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97/540/EC:

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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1605/97
of 8 August 1997
on the supply of milk products as food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security⁽¹⁾, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated milk powder to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽²⁾, as amended by Regulation (EEC) No 790/91⁽³⁾; whereas it is necessary to specify the time limits and conditions of

supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Milk products shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 1997.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

⁽¹⁾ OJ No L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** ⁽¹⁾: 387/96
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma (tel.: (39-6) 52 28 29 88; fax: 52 28 28 44/3; telex: 62 66 75 WFP I)
4. **Representative of the recipient**: WFP, B.P. 1150 Kigali, Rwanda. Tel.: (250) 876 11/12/13/14; fax: 87621
5. **Place or country of destination**: Rwanda
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁴⁾: see OJ No C 114, 29. 4. 1991, p. 1 (I.B(1))
8. **Total quantity (tonnes)**: 378
9. **Number of lots**: 1
10. **Packaging and marking** ⁽⁵⁾ ⁽⁷⁾: see OJ No C 267, 13. 9. 1996, p. 1 (6.3 A and B.2)
see OJ No C 114, 29. 4. 1991, p. 1 (I.B(3))
Language to be used for the marking: French
Supplementary markings: 'Date d'expiration: ...'
11. **Method of mobilization**: The manufacture of the skimmed-milk powder, and the incorporation of vitamins, must be carried out after the award of the tender
12. **Stage of supply**: free at destination
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: Entrepôt WFP/PAM à Kigali: Oprovia-Kicukiro
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 15 — 28. 9. 1997
18. **Deadline for the supply**: 23. 11. 1997
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**:
(12 noon (Brussels time)) 25. 8. 1997
21. **In the case of a second invitation to tender**:
 - a) deadline for the submission of tenders: 8. 9. 1997 (12 noon (Brussels time))
 - b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 29. 9 — 12. 10. 1997
 - c) deadline for the supply: 7. 12. 1997
22. **Amount of tendering security**: ECU 20 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾:
Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard,
Bâtiment Loi 130, bureau 7/46
Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: refund applicable on 5. 8. 1997, fixed by Commission Regulation (EC) No 1539/97 (OJ No L 206, 1. 8. 1997, p. 29)

Notes:

- (1) The operation number should be mentioned in all correspondence.
 - (2) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
 - (3) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
 - (4) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.

The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ No L 188, 27. 7. 1996, p. 22), shall not apply to this amount.
 - (5) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following documents:
 - health certificate.
 - (6) Notwithstanding OJ No C 114, point I.B.3 (c) is replaced by the following: 'the words "European Community"'.
 - (7) Placed in 20-foot containers. The free holding period for containers must be at least 15 days.
-

COMMISSION REGULATION (EC) No 1606/97

of 8 August 1997

on the issuing of export licences for products processed from fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1429/95 of 23 June 1995 on implementing rules for export refunds on products processed from fruit and vegetables other than those granted for added sugars⁽¹⁾, as last amended by Regulation (EC) No 1007/97⁽²⁾, and in particular Article 4 (1) thereof,

Whereas Commission Regulation (EC) No 1121/97⁽³⁾ specifies the quantities which may be covered by applications submitted for export licences with advance fixing of the refund other than those applied for in connection with food aid;

Whereas Article 4 of Regulation (EC) No 1429/95 lays down the conditions under which special measures may be taken by the Commission to prevent an overrun in the quantities for which export licence applications may be submitted;

Whereas, in view of the information available to the Commission as of today, the quantity of 354 tonnes of orange juice with a sugar content of not less than 55° Brix in the Annex to Regulation (EC) No 1121/97, reduced or increased by the quantities referred to in Article 4 (1) of Regulation (EC) No 1429/95, would be

exceeded if licences were issued with advanced fixing of refunds without restriction in response to applications submitted since 6 August 1997; whereas a reducing factor should accordingly be applied to the quantities applied for on 6 August 1997, and applications for export licences with advance fixing of refunds submitted subsequently with a view to such licences being issued during the current period should be rejected,

HAS ADOPTED THIS REGULATION:

Article 1

Export licences with advance fixing of the refund for orange juice with a sugar content of not less than 55° Brix for which applications have been submitted on 6 August 1997 pursuant to Article 1 of Regulation (EC) No 1121/97 shall be issued for 57,9 % of the quantities applied for.

Applications for export licences with advance fixing of refunds for the above product submitted after 6 August 1997 and before 24 October 1997 shall be rejected.

Article 2

This Regulation shall enter into force on 9 August 1997.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 1997.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

⁽¹⁾ OJ No L 141, 24. 6. 1995, p. 28.

⁽²⁾ OJ No L 145, 5. 6. 1997, p. 16.

⁽³⁾ OJ No L 163, 20. 6. 1997, p. 16.

COMMISSION REGULATION (EC) No 1607/97
of 8 August 1997
on the issue of import licences for high-quality fresh, chilled or frozen beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat⁽¹⁾,

Whereas Commission Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2 (f);

Whereas Article 2 (f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 1997 to 30 June 1998 at 11 500 tonnes;

Whereas it should be recalled that licences issued pursuant to this Regulation will, throughout the period of

validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 until 5 August 1997 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2 (f) of Regulation (EC) No 936/97 shall be granted in full.

2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of September 1997 for 1 107 tonnes.

Article 2

This Regulation shall enter into force on 11 August 1997.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 1997.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

⁽¹⁾ OJ No L 137, 28. 5. 1997, p. 10.

COMMISSION REGULATION (EC) No 1608/97

of 8 August 1997

establishing the standard import values for determining the entry price of
certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 2375/96 ⁽²⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EC) No 150/95 ⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 August 1997.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 1997.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 8 August 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0709 90 79	052	77,9
	999	77,9
0805 30 30	388	63,7
	524	69,6
	528	53,4
	999	62,2
0806 10 40	052	125,8
	400	228,6
	512	118,0
	600	161,8
	624	178,8
	999	162,6
0808 10 92, 0808 10 94, 0808 10 98	388	76,0
	400	66,7
	508	82,3
	512	39,0
	524	83,1
	528	51,6
	804	69,6
	999	66,9
0808 20 57	388	49,7
	512	9,5
	528	57,1
	999	38,8
0809 20 69	052	275,8
	400	260,9
	616	263,9
	999	266,9
0809 30 41, 0809 30 49	052	74,1
	999	74,1
0809 40 30	064	71,7
	066	72,8
	999	72,3

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1609/97
of 8 August 1997
fixing the agricultural conversion rates

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽¹⁾, as last amended by Regulation (EC) No 150/95⁽²⁾, and in particular Article 3 (1) thereof,

Whereas the agricultural conversion rates were fixed by Commission Regulation (EC) No 1535/97⁽³⁾;

Whereas Article 4 of Regulation (EEC) No 3813/92 provides that, subject to confirmation periods being triggered, the agricultural conversion rate for a currency is to be adjusted where the monetary gap between it and the representative market rate exceeds certain levels;

Whereas the representative market rates are determined on the basis of basic reference periods or, where applicable, confirmation periods, established in accordance with Article 2 of Commission Regulation (EEC) No 1068/93 of 30 April 1993 on detailed rules for determining and applying the agricultural conversion rates⁽⁴⁾, as last amended by Regulation (EC) No 1482/96⁽⁵⁾; whereas paragraph 2 of that Article provides that, in cases where the absolute value of the difference between the monetary gaps in two Member States, calculated from the average of the ecu rates for three consecutive quotation days, exceeds six points, the representative market rates are to be adjusted on the basis of the three quotation days in question;

Whereas, as a consequence of the exchange rates recorded from 1 August to 10 August 1997, it is necessary to fix a new agricultural conversion rate for the Portuguese escudo and the Spanish peseta;

Whereas Article 15 (2) of Regulation (EEC) No 1068/93 provides that an agricultural conversion rate fixed in advance is to be adjusted if the gap between that rate and the agricultural conversion rate in force at the time of the operative event applicable for the amount concerned exceeds four points; whereas, in that event, the agricultural conversion rate fixed in advance is brought more closely into line with the rate in force, up to the level of a gap of four points with that rate; whereas the rate which replaces the agricultural conversion rate fixed in advance should be specified,

HAS ADOPTED THIS REGULATION:

Article 1

The agricultural conversion rates are fixed in Annex I hereto.

Article 2

In the case referred to in Article 15 (3) of Regulation (EEC) No 1068/93, the agricultural conversion rate fixed in advance shall be replaced by the ecu rate for the currency concerned, shown in Annex II:

- Table A, where the latter rate is higher than the rate fixed in advance,
- Table B, where the latter rate is lower than the rate fixed in advance.

Article 3

Regulation (EC) No 1535/97 is hereby repealed.

Article 4

This Regulation shall enter into force on 11 August 1997.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 1997.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

⁽¹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽²⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽³⁾ OJ No L 206, 1. 8. 1997, p. 19.

⁽⁴⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁵⁾ OJ No L 188, 27. 7. 1996, p. 22.

ANNEX I

Agricultural conversion rates

ECU 1 =	40,9321	Belgian and Luxembourg francs
	7,54917	Danish kroner
	1,98243	German marks
	312,011	Greek drachmas
	200,321	Portuguese escudos
	6,68769	French francs
	6,02811	Finnish marks
	2,23273	Dutch guilders
	0,759189	Irish punt
	1 973,93	Italian lire
	13,9485	Austrian schillings
	167,153	Spanish pesetas
	8,88562	Swedish kroner
	0,720829	Pound sterling

ANNEX II

Agricultural conversion rates fixed in advance and adjusted

Table A			Table B		
ECU 1 =	39,3578	Belgian and Luxembourg francs	ECU 1 =	42,6376	Belgian and Luxembourg francs
	7,25882	Danish kroner		7,86372	Danish kroner
	1,90618	German marks		2,06503	German marks
	300,011	Greek drachmas		325,011	Greek drachmas
	192,616	Portuguese escudos		208,668	Portuguese escudos
	6,43047	French francs		6,96634	French francs
	5,79626	Finnish marks		6,27928	Finnish marks
	2,14686	Dutch guilders		2,32576	Dutch guilders
	0,729989	Irish punt		0,790822	Irish punt
	1 898,01	Italian lire		2 056,18	Italian lire
	13,4120	Austrian schillings		14,5297	Austrian schillings
	160,724	Spanish pesetas		174,118	Spanish pesetas
	8,54387	Swedish kroner		9,25585	Swedish kroner
	0,693105	Pound sterling		0,750864	Pound sterling

COMMISSION REGULATION (EC) No 1610/97
of 8 August 1997
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector⁽³⁾, as amended by Regulation (EC) No 641/97⁽⁴⁾, and in particular Article 2 (1) thereof,

Whereas the import duties in the cereals sector are fixed by Commission Regulation (EC) No 1529/97⁽⁵⁾, as last amended by Regulation (EC) No 1603/97⁽⁶⁾;

Whereas Article 2 (1) of Regulation (EC) No 1249/96 provides that if during the period of application, the

average import duty calculated differs by ECU 5 per tonne from the duty fixed, a corresponding adjustment is to be made; whereas such a difference has arisen; whereas it is therefore necessary to adjust the import duties fixed in Regulation (EC) No 1529/97,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to amended Regulation (EC) No 1529/97 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 9 August 1997.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 1997.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.
⁽²⁾ OJ No L 126, 24. 5. 1996, p. 37.
⁽³⁾ OJ No L 161, 29. 6. 1996, p. 125.
⁽⁴⁾ OJ No L 98, 15. 4. 1997, p. 2.
⁽⁵⁾ OJ No L 206, 1. 8. 1997, p. 6.
⁽⁶⁾ OJ No L 216, 8. 8. 1997, p. 73.

ANNEX I

Import duties for the products listed in Article 10 (2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by air or by sea from other ports ⁽²⁾ (ECU/tonne)
1001 10 00	Durum wheat ⁽¹⁾	0,00	0,00
1001 90 91	Common wheat seed	17,84	7,84
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	17,84	7,84
	medium quality	40,71	30,71
	low quality	53,91	43,91
1002 00 00	Rye	72,39	62,39
1003 00 10	Barley, seed	72,39	62,39
1003 00 90	Barley, other ⁽³⁾	72,39	62,39
1005 10 90	Maize seed other than hybrid	86,80	76,80
1005 90 00	Maize other than seed ⁽³⁾	86,80	76,80
1007 00 90	Grain sorghum other than hybrids for sowing	84,33	74,33

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2 (4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

- ECU 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
- ECU 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of ECU 14 or 8 per tonne, where the conditions laid down in Article 2 (5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 31 July 1997 to 7 August 1997)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	134,69	127,20	123,10	96,74	200,03 (¹)	99,00 (¹)
Gulf premium (ECU/tonne)	—	13,42	4,54	9,95	—	—
Great Lakes premium (ECU/tonne)	19,36	—	—	—	—	—

(¹) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 13,40 per tonne; Great Lakes — Rotterdam: ECU 22,85 per tonne.

3. Subsidy within the meaning of the third paragraph of Article 4 (2) of Regulation (EC) No 1249/96: ECU 0,00 per tonne (HRW2)
: ECU 0,00 per tonne (SRW2).

COMMISSION REGULATION (EC) No 1611/97

of 8 August 1997

correcting Regulation (EC) No 1587/97 fixing the maximum export refund for white sugar for the 50th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1464/96

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1587/97 ⁽³⁾ fixes the maximum export refund in question;

Whereas a check has shown that the published version of the Regulation does not tally with the measures presented for an opinion to the Management Committee; whereas the Regulation in question should accordingly be corrected in its entirety,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1587/97 is hereby replaced by the Regulation set out in the Annex hereto.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply from 7 August 1997.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 August 1997.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 215, 7. 8. 1997, p. 17.

