

Anticipated acquisition by Refresco Group N.V. of the traditional non-alcoholic beverage business of Cott Corporation Inc.

Decision on undertakings in lieu of reference

ME/6705/17

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 28 March 2018. Full text of the decision published on 3 April 2018.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

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**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow Refresco the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.

4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 10 January 2018, Refresco offered undertakings to the CMA for the purposes of section 73(2) of the Act.
5. On 17 January 2018, the CMA gave notice, pursuant to section 73A(2)(b) of the Act, to Refresco that it considered that there were 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 was considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the supply of manufacturing and packaging for FC Juices/juice drinks in APET in the UK.
8. To address this SLC, Refresco has offered to give undertakings in lieu of a reference to divest 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, with an estimated cost of £[X], 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 £[X] to upgrade the Divestment Business to enhance performance and reliability (**the Undertakings**).
9. Under the Undertakings, Refresco agreed to sell the Divestment Business to Sunmagic Juices Limited, before the CMA's final acceptance of the Undertakings (**Upfront Buyer Condition**).

Consultation

10. On 8 March 2018, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views.¹ For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLCs identified in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation, and that Sunmagic Juices Limited would be a suitable purchaser.
11. The CMA received a submission from one third party during the consultation period. The third party agreed with the CMA's preliminary view that the UILs should be accepted provided that they do not lead to a reduction of the relevant capacity being available in the market.
12. The CMA therefore considers that the UILs offered by Refresco are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and that Sunmagic Juices Limited is a suitable purchaser of the Divestment Business.

Decision

13. For the reasons set out above, the CMA believes that the UILs provided by Refresco are as comprehensive a solution as is reasonable and practicable, and that they will remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by Refresco pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
14. The undertakings, which have been signed by Refresco and will be published on the CMA webpages,² will come into effect from the date of this decision.

Rachel Merelie
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Competition and Markets Authority
28 March 2018

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

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