EUROPEAN COMMISSION
DG Competition

Case M.10484 - PAI PARTNERS / NEW TIGER

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PAI Partners
232, rue de Rivoli
75001 Paris
France

Subject: **Case M.10484 – PAI Partners / New Tiger**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 3 December 2021, the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, which would result from a proposed transaction by which PAI Partners S.à.r.l. ("**PAI Partners**", France, and together with PAI Partners SAS "**PAI Partners Group**") intends to acquire sole control over New Tiger LLC (the "**Target**", US) (the "Transaction"). The Target is currently wholly-owned by PepsiCo, Inc. ("**Pepsico**").[3] In this Decision, PAI Partners 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 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 C 505, 15.12.2021, p. 7.

1. THE PARTIES

(2) **PAI Partners Group** is a European private equity firm headquartered in Paris, France. PAI Partners Group jointly controls Refresco, a company active in the supply of production and bottling services for retailers and brand owners for beverages, including juices. The other controlling shareholder in Refresco is the British Columbia Investment Management Corporation ("BCI").[4] PAI Partners also controls Ecotone, a company active in the sale of branded juices, in particular under the brands 'Bjorg', 'El Granero' and 'Isola Bio'.

(3) **The Target** is engaged in the development, production, commercialization, marketing, distribution and sale of certain juice and juice-based beverages. The Target is mostly active in North America, but also operates in some Member States under the brands 'Tropicana', 'Naked' and 'Punica'.

2. THE OPERATION

(4) The Transaction is to be achieved through a unit purchase agreement signed on 2 August 2021, by which funds managed by PAI Partners will acquire [60-70]% of the shares in the Target while PepsiCo will retain the remaining [30-40]% as a non-controlling stake in the Target. Upon completion of the Transaction, PAI Partners Group would solely and indirectly control the Target.

(5) Therefore, the operation would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[5] (PAI Partners Group: EUR […]; Target: EUR […]). Each of them has a Union-wide turnover in excess of EUR 250 million (PAI Partners Group: EUR […]; Target: EUR […]), but neither of them achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(7) The notified operation therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. The Parties' activities

(8) The Transaction would lead to a vertical relationship between Refresco's upstream activities in the production and bottling of juices and juice-based beverages, on the one hand, and the Target's downstream activities in the sale of branded juices and

[4] The acquisition of joint control over Refresco by PAI and BCI was the subject of Case M.8755, approved under the simplified procedure.

[5] Turnover calculated in accordance with Article 5 of the Merger Regulation.

juice-based beverages, on the other.[6] The Transaction would also lead to a horizontal relationship downstream between Ecotone and the Target's activities in the sale of branded fruit juices.

(9) PAI Partners Group, through Refresco, is active in the upstream production and bottling of different types of drinks in carton, aseptic PET, cans and glass. It produces and bottles both private label products for retailers and branded products for brand owners (also known as "contract manufacturing" or "co-manufacturing"). With regard to juices, Refresco almost exclusively produces and bottles ambient juices and juice-based drinks, and to a much lesser extent chilled fruit-based drinks.[7]

(10) The Target is PepsiCo's juice and juice-based beverages business, active mostly in North America while the remaining part of its sales is mainly generated in the UK (ca. [5-10]%) and France (ca. [5-10]%), but the Target is also active in other Member States including the Netherlands, Ireland and Belgium. In the Union, the Target's business includes sales of juices under the brands Tropicana, Naked Juice and Punica. The Target is mostly active on the off-trade sales channel (i.e. [90-100]% of its sales are made to retailers) and only marginally on the on-trade channel (i.e. intended for out of home customers).[8]

(11) The Target produces the majority (ca. 60-70%) of the juice volumes it sells in the Union in-house, with the remaining volumes co-manufactured by Refresco. Refresco already currently supplies a large part of the Target's outsourced juice production and bottling needs in the EU.[9]

4.2. Production and bottling of juices (upstream)

4.2.1. Product market

4.2.1.1. The Commission's past practice

(12) 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 private label).

(13) Within the market for NABs, the Commission previously considered the production and bottling of carbonated soft drinks ("CSDs") and non-carbonated soft drinks ("NCSDs") to constitute two separate product markets. The Commission did not in the past address further potential segmentations within CSDs.[10]

(14) Within NCSDs, the Commission considered that water and ready-to-drink ("RTD") teas belong to separate product markets.[11] The Commission also considered further potential segmentations within NCSDs (namely between fruit juices, energy and

[6] The Target produces some of its juices in-house, entirely for captive use. It has never produced and bottled juices for third parties, and the Commission does not have indications that it had plans to start doing so.

[7] Form CO, paragraph 114.

[8] Form CO, paragraphs 93-96.

[9] Form CO, paragraphs 97-99.

[10] Case M.9369 - PAI Partners/Wessanen, (2019), paragraph 104; Case M.6924 - Refresco Group/ Pride Foods, (2013), paragraph 15.

[11] Case M.6924 – Refresco Group/Pride Foods, paragraph 23.

sport drinks), but ultimately left this question open.[12] Moreover, the Commission distinguished in the past 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).[13] The Commission also envisaged a potential segmentation between the production and bottling of organic and non-organic NABs, while ultimately leaving the market open.[14] However, the Commission considered that it is not relevant to distinguish between different sizes of packaging.[15]

(15) Also, the Commission previously considered that the production and bottling of private label ("PL") NCSDs for retailers and the co-manufacturing of branded NCSDs for brand-owners belong to separate product markets.[16]

4.2.1.2. The Notifying Party's view

(16) The Notifying Party agrees with the Commission and considers that the production and bottling of NABs constitutes a distinct market from the production and bottling of alcoholic cold beverages, and also that within the NABs, CSDs and NCSDs are distinct product markets.[17] However, the Notifying Party considers that fruit juices and fruit juice-based drinks (including still drinks with fruit flavor) are part of the broader market for NCSDs and that any further segmentation of NCSDs is not relevant because from a supply-side perspective, any producer of juices can easily switch to the production and bottling of other NCSDs (such as RTD tea, water, sport drinks, or energy drinks) without incurring high investment costs.[18]

(17) Also, the Notifying Party considers that the production and bottling of private label NCSDs for retailers and branded NCSDs for brand-owners belong to the same product market because they are served by the same production lines and the final products compete in the market for the retail of NCSDs.[19] Regarding the further segmentation of the production process by according to (i) the type of packaging and (ii) the production process, the Notifying Party considers that the production and bottling of NCSDs should not be sub-segmented considering these criteria because the packer can easily switch between from PET to carton, the production and bottling of ambient fruit juices and juice-based drinks in the EU is almost exclusively made under the aseptic production process and customers can easily switch from aseptic to non-aseptic products.[20] The Notifying Party also considers that there should not be a distinction between (i) ambient and chilled NCSDs as they should be considered substitutable at least from a demand-side perspective, nor between (ii) organic and non-organic, as they are substitutable from a supply-side perspective.[21]

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12 Case M.6924 - Refresco Group/ Pride Foods (2013), paragraph 13; Case M.5633-Pepsico/The Pepsico Bottling Group; Case M.1065-Nestle/San Pellegrino.

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

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

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

16 Case M.9369 - PAI Partners/Wessanen, (2019), paragraphs 112 and 114.

17 Form CO, paragraphs 160 and 163.

18 Form CO, paragraph 168.

19 Form CO, paragraph 172.

20 Form CO, paragraphs 180, 183 and 184.

21 Form CO, paragraphs 189 and 193.

4.2.1.3. The Commission's assessment

(18) The Commission considers that, consistently with its past practice and absent indications to the contrary from the market investigation, there is a plausible relevant product market for the production and bottling of fruit juices.

(19) Regarding the segmentations 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), the results of the market investigation confirms previous findings that they are separate product markets. Indeed, the majority of the upstream competitors who expressed an opinion on these points consider that is difficult in terms of costs and time involved to change between types of packaging[22] and between ambient and chilled production processes.[23]

(20) Regarding the potential segmentation between the production and bottling of organic and non-organic NABs, the majority of upstream competitors that responded in the market investigation at this point consider that is reasonably easy to switch the production from organic juice to non-organic juice and vice versa.[24] The majority of market participants indicated that the main difference between the production and bottling of organic and non-organic NABs relates is the certifications needed for the raw material to be classified as of organic origin.[25]

(21) In relation to private label and contract manufacturing of NABs, a large majority of upstream competitors indicated that suppliers active exclusively in the production and bottling of private label NABs to retailers are able to start contract manufacturing for brand owners swiftly and without significant costs.[26] The opposite is also true according to the upstream competitors: suppliers active exclusively in the contract manufacturing of NABs are able to start contract manufacturing private labels for brand owners swiftly and without significant costs.[27] In any event, for the purpose of the present case, in line with the Commission's precedents and considering the Target is only active in the sale of branded fruit juices, the assessment will be done at the narrower plausible level, i.e. considering branded contract manufacturing as a separate market from the production and bottling of private label NABs.

(22) 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 fruit juices no serious concerns arise as to the compatibility of the concentration with the internal market as regards the vertical relationship between the upstream production and bottling of fruit juices and the downstream sale of fruit juices. 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 (i.e fruit juices); (ii) the type of packaging (between carton and aseptic PET); (iii) the production process (between aseptic and non-aseptic and as well as between ambient and chilled); (iv) organic and non-organic NABs; and (v) private label and contract manufacturing of NABs.

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22 Replies to question 6 of Q2 – Questionnaire to competitors, production and bottling.

