



Case M1017J

**Proposed acquisition by Suntory Beverage & Food Limited of
sole control over the Ribena and Lucozade soft drinks business
from Glaxo Group Limited**

Public Decision

The Notified Transaction

1. On 30 October 2013, the Jersey Competition Regulatory Authority (**JCRA**) received an application (the **Application**) for approval under Articles 20 and 21 of the *Competition (Jersey) Law 2005* (the **Law**). The Application concerned the proposed acquisition by Suntory Beverage & Food Limited (the **Purchaser**) of control over the Ribena and Lucozade soft drinks business (the **Business**) of Glaxo Group Limited (the **Seller**) (the **Acquisition**).
2. The JCRA registered a notice of its receipt of the Application on its website on 30 October 2013, inviting comments by 13 November 2013. No comments were received.

The parties and the transaction

(a) *Purchaser*

3. The Purchaser is a Japanese company, is listed on the Tokyo Stock Exchange and is ultimately controlled by Suntory Holdings Limited (**Suntory Holdings**). Suntory Holdings is also a Japanese company. The Suntory Group's activities include the production, marketing and distribution of soft drink products. The Purchaser, which is primarily responsible for the non-alcoholic beverage and food business of the Suntory Group, is active in the soft drinks sector in the EEA through its subsidiary, Orangina Schweppes Group (**OSG**).
4. Suntory Group or Suntory Holdings (through its subsidiaries or affiliates) own and/or licence the following soft drink brands, which are sold in the UK and imported into Jersey¹:
 - a. V Energy Drink (a carbonated energy drink containing guarana, taurine and caffeine);
 - b. Orangina (a carbonated fruit drink with orange pulp and 12% citrus fruit juice); and
 - c. Sunny Delight (a still orange flavoured drink containing juice and added vitamins).

5. The Suntory Group has approximate turnover as follows:

Location	Year ended 31 December 2012
Worldwide	[REDACTED]
Jersey	[REDACTED]

¹ The parties' investigations have indicated that Snapple, a non-carbonated soft drink available in a range of flavours, which is sold by Suntory Group in the UK under licence, is not available in Jersey.

(b) *Seller and the Business*

6. The Seller is incorporated under the laws of England & Wales and is ultimately controlled by GlaxoSmithKline plc (**GSK**). GSK is incorporated under the laws of England & Wales and is listed on the London and New York Stock Exchanges. As one of the world's largest healthcare companies, its three primary areas of business are pharmaceuticals, vaccines and consumer healthcare. As part of its consumer healthcare business, GSK produces and supplies a range of well-known consumer brands, including Lucozade, Ribena, Sensodyne, Aquafresh, Panadol, Beechams, Maximuscle and Horlicks.
7. The Business is active in the manufacture, distribution and sale of non alcoholic beverages, including Lucozade, which it produces under four main brands², and Ribena, a fruit-based soft drink available in a range of product forms³. The Business comprises a factory based in Coleford (in England) and various related assets. The total consideration to be paid by the Purchaser for the Business is £[REDACTED], subject to any adjustments.
8. The Business has approximate turnover as follows:

Location	Year ended 31 December 2012
Worldwide	£[REDACTED]
Jersey	£[REDACTED] ⁴

The Requirement for JCRA Approval

9. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. Under Article 2(1)(b) of the Law, a merger or acquisition occurs for the purposes of the Law if a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.

² (a) Lucozade Energy – a carbonated glucose-based energy drink; (b) Lucozade Revive – a low calorie carbonated energy drink containing vitamins; (c) Lucozade Sport – a bottled still sports drink designed to provide carbohydrate, fluid and electrolytes to maintain hydration during exercise; and (d) Lucozade Sport Lite – a bottled still sports drink designed to hydrate but provide lower levels of carbohydrate (and therefore calories) than traditional sports drinks.

³ Concentrate, fruit/still drinks, carbonated drinks and juice drinks

⁴ Direct sales to customers in Jersey

10. The parties have applied for JCRA approval of the Acquisition on the basis that it seems likely the Business has a share of 40% or more of the supply of sports and energy drinks to customers in Jersey by virtue of its production and supply of products under the Lucozade brand, bringing the Acquisition within the conditions of Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2010* (the **Order**), and that neither of the exemptions set out in Article 4(a) or (b) of the Order are applicable.
11. The parties also applied on the basis that some independent retailers in Jersey sell the energy drink, V. In light of the approximate share of supply in the sports and energy drinks sector held by the Business, it seems likely that the Acquisition would also fall within the terms of Article 2(b) of the Order, albeit that the increment attributable to the V brand is *de minimis*.
12. On the basis of these facts and submissions, pursuant to the Order and Article 20(1) of the Law, the JCRA's approval is required before the Acquisition is executed.

Product market

13. The parties are active in the manufacture and supply of soft drinks in the non-alcoholic beverage (**NAB**) sector. Within the NAB sector, the European Commission has previously distinguished separate markets for (i) carbonated soft drinks (**CSDs**) and (ii) other non-alcoholic beverages or non-CSDs⁵.

