Proposed joint venture between Acorn Holdings B.V. and Mondelēz International Holdings LLC Case M1140J

Decision

REDACTED

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Jersey Competition Regulatory Authority
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CONTENTS

Summary 2

The Notified Merger 2

The Parties 2

Requirement for JCRA Approval 3

Market definition 4

Assessment of Relevant Markets 6

European Commission approval 7

Counterfactual assessment 7

Conclusion 7

Summary

1. Acorn Holdings B.V. (Acorn) and Mondelēz International Holdings LLC (MDLZ) (formally known as Kraft Foods Inc) propose to form a full-function joint venture (the "**Merger**") combining the operating subsidiaries of, and substantially all the material assets of D.E Master Blenders 1753 B.V. and its subsidiary companies, and the coffee business of Mondelēz International, Inc.

2. This Merger has been duly notified to the Jersey Competition Regulatory Authority (**JCRA**) for approval under Article 21 of the *Competition (Jersey) Law* 2005 (**Law**).

3. The JCRA has determined that the proposed Merger will not lead to a substantially lessening of competition in the relevant markets and hereby approves the Merger.

The Notified Merger

4. The Jersey Competition Regulatory Authority (**JCRA**) received pre-notification of the proposed Merger on 15 April 2015.

5. Acorn and MDLZ propose to form a full-function joint venture company combining the operating subsidiaries of, and substantially all the material assets of D.E Master Blenders 1753 B.V. (DEMB) (part of Acorn) and its subsidiary companies, and the coffee business of MDLZ.

6. The **Application** for approval under Article 21 of the *Competition (Jersey) Law* 2005 (the **Law**) was registered on 1 May 2015. Comments were invited by 5pm on Friday 15 May 2015. The JCRA has received no submissions in respect of this Merger.

The Parties

D.E Master Blenders 1753 B.V.

7. Acorn is a holding company REDACTED owned by JAB Holding Company s.à.r.l (**JAB**); a privately held group focusing on long term investments in companies with premium brands in the fast moving consumer goods sector.

8. DEMB is REDACTED owned by Acorn and a portfolio company of JAB. DEMB is an international coffee and tea company that offers a range of coffee and tea products across Europe, Brazil, Australasia and Asia. Coffee brands

include Douwe Egberts and L'Or and tea brands includes Tea Forté and Pickwick. DEMB also provides liquid roast coffee products, coffee dispensers and accessories and other tea and coffee products to businesses, hospitals, hotels, restaurants and public sector organisations worldwide as well as to foodservice business partners for distribution to end customers.

9. REDACTED. In addition, DEMB is involved in the operation of coffee houses in some countries, REDACTED, although there are none of these in Jersey.

Mondelēz International Holdings LLC

10. Mondelez (MDLZ) is a global snack company with a product offering spanning biscuits, chocolate, sweets, cheese, powdered beverages, chewing gum and coffee. It is a spin off from Mondelēz International Inc, formally known as Kraft Foods Inc.

11. MDLZ supplies coffee products internationally and its portfolio includes brands such as Jacobs, Carte Noire, Kenco and Maxwell House. Its portfolio also includes the Tassimo range of single-serve coffee machines with their associated consumable Tassimo pods (known as T-discs).

Requirement for JCRA Approval

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

13. Moreover, a merger or acquisition is subject to Article 2(1)(b) of the Law if it satisfies a relevant condition in the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) applicable to the specific merger or acquisition under consideration. CICRA's Guideline 6 on Mergers and Acquisitions provides definitions of the three main types of mergers: "Mergers can be categorised as horizontal, vertical or conglomerate. Horizontal mergers involve a merger between parties at the same level in the supply chain; for example, between two retailers, or several producers of the same good or service in the same geographic market. Vertical mergers typically involve either a merger between a business and its supplier or a business and its customer. Conglomerate mergers cover all other types of mergers."

14. As discussed below, the Merger represents a horizontal merger resulting in the Parties obtaining a REDACTED share of the Jersey market for instant coffee products and is therefore notifiable. Issues associated with vertical and conglomerate mergers have been considered but are not considered pertinent.

Market definition

15. Under Article 22(4) of the Law, the JCRA must determine if the Merger would substantially lessen competition in Jersey or in any part of Jersey. To this end, the JCRA needs to identify the markets which are likely to be affected by the Merger and, in a second stage, to assess whether competition in these markets will be substantially lessened.

16. The process of identifying markets is essential to the JCRA's analysis because, by identifying where customers purchase the goods and services they need, the analysis assesses whether customers have an appropriate range of alternatives over which to exercise their choice. In particular, it assesses whether substitutes exist and customers are more or less restricted in the alternatives (price, quality, quantity, etc.) available to them. It is customers' ability to exercise their choice that ensures that markets function well and encourage innovation and 'best endeavour' on the part of suppliers.

Horizontal mergers

17. Horizontal mergers, as noted above, involve companies at the same level in the supply chain and that may therefore be direct competitors.

