OFFICE FOR FAIR COMPETITION

DECISION

Comp-MCCAA/02/2013

20 May, 2013

Decision on the creation of a full function joint venture in terms of regulation 6(1)(ii) of the Regulations on Control of Concentrations, 2002 (LN 294 of 2002),

The Office for Competition,

Having considered the joint notification of Marsovin Limited and Master Wine Holdings Limited pursuant to regulation 5 of the Regulations on Control of Concentrations 2002,

Having considered the provisions of the Regulations on Control of Concentrations, 2002,

Having considered EU and other foreign jurisprudence,

Whereas,

I. Facts

1. On 8 April, 2013, Marsovin Limited (hereinafter referred to as "Marsovin") and Master Wine Holdings Limited (hereinafter referred to as "Master Wine" and hereinafter collectively referred to as "the Notifying Parties") jointly notified the Office for Competition (hereinafter referred to as "Office") with a Joint Venture & Shareholders' Agreement dated 14 March, 2013, whereby Marsovin and Master Wine are to transfer the entirety of their respective beverage production and distribution operations to CassarCamilleri Limited, a new joint venture company set up for the purposes of this transaction.

2. The filing and the acceptance of such notification was notified to the public through a public notice in the Government Gazette number 19,073 on 12 April, 2013 and a notice that appeared in a local newspaper on 17 April, 2013.

II. Parties

3. Marsovin is a limited liability company incorporated in Malta having registration number C 115 and registered address at The Winery, Wills Street, Paola. Its principal activity is the manufacture, importation and sale of beverages, including wines, beers, fruit juices, mineral water and other non-alcoholic beverages. It also provides the equipment and services for the transport and distribution of all or part of the above-mentioned goods. Its subsidiary, Anthony Cassar & Son (1919) Limited (C 17677), imports alcoholic and non-alcoholic beverages, including wine, beer, fruit juices and nectars, squashes and bottled water, as well as foodstuffs. Its other subsidiary, Marsovin (Sales & Distribution) Limited (C 20060), is principally engaged in the sale and distribution of beverages on behalf of the Marsovin group companies. Marsovin's brands include: Marsovin wines produced from Maltese grown grapes, 1565 Victory Lager, Coolee dilutable drinks, Safari and Vival fruit juice and Fontana bottled water.

4. Master Wine is a limited liability company incorporated in Malta having registration number C 26313 and registered address at Master Wine, Zwejt Street, San Gwann Industrial Estate, San Gwann. Its principal activity is the holding of shares in other group companies and the provision of financing and various services to its subsidiary, associated and related companies. Its subsidiary Camilleri Wines Limited (C 26375) and Caraffa Wines Limited (C 26612) produce wines in Malta. Madalien Limited (C 26376) produces a range of alcoholic and non-alcoholic beverages, including spirits and liqueurs and squashes. Master Distributors Limited (C 2837) is engaged in the importation and distribution of alcoholic and non-alcoholic beverages, including wines, spirits and liqueurs, fruit juices and nectars, smoothies, squashes and mineral water. Plastic Creations Limited (C 28248) produces plastic bottles which are used by Madalien Limited. Master Cellars Limited (C 24303) is engaged in the retail sale of products produced and imported by Master group companies and brands of other companies. Master Wine's own brands include: Camilleri Wines, Caraffa Wines, Zeppi's liquer, Black Eagle and Just squashes. Master Wine's imported brands include: Budvar beer, Hawaiki juice, mySmoothie and Hildon bottled water.

III. <u>Full Function Joint Venture</u>

5. The Notifying Parties have established a new joint venture to be named CassarCamilleri Limited (hereinafter referred to as "CassarCamilleri"), which is a limited liability company incorporated under the laws of Malta having registration number C 59394 and registered address at The Winery, Wills Street, Paola. The business of CassarCamilleri shall relate to the manufacture, purchase, distribution and sale of wines, spirits and various types of alcohol and non-alcoholic beverages; including the provision of equipment and services relating to the transport and distribution of merchandise including beverages and the handling of the said goods both for the local market and overseas.

6. It is owned as to 67.8% by Marsovin and as to 32.2% by Master Wine. It is established that the Board of Directors shall consist of not more than seven directors. Marsovin and Master Wine shall respectively be entitled to appoint four directors and two directors to CassarCamilleri's Board of Directors. The seventh director, who is to occupy the post of chairman, is to be appointed by means of an extraordinary resolution which requires not less than 75% of the issued shares of the Company conferring the right to attend and vote. In the case of an equality of votes the chairman shall have the right of a second or casting vote. In addition both Marsovin and Master Wine shall have the power to decide on the appointment, removal or replacement of the senior management of the Company and on the disposal of the whole or a significant part of its business or its discontinuance of any business operation or part thereof.

