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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Carlsberg UK Holdings Limited
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United Kingdom

Subject: **Case M.11675 – CARLSBERG / BRITVIC**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 11 November 2024, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Carlsberg A/S ('Carlsberg', Denmark) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Britvic PLC ('Britvic', United Kingdom)[3] (together, the 'Parties').

1. THE PARTIES

(2) Carlsberg, headquartered in Denmark, is primarily active in brewing and in the wholesale supply of beer and cider. Carlsberg is also a bottler[4] of certain PepsiCo

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.
2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').
3 OJ C, C/2024/6994, 19.11.2024.
4 Bottlers are companies licensed by beverage brands to manufacture, package and distribute products of those brands within a specific geographic region.

soft drink brands in Norway, Sweden and Switzerland and a bottler of certain Coca-Cola soft drink brands in Denmark and Finland.

(3) Britvic, headquartered in the UK, is a manufacturer and supplier of soft drinks. The majority of Britvic's revenues are earned in the UK. In the Republic of Ireland, Britvic manufactures and supplies carbonated soft drinks (including Britvic-owned brands such as Club, TK lemonade and Cidona, and PepsiCo brands, for which Britvic is the exclusive bottler, such as Pepsi, PepsiMax and 7UP), sports drinks (such as Energise Sport), dilutables (such as MiWadi) and packaged waters (Ballygowan mineral water).

2. THE OPERATION

(4) Carlsberg will acquire the entire issued and to be issued share capital of Britvic via a scheme of arrangement under Part 26 of the UK Companies Act 2006 (the 'Transaction'). The Transaction, which was publicly announced on 8 July 2024, involves a recommended cash offer by Carlsberg for Britvic, pursuant to which Britvic shareholders shall be entitled to receive 1,315 British pence for each Britvic share (comprising 1,290 British pence in cash for each Britvic share, plus a special dividend of 25 British pence per Britvic share expected to be paid by Britvic prior to completion). The Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Carlsberg: EUR 9 876 million in 2023; Britvic: EUR 2 010 million in 2023). Each of them has an EU-wide turnover in excess of EUR 250 million (Carlsberg: EUR […] in 2023; Britvic: EUR […] in 2023). Furthermore, the Parties do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

4. MARKET DEFINITION

(6) The Parties' activities give rise to horizontal and vertical relationships in the production and distribution of non-alcoholic beverages, as well as conglomerate relationships in the production of beverages.

4.1. Production and supply of non-alcoholic beverages

4.1.1. Product market definition

(7) The Commission has previously found that the market for the production and supply of non-alcoholic beverages was further segmented into the production and supply of carbonated soft drinks and non-carbonated soft drinks, which were found to constitute two separate product markets.

(8) Within non-carbonated soft drinks, the Commission has considered that water and ready-to-drink teas belong to separate product markets. The Commission has considered further potential segmentations within non-carbonated soft drinks (namely fruit juices, energy and sport drinks), but has ultimately left this question

open.[5] In particular, the Commission left open the question of whether dilutables (e.g. squashes and syrups) compete with other soft drinks.[6]

(9) In the present case, the Commission considers that the exact product market definition can be left open. If dilutables were part of the wider market of soft drink (either carbonated or not, depending on the beverage mixed with the dilutable), no affected markets would arise in relation to these products. If dilutables were part of a separate market, that market would be vertically affected but – for the reasons explained in the following sections – the Transaction would not raise competition concerns.

4.1.2. Geographic market definition

(10) The Commission has previously assessed the markets for the production and supply of non-alcoholic beverages under a conservative approach based on national markets, while noting that the market investigation indicated competitive pressure from neighbouring countries and sometimes pointed to a wider than national scope of the market.[7]

(11) In line with this approach, the Commission considers that the exact geographic market definition can be left open as the Transaction would not give rise to competition concerns under any plausible market definitions and will assess the Transaction under a conservative approach based on national markets.

4.2. Wholesale distribution of beverages

4.2.1. Product market definition

(12) In the past, the Commission has identified a separate product market for the wholesale distribution of both alcoholic and non-alcoholic beverages, which is downstream from production. Moreover, the Commission has considered, but ultimately left open, a potential distinction of the market for the wholesale distribution of beverages depending on whether beverages are sold to retail outlets ('off trade' channel) or to points of sale for direct consumption, e.g. restaurants or hotels ('on trade' channel).[8]

(13) In the present case, the Commission considers that the exact product market definition can be left open, as the Transaction would not give rise to competition concerns under any plausible market definitions.

4.2.2. Geographic market definition

(14) The Commission has previously considered the market for the wholesale distribution of beverages to be national in scope.[9] The market investigation in the present case confirmed that distributors are generally able to sell beverages across

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5 Commission decision on 24 January 2022 in Case M.10435 *Refresco Group / Hansa-Heemann*, paras. 11 and 12.

6 Commission decision on 30 November 2018 in Case M.9108 *Pepsico / Sodastream International*, para. 15.

7 M.10435 *Refresco Group*, *supra*, paras. 24 to 26.

8 Commission decision on 30 March 2021 in Case M.10061 *Coca-Cola Hellenic Bottling Company / Heineken / Stockday*, para. 11.