CSDs

14. In previous merger decisions, the European Commission has determined that the relevant product market should include all CSDs or has otherwise left open the question of the precise market definition. The UK Competition Commission in *AG Barr/Britvic plc*⁶ defined the relevant market as comprising the supply of all CSDs.

⁵ See for example, Case COMP/M.5632 *Pepsico/Pepsi Americas* (2009); Case COMP/M.5633 *Pepsico/The Pepsico Bottling Group* (2009).

⁶ UK Competition Commission, (2013), *A.G. Barr/Britvic*, para 4.16.

Non-CSDs

15. Within non-CSDs, the following narrower categories have been considered as potential product markets by other competition authorities, although often a definitive conclusion on market definition has not been reached:⁷
- a. Fruit juices – where the content is 100% pure juice;
 - b. Smoothies;
 - c. Fruit/still drinks – fruit drinks where the fruit content is less than 100%, nectars, juice based drinks, ready-to-drink squashes, flavoured waters and iced teas;
 - d. Dilutes – squash and other cordials sold in concentrate form for dilution with water; and
 - e. Bottled water.

Sports and Energy Drinks

16. The European Commission has noted that it is theoretically possible that sports and energy drinks might compete with CSDs and/or fruit juices but has left this question open in previous cases⁸. The OFT has previously considered whether sports and energy drinks can be differentiated from other soft drinks on the basis that sports and energy drinks are used to replenish lost energy, and increase physical/mental endurance and performance,⁹ but has left the precise product market definition open.

Distribution Channels

17. The European Commission has considered whether further segmentation of these product markets might be possible depending on whether a product is sold on-trade (e.g. sales to hotels, bars, cafes) or off-trade (e.g. sales to grocery retailers), given differing product offerings, packing formats and distribution arrangements between the two distribution channels.¹⁰ However, a definitive conclusion has not been reached on such segmentation.

⁷ In *A.G. Barr/Britvic*, the OFT found limited evidence to support widening the narrow candidate markets of water, fruit juice, fruit drinks, and dilutes, and so considered these separately on a cautious basis (in particular water and fruit drinks where there were overlaps between the parties' activities). Upon referral, the Competition Commission also considered the still soft drink sub-segments as including fruit juice, fruit drinks, dilutes (squash) and bottled water, but left the market definition open (*A.G. Barr/Britvic*, Appendix B to Final Report).

⁸ Case COMP/M.2275 *Pepsico/Quaker* (2001): the Commission stated that it was not necessary to decide in this case whether a distinction ought to be drawn between these product categories, as under either alternative the transaction would not give rise to competition concerns.

⁹ Case ME/4809/10 *Anticipated acquisition by GSK of Maxinutrition* (14 February 2011).

¹⁰ See for example, Case COMP/M.2276 *The Coca-Cola Company/Nestlé/JV* (2001)

18. The parties consider that the distinction between the supply to on-trade customers and off-trade customers can sometimes be blurred, as for example wholesale customers can supply CSDs and non-CSD products to both on-trade and off-trade customers.

Private Label Products

19. The extent to which private label products compete with branded products in the CSD and non-CSD segments has also been considered by other competition authorities in a number of previous cases, although a definitive view has not been reached.¹¹
20. The JCRA has noted the parties' submission that, in the relevant CSD and non-CSD segments, private label products can provide a significant competitive constraint to branded products and that branded and unbranded products may be considered as part of the same relevant market. For example, the strong promotion by large retailers of their own private label products, the similarity in the names and packaging of private label products with branded products, and strategic proximity of private label products on retailers' shelves to branded products, point towards private label products being substitutable for branded products. On the other hand, the JCRA notes that it would be possible for brand loyalty to deter consumer switching.

Conclusion on product market definition

21. Given that the proposed Acquisition does not give rise to a substantial lessening of competition on any conceivable product market definition, the JCRA has accepted the parties' submission that it is not necessary to reach a definitive view. For the purposes of its analysis, the JCRA has proceeded on the basis that the relevant product markets comprise (1) CSDs; (2) non-CSDs/fruit/still drinks (excluding sports and energy drinks), and (3) sports and energy drinks, including, in each case, all distribution channels and private label and branded products.

Geographic Market

22. Due to a number of factors, including differentiated national consumer preferences, transportation and distribution costs relative to the value of the product, and national marketing

¹¹ In *Cott Beverages/Macaw*, the UK Competition Commission considered that there was little consumer substitution between branded and private label products; however, this case related specifically to the private label segment and the market at issue was the supply of own-label PET-bottled CSDs. For non-CSDs, the OFT has left open the question as to whether private label products are effective substitutes for branded products (Case ME/4091/09 *Anticipated acquisition by the Coca-Cola Company of a minority interest in Fresh Trading Limited* (26 May 2009)).

and advertising costs, in previous European Commission decisions, the relevant geographic markets for CSDs and non-CSD segments have been defined to be national in scope.¹²

23. The parties were unable to offer evidence/information about factors which might suggest that there is a separate and distinct geographic market in Jersey from the UK mainland. The parties have argued that although there are likely to be additional costs associated with importing products (i.e. shipping and transportation costs), which may increase prices paid by consumers in Jersey compared to those in the UK, competitor products presumably face the same issues, which might tend to suggest that Jersey is an extension to or part of the overall UK market. Further, the marketing of the parties' brands tends to be achieved via media common to Jersey and the UK.
24. Given that the proposed Acquisition does not give rise to any substantial lessening of competition, the JCRA has accepted the parties' submission that it is not necessary to reach a definitive view on geographic market definition. For the purposes of its analysis, the JCRA has proceeded on the basis that the relevant geographic market comprises Jersey.