7. The Board shall be responsible for deciding on the strategic business behaviour of the joint venture, including matters such as the budget, business plan and recommendations for the appointment of the chief executive officer. These matters, amongst others, require the approval of the majority of all the directors, including the approval of at least one director appointed by Marsovin and one director appointed by Master Wine. In addition, the Agreement provides for a 'Deadlock Matter' procedure in the event that the Board of Directors cannot resolve on a matter pending before it, including the approval of a budget or of a business plan or of the capital expenditure. Thus, CassarCamilleri is jointly controlled by Marsovin and Master Wine.

8. Marsovin and Master Wine will withdraw from the market of CassarCamilleri. The Notifying Parties have agreed that they shall sell, convey, transfer, assign, grant and deliver to CassarCamilleri all of their assets relating to the beverage production and distribution business, including the Marsovin and Master Wine intellectual property rights, with full title guarantee. The transfer of the Parties' assets shall be made at a price to be determined by an independent auditor using pre-established valuation principles. CassarCamilleri will have its own management and employees and shall carry out its operations and activities and conduct its business from the premises at The Winery in Paola. This consists of a winery, stores, offices, cellars, laboratories, a wine shop and other related facilities. Both Marsovin and Master Wine *[confidential]*. Furthermore, the Notifying Parties will endeavour to procure for the joint venture, working capital to finance the business, which shall include *[confidential]*. The joint venture has therefore been placed in a position to perform all the functions related to its business activity independently from its parent companies.

IV. <u>Turnover Threshold</u>

9. The aggregate turnover of the undertakings concerned in the preceding financial year exceeds €2.33 million and each of the parties concerned had a turnover in Malta equivalent to at least 10 percent of the combined aggregate turnover of the undertakings concerned as set out in the definition of concentration in regulation 2 of the Regulations.

<u>V. Notifiable Concentration</u>

10. The Office considers that the joint venture will perform on a lasting basis all the functions of an autonomous economic entity within the meaning of the first proviso to the definition of concentration in regulation 2 of the Regulations and that the proposed operation thus constitutes a concentration.

VI. <u>Third Party Objections</u>

11. There were no third party objections in terms of regulation 5(5) of the Regulations. However, during the course of the Office's investigation, a competitor submitted that the joint venture would be in a stronger position to grant special benefits to outlets in order to consolidate its shelf space. Furthermore, it was submitted that the joint venture may be able to foreclose competitors by imposing tying arrangements due to its wide range of portfolio products. Lastly, with particular regard to Maltese wines, the joint venture would

have a stronger bargaining power to induce on-trade customers, which are particularly important to Maltese wine producers to access tourists as final consumers, to exclusively or in large part stock its own wines.

VII. The Relevant Markets

A. Product Markets

12. The EC Commission's Notice on market definition states that, "a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use."[1] In addition, the Notice explains further that firms are subject to three core competitive constraints: demand substitutability, supply substitutability and potential competition.[2] Demand substitutability refers to the possibilities for customers to switch some of their purchases from the focal product to other readily available substitute products in response to a hypothetical, small but permanent relative price increase in the focal product. Supply side substitutability occurs where in relation to a rise in relative prices, undertakings are able to switch production to the relevant products in a short term without incurring considerable additional costs. Potential competition is not analysed at the stage of market definition but is examined at a later stage when considering barriers to entry.

Market for the production and/or importation of wine

13. In a decision of the Office for Competition of the 20th November 2003, in the names Simonds Farsons Cisk plc/ Guido Vella, concerning the beverages sector[3], the market was assessed according to the different stages in the supply chain (i.e. manufacture and importation, wholesale and retail). In that case, Simonds Farsons Cisk plc, an importer and wholesaler of alcoholic and non-alcoholic beverages, acquired Mr. Guido Vella's going concern consisting in the wholesale and retail of alcoholic and non-alcoholic beverages. On the other hand, the notified transaction under consideration concerns the creation of a joint

[1] Found at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y1209(01):EN:HTML, paragraph 7.
[2] Ibid, paragraph 13.
[3] Case CCD/M/66/03, *Simonds Farsons Cisk plc/Guido Vella*, 20th November 2003.

venture by two competitors for the importation, production and supply of alcoholic and non-alcoholic beverages.

14. Winemakers do not generally participate in retailing wine to any great extent. One exception is Master Wine which is engaged in the retail sale of beverages. These sales are not considered to be significant in terms of the total overall wine market so the retail market will not be considered further.

15. In the present case, therefore, the Office considers that the markets and the impact on competition therein should be assessed by reference to the different types of beverages rather than by reference to the different stages in the supply chain.