23 Replies to question 7 of Q2 – Questionnaire to competitors, production and bottling.

24 Replies to question 5 of Q2 – Questionnaire to competitors, production and bottling.

25 Replies to question 5.1 of Q2 – Questionnaire to competitors, production and bottling; Replies to question 7.1 of Q1 – Questionnaire to downstream competitors.

26 Replies to question 9 of Q2 – Questionnaire to competitors, production and bottling.

27 Replies to question 10 of Q2 – Questionnaire to competitors, production and bottling.

4.2.2. Geographic market

4.2.2.1. The Commission's past practice

(23) As regards the geographic dimension of the production and bottling of juices, the Commission has previously considered that the markets for the production and bottling of NCSDs are national in scope, with imports exerting a competitive constraint.[28]

4.2.2.2. The Notifying Party's view

(24) The Notifying Party submits that the geographic market definition should be left open given that the Transaction does not raise any competitive issue at any level, but submitted market data at national level.[29]

4.2.2.3. The Commission's assessment

(25) The results of the market investigation regarding the geographic market for the production and bottling of juices are consistent with Commission's past decisional practice. While the majority of upstream competitors consider those markets to be national in scope [30] with prices differences between countries[31], the majority of downstream competitors that expressed their views on this point refer to a competitive pressure of neighbouring countries.[32]

(26) In any event, the precise geographic market definition can be left open as no serious concerns arise as to the compatibility of the concentration with the internal market as regards the vertical relationship between the upstream production and bottling of fruit juices and the downstream sale of fruit juices. For the purposes of this Decision and under a conservative approach, the analysis will be conducted on the basis of national markets.

4.3. Sale of juices (downstream)

4.3.1. Product market

4.3.1.1. The Commission's past practice

(27) The sale of NABs includes a large variety of drinks, juices, waters, teas and other non-alcoholic beverages.

(28) The Commission previously considered that at the downstream level, CSDs and NCSDs constitute two separate product markets. Within NCSDs, the Commission has envisaged a further segmentation into packaged water, fruit juices, RTD teas and energy and sports drinks, but ultimately left the segmentation open.[33]

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28 Case M.9369 - PAI Partners/Wessanen, (2019), paragraphs 113-115.

29 Form CO, paragraph 201.

30 Replies to question 11 of Q2 – Questionnaire to competitors, production and bottling.

31 Replies to question 12 of Q1 – Questionnaire to downstream competitors, Replies to question 12 of Q2 – Questionnaire to competitors, production and bottling.

32 Replies to question 11 of Q1 – Questionnaire to downstream competitors.

33 Case M.7763 - TCCC / COBEGA / CCEP, (2015), paragraph 13, Case M.8244 – Coca-Cola Company/Coca-Cola HBC/Neptuno Vandenys, paragraph 18.

(29) Regarding fruit juices, the Commission considered that orange juice is a separate product market from other fruit juices and – while it ultimately left this question open – it also explored the possibility that orange juice could be further segmented into not-from-concentrate ("NFC") orange juice and from-concentrate ("FC") orange juice.[34]

(30) Moreover, the Commission considered, but ultimately left open, further segmentations between the sale of private label and branded products and between the on-trade and off-trade channels.[35]

4.3.1.2. The Notifying Party's view

(31) The Notifying Party considers that the downstream market should include all juice regardless of the fruit used, but considers for completeness purposes separate sub-segments for orange juice and orange juice NFC. Moreover, the Notifying Party submits that a separate market for organic fruit juices should not be considered since it considers that a sufficient level of substitutability exists with non-organic products: the same producers and bottlers produce both products, and they are displayed on the same shelves in stores. [36]

4.3.1.3. The Commission's assessment

(32) The Commission considers that, consistently with its past practice, plausible relevant product markets exist separately for juice and that within the sale of juice a separate market may exist for orange juice, possibly with a further segmentation between FC and NFC orange juice.

(33) Within the juices market, the results of the market investigation indicate that orange juices are not substitutable with other fruit juices in terms of demand, prices and brands.[37] As some downstream competitors stated: "*[o]range Juice SKUs see consistently far higher (2-3x) rate of sale than any other SKU, even when merchandised, placed and priced similarly to other flavours. Very simply, replacing an OJ SKU with any other blend will lead to much lower sales*" or "*[t]here is very little customer substitution in this category. Most customers buy orange juice for a specific need and would rarely substitute it for another fruit juice*".[38]

(34) Regarding the segmentation between organic and non-organic, even though the majority of downstream competitors indicate that the share of organic juices sold is low[39], also the majority of downstream competitors consider that organic and non-organic juices are not substitutable[40]: "*the organic mention is probably a key point in the purchasing decision, making it difficult to substitute for a non-organic purchase*", and "[t]*he supply and demand for organic juices differs a lot from conventional juices. Currently resulting in a much higher price for raw materials*".[41]

34 Case M.9369 - PAI Partners/Wessanen, (2019), paragraph 117.
35 Case M.5633 – PEPSICO/ THE PEPSI BOTTLING GROUP, (2009), paragraph 13.
36 Form CO, paragraphs 198 and 199.
37 Replies to question 5 of Q1 – Questionnaire to downstream competitors.
38 Replies to question 5.1 of Q1 – Questionnaire to downstream competitors.
39 Replies to question 2.5 of Q1 – Questionnaire to downstream competitors.
40 Replies to question 7 of Q1 – Questionnaire to downstream competitors.
41 Replies to question 7.1 of Q1 – Questionnaire to downstream competitors.

(35) The majority of downstream competitors consider that market conditions for the sale of juices to the on-trade channel (i.e. directly or indirectly to restaurants and bars) and the off-trade channel (i.e. retailers), differ in terms of pricing, volumes of order, format and/or nature of the products, delivery logistics etc.[42] As one downstream competitor stated: "[i]*n our view, market conditions are very different: on-trade typically values stable shelf-life and handling with small formats emphasised (one-shot) and can secure higher prices. Off-trade values striking on-shelf appearance and reliability, product moves through much faster; with larger orders and rate of sale*".[43] In addition, the majority of the downstream competitors consider the sale of private label juices differ from those for the sale of branded fruit juices in terms of pricing, volumes of order, format and/or nature of the products, delivery logistics[44].

(36) In any event, the precise product market definition can be left open as even under the narrowest possible market definition for the sale of fruit juices no serious concerns arise as to the compatibility of the concentration with the internal market as regards the vertical relationship between the upstream production and bottling of fruit juices and the downstream sale of fruit juices, nor as regards the downstream horizontal overlaps. 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 (i.e fruit juices); (ii) orange juice (including the further segmentation between FC and NFC orange juice); (iii) organic and non-organic juices; (iv) on-trade and off-trade sales channels; and (v) PL and branded juices.

4.3.2. Geographic market

4.3.2.1. The Commission's past practice

(37) As regards the geographic dimension of these markets, the Commission previously considered that the markets for the sale of NABs, including juices, were national in scope. The Commission took into account differences in consumption patterns, logistics and distribution networks, as well as marketing strategies.[45]

4.3.2.2. The Notifying Party's view

(38) The Notifying Parties submit that, consistent with the Commission's past practice, the relevant geographic market for the sale of fruit juices should be national, but that the exact definition can be left open given that the Transaction does not raise any competitive issue.[46]

4.3.2.3. The Commission's assessment

(39) Consistent with its past practice, the Commission considers that the market for the sale of juices is national in scope as the competitive conditions differ from one country to another (different companies active on the national markets, different

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42 Replies to question 9 of Q1 – Questionnaire to downstream competitors.

43 Replies to question 9.1 of Q1 – Questionnaire to downstream competitors.

44 Replies to question 10 of Q1 – Questionnaire to downstream competitors.

45 Case M.9369 - PAI Partners/Wessanen, (2019), paragraphs 118-122; Case M.8244 – Coca-Cola Company / Coca-Cola HBC / Neptuno Vandenys, paragraph 25.

46 Form CO, paragraph 208.

product mix based on national preferences, etc.).[47] In any event, for the purposes of this Decision, it can be left open whether the markets for the sale of juices are national in scope as the assessment of the Transaction's compatibility with the internal market or the functioning of the EEA Agreement would not change under any plausible product market definition. Under a conservative approach, the Transaction will be assessed at the national level.

5. COMPETITIVE ASSESSMENT

5.1. Analytical Framework

(40) Under Article 2(2) and (3) of the Merger Regulation,[48] 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.

(41) 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.[49]

(42) Non-horizontal effects arise when the parties to a concentration operate on different levels of the supply chain (vertical effects) or in neighbouring markets (conglomerate effects). The Commission appraises non-horizontal effects in accordance with the guidance set out in the Non-Horizontal Merger Guidelines.[50]

(43) Both the Horizontal and Non-Horizontal Merger Guidelines distinguish between two main ways in which mergers may significantly impede effective competition, namely non-coordinated and coordinated effects.

(44) In horizontal mergers, non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by each party to the merger on the other, as a result of which the merged entity would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[51]

(45) 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

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47 Replies to questions 2 and 3 of Q1 – Questionnaire to downstream competitors.

48 As regards the assessment in relation to the EEA, see also Annex XIV to the EEA Agreement.

49 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).

50 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6).

51 Horizontal Merger Guidelines, paragraph 24.

eliminate an important competitive force.[52] Not all these factors need to be present for significant non-coordinated effects to be likely. The list of factors is also not exhaustive.

(46) 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.[53]

(47) In non-horizontal mergers, non-coordinated effects may arise when the concentration gives rise to foreclosure. In vertical mergers, foreclosure can take the form of input foreclosure, where the merger is likely to raise costs of downstream rivals by restricting their access to an important input; and/or the form of customer foreclosure, where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.[54]

(48) In assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines whether the merged entity would have post-transaction the ability to foreclose access to either inputs or customers, whether the merged entity would have the incentives to do so and whether such foreclosure strategy would have a detrimental effect on competition.[55]

(49) This Decision will examine whether the Transaction gives rise to serious doubts as to its compatibility with the internal market in relation to (i) the vertical relationships arising between the upstream production and bottling of juices and the downstream sale of juices; and (ii) the horizontal overlap arising in the market for the downstream sale of juices.

