

Anticipated acquisition by Danone S.A. of Harrogate Water Brands

Decision on relevant merger situation and substantial lessening of competition

ME/6884/20

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

SUMMARY

1. Danone Holdings (UK), a subsidiary of Danone S.A. (**Danone**), has agreed to acquire Harrogate Water Brands Limited (**Harrogate**) (the **Merger**). Danone and Harrogate are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Danone and Harrogate is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of plain bottled water, both still and sparkling, in two distribution channels in Great Britain (**GB**): the **on-trade** channel, which includes foodservice providers, as well as the wholesalers supplying these; and the **off-trade** channel, which includes grocery retailers. These channels differ in terms of route to market and customer requirements. The Parties do not overlap materially in Northern Ireland (**NI**).
4. The CMA has assessed the impact on competition of the Merger in GB in relation to: (i) the supply of plain still bottled water to on-trade customers in GB, (ii) the supply of plain sparkling bottled water to on-trade customers in GB, (iii) the supply of plain still bottled water to off-trade customers in GB, and (iv) the supply of plain sparkling bottled water to off-trade customers in GB.

5. With regard to the horizontal unilateral effects of the Merger, the evidence available to the CMA indicates that the Parties do not compete closely in either on-trade or off-trade for still or sparkling plain bottled water and there is no realistic prospect of them doing so in the foreseeable future absent the Merger. Harrogate's presence in the off-trade channel is minimal, while Danone's presence in the on-trade channel is minimal.
6. The change in market structure brought about by the Merger is limited and Danone will continue to be constrained after the Merger by the Parties' main competitors in both channels, namely: Nestlé S.A. (**Nestlé**), The Coca-Cola Company (**Coca-Cola**); and Highland Spring Limited (**Highland Spring**). These competitors and other smaller competitors will collectively exercise a considerable constraint on Danone after the Merger.
7. With regard to possible conglomerate effects of the Merger, the CMA found that Danone will not have the ability to foreclose its rivals by bundling or tying the Parties' bottled water products. Danone's position in the off-trade channel will not materially change. In the on-trade channel, the CMA found that demand for such a bundle would be limited and, in any event, there are multiple alternative suppliers of comparable bundles.
8. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects or conglomerate effects in the supply of plain bottled water, still or sparkling, in any channel in GB.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. Danone is a multinational company whose UK product portfolio consists of bottled water (flavoured and plain), fresh dairy products, and medical nutrition products. Danone sources, bottles, distributes and markets bottled plain still water in the UK under the Evian and Volvic brands, both of which use water sourced from specific locations in France. Until September 2019, Danone also distributed naturally-carbonated water sourced in France to the UK under the Badoit brand. Badoit-branded water exported to the UK before then is still being sold in the UK. Danone's total 2019 UK revenue was £[REDACTED], while its revenue from UK sales of bottled water was £[REDACTED] in 2019.

11. Harrogate is a UK company which sources, bottles, distributes and markets bottled plain still and sparkling water in the UK under the 'Harrogate' and Thirsty Planet brands.¹ In 2018, Harrogate had generated global revenues of approximately £21.5 million and UK revenues of £20.5 million.

Transaction

12. Danone agreed to buy [X] of the issued ordinary share capital of Harrogate for [X]. Harrogate's current shareholders will retain the remaining [X] of Harrogate's shares.
13. Danone's rationale for the Merger is to acquire a water source and bottling facilities in the UK, which it does not currently have, and to compete more effectively in the UK's on-market channel. Danone's internal documents support Danone's stated rationale.

Jurisdiction

14. Each of Danone and Harrogate is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
15. The Parties overlap in the supply of plain bottled water, both still and sparkling, to on-trade and off-trade GB customers. Their combined share for the supply of plain still water in the off-trade GB channel is [30-40]% (by volume) and [30-40]% (by value), with an increment of [0-5]% both by volume and value. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
16. Accordingly, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 11 May 2020 and the statutory 40 working day deadline for a decision is therefore 6 July 2020.

Counterfactual

18. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the

¹ Thirsty Planet is a multi-source ethical brand funding water access initiatives.

counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.² In the present case, the Parties submitted that the prevailing conditions of competition is the appropriate counterfactual against which to assess the Merger.

19. The CMA has seen no evidence supporting a different counterfactual. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

20. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.³

Overlap products

21. The Parties overlap in the supply of still and sparkling plain bottled water in GB. Harrogate does not supply flavoured bottled water. Danone exports bottled water from France to GB customers, primarily in the off-trade channel. Harrogate bottles water in GB and supplies primarily the on-trade channel. Most of its customers are wholesale distributors and catering companies which supply the foodservice industry, as well as offices, hotels, leisure facilities and sporting venues.
22. A number of companies with their own water sources and bottling facilities supply private label bottled water to wholesalers, distributors and retailers. Neither of the Parties supplies private label bottled water to the off-trade channel. [REDACTED].

² [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

23. Following feedback from one third party, the CMA considered the possibility that the Merger could reduce competition in the supply of private label water to third parties who stock private label bottled water. The CMA found that Harrogate is a minor supplier of this service, while Danone does not provide this service. Moreover, third parties cited multiple major alternative suppliers of this service, most notably Nestlé, Highland Spring, Montgomery Waters Limited, Radnor Hills Mineral Water Company Limited (**Radnor Hills**), Wenlock Spring Bottled Water (**Wenlock Spring**) and Shepley Spring Limited.

