

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

Date: 7 July 2009

The Registrar
Market Structure Team
Commerce Commission
PO Box 2351
Wellington

Pursuant to section 66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

Summary

- 1.1 This is an application for an acquisition that would result in the Frucor and Simply Squeezed fruit juice and fruit drink (**FB**) businesses coming under common (Frucor) ownership.
- 1.2 Frucor does not believe the proposed acquisition amounts to a substantial lessening of competition in any market. The main reasons for this view are as follows:
- (a) At its narrowest, the market is the national market for the wholesale supply of fruit juice and fruit drinks, as relevantly defined by the Commission in its *Rio* decision, (termed the “FB market” in this Application).
 - (b) Frucor is and will remain constrained post-acquisition by existing competitors, in particular:
 - (i) Coca-Cola Amatil (**CCA**), with an estimated [.]% share of FB sales, and approximately [.]% share of the overall non-alcoholic beverage (**NAB**) market;
 - (ii) Charlie’s Trading Company Limited (**Charlie’s**), with [.]% share of FB sales; and
 - (iii) the presence of a large number of other competitors, including the likes of Heinz, Pinto, GSK and Fonterra.
 - (c) There are low barriers to entry and expansion.
 - (d) The market is dynamic and highly innovative – more than [.] new juice products have been introduced in the past 12 months alone, and the past year has seen approximately [.] different FB skus sold in supermarkets.¹
 - (e) There is a high level of countervailing power held by large buyers (supermarkets alone account for [.]% of Frucor’s FB sales.² This is further amplified by FB demand being particularly sensitive to promotional pricing, hence increasing the importance of supermarket-controlled promotional slots.
 - (f) An absence of market conditions that would encourage tacit collusion and no evidence that there is such collusion currently – principally due to the high level of product differentiation, absence of pricing transparency, the active fringe, price elasticity and buyer power – none of which will change as a result of the proposed acquisition.
- 1.3 The analysis underpinning this view is consistent with the Commission’s analysis in its *Rio* decision.

¹ Based on a threshold of 500L volume sales in the last year. Includes size changes and rebranding but not changes in pack design or promotional type products.

² For calendar year ended 30 April 2009.

Part 1: Transaction Details

1. **Provide the name of the acquirer (person giving notice), and the name and position of the individual responsible for the notice.**

1.1 This application is given by Peter Lamb, Chief Financial Officer, Frucor Beverages Limited (**Frucor / the Applicant**):

Frucor Beverages Limited
86 Plunket Ave, Manukau, Auckland
PO Box 76202
Manukau City 1730

Telephone: (09) 250 0100
Fax: (09) 250 0150
www.frucor.co.nz

1.2 Frucor requests that all correspondence is directed in the first instance to:

Bell Gully
Vero Centre, 48 Shortland Street
PO Box 4199
Auckland 1140

Attention: Torrin Crowther, Partner	Kristel McMeekin, Solicitor
Telephone: (09) 916 8621	(09) 916 8923
Fax: (09) 916 8801	(09) 916 8801
Email: torrin.crowther@bellgully.com	kristel.mcmeekin@bellgully.com

2. **Provide the name of the other merger parties, and the name/position of the relevant individual within the relevant merger parties.**

2.1 The target business is known as Simply Squeezed. It is operated by Brownlie Brothers Limited (**Brownlie Brothers**), a wholly owned subsidiary of Simply Squeezed Holdings Limited (**Simply Squeezed**). Simply Squeezed is owned by Crescent Food Group Pty Limited. (Collectively these companies are referred to as the **Vendor**.)

2.2 Contact details are as follows:

Brownlie Brothers Limited Cnr Franklin & Main North Roads Bay View Hawkes Bay	Simply Squeezed Holdings Limited Cnr Franklin & Main North Roads Bay View Hawkes Bay	Crescent Food Group Pty Limited c/- Crescent Capital Partners Level 7, 75 Elizabeth Street Sydney NSW 2000
Telephone: (06) 836 7066 Fax: (06) 836 7264	Telephone: (06) 836 7066 Fax: (06) 836 7264	Telephone: +61 2 9220 8100 Fax: +61 2 9221 9650

2.3 The Vendor requests that all correspondence in respect of this application be addressed in the first instance to:

Sarah Keene, Partner
Russell McVeagh

Vero Centre, 48 Shortland Street
PO Box 8
Auckland 1140

Telephone: (09) 367 8133
Email: sarah.keene@russellmceveagh.com

3. **With respect to the merger parties, list the relevant companies and the person or persons controlling these directly or indirectly. Please use organisational charts or diagrams to show the structure of the ownership and control of the acquirer and participant(s) to the acquisition.**

