

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 11 September 1997

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

(Case No IV/M.833 — The Coca-Cola Company/Carlsberg A/S)

(Only the English text is authentic)

(Text with EEA relevance)

(98/327/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<sup>(1)</sup>, 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 2 May 1997 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<sup>(2)</sup>,

Whereas:

(1) On 25 March 1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (the Merger Regulation) by which The Coca-

Cola Company (TCCC) and Carlsberg A/S (Carlsberg) will set up a jointly-owned company, Coca-Cola Nordic Beverages (CCNB). This joint venture will own interests in various soft drink entities in the Nordic region, including certain assets that will be transferred from Carlsberg to TCCC pursuant to a licence agreement. The notification concerns Denmark and Sweden.

(2) By decision of 14 April 1997, the Commission ordered the continuation of the suspension of the notified concentration, pursuant to Article 7(2) and Article 18(2) of the Merger Regulation, pending its final decision.

(3) After examination of the notification, the Commission concluded that the notified operation fell within the scope of the Merger Regulation and raised serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement. The Commission decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 2 May 1997.

## I. THE PARTIES

## TCCC

(4) TCCC, a US company, is a major brand owner and global supplier of soft drink concentrates and

<sup>(1)</sup> OJ L 395, 30. 12. 1989, p. 1; corrigendum OJ L 257, 21. 9. 1990, p. 13.

<sup>(2)</sup> OJ C 149, 15. 5. 1998.

syrups used to produce certain carbonated soft drinks (CSDs), including Coca-Cola, Coca-Cola Light, Fanta and Sprite, as well as other non-alcoholic beverages (NABs).

### Carlsberg

- (5) Carlsberg is the Danish registered parent of a group of companies that are active primarily in the production and wholesale distribution of beer, but also in other drinks-related operations, including NABs. One of Carlsberg's subsidiaries, Dadeko A/S (Dadeko), is the largest bottling company of CSDs in Denmark. In addition Carlsberg has interests in other soft-drink and brewing companies in Denmark and in Sweden.

## II. THE OPERATION

### A. General

- (6) CCNB will be 51 % owned by Carlsberg, with the remaining 49 % held ultimately by TCCC. CCNB will be based in Denmark and its main business will be to invest and hold interests in national bottlers with respect to the preparation, packaging, marketing, distribution and sale of NABs and other related activities. CCNB will at the outset cover Denmark and Sweden but will also cover Finland, Norway, Iceland, Estonia, Latvia, Lithuania and possibly Greenland and St. Petersburg, Russia (the CCNB territory) at a later stage.
- (7) The operation involves: (i) the creation of CCNB, (ii) the transfer of national bottling companies in Denmark and Sweden to CCNB, that is, Carlsberg will contribute its wholly owned Danish subsidiary, Dadeko, and TCCC will contribute its recently established wholly owned Swedish subsidiary, Coca-Cola Drycker Sverige AB (CCDS), (iii) two agreements governing the transfer and licensing of certain brands in those countries, and (iv) the creation of a distribution company in Sweden.
- (8) In Denmark, Dadeko, which renewed its bottling agreement with TCCC in 1994, will continue a 40-year relationship for bottling mainly TCCC's CSD products. At present, Dadeko is responsible

for preparing and packaging the CSD brands of both Carlsberg and Tuborg, together with those Cadbury Schweppes brands that are present in Denmark. Currently Dadeko only distributes TCCC products to the retail sector, while Carlsberg and Tuborg distribute their own CSD brands, together with those of Cadbury Schweppes to the retail sector. Moreover, Carlsberg and Tuborg currently share responsibility for distributing their own CSD brands, together with those of TCCC and Cadbury Schweppes, to the hotel, restaurant and catering (Horeca) sector. After implementation of the operation, Dadeko will continue to bottle TCCC brands, and those remaining [...] (!) brands. It will be responsible for the distribution of [...] brands to the retail sector, while [...] will distribute those brands to the Horeca sector.

- (9) In Sweden, TCCC has recently established CCDS which has been marketing and selling TCCC's products since 1 April 1997. From 1 January 1998, CCDS will take over the preparation and packaging of TCCC's products, which at present is carried out by Pripps Ringnes. DryckesDistributoren AB (DDAB), a 50/50 joint venture between CCDS and Falcon Bryggerier AB (itself jointly owned by Carlsberg and Oy Sinebrychoff Ab, a Finnish brewer), will carry out the physical distribution (storage, transportation and delivery) on an exclusive basis of CCDS' NABs, Falcon's NABs and Falcon's beer to customers in Sweden.

- (10) CCNB will form the ninth 'anchor bottler' of TCCC products. The term 'anchor bottler' identifies certain bottling companies in which TCCC holds a minority equity interest and which are strongly committed to the strategic goals of TCCC and to furthering the interests of TCCC's worldwide production, distribution and marketing systems. They tend to be large and geographically diverse, and have strong financial and management resources.

### B. The Master Shareholders' Agreement (MSA)

- (11) The MSA between TCCC and Carlsberg provides for the establishment of CCNB and sets out the terms under which the parties will control CCNB, how CCNB will function and provides the framework for all future national bottling entities in the CCNB territory. The MSA also contains the non-competition obligations of TCCC and Carlsberg. Another important provision is the arrangement [...]. Finally the MSA refers to [...].

(!) In the published version of the Decision, some information has hereinafter been omitted for reasons of confidentiality.

### C. *The Licence Agreement in Denmark*

- (12) TCCC, Carlsberg and Dadeko have signed a [...] year Licence Agreement (renewable for another [...] years) under which Carlsberg grants an authorisation to TCCC and TCCC in turn grants an authorisation to Dadeko to produce, market, distribute, and sell certain [...] NABs in Denmark. The [...] licensed products are [...]. Carlsberg will make available to TCCC [...] relating to those products with a view to TCCC providing [...]. TCCC will become the brand manager for the [...] brands. Carlsberg will retain some right to [...] in order to protect [...]. CCNB will be responsible for [...]. Carlsberg undertakes not to [...] any other party those products, or any other [...], in Denmark.
- (13) In addition, Carlsberg will discontinue the production of its [...] brands [...]. Therefore, as a consequence of the operation only [...] will be kept by the Carlsberg organisation.

### D. *Arrangements in Sweden*

- (14) In addition to the transfer of CCDS to CCNB, notified under the Merger Regulation, other agreements setting up DDAB and a Trademark Purchase and Supply Agreement (TPSA) governing the transfer of certain brands from Falcon to TCCC were notified to the Commission under Council Regulation No 17<sup>(1)</sup> on 18 April 1997. Those agreements are being assessed separately.

### E. *Conclusion*

- (15) The operation will lead to a structural change in the soft drinks business operations of Carlsberg and TCCC, at both a regional level in the Nordic countries, and a national level in Denmark and Sweden. In particular Carlsberg will have no CSD interests in competition to CCNB. TCCC's position changes from that of a simple licensor of its CSDs in those markets to being a co-owner of the joint venture that produces CSDs.

## III. THE CONCENTRATION

### A. *The scope of the concentration*

- (16) Apart from the setting up of CCNB, which constitutes the essence of the operation, the parties have also notified the licence agreement between Carlsberg, TCCC and Dadeko in Denmark under the

Merger Regulation. The notifying parties consider specific provisions, such as non-competition clauses and exclusivity provisions in the licence agreement, to be ancillary restrictions directly related and necessary to the implementation of the concentration. However, the Commission considers that the licence agreement is necessary in order for TCCC and Carlsberg to concentrate the preparation, packaging, distribution, marketing and sales of all the TCCC and Carlsberg brands in CCNB in order to bring Carlsberg's Danish NAB business into line with the TCCC anchor bottler principles. The licence agreement is, therefore, one of the elements constituting the concentration, which will establish economic unity between Carlsberg and TCCC and should also be considered to be an essential and integral part of the concentration.

### B. *Assessment of the concentrative nature of CCNB*

#### B.1. *Joint control*

- (17) CCNB will be owned 51 % by Carlsberg and 49 % indirectly by TCCC. Relations between Carlsberg and TCCC will be governed by the MSA. Carlsberg will nominate [...] directors and TCCC [...] directors to CCNB's supervisory board. TCCC will nominate CCNB's [...] and Carlsberg will nominate its [...]. CCNB's Chief Executive Officer, responsible for the day-to-day management, will be nominated by [...] and the Chief Financial Officer by [...]. To ensure that each parent has to consent to certain decisions affecting the strategic behaviour of CCNB, 'key decisions' by the shareholders on matters related to corporate structure and policies, [strategic decisions], the adoption of business plans and budget require the unanimous approval of both parents. If the supervisory board is unable to agree [...]. According to the parties there are, however, significant incentives for the parties to avoid a situation in which the termination provisions of their agreement will come into operation. CCNB will thus be subject to joint control by TCCC and Carlsberg.

#### B.2. *Full function on a lasting basis*

- (18) CCNB will have all the resources necessary to operate its business activities on a lasting basis. First, the parties will transfer their existing bottling

<sup>(1)</sup> Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ 13, 21. 2. 1962, p. 204/62).

entities in Denmark and Sweden to CCNB, including the plants, distribution equipment (trucks, warehouses and so forth), employees and other investments such as vending and fountain equipment. Second, CCNB will be responsible for the production, marketing, distribution and sale of NABs in the Nordic region and will thus not be limited to one specific function on the market. Also, CCNB and its bottlers will add considerable value to the concentrate provided by TCCC. Third, even though TCCC will supply concentrates and authorise the bottling of such NABs, and Carlsberg has a 50 % shareholding in Falcon and will retain [...] in Denmark, such presence of the parties in the market of CCNB and its subsidiaries does not affect the characterisation of CCNB as a concentrative joint venture. The MSA is signed for [...] years with a possibility of renewal for a further [...] years.