Product scope

Parties' submissions

24. The Parties submitted that the plain bottled water market can be segmented by the type of plain bottled water (e.g., still or sparkling).
25. The Parties also submitted that the product frame of reference can be further segmented into (i) the on-trade or on-premises consumption channel (e.g., hotels, restaurants, trains, offices and bars), and (ii) the off-trade channel (e.g., sales to retailers, supermarket chains, etc.).

Previous decisions

26. In previous cases, the European Commission (**EC**) and the UK competition authorities have consistently found that the wider sector of non-alcoholic beverages may be subdivided into carbonated soft drinks (CSDs) and non-carbonated soft drinks (NCSDs), which respectively include sparkling and still bottled water.⁴ The Office of Fair Trading (OFT) (now the CMA) also previously considered the distinction between the on-trade and off-trade channels.⁵

CMA's assessment

27. As a starting point in this investigation, the CMA considered the supply of bottled water, as this is where the Parties overlap. The CMA has considered whether it is appropriate to distinguish between the supply of: (i) still and sparkling bottled water; (ii) mineral and spring source bottled water, and (iii) branded and private label bottled water. The CMA has also considered if it is

⁴ Indicatively see OFT Case No. ME/5801/12 – Anticipated acquisition by A.G. Barr plc of Britvic plc; OFT decision – *Cott Beverages / Macaw*; OFT Case No. ME/4091/09 – *Coca-Cola Company/Fresh trading Limited*.

⁵ OFT Case No. ME/5801/12 – *Anticipated acquisition by A.G. Barr plc of Britvic plc*.

appropriate to distinguish the supply of bottled water between the on-trade and off-trade distribution channels.

Still versus sparkling bottled water

28. The Parties submitted that it is conceivable to distinguish between the supply of still and sparkling bottled water because, while there is some level of substitutability between the supply of still and sparkling water on the supply side,⁶ there is limited substitutability on the demand-side.
29. The CMA found that there is limited substitutability between still and sparkling bottled water. Internal documents of the Parties, as well as independent industry reports, show that still and sparkling bottled water products are priced, branded and marketed differently.
30. From the supply-side,⁷ the CMA found that it is possible to switch production from still to sparkling by adding a carbonating system to the production line. However, suppliers would also need to use bottles designed to contain carbonated water. In addition, a competitor of the Parties indicated to the CMA that to be successful in the sparkling segment a supplier needed a brand with a strong pedigree in sparkling water. Finally, some sparkling water brands use water which is naturally carbonated (e.g., Badoit).
31. While acknowledging that there may be a degree of substitutability on the supply-side between still and sparkling bottled water, for the reasons set out above, the CMA found that still and sparkling bottled water products are not close alternatives. Accordingly, on a cautious basis, the CMA assessed the impact of the Merger on competition in the supply of still and sparkling bottled water products separately.

Mineral versus spring water bottled water

32. The Parties referred to several EC decisions which have indicated that mineral water may form a separate product market from spring water.⁸ However, in those decisions, the EC did not expressly distinguish the two

⁶ The bottling of sparkling water includes one additional stage (carbonisation) compared to the bottling of still water. Bottled water companies can easily produce sparkling water by using this process, and it is possible to change the bottling line to accommodate potential fluctuations of demand for still or sparkling water in a very short time and with limited costs.

⁷ While the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone, the CMA may widen the scope of the market where there is evidence of supply-side substitution. See [Merger Assessment Guidelines](#), paragraphs 5.2.10-5.2.12.

⁸ Commission Case No. IV/M.1065 - *Nestle / San Pellegrino*, paragraphs 7 and 9; Commission Case No. M.5633 - *PepsiCo / The PepsiCo Bottling Group*, paragraph 12.

products. The Parties therefore submitted that both types of bottled water products should be included in the same product market.

33. The CMA's investigation indicates that segmentation between mineral and spring water would not be appropriate in the present case. While the history and characteristics of the water source of individual brands is important to their identity, the distinction between mineral and spring scarcely features in the internal documents of the Parties. In particular, [redacted]. This pattern also applies to third party industry reports, which assess brands according to variables including associations with sustainability, appeal to certain demographics, price and 'brand equity'. Notably, they do not contrast mineral water with spring water.
34. In any event, if the product frame of reference was segmentation according to this categorisation, there would not be an overlap between the Parties. All of Danone's brands are marketed in the UK as mineral water, while Harrogate is marketed as spring water.
35. Therefore, for the purposes of this investigation, the CMA has not distinguished between spring and mineral bottled water.

Branded and private label bottled water

36. The Parties submitted that a distinction between branded and private label should not be adopted [redacted]. The Parties also noted that private label bottled water products are marketed and sold in the on-trade channel to a smaller but still significant extent (ie compared to the off-trade channel).
37. The OFT has found that private label bottled water is unlikely to be a substitute to branded bottled water, though branded bottled water may be a substitute for private label water.⁹
38. The CMA's investigation indicates that private label is likely to pose a constraint on branded bottled water products, albeit only a limited one for premium brands. A minority of customers listed private label as an alternative to the Parties. Those that did considered private label a closer alternative to Volvic and Harrogate than to Evian. While both Parties track private label water in their annual reports and market reviews, and they both recognise its importance especially in off-trade, they do not monitor it as closely as rival brands.

