaire to customers.

50 Form CO, paragraph 299.

51 See [https://www.riha-wesergold.de/en/Products/Fruit\\_juice\\_beverages/](https://www.riha-wesergold.de/en/Products/Fruit_juice_beverages/).

52 See <https://www.konings.be/core-activities/beverages>.

53 See <https://www.riedel.nl/product-assortiment/>.

54 See <https://www.valensina.de/produkte>.

55 See <https://www.gropper.de/en/products-services/products/juices-smoothies>.

Netherlands).<sup>56</sup> No other market participants have reported sourcing from Hansa-Heemann in the Dutch affected markets in the past 3 years.<sup>57</sup>

- (43) In the second place, the main Dutch customers in the affected markets, including large retail chains, do not consider Hansa-Heemann as a competitor of any significance in the affected markets. Namely, several customers have reported being unaware of Hansa-Heemann's activities in the affected markets: '*Hansa-Heemann's operations are unknown to us as we haven't dealt with them on a business operations front*'.<sup>58</sup> In relation to the markets for PLB CSDs, NCSDs excluding water and packaged water in PET packaging, a large Dutch retail chain notes that: '*Hansa-Heemann* is not familiar to me in private label, thus we have also not selected them as our supplier'.<sup>59</sup> Similarly, a large Dutch customer for NCSD submits that: '[m]ultiple tenders were issued, but Hansa Heemann was not invited to partake, we did not know they could produce these products'.<sup>60</sup>
- (44) In the third place, the majority of market participants does not consider Hansa-Heemann as a main alternative to Refresco in any of the affected markets.<sup>61</sup> In fact, in the past 3 years, most market participants have not competed against Hansa-Heemann in any tender procedure for the provision of PLB water, CSDs or NCSDs excluding water in the Netherlands.<sup>62</sup> In same vein, the large majority of competitors that responded to the market investigation have not lost any customers to Hansa-Heemann in the past five years in the Dutch affected markets.<sup>63</sup> Similarly, the vast majority of customers reported in their replies to the market investigation that they had never used an offer or bid from Hansa-Heemann in their negotiations with other suppliers in the Netherlands.<sup>64</sup>
- (45) Finally, Hansa-Heemann's limited presence in the Netherlands is further reflected in its relatively low turnover in 2020, i.e., EUR [...]in the Netherlands,<sup>65</sup> out of which [50-60]% corresponds to sales to [customer information].<sup>66</sup>
- (46) **Fourth**, the results of the market investigation generally support the finding that the Transaction will not have a negative impact on any of the affected markets in the Netherlands.
- (47) In the first place, the majority of market participants that expressed an opinion expect the price of CSD, NCSD and water in the Netherlands to either decrease or

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<sup>56</sup> Form CO, Annex 11.

<sup>57</sup> Replies to question 6.1 of Q2 – Questionnaire to customers.

<sup>58</sup> Replies to question 13 of Q2 – Questionnaire to customers.

<sup>59</sup> Replies to question 9.1.1 of Q2 – Questionnaire to customers.

<sup>60</sup> Replies to question 9.1.2 of Q2 – Questionnaire to customers.

<sup>61</sup> Replies to question 4.1 of Q1 – Questionnaire to competitors; replies to question 4.1 of Q2 – Questionnaire to customers.

<sup>62</sup> Replies to question 8.1 of Q1 – Questionnaire to competitors.

<sup>63</sup> Replies to question 9 of Q1 – Questionnaire to competitors.

<sup>64</sup> Replies to question 10 of Q2 – Questionnaire to customers.

<sup>65</sup> Form CO, paragraph 191.