9 Case M.10061 *Coca-Cola Hellenic Bottling Company*, *supra*, paras. 16 to 18.

the entire French territory (which is affected by the Transaction).[10] The Commission will therefore assess the Transaction based on a national scope of the market.

5. HORIZONTAL EFFECTS

(15) The Transaction gives rise to horizontal overlaps in the production and supply of non-alcoholic beverages in a few Member States (namely Denmark, Estonia, Greece, Latvia and Lithuania). Irrespective of the product market definition, Britvic's activities in these countries are negligible, with market shares of around [0-5]%. Carlsberg also does not hold any strong market position in those markets (with market shares not exceeding [20-30]% in Sweden, [20-30]% in Denmark and [5-10]% in the remaining countries) and largely acts as a bottler for third-party brands (e.g. Coca-Cola and PepsiCo).

(16) These limited overlaps therefore do not give rise to any affected markets within the meaning of recital 25(g) Annex I to Regulation (EU) 2023/91.[11]

6. VERTICAL EFFECTS

(17) The Transaction also gives rise to one vertically affected market in France, where Britvic is active in the production of dilutables (upstream) and Carlsberg is active in the wholesale supply of beverages (downstream).

(18) Britvic produces dilutables in France under the brands Teisseire, Mathieu Teisseire and Moulin De Valdonne. Carlsberg is active in France as a wholesaler of beverages via its subsidiary Tafanel.

6.1. Legal framework

(19) According to the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the 'non-horizontal guidelines'), a vertical merger may significantly impede competition through input foreclosure or customer foreclosure.[12]

(20) Input foreclosure occurs where the merger is likely to increase the costs of downstream competitors by restricting their access to an important input.[13] Conversely, customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[14]

(21) In both cases, the Commission examines whether the merged entity will have (i) the capacity[15] and (ii) the incentive[16] to foreclose the input market and/or

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10 Questionnaire to distributors, question C.3.

11 Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023 (the 'Implementing Regulation'), p. 22.

12 Non-horizontal guidelines, paragraph 30.

13 Non-horizontal guidelines, paragraph 31.

14 Non-horizontal guidelines, paragraph 58.

15 Non-horizontal guidelines, paragraphs 33-39 and 60-67.

16 Non-horizontal guidelines, paragraphs 40-46 and 68-71.

customer access and (iii) the impact of such a strategy on the market.[17] These conditions must be met cumulatively in order for a vertical merger to be able to significantly restrict competition.

6.2. Competitive assessment

6.2.1. Market shares

(22) Table 1 and Table 2 below show the Parties' market shares with regards to this vertical relationship, under all plausible market definitions.

Table 1 – Britvic's market shares for the production and supply of dilutables in France (upstream) (2023, volume and value)

Upstream market (Britvic)		
Product market definition	**Geographic market definition**	**Market share**
Production and supply of non-carbonated soft drinks	National	[5-10]% by value [0-5]% by volume
Production and supply of dilutables	National	[50-60]% by value for supply to both the on-trade and off-trade [30-40]% by volume for supply to both the on-trade and the off-trade [0-5]% by volume for supply to the on-trade only

Source: Form CO, Table 6.

Table 2 – Carlsberg's market shares for the wholesale distribution of beverages in France (downstream) (2023, volume and value)

Downstream market (Carlsberg)		
Product market definition	**Geographic market definition**	**Market share / Share of purchase**
Wholesale distribution of beverages	National	*Market share*: less than 30%[18] *Share of purchase of dilutables*: [0-5]% in value and [0-5]% in volume

Source: Form CO, Table 6.

6.2.2. Input foreclosure

(23) The market share information submitted by the Notifying Party as well as the results of the market investigation confirm that the Parties would not have the

[17] Non-horizontal guidelines, paragraphs 47-57 and 72-77.

[18] The Notifying Party was not able to precisely quantify Tafanel's market shares, but expects it to be below 30%. A majority of respondents to the market investigation indicated that there are at least three other players competing against Tafanel and having a comparable or even stronger market position, which confirms that Tafanel's share does not exceed 30% (see Questionnaire to distributors, question D.2).

ability, post-Transaction, to foreclose Carlsberg's rivals by restricting their access to Britvic's dilutables in France.

(24) *In the first place*, while Britvic's market shares with regards to the production of dilutables are high (around [50-60]% by value and [30-40]% by volume), Britvic does not appear to have any must-have brands among its dilutables portfolio in France. Indeed, a majority of market participants explained that, within their drinks portfolios, Britvic's brands are not very important.[19] Furthermore, well-established rivals of Britvic would remain active in France. For example, Routin and Slaur estimated their market shares for dilutables at around 20% each.[20] Therefore, rivals of Carlsberg would have alternatives to turn to, should they no longer be able to purchase dilutables from Britvic.