### B.3. Absence of coordination

- (19) In Denmark, TCCC has no presence as a producer or distributor, only as a brand owner. Apart from being a concentrate supplier, TCCC will, broadly speaking, only be present in Denmark through CCNB. According to the parties the prospects of TCCC entering the Danish market other than through CCNB would be extremely remote. Carlsberg will discontinue [...] of its present NAB brands. However, it will retain certain NAB activities which will [...] to the sale and distribution of [...], limited distribution in the [...] and that of [...] NABs and a 50 % shareholding in Rynkeby A/S (producing juices and dilutables). Carlsberg will be subject to a non-competition clause according to which it cannot compete in [...]. TCCC has never directly bottled in the Danish market and presently has no available facilities for doing so. Therefore the activities kept outside CCNB cannot be seen as an instrument for producing or reinforcing coordination between Carlsberg and TCCC.
- (20) As in Denmark, Carlsberg will also be bound by its obligation not to compete in [...] activities in Sweden. Based on the above information, CCNB cannot be seen as an instrument for producing or reinforcing coordination between Carlsberg and TCCC.

### C. Conclusion

- (21) The notified joint venture, together with the licence agreement in Denmark, forms a concentration within the meaning of Article 3 of the Merger Regulation.

## IV. COMMUNITY DIMENSION

- (22) The concentration has a Community dimension as defined in Article 1(2) of the Merger Regulation. TCCC and Carlsberg have an aggregate world-wide turnover of more than ECU 17 billion, which is above the ECU 5 billion specified in the Merger Regulation. The undertakings concerned each have a Community-wide turnover of more than ECU 250 million (TCCC: ECU 4 046 million, and Carlsberg: ECU 1 952 million), of which not more than two-thirds is achieved in one and the same Member State.

## V. RELEVANT MARKETS

### A. Relevant product markets

- (23) In the Nordic countries the majority of producers of CSDs and other NABs like juices and packaged waters have traditionally been brewers. The brewers have thus been able to offer a wide portfolio of commercial beverages encompassing beers, CSDs and packaged waters to their customers. However, the fact that a product is sold as a part of a larger portfolio of beverages does not mean that the portfolio as such should be considered the relevant product market for anti-trust purposes. A distinction has to be made between various categories of commercial beverages. This analysis should not ignore the fact that at the bottling level, it increases the market power of a supplier to be able to offer customers a broader beverage portfolio. The economic advantages that flow to bottlers who offer both CSDs and beers in their system will be discussed in the assessment of this operation.
- (24) In their notification, the parties state that the affected product markets 'are at least as wide as those for the supply of NABs' in Denmark and Sweden. Such a market would encompass a wide-ranging variety of beverages, including CSDs, still drinks, fruit juices, packaged waters, coffee, tea and milk. An examination of the soft drinks industry indicates that the market definition proposed by the parties is too broad for analysing the likely competitive consequences of the notified operation.

For the reasons discussed below, it appears appropriate to assess the operation, at both the brand and bottling levels, in the context of an overall CSD market. A number of elements suggest that there is a separate relevant product market for colas, but it should be noted that whether the operation is analysed in terms of colas alone, or in terms of all CSDs, the assessment would not materially change.

#### A.1. The CSD production stream

(25) The supply of colas and other flavoured CSDs to retail customers consists of two interrelated activities: brand ownership and bottling. The brand owner creates and promotes the beverage brands, provides the supply of concentrate (or authorises its production), and authorises local bottlers to prepare, package, market, distribute and sell the beverages. In this respect it is TCCC's strategy, as a brand owner, to create consumer demand, whereas the role of the TCCC bottlers is to meet the demand.

(26) Brand owners of international brands — such as TCCC, PepsiCo and Cadbury Schweppes — produce CSD concentrates in a limited number of locations throughout the world and supply their bottlers on a global basis from these production facilities. In comparison, smaller companies may use 'flavour houses' to produce their concentrate.

(27) The term 'bottling' is generally applied throughout the CSD industry to encompass the preparation, packaging, sales, marketing and distribution of CSDs. A bottler is typically assigned a geographic territory by the brand owner within which it is responsible for these functions.

(28) The responsibility for the marketing and promotion of CSDs is normally shared between the brand owner and bottler. Marketing activities are a combination of brand-specific advertising and trade-oriented promotion. In the CSD industry, a distinction is generally made between these areas as follows:

— *'Above-the-line' marketing:* The CSD markets are characterised by powerful brands, with the leading brands being advertised on an international basis. This brand-specific advertising is referred to in the industry as 'above-the-line' and is mainly carried out through TV, radio,

cinema, the press, and sponsorship of activities such as music and sport. Such advertising is normally devised, carried out and financed by the brand owner.

— *'Below-the-line' marketing:* Promotion of products at the trade level is referred to in the industry as 'below-the-line' marketing. 'Below-the-line' marketing consists of two main types of activities: promotional discounts (such as multi-buy offers, price reductions and customer discounts); and trade marketing (such as payment to customers for listings, shelf displays and in-store advertising).

(29) Distribution of CSDs is carried out through various channels, which differ somewhat from country to country depending upon market structure (including such factors as location of customer warehouses and retail outlets, geographic dispersion of population, and whether CSDs are co-distributed with beers or not). In Denmark and Sweden, CSDs are mainly distributed through the retail channel which may be sub-divided into the grocery channel (supermarkets and so forth) and a service trade channel (comprising petrol stations, kiosks and so forth) and the horeca channel (hotels, restaurants and catering). However, for the purpose of assessing the proposed transaction these distinctions do not make a separate assessment necessary for either the Swedish or the Danish market, since the conclusions resulting from the analysis would be the same whether the channels were considered as separate relevant product markets or not. Therefore the question as to whether the channels are separate relevant product markets can be left open.

(30) In the present case the impact of the operation is on TCCC's forward vertical integration into bottling, on TCCC's acquisition of brands in Sweden and on its gaining the licence for brands in Denmark. Because the impact of the changes in brand ownership and TCCC's vertical integration are substantial at both the brand and bottling levels, the assessment of the impact of the operation will be analysed at both levels.

**A.2. Product market definition: all CSDs**

different growth rates for the various categories of soft drinks.

*(a) The distinction between CSDs and other NABs*

- (31) According to the most recent Canadian data available (Annual Report — 1996 Cycle, Canadian), it appears that CSDs have continued to grow at a different rate from the overall beverages and soft drinks categories in both Denmark and Sweden.
- (32) In Denmark, data show that total sales of soft drinks grew by 5,5 % annually between 1990 and 1995. Packaged waters grew by about 7 %, and CSDs 'soared' by 10 %. Canadian reported that 'carbonate sales in the 1990's were particularly good, growing by nearly 65 % between 1990 and 1995.' In comparison, the report stated that 'the performance of fruit drinks, which are primarily targeted at the youth market, has been pretty lacklustre throughout the decade,' being perceived as the 'poor relation' among soft drinks, and that the soft drink 'market growth was driven by carbonates [and syrups/squashes].' The consumption of fruit juices thus fell by 2 % annually between 1990 and 1995. If packaged waters and juices were part of the same product market as CSDs, it would be expected that price developments could explain the difference in growth rates. However, that is not the case since, according to Canadian data on retail prices, relative prices for the various types of soft drinks have changed little in the last four years, and so different price developments do not explain the different growth rates for the various categories of soft drinks.
- (33) In Sweden, too, Canadian data showed different rates of growth between the soft drink category and CSDs. Total soft drink sales grew by 1 % and packaged water by 9 %, while juice and nectar sales declined by 2 % and CSD sales remained 'static.' If packaged waters and juices were part of the same product market as CSDs, it would be expected that price developments could explain the difference in growth rates. However, as for Denmark, that is not the case since, according to Canadian data on retail prices, relative prices for the various types of soft drinks have changed little in the last four years, and so different price developments do not explain the
- (34) The parties have argued in their response to the Statement of Objections ('the Response') that the Canadian price data represent only a limited number of brands, packages and distribution channels and that it is unclear how the price data has been collected. The Commission recognises that the Canadian price data are selected retail prices which do not cover all distribution channels and packages. However, the Canadian price data are typical market prices which cover the most important brands, packages and distribution channels. It is, therefore, not unreasonable to conclude that the Canadian prices reflect the general development in market prices for CSDs, juices and packaged waters. Consequently, the Commission concludes, that changes in relative prices cannot explain the different growth rates of CSDs, juices and packaged waters in the last four years in Denmark and Sweden. This is an indication that there is not a high level of price competition between CSDs, packaged waters and juices. In other words, it is not prices which cause customers to purchase, for example, a higher volume of CSDs, and less juice.
- (35) In addition, the Commission has considered the Canadian data relating to selected retail prices for Denmark and Sweden. Waters and CSDs appear to be at similar price levels but both are cheaper than fruit juices. Furthermore it is clear that CSDs are more expensive than milk, tea and coffee, thereby indicating that CSDs are in a separate relevant product market from all NABs. However, waters do not have the same characteristics as CSDs: for example, they do not contain added sugar.
- (36) Both in Denmark and Sweden CSDs are not displayed, in supermarkets, on the same shelf as other NABs such as coffee, tea, milk, or juices, indicating that CSDs and NABs are in different product markets. Products competing directly with each other would normally be expected to be displayed next to each other.
- (37) [Certain studies] show that the timing of consumption of CSDs, compared to other NABs, is different.