ANNEX

'COMMISSION REGULATION (EC) No 1587/97**of 6 August 1997****fixing the maximum export refund for white sugar for the first partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1408/97 of 22 July 1997 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1408/97 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the first partial invitation to

tender, the provisions set out in Article 1 should be adopted;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the first partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1408/97 the maximum amount of the export refund is fixed at ECU 39,437 per 100 kilograms.

Article 2

This Regulation shall enter into force on 7 August 1997.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 August 1997.

For the Commission

Monika WULF-MATHIES

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 194, 23. 7. 1997, p. 16.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 January 1997

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case No IV/M.794 — Coca-Cola/Amalgamated Beverages GB)

(Only the English text is authentic)

(Text with EEA relevance)

(97/540/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾, as amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 8 (2) thereof,

Having regard to the Commission Decision of 13 September 1996 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the Opinion of the Advisory Committee on Concentrations⁽²⁾,

Whereas:

- (1) On 9 August 1996, the Commission received notification of an operation by which Coca-Cola Enter-

prises Inc. (CCE) would acquire the entire issued share capital of Amalgamated Beverages Great Britain (ABGB), the parent company of the British bottling company, Coca-Cola & Schweppes Beverages Limited (CCSB).

- (2) After examination of the notification, the Commission decided on 13 September 1996 that the notified operation fell within the scope of Regulation (EEC) No 4064/89 (the Merger Regulation) and raised serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

A. CCE

- (3) CCE is the world's largest bottler of the products of The Coca-Cola Company (TCCC). CCE was created in 1986 when TCCC began consolidating its US bottling operations and offered 51 % of CCE's shares to the public. In the early 1990s, CCE merged with the Johnston bottling group, the largest independent Coca-Cola bottler in the United States. CCE operates primarily in the

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1; corrected version OJ No L 257, 21. 9. 1990, p. 13.

⁽²⁾ OJ No C 243, 9. 8. 1997.

United States, where, in addition to bottling TCCC's products (56 % of TCCC's US sales in 1995), it also bottles Dr Pepper, a Cadbury Schweppes product, and distributes several other national brands.

- (4) CCE began operating in the EEA in 1993 when it acquired TCCC's bottling and distribution operations in the Netherlands. In 1996 it acquired TCCC's bottling and distribution operations in Belgium and France. CCE is virtually the sole bottler of TCCC products in these countries.

Relationship between CCE and TCCC

- (5) TCCC is the largest single shareholder in CCE with some 45 % of its shares. However, there are no formal rights attached to this shareholding, in particular with regard to the composition and voting on the Board. Nevertheless, there are a number of factors which, when assessed cumulatively, lead to the conclusion that TCCC does have the possibility of exercising decisive influence over CCE on a *de facto* basis within the meaning of Article 3 (3) of the Merger Regulation.
- (6) Essentially, TCCC's 45 % shareholding must be regarded as a strategic investment conferring upon it considerable influence over the commercial activities of CCE, given in particular the fact that no other single shareholder holds more than 8 %. An 8 % shareholding is held by the Chief Executive Officer, Mr Johnston, and his family, 9 % of the shares are held by executives and employees of CCE, 28 % by institutional investors, no one of whom individually holds more than just over 5 %, with the remaining 10 % held by the public. No other shareholder has anywhere near the same weight as TCCC in terms of voting rights.
- (7) The TCCC shareholding falls only just short of achieving a majority of votes cast in annual general meetings held in recent years (49,79 % in 1994; between 48,09 % and 48,84 % in 1995; and between 48,2 % and 48,8 % in 1996).
- (8) The parties argue that, collectively, the financial interests of the other minority shareholders act as an effective counterweight to the interests of TCCC, which may be driven partly by volumes of concentrate sales. However, TCCC has never been outvoted in any Annual Shareholders' Meeting. Taking into account the fact that the remaining capital is widely dispersed and that those shareholdings do not represent homogeneous interests,

it is highly unlikely that those shareholders would vote together against TCCC. Furthermore, in considering their financial interests, those shareholders would have to balance any short-term gain against the potential damage to the long-term value of their CCE shares if they voted against TCCC.

- (9) The improbability of TCCC failing to find a majority in an Annual Shareholders' Meeting is reinforced by the following considerations: as stated by CCE itself in its 1995 annual report, CCE is the world's largest bottler of TCCC's products. Some 90 % of CCE's turnover worldwide (nearly 100 % in the case of its European operations to date) is derived from the sales of TCCC products. Therefore, CCE's business is inextricably bound up with that of TCCC and is dependent on the latter company. These parties deny any notion that CCE is dependent on TCCC, in particular by drawing parallels with exclusive distribution arrangements. However, it is submitted that the relationship between TCCC and CCE can hardly be equated with an exclusive distribution arrangement, given in particular the 45 % shareholding of TCCC in CCE and the structure of the remaining shareholdings. Moreover, it is inconceivable that CCE would replace Coca-Cola by Pepsi-Cola or any other brand of cola when TCCC remains in such a powerful position in the market place. Moreover, while the fact that CCE buys some 18 to 20 % of TCCC's total output gives it a certain leverage over the latter, and while CCE could inflict serious damage on TCCC if it wanted to, this cannot be equated with the leverage exercisable by TCCC, given the 90 % dependence of CCE.
- (10) If TCCC had any difficulty in finding a majority, it could easily purchase a 2 % shareholding on the stock exchange, thus acquiring an absolute majority. The fact that it has not found it necessary to do so is a further indication than it already enjoys practical control.
- (11) CCE stresses the fact that it plays an active independent role as bottler on the market. The Commission accepts that TCCC recognizes CCE's expertise in the bottling business and that TCCC does not normally interfere with CCE's operations. Nevertheless, CCE can hardly ignore the fact that the economic balance between itself and TCCC is heavily weighted in TCCC's favour: CCE bottles some 15 to 20 % of TCCC's products worldwide, while some 90 % of CCE's sales are TCCC products. It is clear that TCCC has chosen to set

up CCE as its 'anchor bottler' in many parts of the United States and of the European Union. An executive of TCCC stated in a presentation entitled 'How will Recent Bottling Restructuring Produce Benefits' that '[Coca-Cola] and anchor bottlers [of which CCE is the most important] are strategic partners sharing in the common goals of the Coca-Cola system.'

- (12) The parties state that CCE's executive compensation structure also ensures its independence from TCCC since it guarantees that executive officers and managers would not encourage volume growth if this was at the expense of CCE's profit. In CCE's 1995 Annual Report, however, it is stated that employees focus on making decisions that will increase the long-term economic value of the company. It is also clear from that report that increased volume is essential to the long-term profitability of CCE.
- (13) For all the above reasons, taken together, the Commission concludes that TCCC is in a position to exert decisive influence over CCE and, as such, controls the company within the meaning of Article 3 (3) of the Merger Regulation. The Commission rejects the contention of the parties that it is required to establish control in respect of any single factor individually, standing alone. On the contrary, Article 3 (3) specifically provides that control can be based on a combination of factors, as well as on a single fact.
- (14) [...](¹).

B. ABGB AND CCSB

- (15) ABGB is a subsidiary of Cadbury Schweppes plc (CS), which has a 51 % equity shareholding. The remaining 49 % interest is held by TCCC. Those two companies exercise *de facto* joint control over ABGB. This is discussed more fully in the assessment of the proposed operation. ABGB is the parent company of CCSB, the bottling company established in 1987 by CS, Coca Cola Export Corporation and TCCC to produce, package, market, distribute and sell soft drinks in Great Britain. The majority of CCSB's soft drinks are produced from concentrates, essences and extracts manufactured by its owners, CS and TCCC.

(¹) In the published version of this Decision, some information has been omitted or replaced by ranges, pursuant to Article 17 (2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets.

II. THE OPERATION

GENERAL

- (16) Under the proposed transaction, CCE and thus TCCC would acquire sole control of CCSB, by the purchase of all of ABGB's share capital, through a new, wholly-owned subsidiary, Bottling Holdings (Great Britain) Limited (Newco). Newco would purchase CS's 51 % shareholding and the 49 % shareholding in ABGB held by Coca-Cola Holdings (United Kingdom) Limited, which is owned by TCCC.
- (17) In addition, new licensing arrangements have been negotiated between CCE and TCCC in respect of TCCC's products and between CCE and CS in respect of CS's products. TCCC has reported to the Commission that its new licensing agreement will be its standard European licensing agreement (Bottler's Agreement). Under the new CS licensing agreement, CCE — through CCSB — would have the exclusive right to manufacture, distribute, market and sell CS soft drink brands in Great Britain under a 15-year contract (renewable for an additional 10 years). The licensing arrangements between CS and CCE are considered not to be directly related and necessary to the implementation of the concentration. The arrangements have been notified to the Commission and are currently being examined under Regulation No 17 of 1962 (²).
- (18) Under CCE's ownership, CCSB would produce, package, distribute, market and sell the products of CS and TCCC in Great Britain, as well as the products of third parties which are currently covered by bottling agreements.

AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED STATES

- (19) This case has led to activation of the EC/US Agreement.

III. CONCENTRATION

- (20) Under the proposed transaction, CCE and thus TCCC would acquire 100 % of the issued share capital of ABGB, and hence sole control of CCSB. This would constitute a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

(²) OJ No 13, 21. 2. 1962, p. 204/62.

IV. COMMUNITY DIMENSION

- (21) CCE's worldwide turnover for the year ending in 1995 was ECU 5 178 million, of which ECU 259 million was achieved in the EEA. Over 97 % of the latter turnover was achieved in the Netherlands. ABGB's 1995 turnover was ECU 1 091 million, over 99 % of which was achieved in the United Kingdom. Thus, the two undertakings do not achieve more than two-thirds of their Community-wide turnovers within one and the same Member State. Since CCE and ABGB meet the aggregate worldwide turnover threshold, the operation has a Community dimension pursuant to Article 1 (2) of the Merger Regulation and it is not necessary to consider the turnover of TCCC for jurisdictional purposes.

V. COMPATIBILITY WITH THE COMMON MARKET

- (22) The proposed transaction does not involve any aggregation of market shares or brands since CCE is not currently active in Great Britain. However in order to assess the effects of the proposed acquisition of CCSB by CCE/TCCC it is necessary to determine whether the products supplied by CCSB constitute one or more relevant markets.

A. RELEVANT PRODUCT MARKET

- (23) The parties involved in the notified operation are active in the preparation, packaging, marketing, distribution and sale of commercial beverages. Both CCSB and CCE are leading members of the soft drinks bottling industry. In its notification, the notifying party states that the relevant product market is the market for commercial beverages, which would comprise, from CCE's point of view, an extremely wide variety of product offerings. By reference to the products CCE and CCSB supply, such a relevant market would comprise a wide range of carbonated soft drinks ('CSDs'), still soft drinks, fruit juices, and bottled waters. In addition, the relevant product market would also comprise any other beverage, including hot beverages such as tea and coffee.
- (24) CCE does not distinguish, in its notification, between different groups among its customers, which include large multiple food retailers, pubs and restaurants, small grocers, multiple CTNs, garage forecourts, foodservices, catering and so forth.
- (25) Under the Merger Regulation, a relevant product market comprises those products which are substitutable by the consumer by reason of their

characteristics, their prices and their intended use. The market definition proposed by the notifying party seems to be based on a different set of considerations, such as the total demand they can address with their products, 'share of throat' considerations, or a mere functional substitutability in terms of quenching thirst. The Commission has already rejected this type of approach in previous decisions concerning beverages.

- (26) The Commission considers that for the following reasons the relevant product market comprises the sale of cola flavoured CSDs ('colas'), which account for around 50 % of CSDs:
- the majority of customers and competitors contracted consider colas to be a separate market,
 - the parties themselves and their competitors organize their marketing research on the basis of a cola market,
 - the parties formulate a specific pricing policy for colas,
 - own-label colas present distinct characteristics, the recent introduction of premium own-label colas would appear to have resulted in gains primarily at the expense of other colas, and the leading competitors have only reacted with respect to their cola products, and
 - considerations of supply-side substitutability cannot lead to an extension of the market.

These reasons are examined in detail in paragraphs 30 to 94. Additionally, when the different types of customers served by bottlers of colas are taken into account, the relevant product market would be divided into three different channels:

- sales of colas to multiple retailers for home consumption,
 - sales of colas to pubs and restaurants for on-premise consumption, and
 - sales to small independent grocers, multiple CTNs, garage forecourts, catering companies, and others.
- (27) As for other CSDs, it seems that they can be distinguished from other type of beverages (juices, milk products, waters and so forth) by reason of their characteristics, their prices and their intended use. It is less clear whether other flavours of CSDs can be regarded as constituting separate relevant markets of their own. In general, retailers and competitors have described them as having less of a distinct image than colas. By contrast to colas, price

seems to play a more important role. In their responses to the Commission the market operators have not consistently identified any other flavour where switching would be so limited. It is also relevant that while the major cola brands are reserved for cola flavoured drinks, brands of other flavours extend across a range of different flavours, for example Sunkist, Tango, Schweppes. For these reasons the Commission considers that there is not sufficient evidence to conclude whether or not some of the other flavoured CSDs would also constitute separate markets. However, on the basis that colas constitute a separate market and that, as considered below, there is dominance in this market, it is not necessary for the purposes of the present decision to reach a definitive conclusion on this issue.

