

# Acquisition by Refresco Group N.V. of the traditional beverage business of Cott Corporation Inc.

## Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME//6705/17

### Introduction

1. Refresco Group N.V. (**Refresco**) has agreed to acquire the traditional non-alcoholic beverage business of Cott Corporation Inc. (**Cott**) (the **Merger**). Refresco and Cott are together referred to as the **Parties**.
2. On 3 January 2018, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA webpages.<sup>1</sup>
3. On 10 January 2018, Refresco offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 17 January, the CMA gave notice to Refresco, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering Refresco's offer (the **UIL Provisional Acceptance Decision**).

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<sup>1</sup> See <https://www.gov.uk/cma-cases/refresco-cott-merger-inquiry>.

## The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of manufacturing and packaging for from concentrate (**FC**) Juices/juice drinks in aseptically filled polyethylene terephthalate (**APET**) in the UK.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA Refresco has offered to sell Cott's APET facility in Nelson, Lancashire, including the freehold for the land and buildings, the APET production line, all associated facilities and personnel responsible for APET production in the UK and all existing APET UK customer contracts and revenues (the **Divestment Business**). Refresco has also committed to undertake immediate investments at the Divestment Business, at an estimated cost of £1.4m, to ensure that the Divestment Business can operate independently of other Cott facilities located near that site. Refresco has also committed to invest an additional £0.83m to upgrade the Divestment Business to enhance performance and reliability. The full text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>2</sup>
7. Refresco has also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the Proposed Undertakings. Refresco proposed Sunmagic Juice Limited (**SJL**), as the upfront buyer. This agreement will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of SJL as the buyer of the Divestment Business.

## CMA assessment

8. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>3</sup> This is because the Proposed Undertakings result in the divestment of all of Cott's facilities which manufacture and package FC Juices/juice drinks in APET in the UK and therefore fully remove the increment resulting from the Merger. The CMA also considers that the Proposed Undertakings would be capable of

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<sup>2</sup> See <https://www.gov.uk/cma-cases/refresco-cott-merger-inquiry>.

<sup>3</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

ready implementation, in particular because the Divestment Business is a viable business (including assets, land, staff and customer contracts) being sold to a purchaser which has experience in manufacturing and packaging juice drinks (including FC juice drinks) and has the infrastructure to continue to support the Divestment business.

### ***Suitability of the proposed purchaser***

9. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
  - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
  - (b) the proposed purchaser is independent of and unconnected to the merging parties;
  - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
  - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
  - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.<sup>4</sup>
  
10. SJL is active in the manufacturing and marketing of the following products, which it supplies to UK and European customers:
  - freshly squeezed fruit juices and smoothies in PET and glass bottles;
  - not from concentrate ('NFC') fruit juices and juice drinks in PET bottles and cartons;
  - from concentrate ('FC') fruit juices and juice drinks in hot fill PET bottles; and

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<sup>4</sup> [OFT1122](#), paragraphs 5.25–5.30.

- premium raw juices manufactured using a High Pressure Processing cold pasteurization technique ('HPP')
11. SJL is wholly owned by Multiple Marketing, which is active in the production of specialist cereal bars and Juices in the UK. Multiple Marketing's turnover in 2016 was approximately £56m, and is part of a wider group of companies with a combined turnover in excess of £175m.
  12. SJL told the CMA that currently it does not have any activities in the UK in the same markets as the Divestment Business. It stated that its activities take place in markets adjacent to those carried out by the Divestment Business and that these can be considered complementary. This is in line with the CMA's findings in the SLC decision. The CMA therefore believes that the acquisition by SJL does not itself create an SLC within any market or markets in the UK.
  13. As regards independence, SJL does not have any structural or financial links with Refresco.
  14. As regards financial resources, SJL told the CMA that it is able to finance the acquisition through a combination of existing cash reserves and/or debt finance. Having considered SJL's funding and reviewed its financial accounts, the CMA believes that SJL (with the support of its parent Multiple Marketing) would have the necessary financial resources to finance the purchase of the Divestment business and to operate it effectively in the future.
  15. SJL is an established player in the manufacture and packaging of juice and juice drinks in the UK. Based on the information provided to the CMA about its plans to operate the Divestment Business, the CMA considers that SJL has the necessary expertise, incentives and intention to maintain the Divestment Business as an effective competitor to Refresco in the UK. In addition, SJL intends to retain the current staff of the Divestment Business and it has existing relationships with some of the customers supplied by the Divestment Business.
  16. Therefore, subject to responses to this consultation, the CMA currently considers SJL to be a suitable purchaser of the Divestment Business.

## **Proposed decision and next steps**

17. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by SJL are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the

competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.

18. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.<sup>5</sup>
19. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>6</sup>
20. Representations should be made in writing to the CMA and be addressed to:

Nick Wright  
Mergers Group  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London  
WC1B 4AD

Email: [Nick.Wright@cma.gsi.gov.uk](mailto:Nick.Wright@cma.gsi.gov.uk)  
Telephone: 020 3738 6791

**Deadline for comments: 22 March 2018**

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<sup>5</sup> See <https://www.gov.uk/cma-cases/refresco-cott-merger-inquiry>.

<sup>6</sup> Under paragraph 2(4) of Schedule 10 to the Act.