(%)

|                   | At breakfast |      | Between breakfast and lunch |      | At lunch |      | Between lunch and dinner |      | At dinner |      | After dinner |      |
|-------------------|--------------|------|-----------------------------|------|----------|------|--------------------------|------|-----------|------|--------------|------|
|                   | DK           | S    | DK                          | S    | DK       | S    | DK                       | S    | DK        | S    | DK           | S    |
| Coffee, tea, milk | [..]         | [..] | [..]                        | [..] | [..]     | [..] | [..]                     | [..] | [..]      | [..] | [..]         | [..] |
| Tap water         | [..]         | [..] | [..]                        | [..] | [..]     | [..] | [..]                     | [..] | [..]      | [..] | [..]         | [..] |
| Alcoholic drinks  | [..]         | [..] | [..]                        | [..] | [..]     | [..] | [..]                     | [..] | [..]      | [..] | [..]         | [..] |
| CSDs              | [..]         | [..] | [..]                        | [..] | [..]     | [..] | [..]                     | [..] | [..]      | [..] | [..]         | [..] |

(38) These and similar studies indicate that CSDs are often drunk during leisure times unlike other NABs which are more functional in nature. Therefore, the different consumption patterns of CSDs from other NABs indicate that they are not both in the same product market.

(39) In respect of consumption patterns the parties have argued that the Commission has failed to address the key issue of whether consumers of CSDs find other beverages to be demand substitutes, and that it is difficult to conclude anything about the timing or consumption of CSDs compared to other NABs from the above table (Response, p. 41). However, the parties have not disputed the fundamental conclusion from their own studies that CSDs are often drunk at leisure times, unlike other NABs which are more functional in nature. Therefore, the Commission maintains that the different consumption patterns indicate that CSDs and other NABs are not in the same relevant product market.

(40) Finally, responses from customers and competitors in both Sweden and Denmark indicate that CSDs are not part of the same relevant product market as other NABs. In this respect the parties have argued that it is wrong to attach much, if any, importance to the impressions of retailers, wholesalers and competitors (Response, p. 42). However, retailers, wholesalers and competitors normally do have a thorough knowledge of their businesses and therefore have a clear view on, for example, the impact of a promotion of Coca-Cola on the sales of other drinks.

(41) As to supply-side considerations, other NABs such as milk, coffee, tea and juices are produced in a completely different way from CSDs and no supply-side substitution is possible. As far as pack-

aged waters are concerned, it would be easier to package CSDs on the same equipment as is used for the production of packaged waters. However, the fact that a range of soft drinks can be produced on the same equipment is insufficient to create a single relevant product market for all soft drinks for the purpose of assessing the notified operation. The need to create and position a CSD, to advertise and promote a new product or a new brand, and to obtain access to distribution outlets means that supply-side flexibility is not a sufficient criterion upon which to expand the relevant product market. The mere physical capability of production equipment to produce a number of different products is not sufficient for the conclusion to be drawn that different beverages should be grouped into a single relevant product market.

(42) In conclusion, therefore, for the purpose of the application of the Merger Regulation, NABs as a whole cannot be regarded as being the relevant product market in either Sweden or Denmark. Rather it is concluded that CSDs are distinct from other NABs such as coffee, tea, milk, juices and packaged waters and do, in themselves, form a separate relevant product market.

(b) *The differentiation of colas from all other CSDs*

(43) With respect to drawing a differentiation between colas and all other CSDs, the Commission's earlier decisions<sup>(1)</sup> indicate that a wide variety of factors show that in the beverage industry a distinction may be made between different flavours of CSDs. A wide range of evidence including industry statements and market studies supported the Commission's finding of a distinct relevant product market

<sup>(1)</sup> Decision 97/540/EC, Case IV/M.794 — Coca-Cola Enterprises, Inc./Amalgamated Beverages GB (OJ L 218, 9. 8. 1997, p. 15); Decision 92/553/EEC, Case IV/M.190 — Nestlé/Perrier (OJ L 356, 5. 12. 1992, p. 1); Case IV/M.289 — PepsiCo/KAS (21. 12. 1992) and Decision 96/204/EC, Case IV/M.582 — Orkla/Volvo (OJ L 66, 16. 3. 1996, p. 17).

for cola CSDs in Great Britain<sup>(1)</sup>. This conclusion was based on factors including consumer preference, and differences in marketing and pricing between colas and non-cola flavoured CSDs. In the present case a number of elements suggest that there is a separate relevant product market for colas, but it should be noted that whether the operation is analysed in terms of colas alone, or in terms of all CSDs, the assessment would not materially change. The competitive effects of the present operation can thus be analysed in a product market encompassing all CSDs.

### B. *Relevant geographic markets*

- (44) It has been the Commission's practice to analyse the supply of beverages on a national basis<sup>(2)</sup>. The same analysis is relevant in the present case, since the bottlers in question have been licensed by brand owners to sell a product within the limits of a national geographic territory.
- (45) The finding of national CSD markets for Denmark and Sweden is supported by the low rate of imports and exports of CSDs. According to Canadean, imports of CSDs were less than 2,5 % in Sweden and less than 2 % in Denmark in 1995. Exports were even lower than imports in Sweden, whereas Danish exports were only 4 %.
- (46) Differences in list prices for TCCC products between Sweden, Denmark, Norway, Finland, Germany, Netherlands, the United Kingdom and Belgium are an indication that Sweden and Denmark are two separate relevant geographical markets. The Norwegian list prices are the lowest in the Nordic countries. Danish list prices are about 20 % higher than in Norway, and Swedish list prices about 40 % higher than in Norway. Furthermore, Danish prices are significantly higher than in areas such as Germany and the Benelux.
- (47) The parties have indicated in their letter of 28 May 1997 that list prices do not necessarily correspond to transaction prices due to discounts. However, discounts are a normal feature of CSD markets in all these countries and it seems that differences in discounts cannot explain the whole difference between the list prices. The parties have argued in their letter of 28 May 1997 that different recycling

systems and differences in distribution costs can explain part of the differences in list prices. However, the recycling systems in the Nordic countries are comparable for the greater part of the volume of CSDs, since most CSDs are sold in refillable bottles. As far as distribution costs are concerned, it would be expected that Norway would have the highest distribution costs and in this respect be comparable to Finland and Sweden due to the similarities in the geography of these countries. Denmark would, on the other hand, be expected to be more similar to Germany, the United Kingdom and the Benelux countries in this respect. However, contrary to what would be expected if distribution costs explained the differences in list prices, Sweden and Denmark have higher list prices than Norway. As far as the other explanations offered in the parties' letter (comparisons based on purchasing power parities and the fact that price variations on similar consumer goods are the norm with the Community), the Commission is of the opinion that they are not relevant for the delineation of the relevant geographic market.

- (48) In addition, as regards Denmark, laws relating to beverage packaging are the strictest in Europe; refillable bottles are mandatory for domestic sales of locally produced CSDs and beers. There is also a total ban on cans. Therefore, in practice imports are restricted unless a satisfactory deposit/returnable/recycling system is in place. The national ban on one-way containers acts as a barrier to imports, by imposing obligations on the industry to use the designated recycling system for all bottles produced.
- (49) Therefore, the Commission concludes that Denmark and Sweden are separate relevant geographic markets for the purposes of assessing this operation, a conclusion that has not been contested by the parties.

## VI. COMPATIBILITY WITH THE COMMON MARKET AND THE FUNCTIONING OF THE EEA AGREEMENT

### A. *Overview: the impact of the operation*

- (50) The impact of the notified operation would be felt at both the brand and bottling levels. Specifically,

<sup>(1)</sup> Decision 97/540/EC.

<sup>(2)</sup> Decision 97/540/EC and Decision 92/553/EEC.

the operation would have the following competitive effects on the markets:

(a) at the *brand level*, TCCC would acquire the know-how and production rights for certain CSDs (and concentrates) from Carlsberg and Falcon in Denmark and Sweden respectively (in Denmark, TCCC will reassign the rights to produce the CSDs to Dadeko, whereas in Sweden it will retain these rights); and

(b) at the *bottling level*, there would be two effects:

— the overall strengthening of TCCC's market power through its forward vertical integration, in that it is moving from its role as a licensor to that of being the co-owner and co-decision maker of bottling operations, and

— the strengthening of the dominant position of Dadeko, control over which passes to CCNB, at the bottling level in two ways: TCCC's brand portfolio would be enlarged by the operation, and at the same time, the Carlsberg portfolio would be eliminated in Denmark. Furthermore, the Falcon portfolio would be weakened in Sweden.

(51) As a result of these structural changes, the operation would lead to the elimination of both actual and potential competition from Carlsberg in both Denmark and Sweden, in the following ways:

(a) *elimination of actual competition in both Denmark and Sweden:*

in Denmark: Carlsberg has stated its intention (in the notification) to discontinue production of certain [...] flavours which it currently produces and markets, including in particular, [...] in the portfolio; and in Sweden: TCCC would acquire certain [...] brand CSDs from Falcon; and

(b) *elimination of potential competition in both Denmark and Sweden:*

in Denmark: Carlsberg is bound by the MSA not to introduce any new [...] flavours in [...] in the future; and in Sweden: Falcon (50 % owned by Carlsberg) is bound by [...] non-competition agreements not to re-enter the CSD markets in [...].

(52) The parties have asserted that the concentration has no appreciable effect on competition. Their main lines of argument are that the relevant product market is at least as wide as all NABs (a notion dismissed above), that there will be no material change in the competitive structure in Denmark,

and that there will be a more competitive market in Sweden. This 'lack of change' scenario ignores the fundamental structural alterations that would take place: TCCC and Carlsberg become partners in CCNB, replacing the current licensor/licensee arrangement; the TCCC CSD brand portfolio is enlarged by the operation, and at the same time, the Carlsberg CSD portfolio is eliminated and the Falcon CSD portfolio is weakened. Finally, the operation raises barriers to entry in Denmark (discussed below).