3.1 Acquirer group/associates:

- (a) Frucor is wholly owned by Suntory Holdings Limited (**Suntory Holdings**), a Japanese company. A Frucor Structure chart is attached as Annexure 1.
- (b) For completeness, Cerebos Gregg's Limited is also part of the broader Suntory group. Relevantly, Cerebos Gregg's manufactures and wholesales the Raro and Refresh range of powdered fruit drinks (**PFD**) in New Zealand – PFD's being products obtained from fruit juice by the physical removal of virtually all the water content, which are then sold in a pre-sweetened powder form to be diluted with water by consumers.³ Frucor does not believe PFDs compete in any meaningful sense with FBs – and to the extent they could be said to impose some constraint, the constraint on Frucor's FB products from other PFDs and from cordials (which are 'closer' products to FBs than PFDs) should also be taken into account. If there were such a market, then Frucor's post Acquisition share (including Suntory interests) would be around [.]% , which is lower than its post-acquisition share of FB sales. Moreover, the level of aggregation in such a market would be low, given Simply Squeezed is not active in respect of either PFDs or cordials.
- (c) Cerebos Gregg's also owns the Robert Harris chain of cafes. As noted in 14 below, Robert Harris accounts for less than [.]% of Frucor's total FB sales. No further comment is made in relation to Cerebos Gregg's, although further information can be provided if required.
- (d) Suntory has no other NAB-related interests that affect a market in New Zealand. Further detail about Suntory can be provided if required.

3.2 Target company group/associates:

- (a) Brownlie Brothers is wholly owned by Simply Squeezed.
- (b) Post-acquisition, none of the shareholders in Simply Squeezed will retain any ongoing ownership interest in that company, or in Brownlie Brothers, and therefore no further details are provided in relation to the Vendor's other interests in New Zealand.⁴ Further detail can be provided if required.

4. **Provide details on what is to be acquired.**

- 4.1 Clearance is sought for Frucor, or any interconnected body corporate of Frucor, to acquire up to 100% of the shares in, or assets of, Simply Squeezed Holdings Limited and/or Brownlie Brothers Limited.

³ Cerebos supplies a range of other products, including tea and coffee. See www.cerebos.co.nz for further details.

⁴ Although the Applicant, if it becomes the new owner, will have the benefit of a supply contract for oranges from Brownlie Orchards – the shareholder of which is a part shareholder in the target business.

5. **Fully explain the commercial rationale for the proposed merger. Specify whether this is part of an international merger.**
 - 5.1 Frucor expects that the chilled juice segment of the overall juice category will continue to outgrow the rest of the category, especially as economic conditions improve. The segment is relatively under-developed in New Zealand compared to the US and UK markets which have roughly double the per capita consumption of New Zealand.
 - 5.2 Frucor needs to bolster its position in the chilled juice segment to offset the expected gradual reduction in ambient juice sales.
 - 5.3 [.] Arano is very much aimed at the premium end of the chilled juice segment. [.]
 - 5.4 While Simply Squeezed's share of chilled juice in supermarkets has eroded by approximately [.]% in the last three years, mainly due to the aggressive expansion of Charlie's, Frucor believes that its brand and low cost operations are a good fit for Frucor's existing juice portfolio. [.]
 - 5.5 The Acquisition is not part of an international merger.
6. **Provide copies of the final or the most recent versions of any documents bringing about the proposed merger (e.g. contracts, sales and purchase agreements, or offer documents if it is a public bid).**
 - 6.1 A Sale and Purchase Agreement is currently being negotiated. The draft agreement provided by the Vendor as part of the bid process can be provided.
7. **If any other jurisdiction's competition agency has been (or will be) notified of the proposed merger, please list each competition agency notified (or to be notified) and the date of the notification.**

N/A.

Part 2: The Industry

8. Describe the relevant goods or services supplied by the merger parties (it is sufficient to refer in general terms to activities in which there will be no aggregation).

Frucor Beverages Limited

8.1 Frucor is the second largest supplier of NAB in New Zealand, behind CCA. It produces energy drinks, FBs, pure waters and sport waters, soft drinks and milk drinks.

8.2 Frucor's brands include:

- (a) FBs: Just Juice; Fresh Up; McCoy; Arano⁵; Citrus Tree; Twist; Joo-C;

JUICE AND DRINKS



- (b) Sports drinks/Functional: V; G Force; Mizone; Mizone Rapid;
- (c) Water: Mizone; Mizone Rapid; H2Go; NZ Natural; Supplement Water;
- (d) Carbonated beverages: Frank; Pepsi; Just Juice Bubbles;
- (e) Milk: Moccona; Wave.

8.3 See www.frucor.co.nz for further details of Frucor's NAB portfolio.

8.4 [.]

8.5 [.]

Simply Squeezed

8.6 Simply Squeezed manufactures FBs in New Zealand. Its brands include: Simply Squeezed (fruit juices and smoothies) and Supreme Country Style (value fruit juices, quenchers and nectars); Bay Harvest (principally apple fruit based) which is an ambient drink; and Allganics (organic fruit juice flavoured still and sparkling drinks).