⁹ OFT decision - *Cott Beverages / Macaw*, paragraph 20; OFT Case No. ME/4091/09, *Coca-Cola Company/Fresh trading Limited*, paragraphs 15-17.

39. For the purposes of this assessment, it is not necessary for the CMA to conclude on whether private label and branded bottled water are part of the same product frame of reference. The CMA found that no competition concerns arise on a cautious basis if private label sales are excluded (see paragraphs 103 and 115). The CMA nonetheless considered the constraint posed by private label bottled water in its competitive assessment where relevant.

Distribution channels: On-trade vs Off-trade

40. The Parties submitted that there are several common characteristics between the two channels, such as pricing. However, the Parties also identified differences in relation to how the products are sold. Whereas in the off-trade channel the Parties typically negotiate terms directly with their grocery retail customers, in the on-trade channel the Parties sell their products through wholesale distributors, with the exception of some large on-trade customers whom they sell to directly. In these instances, customers frequently hold tenders for a single, or a small number of, bottled water suppliers. In addition, in contrast to most on-trade customers, off-trade customers almost always buy bottled water products from more than one bottled water manufacturer.
41. The CMA notes that in the past the OFT has distinguished between the on-trade and off-trade channels in relation to the supply of soft-drinks¹⁰, however, the CMA considers that such a segmentation is appropriate in this case for bottled water specifically. In the Parties' market analysis documents, for instance, the Parties frequently distinguish between the competitive conditions in off-trade and on-trade. Third party evidence indicates that the preference for brands using GB-sourced water is more pronounced in the on-trade than the off-trade channel. The CMA also found that the competitive landscape differs between the two channels, with the on-trade market being considerably more fragmented than the off-trade market.
42. Accordingly, the CMA has assessed the impact of the Merger in the off-trade and on-trade channels separately.

Conclusion on product frame of reference

43. For the reasons set out above, for the purpose of this investigation and without concluding on the exact definition of the product frames of reference, the CMA has considered the impact of the Merger in the:

¹⁰ OFT Case No. ME/5801/12 - *Anticipated acquisition by A.G. Barr plc of Britvic plc.*

- (a) supply of plain still bottled water in the on-trade channel;
- (b) supply of plain sparkling bottled water in the on-trade channel;
- (c) supply of plain still bottled water in the off-trade channel (excluding private label); and
- (d) supply of plain sparkling bottled water in the off-trade channel (excluding private label).

Geographic scope

Parties' submission

- 44. The Parties submitted that the geographic scope of the supply of bottled water in the different segments identified above includes at least the whole of the UK. The Parties consider the market conditions across the UK to be uniform and that prices and logistics are similar throughout the UK.
- 45. In addition, the Parties submitted that the fact that Danone imports all its bottled water products from France indicates that the geographic scope of the market could even be wider than national.

The CMA's assessment

- 46. The CMA's investigation indicates that the appropriate geographic frame of reference for assessing the impact of this Merger is no larger than GB. Although Danone faces no difficulty in supplying its bottled water products in the UK from its bottling facilities in France, the CMA's investigation indicates that customers, especially in on-trade, typically have a preference for brands which use GB-sourced water. The main reasons cited for this preference were distribution costs, security of supply, and carbon footprint considerations.
- 47. This is consistent with the fact that some customers, including a large foodservice chain, chose different suppliers for their NI and GB operations. One of the Parties' competitors has separate bottling and distribution partners for GB and NI, while their marketing and advertising strategies also differ between these two regions. The CMA has not considered the impact of the Merger in NI separately as the Parties do not overlap materially in NI.
- 48. The CMA's investigation also indicated that the appropriate geographic frame of reference is not narrower than GB. The CMA received some evidence that there are smaller bottled water producers active in a particular regions which may be a preferred choice for local consumers. A number of the Parties' customers also listed that for some of their end-customers a preference for a

local or regional brand may be one of the many factors influencing their choice of supplier. The other reasons given included price, consumer preference and security of supply.

49. However, CMA also found that the Parties' customers largely view the Parties and some of their competitors as national or global suppliers, while one of the Parties' competitors said that their products are priced uniformly across the UK. Furthermore, the CMA found that the Parties and their competitors do not take into account regional differences in their broader commercial strategy, with the exception of some limited regional targeting activities.
50. Accordingly, the CMA considers that the appropriate geographic frame of reference for assessing the impact of this Merger is GB.

Conclusion on frame of reference

51. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
 - (a) supply of plain still bottled water in the on-trade channel in GB;
 - (b) supply of plain sparkling bottled water in the on-trade channel in GB;
 - (c) supply of plain still bottled water in the off-trade channel in GB; and
 - (d) supply of plain sparkling bottled water in the off-trade channel in GB.

Competitive assessment

Horizontal unilateral effects

52. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.¹¹ Horizontal unilateral effects are more likely when the merging parties are close competitors.
53. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the four frames of reference listed in paragraph 51.