(53) As is evident from parties' internal papers, the overall purpose of establishing CCNB is to strengthen the TCCC brands and bottling operations in the CCNB territory and thereby capture a higher share of beverage sales. [...].

(54) The impact of the establishment of CCNB can only be understood against the background of the outlook for the Nordic market. The parties have provided projections (in millions of litres) for sales of cola and non-cola CSDs in Denmark and Sweden:

|         |           | 1995 | 1998 | 1999 | 2000 |
|---------|-----------|------|------|------|------|
| Denmark | Colas     | 207  | [..] | [..] | [..] |
|         | Non-colas | 192  | [..] | [..] | [..] |
| Sweden  | Colas     | 233  | [..] | [..] | [..] |
|         | Non-colas | 306  | [..] | [..] | [..] |

The forecast compound annual growth rates for the period between 1998 and 2000 in Denmark are [...] for colas and [...] for non-cola flavoured CSDs, and for Sweden [...] for colas and [...] for non-cola flavoured CSDs. In general, based on the current annual per capita consumption, the parties consider the Danish and Swedish markets have considerable growth potential for both colas and non-cola flavoured CSDs.

(55) In conclusion, the strategic aim of TCCC in establishing CCNB is to capture the growth of the market for the brands owned by or licensed to TCCC. Although this is a legitimate objective as such, as will be seen from the following discussion, the creation of CCNB as a joint venture with Carlsberg is not a matter of internal restructuring, but is a new transaction putting into effect the joint strategy of two competitors which will have structural effects on the industry.

## B. Denmark

### B.1. Overview of the industry

- (56) The total volume of CSDs consumed in Denmark in 1995 was 399 million litres with colas accounting for 52 % and non-colas for 48 % of this total volume. The retail channel accounted for 64 % of CSDs consumed and the Horeca channel for 36 % of the total volume consumed in 1995.
- (57) TCCC is the brand owner and supplier of the concentrate for Coca-Cola, Coca-Cola Light, Fanta, Sprite and other TCCC brands which are being bottled exclusively by the Carlsberg subsidiary Dadeko. PepsiCo is the brand owner and supplier of the concentrate for Pepsi Cola, 7-Up and other PepsiCo brands whose products are bottled by the brewer Bryggerigruppen A/S (Bryggerigruppen), as discussed below. Cadbury Schweppes is the brand owner and concentrate supplier of the Schweppes and Sunkist brands. In addition, it owns Dr Pepper, which is not on the Danish market. The Cadbury Schweppes brands are packaged by Dadeko and distributed through the Carlsberg distribution system.
- (58) Carlsberg is the largest supplier of beer, CSDs and packaged waters in Denmark. Carlsberg is the brand owner of the Tuborg Squash CSDs. It has a 75 % stake and sole control over Dansk Coladrik, which owns and bottles Jolly Cola, the third largest cola brand in Denmark. Furthermore, Carlsberg is the 100 % owner of the brewer Wiibroe, which supplies the Neptun CSD brands. Carlsberg also has joint control over the largest Danish producer of juice products. It is foreseen as a consequence of the operation, that Dansk Coladrik will be sold (see below).
- (59) Bryggerigruppen is the second largest brewer and bottler of soft drinks in Denmark. It is the bottler of the PepsiCo brands, and supplies a full range of its own non-cola flavoured CSDs. It is, for example, the brand owner of the lemon-lime CSD 'Faxe Kondi', which competes directly with TCCC's Sprite brand.
- (60) The shares of Bryggerigruppen are held by the two holding companies, Jyske Bryg Holding AS (Jyske Bryg) and Faxe Bryg Holding A/S (Faxe Bryg), in which Carlsberg has minority shareholdings. Carlsberg holds 37 % of the shares and 48 % of the votes in Jyske Bryg and, based on the votes cast at the last three annual general meetings of the shareholders, Carlsberg has cast more than 50 % of the votes present at the meetings.

|          | Total votes | Voted at meeting | Carlsberg holding | Carlsberg (percentage) |
|----------|-------------|------------------|-------------------|------------------------|
| 1994 AGM | 2 777 525   | 1 810 122        | 1 335 995         | 74                     |
| 1995 AGM | 2 777 525   | 1 837 422        | 1 335 995         | 73                     |
| 1996 AGM | 2 777 525   | 1 478 738        | 1 335 995         | 90                     |
| 1997 AGM | 2 777 525   | 1 595 090        | 1 335 995         | 84                     |

Therefore, Carlsberg has the possibility of exercising decisive influence and consequently control over Jyske Bryg.

- (61) Jyske Bryg holds, directly and indirectly, 62 % of the shares and 49 % of the votes of Bryggerigruppen. Furthermore, it appears that [...]. The remaining shares of Bryggerigruppen are held by Faxe Bryg (49 % of the votes) and BG Bank which holds 2 % of the votes. According to the parties, [...].
- (62) If a disagreement were to arise between Jyske Bryg and Faxe Bryg, the leading position of Carlsberg in the beer and CSD markets would play an important role in any negotiations to resolve the differences. It would be in the economic interests of Bryggerigruppen, and its shareholders, to find an accommodation with Carlsberg to avoid retaliation in the markets where Bryggerigruppen operates and Carlsberg has market leadership. For these reasons, it appears that Carlsberg has substantial influence over Bryggerigruppen and therefore that Bryggerigruppen offers reduced competition to Carlsberg.
- (63) Others: A number of other smaller brewers exist. The most important are Harboe, in which Carlsberg has 25 % of the shares and a member of the board, and Albani in which Carlsberg has a 15 % shareholding, but only 8,75 % of the votes. Furthermore, the company Saltum-Houlbjerg Bryggerier (Saltum) has developed into an important supplier of discount and distributors' own brands (DOBs) in recent years. It is a small company which does not have its own distribution network.

### B.2. Market structure

#### (a) Market positions

- (64) The impact of the operation is felt at the brand and bottling levels. The market positions of the brand owners and bottlers on the overall CSD market are shown in the following tables, which set out the

market shares for 1995 on a value basis in Denmark and the estimated market shares following the creation of CCNB (based on data provided by the parties):

#### Brand owners

|                 | All CSDs<br>1995 | All CSDs<br>post CCNB |
|-----------------|------------------|-----------------------|
| TCCC            | [40 to 45]       | [40 to 45]            |
| Carlsberg       | [5 to 10]        | [5 to 10]             |
| Dansk Coladrik  | [5 to 10]        | [5 to 10]             |
| Total Parties   | [55 to 60]       | [55 to 60]            |
| PepsiCo         | [5 to 10]        | [5 to 10]             |
| Albani          | [0 to 5]         | [0 to 5]              |
| Harboe          | [0 to 5]         | [0 to 5]              |
| Bryggerigruppen | [5 to 10]        | [5 to 10]             |
| Schweppes       | [5 to 10]        | [5 to 10]             |
| Others          | [10 to 15]       | [10 to 15]            |

#### Bottlers

|                          | All CSDs<br>1995 | All CSDs<br>post CCNB |
|--------------------------|------------------|-----------------------|
| Dadeko                   | [40 to 45]       | [50 to 55]            |
| Carlsberg/Tuborg         | [10 to 15]       | [0 to 15]             |
| Carlsberg/Wiibroe        | (*)              | —                     |
| Carlsberg/Dansk Coladrik | [0 to 5]         | [0 to 5]              |
| Total Parties            | [60 to 65]       | [50 to 55]            |
| Bryggerigruppen          | [15 to 20]       | [15 to 20]            |
| Albani                   | [0 to 5]         | [0 to 5]              |
| Harboe                   | [0 to 5]         | [0 to 5]              |
| Others                   | [10 to 15]       | [20 to 25]            |

(\*) Included in the Carlsberg/Tuborg figures.

owner and Carlsberg is almost four times bigger than the next largest bottler. The rest of the producers mainly produce discount brands and DOBs, which have achieved a certain success, mainly in the retail channel.

#### (b) Conditions of competition

- (65) TCCC had a market share of [40 to 45 %] at the brand level and the Carlsberg operations had a share of [10 to 15 %] in 1995. As regards bottling, Dadeko bottles [40 to 45 %] of CSDs and Carlsberg's other operations a further [15 to 20 %]. The second largest brand owner is PepsiCo with [5 to 10 %], and the second largest bottler is the PepsiCo bottler Bryggerigruppen with [15 to 20 %] of the market. Carlsberg and TCCC are therefore more than five times larger than the next largest brand
- (66) Access to brands and to distribution are key competitive factors in the CSD industry. Dadeko holds the licence for the dominant TCCC brands, the Cadbury Schweppes brands, and its parent, Carlsberg, is the owner of the important national brand in Denmark — Tuborg Squash. The production of Dadeko, together with the other Carlsberg bottlers, is more than four times that of its nearest competitor.
- (67) Colas are the largest selling CSD flavour and are sometimes referred to as a 'traffic builder' which drives the overall CSD volume of a supplier. Therefore, it is a considerable advantage for a supplier to have a strong cola brand in its portfolio. Furthermore, the inclusion of strong beer and packaged water brands, such as those of Carlsberg, in the beverage portfolio gives each of the brands in the portfolio greater market power than if they were sold on a 'stand-alone' basis. It is almost inconceivable that a Danish outlet for beverages such as packaged waters, beers and CSDs would not carry TCCC and Carlsberg brands. No other Danish supplier has a beverage portfolio which would enable it effectively to challenge Carlsberg and Dadeko.
- (68) The distribution of CSDs is characterised by high economies of scale. In particular it is crucial to unload a sufficiently high volume at each truck stop to bring down the average cost of delivery to individual customers. Generally this means that companies with the highest volume and the broadest portfolio of beverages in their distribution system will have the lowest costs and be able to reach the highest number of customers.
- (69) In Denmark beer and packaged waters are often co-distributed with CSDs. This is an advantage for both the brewers and the customers. For the brewers it increases the economies of scale in distribution, and allows a wider distribution than would otherwise have been possible. For customers it is an advantage to be able to buy a complete portfolio from one supplier, since it involves fewer deliveries. The Carlsberg group is the largest supplier of beer and packaged waters with more

than 50 % and 45 % of the respective volumes consumed in Denmark. In view of their market shares in CSDs, it is clear that Carlsberg and Dadeko have by far the most extensive distribution systems, giving their products the best market coverage when compared to the other suppliers. By way of comparison with other breweries, Carlsberg and Dadeko distributed some 344 million litres of beer and 163 million litres of colas and other CSDs in 1996; all other breweries together distributed volumes of beers and CSDs totalling between 85 and 100 million litres, respectively. Carlsberg/Dadeko was therefore almost three times bigger than the other brewers as a whole.

risks, costs and the time needed to launch an international brand it is likely that only the existing three international brand owners would be able to launch new international CSD brands in any country. On the Danish market only Carlsberg and Bryggerigruppen have, in the past, been able to launch national premium brands. Therefore, it appears that only the existing brand owners in Denmark would be able to launch new brands.