⁵ Frucor distributes the Bengel Gold and Ozone brands through Arano.



- 8.7 It currently manufactures Pam's and Signature Range chilled orange juice and is also a non-exclusive distributor for several NABs, being Vitasoy, S. Pellegrino water, Otakiri and Waiwera water, Dark Dog energy drink, the "Fruity" range of children's smoothies, Monin Cordial Syrup, Bundaberg Ginger Beer and Emma and Tom's juices and waters.
9. **Describe the industry or industries affected by the proposed acquisition. Where relevant, describe how sales are made, the supply chain(s) of any product(s) or service(s) involved, and the manufacturing process. If relevant, provide a glossary of terms and acronyms.**
- 9.1 Overlap occurs in relation to the manufacture and supply of FBs.⁶
- 9.2 The key steps to juice manufacturing are summarised below. These steps are similar to the production of a range of other (non FB) NABs:
- (a) Juice extraction (if relevant) for products which are part or wholly made with "NFC" (Not From Concentrate):
 - (i) In the majority of cases, the juice is not extracted on site but rather extracted by a third party and sold to the FB manufacturer in a "NFC" form.
 - (ii) If the juice extraction is performed on site, this step involves washing the fruit and literally extracting the juice.

Both Frucor and Simply Squeezed use a mix of NFC and on-site extraction.
 - (b) Blending: process of blending the juice and other ingredients, which may include reconstituted juice from concentrate.
 - (c) Pasteurisation (as relevant).
 - (d) Filling: via filling lines. Either:
 - (i) (most commonly) hot or warm filled (which occurs where the product contains no preservatives and is pasteurised to kill bacteria, and then put into the bottle while juice is hot/warm); or
 - (ii) (less commonly) pasteurised, cooled and then cold filled.

The "chilled juice" section in a supermarket contains a mix of hot and cold filled product. Simply Squeezed's FB products are principally cold filled. Frucor's FB products are principally hot filled, although its Arano product is cold filled.
 - (e) Packing: Process of packing the bottles into boxes and then pallets.

⁶ Simply Squeezed is a non-exclusive distributor of certain other products that compete with Frucor (e.g. bottled water) but as these are non-exclusive distributorships the extremely minor level of overlap is not considered further. Additional information can be provided if the Commission would like.

- (f) Distribution: the mode of which will depend on whether the product is shelf stable or truly "chilled". Truly chilled product requires access to a chilled distribution infrastructure.

10. Describe the current industry trends and developments including the role of imports and exports, emerging technologies, and/or changes in supply and demand dynamics.

- 10.1 As noted above, the chilled segment of the FB is growing.
 - 10.2 More generally, suppliers are constantly seeking to create a competitive advantage by detecting, anticipating and servicing changing consumer tastes and preferences, with large numbers of new products supplied into the category on an ongoing basis.
 - 10.3 Imports are an ongoing feature of the market.
 - 10.4 Another important characteristic is the increasing willingness of supermarkets to grow their sales of housebrand products as they consider necessary to drive competitive pricing from branded suppliers. To date, housebrand FB sales as a proportion of total sales have been lower than is evident in many other categories. Frucor does not believe this in any way indicates that FBs are not well suited to housebrand sales, but rather that FB suppliers have provided the supermarkets with competitive pricing and service. Frucor is under no illusion in terms of the supermarkets' willingness and ability to increase the volume of housebrand FB sales if they felt the need to, e.g. in order to discipline branded suppliers, send a message, etc. The fact the product can be imported, as is the case with the Charlie's brand, enhances this threat even further, especially in the case of PEL given it is owned by Woolworths.
- 11. Please highlight any relevant mergers that have occurred in this industry over the past three years.**
- 11.1 Crescent Capital Partners (a private equity firm) acquired a stake in Simply Squeezed in 2006.
 - 11.2 Frucor acquired the assets and brands of the Arano Juices business in August 2007.
 - 11.3 Suntory Limited acquired Frucor Beverages Group Limited from Danone Asia Pte Ltd (a subsidiary of Groupe Danone) by share acquisition in 2009.
 - 11.4 Coca-Cola Amatil (NZ) Limited was cleared to acquire the assets of Baker Halls' business on 28 January 2009.
 - 11.5 Frucor is unaware of any other relevant transactions.