¹¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

54. In assessing whether the Merger will lead to an SLC in relation to these frames of reference, the CMA considered: (i) shares of supply; (ii) closeness of competition between the Parties; and (iii) remaining competitive constraints.¹²

Supply of plain still bottled water in the on-trade channel

Shares of supply

55. The Parties submitted shares of supply for plain still water in the on-trade channel both by volume (litres) and value (GBP) for GB covering the 12-month period up to 3 November 2019.¹³ As shown in Table 1, the Parties estimated that their combined shares of supply in this market are [20-30]% (in terms of volume) and [20-30]% (in terms of value), with an increment due to Danone of [0-5]% and [0-5]%, respectively.
56. The CMA obtained volumes data from [redacted] the Parties' [redacted] competitors, namely [redacted]. Moreover, the CMA obtained alternative shares of supply and market size estimates from market reports provided by the Parties. Both data sources yielded slightly lower share of supply estimates for the Parties compared to those initially submitted by the Parties.

Table 1: shares of supply in plain still bottled water in the on-trade channel in GB (12 months up to 3 November 2019)

Firm	Volume (litres)		Value (£)	
Danone	[redacted]	[0-5]%	[redacted]	[0-5]%
Harrogate	[redacted]	[20-30]%	[redacted]	[10-20]%
Combined	[redacted]	[20-30]%	[redacted]	[20-30]%
A.G. Barr plc (Barr's) ¹⁴	[redacted]	[5-10]%	[redacted]	[10-20]%
Coca-Cola ¹⁵	[redacted]	[5-10]%	[redacted]	[5-10]%
Highland Spring ¹⁶	[redacted]	[0-5]%	[redacted]	[5-10]%
Nestlé ¹⁷	[redacted]	[10-20]%	[redacted]	[10-20]%

¹² The CMA did not find any evidence of any of the two Parties expanding in a sector beyond the identified overlaps. As such, the CMA did not consider any theory of harm related to potential competition.

¹³ The Parties' estimates were based on data from IRI market report for the off-trade segment and CGA market report for the on-trade segment, supplemented by the Parties' own volume data. The Parties submitted that the above reports are the most reliable sources of such data and are recognised sector-wide. However, the Parties highlighted certain limitations due to the methodology used by both market reports in relation to the geographic coverage of the data as well as the exclusion of certain types of businesses (eg cash and carry and discounter supermarkets/wholesalers, and airlines).

¹⁴ Barr's supplies bottled plain water in GB under the Strathmore brand.

¹⁵ Coca-Cola supplies bottled plain water in GB under the SmartWater and Abbey Well brands.

¹⁶ Highland Spring supplies bottled plain water in GB under the 'Highland Spring' and Speyside Glenlivet brands.

¹⁷ Nestlé supplies bottled plain water in GB under the Nestlé Pure Life, Buxton, San Pellegrino, Perrier and Princes Gate brands (through its majority stake in Princes Gate Spring Water Limited (**Princes Gate**)).

Other	[REDACTED]	[40-50]%	[REDACTED]	[40-50]%
Total	[REDACTED]	100%	[REDACTED]	100%

Source: Final Merger Notice (FMN), Table 3

57. The CMA notes that shares of supply based on sales value might better represent the production positioning of the Parties and their competitors (e.g., more premium products are likely to be more expensive); however, the differences between shares of supply based on volumes and sales are not significant.¹⁸
58. The CMA notes that the shares of supply of the Parties are relatively low and the Merger represents a limited increment to the Parties' existing position in the supply of plain still bottled water in GB.

Closeness of competition

59. In assessing the closeness of competition between the Parties, the CMA has considered (i) the Parties' submissions; (ii) tender data; (iii) the Parties' internal documents; and (iv) third parties' views.

- *Parties' submissions*

60. The Parties submitted that they are not each other's closest competitors for the following reasons:
- (a) Their activities are primarily focused on different distribution channels, with Danone focused on the off-trade channel and Harrogate on the on-trade channel.
 - (b) [REDACTED].
 - (c) In one of Danone's internal reports discussing the bottled water sector in the UK, Harrogate 'is not mentioned as a competitor in the plain water segments.'
 - (d) The Parties differ in marketing strategies, product offering, distribution channels and their respective market shares in the on-trade and off-trade channel.

¹⁸ The CMA also obtained revenue data from competitors; however, their data is not comparable to sales data from the IRI and CGA reports as they refer to different levels of the supply chain, ie IRI and CGA collected sales data at retail level, whereas third parties provided data at wholesale level. The CMA assessment therefore relies on volumes data.

- *Tender data*

61. As explained in paragraph 40, the Parties reach customers in the on-trade channel primarily through wholesale and distribution companies, though also through direct supply. The Parties submitted data on tenders for customers in the on-trade channel covering the last five years. This data showed that Danone had participated in [REDACTED] tenders, [REDACTED]. According to this data [REDACTED].
62. However, one third party [REDACTED]. This customer did not consider the Parties' offerings to be close alternatives. This was reflected in the outcome of the bid, [REDACTED].