(70) Finally, it is important to consider the effect of Carlsberg's holding in Jyske Bryg, which holds, directly and indirectly, 62 % of the shares in Bryggerigruppen. Carlsberg, through Jyske Bryg, has substantial influence over Bryggerigruppen. This brewer is the largest competitor to Dadeko, TCCC and Carlsberg at both the brand and bottling levels and the only other company bottling premium brands in Denmark. Furthermore, Carlsberg has shareholdings in Albani and Harboe, which together with Saltum are the largest producers of discount CSDs.

(73) CSDs rely heavily on brand image to drive sales, and companies like TCCC and PepsiCo have established brand loyalty through heavy investments to maintain the high profile of their brands. The introduction of a new brand would thus require heavy expenditure on advertising and promotion in order to persuade brand-loyal consumers to switch away from their usual CSD brand. Moreover, consumer loyalty to the established brands would make it difficult for a new supplier to persuade retail customers to change suppliers and would thus further hinder entry. Such advertising and promotion expenditures are sunk costs and add substantially to the risk of entry.

(71) In conclusion, in view of the brands owned by TCCC and Carlsberg, it is unlikely that they would be restrained by their current competitors in the overall CSD market. As regards bottling, given the market shares of Dadeko and the other Carlsberg operations, their portfolios of brands, their distribution systems and Carlsberg's shareholdings in other brewers, it appears that none of the current competitors would be able to constrain the actions of Dadeko in the CSD market.

(74) In addition, any potential entrant would also be hindered by the need for access to bottling and to a distribution system. Each of the major brewers in Denmark has its own distribution system, meaning that any new entrant would have to either incur the significant cost of setting up its own system or negotiate with a competitor for the use of their system. It is unlikely that a new entrant would find it economically viable to set up a new distribution operation, since the entrant would have to include beers and packaged waters in its system in order to achieve a sufficient volume of distribution. The brewers' power in this field is reinforced by the fact that CSDs are distributed in refillable containers and any new entrant's bottles would have to comply with the relevant standards. Therefore, a new entrant's products would have to be distributed by one of the existing brewers as is today the case for TCCC and Cadbury Schweppes products, which are distributed by Carlsberg, and PepsiCo brands, which are distributed by Bryggerigruppen.

(c) *Barriers to entry for potential competitors*

(72) The main barriers to entry to the CSD market are access to brands and to a distribution network, as well as to shelf space, a sales and service network, brand image and loyalty and advertising sunk costs. TCCC, PepsiCo and Cadbury Schweppes are the only international brand owners. In view of the

However, as the existing brewers are well established, and have their own line of soft drinks, it would be difficult for a new entrant to find distribution. Moreover, Carlsberg's holdings in several other Danish brewers makes it less likely that any potential entrant would be able to co-operate or otherwise form an alliance with a Danish brewing company. Furthermore, as mentioned above, it should be noted that Carlsberg has by far the best and most wide-ranging distribution system on the Danish market. For a new entrant the most efficient way to enter the Danish market would be to be distributed by Carlsberg.

(75) Finally, even if a new entrant were to obtain access to an adequate distribution network, the firm would still have to obtain shelf space and incur the expenses of supporting a sales and service network in order to ensure that its products were properly stocked and positioned. The Commission has recognised<sup>(1)</sup> the importance of having a sales and service network to induce customers to take on a product line.

(76) The Commission recognises that entry may be possible on a smaller scale, for example by deliveries of DOBs directly to a supermarket chain with distribution completed through the supermarket chain's distribution system. This strategy has been used by Saltum. It is a strategy which does not involve heavy advertising costs or major investment in a distribution system. Saltum has in the period 1990 to 1995 been able to increase its CSD volume from 19 to 54 million litres. This increase in volume arises from sales of Saltum's own brands, an increase in its supplies of DOBs to a supermarket chain and the acquisition of another producer of discount CSDs. In comparison, Bryggerigruppen, the PepsiCo bottler, increased its volume from 39 to 58 million litres in the period 1990 to 1995. However, an assessment of the competitive impact of a producer like Saltum cannot be made simply by looking at the increase in its volume sold, as argued by the parties at the Hearing and in the Response (p. 52). It must be noted that the growth of Saltum has mainly been achieved through an acquisition and the production of DOBs for one supermarket chain. Moreover, it is incorrect to say

that Saltum is one of the three largest Danish brands by considering its total production, as one third of its production is of DOBs and one fifth represents another discount brand acquired recently by Saltum. Finally, it is necessary to look at the impact of discount brands and DOBs on the whole market.

(77) Discount brands and DOBs have achieved a certain success in the retail channel, but are of little importance in the service trade and Horeca. Discount brands and DOBs therefore only have an impact on specific parts of the market. It is correct as the parties stated at the Hearing that discount brands have increased their volume share of the market in the period 1986 to 1996. However, more importantly, in value terms the share of discount brands and DOBs actually decreased from 24 % of the market in 1993 to 21 % of the market in 1995. Furthermore, it is clear from Nielsen data that the average retail price for all CSDs has not decreased in the last two years. Finally, the price differences between Denmark and neighbouring countries (see section V.B above) are substantial. This is evidence that discount brands and DOBs have not been able to create competition which has led to a lower price level for consumers. It, therefore, appears that branded CSDs are of importance to enable a producer to be an effective competitor. In any case, the most likely companies to enter the CSD market with discount brands or DOBs are the established brewers who are already on the market with such products.

(78) For these reasons there do not appear to be any potential competitors who would or could enter the Danish overall CSD markets at either a brand or bottling level.

(d) *Countervailing buyer power*

(79) Major retail chains have a need to stock leading brands such as those owned by TCCC and Carlsberg. The Coca-Cola brand, in particular, is considered a 'must stock' brand; and CSDs in general are of strategic importance to grocery retailers in that they are fast-moving consumer goods that 'build traffic'. One retailer noted that if Coca-Cola were

<sup>(1)</sup> Decision 96/204/EC, Orkla/Volvo.

delisted, a certain volume of consumers would be lost to another retail outlet, indicating the strong demand for the Coca-Cola brand. Consequently, retailers cannot use the threat of increasing volume of other brands as leverage. Therefore, it appears that little, if any, countervailing buyer power arises between the customer and either the brand owner or bottler.

(80) In the Response the parties have argued that Dadeko is constrained by powerful buyers and that Dadeko's five largest retail customers account for around [35 to 40 %] of TCCC's total sales of NABs in Denmark. Furthermore, retailers control shelf space and product promotions and would be able to meet CSD requirements from sources other than Dadeko. The parties also mention examples of the power of supermarket chains: a delisting of [...] by the [...] chain for a period in [...] and a reduction in shelf space by [...] in [...].

(81) The Commission recognises that the big supermarket chains have more negotiating power than smaller retailers, and that this results in the supermarket chains being able to negotiate discounts which are not available to smaller retailers. However, in an assessment of dominance the question is whether there is sufficient countervailing buyer power to neutralise the market power of the parties. This is not the situation in the present case. First, the concentration ratio on the supply-side is much higher than on the buyer side. Second, retailers are not able to meet the demand for the dominant 'must stock' TCCC brands from other suppliers. Consequently, they are not able to find other suppliers for their CSD requirements to such an extent that it could remove the dominance of the parties. In the absence of any other specific reasons for the presence of countervailing buyer power, it can only be concluded that little countervailing buyer power exists. This is also clear from the fact that Danish CSD prices are very high compared to neighbouring countries. See section V.B above.

(e) *Conclusion*

(82) In the overall market for CSDs, TCCC's market share, the strength of its brand, the barriers to entry for competitors and the lack of countervailing buyer power, lead the Commission to conclude that

TCCC is dominant on the CSD market at the brand level. For similar reasons the Commission considers that Dadeko, as licensee of TCCC, is dominant on the market for CSDs at the bottling level.

**B.3. Strengthening of a dominant position on the overall CSD market in Denmark**

(83) With the creation of CCNB, the brands, the portfolios and distribution system of TCCC and Carlsberg/Dadeko come under the joint strategy and common ownership of the parties. Consequently the Commission has concluded that the creation of CCNB will give rise to the strengthening of the dominant positions of TCCC and Dadeko on the CSD market at the brand and bottling levels respectively.