5.2. Vertical relationships between the upstream production and bottling of juices and the downstream sale of juices

(50) The Transaction gives rise to vertical relationships between PAI Partners' activities upstream, through Refresco, in the production and bottling of juices, and the Target's activities downstream in the sale of fruit juices in relation to a number of Member States.[56]

(51) PAI Partners, through Refresco, is active in the upstream production and bottling of different types of drinks, including juices, in different types of packaging (carton, aseptic PET, cans and glass). It bottles both private label products for retailers and, through contract manufacturing, branded products for brand owners.

(52) The Target sells branded juices in Europe through the brands 'Tropicana', 'Naked' and 'Punica'.

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52 Horizontal Merger Guidelines, paragraph 26.

53 Horizontal Merger Guidelines, para 18.

54 Non-Horizontal Merger Guidelines, para 30.

55 Non-Horizontal Merger Guidelines, para 30.

56 According to the Parties (Form CO, paragraph 318), Refresco and the Target will be held by different investment funds: [Details of PAI's ownership structure]. As a management company of both funds, PAI Partners is required to act in the best interest of each of the funds taken separately.

(53) The following assessment focuses on whether the combination of Refresco's upstream activities in the production and bottling of juices and juice-based beverages and the Parties' downstream sales of juices and juice-based beverages may give rise to anticompetitive vertical effects in the form of input foreclosure and/or potential customer foreclosure. The following assessment will examine successively the Member States in which vertically affected upstream or downstream markets arise, i.e. France, the Netherlands, Ireland and Belgium.[57]

5.2.1. France

(54) In France, the Transaction gives rise to combined market shares in excess of [30-40]% in three plausible upstream markets due to Refresco's activities in the production and bottling of branded juices and juice-based beverages, which present a vertical link with two plausible downstream markets due to the Parties' (mainly the Target's) downstream activities in the production and sale of branded juices and juice-based beverages.

Table 1 – Parties' market shares at or above 30% based on narrowest plausible market definitions in France

Upstream markets[58]			
	PAI Partners	**Target**	**Combined**
Production and bottling of branded ambient fruit juices in PET packaging	[30-40]%	-	**[30-40]%**
Production and bottling of branded ambient fruit juices in carton packaging	[60-70]%	-	**[60-70]%**
Production and bottling of branded chilled fruit juices in PET packaging	[30-40]%	-	**[30-40]%**
Downstream markets[59]			
	PAI Partners	**Target**	**Combined**
Sale of branded fruit juices in retail stores	[0-5]%	[30-40]%	**[30-40]%**
Sale of branded orange juices in retail stores	<[0-5]%	[40-50]%	**< [40-50]%**

Source: Form CO, Annex 20.

57 The Transaction also gives rise to overlaps between the Parties' activities in Denmark, Germany, Italy, Portugal and Spain. Those overlaps do not give rise to vertically affected markets and will therefore not be examined further.

58 According to the Parties' best estimates, the Parties' market shares on the affected markets would not be materially different if taking into consideration, in addition to the segmentations already taken into account in the table, further sub-segmentations based on a distinction between (i) aseptic and non-aseptic packaging and (ii) organic and non-organic juices.

59 According to the Parties' best estimates, the Parties' market shares would not be materially different if taking into consideration, in addition to the segmentations already taken into account in the table, further sub-segmentations based on a distinction between organic and non-organic juices, and on NFC and FC orange juice.

(55) Regarding the upstream markets, the Parties have been unable to provide reliable market shares excluding in-house production by vertically integrated downstream players – *i.e.* downstream players producing and bottling their own juices at least partially in-house. This is because, according to the Parties, in-house production by brand-owners in France could represent 60-70% of the total production and bottling of branded fruit juices. On the 30-40% comprising the provision of independent production and bottling services for third party brand owners, the Parties have only been able to identify one player other than Refresco, namely LSDH, whose market share could reach 10%.[60] Although it cannot therefore be excluded that Refresco's market shares on a market excluding in-house production may be higher than the market shares indicated in the above table, the market investigation confirmed that there is a number of other upstream competitors other than LSDH active or potentially active in the production and bottling of juices for third parties. As further explained in paragraphs (64) to (67) below, the market investigation has indicated that in addition to LSDH, also Wesergold, AMC, Niederrhein Gold, García Carrión and Fruits Délice are actual or at the very least potential upstream suppliers available to downstream competitors on the market. The Commission also notes that Hermes, which has a production facility in France and [confidential contractual information], is a competitor on that market.

(56) In any event, the Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market.

5.2.1.1. Input foreclosure

(A) Ability

(57) As illustrated by the market shares indicated in paragraphs (54) and (55) above, Refresco enjoys a significant market position in the markets for the production and bottling of branded fruit juices in France. In the course of the investigation, some market participants have confirmed Refresco's strong market position in France.[61]

(58) A few market participants raised concerns that the Parties would be in a position to engage in input foreclosure following the Transaction.[62] In particular, one downstream player raised concerns that the Parties would be able to favour the Target and discriminate against and ultimately foreclose other competitors.[63]

(59) However, the market investigation has indicated that the Parties would be unlikely to have the ability to foreclose juice brand owners as a result of the Transaction.

(60) **First**, Refresco would continue to face sufficient competition following the Transaction.

(61) Refresco would, in the first place, face competition from LSDH.[64] LSDH is an independent provider of production and bottling services based in France, both for

60 Form CO, Annex 20.

61 Replies to question 13 of Q2 – Questionnaire to competitors, production and bottling.

62 Replies to questions 23.1 and 24.1 of Q2 – Questionnaire to competitors, production and bottling; replies to question; replies to questions 28.- and 29 of Q2 1 – Questionnaire to downstream competitors.

63 Reply to question 25.1 of Q1 – Questionnaire to downstream competitors.

64 Replies to question 13.1 of Q1 – Questionnaire to downstream competitors; replies to question 13 of Q2 – Questionnaire to competitors, production and bottling.

ambient and chilled juices. LSDH has been identified by a majority of brand owners active in France as well as by a majority of upstream competitors as the main alternative to Refresco for the production and bottling of juices, both chilled and ambient, and both for brand owners and for private label customers, in France.[65]

(62) Although based on the Parties' best estimates LSDH's market shares are lower than Refresco's in the markets for the production and bottling of branded juices, its market shares are significantly higher (ranging from 25 to 40%) and in a range comparable to those of Refresco's when considering the production and bottling of private label juices. This further substantiates LSDH's credibility as a potential alternative to Refresco also for the production and bottling of branded juices. Indeed, a large majority of upstream competitors have indicated that a supplier active in the production and bottling of private label fruit juices would be able to start producing and bottling branded juices for brand owners swiftly and without significant costs.[66]

(63) In addition, it was confirmed through the market investigation that LSDH' juice production and bottling services compete in terms of quality, price and product range with those of Refresco,[67] which was confirmed by a large French brand owner: "*LSDH is a big producer and bottler in France, operating at a similar scale as Refresco*."[68]

(64) In addition to LSDH, the market investigation has indicated that Refresco would also continue to face competition from a number of other competitors, including competitors located outside of France.

(65) In a recent decision, the French Competition Authority acknowledged in particular the competitive pressure exerted by players based across the French border such as AMC (with juice production facilities in Spain and the Netherlands), Fructa Partner/Riha Wesergold (German competitor with juice production facilities in several countries including Spain), or García Carrón (with facilities in Spain).[69] The French Competition Authority also references a third party industry report supporting the increased penetration by out-of-France products onto the French market.[70]

(66) The relevance of cross-border competitors was also confirmed by the Commission's market investigation, as a number of those competitors, such as Fructa Partner/Riha Wesergold, AMC, Sill, Niederrheingold, or Stute, have been listed by market participants as main competitors in France, alongside Refresco and LSDH.[71]

(67) The competitiveness of the French market has also been confirmed by a large brand owner, and competitor of the Target in France, according to which: "*the market for the production and bottling of juice in France is sufficiently competitive, with a number of alternatives to Refresco for production and bottling services of juices*

[65] Replies to question 13.1 of Q1 – Questionnaire to downstream competitors; replies to question 13 of Q2 – Questionnaire to competitors, production and bottling.

[66] Replies to question 9 of Q2 – Questionnaire to competitors, production and bottling.

[67] Reply to question 14 of Q2 – Questionnaire to competitors, production and bottling.

[68] Non-confidential minutes of a call from 23 November 2021 with a downstream competitor, paragraph 7.

[69] French competition authority decision 20-DCC-96 from 23 July 2020, paragraph 68.

[70] French competition authority decision 20-DCC-96 from 23 July 2020, paragraph 69.

[71] Replies to question 13.1 of Q1 – Questionnaire to downstream competitors; replies to question 13 of Q2 – Questionnaire to competitors, production and bottling.

available in France and elsewhere in the EU".[72] Another large brand owner and significant competitor of the Target in France also considers that: "[r]*egarding the French market, the Company considers that LSDH is Refresco's biggest competitor for the production and bottling of fruit juices, and that Spanish (e.g. AMC, and Don Simon) and German (e;g. Wesergold, Stute, and Niederrein Gold) producers also currently compete or could complete in that market by transporting the products from neighbouring countries*."[73]

(68) **Second**, the juice production sector in France appears to be characterized by overcapacity. This is against a backdrop of an ongoing decrease in juice consumption in Europe.