Part 3: Market Definition

HORIZONTAL AGGREGATION

12. For each area of aggregation of market shares, please define the relevant market(s)
- 12.1 The Acquisition will give rise to aggregation between the parties in respect of the supply of NABs in New Zealand.
- 12.2 In its 2002 CCA/Rio Beverages decision⁷ (*Rio*), the Commission defined (among other relevant markets) a national market for the wholesale supply of fruit juice/fruit drinks.
- 12.3 **Functional Market:** In *Rio*, both parties were involved in the bottling and wholesaling of NABs and therefore the Commission found that the relevant functional level of the market was the wholesale supply of the product. The Applicant believes the same approach to functional market definition should be adopted in this case.
- 12.4 **Geographic Market:** In *Rio*, the Commission said that NABs are marketed New Zealand wide and sold via outlets which have a national presence, and that while distinctions can be made between supermarkets and route trade in that there is a difference in the way the product is packaged and sold as well as the customer need the product is addressing, the fact that supermarkets also have a route trade display, stocking chilled single serve products, and the route trade outlets also stock a limited amount of non-chilled take home packs, there was no precise distinction between the route trade and the supermarket trade. The Applicant believes the same approach to geographic market definition should be adopted in this case.
- 12.5 **Product Market:** While the Commission did not accept a broad NAB market (and identified four separate product markets relevant to the acquisition; CSD, bottled water, fruit juices and fruit drinks and new age beverages) it did acknowledge that fruit juices can be substituted by various other beverage products in some situations. The Commission stated that the juice market includes products such as 'pure' fruit juices, fruit juices produced from concentrate, and fruit flavoured drinks. The ACCC adopted a very similar definition (the national market for the wholesale supply of chilled and ambient fruit juice and fruit drinks) in its 2004 CCA/Berri decision, its 2004 Crusta Fruit Juice/CCA decision and its 2002 Golden Circle/Original Juice Company decision.
- 12.6 Both the Commission and the ACCC have included chilled and ambient (or 'shelf stable') juices and drinks in the same market. Frucor believes this approach remains appropriate, and in fact the justification for doing so is even greater today than it was previously.
- (a) A large proportion of chilled juice classified products are in fact long-life and do not need to be in the chiller, but due to manufacturer imperatives have been placed there for competitive, pricing, or incremental brand location purposes, etc. By way of example, around half of the products located in a typical Pak n Save and Foodtown chilled juice section are in fact "shelf stable".
- (b) The majority of products that are now described as "chilled" are in fact squeezed juice and concentrate mixes. Some are "nectars and quenchers" containing added water and sugar, most contain preservatives to give 40 days life or have been fully pasteurised to give nine months shelf life, and are in 1L or 2L bottles.

⁷ The Coca Cola Company/Rio Beverages Limited, Commerce Commission Decision No 481, November 2002.

- (c) Firms take into account both chilled and shelf stable products when setting price, branding and promotional strategies for a particular product.
- (d) In supermarkets, the fact that the chilled juice segment may often be physically located away from the shelf stable section is largely driven by practical considerations: the preference is for chilled fixtures to be located around the outside of the store, where wiring is easier and motor noise minimised.

12.7 More generally, there is a chain of substitution which means that all FBs fall within the same market. There is substantial pricing overlap along this chain. This argument was accepted in the bread context in the Goodman Fielder/River Mill decision⁸ where the Commission found that a chain of substitution meant that there was a market for the manufacture and wholesale supply of plant bread.

12.8 Pictorially, a small sample of the various products available is set out below (prices are per litre list prices to enable a comparison). Given there have been some [.] skus sold⁹ in supermarkets in the past 12 months this sample is comparatively small.

⁸ Goodman Fielder Limited and River Mill Bakeries Limited, Commerce Commission Decision No 599, March 2007.

⁹ Please refer to Annexure 2.

					
\$1.50	\$1.56	\$1.86	\$1.99	\$1.99	\$2.03
Home Brand fruit juice orange (3L)	Signature Range fruit juice apple & orange (3L)	Fresh Up fruit juice apple & orange (3L)	Just Juice fruit juice orange (3L)	Keri Original fruit juice orange with apple (3L)	Citrus Tree fruit juice orange (3L)
Shelf	Shelf	Shelf	Shelf	Shelf	Shelf
					
\$2.15	\$2.16	\$2.33	\$2.50	\$2.50	\$2.58
Golden Circle fruit juice pineapple (1L)	Keri Crush fruit juice apple orange & mango (1L)	Keri Premium fruit juice cranberry (2.4L)	Nekta fruit juice kiwifruit (2L)	Supreme orange juice nectar (2L)	Pinto fruit juice organic apple & orange (2L)
Shelf	Shelf	Shelf	Shelf	Chiller	Shelf
					
\$2.58	\$2.79	\$2.99	\$3.00	\$3.06	\$3.09
Just Juice fruit juice orange (1L)	Keri Premium fruit juice cranberry (1L)	Fresh Up fruit juice apple & orange (1L)	Signature Range orange juice chilled (2L)	McCoy fruit juice orange (1L)	Ceres fruit juice fruit medley (1L)
Shelf	Shelf	Shelf	Chiller	Shelf	Shelf