(25) *In the second place*, Tafanel's downstream market power as a distributor is not high enough for Carlsberg to have the ability to foreclose Tafanel's rivals from access to Britvic's dilutables. Indeed, as shown in Table 2, Tafanel's market share downstream with regards to the wholesale distribution of beverages is below 30%, which is below the level at which the Commission is likely to find concerns in non-horizontal mergers.[21] Furthermore, Tafanel's share of purchase of dilutables is very low, below [0-5]%.[22] Therefore, given that it is not a large enough player to absorb Britvic's production of dilutables, Carlsberg would not have the ability to foreclose its rivals from purchasing Britvic's dilutables.

(26) Moreover, the merged entity would not have an incentive to pursue an input foreclosure strategy, because this is unlikely to prove profitable. This is because the hypothetical input foreclosure strategy would mostly affect Britvic's off-trade customers, who account for [a large proportion] of Britvic's sales of dilutables. The market shares lost by these customers are unlikely to divert to Tafanel, which is predominantly active (for [a large proportion] of its sales) in the on-trade segment. The lack of incentive is further supported by the fact that a large majority of responding customers expect Britvic's supply of dilutables to remain largely unchanged following the Transaction.[23]

(27) Finally, even if the merged entity did pursue an input foreclosure strategy, this would be unlikely to have an impact on effective competition. Indeed, a large majority of responding customers indicated that, even if Britvic were to reduce or discontinue supply of its dilutables, that would not significantly (or not at all) affect their competitiveness in the downstream market. In particular, those customers indicated that they would be able to replace Britvic with other competing suppliers or that the exclusion of Britvic's products from their portfolio would not significantly affect their ability to compete in the market.[24]

6.2.3. Customer foreclosure

(28) The market share information submitted by the Notifying Party as well as the results of the market investigation confirm that the Parties would not have the

19 Questionnaire to distributors, question D.1.
20 Questionnaire to suppliers, question D.1.
21 Non-horizontal guidelines, paragraph 25.
22 Form CO, Table 6.
23 Questionnaire to distributors, question D.3.
24 Questionnaire to distributors, question D.4.

ability, post-Transaction, to foreclose Britvic's rivals by preventing them from selling to downstream beverage wholesalers.

(29) Indeed, the low market shares of Tafanel downstream (less than 30%), its minimal purchasing share of dilutables (less than [0-5]%) and its limited geographic presence (mostly limited to the Paris area), show that competitors of Britvic would have access to sufficient wholesalers downstream for their supply of dilutables. In the course of the Commission's investigation, Britvic's competitors generally indicated that they either do not know or currently do not work with Tafanel, or that they would be able to replace Tafanel with other customers if necessary. This further highlights Tafanel's limited importance as a wholesaler to Britvic's main competitors.[25]

(30) Given that the merged entity will not be able to engage in a customer foreclosure strategy, it is not necessary to assess its incentives to engage in that strategy or the impact of that strategy.

7. CONGLOMERATE EFFECTS

(31) Conglomerate effects arise from combinations involving suppliers of products which belong to a range of products that is generally purchased by the same set of customers for the same end use. The main concern in the context of conglomerate mergers is that of foreclosure. The combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices.[26]

(32) Carlsberg and Britvic both supply a broad range of different beverages belonging to different product markets, which are typically purchased by the same set of customers (e.g. distributors, retailers or horeca customers) for the same end use (i.e. sale to final consumers for on-trade or off-trade consumption). However, the Commission considers that the merged entity will not be able to leverage its position to engage in exclusionary practices in these related markets.

(33) *First*, in France, with the exception of Britvic's supply of dilutables, the Parties' combined market shares do not exceed 30% on any of the markets concerned and are therefore unlikely to give rise to conglomerate concerns.[27] With respect to Britvic's supply of dilutables, a large majority of responding customers have indicated that Britvic's products are only moderately important for them, or even not important at all.[28] Moreover, as explained above, customers will continue to have access to well-established alternative suppliers of dilutables in France, such as Routin and Slaur. The merged entity will therefore be unable to leverage its supply of dilutables in France to foreclose competitors in related markets.

(34) *Second*, in Ireland, Carlsberg is not directly active in the supply of beverages but acts through an independent beer bottler. This means that no tying or bundling of Carlsberg's beer and Britvic's non-alcoholic beverages will be possible in Ireland,

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25 Minutes of a call held with a market participant on 24 October 2024, paragraph 14; questionnaire to suppliers, question D.4.

26 Non-horizontal guidelines, paragraphs 91 and 93.

27 Non-horizontal guidelines, paragraph 25.

28 Questionnaire to distributors, question D.1.

because these products will continue to be sold by different undertakings post-Transaction. In any case, the market shares of these companies are not high enough to support a foreclosure strategy against competitors (Carlsberg's independent beer bottler: [5-10]% in value and volume; Britvic: no more than [5-10]% in value and [20-30]% in volume, depending on the product segment).[29]

(35) *Third*, in all other EEA countries, Britvic has negligible market shares of c. [0-5]% or less. The very limited increment brought about by the Transaction will not have a material impact on Carlsberg ability or incentive to engage in foreclosure strategies.

8. CONCLUSION

(36) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Teresa RIBERA
Executive Vice-President

[29] Non-horizontal guidelines, paragraph 25.