

Competition Commission Adoption of Undertakings

IN THE MATTER of the reference to the Competition Commission dated 28 November 2005 relating to the completed acquisition by Cott Beverages Limited of Macaw (Holdings) Limited.

Whereas on 28 November 2005 the Office of Fair Trading ("OFT") made the reference to the Competition Commission ("CC") under section 22 of the Enterprise Act 2002 ("the Act"):


And whereas prior to making the reference the OFT, for the purpose of preventing pre-emptive action, accepted the undertakings reproduced in the Annex below ("the Undertakings") from Cott Beverages Limited on 14 November 2005 in accordance with section 71(2) of the Act:

And whereas the reference has not been finally determined:

And whereas the Undertakings are still in force:

On 2 December 2005 the CC adopted the Undertakings in accordance with section 80(3) of the Act for the purpose of preventing pre-emptive action, and to ensure that no action is taken which might prejudice the reference or impede the taking of any action by the CC under Part 3 of the Act which may be justified by the CC's decisions on the reference.

Signed by authority of the Competition Commission



Peter Freeman
Deputy Chairman
December 2005

**COMPLETED ACQUISITION BY COTT BEVERAGES LIMITED OF MACAW
(HOLDING) LIMITED**

**UNDERTAKINGS GIVEN BY COTT BEVERAGES LIMITED TO THE OFFICE OF
FAIR TRADING PURSUANT TO SECTION 71 OF THE ENTERPRISE ACT 2002**

Cott Beverages Limited (Cott) hereby gives to the OFT the following undertakings in respect of the acquisition by Cott of Macaw (Holdings) Limited (Macaw) pursuant to section 71 of the Enterprise Act 2002 for the purpose of preventing pre-emptive action.

Management of the Macaw business until determination of proceedings

1. Except with the prior written consent of the OFT, Cott undertakes that it will not during the specified period take any action which might directly or indirectly:
 - (a) lead to the further integration of the Macaw business with the Cott business to the extent that the Macaw business remains separate from the Cott business as at 14 November 2005;
 - (b) transfer the ownership or control of Macaw or any of its subsidiaries; or
 - (c) prejudice the reference to the CC or impede the taking of any action under the Act which may be justified by the CC's decisions on any such reference.

2. Without prejudice to the generality of paragraph 1, Cott will at all times during the specified period, procure that except with the prior written consent of the OFT:
 - (a) the Macaw business is maintained as a going concern and sufficient resources are made available for the development of the Macaw business on the basis of its pre-merger plans;
 - (b) except in the ordinary course of business, no material changes are made to the organisational structure of the Macaw business or the management responsibilities within the Macaw business;
 - (c) except in the ordinary course of business and subject to the remaining requirements of paragraph 2
 - (i) the assets of the Macaw business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Macaw business are disposed of; and
 - (iii) no interest in the assets of the Macaw business is created or disposed of;
 - (d) the nature, description, range and standard of goods currently supplied in the United Kingdom by each of the Cott business and the

Macaw business are in all material respects maintained and preserved;

- (e) there is no integration of the information technology of the two businesses and the software and hardware platforms of the Macaw business shall remain essentially unchanged, except for routine changes and maintenance;
- (f) no key staff are transferred between the two businesses;
- (g) all reasonable steps are taken to encourage all key staff to remain with the Macaw business;
- (h) to the extent it has not already occurred prior to the date on which these undertakings are signed, no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either **the Cott business** or **the Macaw business** shall pass, directly or indirectly from Macaw (or any of its employees, directors, agents or affiliates) to Cott (or any of its employees, directors, agents or affiliates) or vice versa, except where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed.

Compliance

3. Cott will procure that each of its subsidiaries complies with these undertakings as if it had given them.
4. Cott will forthwith provide to the OFT such information as it may from time to time require for the purposes of monitoring compliance by Cott and its subsidiaries with these undertakings.
5. Cott will comply insofar as it is able with such written directions as the OFT may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

Interpretation

6. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
7. For the purposes of these undertakings:

"the Act" means the Enterprise Act 2002;

"an affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

"Macaw" means Macaw (Holdings) Limited;

"the Macaw business" means the business of Macaw and its subsidiaries carried on in the United Kingdom as at 14 November 2005;

"business" has the meaning given by section 129(1) and (3) of the Act;

"the CC" means the Competition Commission;

"control" shall be construed in accordance with section 26 of the Act and in the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"the decisions" means the decisions of the Competition Commission on the questions which it is required to answer by virtue of section 35 of the Act;

"Cott" means Cott Beverages Limited;

"the Cott business" means the business of Cott and its subsidiaries carried on in the United Kingdom as at 14 November 2005;

"key staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

"the OFT" means the Office of Fair Trading, provided that, should the CC adopt these undertakings pursuant to section 80(3) of the Act, references to "the OFT" in paragraphs 1 and 2 of these undertakings shall be taken as references to the CC, and references to "the OFT" in paragraphs 4 and 5 of these undertakings shall be taken to include both the Office of Fair Trading and the CC;


"the ordinary course of business" means matters connected to the day to day supply of goods and/or services by Macaw and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Macaw;

"the specified period" means the period beginning on the date of these undertakings and terminating either at the end of the period specified in section 71(5) or (6) of the Act or, should the CC adopt these undertakings pursuant to section 80(3) of the Act, the end of the period specified in section 80(7) or (8) of the Act;

"subsidiary", unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended); and

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF COTT BEVERAGES LIMITED

.....  Signature Signature

..... ASMURRIN Name Name

..... MD. COTT BEVERAGE CO. Title Title

..... 14/11/05 Date Date