					
\$3.25	\$3.26	\$3.29	\$3.59	\$3.70	\$3.79
Just Juice plus fruit juice orange guava (1L)	Charlie's old fashioned fruit juice mango & orange quencher (1.5L)	Signature Range orange juice chilled (1L)	Charlie's fruit juice pure orange (1L)	Greenways fruit juice red grape (2L)	Nekta fruit juice original kiwifruit (1L)
Shelf	Chiller	Chiller	Shelf	Shelf	Shelf
					
\$4.00	\$4.09	\$4.19	\$4.20	\$4.67	\$4.67
Simply Squeezed fruit juice orange (2L)	Simply Squeezed fruit juice orange (1L)	Aloe rejuva fruit juice aloe vera (1.5L)	Charlie's honest orange juice (2L)	Charlie's orange juice pure chilled (1L)	McCoy orange juice (1L)
Chiller	Chiller	Shelf	Chiller	Chiller	Chiller
					
\$4.85	\$4.90	\$5.29	\$5.87	\$6.33	
Arano orange juice (2L)	V8 fruit juice apple burst (1.5L)	Arano orange juice (1L)	Phoenix fruit juice organic apple (750ml)	Sunsweet fruit juice prune (946ml)	
Chiller	Shelf	Chiller	Shelf	Shelf	

NB: Prices are the list (non-promotion) price per litre at www.woolworths.co.nz on 21 May 2009 for Auckland CBD Downtown, Auckland Central West

12.9 The fact that consumers choose their NABs based on a variety of factors, and a number will substitute between types of NAB based on price, "need state", etc. suggests there is a broad NAB market. Nevertheless, Frucor is aware the Commission has defined narrower markets in the past and on that basis does not argue further in this application for an overall NAB market, but rather proceeds on the basis of a national market for the wholesale supply of fruit juice and fruit drinks (the **FB market**).

12.10 Even though Frucor is willing to proceed on this basis and does not believe an SLC occurs even if a narrow FB market is adopted, it considers that proper weight should nevertheless be given to the constraint from other non-alcoholic beverages, including bottled water, CSDs and new age beverages, all of which contribute to the competitive dynamic:

- (a) a number of consumers can and do substitute to and from those products from time to time, which the Commission acknowledged in its *Rio* decision when it said that “*fruit juices can be substituted by various other beverage products in some situations*”¹⁰; and
- (b) on the supply side: (i) it is necessary for retailers to stock a repertoire of drinks in order to satisfy customer demand; and (ii) switching between the production of a number of NABs can be relatively easy.

13. Where relevant, please explain how products or services are differentiated within the market(s).

13.1 As the Commission observed in *Rio*, “*Non-alcoholic beverages are highly differentiated even within the relatively narrow markets adopted by the Commission. For many of the products, brand and positioning seem just as important, if not more so, than specific content.*”¹¹

13.2 FBs remain highly differentiated products today. The FB category is typified by a large number of participants of varying sizes, supplying a large number of brands and products targeting different consumer preferences. The pictorial representation above reflects a market in which suppliers will look to appeal to all manner of consumer preferences and fill any perceived ‘gap’ in the product spectrum. In fact, there have been close to [.] FB skus sold in the FB category in the supermarket channel in the past 12 months, around [.] of which were skus sold by firms other than the parties to the acquisition.¹² Naturally, a large number of these generated relatively low sales, but the sheer number illustrates the constant presence of new products/brands, etc, vying for consumer (and retailer) attention. Suppliers have little choice but to differentiate their products from the competition in order to stand out in such a crowded product spectrum.

13.3 In the broader NAB market, and also in relation to FBs, consumers are increasingly seeking brands that express their desire for ‘individuality’ – this has led to greater brand and product segmentation. As noted in the barriers to entry section below, more than [.] new products have been introduced in the past 12 months alone.

VERTICAL INTEGRATION

14. Provide details of any creation or strengthening of vertical integration that would result from the proposed merger. Please use organisational charts or diagrams to illustrate the structure of the ownership and/or control of the participants and the vertical relationships in question.

14.1 Whilst Frucor would take over the distribution of the products currently distributed by Simply Squeezed, it would continue to distribute these on a non-exclusive basis.

14.2 As noted, Suntory, via Cerebos Gregg’s, also owns the Robert Harris cafes (which operate via franchise). While Robert Harris cafes sell FBs, Frucor estimates its sales to Robert Harris account for less than [.]% of its overall sales.

14.3 In Frucor’s view, neither of the above factors would have any impact on the ability of competitors to compete at either functional level of the FB market.

¹⁰ Rio Beverages, para 84.

¹¹ Ibid, para 51.

¹² AC Nielsen Scantrack, TSM, MAT to 17 May 2009, condition: products sold in previous year. Please refer to Annexure 4.