16. Furthermore, the Office does not consider it necessary to analyse the impact of the proposed transaction on the basis of separate product markets according to whether the products are distributed to the on-trade (sales to bars, restaurants, hotels) or to the off-trade (sales to retailers). The Notifying Parties submit that there is no distinction between the infrastructures required to serve both types of customers and that the skills required of the personnel involved in the distribution of these products whether to on-trade or off-trade are similar.

17. Wine is an alcoholic beverage made by fermenting grape juice. According to the Wine Act[4], 'wine' and 'wine related products' are "the products obtained exclusively from the total or partial alcoholic fermentation of fresh grapes, whether or not crushed, or of grape must, officially certified to be produced exclusively from authorised or recommended grape varieties"[5].

18. White wine is made by fermenting juice which is made by pressing crushed grapes to extract a juice. The grape skin is not used when making white wine and, therefore, white wines can be made from the grape juice of white grapes as well as red grapes. During fermentation, the natural sugars of the grape juice are converted to alcohol and carbon dioxide through naturally occurring or cultured yeast. Once fermentation is complete, the wine is set aside

[4] Chapter 436, Laws of Malta.
[5] Ibid, Article 2.

for ageing (usually a few months to a year) to allow the wine's aromas and flavours to develop. The wine can then be clarified through fining or filtration before being bottled. The process of making red wine is very similar, however there is a slight variation in the order in which the grapes are fermented. The red colour is derived from pigments in the skin, which are not present in the juice or flesh. Sparkling wine, on the other hand, may be produced by different methods. One method is injecting carbon dioxide into the wine. Another method is the traditional method, which takes around two and a half years. It involves adding yeast to the bottle and then secondary fermentation occurs in the bottle.

19. Wine can be categorised by a number of different criteria, such as: (i) colour (red or white); (ii) grape or blend of grapes; (iii) year of vintage; (iv) country of origin; (v) brand or estate and (vi) price. In previous decisions in the wine sector, the European Commission has traditionally distinguished between still wines and sparkling wines (other than Champagne). With respect to still wines, several potential segmentations were considered (i.e. distinguishing the wines according to different regional denominations and appellations of the wine concerned[6] or distinguishing wines according to colour[7]) but the precise market definition was left open. Other segmentations according to price or on the basis of the country of origin were also discussed but not considered appropriate for those specific cases[8].

20. There is a matrix of issues which determines which wine a consumer will buy and the evidence in this case has not suggested any compelling reasons to adopt a frame of reference limited to Maltese wine alone or to imported foreign wines or to wines of any particular denomination or grape variety. Industry participants have submitted that there is demand substitutability between local wine and imported wine as customers generally do not show any particular preference to local products over imported products. Rather consumers seem to be guided more by price. Hence, according to industry participants, imported products compete with local products. In fact, according to the statistics issued by the NSO, for the 2010/2011 crop year, total available wine for consumption was 80,300hl of

[6] See Case IV/M.400, *Allied Lyons/HWE-Pedro Domecq*, paragraphs 13-17, decision of 28 April 1994 and Case COMP/M.2941 *CNP/Taittinger*, 16 October 2002.
[7] See Case COMP/M.5114 *Pernod/Ricard*, 17 July 2008.
[8] Ibid.

which approximately 54% was imported wine[9]. On the supply side, most wine makers produce all varieties of wines and will switch emphasis to particular varieties in response to market demand. In addition the Notifying Parties supply imported wines.

21. According to the Notifying Parties, there are various ways to distinguish between different types of wine, for example, red wines and white wines, or premium wines and table wines. However, they maintain that all wines form part of the same product market. On the basis of the European Commission's decisional practice, the Notifying Parties accept that the relevant product market may be split into the market for still wines and the market for sparkling wines. Nevertheless, the Parties provided market share information on the wider market for all wines, as well as on the possible narrower market definition for still wines by distinguishing between still white wine and still red wine.

22. In the present case, the market investigation has indicated that it would be appropriate to make a distinction in the still wines category based on colour as wines of different colour are not seen as substitutes by consumers. Industry participants felt that consumers had fairly strict preferences for white or red and would not normally switch even if a *ssnip* test were to be applied. However, these comments were mainly based on anecdotal evidence. Furthermore, most industry parties agreed that a separate market existed for sparkling wines. This was based on the view that sparkling wines were purchased for special occasions. Still wines would not be a close substitute in this respect. The Office has sought empirical information to give some indication of the amount of switching between types. However, insufficient information was available to allow reasonable estimates to be made. Therefore, while recognising the possible existence of a singe overall wine market, the Office has adopted a conservative approach, and has considered the narrower markets for each type of wine (red, white and sparkling). This is based on the premise that if no competition concerns exist in the narrower markets, it is unlikely that they will exist in the broader wine market.