(84) The parties have argued that the intended divestiture of Jolly Cola, the licensing of [...], the discontinuation of certain [...] brands, as well as [...] would have reduced their market share from [55 to 60 %] to [50 to 55 %] at the brand level in 1995. These actions would have led to a reduction in market share, at the bottling level, from [60 to 65 %] to [50 to 55 %] in 1995. However, as discussed below it is not likely that the operation will lead to the parties giving up this [5 to 10 %] market share. More importantly, the parties have forecast that the overall CSD market in Denmark is expected to grow. Rather, it appears that the purpose of the operation is to position TCCC and CCNB/Dadeko to capture the majority of this growth. For the following reasons, TCCC's dominant position will be strengthened at the brand level and Dadeko's at the bottling level through the creation of CCNB.

(a) *The change from a licence agreement to a joint venture arrangement*

(85) Bottlers may be either independent companies, licensed by TCCC to produce its products, or entities which are either partly or wholly owned by TCCC. In some cases, the bottling arrangement between TCCC and the licensee matures into the creation of a joint venture between the two parties, a relationship which may subsequently be terminated upon the former licensee becoming subject to the sole control of an 'anchor bottler' (<sup>1</sup>).

(<sup>1</sup>) Such was the case in IV/M.794 — Coca-Cola Enterprises, Inc./Amalgamated Beverages GB (Decision 97/540/EC). In the present operation, there is already a provision in the MSA in case of dissolution of CCNB, in which event CCNB would pass under the full control and ownership of TCCC (as discussed in paragraph 11).

- (86) As far as the present arrangements are concerned, the operation results in a change from a licence agreement to a structural joint venture. The present licence agreement between TCCC and Dadeko is based on TCCC's standard Bottler's Agreement known as its European Community Standard International Bottler's Agreement ('ECSIBA') which was notified under Regulation 17 to the Commission on 7 September 1992<sup>(1)</sup>.
- (87) In general terms, the present agreement provides that TCCC's role is confined to selling and delivering beverage bases and to approving certain decisions. Dadeko's role is confined to preparing and packaging TCCC beverages for distribution and sale in Denmark. Dadeko is obliged [...]. The bottling agreement obliges Dadeko, for example, to [...]. Dadeko is further identified as being [...]. Thus, the Bottler's Agreement provides for a formal division of responsibilities between Dadeko and TCCC. Moreover, under the present arrangement [...].
- (88) The post-merger arrangement will be based on a Bottler's Agreement<sup>(2)</sup>, the MSA and the licence agreement concerning the [...] CSD brands. The last two agreements will thus involve additional contractual obligations on the parties in addition to the bottling provisions, described above. Some of the main changes that will ensue in the relationship between the parties are: (i) TCCC will become fully involved in all decision-making bodies at different levels<sup>(3)</sup>, (ii) [certain] brands will now become a part of the joint venture and thus subject to joint decision-making, (iii) Carlsberg must not, directly or indirectly, undertake any act or activity in relation to [...] within [...] and (iv) the MSA introduces [...].
- (89) The parties have recognised that the concentration will lead to a structural change but have maintained that the structural change will have no appreciable impact on the parties' business relationship. However, the structural change from a licence agreement to a joint venture will strengthen Dadeko in two ways.
- *It will allow TCCC to take a more long-term view.* The Commission appreciates that TCCC and other brand owners have historically licensed bottlers for long periods. However, licence agreements are intrinsically not structural and therefore more limited in their contractual obligations and they are also a more short-term means of cooperation than a joint venture. In this respect it is instructive to note that TCCC terminated its licence agreement with Pripps in Sweden to facilitate the creation of CCNB and that TCCC recently established a joint venture with the former long-term PepsiCo licensee in Venezuela. Such transactions would be more difficult to achieve in the case of a joint venture agreement as compared to a licence arrangement. In the present case, [...].
- *It will harmonise the goals of TCCC and Carlsberg.* The parties have recognised that there can be conflicting interests between TCCC as a brand owner and Carlsberg as a bottler. The creation of CCNB will give TCCC joint control over production, below-the-line marketing, distribution and sales of both TCCC and [certain other] brands. The operation will remove potential areas of conflict between TCCC and Carlsberg, for example, in the allocation of production capacity and advertising strategies. At present TCCC and Carlsberg could, for example, have different interests in the mix of advertising and point-of-sales promotions, since TCCC is basically paying for the above-the-line advertising, whereas Carlsberg/Dadeko is paying for the point-of-sales advertising and has other brands being sold outside the influence of TCCC. In the future, with the creation of the joint venture, such areas of conflict will be eliminated through the pooling of the brands under TCCC and the joint control over CCNB. In this sense, the operation will create a 'seamless' structure with better coordination between the brand and bottling levels.

<sup>(1)</sup> Case IV/34.460, which is still pending.

<sup>(2)</sup> The parties have submitted that the Bottler's Agreement to be executed between TCCC and Dadeko following the implementation of the notified operation will be identical to [...] in all material respects.

<sup>(3)</sup> This means that TCCC will be represented at: (i) the shareholders' general meeting, (ii) the supervisory board which, jointly with the executive board, is in charge of the management affairs, is responsible for the proper organisation of the activities and supervises the activities of the executive board; (iii) [...]; and (iv) [other day-to-day management functions].

(90) Therefore, on the basis of the foregoing, the Commission does not accept the 'no change scenario' presented by the parties who consider that the creation of CCNB will not significantly change the present situation and that TCCC will have no new decision-making power or influence over its bottler beyond the influence that it currently exerts.

(b) *Strengthening at the brand level*

(91) Jolly Cola will remain in the CCNB brand portfolio despite [...]. In the Response the parties have argued that Jolly Cola is a brand in decline which has lost considerable market share and has become less important in recent years. The Commission recognises the difficulties faced by the Jolly Cola brand and the fact that the market share of Jolly Cola has decreased to about only 5%. However, there is not at present any agreement to sell the stake in Dansk Coladrik, and any sale would be complicated by a pending court case over the disposal process. Consequently, the Commission has combined the market share appertaining to Jolly Cola with that of the parties.

(92) Similarly it has been argued that the [...] brand should not be included in the parties' market share since Carlsberg is to license its production to [...]. However, its exclusion would be inappropriate since Carlsberg plans to continue to distribute the [...] brand. In the Response the parties have argued that [...]. The Commission agrees that the brand is not important in an overall market context, but notes that Carlsberg will continue to distribute the [...] brand.

(93) As regards [...], there is a risk that [...] may leave the overall CSD market in Denmark because, as a consequence of the operation, [...].

(94) The parties claim that it is likely that the [...] brand will be able to find another bottling arrangement: in reality the only available alternative is Bryggerigruppen. While it is not impossible that Bryggerigruppen would become the future bottler of [...]. Finally, as noted above, Carlsberg has substantial influence over Bryggerigruppen. The establishment of CCNB will mean that, in any conflicts between the interests of [...] and those of TCCC, Carlsberg is likely to support TCCC because the strategic interest of Carlsberg in CCNB is much greater than its interest in the CSD business of Bryggerigruppen. This will constrain the competitive potential of the [...] brand in

Denmark, even if the brand were to be licensed to Bryggerigruppen. For these reasons, it cannot be taken for granted that [...] would be licensed to Bryggerigruppen. In fact, the brand may be withdrawn from the Danish market.

(95) The operation will result in reduced competition between the TCCC, Carlsberg and Cadbury Schweppes brands. At present the capacity of Dadeko is allocated between the production of TCCC, Tuborg, Carlsberg and Cadbury Schweppes brands and, at the marketing level, coordination is undertaken at the Carlsberg Group level through the Carlsberg Soft Drink Coordination Committee. However, Dadeko is currently an exclusive TCCC sales and distribution organisation, which is separate from the Tuborg and Carlsberg sales and distribution organisations. Therefore, a certain degree of competition between the brands of TCCC, Carlsberg and Cadbury Schweppes takes place.

(96) The operation will lead to a structural change in this relationship. First, the brand management and the above-the-line marketing for all the TCCC, [...] and [...] brands will be handled by TCCC, and the [...] brands by CCNB. Second, the distribution and below-the-line marketing will be carried out by Dadeko for all the TCCC, Carlsberg, and [...] brands. Therefore, the operation will create one focused organisation which has all the TCCC, Carlsberg, [...] and [...] brands in its portfolio, and which carries out all the distribution, marketing and sales activities of TCCC and Carlsberg for all the brands (including the [...] brands). Consequently, the present competition between TCCC, Carlsberg and [...] brands will be eliminated. Moreover, TCCC would acquire the power to give additional advertising and promotional support to the CSDs it prefers and to weaken, or totally eliminate, support for other flavours. This means it would be able to 'manage out' flavours from the Carlsberg and [...] portions of the CCNB portfolio to the advantage of TCCC brands.

(97) As discussed above, Carlsberg has substantial influence over Bryggerigruppen. It is clear [...] that the link between Bryggerigruppen/Pepsi and Carlsberg [...] could cause conflicts of interest for Carlsberg. [...] Furthermore, Carlsberg's future stake in CCNB may further constrain the competitive potential of Bryggerigruppen on the Danish CSD market. In particular in cases of conflict between

TCCC and PepsiCo, Carlsberg would have a greater incentive to support TCCC after the operation. The reason is that Carlsberg's stake in CCNB is of much greater strategic importance than its stake in the CSD business of Bryggerigruppen.

- (98) As concerns raising barriers to entry, the only Danish companies likely to launch new CSD brands would be Carlsberg or Bryggerigruppen. However, Carlsberg will be eliminated as a competitor at this level in the future. This is particularly important since Carlsberg is one of the few companies which would be able to challenge TCCC as a supplier of new brands. Furthermore, it cannot be excluded that Carlsberg's substantial influence over Bryggerigruppen could constrain the launch of a new brand by this company. Therefore, in effect, the operation gives TCCC decisive influence over which new brands will be launched on the overall CSD market in Denmark in the future. In this respect it should be noted that [...], especially since TCCC has recently launched the [...] brand on the Danish market.