<sup>66</sup> Form CO, paragraph 306.

remain stable post-Transaction.<sup>67</sup> Likewise, they also expect that the choice of suppliers of CSD, NCSD and water in the Netherlands will either increase or remain unchanged following the Transaction.<sup>68</sup> Finally, no market participant expects the Transaction to affect the quality of the CSD, NCSD and water marketed in the Netherlands.<sup>69</sup>

- (48) In the second place, while a few market participants in the Netherlands have expressed some concerns in the context of the market investigation, such concerns appear to relate more generally to Refresco's significant market position across several markets, without being specifically related to the relevance of Hansa-Heemann as a competitor. In contrast, in addition to the generally neutral market feedback discussed in paragraph (47), the main Dutch retailers assert that the Transaction will not have any impact on them or on the Dutch market, as Hansa-Heemann is not a significant competitor and, in any event, there are sufficient alternatives to the Parties in all affected markets. In this regard, a main Dutch retail chain notes that: '*Hansa[-Heemann] is not familiar to me in private label, we have enough good other manufacturers of our private label products*'.<sup>70</sup>
- (49) In the third place, certain market participants even submit that the Transaction may have a positive effect on the Dutch market. For instance, another large Dutch retail chain submits that the integration of Hansa-Heemann's water business into Refresco may '*increase Choice in Waters, Sports & Energy Drinks: It widens our choice of potential suppliers*'.<sup>71</sup> This is further supported by certain competitors of the Parties, who submit that the Parties '*can offer more options if these competitors join forces*'<sup>72</sup> or that they '*will be able to offer cheaper and of course create more choice for customers*'.<sup>73</sup>
- (50) In light of 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 production and bottling in the Netherlands of: (i) PLB packaged water in PET packaging; (ii) PLB CSDs in PET packaging; (iii) branded CSDs in PET packaging; (iv) PLB NCSDs excluding water in PET packaging; and (v) NCSDs excluding water in PET packaging.

#### 5.2.2. Horizontally affected markets in Poland

- (51) In Poland, the Transaction gives rise to combined market shares in excess of 20% in one potentially relevant market.

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<sup>67</sup> Replies to question 12.1 of Q2 – Questionnaire to customers; replies to question 11.1 of Q1 – Questionnaire to competitors.

<sup>68</sup> Replies to question 12.1 of Q2 – Questionnaire to customers; replies to question 11.1 of Q1 – Questionnaire to competitors.

<sup>69</sup> Replies to question 12.1 of Q2 – Questionnaire to customers; replies to question 11.1 of Q1 – Questionnaire to competitors.

<sup>70</sup> Replies to question 11.1 of Q2 – Questionnaire to customers.

<sup>71</sup> Replies to question 12.11 of Q2 – Questionnaire to customers.

<sup>72</sup> Replies to question 10.1 of Q1 – Questionnaire to competitors.

<sup>73</sup> Replies to question 11.11 of Q1 – Questionnaire to competitors.

**Table 2 - Parties' volume market shares in potentially relevant production and bottling markets<sup>74</sup> for which combined shares (excluding captive sales)<sup>75</sup> exceed 20% in Poland**

Country	Potentially relevant market	Market shares in volume <sup>76</sup>		
		Refresco	Hansa-Heemann	Combined
Poland	PLB CSDs in PET packaging	[40-50]%	[0-5]%	[40-50]%

Source: Form CO

- (52) While the Transaction gives rise to one potentially relevant affected market in the production and bottling PLB CSDs in PET packaging in Poland, it seems unlikely that the Transaction would give rise to anticompetitive horizontal non-coordinated effects for the following reasons.
- (53) **First**, the market share increment brought about by the Transaction is limited to [0-5]%, resulting from Hansa-Heemann's EUR [...] of revenues in Poland in 2020.
- (54) **Second**, a number of competitors of the Parties seem to be active in this potentially relevant market. Namely, the Parties have identified a number of alternative available suppliers for PLB CSDs in PET packaging, including Bewa, Ustronianka, Zbyszko, Hermes or Hoop.<sup>77</sup> The market investigation has confirmed the presence of those competitors in the potentially relevant affected market and, in addition, market participants have also identified Maspex, Wosana, Lonza Nata and Krynica Vitamin as main alternatives to Refresco for PLB CSDs in PET packaging.<sup>78</sup>
- (55) **Third**, it appears that Hansa-Heemann does not currently exert any significant competitive constraint in Poland.
- (56) In the first place, Hansa-Heemann only has [customer information] in Poland for PLB CSDs, namely [customer information].<sup>79</sup> This is confirmed by the market investigation, in which no other market participants have reported buying CSDs from Hansa-Heemann in Poland in the past 3 years.<sup>80</sup>