[9] National Statistics Office, 'Agriculture and Fisheries 2011' (Valletta 2012), pp. 82-83. Available from: http://www.nso.gov.mt/statdoc/document_file.aspx?id=3490).

Conclusion

23. The Office considers that still red local and imported wine, still white local and imported wine and sparkling local and imported wine constitute separate relevant product markets.

Market for the production and/ or importation of fruit juices

24. The joint venture will be involved in the production and importation of fruit juices. Four types of fruit juices are mainly defined by the Fruit Juices and Similar Product Regulations, 2004[10], namely fruit juice and fruit juice from concentrate, concentrated fruit juice, dehydrated/powdered fruit juice and fruit nectar. Fruit juice is defined as 100% pure fruit juice with no added ingredients, except permitted minerals and vitamins for the purpose of fortification and permitted additives. This also includes fruit juices from concentrate. When the fruit is squeezed and concentrated through evaporation of natural water content by evaporators, it will be classified as concentrated fruit juice. On the other hand, dehydrated/powdered fruit juice is obtained by the physical removal of all water content from the fruit juice. Moreover, nectars are defined as diluted fruit juice, to which sweetening agents are added for the purposes of production. Permitted minerals and vitamins for the purpose of fortification and permitted additives may be added. Nectars contain 25-99% juice content.

25. The Notifying Parties submit that the relevant market should include all fruit juices and nectars of all flavours as there is demand-side substitutability between all types of fruit juices as their prices and intended use are very similar. In addition, there is also supply-side substitutability as suppliers who supply one particular flavour produce and sell different fruit juice flavours, juices and nectars.

26. However, some industry participants have also submitted that the relevant product market could also be defined narrower as customers have strong preferences to orange juice and apple juice and will not shift to different flavours in the event of a 10% increase in the price of one flavour. On the other hand, some other industry participants confirmed that there is demand-side substitutability between different types of fruit juices. In addition, industry

[10] L.N. 301 of 2004, as amended by Legal Notice 41 of 2011.

participants submitted that from a supply-side substitutability, suppliers do produce and sell different flavours of fruit juices and different types of fruit juices.

Conclusion

27. The Office considers that it is not necessary in this case to precisely define the exact parameters of the relevant product market since the proposed transaction raises no likely competition concerns in any potential market delineation context.

Market for the production and/or importation of dilutable drinks

28. According to the British Soft Drinks Association, dilutable drinks which are also referred to as "squash", are soft drinks purchased in concentrated form to be diluted with water prior to consumption. They may contain fruit juice plus other ingredients such as colours, sweeteners and preservatives[11]. Dilutable drinks are considered to be low cost drinks and are mainly sold to the end consumers through retail outlets such as supermarkets.

29. The Notifying Parties submit that dilutable drinks form part of the same market as other non-alcoholic beverages sold in Malta. However, they also submit that the market could be narrower so as to exclude fruit juices and bottled water due to the healthier image associated with these products. Nevertheless they maintain that carbonated soft drinks form part of the same market as dilutables due to the fact that consumers can mix dilutables with either still or carbonated water, thus in the latter case, the product could be defined as carbonated soft drink. In addition, carbonated soft drinks producers, sell their products also in kegs which are either filled with ready-to-drink carbonated soft drinks or in concentrate form for dilution and carbonation at the point of sale and thereby can be classified as a dilutable drink. Moreover, the Parties also submitted that the introduction of carbonated soft drinks in plastic bottles has had a positive impact on the growth of the carbonated soft drinks segment to the detriment of the dilutable drinks segment.

[11] British Soft Drinks Association, 'Glossary'. Available from: http://www.britishsoftdrinks.com/default.aspx?page=478.

30. The European Commission has delineated certain relevant product markets in the non-alcoholic beverages sector. In *Coca-Cola Enterprises Inc / Amalgamated Beverages*[12], the Commission concluded that carbonated soft drinks were distinct from other non-alcoholic beverages and beverage types[13]. In addition, in *Cadbury Schweppes / Pernod Ricard*[14], the Commission found convincing indications that there is a market for carbonated soft drinks in France which is distinct from still drinks, fruit juices, water and milk drinks. This is due to such factors as the high volume and conditions of consumption of the latter categories of products. Similarly, a distinction exists between carbonated soft drinks and fruit juices, especially refrigerated fruit juices, which have a different handling and delivery system and a healthier image. Moreover, the substitution between carbonated soft drinks and other still drinks is considered unlikely, because of their different images and target groups, as still drinks are mainly targeted for children while carbonated soft drinks primarily target teens and adults.