(c) *Strengthening at the bottling level*

- (99) The operation will allow TCCC to have direct contact with customers, thereby allowing it to employ the commercial leverage of its global system in relation to its customers, greatly increasing its bargaining position in the market. Consequently, TCCC will also be in a position to implement exclusivity programmes, volume discounts and rebate schemes more easily.
- (100) The operation forecloses the Carlsberg distribution system to brands other than those owned by or licensed to TCCC and CCNB. The Carlsberg and Tuborg distribution systems are still today available for other brands. This is demonstrated by the fact that, in 1993, Carlsberg launched the Cadbury Schweppes Sunkist brand, which is distributed by Carlsberg and Tuborg. As a consequence of the operation, such product launches would no longer be possible for Carlsberg. Since the Carlsberg distribution system is the largest in the country, that foreclosure has serious consequences for other brand owners, especially given Carlsberg's substantial influence over Bryggerigruppen, which is the only realistic alternative to Carlsberg as a licence holder and distributor of a new international brand for colas and other CSDs. Thus the operation will further increase the likelihood of CCNB increasing its market share and in reality gives TCCC decisive

influence over which new brands will be launched on the Danish market. Therefore the likelihood that a major international brand, such as Cadbury Schweppes' Dr Pepper brand, would enter the market is reduced.

#### B.4. Conclusion

- (101) For the above reasons, the Commission has concluded that, at the brand level TCCC is dominant and at the bottling level Dadeko (as bottler for TCCC and Carlsberg CSDs) is dominant. With the creation of CCNB, the dominant positions of TCCC and Dadeko (control over which passes to CCNB) are strengthened. In reality, the operation will give TCCC decisive influence over which new CSD brands are launched on the Danish market.

#### C. Sweden

##### C.1. Overview of the industry

- (102) The total volume of CSDs consumed in Sweden, in 1995, was some 542 million litres of which 239 million litres (44 %) were cola flavoured CSDs. Some 77 % of all CSDs in Sweden were sold by the retail trade in 1995, with the balance being sold in the Horeca channel.
- (103) Prior to the establishment of CCDS, three breweries were primarily responsible for the production, distribution and sale of CSDs and packaged waters in Sweden. Pripps, a subsidiary of the Norwegian conglomerate Orkla, was the largest of these companies. As well as producing a range of beers, Pripps was the licensee for TCCC's brands and is the franchisee for Cadbury Schweppes' mixers, in addition to producing its own CSDs and packaged waters. The second largest brewer was Spendrups Bryggeri AB, which is independently owned and holds, at present, the licence for PepsiCo brands in Sweden and Norway. The smallest of the three brewers, Falcon, currently holds the licence to produce Dr Pepper. Falcon will jointly own, with CCDS, the distribution joint venture, DDAB.
- (104) As already mentioned, since 1 April 1997, CCDS has been marketing and selling the full range of TCCC's products on the Swedish market. As of 1 January 1998, CCDS will also take over the bottling of those products, which is being carried out by Pripps until its bottling agreement expires on 31 December 1997.

## C.2. Market structure

- (105) The market positions of the brand owners and bottlers on the overall CSD market in Sweden are shown in the following tables, which set out the market shares for 1995 on a value basis and the estimated market shares following the creation of CCNB (based on data provided by the parties):

### Brands

|               | All flavoured CSDs 1995 | All flavoured CSDs post CCNB |
|---------------|-------------------------|------------------------------|
| TCCC          | [40 to 50]              | [50 to 55]                   |
| Falcon        | [0 to 5]                | [0 to 5]                     |
| Total parties | [50 to 55]              | [50 to 55]                   |
| PepsiCo       | [5 to 10]               | [5 to 10]                    |
| Schweppes     | [0 to 5]                | [0 to 5]                     |
| Pripps        | [10 to 15]              | [10 to 15]                   |
| Spendrups     | [5 to 10]               | [5 to 10]                    |
| Others        | [15 to 20]              | [15 to 20]                   |

NB: The 'Others' category includes DOBs and the like.

### Bottlers

|               | All flavoured CSDs 1995 | All flavoured CSDs post CCNB |
|---------------|-------------------------|------------------------------|
| CCDS          |                         | [50 to 55]                   |
| Falcon        | [5 to 10]               | [5 to 10]                    |
| Total parties | [5 to 10]               | [55 to 60]                   |
| Pripps        | [60 to 65]              | [15 to 20]                   |
| Spendrups     | [15 to 20]              | [15 to 20]                   |
| Others        | [15 to 20]              | [15 to 20]                   |

NB: The 'Others' category includes DOBs and the like.

- (106) In the context of the market structure, it should be taken into account that in August 1997 Pripps and PepsiCo agreed to enter into an exclusive franchise bottling agreement for the production, distribution and sales of Pepsi-Cola and Seven-Up products in Sweden. The agreement will come into force on 1 January 2001, after the expiry of PepsiCo's existing bottling agreement with Spendrups. According to the parties, preliminary discussions are also under way regarding a similar alliance in Norway.

## C.3. Conclusion

- (107) On the basis of the information provided by the parties, together with the Commission's investigation, there are indications that TCCC is dominant at the brand level and CCDS is dominant at the bottling level on the CSD market in Sweden. The Commission, however, recognises that the formation of CCDS, together with the termination of TCCC's licence agreement with Pripps, will add new bottling capacity to the Swedish CSD market. Consequently, the concentrative elements of the operation will not lead to a strengthening of the present positions of either TCCC or CCDS. The cooperative elements of the operation (the TPSA and the creation of DDAB) are being assessed under the separate proceedings pursuant to Article 85 of the EC Treaty. In this context, the Commission notes that certain undertakings have been given during the course of the procedure under the Merger Regulation with respect to the TPSA (see below).

## VII. UNDERTAKINGS SUBMITTED BY THE PARTIES

- (108) In the light of the competition concerns identified by the Commission, the parties have offered to modify the original concentration plan. The wording of the two main divestiture undertakings is as follows:

- (109) *Divestiture of Carlsberg's shareholding in Jyske Bryg*

'In order to meet the requirements of the Commission to facilitate the development of a viable competitor with adequate resources in the CSD sector, Carlsberg A/S hereby gives the following undertaking to the Commission with respect to its shareholding in Jyske Bryg Holding A/S:

1. If, within [...] from the date of the Commission adopting a favourable decision under Regulation (EEC) No 4064/89, Carlsberg A/S has not sold its shares in Jyske Bryg Holding A/S (such shares hereinafter referred to as the "Shares") to one or more viable industrial undertakings unconnected to Carlsberg A/S or The Coca-Cola Company, such purchaser being in a position to maintain and develop Bryggerigruppen as an active competitive force in competition with Dadeko, Carlsberg A/S will:

- (a) appoint an independent firm of accountants, lawyers, investment bankers or similar consultants (such firm hereinafter referred to as the "Trustee"), to be approved by the Commission, and to act on the Commission's behalf in overseeing the ongoing independent and separate management of the

Shares and the continued efforts by Carlsberg A/S to divest the shares within the further period set out in (b) below; and

- (b) be allowed a further period of [...] to negotiate a sale of the Shares to a purchaser or purchasers unconnected to Carlsberg A/S or The Coca-Cola Company.
2. Should divestiture according to paragraph 1 above not have been accomplished within the further period set out in paragraph 1(b) above, Carlsberg A/S will give the Trustee an irrevocable mandate to find purchaser(s) for the Shares, such sale to be made at a fair and reasonable price within an additional extension period of [...] (or such further period to be agreed with the Commission) to a purchaser or purchasers unconnected to Carlsberg A/S or The Coca-Cola Company. Carlsberg A/S will provide the Trustee with all the assistance and information necessary for the execution of such sale and for the obtaining of such terms and conditions.
  3. In the event that the Trustee has not sold the Shares by the end of the period described in paragraph 2, he shall sell the Shares on the best possible terms and conditions subject to an absolute and unconditional obligation on Carlsberg A/S to divest at no minimum price. Such sale to take place prior to the end of the period described in paragraph 2.
  4. Carlsberg A/S or the Trustee (as appropriate) will notify the Commission of any proposal within their knowledge for a sale of Shares to a single purchaser by Carlsberg A/S where such sale is in respect of Shares amounting to [...] per cent or more of the total number of issued shares in Jyske Bryg Holding A/S. The Commission will, within [...] weeks of receipt of such notification, inform Carlsberg A/S or the Trustee (as appropriate) in writing if it considers that the proposed purchaser does not fulfill the conditions set out in paragraphs 1, 1(b) or 2 (as appropriate), in which case a sale to such proposed purchaser shall not proceed. Otherwise, at the end of the [...] week period Carlsberg A/S will be free to sell its shares to such purchaser.
  5. Carlsberg A/S further understands that any sale of shares amounting to less than [...] per cent of the total issued shares in Jyske Bryg Holding A/S shall also be to a purchaser which to the best of Carlsberg A/S's knowledge is unconnected to it or The Coca-Cola Company. When

the divestiture of its shares in Jyske Bryg Holding has been accomplished, Carlsberg A/S undertakes to report to the Commission the identity of the buyer(s) of the shares, provided that the identity of the buyer(s) of the shares is known to Carlsberg A/S, and as may be necessary, provide the information, to the best of its knowledge, necessary to judge whether the buyers are unconnected with Carlsberg A/S and The Coca-Cola Company.

