

ACQUISITION BY REFRESCO GROUP N.V. OF THE TRADITIONAL BEVERAGES BUSINESS OF COTT CORPORATION INC.

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that Refresco Group N.V. (**Refresco Group**) and the traditional beverages business of Cott Incorporation Inc (**the Cott business**) have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (UK);
- (c) on 17 January 2018 the CMA took a decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted;
- (d) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference;
- (e) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Refresco Beverages Limited (**Refresco UK**) and Refresco Group (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 31 January 2018.
2. This Order applies to Refresco UK and Refresco Group.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Refresco UK and Refresco Group to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Refresco and Cott businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Refresco UK and Refresco Group shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Cott business with the Refresco Group business;
 - (b) transfer the ownership or control of the Refresco Group business or the Cott business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Cott business or the Refresco Group business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Refresco UK and Refresco Group shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Cott business is carried on separately from the Refresco Group business and the Cott business's separate sales or brand identity is maintained;
 - (b) the Cott business and the Refresco Group business are maintained as a going concern and sufficient resources are made available for the development of the Cott business and the Refresco Group business, on the basis of their respective pre-merger business plans;

- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Cott business or the Refresco Group business;
- (d) the nature, description, range and quality of goods and services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Cott business and the Refresco Group business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Cott business or the Refresco Group business are disposed of; and
 - (iii) no interest in the assets of the Cott business or the Refresco business is created or disposed of;
- (f) there is no integration of the information technology of the Cott or Refresco businesses, and the software and hardware platforms of the Cott business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Cott business will be carried out by the Cott business alone and for the avoidance of doubt the Refresco Group business will not negotiate on behalf of the Cott business (and vice versa) or enter into any joint agreements with the Cott business (and vice versa);
- (h) all existing contracts of the Cott business and the Refresco Group business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Cott business or Refresco Group business;
- (j) no key staff are transferred between the Cott business and the Refresco Group business;

- (k) all reasonable steps are taken to encourage all key staff to remain with the Cott business and the Refresco Group business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Cott business (or any of its employees, directors, agents or affiliates) to the Refresco Group business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

- 6. Refresco Group and Refresco UK shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
- 7. Refresco Group and Refresco UK shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Refresco Group and Refresco UK and their subsidiaries with this Order. In particular, on 13 February 2018 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Refresco Group and Refresco UK or other persons of Refresco Group and Refresco UK as agreed with the CMA shall, on behalf of Refresco Group and Refresco UK, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
- 8. At all times, Refresco Group and Refresco UK shall, or shall procure that the Cott business shall, actively keep the CMA informed of any material developments relating to the Cott business or the Refresco Group business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Cott business or the Refresco Group business;

- (b) any interruption of the Cott or Refresco Group business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Cott business or Refresco Group business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Cott business or Refresco Group business's contractual arrangements or relationships with key suppliers.
9. If Refresco Group or Refresco UK has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Refresco Group or Refresco UK may be directed to appoint under paragraph 10.
10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
11. Refresco Group and Refresco UK shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
13. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'business' has the meaning given by section 129(1) and (3) of the Act;

'commencement date' means 31 January 2018;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'Cott' means Cott Corporation Inc., a company registered in Canada with corporation number 985163-1.

'the Cott business' means the traditional beverages business sold by Cott to Refresco as carried on as at the commencement date;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by the Cott business or Refresco Group and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the Cott business and Refresco Group;

'Refresco UK' means Refresco Beverages UK Limited, a company registered in the UK with company number 00161079;

'the Refresco UK business' means the business of Refresco UK and its subsidiaries but excluding the Cott business, carried on as at the commencement date;

Refresco Group means Refresco Group N.V., a company registered in the Netherlands with company number 24395416.

'the Refresco Group business' means the business of Refresco Group and its subsidiaries carried on as at the commencement date;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which Refresco and the Cott business have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Refresco Group business and the Cott business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Compliance statement for Refresco Group/Refresco UK

I [insert name] confirm on behalf of Refresco Group/Refresco UK that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Refresco Group/Refresco UK has complied with the Order made by the CMA in relation to the transaction on 31 January 2018 (the Order).
 - (b) Refresco Group/Refresco UK's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Refresco Group/Refresco UK that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Cott business with the Refresco Group/Refresco UK business;
 - (ii) transfer the ownership or control of the Refresco Group/Refresco UK business or the Cott business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Cott business or the Refresco Group/Refresco UK business to compete independently in any of the markets affected by the transaction.
 - (b) The Cott business has been carried on separately from the Refresco Group/Refresco UK business and the Cott business's separate sales or brand identity has been maintained.
 - (c) The Cott business and the Refresco Group/Refresco UK business have been maintained as a going concern and sufficient resources have been made available for the development of the Cott business and the Refresco Group/Refresco UK business, on the basis of their respective pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Refresco Group/Refresco UK business or the Refresco Group/Refresco UK business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Cott business and the Refresco Group/Refresco UK business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Cott business and the Refresco Group/Refresco UK business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Cott business or the Refresco Group/Refresco UK business have been disposed of; and
 - (iii) no interest in the assets of the Cott business or the Refresco Group/Refresco UK business has been created or disposed of.
- (g) There has been no integration of the information technology of the Cott or Refresco Group/Refresco UK businesses, and the software and hardware platforms of the Cott business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Cott business have been carried out by the Cott business alone and, for the avoidance of doubt, the Refresco Group/Refresco business has not negotiated on behalf of the Cott business (and vice versa) or entered into any joint agreements with the Cott business (and vice versa).
- (i) All existing contracts of the Cott business and the Refresco Group/Refresco UK business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Cott business or the Refresco Group/Refresco business.

- (k) No key staff have been transferred between the Cott business and the Refresco Group/Refresco UK business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Cott business and the Refresco Group/Refresco UK business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Cott business (or any of its employees, directors, agents or affiliates) to the Refresco Group/Refresco UK business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the Cott business or the Refresco Group/Refresco UK business;
 - (ii) interruptions of the Cott business or the Refresco Group/Refresco UK business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Cott business or the Refresco Group/Refresco UK business; or
 - (iv) substantial changes in the Cott business' or Refresco Group/Refresco business' contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Refresco Group/Refresco UK and its subsidiaries remain in full compliance with the Order and will, or will procure that the Cott business, continue actively to keep the CMA informed of any material developments relating to the Cott business or the Refresco Group/Refresco UK business in accordance with paragraph 8 of the Order.

Interpretation

- 4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF REFRESCO GROUP/REFRESCO UK

Signature

Name

Title

Date