31. Third parties have submitted that dilutable drinks should form a separate market from carbonated soft drinks and other non-alcoholic beverages including fruit juices and water. This is due to the fact that the prices of dilutable drinks are lower than other non-alcoholic beverages and the target groups of the dilutable drinks differ from those of other non-alcoholic beverages. Moreover, dilutable drinks have a healthier image than carbonated soft drinks and should therefore constitute separate markets.

Conclusion

32. On the basis of the above, the Office has adopted a conservative approach, and has considered the narrower market for the production and/or importation of dilutable drinks.

Market for the production and/or importation of bottled water

33. The Water Intended for Human Consumption Regulations, 2009[15], defines water intended for human consumption as follows:

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[12] Case No. IV/M.794 - *Coca-Cola Enterprises Inc / Amalgamated Beverages.*
[13] See also Case No. IV/M.833 - *The Coca-Cola Company / Carlsberg A/S.*
[14] Case No. COMP/M.2504 - *Cadbury Schweppes / Pernod Ricard.*
[15] L.N. 17 of 2009, as amended by Legal Notice 242 of 2009.

"(a) all water either in its original state or after treatment, intended for drinking, cooking, food preparation or other domestic purposes, regardless of its origin and whether it is supplied from a distribution network, from tanker, or in bottles or containers;
(b) all water used in any food-production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption unless the competent authority is satisfied that the quality of the water cannot affect the wholesomeness of the foodstuff in its finished form."[16]

The bottled water segment consists of different types of still and sparkling water, including natural mineral water, spring water and table water. Natural mineral water must come from a protected source and may not undergo any treatment except for filtration to remove sand particles or for the addition of carbon dioxide to create a sparkling product. Therefore, what goes into the bottle is the same as what comes out of the ground. Spring water can come from a single non-polluted ground water source. Unlike natural mineral water, spring water may undergo permitted treatments in order to meet the microbiological criteria and to comply with standards based on the drinking water regulations. Table water applies to bottled water which may come from more than one source and may include the public water supply. Treatment which results in the water achieving the compositional or microbiological requirements of the regulations is permitted. Some companies may also add mineral salts to their water to replace those minerals lost during treatment or to enhance those which already exist.

34. The Notifying Parties submit that the relevant product market is that for the production and importation of bottled water including both still and sparkling water. The European Commission in its decision of *Nestle/San Pellegrino*[17], stated that it is unclear whether still and sparkling water fall into the same market. From the demand-side, it found that the majority of still water consumers would not switch to sparkling water in response to a significant and permanent price increase. However, it noted that consumers of sparkling water would switch more easily to still water. By contrast, the high level of supply-side substitutability militates very clearly in favour of a single product market. In Malta, bottlers

[16] Ibid, Regulation 2.
[17] Case No. IV/M.1065 - *Nestle / San Pellegrino.*

of water bottle both still and sparkling water. Bottled water should also be distinguished from other non-alcoholic beverages including fruit juices, dilutable drinks and carbonated soft drinks due to different prices, characteristics and intended use.

35. Third parties have highlighted that Maltese consumers do not differentiate between the different types of water, that is, between natural mineral water, spring water and table water. However, they do differentiate between still and sparkling water. Therefore, according to third parties, if the price of still water had to increase by 10%, consumers would not shift to drinking sparkling water. In addition, third parties also claimed that Maltese consumers do not differentiate between Maltese produced bottled water and foreign produced bottled water as prices are very similar. All Maltese brands of bottled water are classified as table water and all the natural mineral water consumed in Malta is imported.

Conclusion

36. The Office considers that it is not necessary in this case to precisely define the exact parameters of the relevant product market since the proposed transaction raises no likely competition concerns in any potential market delineation context including the narrower markets for still and sparkling bottled water.

B. Relevant Geographic Markets

37. The EC Commission's Notice on market definition defines the relevant geographic market as "the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas"[18].

38. The Office considers that the relevant geographic market for the above mentioned product markets is the national territory of Malta. This is due to the fact that all suppliers of alcoholic

[18] Found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y1209(01):EN:HTML, paragraph 8.

and non-alcoholic beverages distribute their products across Malta and Gozo without any differing conditions as to prices and terms of sale.

VIII. <u>Competitive Assessment</u>

39. For the purposes of Section 6 III of the CN Notification Form (annexed to the Regulations on the Control of Concentrations), *affected markets* are relevant product markets where, in the Maltese territory or a relevant part thereof:

    (a) two or more of the parties to a concentration are engaged in business activities in the same product market and where the concentration will lead to a combined market share of 15% or more, or

    (b) one or more of the parties to the concentration are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and any of their individual or combined market shares is 25% or more, regardless of whether there is or is not any existing supplier customer relationship between the parties to the concentration.