- (28) Nevertheless, there are significant interactions between colas and other flavours of CSDs in terms of common costs and equipment in bottling and distribution, product range effects in marketing, competition between different brands with respect to brand strategy and brand positioning. These considerations point to a certain complementarity of different types of drinks, rather than demand substitutability. The evolution of sales volume over time (see Annex 5 charting the weekly sales by volume of different types of drinks; source: Nielsen, supplied by CCSB) indicates that volumes tend to move together when demand increases, for instance in summer or at Christmas.
- (29) These considerations do not seem to be sufficient to extend the scope of the product market to all CSDs. They will be considered explicitly in the discussion of the evidence on which the Commission bases its evaluation of the product market.

1. Demand considerations; product characteristics and consumer preferences

Distinction between CSDs and other types of beverages

- (30) Patterns of consumption of various types of drinks seem to present significant differences. Mineral waters and juices, for instance, tend to be consumed with meals at home, juices in particular at breakfast. CSDs tend to be consumed at other occasions, in particular at fastfood restaurants or on social occasions, [...]. The study carried out by Audits and Surveys Worldwide in Great Britain (March 1996) presents comparable results. CSDs are the favourite beverage at places that serve fast foods or at various social occasions. In contrast, fruit juices and mineral waters are more associated with the desire to think something healthy. Very few consumers cited CSDs in association with health in their response to this survey.
- (31) These differences in patterns of consumption reflect the different drink requirements of consumers and the different reasons for which they might choose a specific drink. These range from the mere functional/physiological need to quench thirst, to reasons related to nourishment and to a variety of psychological needs (interaction, cheering up, break, reward, stimulation and others (source: market research submitted by a competitor)).
- (32) Thus, milk and juices might fulfil a nourishment need, and tend to be consumed at breakfast time. Fruit juices or mineral waters are predominantly associated with natural drinks (additive-free and sugar-free drinks), and demand for them is largely driven by considerations of health and a healthy lifestyle.
- (33) On the other hand, the main generic physical properties of CSDs, as perceived by consumers, are sweetness, sugary taste and effervescent composition ([...]). To a certain extent, CSDs have an image of being artificial and do not seem to have any association with a positive effect on health. These two aspects are documented in the Monitor Driver Quantification Study, which deals only with Coca-Cola (the main CSD by volume) submitted by the parties. CSDs tend to be consumed less by reason of their thirst-quenching properties than by reason of their stimulation properties (sugar, caffeine, effervescence). The basic reasons for which consumers demand CSDs, on the one hand, and, for instance, milk, juices or bottled waters, on the other, seem to be radically different.
- (34) Within CSDs, the demand for colas is very much driven by brand perceptions and the image associated with brands by consumers. Taste is also a factor in determining the choice of colas, but appears to be considered of secondary importance by market operators when compared to other CSDs. The considerable budgets spent each year by the large suppliers of colas on advertising their brands to the final consumer (see Annex 2) support this view. It also appears from the responses provided by competitors and customers that brand and

image are the key driving factors in the consumption of colas, whereas price and taste play a less important role. However, price and taste do seem to be more important with respect to other CSDs and other types of drinks.

- (35) The above considerations apply to a certain extent to CSDs generally. It appears that there are basic reasons to draw a distinction between CSDs, on the one hand, and other drinks, on the other, and that CSDs could constitute a relevant market for the examination of a particular issue.

- (36) Nevertheless, the key issue to address in the present merger case is whether the pricing of colas is sufficiently constrained by demand substitution to other types of drinks. For this purpose, the Commission has analysed (i) the views of customers and competitors, (ii) the marketing studies and internal documents submitted by the parties and (iii) the impact of the launch of own-label colas in the United Kingdom in the recent past.

2. Views of customers and competitors

- (37) The majority of the competitors and customers of CCSB contacted by the Commission in its inquiry indicated that consumers of colas are not likely to switch to other drinks in response to a small change in the relative price of colas. Those that considered that there would be some substitution indicated that the substitution would basically be for other CSDs and that the impact on juices, mineral waters or still soft drinks would be, at most, negligible.
- (38) Of the six multiple retailers (representing a very large proportion of this channel) that responded to formal requests for information, only one indicated that in its view, a 5 % to 10 % increase in the price of colas in the United Kingdom would induce consumers of colas to substitute away to a significant extent. Another retailer was not able to provide a specific answer. The remainder have indicated that there would be little or no substitution. A number of retailers indicated that promotions of a given cola induce an increase in the sale of colas, but do not have an appreciable effect on other CSDs. Likewise, promotions in other flavours of CSDs do not affect sales of colas.

- (39) Of the twelve competitors whose answers have been examined, seven indicated that there would be limited or no substitution away from colas; two were not able to answer the question; two indicated that they believed there would be significant switching to other CSDs and one indicated that its research on price elasticities was restricted to products within a narrow category and therefore could not answer the question of interactions between colas and other categories. Those that believed that there would be a limited substitution away from colas in response to small change in relative price indicated that most of the volume would be displaced to other CSDs.

- (40) The majority of market operators contacted by the Commission indicated, therefore, that consumers do not substitute away from colas in response to changes in relative prices.

3. Marketing research studies; Internal planning documents of the parties

- (41) Marketing research submitted by the parties shows that often cola brands are compared to other CSDs brands, and in a limited number of cases, also brands of other types of drinks.
- (42) Coca-Cola (GB) (CCGB) commissioned a consumer/purchaser qualitative study from Sadek Wynberg Research in 1995 to analyse drivers of volume for colas and other CSDs. The study is based on interviews with a sample of consumers on the basis of a diary and accompanied visits to stores (large multiple retailers). The sample was designed to include both a group of heavy cola drinkers and a group of light CSD drinkers and the aim was to identify and target the potential for Coca-Cola volume growth with the purpose of establishing a marketing plan.
- (43) Examples of such qualitative research on consumers' attitudes and patterns of purchases are numerous. Generally, they seek to identify those situations where Coca-Cola volume could be expanded by improving the targeting of consumers by adapting the communication of the brand and the brand positioning. Another aim of such studies is better planning of marketing and promotional activities in the context of volume expansion. Generally, Coca-Cola is compared to brands of several non-cola beverages in those qualitative studies.

(44) For instance, the continuous consumer tracking by Audits and Surveys Worldwide (1996), based on interviews with approximately 1 100 households, covers all brands from TCCC, CS and Pepsi/Britvic brands. The study focuses on the advertising awareness of consumers, their associations with individual brands, slogan identification and occasions for drinking a particular beverage. The Infratest Burke 1995 study addresses the motivations of consumers to choose a drink and the need they try to fulfil with particular drinks. That study also covers all the brands of the parties and of their main competitors. Stated objectives of the research are to understand the capacity of existing brands to meet need-states and motivations of consumers.

(45) Perhaps the most illustrative example is the study 'Key competitive brand modules analysis' submitted by TCCC. That study compares Coca-Cola with Pepsi and Tango in terms of brand strategies and positioning, marketing communication activities, brand achievements, key brand-success factors, and the comparative strengths and weaknesses of each brand.

(46) CS has also submitted examples of its research into consumer attitudes and usage of soft drinks, including IRI Household Panel 1995, a study on purchasing behaviour. That study (carried out in the United States) is restricted to comparing brands of flavours other than colas. In 'Soft drinks category market structure', by Information Resources, brand images of different CSDs are compared using cluster analysis, with the overall aim of identifying switching patterns.

Conclusions on marketing research studies

(47) It appears from the review of the marketing research referred to above that, when analysing consumer usage, attitudes, purchasing habits and perceptions of brands, the parties involved consider a competitive environment which is broader than colas, encompassing a larger range of CSDs. However, that occurs, apparently, in the context of defining a brand communication strategy and a brand positioning, by comparing the different attributes of different brands and the image associated by consumers with each brand. Brands across the spectrum of CSDs are also, it seems, compared for the purpose of tracking and measuring the

effectiveness and success of different advertising strategies.

(48) Generally, the abovementioned studies do not focus on or consider relative prices of products sold under different brands.

Quantitative research; Research on pricing

(49) The picture changes significantly, however, when the parties' marketing research is of a more quantitative nature, and is focused on measuring price elasticities, defining a pricing strategy or assessing the effects of transitional price reductions associated with promotions at retailer's stores. At this level, the studies tend to be commissioned separately for colas, for other flavours of CSDs, or in some instances for individual flavours (such as tonic mixers and sodas) within CSDs.

(50) In the Monitor Driver Quantification Study (1996), supplied by TCCC, pricing of Coca-Cola is compared to own-label colas. The purpose of the study is to assess the relative importance of pack, price and brand as main drivers of Coca-Cola volumes. [...]. The impact of price on volume is analysed within colas only and there is no consideration of the possible impact of other CSDs.

(51) Additional evidence is provided in [a ...] study on modelling the UK soft drinks market, [...]. Elasticities are calculated separately for colas, fruit carbonates, lemonades and mixers, separately for the multiple and impulse channels, and differentiating cans from bottles. The main conclusions of the study are that [...], on demand for colas in the impulse channel, where [...] of sales in either bottles or cans. In the multiple grocery channel, [...] is found to differ between colas and fruit carbonates.

(52) Likewise, the Cola Pricing study commissioned by CCSB from Marketing Sciences (1994) is restricted to colas only. The research objectives are to evaluate price sensitivity on major cola pack volumes in the grocery and impulse channels, to establish the level of price premiums that Coke and Pepsi can command over retailers' brands and to examine the relationship between price and brand image. In this brand/price trade-off study, consumers are confronted with a set of products and then questioned about their reaction to different price scenarios. The set of products is apparently restricted to colas.

- (53) The same basic approach is adopted in the CCSB sales model prepared by Millward Brown International. For the grocery market and impulse cans, the price is compared to the prices of other colas only. The study finds elasticities below [...] in the impulse channel, and elasticities slightly above [...] for Coke bottles in the multiple grocery channel (with the exception of diet Coke, where the elasticity is below [...]). The study also analyses the impact of the introduction of Virgin Cola and premium own-label colas on sales of various packagings of TCCC's colas, but does not address the issue of whether other CSDs marketed by CCSB had suffered any losses. The study analyses Sunkist separately within a market for fruit carbonates. Elasticities appear to be quite high (above [...]) in the multiple grocery channel, and much less important in the impulse channel.
- (54) CCSB commissioned an application of Nielsen's ScanPro model for the evaluation of the impact of promotions within the cola market. The study analyses the impact of promotions of cola products on other cola products, including Pepsi and own-label. It does not analyse possible effects among different flavours of CSDs.
- (55) Likewise, CS commissioned a study from Information Resources where the elasticities of Schweppes tonics are estimated for the United States. The study is based on weekly sales data from Info Scan and covers only tonic products and sodas, that is clear CSDs, and not colas or other flavoured carbonates.
- Business plans and planning documents of the parties*
- (56) It appears [there is ...] a specific pricing policy for the Coca-Cola brand [...], without reference to [...] other non-cola drinks.
- (57) [...] A key issue [...] with respect to pricing is the price of Coca-Cola products in relation to [...]. Volume share and relative prices are analysed by reference to other colas, and not by reference to a broader market of CSDs. It is also worth noting [...] Coke's image of having the 'real cola taste'.
- (58) In CCGB's 1997 Cola Brand Objectives and Strategies (1996), pricing is a priority issue for Coca-Cola in the multiple grocery channel. [...]. In contrast, pricing is not treated in detail with respect to the impulse channel, [...].
- (59) In that document, the overall strategy of CCGB is defined as becoming a total beverage company. In that context, there is a comparative analysis of different categories of beverages, and an assessment of their respective volume growth and trends. The aim seems to be to identify the potential size of opportunities for further expansion of sales of Coca-Cola on different occasions, but there is no indication in this context that pricing, or relative prices, are of any significance in achieving this potential growth.
- (60) It is also significant that [...] is defined for other TCCC brands by reference to [...] respective flavours. For instance, for pure juices, the UK market is described as being of a commodity nature. The commodity nature and the existence of established brands led CCGB to conclude that the juices market in the United Kingdom presents relatively high barriers to entry. When defining a pricing policy for [...], the objective is formulated again in terms of maintaining the grocery price [...]. Finally, [...] is compared with other [...] similarly flavoured fruit] drinks ([...]), and the basic product strategy is defined in terms of taste ([...]).
- (61) The CCGB 1997/98 Business Plan is broadly on the same lines. Growth of premium own-label colas and Virgin appears as a priority concern. It is described as having had a significant impact on Coca-Cola shares (in particular for diet Coke). [...] Other flavoured carbonates are analysed separately, and the market is described as congested by the fragmentation of brands, with few brands achieving critical mass. [...] considered a key issue in the multiple grocery channel but not in the impulse or on-premises channel. [...].
- Conclusion*
- (62) It appears from the above that when parties carry out research on the pricing of cola products and the volume responses associated with price changes, they tend to consider a market for cola, differentiating between multiple grocery, on-premises and impulse channels. The definition of their competitive strategy is largely based on such studies, at least with regard to pricing.
- (63) As regards other carbonated soft drinks, the situation is less clear. There are several instances where competitive relations are analysed within individual flavours and where taste seems to be a significant determinant of the competitive strategy. On the

other hand, there are also instances where all flavoured carbonates appear to be regarded as one market. As stated above, however, there is no need to adopt a precise decision on this issue for the purpose of analysing the present case, and this question will not be addressed further.