Part 4: Counterfactual

15. **In the event that the proposed merger does not take place, describe what is likely to happen to the business operations of the merger parties and the market/industry.**
- 15.1 Given the low barriers to entry and expansion and, hence, the somewhat fragmented nature of the industry, the Applicant believes that new entry, exit and mergers and acquisitions will continue in this market over time.
- 15.2 The Applicant is of the view that the likely counterfactual will be either:
- (a) a sale to another party; or
 - (b) a continuation of the "status quo".

EXISTING COMPETITORS

16. Identify all of the relevant competitors in the market(s), including near competitors and importers in the market(s), and describe how they all compete in the market(s).

Existing Competition

- 16.1 In the *Rio* decision, the Commission received feedback from industry participants that there is strong competition in the FB market.¹³ Frucor believes this remains the case today. The market is dynamic and highly innovative and – in addition to firms such as CCA and Charlie’s – there is the presence of a strong competitive fringe, which includes firms such as Heinz, GSK, Pinto and Fonterra.

16.2 **CCA**

- (a) CCA is the leading supplier of NABs in New Zealand. On its website it states that CCA provides more than 80 brands and flavours of drinks in New Zealand. It possesses a formidable competitive position through its “must stock” Coca Cola brand. CCA describes Coca-Cola as the most popular and biggest-selling soft drink in history, as well as the best-known product in the world.
- (b) In New Zealand, CCA has a strong portfolio of brands including (as noted in its Baker Hall clearance application):
- (i) CSDs: Coca-Cola, Coca-Cola Zero, Vanilla Coke, Diet Coke, Fanta, Sprite, Sprite Zero, Lift, Diet Lift, Schweppes (including Lemonade, Flavours range, Sparkling range, Mixers range), L&P, L&P Sweet As, Deep Spring;
 - (ii) FBs: Keri fruit juices (Original, Crush and Premium), Thexton’s fruit juices and drinks, and Sunfresh Orange (postmix);
 - (iii) New age beverages: Energy (Relentless, Lift Plus and Lift Plus Sugar Free), Sports: (Powerade, Lifestyle: e2 Drinks);
 - (iv) Water: Kiwi Blue (still and sparkling), Pump (still) and Aqua Shot (flavoured water); and
 - (v) Cordials: Schweppes and Roses Cordials.

See <http://www.makeeverydropmatter.co.nz/> for further details.

- (c) The table below highlights CCA’s dominance in the CSD and Sports Drink categories, which are relevant to its ability to compete strongly in the juice category.¹⁴

	CCA share of Grocery sales	CCA share of Oil sales
CSD	[.]%	[.]%
Sports	[.]%	[.]%

¹³ Rio Beverages, para 97.

¹⁴ AC Nielsen scantrack, TSM & SSO, volume share, year ended 19th April 2009. CCA is also very strong in the route channel, but there is limited scan data from which to put an accurate figure on its strength.

Drinks		
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- (d) An indicia of CCA's market power and strength of its product portfolio is its many exclusive agreements around New Zealand with smaller distributors. In the CCA/Berri decision, the ACCC stated that CCA possesses tremendous brand loyalty through its Coca Cola product which is viewed as a "must stock" by retailers. [...] This highlights the "must stock" status of Coke, and also shows a degree of power exercised by even small retailers when deciding which products they wish to range.
- (e) Further, CCA has an unrivalled network of in-store refrigeration equipment in the non-grocery trade channels through which it distributes its beverage products. It also has the ability to leverage its "must haves" to support new entry/expansion in respect of FBs. [¹⁵]

16.3 **Charlie's**

- (a) Charlie's supplies FBs, waters and CSDs in New Zealand. Since entering the market in 2000, it has grown its market share to [...]% of the total juice market and [...]% of the chilled juice segment.¹⁶ Charlie's website states that its slogan is "*the whole juice and nothing but the juice*".
- (b) It is a significant player in the New Zealand beverage market, and increasingly in Australia and South East Asia. Its principal brands, Charlie's and Phoenix Organics, are household names and Charlie's brand recognition is reported to be higher than any other juice brand in New Zealand.¹⁷
- (c) Charlie's is also involved in the branding and distribution of fresh fruit including limes, grapefruit, oranges, lemons, mandarins and avocado.
- (d) Its NAB products include:
- (i) FBs: The "Charlie's" range of Honest FBs; Honest quenchers; Honest smoothies;
 - (ii) Waters: Vitamin water; Honest water; and
 - (iii) CSD: Sparkling Soda Co and the Phoenix range of organic beverages.

See www.charliesgroup.co.nz and www.phoenixorganics.co.nz for further details.