<u>Horizontal Overlaps</u>

40. The activities of the Notifying Parties overlap horizontally in the markets of:
    - Production and/or importation of still red wine;
    - Production and/or importation of still white wine;
    - Production and/or importation of sparkling wine;
    - Production and/or importation of fruit juices;
    - Production and/or importation of dilutable drinks; and
    - Production and/or importation of bottled water.

41. In assessing any competitive concerns in relation to the above mentioned markets as a result of the proposed transaction, the Office will analyse, as necessary, the following

pertinent key factors: i) market shares, ii) barriers to entry and iii) countervailing buyer power.

Markets of the production and/or importation of still red wine, still white wine and sparkling wine

Market Shares

42. The EC Commission in its '*Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*' states that "market shares and concentration levels provide useful primary indications of the market structure and of the competitive importance of both the merging parties and their competitors".[19]

43. As a result of the proposed transaction, the combined market shares for the production and/or importation of still red wine, still white wine and sparkling wine will be *[*10--20*]*%, *[*10-20*]*%, and *[*20-30*]*%, respectively. According to the Guidelines referred to in the preceding paragraph, where market shares of the undertakings concerned do not exceed 25% either in the common market or in a substantial part of it, the concentration may be presumed to be compatible with the common market.

44. According to the information available to the Office, the joint venture shall continue to face competition from local producers including Emanuel Delicata Winemarker Ltd, Meridiana Wine Estate, Ta' Mena Estate, MonteKristo Beverages and Vineyards, Bacchus Winery, Izola Wines and Tal-Massar Winery. In addition, it will also continue to face competition from a number of importers of wine including Farsons Group, Mirachem, Attard & Co, Charles Grech, M. Demajo (Wines & Spirits), P. Cutajar and Lidl.

Barriers to Entry

45. An assessment of entry barriers is important in the analysis of the likely competitive effects of an acquisition or a merger transaction. This is due to the fact that the lower the entry

barriers are, the more likely it is that potential competition will prevent the merged parties from raising prices. In the following analysis, the subsequent potential barriers to entry are analysed:

(i) Regulation

46. Under Article 3 of the Wine Act, licences have to be issued to those persons who wish to prepare, make or bottle locally produced or imported wine and wine related products for sale. In addition, a winery or a person who wishes to produce grapes for wine production or use any land for the growing of grapes for wine production must be registered as a grower and the land under vine must be registered with the Department of Agriculture.

(ii) Costs

47. The main resources required for winemaking are viticulture management and land. The costs of entry for a wine producer can vary but the Notifying Parties estimate that the start-up cost is estimated at around €50,000 for a small winery that has its own vineyard and around €250,000 for a larger winery producing about 75,000 litres of wine each year. Furthermore, the grape growing process requires time, dedication and a passion for viticulture. According to the Notifying Parties and other players on the market, it takes around two years from planting before a vineyard can produce enough grapes to render it commercially viable, whilst consistency in the amount of produce takes around five years. However, the costs for importers of wine are much less as they only require enough capital to purchase the required stock of wine to sell.

48. In addition, branding and distribution are considered particularly important in the wine industry. Moreover, significant expenditure on research and development is considered important for producers who seek to introduce new original recipes in the market. However, the latter expenditure is not regarded as considerable for companies active in the importation and distribution of wine.

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[19] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:031:0005:0018:EN:PDF, paragraph 14.

Countervailing Buyer Power

49. The joint venture will not be in a position to significantly impede effective competition, in particular by acting to an appreciable extent independently of its customers, as the latter possess countervailing buyer power. In fact, during meetings held with competitors and potential customers of the joint venture such as supermarkets, it transpired that suppliers of both locally produced wine and imported wine face strong countervailing buyer power from their customers. This is due to the fact that the latter can easily resort within a reasonable time frame to alternative sources of supply should the joint venture decide to increase prices or to otherwise deteriorate the terms and conditions of sale and delivery.

Conclusion

50. In view of the above analysis, the Office considers that although the production of local wine may be characterised by some barriers to entry, the market shares of the joint venture, the number of competitors present in the relevant markets, the low barriers to entry in the importation of wine and the significant countervailing buyer power of its customers indicate that the proposed transaction is unlikely to raise competition concerns in relation to the production and/or importation of still white wine, still red wine and sparkling wine.