4. Impact of the introduction of own-label colas

- (64) Own-label colas have had a significant impact in the UK cola market as from 1994. The significant growth of own-label colas in that year and since then tends to indicate that colas constitute a separate market, since own-label has apparently gained sales at the expense of other colas, and not other CSDs, branded or otherwise.
- (65) Own-label penetration in colas represents about 28 % of the UK cola market by value, as shown below:

1995 Own-Label Penetration by Product in the United Kingdom

Product	Value (%)
Colas	28,4
Non-Cola CSDs	50,7
All CSDs	39,4
Mineral water	48,0
Total SDs	42,5

Source: Nielsen top end grocery/CS letter, 11. 10. 1996

The penetration is much higher in other CSDs and soft drinks. For non-cola CSDs, own-label penetration appears to be in excess of 50 % of the market. In particular for lemonades, own-label has virtually eliminated premium brands from the market, and certain retailers do not offer any branded product in that flavour category. It would appear that own-label colas offer a higher discount with respect to the leading branded colas than the discount applied in other flavour categories (see Annex 1). With regard to lemonades, it would appear that not only does own-label account for the vast majority of sales, but also remaining brands are often sold at a discount to own-label.

- (66) Annex 1 compares the average percentage of shelf space allocated by retailers to own-label in various categories of soft drinks. In relation to the respect-

ive share accounted for by own-labels in each category, it appears that own-label colas have required relatively higher support in terms of shelf-space allocation.

- (67) This comparative situation of own-label colas would be consistent with the fact that demand for colas is relatively price-inelastic, since own-label has achieved lower penetration in cola and even this lower level of penetration has required a larger discount and higher support in shelf-space allocation.

Views of retailers

- (68) Three of the five largest retailers in the United Kingdom, in response to formal requests for information, have indicated that their introduction of own-label colas prompted a reaction by brand manufacturers, in terms of increased support and advertising, in order to minimize switching to own-label colas. The increased support and advertising was only for cola brands when a cola own-label was introduced. Furthermore, retailers have indicated that, in their experience, the introduction of own-label colas has affected only sales of branded colas, with no significant impact on other CSDs. Only one retailer indicated that own-label colas had gained some sales from lemonades. Another indicated that it experienced no particular reaction from branded manufacturers and that it has no precise measure of how own-label gains sales within the flavour category or from other categories.

Competitive response to introduction of own-label

- (69) Further information that manufacturers of branded colas react only with respect to their cola brands (and not other CSD brands or other types of drinks) to the introduction of own-label colas is given by CCE's business plan for the Netherlands. In response to the imminent launch of Cott's cola at Superunie, CCE is responding by allocating a budget for increased promotional activity (price-off and other promotional activities) at individual Superunie competitors for its cola products only. It is not considering any specific action for any of its other brands.
- (70) The evolution of Coca-Cola's advertising efforts also demonstrates that TCCC has basically addressed its concerns about premium own-label cola penetration in the United Kingdom by substantially increasing advertising budgets for its Coke brands. Annex 2 shows the evolution of advertising budgets in the United Kingdom in the period 1990 to 1995 (as reported in Canadean). In 1994, several premium own-labels were introduced (such as Sainsbury's Classic Cola or Safeway's Select). Also in 1994 Virgin Cola was launched at

Tesco. In 1995, sales of own-label colas increased by 39 % by volume in the multiple-retailers market by comparison to the previous year. Sales of Virgin Cola increased by over 700 % on the same basis (source: Nielsen figures as supplied by a competitor).

- (71) [According to Canadean, in ...] 1995, TCCC more than doubled its advertising budget, from some £ 15 million to £ 37 million. The advertising for regular cola represented some £ 21 million, which is more than double the budget allocated to regular Coca-Cola advertising in any of the previous five years. The budget for Diet Coca-Cola in 1995 was some £ 8 million, which again is more than double the budget allocated in any of the previous five years. There was no comparable increase for any of the other TCCC brands in the UK, with the exception of Five Alive, for which very little advertising had taken place previously.

- (72) Such spectacular increases in advertising expenditure can be connected to the introduction and increasing sales of premium own-labels, as they coincide in time and, furthermore, the internal documents of TCCC, CCE and CCSB show that own-label is the main concern in the cola market. In any case, they cannot be attributed to increased advertising generally by Pepsi Cola International in the United Kingdom. Pepsi Cola's overall advertising budget in the United Kingdom had been falling since 1993. The increase in advertising for Pepsi's regular cola in 1995 by comparison with 1994 is certainly significant (from GBP [...] million to GBP [...] million, [25-35 %]), but on a much smaller scale than the increased effort of Coca-Cola. For Pepsi, the overall advertising budget, as reported by Canadean, actually fell. Although both Coca-Cola and Pepsi increased their advertising, the massive increase for the Coca-Cola brands does not seem to have been prompted by a general scaling-up of advertising in the industry. Rather, it would appear that both TCCC/CCSB and Pepsi/Britvic increased advertising of their respective colas when own-label colas started to gain sales volume and shares.

- (73) It does not appear, however, that prices were reduced in the period from 1994 to 1996. On the contrary, average effective retail prices have been increasing, and the premium over own-label prices has also been increasing, as illustrated in the graph in Annexes 6 and 7. Prices are retail prices in pence per litre as supplied by CCSB. On the basis

of indexation of those prices (first observation = 100, see Annex 8) the price of regular Coca-Cola reached 124 on 7 September 1996 and 111 on 28 September 1996 (the figures for the last week were depressed by a major promotion). The price of Diet Coke has risen to 113 in the two year period under consideration. A similar increase is to be found with respect to Pepsi's colas. In contrast, own-label bottles of cola have actually experienced a price decrease, with an index at 83 % for regular cola and 87 % for low calorie cola at the end of the period.

Analysis of sales evolution by volume

- (74) Annex 3 shows the quarterly evolution of sales of CSDs and colas during 1994 and 1995, together with the annual rate of growth in 1995 (source: Nielsen, as supplied by a competitor). Because of the seasonality of sales of CSDs and generally the growing trend of consumption of beverages generally in the UK, it is not possible to analyse directly the impact of the increased sales of own-label colas on branded colas or on other CSDs. However, it appears from an analysis of the evolution of percentage share of own-label colas in relation to total sales by volume of all CSDs that own-label colas have gained most of their sales from three sources:

- at the expense of colas other than the two leading brands,
- to a lesser extent, at the expense of Coca-Cola and Pepsi, and
- from overall growth of demand for colas that, in principle, should be the result of increased advertising and new product launching.

It would appear that other CSDs have not significantly lost sales to own-label colas.

- (75) An analysis of rates of growth and sales variations by volume tends to confirm this view. Sales of own-label colas by volume increased by 123 % in the first quarter of 1995 with respect to the first quarter of 1994. Sales of Coca-Cola, Pepsi Cola and other colas declined significantly in the same period, whereas other CSDs actually increased their volume by 0,8 %. It should be noted, however, that the gains of own-label in volume are much larger than the losses of the branded products. This could be attributed either to a shift in demand for colas or to gains from other CSDs, in particular in view of the low rate of growth of other CSDs in this period.

(76) In the second quarter, a similar picture emerges, although CSDs attained a significant growth. Sales of own-label colas by volume in the second quarter of 1995 increased by 58,3 % with respect to the same quarter of 1994. Sales of Coca-Cola, Pepsi and other branded colas declined in the same period (by 2,9 %, 2,2 % and 23,4 % respectively) in a context where sales of other CSDs expanded by 5,2 % and sales of total carbonates also expanded by 8,6 %. In the third and fourth quarters of 1995, when the rate of growth of own-label colas slowed down to 27,8 % and 8,8 %, both premium colas and carbonates expanded, with the exception only of other colas which continued to decline. Both Coca-Cola and Pepsi underperformed the colas market in terms of rate of growth in those quarters.

(77) The same conclusions can be drawn from the monthly data submitted by CCE concerning sales in Top End outlets. (see Annex 4 and associated graphics). The share of sales of other CSDs in relation to total sales of CSDs by volume remains stable over the period of the introduction and expansion of own-labels. Shifts in shares resulting from the increased sales of these own-labels seem to have taken place within colas, and not within CSDs.

(78) In their reply, the parties indicated that over the period 1994 to 1995, the share of other CSDs in relation to total CSDs declined by 1 %, which would imply that own-label colas gained some volume from other CSDs. First of all, that is in contradiction with the views expressed by food retailers and with the parties' own business documents. Secondly, the observation that other CSDs have lost a one percentage point share only means that the growth of colas has been higher than that of other CSDs, which is the result to be expected from increased advertising and product launching. What is relevant in this respect is the comparison of the shifts in shares of total CSDs taking place within colas in relation to the stability of the share of other CSDs.

(79) It can be concluded from the foregoing that the introduction of premium own-label colas has prompted a reaction of suppliers of cola in respect of their cola products only, and that own-label colas have gained sales at the expense of other colas and not significantly from other CSDs. This

would be inconsistent with the relevant product market being wider than colas.

5. *Different categories of customers*

(80) In addition to the production of colas and other soft drinks, the proposed operation involves the distribution and sale of those products. At the distribution level, soft drinks are delivered to customers through several channels. For example, CCSB divides soft drinks trade channels into three distinct areas:

- Grocery — or large multiple food retailers — serving the take-home sector,
- Impulse — independent grocers, newsagents, convenience stores, garage forecourts, independent or multiple owned off-licences, serviced directly by CCSB or via the cash-and-carry wholesale trade — primarily serving the impulse/immediate consumption/convenience market,
- On-premises — pubs, hotels, restaurants, night clubs, workplace, schools, health centres, hospitals — providing soft drinks for consumption on-location.

Multiple grocery

(81) Large multiple retailers can readily be identified as such by suppliers of colas. They require supply of large volumes that can only be economically supplied directly by the bottlers. The terms and conditions negotiated with retailers for the supply of colas are not likely to be influenced by the possibility of arbitrage from products distributed through other channels.

Impulse

(82) Distribution through the impulse channel, comprising thousands of selling points, requires a dense distribution network. It also appears from internal documents of the parties that the impulse sector is characterised by a reduced price sensitivity, and that the main driver of sales is the availability of the product and cold storage.

(83) The structure of customers in the impulse sector is quite different from the multiple retailers sector; few of the customers are of sufficient size to develop their own labels. Furthermore, the fact that consumers are purchasing at specific, well identified selling points would in principle make it possible to apply different pricing policies in the impulse and multiple grocery channels, with

pricing being subject to a different set of constraints, thereby allowing price discrimination in the absence of any possibility of effective arbitrage. In fact, as stated above, internal documents from the parties show significant differences in their approach to pricing in the impulse channel, on the one hand, and in the multiple grocery channel, on the other.

On-premises

- (84) In previous decisions (for instance, Orkla/Volvo⁽¹⁾) the Commission considered that there was a separate relevant product market for sales of beverages for on-premises consumption. The customers of CCSB selling on-premises can readily be identified as such, and a different pricing policy could be followed in this sector to a certain extent. In particular, the selling of colas in larger, bulkier packages and the supply of dispensing equipment necessary to serve colas would allow products to be priced differently in the on-premises channel as compared to other channels.

Consumer surveys submitted by the parties

- (85) The parties have submitted a number of survey studies (the French study, the British pilot study and the British study) as evidence allegedly supporting the contention that consumers readily switch to a number of commercial beverages in response to significant price increases for colas (a 20 % price increase is used). Those studies have been commissioned by counsel for TCCC specifically for the purposes of competition cases.
- (86) In general, the Commission prefers to rely on documentation regarding the normal conduct of the parties' business, such as the evidence described above, rather than *ad-hoc* consumer surveys. The reason is that, first of all, it is difficult to establish that consumers will reflect in their actual purchasing behaviour their answers to questionnaires, and they will generally overstate their willingness to change actual behaviour.
- (87) Secondly, the way the survey is designed can to a large extent pre-determine the answers. Specifically, the studies submitted comprise two different phases. In a first phase, consumers are asked to identify the drinks they might consume at different occasions, and they are presented with a list of up to 15 categories of beverages (wine, beer, cola, carbonated soft drinks other than colas, etc.) The question is presented without any time frame or reference to individual brands or products.
- (88) The responses of consumers show that obviously many different beverages can be drunk, for instance, at meals at home over time, or even at a single meal. The fact that a consumer answers that he or she drinks, or would consider drinking, wine and a coffee at a meal cannot be considered to provide any indication as to substitutability between wine and coffee. It is unclear, therefore, what conclusions as to substitutability can be drawn from the results of the first phase.
- (89) In order to identify and then focus on consumers of cola, the interviewee is then asked to indicate whether he or she has consumed a cola. In this case, there is a precise indication of a time frame in the question, which refers to a period of one year. Such a long period is likely to include in the group of cola consumers even very occasional cola drinkers, and therefore exaggerate switching behaviour. In the second phase of the study, questions focus on the reaction of consumers to price increases. The price increase postulated for colas is in any case very high, namely 20 %, when compared with the usual benchmark used by the main anti-trust jurisdictions for price increases (in the range of 5 to 10 %).
- (90) Naturally, consumers may be expected to answer that they would switch to other products in the hypothesis of a price increase. It is striking in this respect that a large number of responses indicate that the consumer would drink 'nothing' if the price of colas were to be raised by 20 %. In the French study, the proportion giving the answer 'nothing' was [15 % to 25 %] at restaurants (the most frequent response), [10 % to 20 %] at home (the third most frequent answer), [20 % to 30 %] at fast food establishments (again the most frequent answer) and [10 % to 20 %] at cafés and bars (the third most frequent answer).
- (91) It is not plausible that these responses are indicative of actual switching behaviour and volume responses. It cannot realistically be considered that if prices of colas rose permanently by 20 %, a significant proportion of consumers would stop taking any drinks for such a period of time that actual sales of colas would be affected.
- (92) Although the studies submitted by the parties offer certain insights into consumer attitudes, they cannot outweigh the evidence described above. The Commission concludes therefore that the studies

⁽¹⁾ Case IV/M.582 — Orkla/Volvo.

submitted by the parties cannot be taken to demonstrate the existence of a wider product market in spite of the technical sophistication of these studies.