Assessment

25. Under Article 22(4) of the Law, the JCRA must determine if the Acquisition would substantially lessen competition in Jersey or any part thereof.
26. The parties' activities overlap in the manufacture and supply of (i) CSDs (both including and excluding the supply of carbonated sports and energy drinks), (ii) non-CSDs/fruit/still drinks and (iii) sports and energy drinks.

CSDs

27. The Suntory Group owns the Orangina brand but, as it is licensed to A.G. Barr in the UK and the Channel Islands, the parties submit that Orangina sales should not be attributed to the Suntory Group. The JCRA has accepted this position, which is in line with the recent decisions of the OFT and UK Competition Commission in *A.G. Barr/Britvic*, where the market shares of Orangina were attributed to A.G. Barr.

¹² See for example, Case COMP/M.5632 *Pepsico/Pepsi Americas* (2009); Case COMP/M.5633 *Pepsico/The Pepsico Bottling Group* (2009); Case COMP/M.2504 *Cadbury Schweppes/Pernod Ricard* (2001).

28. Based on the market share information provided by the parties, the parties' combined market shares in the UK (which, it is assumed, are replicated in Jersey) in respect of CSDs (even including (i) carbonated sports and energy drinks, which the parties submit could compete within the wider CSDs segment, and (ii) Orangina, which it is accepted should not be attributed to the Suntory Group) is less than [REDACTED]%. The parties' combined CSD market shares (excluding carbonated sports and energy drinks but including Orangina) is only [REDACTED]%. Further, the evidence that the parties have submitted shows that the increment in the parties' shares following completion of the Acquisition would be minimal, at [REDACTED] or less.
29. Moreover a number of strong brands will continue to offer effective competitive restraint in the CSD market after the Acquisition, including, but not limited to, Coca-Cola, Pepsi, Fanta, Sprite, Lilt, Irn-Bru and Red Bull.

Non-CSDs/Fruit/still drinks

30. The Business sells various still versions of Ribena products in the fruit/still drinks segments in the UK, which are available in Jersey. As noted above, the fruit/still drink brand Snapple is licensed to the Suntory Group but is not available in Jersey. The Suntory Group also owns the Sunny Delight brand in the UK, but licences it to Gerber Juice Company. As such, the parties have argued that Sunny Delight should not be attributed to the Suntory Group, consistent with the reasoning in the *A.G. Barr/Britvic* merger case. The JCRA has accepted this position.
31. The market share data provided by the parties shows that their combined market shares for non-CSDs would be [REDACTED]% or less (even when Sunny Delight shares are included). Additionally, the increment in the Parties' shares after the Acquisition would be minimal, at [REDACTED]%. Given that Snapple is not available in Jersey, it is arguable that no overlap whatsoever arises in this product market in Jersey.

Sports and energy drinks

32. The parties have submitted that sports and energy drinks may be consumed outside the sporting context, in line with the European Commission's view that it is possible that sports and energy drinks might compete with CSDs and/or fruit juices (although the question was left open¹³). The parties have provided market share information for sports and energy drinks separately from

¹³ Case COMP/M.2275PepsiCo/Quaker (2001)

CSDs. According to these statistics, the parties' combined market shares in the UK (again, assumed to be replicated in Jersey) are between [REDACTED]% and [REDACTED]%. The Business has the higher market share of the parties, at between [REDACTED]% and [REDACTED]% in respect of the Lucozade brand, with a minimal increment as a result of the Acquisition of [REDACTED]% or less.

33. Furthermore, there will remain a number of strong competitors to Lucozade and V, such as Red Bull (owned by Red Bull GmbH), Powerade and Relentless (owned by the Coca-Cola Company), Monster (distributed by the Coca-Cola Company), Gatorade and Mountain Dew (both owned by Pepsi and distributed in the UK by Britvic). In addition, the parties' evidence shows that there have been a number of new entrants and expansions in the last three years in the sports and energy drinks market, with other brands expected to enter the market for carbonated energy drinks.
34. The JCRA also notes that V is a small competitor, whose market share has remained below [REDACTED]% over the last 3 years and is expected to remain the same for the foreseeable future. In addition, V is not a widely available mass market product like Lucozade, is generally only available in certain large supermarkets, petrol stations and convenience stores and is not generally positioned on the shelves at the same level as Lucozade.

Conclusion

35. Based on the preceding analysis the JCRA is satisfied that the proposed Acquisition would not give rise to any substantial lessening of competition within any potential markets for the supply of CSDs, non-CSDs or sports and energy drinks in Jersey. Accordingly, the Acquisition is approved under Article 22(1) of the Law.

3 December 2013

By Order of the Board of the JCRA