Production and/or importation of fruit juices

Market Shares

51. As explained above, market shares are useful indicators of the market structure and of the competition among players and other actors on the market. Post transaction, the joint venture will have a market share of *[10-20]%* of the fruit juices market. The concentration may be presumed to be compatible *[confidential]* and the joint venture will continue to face strong competition from strong brands including Pfanner, Kean, Rauch and the private label brands of Lidl, Carrefour and Conad. Industry participants have registered an increase in their turnover of fruit juices over a time span of the last three years.

Barriers to Entry

(i) Regulation

52. There are no regulatory barriers to entry in the market of production and/or importation of fruit juices. The only requirement necessary is a trading licence.

(ii) Costs

53. In the case of locally produced fruit juices, significant investment would be required in machinery and research and development to introduce new recipes in the market. However, no significant investment is required in the case of imported fruit juices. In addition, branding, advertising and establishing a distribution system, which entail a significant amount of expenditure, are considered important in this sector. Nevertheless, the only significant barrier to entry in this market is the ability to obtain shelf space in supermarkets and retail shops as shelf space is considered to be very limited.

Countervailing Buyer Power

54. In the market of the production and/or importation of fruit juices, the joint venture will also not be in a position to significantly impede effective competition, in particular by acting to an appreciable extent independently of its customers, as the latter possess countervailing buyer power. This is due to the fact that the customers such as supermarkets can easily resort within a reasonable time frame to alternative sources of supply should the joint venture decide to increase prices or to otherwise deteriorate the terms and conditions of sale and delivery.

Conclusion

55. In consideration of the above, the Office considers that given the limited market shares of the joint venture, the number of competitors in the market having strong brands and the countervailing buyer power of the customers, the proposed transaction is unlikely to raise competition concerns in relation to the production and/or importation of fruit juices.

Production and/or importation of dilutable drinks

Market Shares

56. In the market of the production and/or importation of dilutable drinks, the market shares post transaction will be *[50-60]*% which exceeds the threshold of 25% referred to above in the Commission Guidelines. Industry participants submitted that the demand for dilutable drinks is very small and that the number of international suppliers is limited as international demand for dilutable drinks is decreasing. However, the joint venture will continue to face competition from other strong brands, both Maltese and imported, including Foster Clark, Bolero, Step, Robinsons, Juicy and other private label brands.

Barriers to Entry

(i) Regulation

57. There are no regulatory barriers to entry in the market of production and/or importation of dilutable drinks. The only requirement necessary is to have a trading licence.

(ii) Costs

58. Similar to the markets assessed above, significant investment for the production of dilutable drinks would be required in machinery and research and development to introduce new recipes in the market. However, no significant investment is required for the importation of dilutable drinks. Again, branding, advertising and establishing a distribution system, which entail significant costs, are considered important in this sector. Shelf space is considered to be a major barrier to entry in this market, as shelf space in Malta is considered to be very limited.

Countervailing Buyer Power

59. In the market for the production and/or importation of dilutable drinks, the joint venture will also not be in a position to significantly impede effective competition, in particular by acting to an appreciable extent independently of its customers, as the latter possess countervailing buyer power. This is due to the fact that customers, such as supermarkets, can easily resort within a reasonable time frame to alternative sources of supply should the joint venture decide to increase prices or to otherwise deteriorate the terms and conditions of sale and delivery.

Conclusion

60. Although post-transaction the joint venture will have a high market share, it will continue to face strong competition from other leading brands. In addition, given the low barriers to entry in the importation of such dilutable drinks and the countervailing buyer power of customers, the proposed transaction is unlikely to raise competition concerns in relation to the production and/or importation of dilutable drinks.

Markets of the production and/or importation of bottled water

Market Shares

61. In the markets for the production and/or importation of still bottled water and sparkling bottled water, the market shares post transaction will be *[5-10]%* and *[10-20]%* respectively, which *[confidential]*. The joint venture will continue to face strong competition in the market from General Soft Drinks Co. Ltd with its strong brands ‘Kristal’ and ‘Apollinaris’. In addition, other strong competitors include Simonds Farsons Cisk plc with its strong brands of ‘San Michel’, ‘Elan’ ‘Aquadot’ and ‘Aquavita’. In addition, competition is also fostered by Island Beverages with its brand ‘H2O only’, private label brands of Carrefour and Lidl. Moreover, imported bottled water such as ‘Nestle Vera’, ‘Aquapanna’ and ‘San Benedetto’ also exert competitive constraints.

Barriers to Entry

(i) Regulation

62. Suppliers active in this market will have to comply with Legal Notice 17 of 2009 – Water Intended for Human Consumption.

(ii) Costs

63. Similar to the markets assessed above, substantial capital would be required to manufacture bottled still and sparkling water. However, according to information gathered by the Office the market is considered to be a growing market. Indeed, in 2011, MonteKristo Beverages and Vineyards started bottling 'Fawwara' still and sparkling bottled water. Furthermore, several brands of imported bottled water have managed to enter the market.

