

Carbonated drinks (Coca Cola & Schweppes Beverages Ltd)

1 Title of report Carbonated Drinks: a report on the supply by manufacturers of carbonated drinks in the United Kingdom (MMC - Cmnd 1625)

2 Date of report 31 May 1991 **Published** 15 August 1991

3 Orders N/A

4 Date of original undertakings 21 May 1993 **Press release** 2 June 1993

5 Companies giving undertakings Britvic Soft Drinks Ltd, Coca-Cola Bottlers (Ulster) Ltd, Coca-Cola & Schweppes Beverages Ltd

6 Undertakings

1. Coca Cola & Schweppes Beverages Ltd (CCSB) will procure that prior notice is given to the Director General of Fair Trading (the Director) of all proposed arrangements which, if carried into effect, would result in the acquisition by CCSB or any of its subsidiaries of any interest in the whole or part of the undertaking or assets of any business in each case engaged in the supply of Dispense Products;

Provided that this paragraph shall not apply to any acquisition:

(i) Comprising fewer than 100 Dispense Installations; or

(ii) Of all or part of a Dispense Installation when CCSB or any of its subsidiaries is awarded a contract to supply Dispense Products for dispense from that Dispense Installation.

2. CCSB will notify the Director, on 1 January and 1 July of each year, of all such acquisitions as are described in paragraph 1 above and which fall within proviso (i) (but not proviso (ii)) to that paragraph.

3. Where any notice is given in accordance with paragraph 1:

(a) CCSB will provide to the Director, within such reasonable period as he may specify, such further information as is available to CCSB and its subsidiaries relating to the notified arrangements as he may request; and

(b) CCSB will procure that the acquisition in question is not made up before the Secretary of State has given his approval in writing, provided that the decision of the Secretary of State is not unreasonably delayed.

4. CCSB will not make or seek to enforce any agreement (which expression shall throughout these undertakings mean any agreement or arrangement, in whatever way and in whatever form it is made, and whether it is, or is intended to be, legally enforceable or not) with a Distributor of Products to the extent that it contains a provision which:

- (a) prevents the Distributor (to any degree) from supplying CCSB products (other than Dispense Products) to any other Distributor or to any wholesaler; or
- (b) Requires the Distributor, in his capacity as such, to acquire or stock a specified range of CCSB Products;

provided that this paragraph shall not prohibit bona fide promotions of not more than three months' duration (excluding the period for pre-promotion sell-in and post promotion evaluation).

5. CCSB will not make or seek to enforce any agreement with a Distributor of Dispense Products to the extent that it contains a provision which:

- (a) prevents the Distributor (to any degree) from manufacturing Dispense Productions or dispensed fruit juices or fruit drinks other than those supplied by CCSB;
- (b) confers on the Distributor any privilege or benefit which is conditional upon the Distributor supplying no more than a specified quantity or proportion of such other products, or upon his doing anything which will or may prevent him (to any degree) from supplying such other products; or
- (c) imposes on the Distributor any penalty or obligation by reason of his failure to comply with any such condition as is described in sub-paragraph (b) above;

provided that this paragraph shall not prohibit:

- (i) the imposition of a requirement to purchase a minimum quantity (expressed in absolute terms but not in terms of a proportion or percentage of the purchaser's requirements) of Dispense Products or dispensed fruit juices or fruit drinks from CCSB, or the granting of any privilege or benefit conditional on the purchase of any such minimum quantity; or
- (ii) bona fide promotions of not more than three months' duration (excluding the period for pre-promotion sell-in and post promotion evaluation).

6. CCSB will not make or seek to enforce any agreement with a Leisure Trade Purchaser to the extent that it contains a provision which prevents the purchaser (to any degree) from acquiring or supplying Products other than CCSB Products;

provided that this paragraph shall not prohibit the imposition of:

- (i) a requirement that only CCSB Products be dispensed from a Dispense Installation supplied on loan or by way of hire by CCSB;

- (ii) a requirement that only CCSB Products be supplied from a branded can-vending machine, cooler cabinet or free-standing merchandising unit supplied on loan or by way of hire by CCSB; or
- (iii) a requirement to purchase a minimum quantity (expressed in absolute terms but not in terms of a proportion or percentage of the purchasers requirements) of CCSB Products, or the granting of any privilege or benefit conditional on the purchase of any such minimum quantity.

7. CCSB will provide as soon as reasonably practicable to the Director such information as he may reasonably require for the purpose of monitoring compliance with the above undertakings.

8. CCSB will procure that its subsidiaries for the time being will comply with the above undertakings as if each reference to CCSB included a reference to each of those subsidiaries.

In these undertakings:

'agreement' shall have the meaning assigned to it in paragraph 4 of these undertakings;

'CCSB Products' means Products supplied by CCSB or any of its subsidiaries;

'Dispense Installation' means a system for providing a ready-to-drink beverage by adding carbonated water to syrup at the point of sale, or a system for dispensing a portion of ready-to-drink beverage at the point of sale by means of a equipment which withdraws the portion from a larger quantity of ready-to-drink beverage;

'Dispense Products' means syrups designed to be mixed at the point of sale with carbonated water by means of a Dispense Installation to produce a ready-to-drink beverage, or a ready-to-drink beverage supplied in bulk form to be dispensed via a Dispense Installation;

'Distributor' means a person who acquires goods for supply to licensed premises (within the meaning of article 1 (2) of the Supply of Beer (Tired Estate) Order 1989 (SI 1989 No 2390);

'Leisure Trade Purchaser' means a person who (or, in the case of an undertaking comprising more than one activity, that part of the undertaking which) acquires Products for resale for consumption on the premises of resale, being premises which have facilities suited to such consumption;

'Products' means carbonated drinks, including syrups supplied for making up such drinks and excluding mineral water, alcoholic drinks and low-alcohol and non-alcoholic beer;

'subsidiary' has the same meaning as in section 736 of the companies Act 1985.

7 Date of amendments N/A

8 Index information Exclusivity, merger control, tying

SIC code: 15.98 (Production of mineral waters and soft drinks)