- *Internal documents*

63. Danone's internal presentations on the proposed Merger show that Danone considers that the Parties have complementary portfolios, and that the Merger will give Danone access to market segments in which it is currently weak and Harrogate is strong, such as the on-trade segment.¹⁹
64. Internal documents in which Danone tracks its competitors show that Danone does not monitor Harrogate closely in the normal course of business,²⁰ [REDACTED].²¹ In one of these documents, Danone [REDACTED],²² and found that [REDACTED].
65. [REDACTED].
66. Independent industry reports submitted by the Parties indicate that the Parties' brands are positioned and therefore perceived by consumers differently. For instance, Danone's brands are perceived to hold considerably more 'brand equity' than Harrogate's.²³

- *Third party views*

67. The majority of on-trade customers who responded to the CMA's questionnaire indicated that they do not consider the Parties to be close

¹⁹ For example, [REDACTED]. The same document [REDACTED]. While Harrogate is estimated to generate [80-90]% of its revenues from on-trade customers, [REDACTED]. A separate Danone [REDACTED].

²⁰ These documents are not channel-specific. Given the limited presence of Danone in the on-trade channel, the CMA gave more weight to this evidence in relation

²¹ In its monthly reports, Danone uses IRI data to track the performance of its brands against rival brands, including Harrogate. However, in the executive summary of these documents, Danone comments only on Highland Spring, Nestlé (Nestlé Pure Life and Buxton), Coca-Cola (SmartWater), and, to a limited extent, Britvic plc (Britvic, which supplies bottled plain water in GB under the Ballygowan brand).

²² Other competitors are Buxton, Highland Spring, Icelandic Glacial, SmartWater, Arto Life Water, VOSS.

²³ A market report by Kantar assesses the 'brand equity' of several water suppliers. While Evian and Volvic are ranked first and third, Harrogate is ranked ninth, after private label water, Nestlé (including Buxton), and Highland Spring.

competitors, with some of these citing Danone's limited presence in on-trade as the main reason.²⁴ On-trade customers also cited price as one of the most important factors in choosing which brand to buy, while recognising that Evian is considerably more expensive than Harrogate Still. Several on-trade customers of Harrogate noted the importance of Harrogate being sourced in GB, with one such customer saying it would not even consider Danone as a result.

68. The Parties' competitors also indicated that the Parties were not each other's closest competitors, with two of them noting the limited presence of Evian and Volvic in the on-trade segment. Competitors noted that Evian occupies an established premium position, while Harrogate's brand positioning is more ambiguous and partly contingent on being bottled in glass. Some of the Parties' competitors further told the CMA that Evian is considerably more expensive than Harrogate and that Volvic is focused on flavoured water.

- *Conclusion on closeness of competition*

69. Overall, the CMA considers that the Parties do not compete closely in the supply of plain still water in the on-trade channel in GB.

Competitive constraints

70. The Parties submitted that they face competition from a number of larger and established competitors (e.g. Nestlé and Highland Spring) as well as from smaller suppliers of bottled plain still water in GB who have the capacity to readily increase their production and product offering (e.g., Coca-Cola).
71. According to the shares of supply estimates provided by the Parties, Coca-Cola, Barr's and Nestlé are the other main suppliers of plain still water in the on-trade channel, after Harrogate. Data collected by the CMA from third parties indicated that [redacted] and [redacted] have been significantly underrepresented by these estimates. Moreover, according to the Parties' estimates, the market appears to be fragmented, with more than two-fifths of the volumes in the market being sold by smaller suppliers.²⁵
72. As mentioned in paragraph 64, internal documents from [redacted]. Moreover, an industry report show that [redacted].

²⁴ [redacted].

²⁵ CGA data shows that other competitors selling more than one million litres plain still water on-trade in 2019 include Belu Water, Cornish, Decantae, Edrington-Beam Suntory UK, Highland Spring, Hildon, LR Suntory, Minton Spring Water Ltd, Navson Ltd, Princes Gate, Pure Blue, Radnor Hills Ltd, Shapla Paani, Shepley Spring, The One Brand, and Wenlock Water.

73. Third party feedback from both customers and competitors indicates that on-trade customers consider Nestlé, Highland Spring and Coca-Cola brands to be closer alternatives to Danone and Harrogate than Danone and Harrogate are to each other. Moreover, Harrogate customers listed a total of nine additional suppliers they consider close or very close alternatives to Harrogate, namely Barr's, Britvic, Decantae Mineral Water Ltd (**Decantae**), Hildon Limited (**Hildon**), a private label product, Radnor Hills, Wenlock Spring, Life Water, and Aqua Pura.²⁶
74. Overall, the evidence above indicates that the Parties will continue to face sufficient constraint from a number of credible suppliers after the Merger in the supply of bottled plain still water in the on-trade channel in GB.

Conclusion on plain still on-trade

75. For the reasons set out above and in relation to the supply of plain still water in the on-trade channel in GB, the CMA found that: (i) the Parties have a relatively low combined share of supply and the Merger represents a limited increment to Harrogate's existing position; (ii) the Parties are not competing closely; and (iii) the Parties will continue to face sufficient competitive constraint from a number of credible competitors after the Merger. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC in relation to the supply of plain still water in the on-trade channel in GB.