6. *Supply-side substitutability*

- (93) In principle, filling lines can be used to bottle a large range of different beverages. Considerations of supply-side substitutability cannot however lead to an extension of the relevant product market in this case. The need to create and position a cola brand or a brand for flavoured CSDs, to advertise and promote a new product or a new brand, and to obtain access to distribution outlets means that supply-side considerations are not sufficient to allow the conclusion that different beverages should be grouped into one single product market. Any competitive constraint on supplies of colas arising from bottlers of other CSDs can be taken into account when assessing the impact of the notified transaction. However, the immediacy and effectiveness that would be necessary to consider any such constraints at the stage of market definition are not present.

7. *Conclusion*

- (94) In view of the above, the Commission cannot accept the parties' submission that the relevant product market encompasses such a broad range of beverages as has been asserted. The Commission concludes that there is a relevant market for the supply of colas in Great Britain. However, for the purpose of assessing the present case, the question whether and on what basis the market could be

further divided can be left open, since a further segmentation of the market would not materially alter the analysis of the present case.

B. RELEVANT GEOGRAPHIC MARKET

- (95) The Commission's past practice with respect to the definition of the geographic market for packaged beverages and consumer products more generally has been to consider the relevant geographic markets as being national⁽¹⁾. In its notification, CCE does not contest this definition.
- (96) In the present case, over 95 % of CCSB's production is sold in Great Britain and the Isle of Man; similarly, major retailers have stated that the vast majority of their purchases of colas and other CSDs are purchased from suppliers in Great Britain.
- (97) Among the reasons adduced by the Commission in past similar cases for the definition of national markets (see footnotes 5 and 6), some are especially relevant in the current case. In particular varying consumer preferences, high transport costs, the importance of brands and the difficulties involved in gaining access to a nationally organized distribution network in Great Britain indicate that suppliers of colas and other CSDs in Great Britain are largely isolated from competitive constraints from bottlers located in other countries.
- (98) Market share differences also support the existence of national markets. On the one hand, a significant number of national brands remain; on the other, even within the four leading European CSD brands, sales differ widely from one country to another, as can be seen from the table below:

Leading European brands market share comparison

(percentage by volume with respect to all CSDs)

	Coca-Cola (cola CSD)	Pepsi Cola (cola CSD)	Fanta (other CSD)	Sprite (other CSD)
Great Britain	[15-25]	[5-10]	[< 5]	[< 5]
France	[45-55]	[5-10]	[< 5]	[< 5]
Germany	[40-50]	[< 5]	[5-10]	[< 5]
Belgium	[40-50]	[< 5]	[< 5]	[< 5]

Source: Nielsen Carbonated Beverages International Report 1996.

⁽¹⁾ Case IV/M.190 — Nestlé/Perrier.

Consumer preferences

- (99) Consumer preferences are largely shaped by cultural aspects and lifestyle. Demand for beverages generally in Great Britain shows certain significant differences when compared to other countries. Thus lemonade enjoys a much higher acceptance in the United Kingdom (25,6 %) than in neighbouring countries (10,2 % in France, 11,9 % in Germany, 4,5 % other countries). Variations in the juice content of fruit flavoured CSDs and phosphoric acid content in colas, and so forth can be found from one country to another. Other significant differences exist in the acceptance of diet products as against regular products.

Transport costs

- (100) Transport cost for colas and for CSDs generally are high, since they are bulky products which are transported in finished form. The notifying party has stated that 'transport costs are relatively high, considering the low value of the product [...] and the high volumes that need to be transported'. In their opinion those costs, although not prohibitive, 'rise significantly when the distances increase and so any activity would be limited and fragmented'. When asked about transport costs, competitors also confirmed their important role. One competitor stated that 'if average mileage doubled distribution costs would increase by 70 %'. Thus, the high weight/value ratio for all soft drinks means that producers face substantial transport costs, which reduces the likelihood of international trade flows.

Other barriers isolating the British market for colas and other CSDs

- (101) Other barriers isolating Great Britain from competitive constraints from bottlers located in other countries are related to the role played by brands in that market. Thus, all competitors considered product launch (mainly advertising and promotional support) and distribution costs to be the major barriers to entry into Great Britain. Similarly significant variations are observed in packaging; in the United Kingdom a greater proportion of CSDs is sold in cans than in neighbouring countries while for glass bottles the situation is the contrary. Plastic (PET) bottles of two litre capacity are predominant in the UK while most other Member States tend to favour 1,5 litre PET bottles.

Pattern of purchases and trade flows

- (102) Major retailers in Great Britain have stated that the vast majority of their purchases of colas and other CSDs are from suppliers located in Great Britain. Only in certain cases related to own-label or the

economy end of the market do retailers purchase from bottlers located outside the United Kingdom.

- (103) Data on trade flows further confirm the national nature of the relevant market. According to the Canadian Report of April 1996, imports into the United Kingdom amounted in 1995 to approximately 1,7 % and exports to 4,5 % of total United Kingdom consumption. Labour costs, which are lower in the United Kingdom than in other Member States, explain at least to some extent the higher volume of exports, and constitute an additional difficulty for foreign producers wishing to compete in the United Kingdom.

Views of market operators

- (104) Finally, the views of market players (customers and competitors) with respect to the above questions generally support a national definition of CSD markets. In addition to those views on such questions, most competitors and retailers contacted considered that UK prices are not significantly influenced by the prices in other Member States. Product labelling differences, administrative burdens and currency fluctuation were also mentioned by the notifying party as being factors which may militate against markets broader than national markets.

Northern Ireland

- (105) The question arises of whether it is appropriate to include Northern Ireland in the relevant market, in view of the similarities between its CSD industry and that of the rest of the United Kingdom. In fact, most market players seem to consider both areas as one for marketing purposes. Administrative and cultural affinities as well as other characteristics also point towards a single market⁽¹⁾.
- (106) Nevertheless other important factors militate in favour of a narrower Great Britain market. Production and bottling structure differences, retail structure particularities and price and market share differences are some of the main facts supporting this approach. In any case, the question may be left open in the framework of this case since the competitive assessment would be substantially the same irrespective of the approach chosen. However, in view of the fact that CCSB is not active in Northern Ireland and that CS's proposed licensing agreement with Newco restricts the territory to be

⁽¹⁾ Case IV/M.623 Kimberly-Clark/Scott Paper. In this case the Commission's decision referred to a number of reasons for and against regarding Great Britain and Northern Ireland as being only one market, many of which apply in the present analysis.

served to 'Great Britain (meaning for these purposes England, Scotland, Wales and the Isle of Man)', the Commission has concentrated its analysis on Great Britain.

Conclusion

- (107) Given the above considerations, the Commission has concluded that Great Britain constitutes the relevant geographic market within which to assess the proposed operation.

C. ASSESSMENT

1. Introduction

- (108) Through the proposed operation, CCE, the world's largest bottler, and thus TCCC, the world's most successful brand owner, would acquire control of CCSB, the largest bottling company in Great Britain. The assessment in this case must be based on:

- an appreciation of the current position of CCSB in the cola market,
- the structural change resulting from the proposed acquisition and the impact of such a change in terms of creating or strengthening a dominant position.

- (109) In so far as the other soft-drink products sold by CCSB are concerned, CCSB's shares for non-cola CSDs, dilutables, fruit juices, and bottled water did not exceed 25 % in 1995. However, it is not necessary to determine whether CCSB is dominant in any of those markets since it will be shown to be dominant in the market for colas and the competition analysis will be essentially unchanged even if it were found to be dominant in other markets.

2. The structure of the market

(a) The overall structure of the soft drinks industry

- (110) The cola market, as is typical of the soft-drinks industry, involves a complex matrix of players. For the purposes of the present case, it is necessary to distinguish the following three main categories of players and their respective activities:

- the brand owner, which owns or licenses rights to use the brand name in the production of one or more soft drinks,
- the concentrate owner, which owns the formula for producing the concentrate/essence which forms the basis of the soft drink; the concentrate owner either produces the concentrate itself or contracts it out for production according to its specifications,

- the bottler, which carries out some or all of the following activities: production, packaging, marketing, distribution and sale of the final soft drink product.

The players in the market may perform some or all of the abovementioned functions depending on their respective degree of vertical integration. To the extent that a player does not carry out all of these functions itself, it must rely on other players to do so. To the extent that the various stages of the chain are interdependent, changes at one level will also have repercussions at other levels.

(b) The main cola suppliers

CCSB

- (111) CCSB is the leading soft-drink bottler/distributor in Great Britain and, more particularly, it is also the leading supplier in the cola market. It has a broad product portfolio spanning the whole spectrum of soft drinks, including colas, other CSDs, fruit drinks and dilutables, juices/nectars and mineral waters.

- (112) CCSB is a company established by TCCC and CS, essentially to supply those companies' soft-drink products on the British market. Practically all of the joint venture's turnover is generated by products produced from concentrates and essences owned or, in the case of some CS products, licensed by TCCC and CS. In addition, CCSB supplies a range of mineral waters which are bottled at the source, some in the United Kingdom, others from continental Europe. The supply arrangements for all CCSB products are governed by bottling or licence agreements with the respective brand/concentrate owners, including TCCC and CS themselves.

- (113) The breakdown of CCSB's total turnover between the three groups of licensors is as follows: TCCC products, [50 % to 70 %] by volume ([60 % to 80 %] by value), CS products, [20 % to 40 %] by volume ([15 % to 30 %] by value), products of others, ([less than 10 %] by volume and [less than 10 %] by value). CCSB's soft-drink portfolio contains a number of major brands, including TCCC's Coca-Cola (including Coca-Cola, Coca-Cola Light, Decaffeinated, etc., collectively known as Megabrand), Sprite, Lilt, Fanta and CS's Schweppes mixers, Canada Dry, Sunkist, Gini and Oasis.

- (114) CCSB operates six filling plants, including a very large modern plant at Wakefield, and five major distribution depots. In 1995, CCSB sold 1 314 million RTDL (Ready to Drink Litres) of colas, out of total sales of soft drinks of 2 344 million RTDL of which 1 872 million RTDL were CSDs (source, Canadian).

Britvic Soft Drinks Ltd.

- (115) The other main bottler/distributor supplying cola and other soft drinks in Great Britain is Britvic Soft Drinks Ltd. (Britvic), which is 90 % owned by Britannia Soft Drinks. The latter company is in turn 50 % owned by Bass, 25 % by Allied Domecq and 25 % by Whitbread. The other 10 % shareholding in Britvic is owned by PepsiCo. Britvic, which also began operations in 1987, supplies, like CCSB, a wide portfolio of soft drinks, including Pepsi, Seven-Up, Tango and Top Deck.
- (116) Britvic has a similar commercial profile to CCSB, in that it has a strong international cola brand, Pepsi, and a wide supporting portfolio of other soft drinks. It also has a similar production and distribution profile, with seven production locations and seventeen distribution depots.
- (117) The volume turnover of Britvic in 1995 amounted to [1 900-2 100 million RTDL], of which [450-550 million RTDL] were colas and [900-1100 million RTDL] were CSDs overall (source, Canadean).

The Virgin Cola Company

- (118) In late 1994, The Virgin Cola Company Ltd (Virgin), a joint venture between The Virgin Trading Company Ltd and Cott Corporation of Canada (Cott) was established and launched Virgin Cola. Virgin Cola comprises a range of colas which includes regular, diet, caffeine free and light colas. Virgin Cola is mainly sold in two multiple retailers ([...]).

The Cott Corporation

- (119) Cott is a Canadian company which specialises in the production of quality own-label colas in North America. In 1994 it started operations in Great Britain supplying multiple retailers with premium colas. Cott holds the UK licence for one of the major cola concentrates in the world, Royal Crown Cola. Nearly all the British premium own-label colas and Virgin Cola are based on this concentrate. Cott also produces Virgin Cola, as explained above. Cott operates two production plants and had a 1995 production of over [...] million RTDL, the greater part of which was of colas.

Other cola suppliers

- (120) There are a number of other soft-drinks producers supplying colas in the market in Great Britain. These include Princes, Vimto and Barr, which mainly produce value and economy own-label products for the multiple grocery channel.

(c) *The main customers/distribution channels***The multiple grocery channel**

- (121) The multiple grocery channel, which comprises the large supermarket chains, constitutes the largest distribution channel for colas in terms of volume in Great Britain. The importance of this channel, in relation to overall demand in the cola market, is estimated by CCSB as representing some [40 % to 55 %] of the total volume sold in 1995. The sales of colas through this channel grew in absolute volume terms from approximately [...] million RTDL in 1993 to [...] million RTDL in 1995, according to the parties.

The impulse channel/wholesale and cash-and-carry

- (122) The impulse channel consists mainly of outlets such as small grocery stores, independent and multiple convenience stores, garage forecourts and off-licences. A large proportion of impulse outlets purchase their cola supplies from wholesale and cash-and-carry outlets. According to CCSB, the volume of colas sold through the impulse channel amounted to [...] million RTDL in 1995, that is some [25 % to 35 %] of the overall cola market.

The on-premises channel

- (123) This channel comprises public houses, hotels, restaurants, clubs, cafes, workplace canteens, schools, hospitals and other locations where cola is consumed on the premises. According to the parties, sales through the on-premises channel amounted to some [...] million RTDLs in 1995, that is some [15 % to 25 %] of overall cola sales in Great Britain. The importance of public houses (of which there are about 60 000 in Great Britain) in this channel can be seen from figures in the Report⁽¹⁾ of the Monopolies and Mergers Commission (MMC), which showed public houses as accounting for about two-thirds of the consumption of carbonated soft drinks. CCSB estimates that the figure may now be only 45 %.