(69) According to 2019 report from the AIJN, the European Fruit Juice Association, the overall fruit juice consumption has been declining regularly in France since 2014, with a -3.4% change between 2017 and 2018, and a -11% change between 2014 and 2018.[74]

(70) This picture is reflected in the Parties' internal documents, as illustrated by Figure 1 below, which indicates that consumption in France for carton-packaged juices decreased by 24% between 2013 and 2018.

Figure 1 - Consumption trends for carton juices in France

[…]

Source: Response to RFI 3, Annex 1, slide 2

(71) Another internal document from Refresco mentions: [Refresco's analysis on the decline of juice and CSD consumption].[75]

(72) Such a decrease in consumption necessarily leads to some degree of overcapacity on the market, as explained by one competitor: "*the market has been in volume decline oversupplied by the range of players already active across the marketplace.*"[76]

(73) In addition to the current free capacity already on the market, the decision of the Target not to extend its contract with [contractual relationship] will further increase available capacity on the market. This decision was taken by the Target independently of the Transaction,[77] and will free up […] mL of juices previously produced by [contractual relationship] for the Target ([…] mL of ambient juices and […] mL of chilled juices).[78]

(74) Furthermore, competitors have indicated their willingness to maximize the utilization of their free capacity. Indeed, a vast majority of competitors have indicated that they would consider using their free capacity to start serving (more)

[72] Non-confidential minutes of a call from 23 November 2021 with a downstream competitor, paragraph 7.

[73] Non-confidential minutes of a call from 25 November 2021 with a downstream competitor, paragraph 9.

[74] AIJN 2019 report, available at: https://aijn.eu/en/publications/market-reports-1/20199 (although this decrease mostly concerns private label products, it impacts the market as a whole as most upstream players active in the production and bottling of branded juices are also active in the production and bottling of private label products, and players active in the production and bottling of private label juices could easily start producing and bottling branded juices.

[75] Response to RFI 3, annex 3, slide 8.

[76] Reply to question 18 of Q2 – Questionnaire to competitors, production and bottling.

[77] Form CO, paragraph 361.

[78] Response to RFI 3, question 2.

customers in France should demand and prices for production and bottling services for juices go up.[79] According to three of those competitors: "[i]*f we have free capacity we would be willing to increase our business in these countries*". Also, those competitors stated that [w]*e could increase our offer on the French market*" and that "[i]*f there is any chance of higher prices somewhere we would directly go there...*".[80]

(75) **Third**, switching to a different supplier of production and bottling services appears relatively easy, such downstream players could react to a full or partial input foreclosure strategy from the Parties post-Transaction by turning to the above-mentioned alternatives.

(76) A majority of downstream market respondents have indicated that, although switching supplier of juice production and bottling services make take some time, it is a relatively easy process.[81] According to two large French brand owners: "*it is merely a matter of regular commercial negotiations*", and "[a]*ssuming the supplier has the right production lines in place for the type of product and packaging to be produced (which most of them do), it is very easy to switch from one supplier to another.*"[82]

(77) **Fourth**, the French market is characterized by the fact that many brand owners have their own in-house production capabilities, which makes them less dependent on independent suppliers of production and bottling services such as Refresco, at least for part of their production.

(78) A majority of the French brand owners having responded to the market investigation have confirmed that they produce their juices at least partially in-house.[83] One large brand owner active in France confirmed in this regard that "[m]*ost branded fruit juice suppliers produce the products in-house*".[84] According to another large brand owner active in France, "*in France there are several vertically integrated operators capable of producing and bottling their own beverages*" [85]Another brand owner active in France stated having "*recently launched a proprietary facility in the Netherlands*" and indicated that once fully operational, it would "*produce most but not all of its products in-house*".[86]

(79) **In conclusion**, on the basis of the foregoing, the Commission considers that existing alternative suppliers to Refresco's production and bottling services, which seem to have free capacity, would be able to effectively constrain the Parties' ability to engage in input foreclosure following the Transaction.

(B) Incentive

(80) The market investigation has indicated that the Parties would be unlikely to have the incentive to foreclose competing juice brand owners following the Transaction.

79 Replies to question 17 of Q2 – Questionnaire to competitors, production and bottling.
80 Replies to question 17.1 of Q2 – Questionnaire to competitors, production and bottling.
81 Replies to question 17 of Q1 – Questionnaire to downstream competitors.
82 Replies to question 17.1 of Q1 – Questionnaire to downstream competitors.
83 Replies to question 4 of Q1 – Questionnaire to downstream competitors.
84 Non-confidential minutes of a call from 25 November 2021 with a downstream competitor, paragraph 8.
85 Non-confidential minutes of a call from 23 November 2021 with a downstream competitor, paragraph 9.
86 Reply to question 4.1 of Q1 – Questionnaire do downstream competitors.

(81) Indeed, as explained in paragraphs (60) to (79) above, Refresco would continue to face competition from a number of credible alternatives on a market with overcapacity. As a result, any partial foreclosure strategy would likely result in a loss of customers which would turn to alternative suppliers, and any full foreclosure strategy would be unlikely to result in increasing downstream competitors' costs as they would be able to find credible alternative suppliers to cover their needs.

(82) In addition, considering that already prior to the Transaction the Target uses for the vast majority of its production either its own production capacity or Refresco's, it does not appear that Refresco would be able to compensate the loss of third party customers by internalizing the remainder of the Target's production needs.

(83) The fact that it would not be profitable for Refresco to stop serving other customers has been confirmed by the market investigation. Indeed, the vast majority of downstream players have indicated that they do not consider it likely that the Parties would be able to profitably stop serving customers in France other than the Target, or impose worse conditions to them, as a result of the Transaction.[87]

(84) As explained by one brand owner with a significant presence in France : "*Refresco are at liberty to charge whatever they wish for their services, but it is a competitive market with other co-packers available, and therefore if Refresco were to fundamentally alter their cost/service provision, their customers could move elsewhere.*"[88] This brand owner also stated: "*I fail to see any business reason for Refresco to stop serving other customers. It makes them more efficient to serve as wide a customer base as possible and that is their stated strategy*."[89] According to another brand owner present in France, when asked whether they consider it likely that Refresco would engage in input foreclosure post-Transaction: "*No because I believe that they would risk losing too much volume*."[90]

(85) In addition, out of the two upstream competitors which have responded that they do consider input foreclosure possible,[91] one of them has also indicated that, in response to such a strategy from the Parties, it would "*increase output*".[92]

(86) Finally, Refresco's internal documents on the company's forward-looking strategy show a strategy focused on gaining juice customers and filling capacity as much as possible, which appears difficult to reconcile with a hypothetical input foreclosure strategy.[93]

(C) Effects

(87) Given the likely absence of ability and incentive to foreclose the Target's competitors downstream, it is unlikely that an input foreclosure strategy post-Transaction would significantly impede effective competition.

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87 Replies to questions 28 and 29 of Q1 – Questionnaire to downstream competitors
88 Reply to question 29.1.1 of Q1 – Questionnaire to downstream competitors.
89 Reply to question 28.1.1. of Q1 – Questionnaire to downstream competitors.
90 Reply to question 28.1.1 of Q1 – Questionnaire to downstream competitors.
91 Reply to question 24 of Q2 – Questionnaire to competitors, production and bottling.
92 Reply to question 24.1.2 of Q2 – Questionnaire to competitors, production and bottling.
93 Response to RFI 3, Annex 3 « *Refresco Europe Strategic Plan 2022-2024* »

(88) This has been confirmed by market participants. A majority of upstream and downstream competitors have indicated that they do not think the Transaction would bring about a significant change in France in the market for the provision of production and bottling services for juices.[94] A majority of downstream competitors have also indicated that they consider that after the Transaction, the price, quality and availability of production and bottling services will be the same.[95]

(89) In addition, and as further explained in paragraphs (77) and (78), the French market is characterized by the fact that many brand owners have in-house production capabilities and are vertically integrated, which further limits the extent of any impact of the Transaction on the market.

5.2.1.2. Customer foreclosure

(A) Ability

(90) As illustrated in paragraph (54) above, the Parties' and in particular the Target's market shares are relatively high in France in the markets for the sale of branded fruit juices in retail stores ([30-40]% combined, [30-40]% for the Target) and for the sale of branded orange juices in retail stores ([40-50]% combined, [40-50]% for the Target). This has been confirmed by the market investigation, in the course of which a majority of downstream players have indicated that the Target is an important player in the market for the sale of juices in France.[96]

(91) However, the market investigation has indicated that the Parties would not have the ability to engage in customer foreclosure post-Transaction.

(92) **First**, [50-60]% of the Target's juices sold in France are already produced and bottled by Refresco pursuant to [contractual conditions between the Parties].[97] The remainder of the Target's needs for those services with respect to the juices it sells in France are mostly[98] either satisfied by the Target's in-house production ([30-40]%) or, until recently, dealt with by [contractual relations with third party suppliers] ([5-10]%) pursuant to a contract manufacturing agreement which expired on 31 December 2021 and was not renewed in order to maximize the utilization of the Target's in-house production capabilities.[99]

(93) As a result, the Target already currently does not represent an existing outlet for suppliers of juice production and bottling services for the French market.

(94) **Second**, and in any event, the Target will continue to face significant competition from credible competitors in the downstream market post-Transaction.

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94 Replies to question 21 of Q2 – Questionnaire to competitors, production and bottling; replies to question 26 of Q1 – Questionnaire to downstream competitors.