6. Carlsberg A/S, or alternatively the Trustee, undertakes not to vote the Carlsberg A/S shares in Jyske Bryg Holding A/S during the divestiture periods except with the prior approval of the Commission. The Commission will not unreasonably withhold its approval for Carlsberg A/S, or alternatively the Trustee, to vote the shares. Carlsberg A/S will provide the necessary information for the Commission to make an evaluation in this respect.
  7. Carlsberg A/S or the Trustee, as the case may be, will notify the Commission of all material developments in relation to the sale of the Shares and, in any event, will report on relevant developments at [...] intervals.'
- (110) *Divestiture of Carlsberg's shareholding in Dansk Coladrik (Jolly Cola)*

'Carlsberg A/S hereby gives the following undertaking to the Commission with respect to its shareholding interests in Dansk Coladrik A/S:

1. Carlsberg A/S will, within [...] of the date of the Commission adopting a favourable decision under Regulation (EEC) No 4064/89, seek to sell its shareholding in Dansk Coladrik A/S, it being understood that any purchaser should be a viable existing or prospective competitor independent of Carlsberg A/S and The Coca-Cola Company and possessing the financial resources and proven expertise in the NAB market, enabling it to maintain and develop Dansk Coladrik A/S as an active competitive force in competition with Dadeko A/S in relation to the bottling of cola CSDs (such purchaser hereinafter referred to as a "Purchaser").
2. If Carlsberg A/S does not divest its shareholding in Dansk Coladrik A/S by the end of the period set out in paragraph 1 above, Carlsberg A/S will appoint an independent trustee

- to be approved by the Commission (hereinafter referred to as "the Trustee") to act as described below.
3. The Trustee will on Carlsberg A/S's behalf oversee the ongoing management of Dansk Coladrik A/S to ensure its continued viability and market value and the rapid and effective sale of the Carlsberg A/S shares in Dansk Coladrik A/S at a fair and reasonable price.
  4. Carlsberg A/S will give the Trustee an irrevocable mandate to find a Purchaser for its shareholding in Dansk Coladrik A/S within an extension period of [...] (or such further period to be agreed with the Commission). Carlsberg A/S agrees to undertake to give, on an arms-length basis and subject to Carlsberg A/S's reasonable secrecy interests, all assistance requested by the Trustee prior to the sale of the Carlsberg A/S shareholding to a Purchaser.
  5. Carlsberg A/S or the Trustee will report to the Commission on whether it believes that one or more proposed purchasers fulfil the description of a Purchaser set out in paragraph 1 above. The Commission will, within [...] weeks of receipt of such report, inform Carlsberg A/S or the Trustee (as appropriate) in writing if it reasonably considers that such proposed purchaser or purchasers do not fulfil the description of a Purchaser set out in paragraph 1 above, in which case a sale to such proposed purchaser or purchasers shall not proceed. Otherwise, at the end of the [...] week period Carlsberg A/S will be free to sell its shares to such purchaser.
  6. Providing the offers concerned have been received from Purchasers and the procedure described in paragraph 5 has been complied with, Carlsberg A/S alone will be free to accept any offer or to select the offer it considers best in case of a plurality offer.
  7. In the event that the Trustee has not sold the Carlsberg A/S shareholding in Dansk Coladrik A/S by the end of the period described in paragraph 4, he shall sell the shareholding on the best possible terms and conditions subject to an absolute and unconditional obligation on Carlsberg A/S to divest at no minimum price. Such sale to take place prior to the end of the period described in paragraph 4.
  8. Prior to the completion of the sale of the Carlsberg A/S shareholding in Dansk Coladrik to a Purchaser, Carlsberg A/S will ensure that Dansk Coladrik A/S is managed as a distinct and saleable entity with its own management accounts, and that the management of Dansk Coladrik A/S are instructed that the Dansk Coladrik A/S business will be managed on an independent basis in order to ensure its continued viability and market value, and this will take place under the guidance and control of the Trustee following his appointment as described in paragraph 2 above. Prior to the completion of the sale of the Carlsberg A/S shareholding to a Purchaser, Carlsberg A/S will not integrate the Dansk Coladrik A/S business into any Carlsberg A/S business unit, nor will it appoint or second any Carlsberg A/S employee to the Dansk Coladrik A/S business. Carlsberg A/S also undertakes that it will make no structural changes to the Dansk Coladrik A/S business without prior Commission approval.
  9. Carlsberg A/S will not obtain from Dansk Coladrik A/S management any business secrets, know-how, commercial information or any other industrial information or property rights of confidential or proprietary nature relating to the Dansk Coladrik A/S business.
  10. Carlsberg A/S undertakes that, prior to the sale of the Carlsberg A/S shareholding in Dansk Coladrik A/S, all existing agreements between Carlsberg A/S and Dansk Coladrik A/S relating to the sale of Jolly Cola concentrate by Dansk Coladrik A/S to Carlsberg A/S will continue in force and, in the event that any such agreement will expire prior to the sale of the Carlsberg A/S shareholding, it will be renewed by Carlsberg A/S without any material change to the terms of the contract unless such change is approved by the Commission.
  11. Carlsberg A/S or the Trustee as the case may be will notify the Commission of all material developments in relation to the sale of the Carlsberg A/S shareholding in Dansk Coladrik A/S and, in any event, will report on relevant developments at [...] intervals.'
- (111) **Other undertakings**
- In addition, the parties have proposed three other undertakings. First, the parties will change the notified licence agreement relating to the [...] NAB brands in order to enable Carlsberg to have control

over their brand management. Carlsberg will provide Dadeko with [...]. Second, the MSA will be amended to enable Carlsberg to compete in the CSD market within the CCNB territory. Third, the TPSA will be amended so that TCCC will not purchase the [...] trademark from Falcon, nor supply [...].

#### VIII. ASSESSMENT OF THE UNDERTAKINGS

- (112) In the light of the assessment of the operation, the Commission considers that the proposed undertakings are adequate to prevent the strengthening of a dominant position as a result of which effective competition would be significantly impeded.
- (113) At present, TCCC is dominant at the brand level and Dadeko is dominant at the bottling level. The operation will lead to TCCC's forward vertical integration into bottling and thereby link TCCC and Bryggerigruppen through Carlsberg's shareholding in Bryggerigruppen, the second largest brewer and soft drinks producer in Denmark. Only the removal of this link would make Bryggerigruppen free of TCCC and Carlsberg and enable it to be established as the second independent player in the Danish CSD market. The Commission considers Bryggerigruppen to have the necessary resources to become a viable second force in the Danish CSD market since, among other things, it has a sufficiently broad range of products in its portfolio, it holds the licence for the PepsiCo brands, and it has an adequate nationwide distribution system.
- (114) In the opinion of the Commission, Carlsberg's undertaking to divest itself of its shareholding in Jyske Bryg is crucial to counterbalance the anti-competitive impact arising from the creation of CCNB. In particular, the undertaking compensates for the *de facto* elimination of Carlsberg as an actual and potential competitor at the brand level and for the foreclosure of Carlsberg's distribution system, since it will allow Bryggerigruppen to develop into a real alternative to the parties on the Danish market. The undertaking, for example, makes it more likely that [...], and that new brands can be launched in competition with the brands of TCCC. Therefore, given the specific circumstances of the Danish CSD market, the Commission considers the undertaking to be an essential remedy to prevent a strengthening of a dominant position.
- (115) Carlsberg's undertaking to divest itself of its shareholding in Dansk Coladrik addresses the Commission's concern about an effective and timely disposal of that holding by the parties' proposal to appoint a trustee to oversee the management and sale of Dansk Coladrik. It is noted that the other three shareholders in Dansk Coladrik have rights of first refusal to Carlsberg's shares in the company. The Commission considers that under the present circumstances and in view of the total package of undertakings, Carlsberg or the trustee can sell the shares in Dansk Coladrik to one or more of the other existing shareholders in Dansk Coladrik.
- (116) Finally, the other undertakings offered by the parties are not adequate in themselves to redress the anti-competitive impact of the proposed concentration. First, the undertaking designed to give Carlsberg certain supervisory responsibilities over the [...] NAB brands will lead to increased, though not full, independence from TCCC. Second, the new limitation imposed on the non-competition clause will have only a limited impact, if any, in the marketplace. Third, the undertaking relating to the TPSA solely concerns the arrangements in the Swedish market. The Commission, therefore, notes the existence of these undertakings, but does not assess them further.

#### IX. ANCILLARY RESTRAINTS

- (117) The parties have requested that clause [...] of the MSA, which sets out the non-competition obligations of TCCC [...] and Carlsberg [...] and which are coterminous with the lifetime of the joint venture, be considered as ancillary to the concentration. These provisions are directly related and necessary to the implementation of the concentration and, accordingly, the Commission recognises their ancillary character.

#### X. OVERALL CONCLUSION

- (118) Consequently the notified operation, as modified by the divestiture package, will not strengthen a dominant position in the Danish CSD market as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. The operation is, therefore, on condition that the undertakings are adhered to, compatible with the common market and the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

*Article 1*

Subject to full compliance with the divestiture undertakings concerning Jyske Bryg Holding A/S and Dansk Coladrik A/S, as set out above in paragraphs 109 and 110, the concentration notified by the parties on 25 March 1997 relating to the creation of Coca-Cola Nordic Beverages is declared compatible with the common market and the functioning of the EEA Agreement.

*Article 2*

This Decision is addressed to:

The Coca-Cola Company  
One Coca-Cola Plaza, N.W.  
Atlanta GA 30013  
USA

Carlsberg A/S  
Vesterfælledvej 100  
1799 Copenhagen V  
Denmark

Done at Brussels, 11 September 1997.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

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