(d) *Growth*

- (124) Overall the cola market has grown by some 24 % from 1993 to 1995. The increases in the same period in the three channels were: multiple grocers, 36 %; impulse, 19 %; and on-premises, 11 %. CCSB and most other operators in the cola market expect the trend will be for growth to continue, though the weather may have a significant effect in any individual year.

⁽¹⁾ A report on the supply by manufacturers of carbonated drinks in the United Kingdom (HMSO 1991).

(e) *The Structure and Nature of Marketing Activities (Advertising & Promotion)*

(such as payment to customers for listings, shelf displays and in-store advertising, 'customer-specific' promotions and sampling, trade press advertising, free-on-loan coolers).

(125) The structure and nature of the marketing activities of soft drinks in Great Britain, as described below, combine a mix of brand-specific advertising and trade-specific promotion. These two major elements constitute complementary marketing activities, involving both the brand owner and the bottler/distributor. Such a structure achieves both the appeal of the brand's image and the effectiveness of a promotional programme in a blend which has proved to be particularly relevant in the marketing of colas.

'Above-the-line' advertising

(126) The cola market is largely image-driven and is characterized by powerful brands which have been built up and sustained through long-running advertising campaigns. This brand-specific advertising is referred to in the industry as 'above the line' and is mainly carried out through TV, radio, cinema, press, and sponsorship of activities such as music and sport. Such 'above-the-line' advertising is not only devised and carried out by the brand owners but is also financed by them.

'Below-the-line' promotion

(127) The promotion of branded products at trade level, referred to in industry as 'below-the-line' marketing, is also considered very important to the development of brands, particularly in the multiple-grocery channel and the wholesale/cash-and-carry (impulse) channel.

(128) 'Below-the-line' marketing consists of two main types of activities: (i) promotional discounts (such as value-added promotions, multibuy, price reductions, customer discounts); and (ii) trade marketing

(129) The multiple-grocery and wholesale/cash-and-carry (impulse) channels have the expectation that major brands will be promoted regularly. It should be noted in this respect that, while promotions generally last between four to eight weeks, Coca Cola is typically on promotion most of the year in the top-end grocery channel with one or more packaging/product configurations.

(130) In the on-premises channel, marketing activities consist mainly of the payment of concessionary funds in the form of lump-sum payments to secure medium-term customer contracts (such as with a brewer or leisure account).

(131) 'Below-the-line' marketing is characterized by heavy investment in the large brands on the part of the bottlers/distributors which, typically, have the financial support (often substantial) of the brand-owners concerned, in the form of the co-funding of certain agreed promotions. Thus, the total marketing expenditure 'below the line' can be much greater than the 'above-the-line' advertising expenditure.

3. Dominance

(a) *Strengths of CCSB in the cola market*

Market share

(132) In 1995, CCSB had a [55 % to 65 %] by volume share of the market for colas in Great Britain (all of this is attributed to TCCC, since CS has no cola brands). That is almost three times the share of its next biggest competitor. CCSB has by far the largest share in each of the three trade channels. The market shares are as follows:

Market shares in colas on a volume basis

(%)

Company	1993	1994	1995
CCSB (Coca-Cola brand)	[55-65]	[55-65]	[55-65]
Britvic (Pepsi Cola brand)	[15-25]	[15-25]	[15-25]
Virgin Cola	—	[< 5]	[< 5]
Own-Label Brands	[< 10]	[5-15]	[5-15]
Other Colas	[15-15]	[< 10]	[< 10]
Total	100	100	100

Source: Canadean.

1995 market shares in colas on a volume basis

Company	Multiple-Grocery	Impulse	On-Premises	(%) Overall
CCSB (Coca-Cola brand)	[35-45]	[60-70]	[55-65]	[55-65]
Britvic (Pepsi Cola brand)	[10-20]	[15-25]	[30-40]	[15-25]
Virgin Cola	[<10]	[<5]	—	[<5]
Own-Label Brands	[25-35]	[<5]	—	[5-15]
Other Colas	[<10]	[<10]	[<10]	[<10]
Total	100	100	100	100

Source: Canadean Limited; Nielsen; estimates of the parties.

(133) In the largest of the three, multiple-grocery channels, CCSB with Coca-Cola has shares of about [35 % to 45 %] by volume and [45 % to 55 %] by value, far in excess of the next largest player Britvic's Pepsi with [10 % to 20 %] by volume and [15 % to 25 %] by value. Virgin is a minor player in this channel being present in only two of the major retail chains. Both 'traditional' value/economy brands and the more recently introduced premium own-label colas play a role in this market. It should be noted that although together the own-label brands have an appreciable market share ([25 % to 35 %]), individually their shares are limited ([<10 %]) and confined to one super-market chain.

(134) The introduction of premium own-brand colas and Virgin Cola from 1994 has reduced Coca-Cola's share of the top end (top end is broader than Multiple Groceries as it includes co-operatives and freezer centres) grocers channel from [50 % to 60 %] in 1993 to [40 % to 50 %] in 1995. However, Coca-Cola has made a recovery and for the first seven months of 1996 its share was [40 % to 50 %] according to Nielsen.

(135) Coca-Cola, the CCSB product, has a particularly high market share in the impulse channel. In 1995, according to Nielsen, it had a [60 % to 70 %] share by volume and [65 % to 75 %] by value. The introduction of new premium own-label brands and Virgin Cola, gave rise to a small temporary drop in Coca-Cola sales through this channel. Despite this fall, CCSB's share in this channel has remained relatively stable between [60 % to 70 %] in 1993 and [60 % to 70 %] in 1995.

(136) The on-premises trade in colas is characterised by two very strong players, Coca-Cola (CCSB) and Pepsi (Britvic), which between them accounted for

[90 % to 100 %] of cola sales (CCSB [55 % to 65 %] and Britvic [30 % to 40 %]) through this channel in 1995. Both Coca-Cola and Pepsi have increased their market shares at the expense of other cola suppliers. Coca-Cola has increased its share by volume of the on-premises channel from [50 % to 60 %] in 1993 to [55 % to 65 %] in 1995 despite the entrenched position of Britvic in this channel.

'Must stock'

(137) CCSB's major strength is the Coca-Cola brand owned by TCCC. The TCCC 1995 Annual Report highlights the universal recognition of the Coca-Cola brand name and logo, noting that Coca-Cola is the world's second 'most widely recognized expression' (following the expression 'OK').

The Report continues to emphasise the importance that TCCC attributes to the value of its Coca-Cola brand with the following comments:

'The Coca-Cola trademark must be worth billions, right? Actually, it's worth \$1 — from an accounting standpoint, that is. According to some valuation sources, however, its real value is closer to US\$39 billion. We don't really know how much it's worth. We do know this: If our company burned to the ground, we'd have no trouble borrowing the money to rebuild, based on the strength of our trademarks alone.'

According to 1995 market research data, Coca-Cola enjoys 99 % brand awareness and 69 % advertising awareness amongst consumers.

(138) The near universal recognition of the Coca-Cola brand means that it is a 'must stock' item in multiple grocers, wholesalers and cash-and-carries. The major multiple retailers replying to the Commission's questionnaires all stock Coca-Cola.

One noted that 'certain lines have national importance and require listing, ie, the Coca-Cola brand,' adding that Coca-Cola is 'the prime motivator in the market.' Another company explained that while other brands must convince the retailer to stock them, Coca-Cola is viewed as an 'essential' product 'which retailers consider that they must stock in order to meet their customers' requirements.'

(139) Virtually all retailers stress the strategic importance of colas to their business and Coca-Cola is highlighted in the context. Moreover, soft drinks in general are of strategic importance to retailers, constituting approximately 5 % of their total business. In this regard, colas in particular are considered to be so-called 'traffic-builders,' and as such retailers depend on them to attract customers to the stores. For similar reasons Coca-Cola is a 'must stock' item for the wholesalers/cash-and-carry outlets serving the impulse channel.

(140) The fact that Coca-Cola is a 'must stock' item for wholesalers and multiple retailers confers an advantage in that there is no alternative supplier and this in turn enables CCSB to negotiate satisfactory arrangements regarding commercial terms, access to shelf space and promotional slots. One wholesaler told the Commission 'Coca-Cola being the dominant brand has a strategic importance to [us]. The practical effect of this is giving more space to the brand.'

(141) In the impulse and on-premises channels, the space available for the display and storage of colas and other soft drinks is often limited so that outlets tend to stock only one cola product and a limited range of other soft drinks. Coca-Cola, as a universally recognized product, has a considerable advantage over competing colas.

Prices

(142) CCSB's competitors, including Britvic/Pepsi and Virgin, are forced to take lower margins than CCSB on their cola products and, at the same time, must offer better promotions. One retailer reported that: 'CCSB do not fund 100 % of multisave redemptions as [...] do,' and 'if we offered a buy two, get the third free on two-litre bottles, [...] will fund back ... the full selling price, while CCSB will only fund 70 % of the price, ie, they maintain our margin, but we lose our profit.'

(143) The two major cola brands, Coca-Cola and Pepsi, are on sale in multiple retailers to consumers at around a 20 % premium over Virgin Cola and premium own-label products. According to data on actual prices (that is, inclusive of promotions) provided by the parties for the last two years in relation to the most popular cola product (two litre PET bottle), CCSB has been increasing the actual price of Coca-Cola and the premium of the Coca-Cola price over the average price of all private label colas during this period. These figures include all own-brand colas, value and premium, all packaging options and all customers and therefore represent the best view of the price development in the multiple-grocers channel.

(144) During the same period it would appear that [...] made unsuccessful attempts to increase its share in multiple retailers by reducing the actual price of the [...] two litre PET bottle ([...]) during 1995. This tends to reinforce the general view that [...] is not capable of attacking the Coca Cola market share to any significant degree on a sustainable basis.

(145) Another indication of the relative strength of Coca-Cola over retailers is the fact that even though retailers obtain a lower margin on Coca-Cola than on their premium own-label cola, nonetheless, they virtually all carry Coca-Cola. This disparity in margins is an indicator of the limitations on a retailer's bargaining power when dealing with the market leader, CCSB. While premium own-label cola provides an attractive profit to a retailer, it is not a substitute for Coca-Cola's pulling power.

(146) [...] Non-confidential summary: Internal documentation of the parties noted (in a review in April 1996) that a price increase on Coca-Cola was successfully implemented and the Coke 'mega-brand' was reasserting its strength in the cola market.]

Portfolio

(147) In addition to Coca-Cola, CCSB also has the widest portfolio of any soft drinks producer in Great Britain. CCSB has the ability to offer not only the world's leading cola but also a complete range of other soft drinks, including other leading international brands such as Fanta, Sprite, Dr Pepper, Schweppes mixers, Canada Dry and Sunkist.

- (148) The wide portfolio enables CCSB to structure its discounts so as to encourage retailers to purchase the largest possible volume. Overrider discounts (discounts granted to retailers retrospectively on the basis of volume targets to be achieved over a certain period, usually a year) are applied by CCSB either to individual brands or across the product range. Effectively, such practices encourage customers to maximise their purchases from a particular supplier and create substantial disincentives for customers to change suppliers.

Economies of scale

- (149) A further strength of CCSB is the large volume throughput generated by a combination of Coca-Cola and the other brands in its portfolio which enables CCSB to take advantage of economies of scale in purchasing, production and distribution. For example CCSB's Wakefield plant, the largest in Europe, produced nearly [...] litres in 1995 (about [...] % of CCSB's total production), whereas Britvic's total output from all its plants in 1995 was [...] of approximately the same magnitude]. In addition, the large volumes enable CCSB to deliver products to customers at a lower transport cost per unit.
- (150) There also appear to be economies of scale in advertising. Pepsi has consistently spent considerably more per litre on 'above-the-line' advertising than TCCC with no visible effect on the market share of Pepsi Cola.

(b) Constraints

- (151) The parties have claimed that the introduction of premium own-label colas and Virgin Cola shows that CCSB is not dominant on the market for colas in Great Britain. They also claim that the behaviour of CCSB is constrained by other cola suppliers, by customers and also by other CSDs. These claims are examined below.

Own-label

- (152) Own-label cola products are a significant factor only in the multiple retailers channel, where they have a market share of some [25 % to 35 %] by volume and [15 % to 25 %] by value. They have no measurable market share in the on-premises channel and only [< 5 %] by volume and [< 5 %] by value in the impulse channel. Own-label products, therefore, play no significant role in rela-

tion to the [50 % to 60 %] of the colas sold through channels other than multiple grocers.