95 Replies to question 27 of Q1 – Questionnaire to downstream competitors.

96 Replies to question 23 of Q1 – Questionnaire to downstream competitors.

97 Response to RFI 4, question 1.

98 For completeness, the Target's co-packing agreement with [contractual relations with third parties] provides that [contractual relations with third parties] should supply production and bottling services mostly for the Irish and UK markets, although it also supplies for other territories including France. This agreement also expired on 31 December 2021 to maximize the Target's in-house production (Form CO, para. 642).

99 The decision not to extend the contract with [contractual relations with third parties] was taken by the Target independently of the Transaction.

(95) Indeed, in France, the Target faces competition from other sizeable brand owners:

(a) for the sale of branded fruit juices: Eckes-Granini (with the brand 'Joker') with a [20-30]% market share; the Coca-Cola Company (with a [10-20]% market share for the brand 'Innocent'), Andros with a [10-20]% market share and Britvic (with the brand 'Pressade') with a [5-10]% market share.

(b) For the sale of branded orange juice: Eckes-Granini (with the brand 'Joker') with a [20-30]% market share, the Coca-Cola Company ([10-20]% market share with the brand 'Innocent'), Andros with a [10-20]% market share, and Pressade with a [5-10]% market share.

(96) Eckes-Granini, the Coca-Cola Company (with the brands 'Innocent' but also 'Minute Maid'), Andros and Pressade have also all been listed by market participants as main alternatives to the Target for the sale of juices in France.[100]

(97) In addition to brand owners, upstream competitors will continue to have access to retailer customers active in the sale of private label juices. Several market participants have listed retailers as alternatives to the Target for the sale of juices in France.[101]

(98) Against this background, the Commission considers that the Parties would be unlikely to be able to engage in customer foreclosure, as upstream competitors would continue to have a sufficiently large customer base post-Transaction.

(B) Incentive

(99) As further explained in paragraphs (94) to (97) above, the Target faces strong competition both from brand owners and from retailers with regard to the demand for juice production and bottling services in France.

(100) In addition, and as further explained in paragraphs (75) and (76) above, switching supplier of juice production and bottling services appears relatively easy, such that upstream competitors would not be impaired from finding new customers for their services should they not have access to the Target's business.

(101) As a result, the Parties would likely lack the incentive to engage in a customer foreclosure strategy, as any such strategy would be unlikely to result in increasing the costs of upstream competitors, who would be able to find other customers to sell their services.

(102) In light of the above, the Commission considers that the Parties would be unlikely to have the incentive to engage in customer foreclosure post-Transaction.

(C) Effects

(103) Given the likely absence of ability and incentive to foreclose Refresco's competitors upstream, it is unlikely that a customer foreclosure strategy post-Transaction would significantly impede effective competition.

[100] Replies to question 24 of Q1 – Questionnaire to downstream competitors; replies to question 19 of Q2 – Questionnaire to competitors, production and bottling, non-confidential minutes of a call from 25 November 2021 with a downstream competitor, paragraph 4.

[101] Replies to question 24 of Q1 – Questionnaire to downstream competitors.

(104) In addition, as previously explained in paragraphs (92) and (93) above, the Target already does not represent a significant outlet for upstream competitors.

(105) Even if the Target's needs currently not covered by Refresco were to be considered as potential contestable demand for upstream competitors, this would only represent a very limited portion of the total demand for juice production and bottling services. Indeed, the size of the fruit juice production and bottling market in France is estimated to approximately 1,178 million litres[102], while the Target's in-house production of juices destined for the French market amounted to [100 – 200] million litres in 2021.[103]

(106) This has been confirmed by the respondents to the market investigation, as a majority of upstream competitors have indicated that they do not consider that the Transaction will bring about a significant change for their juice production and bottling businesses in France.[104]

5.2.1.3. Conclusion on France

(107) Based on the above considerations, and in light of the results of the market investigation and of all the information available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to customer or input foreclosure in France in the markets for (i) the production and bottling of branded ambient fruit juices in PET packaging; (ii) the production and bottling of branded ambient fruit juices in carton packaging; (iii) the production and bottling of branded chilled fruit juices in PET packaging.; (iv) sale of branded fruit juices in retail stores; (v) sale of branded orange juices in retail stores.

5.2.2. The Netherlands

(108) In the Netherlands, the Transaction gives rise to combined market shares in excess of [30-40]% in two plausible upstream markets due to Refresco's activities in the production and bottling of branded juices and juice-based beverages, and also in two plausible vertically related downstream markets due to the Parties' (mainly the Target's) downstream activities in the production and sale of branded juices and juice-based beverages.

[102] Form CO, paragraph 362.
[103] Response to RFI 4, question 1.
[104] Replies to question 20 of Q1 – Questionnaire to competitors, production and bottling.

Table 2 – Parties' market shares at or above 30% based on narrowest plausible market definitions in the Netherlands

Upstream market[105]			
	PAI Partners	**Target**	**Combined**
Production and bottling of branded ambient fruit juices in PET packaging	[20-30]-[30-40]%	-	**[20-30]-[30-40]%**
Production and bottling of branded chilled fruit juices in PET packaging	>[30-40]%	-	**>[30-40]%**
Downstream market[106]			
	PAI Partners	**Target**	**Combined**
Sale of fruit juices in retail stores	<[0-5]%	<[0-5]%	**<[0-5]%**

Source: Form CO, Annex 20.

(109) The above market share estimates do not exclude in-house production by vertically integrated players due to the Parties' inability to split the market between in-house and third party production.[107] However, the Parties estimate that their market share on a market excluding in-house production would be above 30% but below 50% based on: (i) their market share of [20-30]% on the broader market for the production and bottling of branded fruit juices including in-house production; and (ii) the fact that, should in-house production be excluded, they were only able to identify one other competitor for the Netherlands, namely Riedel.[108] However, as further explained in paragraph (116) below, the investigation has confirmed that a number of upstream bottlers other than Riedel are available to downstream competitors in the Netherlands.

5.2.2.1. Input foreclosure

(A) Ability

(110) As illustrated in paragraph (108) above, Refresco's market shares reach 30% on two plausible relevant markets in the Netherlands: production and bottling of branded ambient fruit juices in PET packaging, and production and bottling of branded chilled fruit juices in PET packaging.

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105 According to the Parties' best estimates, the Parties' market shares on the affected markets would not be materially different if taking into consideration, in addition to the segmentations already taken into account in the table, further sub-segmentations based on a distinction between (i) aseptic and non-aseptic packaging and (ii) organic and non-organic juices.

106 Given the Parties' sales in the Netherlands are almost non-existent, the Parties have not been able to provide market shares on the narrowest plausible segments, but have confirmed based on their best estimates that the narrowest possible segment of sale of branded NFC orange juice in retail stores would not be affected. The Parties have also confirmed that their market shares would not be materially different if taking into consideration, in addition to all other segmentations envisaged in precedents and set out in section 4.3 above, a distinction between organic and non-organic juices.

107 Form CO, Annex 20.

108 Form CO, Annex 20.

(111) However, the market investigation has indicated that the Parties would be unlikely to have the ability to engage in input foreclosure strategies following the Transaction.

(112) **First**, the Parties would continue to face competition from credible alternative suppliers of juice production and bottling services in the Netherlands.

(113) In particular, the Parties would be constrained by competition from Riedel, Refresco's biggest competitor in the Netherlands.

(114) This is confirmed by the Parties' own internal documents. In a Refresco presentation entitled "*Category vision 2022-2024 – Juice & Juice-based drinks*", it is mentioned that Refresco is [Refresco's analysis of competitors in the juice market],[109] and that [Refresco's analysis of competitors in the juice market].[110]

(115) Riedel's strong position in the Netherlands has also been confirmed by the market investigation, as it has been identified by several downstream players, including two major Dutch retail chains, as one of the main alternatives to Refresco for juice production and bottling services in the Netherlands.[111]

(116) In addition to Riedel, upstream competitors have also listed Valensina, Stute, Wesergold, Hoogesteger, Gropper and AMC as their main competitors in the Netherlands.[112] The Parties also list Fruity Line, Nederrhein Gold, Grand Food and the Schaff Group as potential competitors in the Netherlands,[113] together with a number of smaller local bottlers like Bavaria or Vrumona.[114] Moreover, it also appears that Konings could serve the Dutch market from its production plants in the Netherlands and in Belgium.[115] In fact, a downstream competitor of the Parties identified Konings as one of the main alternatives to Refresco in the Netherlands for chilled fruit juices in PET and carton packaging.[116]

(117) **Second**, and similarly to what appears to be the case in other Member States, there appears to be free capacity on the market, linked to an overall decline in juice consumption.

(118) According to 2019 report from the AIJN, the European Fruit Juice Association, the overall fruit juice consumption has been declining regularly in the Netherlands since 2014, with a -7.5% decline between 2017 and 2018, and a -30% decline between 2014 and 2018.[117]

(119) The Parties' internal documents have confirmed that trend. According to a Refresco document entitled "*Category vision 2022-2024 – Juice & Juice-based drinks*", volumes have been [Refresco's analysis of the Dutch juice market] in the Netherlands.[118]

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109 Response to RFI 3, annex 4, slide 5.
110 Response to RFI 3, annex 4, slide 6.
111 Replies to question 13.2 of Q1 – Questionnaire to downstream competitors.
112 Replies to question 13 of Q2 – Questionnaire to competitors, production and bottling.
113 Form CO, paragraphs 259 and Annex 20.
114 Form CO, paragraph 127 (ii).
115 See https://www konings.be/corporate/history.
116 Replies to question 13.2 of Q1 – Questionnaire to downstream competitors.
117 AIJN 2019 report, available at: https://aijn.eu/en/publications/market-reports-1/20199.
118 Response to RFI 3, annex 4, slide 5.