Supply of plain sparkling bottled water in the on-trade channel

Shares of supply

76. The Parties submitted shares of supply for plain sparkling water in the on-trade channel both in volume (litres) and value (GBP) for GB covering the 12-month period up to 3 November 2019.²⁷ The Parties estimated that they have a combined share of supply of [30-40]% (in terms of volume) and [10-20]% (in terms of value) in the market for plain sparkling water in the on-trade channel in GB, with an increment brought by the Merger of [0-5]% and [0-5]% respectively.
77. As explained in paragraph 56, having compared the data provided by the Parties with the data submitted from third parties and in independent market

²⁶ [REDACTED].

²⁷ See footnote 13 for the methodology used by the Parties.

reports, the CMA recognised that the Parties' estimates are, if anything, likely to overestimate their actual shares of supply.

Table 2: shares of supply in plain sparkling bottled water in the on-trade channel in GB (12 months up to 3 November 2019)

Firm	Volume (litres)		Value (£)	
Danone	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Target	[REDACTED]	[30-40]%	[REDACTED]	[10-20]%
Combined	[REDACTED]	[30-40]%	[REDACTED]	[10-20]%
Barr's	[REDACTED]	[5-10]%	[REDACTED]	[10-20]%
Highland Spring	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Nestlé	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Radnor Hills	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Other	[REDACTED]	[30-40]%	[REDACTED]	[40-50]%
Total	[REDACTED]	100%	[REDACTED]	100%

Source: FMN, Table 4

78. The CMA notes that the increment brought by the Merger in the supply of plain sparkling water in the on-trade channel in GB is very limited.

Closeness of competition

79. The Parties' submissions set out in paragraph 60 with regard to closeness of competition in the on-trade channel apply both to plain still and sparkling water in the on-trade channel.

80. As per the tender data submitted by the Parties (paragraphs 61-62), the Parties competed against each other [REDACTED] and they were not each other's closest competitors.

81. Danone's internal documents indicate that it considers its overall presence in the sparkling segment to be limited. For instance, in internal documents discussing its M&A strategy, Danone [REDACTED], and [REDACTED].

82. The feedback provided by third parties in paragraphs 67-68 applies to plain still as well as plain sparkling, because, like Evian, Badoit is considered to occupy an established premium position. Further, like both Evian and Volvic, Badoit is sourced and bottled in France, and its presence is limited in on-trade. There was no indication from third parties that Harrogate Sparkling is positioned any differently to Harrogate Still, whether in pricing or marketing.

83. Overall, the CMA considers that the Parties do not compete closely in the supply of plain sparkling water in the on-trade channel in GB.

Competitive constraints

84. The assessment of the Parties' submissions and tender data in paragraphs 60 to 62 apply to both the supply of still and sparkling plain water.
85. The shares of supply estimates provided by the Parties show that Princes Gate, Barr's, Radnor Hills, Highland Spring and Nestlé are the main suppliers of plain sparkling water in GB on-trade after Harrogate. Data collected by the CMA from third parties indicated that [REDACTED] and [REDACTED] volumes have been significantly underestimated by the Parties. Moreover, according to the Parties' estimates, the market appears to be fragmented, with more than one-third of the volumes in the market being sold by smaller suppliers.²⁸
86. In its monthly reports, Danone uses IRI data to track the performance of its brands against a range of competitors. It mentions [REDACTED].²⁹
87. Third party feedback from customers and competitors indicates that on-trade customers consider at least Nestlé brands to be closer alternatives to Danone's and Harrogate than Danone and Harrogate are to each other. Moreover, Harrogate customers listed a total of nine additional suppliers they consider close or very close alternatives to Harrogate Sparkling, namely Decantae, Coca-Cola, Highland Spring, Hildon, a private label product, Radnor Hills, Wenlock Spring, Britvic and Barr's.³⁰
88. Overall, the evidence above indicates that the Parties will continue to face sufficient constraint from a number of credible suppliers after the Merger in the supply of bottled plain sparkling water in the on-trade channel in GB.

Conclusion on plain sparkling on-trade

89. For the reasons set out above and in relation to the supply of plain sparkling water in the on-trade channel in GB, the CMA found that: (i) the Merger represents a limited increment to Harrogate's existing position; (ii) the Parties do not compete closely; and (iii) the Parties will continue to face sufficient competitive constraint from a number of credible competitors after the Merger. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC in relation to the supply of plain sparkling water in the on-trade channel in GB.

²⁸ CGA data shows that other competitors selling more than one million litres plain sparkling water on-trade in 2019 include Belu Water, Coca-Cola, Decantae, Hildon, LR Suntory, LR Suntory, and Wenlock Water.

²⁹ Danone monthly reports.

³⁰ [REDACTED].

Supply of plain still bottled water in the off-trade channel

Shares of supply

90. The Parties submitted shares of supply for plain still water in the off-trade channel both in volume (litres) and value (GBP) for GB covering the 12-month period up to 3 November 2019.³¹ The Parties estimated that they have a combined share of supply of [30-40]% (in terms of volume) and [30-40]% (in terms of value) in the market for plain still water in the off-trade channel in GB, with an increment brought by the Merger of [0-5]% both in terms of volume and value.
91. As explained in paragraph 56, having compared the data provided by the Parties with the data submitted from third parties and in independent market reports, the CMA recognised that the Parties' estimates are, if anything, likely to overestimate their actual shares of supply.