- (153) At the time of its investigation in 1990, the MMC found that retailer own-label CSD products were generally priced some 10 % to 20 % below those of the brand leaders, and that the maintenance of a stable price differential between own-label and branded products was assisted by the strong bargaining position held by the retailers *vis-a-vis* own-label manufacturers. (Par.3.59.) However, apparently as a result of the advertising and promotion devoted to Coca-Cola and Pepsi and the inferior quality of the concentrates used in the own-label products at that time, the price differential for colas was much larger, approximately 40 to 50 %. There was also a value-level cola sold at a discount of about 70 %.
- (154) This situation changed dramatically with the arrival in Great Britain of Cott, a Canadian company which enabled the major retail chains to develop cola products comparable to Coca-Cola and Pepsi.
- (155) In April 1994, Sainsbury introduced a premium own-label cola, named 'Classic Cola', positioned to compete more directly with the major brands. The Sainsbury's Classic launch was followed by a procession of 'me too' launches of premium own-label colas by other major multiple-grocery retailers. In addition, NISA and Spar, the largest buying groups, introduced premium own-label colas.
- (156) The early sales of these premium own-label colas made inroads into the market shares of both Coca-Cola and Pepsi Cola. In response to these challenges to Coca-Cola's market share, TCCC stepped up its advertising programmes.
- (157) [... Non-confidential summary of paragraphs 157 and 158: Internal documentation of the parties shows that the Coca-Cola brand began to re-capture share from the own-label colas, as early as the final quarters of 1995, and that by the middle of 1996, market place restructuring was complete].
- (158) [...].
- (159) All the major multiple grocers and the two largest buying groups now have their own premium colas. This in itself restricts the opportunities for further expansion. Furthermore, own-label cola products suffer from a number of additional disadvantages which restrict their potential growth:

- they are restricted to the premises of the multiple grocery which owns them,
 - premium brands cannot compete too vigorously on price because they risk losing their status as 'premium' products and being relegated in consumers' minds to the lower tiers; Coca-Cola acts as a known value indicator showing the value of the premium own brand,
 - they are less able to advertise their brand to counteract their inability to reduce prices,
 - there are limits to the increased sales of own products that multiple retailers can achieve by reducing customer choice and the shelf space allocated to proprietary brands since customers eventually go elsewhere.
- (160) The parties say that the own-brand business is worth about £ 28 billion a year and therefore cannot be said to have limited potential. Furthermore, they say that the multiple grocers spend heavily on advertising their brand name overall and hence on promoting own-brand colas. Even if one accepts this, in 1995 Sainsbury spent [...] on advertising, approximately [...] of its turnover, whereas TCCC's expenditure according to Canadian was £ 29 million, which is equivalent to over [...] of the turnover of TCCC products. The advertising spend in relation to turnover, therefore, is at least ten times as large in the case of TCCC.
- (161) It appears that the market share available to premium own-brands is restricted and that the multiple groceries do not have the tools to expand sales beyond a certain point. That this point seems to have been reached is confirmed by the [... *inter alia*] and by the recovery by Coca-Cola of some of its lost market share.
- (162) Although CCSB lost market share in the multiple-grocery cola market as a result of the introduction of premium own-brand colas and Virgin Cola, according to Canadian, 'its total volume still increased ahead of the market.'
- (163) It is interesting to contrast the situation of colas in multiple retailers with that of lemonades. Own brands dominate lemonade sales with some multiple grocers having no branded product at all or pricing their own brand above the branded (value) product. In contrast Coca-Cola is typically sold at a premium of some 15 to 25 % to the premium own-brand colas yet it remains by far the largest brand in the channel with 42 % by volume, more than half as much again as the aggregate of all own brands. Furthermore, it has increased both its price and its market share recently. In the cola market as a whole, own brands account for only 10 % of volume.
- (164) It should also be noted that own-brand colas have been amongst the least successful products launched by supermarkets, their penetration is only 28 % compared to 39 % for CSDs overall (that is, some 50 % of CSDs excluding colas), 50 % for mineral water and 67 % for fruit juices. This indicates that branded colas enjoy a level of market power not available to other soft drinks. Coca-Cola, as the most important brand by far, is the principal beneficiary of that situation.
- ### Virgin
- (165) Virgin Cola was launched under the umbrella of the 'Virgin' trade-mark, which is used in the wide range of businesses which make up the Virgin Group. According to the Group, those businesses (which include airlines and retailing) are linked by a common philosophy, namely, 'to introduce innovation into stagnant monopolistic markets ... combined with a clear, stated dedication to providing the consumer with genuine benefit through a combination of lower prices and/or better quality products or services'.
- (166) The Virgin operation, which has had some success, is based very largely on sales through two multiple grocers, [...], which give a market share of around [$< 10\%$] in that channel. It has not been able to establish itself to the same degree in the impulse channel, where its share is about [$< 5\%$]. In the on-premises sector its presence is even less significant and is effectively limited to the chain of cinemas owned by the Virgin group. Overall, its share of the cola market in Great Britain was [$< 5\%$] (Canadian) in 1995.
- (167) Virgin Cola suffers a number of disadvantages compared with CCSB:
- Lower financial resources are available to Virgin Cola to fund launches, advertising and promotion of its cola products,

- Its production and distribution resources are much smaller. As far as distribution is concerned, the disadvantage is offset to some extent by the fact that the large bulk of Virgin Cola's sales are made to only two customers. This makes distribution easier for those clients. However, it will require a national distribution operation if it is to have any chance to penetrate the impulse and on-premises channels,
 - While Virgin has introduced additional products and is planning further expansion of its product range, its portfolio cannot be compared to the portfolio of products supplied by CCSB (or even Britvic). As a result, Virgin Cola does not have the same leverage over retailers as CCSB (or even Britvic) in terms of listings, access to shelf-space and terms of supply,
 - Virgin Cola's negotiating stance with retailers, wholesalers/cash-and-carry outlets is relatively weak compared to CCSB, given its total volume sales in both colas and other drinks.
- (168) [... Non-confidential summary: Internal documentation of the parties noted that Virgin's market share had been very stable, basically because it was dependent on a single multiple retailer for a large majority of its volume.] With other multiple grocers unlikely to take on a product which would compete head on with their own-label products, any significant expansion of Virgin Cola's sales through multiple retailers appears unlikely.
- (169) Although Virgin has ambitions to be a complete brand competing in each of the three markets, it has found it difficult to make an impact in the on-premises and impulse markets, and is effectively subject, at least for the time being, to some of the same constraints as the premium own-label colas. [...].
- (170) Virgin lacks the critical mass in volume in both colas and its general portfolio in order to render it economic to exploit the impulse channel fully in terms of distribution. [...].
- Britvic**
- (171) Superficially, Britvic is in a similar position to CCSB in the cola market. It has a major international brand name, Pepsi (the eighth largest brand of fast-moving consumer goods (FMCG), valued at £ 175-180 million in 1995) and the brand owner has adequate resources to advertise and promote the product. Its cola product is supported by a broad portfolio of other soft drinks and Britvic is present in each of the three trade channels. In addition, in the on-premises channel Britvic has a substantial advantage over Coca-Cola in that its shareholders are the owners of over 12 000 tenanted and managed public houses, 20 % of the total, and it has links through PepsiCo to major fast-food outlets. Britvic has traditionally had close links to the licensed trade, which makes up about two-thirds of the volume sales in the on-premises channel.
- (172) Britvic also has modern facilities and a nationwide distribution system. However it operates on a smaller scale than CCSB; its cola sales are about [30 % to 40 %] of CCSB's and its CSD sales are about [45 % to 55 %] of CCSB's.
- (173) In terms of 'above-the-line' advertising, there appear to be economies of scale. Pepsi's expenditure in relation to its volume of sales was for several years (until 1994) almost double that of Coca-Cola in terms of £/litre. In 1994 it was about 40 % higher. Coca-Cola increased its expenditure massively in 1995 and for the first time in six years outspent Pepsi in £/litre terms. Despite those high levels of expenditure relative to Coca-Cola, Pepsi's market share remained more or less constant and suffered a slight fall in 1995.
- (174) Over the last two years at least, although both Coca-Cola and Pepsi are regarded as premium branded colas, Pepsi did not command the same price as Coca-Cola. Average retail prices of Coca-Cola for 1995 and 1996 to date in the multiple-grocery market are some [< 5 %] higher than for Pepsi. This is confirmed by an examination of the weekly price development of colas sold in two litre Pet bottles and in cans. During the period between September 1994 and September 1996, Pepsi commanded a higher price than Coca-Cola for only 39 weeks for bottles and 24 weeks for cans. It is very unlikely that retailers would reduce, over the long term, their margins unilaterally by reducing the price of Pepsi in relation to Coca-Cola, particularly since Pepsi is in a weaker negotiating position in relation to the multiple grocers. It is therefore reasonable to assume that those lower prices to consumers are directly related to lower prices (after taking into account the effects of discounts and promotions) offered by Britvic.

- (175) One product within the Pepsi range — Pepsi MAX — appears to have had some success. When the new 'premium' own-label products were introduced, Pepsi's market share was apparently less affected than that of Coca-Cola, falling only from [15 % to 25 %] to [15 % to 25 %] of the market in the top-end grocery channel in the 1991 to 1995 period, with a slight gain in 1993, followed by a [< 5 %] drop between then and 1995. [...].
- (176) In April 1996, Pepsi launched its 'Pepsi Blue' campaign to accompany the change of colour of its bottles and cans. This campaign is estimated to have cost US\$ 500 million (not including the United States). Despite this expenditure, it appears that Pepsi has made no significant gains in market share.
- (177) In fact, despite a successful product in Pepsi Max, higher advertising expenditure per litre and lower prices to consumers, at least in the multiple-grocers channel, Pepsi has not in recent years made any significant inroads into Coca-Cola's market share. Even in the on-premises channel, where Britvic has significant advantages, Pepsi has been unable to prevent Coca-Cola from gaining market share.
- Cott**
- (178) Cott specializes in the production of own-label colas both in North America and in Great Britain. It produces approximately [10 % to 20 %] of the colas manufactured in Great Britain. However, it has no independent marketing or sales operations, although it may have the resources to develop a new cola brand.
- Multiple grocers, wholesalers and cash-and-carries**
- (179) The parties have submitted that the multiple grocers exert a degree of bargaining power over CCSB because of (a) the weight of their purchasing power as large customers, and (b) their control over listing (and de-listing) products and allocation of shelf space, particularly since they offer their premium own-label colas and other CSDs in competition with CCSB's products.
- (180) While the parties identified a number of the largest multiples that accounted for an important proportion of CCSB's overall sales of soft drinks in 1995, no single multiple-grocery chain accounted for more than [10 %] of such sales. Thus, on an individual basis, no single multiple could be argued to be in a position to constrain CCSB's pricing and marketing policies. Indeed, one of CCSB's largest multiple customers stated that it does 'not have enough negotiating power with big brands — especially Coca-Cola.' The customer cited an example 'where we know raw material prices of PET and sugar have dramatically fallen in the last few months and we cannot get price reductions out of the suppliers in respect of this.'
- (181) While it is true that all suppliers must rely on retailers to provide shelf space and promotional slots, CCSB enjoys substantial leverage over all retailers because it offers the number one FMCG (£ 484 million) — Coca-Cola — which is universally considered to be a 'must stock' product. One major retailer noted that 'certain lines have national importance and require listing, ie, the Coca-Cola brand,' adding that Coca-Cola is 'the prime motivator in the market.' Another company explained that other brands must convince the retailer to stock them, but Coca-Cola is viewed as an 'essential' product 'which retailers consider that they *must stock* in order to meet their customers' requirements' (emphasis added). Thus, the multiples' 'control' over shelf space is mitigated with respect to CCSB because they must offer Coca-Cola to their end-user consumers.
- (182) It is true that some of the multiple grocers, buying groups, wholesalers and on-premises operators have considerably larger turnovers than CCSB or than CCSB and CCE combined. Simple volume of turnover is not the determining factor when considering where the power lies in negotiations. In this respect, the 'must stock' factor is extremely important. It is interesting that all of the multiple retailers stock Coca-Cola, as do the major wholesalers and cash-and-carries. The ability of Coca-Cola to command a higher price than both its closest rival, Pepsi, and own-brand premium colas and also to increase prices while it is allegedly suffering severe competition from premium own-label colas and Virgin Cola appears to demonstrate that the multiple grocers and the wholesalers and cash-and-carries do not have sufficient countervailing power to inhibit CCSB.

- (183) Of the five wholesalers and cash-and-carries which answered the question concerning their bargaining power, four considered that they did not have adequate bargaining power and only one considered that it did.

Brewers/on-premises

- (184) The on-premises channel is considerably less concentrated than the multiple-grocery channel. The three largest purchasers of soft drinks are the owners of Britannia Holdings, that is Bass, Allied Domecq and Whitbreads, which essentially purchase their requirements from their associate company Britvic. The next largest estates are owned by Greenalls, Carlsberg Tetley and Scottish and Newcastle, each of which controls less than 5 % of the total number of pubs.
- (185) No individual customer except Bass, which consolidates Britvic into its accounts, provides more than [5 %] of either CCSB's or Britvic's total sales of soft drinks. It follows that purchasers in this market are unlikely to be able to exert countervailing pressure on CCSB.

Other carbonated soft drinks

- (186) The parties have stated that the competition from other commercial beverages has a constraining effect on the cola market and in particular on prices. No explanation as to how this mechanism works has been given and no evidence of its effectiveness has been presented.
- (187) Even if the Commission were to accept, which it does not, that competition from products in neighbouring drink markets may to a certain extent exert pressure on prices of colas or otherwise constrain the behaviour of players in the cola market, such pressure or constraint would be exerted on the whole cola market, affecting not only CCSB, but all cola producers, and it would not therefore alter the position of CCSB in relation to its direct competitors on the cola market.
- (188) It is clear from the section on market definition that the cola market stands alone. Although the products which the parties describe as close substitutes, such as lemonade, are available at prices between 20 and 30 % of that of Coca-Cola and considerably below the prices of the large majority of other colas, sales of colas have grown faster than

sales of CSDs as a whole and now account for about 25 % of all soft-drink sales and nearly 50 % of CSD sales. Furthermore Coca-Cola has been able to raise prices while regaining market share. In this situation it appears that whatever influence competition from other commercial beverages may have is minimal and is in no way sufficient to compromise the conclusion that CCSB, through Coca-Cola, is dominant on the cola market in Great Britain.