(120) In addition, three German-based competitors have indicated having free capacity in their factories,[119] from which they would be able to services customers in the Netherlands. Furthermore, a majority of market participants have indicated they would consider using their free capacity in order to service (more) customers in the Netherlands in case of demand and price increase.[120] According to one competitor: "[w}*e have three factories in Germany, we do have capacity in all factories to serve customers in these countries*."[121]

(121) **Third**, the market investigation confirmed that switching supplier of production and bottling services is relatively easy, such that downstream players could react to a full or partial input foreclosure strategy from the Parties by turning to the above-mentioned alternatives.[122] According to a large Dutch retail chain: "[w]*e are able to switch suppliers in a few months time, we do it often on several product groups*."[123]

(122) In light of the above, the Commission considers that existing alternative suppliers to Refresco's production and bottling services, which seem to have free capacity, would be able to effectively constrain the Parties' ability to engage in input foreclosure following the Transaction.

(B) Incentive

(123) The Commission considers that the Parties would also be unlikely to have the incentive to engage in input foreclosure in the Netherlands post-Transaction.

(124) **First**, as indicated in Table 2 above, the Target has very limited market shares in the downstream market in the Netherlands.

(125) **Second**, as explained in paragraphs (112) to (120) above, Refresco would continue to face competition from a number of credible alternatives on a market with overcapacity. As a result, any partial foreclosure strategy would likely result in loss of customers which would turn to alternative suppliers, and any full foreclosure strategy would be unlikely to result in increasing downstream competitors' costs as they would be able to find other suppliers to cover their needs. This has been confirmed by the market investigation. Indeed, a majority of market participants, including two large Dutch retailers, have indicated that they do not consider it likely that Refresco could profitably stop serving customers other than the Target,[124] or impose worse conditions on them,[125] as a result of the Transaction.

(C) Effects

(126) Given the likely absence of ability and incentive to foreclose the Target's competitors downstream, it is unlikely that an input foreclosure strategy post-Transaction would significantly impede effective competition.

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[119] Replies to question 16.1 of Q2 – Questionnaire to competitors, production and bottling.
[120] Replies to question 17 of Q2 – Questionnaire to competitors, production and bottling.
[121] Reply to question 16.1 of Q2 – Questionnaire to competitors, production and bottling.
[122] Replies to question 9 of Q2 – Questionnaire to competitors, production and bottling; Replies to question 17 of Q1 – Questionnaire to downstream competitors.
[123] Reply to question 17.1 of Q1 – Questionnaire to downstream competitors.
[124] Replies to question 28.2 and 29.2 of Q1 – Questionnaire to downstream competitors.
[125] Replies to question 29.2 of Q1 – Questionnaire to downstream competitors.

(127) This has been confirmed by market participants. A majority of upstream and downstream competitors have indicated that they do not think the Transaction would bring about a significant change in the Netherlands in the market for the provision of production and bottling services for juices.[126] According to a large Dutch retailer: "*I don't think this move will change much of the market dynamics*." A majority of downstream competitors have also indicated that they consider that after the Transaction, the price, quality and availability of production and bottling services will be the same.[127]

(128) 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 input foreclosure in the Netherlands.

5.2.2.2. Customer foreclosure

(A) Ability

(129) The Commission considers that the Parties would not have the ability to engage in customer foreclosure in the Netherlands.

(130) **First**, the Target already produces all of the juices it sells in the Netherlands in-house.[128] Therefore, the Transaction will not remove any contestable demand from the market.

(131) **Second**, as illustrated in paragraph (108) above, the Target has only a residual presence in the Dutch market, with market shares below [0-5]%. Two large Dutch retail chains have confirmed the Target's very limited presence in the Netherlands in the context of the market investigation: "[t]*hese brands are currently not that active on the dutch market*" and "[t]*he Pepsico brands are very very small in the Netherlands.*"[129]

(132) The Target moreover faces strong competition from competitors such as Riedel ([20-30]% market shares on the sales of fruit juices in retail stores in the Netherlands), or smaller players such as Innocent and Hero, which have been listed by market participants as main alternatives to the Target in the Netherlands.[130] In addition to brand owners, the Target also faces competition from private label products ([60-70]% market share in the market for the sale of fruit juices in the Netherlands).

(133) Against this background, the Commission considers that the Parties would be unlikely to be able to engage in customer foreclosure in the Netherlands as the Target does not represent an important outlet for juice production and bottling services in that country. In addition, upstream competitors would continue to have a sufficiently large customer base post-Transaction.

[126] Replies to question 21 of Q2 – Questionnaire to competitors, production and bottling; replies to question 26 of Q1 – Questionnaire to downstream competitors.

[127] Replies to question 27 of Q1 – Questionnaire to downstream competitors.

[128] Response to RFI 4, question 1.

[129] Reply to question 23.1 of Q1 – Questionnaire to downstream competitors.

[130] Replies to question 19 of Q1 – Questionnaire to downstream competitors.

(B) Incentive

(134) As further explained in paragraphs (129) to (133) above, the Target is only marginally present in the Netherlands and faces strong competition both from brand owners and from retailers with regard to the demand of juice production and bottling services for their private label products in that country.

(135) In addition, and as further explained in paragraphs (68) and (76) above, switching supplier of juice production and bottling services appears relatively easy, such that upstream competitors would not be impaired from finding new customers for their services should they not have access to the Target's business.

(136) As a result, the Parties would lack the incentive to engage in a customer foreclosure strategy, as any such strategy would be unlikely to result in increasing the costs of their upstream competitors, who would be able to find other customers to sell their services to.

(137) In light of the above, the Commission therefore considers that the Parties would be unlikely to have the incentive to engage in customer foreclosure post-Transaction.

(C) Effects

(138) Given the likely absence of ability and incentive to foreclose Refresco's competitors upstream, it is unlikely that a customer foreclosure strategy post-Transaction would significantly impede effective competition.

(139) This has been confirmed by the market investigation, as a majority of upstream competitors have indicated that the Transaction will not bring about a significant change in the market for the production and bottling of juices in the Netherlands.[131]

5.2.2.3. Conclusion on the Netherlands

(140) Based on the above considerations, and in light of the results of the market investigation and of all the information available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to customer or input foreclosure in the Netherlands in the markets for the (i) production and bottling of branded ambient fruit juices in PET packaging; (ii) production and bottling of branded chilled fruit juices in PET packaging; and (iii) sale of fruit juices in retail stores.

5.2.3. Ireland

(141) In Ireland, the Parties' activities vertically overlap, and give rise to affected markets, concerning Refresco's upstream activities in the production and bottling of juices and juice-based beverages, on the one hand, and the Target's downstream activities in the production and sale of branded juices and juice-based beverages, on the other.

[131] Replies to question 21 of Q2 – Questionnaire to competitors, production and bottling.

Table 3 – Parties' market shares at or above 30% based on narrowest plausible market definitions in Ireland

Upstream market[132]		
	PAI Partners	**Target**
Production and bottling of branded fruit juice	<[30-40]%[133]	-
Downstream market[134]		
	PAI Partners	**Target**
Sale of branded fruit juices in retail stores	-	[40-50]%
Sale of branded orange juices in retail stores	-	[50-60]%

Source: Form CO, Annex 20.

5.2.3.1. Input foreclosure

(A) Ability

(142) The Commission considers that the Merged Entity would not have the ability to engage in input foreclosure as a result of the Transaction. This is for the following reasons.

(143) **First**, as shown in Table 3, Refresco's presence is Ireland is limited and its market share in the upstream market for the production and bottling of branded fruit juice in Ireland is below 30% under any plausible market definition.

(144) **Second,** there are a number of alternative bottlers in Ireland whom downstream users of production and bottling services – be they brand owners for co-manufacturing or retailers for their private label – could turn to following the Transaction. More specifically in response to the market investigation, three upstream competitors of Refresco reported to be active in Ireland[135] and, in addition, market participants have also identified Sushine, Keelings, and García Carrión as main alternatives to Refresco for the production and bottling of juice and juice-based beverages in Ireland.[136] In addition, the Target currently uses [relations with third parties] as a third party producer for juices it sells on the Irish market.[137] Finally, as explained in

[132] According to the Parties' best estimates, the Parties' market shares on the affected markets would not be materially different if taking into consideration, in addition to the segmentations already taken into account in the table, further sub-segmentations based on a distinction between (i) aseptic and non-aseptic packaging and (ii) organic and non-organic juices.

[133] Refresco has submitted that, due to its marginal presence in Ireland (EUR […] in sales in 2020), it is not able to precisely estimate the size of the upstream market for the production and bottling of branded fruit juice and, consequently, its market share in this country. However, based on publicly available information on the volume of sales of the main market player in Ireland, Refresco estimates that its market share is well below 30% in that market. Form CO, paragraphs 246 to 249.

[134] According to the Parties' best estimates, the Parties' market shares would not be materially different if taking into consideration, in addition to the segmentations already taken into account in the table, further sub-segmentations based on a distinction between organic and non-organic juices, and between NFC and FC orange juice.

[135] Replies to question 13 of Q2 – Questionnaire to competitors, production and bottling.

[136] Replies to question 13 of Q1 – Questionnaire to downstream competitors.

[137] Response to RFI 4, question 1.

paragraph (161), none of the retailers that participated in the market investigation uses the production and bottling services of Refresco in Ireland.[138]

(145) **Third**, as previously mentioned, due to an overall decline in juice consumption there appears to be increasing free capacity for the production and bottling of juice. According to 2019 report from the AIJN, the European Fruit Juice Association, the overall fruit juice consumption has declined in Ireland since 2014, with an -11% decline between 2014 and 2018.[139] The current pattern according to which several upstream players produce juice meant for the Irish market outside Ireland shows that free production capacity, even if it is located outside Ireland, could be used to produce and bottle juices meant for sale on the Irish market.