18. Information supplied in the Parties application identifies them as being active in two horizontal markets.

19. The **in-home** market covers consumption of tea and coffee products in the consumer's home. The Parties assert that the narrowest plausible segmentation for in-home consumption is :

Instant (also known as coffee powder or soluble coffee)	Prepared by freeze-drying or spray-drying brewed coffee. Consumers re-hydrate the coffee by mixing it with hot water.
Roast & ground	Beans which have been pre-roasted and, in some cases pre-ground, for use in coffee-specific devices. The roast & ground format can be used in a range of appliances including cafetières, drip-coffee cones, drip-coffee machine and espresso machines.

Filter pads	Pre-packaged individual portions of roast & ground coffee for use in compatible appliances to produce a single or double serving of coffee.
Nespresso compatible capsules	Nespresso is a type of single-serve or on-demand system which produces individual servings of espresso coffee. N-Capsules, including those manufactured by Nestle, are compatible only with Nespresso machines.
T-discs	Tassimo is a multi-drink system created by Mondelēz and uses T-disc capsules manufactured exclusively by, or under licence to, Mondelēz.

The Parties are unable to supply market share data specific to Jersey but expect that it will follow that in the UK; indeed the Parties contend that the UK data may overstate their market shares in Jersey.

UK segment shares of in-home market, by value (2013)

	Segment				
Manufacturer	Roast & Ground	Filter Pads	N-Capsules	T-discs	Instant
DEMB	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Mondelēz	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Combined	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Nestlé	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Retailers	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Taylors of Harrogate	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Lavazza	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Illy	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Café Direct	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Rombouts	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Gala	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Cafepod	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Other	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Total	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

Source : Compass Lexecon using Nielsen data

20. The Parties acknowledge there is no reliable data for the **out-of-home** market but DEMB estimates UK market shares for **out-of-home** market coffee sales to be :

Manufacturer	Share
Modelēz	REDACTED
DEMB	REDACTED
Combined	REDACTED
Nestlé	REDACTED
Tchibo	REDACTED
United Coffee	REDACTED
Lavazza	REDACTED
Others	REDACTED

Geographic scope of the markets

21. The Parties assert that the market for tea and coffee related products is national and perhaps regional; i.e. not confined to Jersey.

22. The more geographically confined a market, the more likely a merger is to have a detrimental impact on competition. As a result, if the JCRA analysis found no detriment in the Jersey market, the sole market over which its jurisdiction extends, there would be no wider detriment of concern to the JCRA. Having concluded there would be no detriment in the Jersey markets, the JCRA therefore considers it is not required to assess whether the Merger operates in a wider market. The JCRA also notes that there is no reason to suppose that the Jersey market is significantly different from the UK market.

Assessment of Relevant Markets

23. Under Article 22(4) of the Law, the JCRA must determine if the Merger would substantially lessen competition in Jersey or in any part of Jersey. As is clear from the market descriptions above, the Merger has features of a horizontal merger.

24. While there are no specific data on relative market shares for tea and coffee products in Jersey, there is no reason to suppose that the Jersey market is significantly different from the UK market.

25. The JCRA therefore concludes that, based on the market share data provided by the Parties, the merger leads to an increase in the concentration of the Jersey market for **in-home** instant coffee but that this does not represent a substantial lessening of competition (shares increasing from REDACTED to REDACTED which is to be contrasted to Nestlés's REDACTED). Further, the JCRA considers that, should the price of instant coffee rise as a result of the Merger, consumers do not face substantial barriers to switch to other forms of coffee preparation.

26. The JCRA considers that a similar rationale applies in the case of the **out-of-home** market, where the Merger results in an increase in market share from REDACTED to REDACTED, with several other competitors present in the market and a comparable market share held by another competitor. The JCRA therefore concludes that the merger will not result in a substantial lessening of competition in the **out-of-home** market in Jersey.

European Commission approval

27. Following an in-depth investigation (case COMP/M.7292) the European Commission approved the joint venture on 5 May 2015 subject to certain conditions. These conditions relate to concerns regarding the effect of the joint venture bringing together certain brands that compete closely against one another in France, Denmark, Latvia and Austria. The Parties have agreed to a number of divestments and licensing arrangements to satisfy these concerns. The Commission was also initially concerned that the joint venture could lead to higher prices and less innovation in single-serve products (e.g. T-discs) but, following its in-depth investigation, the Commission concluded that the joint venture would compete against a strong rival in Nestlé.

28. The JCRA notes that the Commission's concerns did not relate to the UK and given no evidence that the Jersey markets exhibit significantly different features to that of the UK, the JCRA has taken into account the absence of concerns or similar undertakings required in the UK market.

Counterfactual assessment

29. Given the international scale of the operations of the parties, it can be reasonably assumed that disapproving the Merger in Jersey would not prevent the international joint venture being formed and operated in other jurisdictions. The likely outcome would be that the joint venture would stop supplying its products to Jersey thus reducing consumer choice of tea and coffee products and concentrating the Jersey market in fewer hands.

Conclusion

30. The JCRA has determined that there are no reasons to assume that the Merger would substantially reduce competition in Jersey. Further, to disapprove the Merger might result in the joint venture ceasing to supply its products to Jersey which would substantially lessen competition.