16.4 **Heinz (Golden Circle)**

- (a) Golden Circle Limited (**Golden Circle**) is an Australian based manufacturer of fruit beverages and CSDs. On 19 December 2008, Heinz finalised the acquisition of Golden Circle for a reported AUD \$288m.¹⁸ Golden Circle beverage products include:
- (i) a range of FBs;
 - (ii) CSDs; and

¹⁵ Please refer to Annexure 3.

¹⁶ AC Nielsen scantrack, TSM, volume share, MAT to 19 April 2009.

¹⁷ <http://www.charliesgroup.co.nz>

¹⁸ <http://business.theage.com.au/business/heinz-sees-juicy-future-for-golden-circle-20090531-brot.html>

- (iii) cordials.
- (b) Heinz is a \$10 billion global company, employing approximately 32,500 people around the globe and claims to have products that enjoy #1 or #2 market share in more than 50 countries.¹⁹
- (c) While Golden Circle currently has only a modest share of FBs sales in New Zealand, it has a much more substantial position in Australia. A review of its website, www.goldencircle.com.au, gives a sense of the breadth of FB products it offers. (See Annexure 6). Heinz's existing relationships with retailers (and Woolworths in particular), its financial clout and its existing Australian product portfolio suggest it is very well placed to exploit any opportunities in the New Zealand FB category should it wish.

16.5 **Campbell's**

- (a) Campbell Australia Pty Ltd (**Campbell's**) manufactures its products in Australia and exports to different regions around the world, including New Zealand. Campbell's employs approximately 400 people in Australia and New Zealand, and operates as the Headquarters of Campbell's Asia Pacific.
- (b) Campbell's produce the V8 Juices range which includes:
 - (i) Plus Berry;
 - (ii) V8 Fruit & Veg (Citrus Splash, Melon Burst and Tropical);
 - (iii) V8 Plus (Cleanse, Energy and Start Up);
 - (iv) V8 Vegetable Juice;
 - (v) V8 Hot 'N Spicy; and
 - (vi) V8 Low Sodium.

16.6 **Ocean Spray**

- (a) Ocean Spray International Inc (**Ocean Spray**), a Massachusetts-based farmers' co-operative, grows in excess of 70% of the world's cranberries. It also produces a large volume of Ruby Red grapefruits sold worldwide. Ocean Spray first introduced its variety of Cranberry and Ruby Red Grapefruit juice drinks to Australia and New Zealand in 1995.²⁰

16.7 Other FB suppliers include:

- (a) Pinto;
- (b) Marsanta Foods Limited;
- (c) Tasman Bay;
- (d) GlaxoSmithKline;

¹⁹ <http://www.heinz.com/our-company.aspx>

²⁰ Ocean Spray International Incorporated. Retrieved June 4, 2009 from <http://www.oceanspray.com.au/about-ocean-spray.asp>.

- (e) Zeagold;
- (f) Nekta;
- (g) Robinsons;
- (h) Sunsweet;
- (i) Mill Orchard;
- (j) Fonterra;
- (k) Goodman Fielder; and
- (l) Kirin.

16.8 Please refer to Annexure 5 for further information on the above FB suppliers.

17. **Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the merger parties and competitors identified above. Please include:**

- the estimated total value of the domestic market; and
- the source of the data provided.

17.1 Post-acquisition market shares are set out in the table below.

Moving Annual Total (MAT): NZ Sales

Firm	Market Share %
Frucor	[.] ²¹
Brownlie	[.] ([.] if [.]% supply of housebrands is included)
Combined	[.] ([.]%)
CCA	[.]
Charlie's	[.]
Heinz (Golden Circle)	[.]
Ocean Spray	[.]

²¹ Includes sales as distributor for Bengel Gold and Ozone.

Campbell's (V8)	[.]
Others	[.]
Other Housebrands ²²	[.]
Total	100%

SOURCES OF ESTIMATES: Scan data supplemented by Frucor's management estimates.

- 17.2 Frucor is unable to reliably estimate productive capacity, but believes that existing participants could readily expand, either by utilising existing assets or expanding capacity if needed.
18. **To what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?**
- 18.1 The Applicant believes sufficient constraint is imposed by CCA, Charlie's and other competitors to undermine any attempt to increase prices above competitive levels, or reduce quality or service below competitive levels.
- 18.2 More generally, the sheer number of competitors in FB (according to supermarket scan data there are approximately [.] skus in the FB category) necessarily constrains the ability of (and will continue to constrain) Frucor to raise prices above competitive levels. There are so many FB products available and new products are constantly being introduced. Moreover, supermarkets, who account for approximately [.]% of Frucor's total FB sales, have the ability to support (and threaten to support) any of these competitors should they feel the need to do so.
- 18.3 CCA is a formidable competitor in respect of NAB. While it may be smaller than Frucor in the FB market, its size in CSD and other segments is highly relevant in terms of its ability to expand in response to any attempt by Frucor to increase FB prices above competitive levels. It has the brands, expertise, financial support, distribution network, and in particular customer relationships and access to chiller space, necessary to expand.
- 18.4 Charlie's product line and brand recognition means it imposes a very real pricing constraint.
- 18.5 A review of the wide range of FBs on Golden Circle's website, www.goldencircle.co.nz, which is now owned by the Heinz, gives an appreciation of the brands that it could supply into New Zealand should it see an opportunity. As noted earlier, its product portfolio and relationship with customers provide it with the ability to quickly expand its New Zealand presence.
- 18.6 Finally, over [.]% of New Zealand grocery juice sales (by volume) are generated by imported product, and there is no reason why that could not grow in terms of the overall juice market.