<sup>74</sup> The Parties have confirmed that further segmenting the potentially relevant markets per production process (aseptic or non-aseptic, as well as ambient or chilled) or between organic and non-organic would not have a material effect on their combined market shares and the market share increments brought about by the Transaction and would not give rise to additional affected markets in Poland.

<sup>75</sup> The Notifying Party claims that there are no captive bottlers in Poland and, therefore, the Parties' and their main competitors' market shares in that country are identical whether captive sales are included or excluded.

<sup>76</sup> The Parties are not able to estimate their market shares in revenue terms as no public information seems to be available in this respect, due to the fact that the bottling industry generally relies on volumes data.

<sup>77</sup> Form CO, paragraphs 271 and 338.

<sup>78</sup> Replies to question 4.2 of Q1 – Questionnaire to competitors; replies to question 12.11 of Q2 – Questionnaire to customers.

<sup>79</sup> Form CO, Annex 11.

<sup>80</sup> Replies to question 6.2 of Q2 – Questionnaire to customers.

- (57) In the second place, none of the market participants identified Hansa-Heemann as a main alternative to Refresco in the potentially relevant affected market.<sup>81</sup> In fact, in the past 3 years, no competitor has competed against Hansa-Heemann in any tender procedure for the provision of CSDs in Poland.<sup>82</sup> In the same vein, the ample majority of competitors of the Parties have not lost any customers to Hansa-Heemann in the past five years in the Polish affected market.<sup>83</sup> Moreover, no downstream customer has reported in its replies to the market investigation having ever used an offer or bid from Hansa-Heemann in its negotiations with other suppliers in Poland.<sup>84</sup>
- (58) Fourth, while one market participant in Poland has expressed concerns, these appear to relate to Refresco's significant market position across several markets, without being specifically related to the relevance of Hansa-Heemann as a competitor. This is confirmed by the market investigation, which support the finding that the Transaction will not have a negative impact on the potentially relevant affected market in Poland. The majority of competitors expect the price of CSDs in Poland to either decrease or remain stable post-Transaction.<sup>85</sup> Likewise, they also expect that the choice of suppliers of CSDs in Poland will either increase or remain unchanged following the Transaction.<sup>86</sup> Finally, they do not expect the Transaction to affect the quality of the CSDs marketed in Poland.<sup>87</sup>
- (59) In light of 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 production and bottling PLB CSDs in PET packaging in Poland.

## 6. CONCLUSION

- (60) 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*  
*Executive Vice-President*

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<sup>81</sup> Replies to question 4.2 of Q1 – Questionnaire to competitors; replies to question 12.11 of Q2 – Questionnaire to customers.

<sup>82</sup> Replies to question 8.2 of Q1 – Questionnaire to competitors.

<sup>83</sup> Replies to question 9 of Q1 – Questionnaire to competitors.

<sup>84</sup> Replies to question 10 of Q1 – Questionnaire to competitors.

<sup>85</sup> Replies to question 12.2 of Q2 – Questionnaire to customers; replies to question 11.2 of Q1 – Questionnaire to competitors.

<sup>86</sup> Replies to question 12.2 of Q2 – Questionnaire to customers; replies to question 11.2 of Q1 – Questionnaire to competitors.

<sup>87</sup> Replies to question 12.2 of Q2 – Questionnaire to customers; replies to question 11.2 of Q1 – Questionnaire to competitors.