(146) More specifically, two upstream competitors of Refresco active in Ireland have indicated that they have significant free capacity in their factories,[140] from which they would be able to services customers in Ireland post-transaction. Furthermore, all four upstream competitors of Refresco that expressed an opinion have indicated they would consider using their free capacity in order to service (more) customers in Ireland in case of demand and price increase.[141]

(147) **Fourth**, the market investigation confirmed that switching supplier of production and bottling services is relatively easy, such that downstream players could react to a full or partial input foreclosure strategy from the Parties post-Transaction by turning to the above-mentioned alternatives.[142] According to a large retail chain active in Ireland: "[a]*ssuming the supplier has the right production lines in place for the type of product and packaging to be produced (which most of them do), it is very easy to switch from one supplier to another*."[143]

(148) In light of the above, the Commission considers that existing alternative suppliers to Refresco's production and bottling services, which seem to have free capacity, would be able to effectively constrain the Parties' ability to engage in input foreclosure in Ireland following the Transaction.

(B) Incentive

(149) The Commission considers that the Merged Entity would be unlikely to have the incentive to engage in input foreclosure post-Transaction. This is for the following reasons.

(150) As explained in paragraphs (144) to (146) above, Refresco would continue to face competition from a number of credible alternatives on a market with overcapacity. As a result, any partial input foreclosure strategy would likely result in loss of customers which would turn to alternative suppliers, and any full input foreclosure strategy would be unlikely to result in increasing downstream competitors' costs as they would be able to find other suppliers to cover their needs.

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138 Replies to question 3 of Q1 – Questionnaire to downstream competitors.

139 AIJN 2019 report, available at: https://aijn.eu/en/publications/market-reports-1/20199.

140 Replies to questions 16 and 16.1 of Q2 – Questionnaire to competitors, production and bottling.

141 Replies to question 17 of Q2 – Questionnaire to competitors, production and bottling.

142 Replies to question 9 of Q2 – Questionnaire to competitors, production and bottling; Replies to question 17 of Q1 – Questionnaire to downstream competitors.

143 Reply to question 17.1 of Q

(C) Effects

(151) Given the likely absence of ability and incentive to foreclose the Target's competitors downstream, it is unlikely that an input foreclosure strategy post-Transaction would significantly impede effective competition.

(152) The market investigation supports this finding. The majority of upstream competitors that expressed a view do not expect the Transaction to bring about a significant change on the Irish market.[144]

5.2.3.2. Customer foreclosure

(A) Ability

(153) As shown in Table 3, the Target enjoys a strong market position in the Irish markets for the sale of branded fruit juices in retail stores, on the one hand, and the sale of branded orange juices in retail stores, on the other hand. Some market participants have also confirmed the Target's strong market position in Ireland in the course of the investigation.[145]

(154) However, the Commission considers that the Merged Entity would not have the ability to engage in customer foreclosure as a result of the Transaction.

(155) Indeed, Refresco's competitors in Ireland would continue to have access to a sufficient customer base following the Transaction. Indeed, in Ireland, the Target faces strong competition from the Coca-Cola Company (Innocent) both in the market for the sale of branded fruit juices in retail stores, where the Parties estimate that Innocent has a 52% market share, and in the market for the sale of branded orange juices in retail stores, where the Parties estimate Innocent's market share at 39%.[146] The market investigation has confirmed that Innocent is an important market player in Ireland in competition with the Target.[147]

(156) In addition to brand owners, upstream competitors will continue to have access to retail customers active in the sale of private label juices. In fact, several competitors of the Target in Ireland identified private label retailers as the Target's closest competitors in that country.[148] In particular, a downstream competitor notes that '[p]*rivate* [l]*abels are number one alternatives for not* [from] *concentrated orange juices'*.[149]

(157) Moreover, in addition to Innocent, market participants have also identified Princes, Don Simón and Mockingbird as main alternatives to the Target for the sale of juices in Ireland.[150] Furthermore, the investigation has shown that a number of other branded fruit and orange juices are available in the main Irish retail chains, including

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144 Replies to question 21 of Q2 – Questionnaire to competitors, production and bottling.

145 Replies to question 23 of Q1 – Questionnaire to downstream competitors.

146 Form CO, Annex 20.

147 Replies to question 24 of Q1 – Questionnaire to downstream competitors; replies to question 19 of Q2 – Questionnaire to competitors, production and bottling.

148 Replies to question 24 of Q1 – Questionnaire to downstream competitors.

149 Replies to question 24.1 of Q1 – Questionnaire to downstream competitors.

150 Replies to question 24 of Q1 – Questionnaire to downstream competitors; replies to question 19 of Q2 – Questionnaire to competitors, production and bottling.

Sqeez,[151] Robinsons,[152] Jaffo Juice[153] and several of Mulrines' brands such as Kulana, Juice Press or Jaffa Gold.[154]

(158) In addition, it seems that a large part of the juice sold in Ireland is imported. Namely, only one upstream competitor of the Parties indicated that it has production facilities in Ireland.[155] Moreover, it seems that the Target, which accounts for a substantial part of the retail market for branded fruit juices ([40-50]%) and branded orange juices ([50-60]%), also imports most of its fruit juice needs and produces and bottles in Ireland […] litres of fruit juice.[156] Hence, in response to a hypothetical reduction in demand for juices to be sold in Ireland, the corresponding production could either still end up with the same customers but end up being sold in different countries, or be used for other customers – brand owners or private label customers – located in countries other than Ireland. Therefore, the customer base for upstream competitors who produce juices that end up being sold in Ireland is in practice not limited to Irish demand.

(B) Incentive

(159) The Commission considers that the merged entity would also not have the incentive to engage in customer foreclosure as a result of the Transaction.

(160) Indeed, Refresco does not have any production site in Ireland, and the imports it makes into the country remain limited. In 2020, its sales of bottled branded fruit juice to Irish customers amounted to approximately EUR […] million (less than […] million litres in volume), representing less than [0-5]% of Refresco's global revenues.[157] It is also not expected that Refresco's limited presence in Ireland will significantly increase in the short term. Refresco does not have any production facilities in Ireland[158] and it does not expect to expand its production capabilities into Ireland in the next […] years.[159]

(161) Refresco's limited activities in Ireland are further confirmed by the market investigation. None of the retailers that participated in the market investigation uses the production and bottling services of Refresco in that country.[160]

(162) In light of the above, the Commission considers that the Parties would be unlikely to have the incentive to engage in customer foreclosure post-Transaction.

(C) Effects

(163) Given the likely absence of ability and incentive to foreclose Refresco's competitors upstream, it is unlikely that a customer foreclosure strategy post-Transaction would significantly impede effective competition.

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151 See http://www.sqeez.ie/lifestyle/faq2 htm.
152 See https://www robinsonssquash.co.uk/our-products/product-range/.
153 See http://www.jaffo.ie/.
154 See https://mulrines.ie/mulrines-ireland/.
155 Replies to question 3 of Q2 – Questionnaire to competitors, production and bottling.
156 Response to RFI 3, footnote 7.
157 Form CO, paragraph 247.
158 Form CO, footnote 27.
159 Response to RFI 3, Annex 3, slide 33.
160 Replies to question 3 of Q1 – Questionnaire to downstream competitors.

(164) The market investigation supports this finding. The only downstream competitor who expressed a view does not expect the Transaction to bring about a change to the Irish market.[161]

5.2.3.3. Conclusion on Ireland

(165) 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 customer or input foreclosure in Ireland in the markets for the (i) production and bottling of branded fruit juice; (ii) sale of branded fruit juices in retail stores; and (iii) sale of branded orange juices in retail stores.

5.2.4. Belgium

(166) In Belgium, as can be seen from Table 4, Refresco's market share is above 30% in the market for the production and bottling of fruit juices in carton packaging, which is vertically linked to the Target's activities on the downstream markets in relation to the sale of fruit juice. The Parties confirm that the Target's market share on any relevant downstream market is below [10-20]%, while it would be below [5-10]% on a hypothetical segment for the sale of fruit juices in carton packaging in retail stores.[162]

Table 4 - Parties' market shares in the narrowest plausible vertically affected markets in Belgium

Upstream market[163]			
	PAI Partners	**Target**	**Combined**
Production and bottling of fruit juice in carton packaging	[30-40]%	-	[30-40]%
Downstream market[164]			
	PAI Partners	**Target**	
Sale of fruit juices in carton packaging in retail stores	<[0-5]%	<[5-10]%	<[5-10]%
All downstream segments related to sale of fruit juice	<[0-5]%	<[20-30]%[165]	<[20-30]%

Source: Form CO – Annex 20

[161] Replies to question 21 of Q2 – Questionnaire to competitors, production and bottling.

[162] Form CO, paragraph 377.

[163] According to the Parties' best estimates, the Parties' market shares on the affected markets would not be materially different if taking into consideration, in addition to the segmentations already taken into account in the table, further sub-segmentations based on a distinction between (i) aseptic and non-aseptic packaging and (ii) organic and non-organic juices.

[164] The Parties have not been able to provide market shares on the narrowest plausible segments, but have confirmed based on their best estimates that the narrowest possible segment of sale of branded NFC orange juice in retail stores would not be affected. The Parties have also confirmed that their market shares would not be materially different if taking into consideration, in addition to the segmentations already taken into account in the table, further sub-segmentations based on a distinction between organic and non-organic juices, and on NFC and FC orange juice. (Response to RFI 2, question 7).