(c) Barriers to entry

- (189) Potential entrants into the cola market face substantial entry barriers. Firstly the relative lack of success of own-label colas before 1994 suggests that they would require access to a premium-quality cola concentrate. The launch of a new cola would incur considerable expenditure to create product awareness, particularly if the launch of a new brand were involved. In addition, considerable promotional support would be required. One competitor has estimated the investment required to launch a new cola brand to be as high as £ 10 million in the first year. CCSB itself has stated that the cost of launching a new soft drink on the market in Great Britain could be of that order of magnitude.
- (190) Given the fact that Coca-Cola is a 'must stock' item in multiple grocers and most, if not all, outlets in this channel also stock a premium own-label product, the difficulties in obtaining access to the quantity and quality of shelf space necessary for success would be a considerable barrier. In addition, the absence of a broad portfolio of products including, in particular, other leading CSD brands, is also a barrier for any potential entrant, since it limits the supplier's negotiating position *vis-à-vis* the retailer.
- (191) Outside the multiple-grocer channel, an extensive distribution network is required which, due to the low volumes, would be difficult to establish and operate cost-effectively.
- (192) In the on-premises channel, any new cola supplier has several additional barriers to overcome. First, in virtually all cases, the supplier must displace a very strong brand (Coca-Cola or Pepsi) as the only cola sold in the outlet. The position of CCSB is very strong in this important market because it not only bottles and distributes the leading cola and mixer brands but can also offer a full range of soft drinks.

(d) *Conclusion*

- (193) The dominance of CCSB stems from the very high market shares of Coca-Cola in the overall cola market and in each of the three channels, its status as a 'must stock' item in multiple grocers, wholesalers and cash and carries, and its wide portfolio, which enables customers to obtain all or a very large part of their requirements from a single source and also allows considerable economies of scale in production and distribution. These economies of scale are in addition to those arising from the sheer volume of Coca-Cola sales.
- (194) New entrants into the cola market face serious barriers to entry. The new entrants, premium own brands and Virgin Cola have effectively been confined to the multiple retailer channel, where there appears to be little scope for further expansion and where in fact Coca-Cola is regaining market share.
- (195) Neither customers nor competitors are able to restrain the ability of CCSB to act independently of the other players in the market.

4. Impact of the proposed operation*Current structure of CCSB*

- (196) In its current form, CCSB, through its holding company ABGB, is a subsidiary of CS, which holds 51 % of the equity shareholding in ABGB. The other 49 % is held by TCCC. In legal terms, the company is controlled by CS. CS has a majority of directors ([...]) on the Board [...]. For the first [...] years of CCSB's existence ([...]), TCCC had veto rights over [strategic decisions ...].
- (197) TCCC currently has veto rights in relation to certain issues, including [...]. Those rights do no more than protect the position of TCCC as a minority shareholder.
- (198) However, [...], given the proportion of the company's business generated from TCCC products ([... by volume and ... by value ...]), CS could not, in practice, use its majority against TCCC on strategic commercial matters [...]. On this basis, it can be argued that TCCC has exercised *de facto* joint control with CS over CCSB's general commercial strategy in recent years.

- (199) In fact, there has been growing divergence between TCCC and CS in recent years over the commercial strategy of CCSB. A third party has stated:

'Dissent between the Coca-Cola Company and Cadbury Schweppes has been well documented in the trade press Unlike Coca-Cola, a significant proportion of Cadbury Schweppes' total profits comes from CCSB. Earnings from CCSB have, therefore, greater impact on Cadbury Schweppes' share price, enabling it to make acquisitions in other parts of the world. As a result, there has been significant tension over CCSB within Amalgamated Beverages: while Cadbury Schweppes' policy was to extract profit from CCSB and to distribute it to shareholders ... Coca-Cola's driving goal has been to invest and build its market share.'

- (200) The parties argue that the Commission exaggerates the supposed policy differences between TCCC and CS as to the basic commercial strategy of CCSB, [...]. However, this does not represent the full picture. [... Non-confidential summary: Since 1994, the parties have disagreed as to the relative emphasis to be given to short-term profit as opposed to volume growth.]

- (201) Nevertheless, it must at the same time be recognized from the factors set out above that, [...] the parties have [...] reach[ed ...] compromise[s] [...] which have enabled them to] continue to operate together within CCSB.

- (202) The parties have argued that tensions are normal between a brand owner and a bottler. It is common knowledge in the industry that, in the supply of soft drinks, the perspectives of a brand owner and of a bottler are different and tensions can arise between them. In general, the brand owner's focus is on volume, since its revenue is normally dependent on the sales of concentrate, which are volume based. The bottler, however, focuses on the profit earned by the business, with the result that the prices it seeks may be higher than those which would maximize the brand owner's return. In the case of CCSB, however, the tensions existed as much, if not more, between the two brand owners, as between one brand owner and a bottler. Their net effect at any rate was that TCCC was not entirely free to pursue its own commercial strategy in the company.

- (203) It should also be noted that CS and TCCC have increasingly become direct competitors in recent years, in so far as they both own similar flavours of drinks, for example, in orange-flavoured CSDs,

Sunkist (CS) and Fanta (TCCC), and still drinks, Oasis (CS) and Fruitopia (TCCC). (Fruitopia was not marketed by CCSB and its withdrawal from the UK has been announced by TCCC). On a broader level, the two companies are also competitors in so far as TCCC is the most important soft-drinks brand owner in the world while CS is the third most important.

Situation after the proposed operation

- (204) After the completion of the proposed transaction, the CCSB operation would be transferred to CCE. As a result, CCE — and thus TCCC — would have sole control over the production, packaging, distribution and marketing of all the CCSB brands. This would include all of TCCC's brands currently within the CCSB portfolio. In addition, CCE — and thus TCCC — would have control over the marketing of CS's products. This is due to CS's long-term licensing arrangements to be executed with CCSB. CS itself would no longer be involved in the bottling business in Great Britain. However, as a result of the licensing arrangements, which have been notified under Article 85 of the EC Treaty (see paragraph 17), CS would retain some influence over (a) the marketing of its own brands, through its financial contribution to CCSB's marketing funds and formulation of a joint marketing fund for its products, and (b) the sales volume of its products through [...].

Vertical Aspects

- (205) Through CCE's acquisition of direct control over CCSB, TCCC would become completely vertically integrated and would obtain a direct 'route to market', that is to say, access to customers in all distribution channels for all TCCC brands in the CCSB portfolio, including, of course, the Coca-Cola brand. There would be a number of advantages to obtaining a direct route to market. In particular, it would increase TCCC's scope of action to co-ordinate CCSB's marketing and promotional activities 'below-the-line' with TCCC's advertising activities 'above-the-line', including increased flexibility to increase 'below-the-line' expenditure and to target that expenditure.
- (206) Consequently, it can be argued that TCCC would be able to increase CCSB's market share and to capture market growth at the expense of its competitors in the cola market.
- (207) However, it has to be recognized that TCCC already influences the marketing of its own products within CCSB through the concentrate price and the size of its marketing contribution. In addition, through the licensing agreement, TCCC and CCSB also seek to agree on an annual plan for

TCCC products. Moreover, as stated above, TCCC already exercises substantial influence, if not joint control, over the overall commercial strategy of CCSB. As a result, therefore, there is not a substantial difference between TCCC's current scope of action and its future scope of action in CCSB. In addition, it is relevant to note in this context that, even at present, CCSB is not free to market colas other than Coca-Cola. In this respect, therefore, the integration of CCSB into TCCC does not further prejudice the possibilities for other cola brand owners to have access to bottling and marketing facilities.

Horizontal / conglomerate aspects

- (208) By retaining the CS brands, CCSB would remain the largest bottler in Great Britain and therefore would maintain all the advantages it now enjoys through having the most complete portfolio in the market. These advantages would now accrue to TCCC. These include scale economies in purchasing, production and distribution, and the ability to offer the most wide-ranging override discounts and other promotional measures to customers. Since it would be TCCC/CCE alone that would control the full portfolio, it would have greater freedom to optimise the use of this portfolio to its own advantage by, amongst other measures, designing promotional measures to boost the Coca-Cola brand. The Coca-Cola brand could also benefit indirectly through promotional measures such as override discounts applied across the whole portfolio if the overall volume and value of non-cola TCCC products (such as Sprite and Fanta) in this portfolio was increased.
- (209) However, it has to be recognized that the advantages resulting from the large CCSB portfolio are to a large extent already present for the current shareholders of CCSB, and that the company already makes use of the competitive potential of this portfolio.

Third-party complaints

- (210) A number of third parties have raised concerns regarding the proposed operation. Those third parties included competitors at the brand owner and bottler levels, and also suppliers of other CSDs/soft drinks. Some of the complaints referred to the potential of the structural change brought about by the operation to reinforce the already dominant position of CCSB in the cola market in Great Britain, including the type of competitive advantages, described above, that the new entity would enjoy.
- (211) In addition, a number of major customers submitted comments to the Commission. The majority did not voice any specific concerns about

the operation; however, this must be viewed in the context of the following: in many cases, those customers have no reason to disapprove of 'below-the-line' promotion offered on CCSB's products, which could be expected to increase their own profit margins. Nevertheless, some customers did express strong reservations about the potential for the operation to strengthen CCSB's market power.

- (212) A number of the third-party competitors raised concerns that the new entity would have the capability to engage in various anticompetitive practices, including predatory pricing, exclusivity provisions, tying and full-line forcing. To a large extent, however, such opportunities already exist. Behavioural practices of this kind which have no direct link with the structural operation can be dealt with under the provisions of Article 85 and/or 86. Remedies under those Articles are available to third parties at any time, independently of the current proceedings under the Merger Regulation. In any event, however, the Commission takes note of the fact that CCE undertakes that, so long as CCE controls CCSB, CCSB will adopt the undertakings given to the Commission by The Coca-Cola Export Corporation in 1989⁽¹⁾. That undertaking would alleviate some of the concerns raised by third parties in the course of the procedure.

⁽¹⁾ Those undertakings may be summarised as follows:

- (i) TCCEC undertakes to implement a compliance programme in this regard to ensure compliance with the EEC competition rules; and
- (ii) TCCEC undertakes to comply with its specific obligations as to its commercial behaviour in each Member State concerning cola-flavoured soft drinks. TCCEC specifically undertakes not to include the following provisions in Agreements concluded or renewed with customers ... and to abstain from unilateral restrictive practices having the equivalent effect:
 - (a) Exclusivity provisions: provisions that obligate a customer not to purchase other colas or provisions that grant the customer a rebate or other advantage on condition that the customer does not purchase such beverages;
 - (b) Target Rebates: provisions which condition the availability or extent of rebates granted to a customer on the customer reaching purchase targets of products individually set for the Customer for periods exceeding three consecutive months;
 - (c) Combined Target Rebates: provisions under which a target rebate (to the extent permitted under (b) above) is paid on the basis of the customer reaching total aggregate purchases of both Coca-Cola Megabrand products and any other beverages;
 - (d) Tying provisions: provisions that condition the supply of Coca-Cola Megabrand products or the availability or extent of rebates or other advantages upon the customer's purchase of one or more additional beverages along with the purchase of one or more Coca-Cola Megabrand products.

The undertaking provides for the possibility for TCCEC to consult with the Commission as to whether a deviation from this undertaking would be appropriate if in the specific circumstances of a specific agreement, adherence to this undertaking would result in serious and substantial commercial hardship to TCCEC.

- (213) In addition, the UK Monopolies and Mergers Commission carried out an investigation of the carbonated soft drinks industry in the United Kingdom in 1991. Based on the findings of the investigation and the MMC's resulting recommendations, CCSB subsequently (in 1993) *inter alia* gave undertakings to resolve concerns regarding certain practices which had been found to operate against the public interest in the United Kingdom. Those undertakings remain in force. Infringements of those undertakings are actionable at any time. To date, no action has been considered necessary by the UK authorities on the basis of those undertakings, or any other anticompetitive practices.

Conclusion

- (214) While it is clear that the new entity would enjoy very substantial market power, that must be seen in comparison with the current structure of CCSB — in particular, through the presence of TCCC in the current structure, as compared with its presence through CCE in the new entity. Moreover, the CCSB portfolio would remain the same; and the new licensing arrangements with the brand owners would operate under similar provisions to the existing arrangements. Thus, although the proposed operation leads to a structural change which may also lead to a change in the market behaviour of CCSB, the Commission considers that, given the very specific facts of the case, it is not possible to differentiate sufficiently between the opportunities which would be derived directly from the proposed operation and the opportunities which already exist within the current structure of CCSB in order to conclude that the proposed operation results in a strengthening of CCSB's dominant position in the cola market in Great Britain within the meaning of Article 2 of the Merger Regulation.
- (215) For these reasons, the Commission considers, in the light of the specific circumstances of the case, that there is not sufficient evidence to conclude with the sufficient degree of certainty that the proposed operation would result in a strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it. The Commission has, therefore, reached the conclusion that the proposed operation is compatible with the common market within the meaning of Article 8 (2) of the Merger Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The concentration notified on 9 August 1996 by Coca-Cola Enterprises Inc. relating to the acquisition of Amalgamated Beverages Great Britain Ltd., the parent company of Coca-Cola & Schweppes Beverages Ltd is declared compatible with the common market under Article 8 (2) of Council Regulation (EEC) No 4064/89 and with the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

Coca-Cola Enterprises Inc.,
PO Box 723040,
2500 Windy Ridge Parkway,
Atlanta,
Georgia 31339-0040,
USA.

Done at Brussels, 22 January 1997.

For the Commission

Karel VAN MIERT

Member of the Commission