Table 3: shares of supply in plain still bottled water in the off-trade channel in GB (12 months up to 3 November 2019)

Firm	Volume (litres)		Value (£)	
Danone	[]	[30-40]%	[]	[30-40]%
Target	[]	[0-5]%	[]	[0-5]%
Combined	[]	[30-40]%	[]	[30-40]%
Nestlé	[]	[30-40]%	[]	[20-30]%
Coca-Cola	[]	[0-5]%	[]	[5-10]%
Highland Spring	[]	[10-20]%	[]	[10-20]%
Other	[]	[10-20]%	[]	[5-10]%
Total	[]	100%	[]	100%

Source: FMN, Table 1

92. The CMA notes that the Merger brings a limited increment to Danone's existing position in the supply of plain still water in the off-trade channel in GB.

Closeness of competition

93. The Parties' submissions described in paragraph 60 apply to the supply of plain still bottled water in the off-trade channel, with some exceptions (e.g., tender data analysis).³²

³¹ See footnote 13 for the methodology used by the Parties.

³² The Parties submitted that customers in the off-trade channel tend to have bilateral negotiations with suppliers of bottled water.

94. The Parties' internal documents and independent industry reports on the plain still water market are assessed in paragraphs 63-64 and 66 above. Overall, internal documents reviewed by the CMA indicate that the Parties are not close competitors in the supply of plain still water in the off-trade channel. For instance, in an internal presentation relating to the Merger, Danone notes Harrogate's 'limited presence in grocery'.
95. The majority of off-trade customers who responded to the CMA's questionnaire indicated that the Parties do not compete closely.³³ The views provided by the Parties' competitors and customers in paragraphs 67-68 are broadly applicable to both on-trade and off-trade channels. An important difference is that, on the whole, off-trade customers tend to purchase a wider range of brands compared with on-trade customers. Nevertheless, as with on-trade, Evian is priced considerably higher than Harrogate Still, which would limit substitutability between the products on the consumer side.
96. Like on-trade customers, off-trade customers recognise the importance of buying bottled water sourced from GB. They typically decide to list Evian and Volvic because these are brands that are widely recognised and valued by consumers. One customer described Evian as 'iconic', which would indicate a degree of brand loyalty.
97. Overall, the CMA considers that the Parties do not compete closely in the supply of plain still water in the off-trade channel in GB.

Competitive constraints

98. The Parties' submissions in relation to competitive constraints they face in the wider plain water market are assessed in paragraph 70 above.
99. The shares of supply estimates provided by the Parties for the plain still water off-trade market show that Nestlé and Highland Spring have significant share of supply ([30-40]% and [10-20]% respectively). Data collected by the CMA from third parties indicated that [REDACTED] volumes have been underestimated by the Parties.
100. Internal documents specific to off-trade show that there are six suppliers other than Danone which sell more in off-trade than does Harrogate, namely Nestlé, Highland Spring, Coca-Cola, Britvic, Spadel (the parent company of Brecon Carreg), and Barr's. In addition, private label products are likely to pose a considerable additional constraint on the Parties' offering. For example, an internal document from Harrogate shows that in 2018 private label bottled

³³ [REDACTED].

water products collectively sold more than twice as much as Nestlé, the largest supplier of branded bottled water in off-trade, by volume, in grocery retailers.

101. Third party feedback indicates that off-trade customers consider Nestlé and Highland Spring to be closer alternatives to Danone and Harrogate than Danone and Harrogate are to each other. Off-trade customers additionally indicated that VOSS is at least as close an alternative to either Party as the Parties are to each other.³⁴
102. Overall, the evidence above indicates that the Parties will continue to face sufficient constraint from a number of credible suppliers after the Merger in the supply of plain still water in the off-trade channel in GB.

Conclusion on plain still off-trade

103. For the reasons set out above and in relation to the supply of plain still water in the off-trade channel in GB, the CMA believes that: (i) the Merger represents a limited increment to the Danone's existing position; (ii) the Parties are not competing closely; and (iii) the Parties will continue to face sufficient competitive constraint from a number of credible competitors after the Merger. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC in relation to the supply of plain still water in the off-trade channel in GB.

Supply of plain sparkling bottled water in the off-trade channel

Shares of supply

104. The Parties submitted shares of supply for plain sparkling water in the off-trade channel both in volume (litres) and value (GBP) for GB covering the 12-month period up to 3 November 2019.³⁵ According to their estimates, the Parties have a combined share of supply of [5-10]% (in terms of volume) and [5-10]% (in terms of value), with an increment brought by the Merger of [0-5]% both in terms of volume and value.
105. As explained in paragraph 56, having compared the data provided by the Parties with data submitted by third parties and data in independent market reports, the CMA recognised that the Parties' estimates are, if anything, likely to overestimate their actual shares of supply.

³⁴ [REDACTED].

³⁵ See footnote 13 for the methodology used by the Parties.

Table 4: shares of supply in plain sparkling bottled water in the off-trade channel in GB (12 months up to 3 November 2019)

Firm	Volume (litres)		Value (£)	
Danone	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%
Target	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Combined	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Nestlé	[REDACTED]	[50-60]%	[REDACTED]	[60-70]%
Highland Spring	[REDACTED]	[30-40]%	[REDACTED]	[20-30]%
Other	[REDACTED]	[10-20]%	[REDACTED]	[5-10]%
Total	[REDACTED]	100%	[REDACTED]	100%

Source: FMN, table 2

106. The CMA notes that the Merger represents a limited increment to Danone’s existing position in the supply of plain sparkling water in the off-trade channel in GB and that the Parties’ combined share of supply is very small.