[165] Form CO, Tables 6.13 – 6.17.

5.2.4.1. Input foreclosure

(167) The Commission considers that following the Transaction Refresco is unlikely to have the ability or incentive to pursue an input foreclosure strategy on the market for the production and bottling of fruit juice in carton packaging in Belgium for the reasons set out below.

(A) Ability

(168) **First,** Refresco's upstream market share on the Belgian market for the production and bottling of fruit juice in carton packaging remains [confidential], at around [30-40]%, while it is below [30-40]% for all other potentially relevant markets relating to the production and bottling of fruit juice in Belgium.

(169) **Second**, and in any event, the Parties will continue to face significant competition from credible competitors in Belgium following the Transaction. Those alternatives include Riha Wesergold with a [10-20]% market share in 2020, Niederrhein Gold with a [10-20]% market share in 2020, LSDH with a [5-15]% market share in 2020, and Riedel with a [20-30]% market share in 2020, as well as others who have been identified in reply to the market investigation, such as Konings, Stute, AMC and Gropper[166].

(170) **Third**, there appears to be free capacity on the market, linked to an overall decrease in juice consumption in Europe, including Belgium. According to the AIJN report, the juice consumption in Belgium decreased with 27% between 2014 and 2018[167]. Refresco's own facilities in Belgium operate at a utilization rate of […]%.[168] Other upstream competitors indicated that they also have free capacity to start serving Belgium if needed: "[w]*e have three factories in Germany, we do have capacity in all factories to serve customers in these countries*".[169] Also, the majority of upstream competitors who expressed their views on this point would be interested in using their free capacity to start serving customers in Belgium in t case prices or demand were to increase.[170]

(171) **Fourth**, the market investigation confirmed that switching suppliers of production and bottling services is relatively easy, such that downstream players could react to a full or partial input foreclosure strategy from the Parties post-Transaction by turning to the above-mentioned alternatives.[171]

(172) The Commission considers that existing alternative suppliers to Refresco, which seem to have free capacity, would be able to effectively constrain the Parties' ability to engage in input foreclosure following the Transaction.

(B) Incentive

(173) The Commission considers that the Parties would be unlikely to have an incentive to engage into input foreclosure, for the following reasons.

166 Replies to question 13 of Q2 – Questionnaire to competitors, production and bottling.
167 Form CO, paragraph 346.
168 Form CO, paragraph 391.
169 Replies to question 16.1 of Q2 – Questionnaire to competitors, production and bottling.
170 Replies to question 17 of Q2 – Questionnaire to competitors, production and bottling.
171 Replies to question 13 of Q2 – Questionnaire to competitors, production and bottling; Replies to question 17 of Q1 – Questionnaire to downstream competitors.

(174) **First**, taking into account that there are alternatives on the Belgian market that could easily start supplying customers, any attempt of engaging in input foreclosure would result in a loss of sales and market share for the upstream markets. This would further bring down the utilization rate of Refresco's Belgian facilities, which is […][172]. Given that [Target's co-packing strategy], Refresco could not compensate such losses by integrating the Target's needs.[173]

(175) **Second**, Refresco's market share is in excess of [30-40]% only for a small part of its production and bottling capabilities with regard to Belgium (i.e. only for the production and bottling of juice in carton packaging). This while most customers do not source only juice in this specific type of packaging, but also in others such as PET packaging. Therefore, by hypothetically restricting its customers' access to its production and bottling of juice in carton packaging, Refresco would risk losing business also in other potentially relevant markets.

(176) In light of the above, the Commission therefore considers that the Parties would be unlikely to have the incentive to engage in input foreclosure post-Transaction.

(C) Effects

(177) Given the likely absence of ability and incentive to foreclose the Target's competitors downstream, it is unlikely that an input foreclosure strategy post-Transaction would significantly impede effective competition.

(178) This has been confirmed by the market investigation. A majority of upstream and downstream competitors who expressed a view have indicated that they do not think the Transaction would bring about a significant change on the market for the production and bottling of juices in Belgium.[174] A majority of downstream competitors have also indicated that they consider that after the Transaction, the price, quality and availability of production and bottling services will remain the same.[175]

(179) 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 input foreclosure in Belgium.

5.2.4.2. Customer foreclosure

(A) Ability

(180) **First**, the Target already produces the majority ([80-90]%) of its juices sold in Ireland in-house.[176] Therefore, the Transaction will not remove any significant contestable demand from the market.

(181) **Second,** the combined market shares of the Parties are low to moderate on the downstream markets as indicated in paragraph (166) , and the Target faces a number of competing brand owners on the downstream market, as also confirmed by market

172 [Refresco's production strategy]
173 Form CO, paragraph 391.
174 Replies to question 21 of Q2 – Questionnaire to competitors, production and bottling; replies to questions 25 and 26 of Q1 – Questionnaire to downstream competitors.
175 Replies to question 27 of Q1 – Questionnaire to downstream competitors.
176 Response to RFI 4, question 1.

participants.[177] These also include several brand owners who sell juice in carton packaging, such as the Coca-Cola Company (under the Minute Maid brand), and Riedel (under the Appelsientje brand).[178]

(182) **Third**, upstream competitors will continue to have access to the demand of retailer customers who are active in the sale of private label juices. All of the main retailers in Belgium sell juice under private label, including in carton packaging, and are therefore possible outlets for the production and bottling services offered by Refresco's upstream competitors.[179]

(183) Against this background, the Commission considers that the Parties would be unlikely to be able to engage in customer foreclosure strategies, as upstream competitors would continue to have a sufficiently large customer base post-Transaction.

(B) Incentive

(184) As further explained in paragraph (181) above, the Target faces strong competition both from brand owners and from retailers with regard to the demand for juice production and bottling services in Belgium.

(185) In addition, and as further explained in paragraphs (171) and (172) above, switching supplier of juice production and bottling services appears relatively easy, such that upstream competitors would not be impaired from finding new customers for their services should they not have access to the Target's business.

(186) As a result, the Parties would lack the incentive to engage in a customer foreclosure strategy, as any such strategy would be unlikely to result in increasing upstream competitors' costs, which would be able to find other customers to sell their services.

(187) In light of the above, the Commission considers that the Parties would be unlikely to have the incentive to engage in customer foreclosure post-Transaction.

(C) Effects

(188) Given the likely absence of ability and incentive to foreclose Refresco's competitors upstream, it is unlikely that a customer foreclosure strategy post-Transaction would significantly impede effective competition.

(189) 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 customer foreclosure in Belgium.

5.2.4.3. Conclusion on Belgium

(190) 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 customer or input foreclosure in Belgium in the markets for (i) the production and bottling of fruit juice in carton packaging; (ii) the sale of fruit juices in carton packaging in retail stores and (ii) all other downstream segments related to sale of fruit juice.

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177 Replies to question 24 of Q1 – Questionnaire to downstream competitors.
178 Form CO, Table 7.4.
179 Replies to question 23.1 of Q1 – Questionnaire to downstream competitors.

5.3. Horizontal relationship in the market for the downstream sale of juices

(191) The Transaction also gives rise to horizontally affected markets in several markets for the sale of juices in France, due to the overlapping activities of the Target and Ecotone, a portfolio company of PAI Partners. Indeed, Ecotone is marginally active in the sale of fruit juices in the EEA. Sales of fruit juices only represent [0-5]% of Ecotone's total sales in the EEA. Ecotone's fruit juices are manufactured [sensitive information on manufacturing process].[180]

Table 5 – Parties' market shares in the narrowest plausible horizontally affected markets in France

Affected market[181]	PAI Partners	Target	Combined
Sale of branded fruit juices in retail stores	[0-5]%	[30-40]%	[30-40]%
Sale of branded orange juices in retail stores	<[0-5]%	[40-50]%	<[40-50]%

Source: Form CO, Annex 20

(192) While the combined market shares of the Parties give rise to two plausible affected markets in the sale of juice in France, it seems unlikely that the Transaction would give rise to anticompetitive horizontal non-coordinated effects for the following reasons.

(193) **First**, due to Ecotone's […] activities in the market for the sale of fruit and orange juice in France, the market share increments brought about by the Transaction are limited to […]% or less. The market investigation confirmed Ecotone's marginal presence in the market for the sale of juice in France, as none of the market participants listed Ecotone as an alternative to the Target in France.[182]

(194) **Second,** based on the Parties' best estimates, the Herfindahl-Hirschman Index ('HHI') increments post-Transaction remain well below 150 under all plausible market definitions.[183]

(195) **Third,** a number of sizeable competitors of the Parties seem to be present in the affected markets post-Transaction, including Joker, Pressade, the Coca-Cola Company, Eckes-Granini and Andros.[184]

(196) 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

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[180] Form CO, paragraph 110.

[181] According to the Parties' best estimates, the Parties' market shares would not be materially different if taking into consideration, in addition to the segmentations already taken into account in the table, further sub-segmentations based on a distinction between organic and non-organic juices, and between NFC and FC orange juice.

[182] Replies to question 24 of Q1 – Questionnaire to downstream competitors; replies to question 19 of Q2 – Questionnaire to competitors, production and bottling.

[183] Response to RFI 2, question 7.c and Form CO, paragraph 60.

[184] Form CO, Annex 20; Form CO paragraph 60; non-confidential minutes of a call from 23 November 2021 with a downstream competitor, paragraphs 2 and 3; non-confidential minutes of a call from 25 November 2021 with a downstream competitor, paragraph 7; and replies to questions 1.2 and 2 of Q1 – Questionnaire to downstream competitors.

horizontal non-coordinated effects in the retail sale of branded fruit juices and branded orange juices in France.

6. CONCLUSION

(197) 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