Conclusion

64. The Office considers that the proposed transaction is unlikely to raise anti-competitive concerns in the markets for the production and/or importation of still and sparkling bottled water. This is due to the limited market shares of the joint venture post transaction, the significant number of competitors and brands in the markets and ease of entry and exit in the markets.

<u>Vertical Overlaps</u>

65. The activities of the Notifying Parties overlap vertically in the markets of:
    - (i) Retailing, and
    - (ii) PET plastic packaging.

(i) Retail

66. Master is active at the retail level of the beverages market in Malta. Its retail arm, Master Cellars, which is situated in Naxxar and has an online store as well, sells wines, spirits, liqueurs, beer, non-alcoholic beverages, hampers and delicacies. It also sells other brands of products apart from its own. However, Marsovin does not have any retail operations. It sells its products through several retailers including Master Cellars. Therefore, there is a vertical relationship between the Parties.

67. In the off-trade segment, beverages are sold through retail stores including supermarkets, grocery stores, specialised beverages retail stores and travel retailers and duty free shops. If the market had to be defined at the narrowest level, that of just including specialised beverages retail shops, the proposed joint venture will face strong competition from Farsons Direct, Charles Grech, Antonio Piscopo Wines and Spirits, M. Demajo, P. Cutajar, Alfons Enterprises, Hansa Wines and Spirits, Dentrade and Captain A. Caruana. The Notifying Parties submit that Master Cellars has an approximate market share of *[0-5]%* which is well below the impedition of effective competition threshold of 25%. In addition, the barriers to entry in such market are considered to be low as the operators will only require a trading licence.

Conclusion

68. In view of the above, the Office considers that the proposed transaction is unlikely to raise competition concerns in the retail segment.

(ii) PET Plastic Packaging

69. A subsidiary of Master, Plastic Creations Ltd, operates a PET bottling facility. Polyethylene terephthalate ('PET') is a plastic resin used to contain drinks and liquid foods, as well as other products including liquid soaps and cream. Plastic Creations Ltd, purchases PET preforms to produce bottles for soft drinks. The parties submit that Master Wine's presence in this sector is a consequence of its own beverage operations. It does not bottle beverages on behalf of third party beverage producers. On the other hand, *[confidential]*.The Parties

also submit that the proposed transaction will not lead to any competition concerns as there are other beverage producers that have their own PET bottling facilities including Farsons Group, General Soft Drinks Co. Ltd, MonteKristo Beverages and Vineyards and Island Beverages Ltd. The Parties estimate that Plastic Creations Ltd produce approximately *[0-5]%* of all the plastic bottles that are manufactured locally and those that are imported.

Conclusion

70. In view of the above, the Office considers that the proposed transaction is unlikely to raise competition concerns in the PET plastic packaging segment.

<u>Portfolio Effects</u>

71. Post-transaction, the overall position of the joint venture may be strengthened where one or more leading brands are added to an existing range. Greater diversity of the product range offered including leading brands improves the position of the joint venture by giving it a series of leading products which may be sold together and used to promote secondary brands.

72. As concluded in the Office's analysis of each affected market, the joint venture cannot act independently of its competitors and its customers. This is due to the fact that in each market identified, the joint venture will continue to face strong competition from leading brands including private label brands. In addition, during various meetings held with other players in the market, it was submitted that the products of both the Notifying Parties may not be considered as 'must-have' brands since they can easily be substitutable to other numerous brands available in each identified market.

73. Moreover, customers have significant buyer power as they can easily resort within a reasonable time frame to alternative sources of supply should the joint venture decide to increase prices or to otherwise deteriorate the terms and conditions of sale and delivery. In addition, industry participants have also stressed that supermarkets and other retailers do not rely on just one supplier for most of the products that they sell including the products

supplied by the Notifying Parties. Rather they deal with various suppliers. Furthermore, through meetings held with some supermarkets in Malta, it transpired that retailers have absolute control on the amount of shelf space given to any operator in the beverages sector.

Conclusion

74. In view of the above mentioned considerations, the Office determined that the transaction will not raise foreclosure concerns through portfolio effects.

IX. <u>Conclusion</u>

75. For the above mentioned reasons and in terms of regulation 6(1)(ii) of the Regulations on Control of Concentrations, 2002 the Director General of the Office for Competition has decided:

    (1) that although the Concentration falls within the scope of these Regulations, the Concentration does not raise serious doubts about its lawfulness;
    (2) not to oppose the Concentration; and
    (3) to declare it a lawful Concentration.

Sylvann Aquilina Zahra
Director General