Closeness of competition

107. With the exception of the Parties’ submissions about their tender data,³⁶ the Parties’ submissions described in paragraph 60 also apply to the off-trade channel.

108. Paragraph 81 above describes the Parties’ internal documents on the plain sparkling water segment and paragraph 100 presents evidence from an internal document on the off-trade channel. Overall, internal documents indicate that the Parties are not close competitors in the supply of plain sparkling water in the off-trade channel.

109. The feedback provided by third parties in paragraphs 95-9696 is broadly applicable to off-trade sparkling. Comments relating specifically to Badoit or Harrogate Sparkling were rare, which may be explained by their limited presence in the off-trade channel. To the extent that third parties referenced these, not one indicated Badoit competes closely with Harrogate Sparkling.

110. Overall, the CMA considers that the Parties do not compete closely in the supply of plain sparkling water in the off-trade channel in GB.

³⁶ The Parties submitted that customers in the off-trade channel tend to have commercial negotiations with suppliers of bottled water and tenders occur only rarely.

Competitive constraints

111. The Parties' submissions in relation to the competitive constraints they face in the wider plain water market are assessed in paragraph 70.
112. The shares of supply estimates provided by the Parties for the plain sparkling water off-trade segment show that Nestlé and Highland Spring have significant shares of supply ([50-60]% and [30-40]%, respectively). Data collected by the CMA from third parties indicated that [REDACTED] volumes have been underestimated by the Parties. In addition, private label products may pose some additional constraint on the Parties' offering.
113. Third party feedback indicates that off-trade customers consider at least five suppliers, including Nestlé and Highland Spring, to be closer alternatives to Danone and Harrogate than Danone and Harrogate are to each other.³⁷
114. Overall, the evidence above indicates that the Parties will continue to face sufficient constraint from a number of credible suppliers after the Merger in the supply of plain sparkling water in the off-trade channel in GB.

Conclusion on plain sparkling off-trade

115. For the reasons set out above and in relation to the supply of plain sparkling water in the off-trade channel in GB, the CMA believes that: (i) the Merger represents a limited increment to the Danone's existing position; (ii) the Parties are not competing closely; and (iii) the Parties will continue to face sufficient competitive constraint from a number of credible competitors after the Merger. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC in relation to the supply of plain sparkling water in the off-trade channel in GB.

Conglomerate effects

116. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).³⁸ The CMA's approach involves analysing the ability, incentive and the effect of such a strategy.³⁹

³⁷ [REDACTED].

³⁸ [Merger Assessment Guidelines](#), paragraph 5.6.2.

³⁹ [Merger Assessment Guidelines](#), paragraph 5.6.13.

117. In the present case, the CMA has considered, in particular, whether, after the Merger, Danone will have the ability to foreclose its rivals by tying or bundling Harrogate's products (still and sparkling) with Danone's bottled water products, namely Evian, Volvic (plain and flavoured) and Badoit, in the on-trade channel.⁴⁰ As Danone's position in the off-trade channel will not materially change, the CMA does not consider that its ability to adopt a foreclosure strategy in the off-trade segment is materially altered by the Merger.
118. One on-trade customer expressed concern that Danone would be able to tie Harrogate's plain bottled water range with Danone's bottled water range in the on-trade channel into discounted packages, thereby foreclosing competitors who cannot offer an equivalent range at a comparable price.
119. The CMA found that, while Harrogate is a popular bottled water brand in on-trade, customers listed a large number of credible and popular alternative suppliers to Harrogate (see paragraphs 73 and 87). No on-trade customer indicated that buying Danone brands in combination with Harrogate was essential to meeting their customers' demands.
120. Moreover, a large majority of the wholesale distributors who responded to the CMA's questionnaire said that they source bottled water from multiple suppliers, and foodservice customers who source directly from the Parties said they typically buy one or two brands. Therefore, demand for a bundle incorporating Danone's enhanced portfolio in the on-trade channel would be limited and customer preference for one-stop shopping is not such as to give the Parties the ability to foreclose competition.
121. To the extent there is any preference by some customers to source more than one type of bottled water from a single supplier, Nestlé also offers multiple brands of plain still water, plain sparkling water and flavoured water. Highland Spring and Coca-Cola, through their various brands, also sell a portfolio which includes brands of plain still, plain sparkling and flavoured water.
122. Accordingly, the CMA found that the merged entity would not have the ability to foreclose rivals after the Merger by leveraging its market position in certain bottled water products. As the CMA concluded that the Merger will not provide Danone with the ability to foreclose its rivals, the CMA has not assessed the impact of the Merger on its incentive to foreclose or the effect of a foreclosure strategy on competition.

⁴⁰ [Merger Assessment Guidelines](#), paragraph 5.6.6.

123. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects.

Barriers to entry and expansion

124. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁴¹

125. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Decision

126. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

127. The Merger will therefore **not be referred** under section 33(1) of the Act.

Maria Duarte
Director, Mergers
Competition and Markets Authority
9 June 2020

⁴¹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.