POTENTIAL COMPETITION

CONDITIONS OF ENTRY

19. **Please explain the requirements for new entry and/or importers in the relevant market(s).**
- 19.1 The sheer number of skus in the FB market illustrates the absence of any meaningful barriers to entry.

²² Frucor is unaware who supplies these to the supermarkets.

19.2 Entry could be effected via several means:

- (a) By importing FBs (which could be manufactured by a third party) and selling through *brokers*. (Brokers liaise with supermarkets and act as a form of agent. They can provide a simple merchandising service right up to full key account management.)
- (b) By importing FBs (which could be manufactured by a third party) and using *distributors*.

Either of the above would require a minimal investment in some IT infrastructure and limited working capital. Frucor believes such entry could be effected in around 3 months.

The success of the Bundaberg brand in New Zealand illustrates how a firm that uses a distributor can achieve a strong position in the market. It is a \$20m business that is the second largest player in the CSD category, notwithstanding that it is wholly imported and has no real sales force on the ground – instead choosing to utilise the services of a distributor.

- (c) Another option is to utilise the services of a contract packer/bottler, or commence a small manufacturing operation. Depending on the age and capacity of the equipment, Frucor estimates a small manufacturer could be up and running with a plant that has an approximate capacity of 5000 – 6000 litres per hour, hot fill or cold fill, for approximately \$1.5m within around 12 months.

An approximate breakdown is as follows:

Equipment	Approximate Price \$
[.]	[.]
[.]	[.]
[.]	[.]
[.]	[.]
[.]	[.]
[.]	[.]
[.]	[.]
[.]	[.]
[.]	[.]
TOTAL	[.]

[.]

19.3 There are no regulatory or frontier requirements that would impede entry. The technical know-how, etc. is readily available.

19.4 NFC and juice concentrate is an internationally traded commodity and water, labels, bottles, etc. are all readily available. In respect of orange juice products, volume is made with imported NFC and concentrate, and Frucor is aware that Simply Squeezed and Arano utilise both imported

product and locally grown oranges.²³ (Frucor does not currently own orchards, nor will it post-acquisition, but rather buys from orchardists.) The fact the majority of product is made with imported NFC/concentrate reflects the substitutability of domestic and internationally derived juice. In relation to access to chiller space, the Commission has found that this is not an issue in the grocery channel. In relation to the route channel the Commission did not consider it to be a material barrier in the *Rio* decision, noting that other forms of distribution are evident. For example, when Red Bull entered the market it introduced its own barrel chillers to overcome the space problem. Moreover, retailers will also often have their own "white" fridge, which they use to stock various brands.

- 19.5 Further, the example of Charlie's entry shows access to chiller space is not a material barrier to entry. Charlie's currently has its own fridges in over 1,200 route trade outlets.²⁴
- 19.6 In addition to Charlie's, some recent examples of new products having gained access to chiller space in the route trade include Demon Energy, Lipton Iced Tea and Monster Energy. In each of these cases there was little or no advertising to support the product, nor an existing sales force/customer relationship to leverage. Naturally, the presence of CCA and Charlie's fridges suggest that they face no issues in this regard.
- 19.7 If the decision was made to target the "chilled" segment then distribution to grocery channels can be achieved by delivering to the supermarkets' own DCs and then relying on the supermarkets' own distribution infrastructure. This would enable distribution to the majority of the ultimate customer base. To the extent the new entrant wished to service the route trade then it could adopt the approach of Charlie's, for example, and pasteurise the products (so that they were technically shelf stable) and then distribute in the normal manner. If the decision was made not to pasteurise, then it would be necessary to utilise a chilled distribution infrastructure in order to fully access the route trade.
20. **Include a full discussion on any factors that could impede entry; and what might prompt new entry post-merger.**
- 20.1 See above. The history of entry into the currently competitive market amply illustrates that any attempts to price above, or allow service/quality levels to drop below, competitive levels would prompt rapid entry. Such entry could be encouraged/supported by one of the supermarkets, which would provide an immediate 'bridge-head'.

LIKELIHOOD, EXTENT AND TIMELINESS OF ENTRY (THE LET TEST)

21. **Please name any likely businesses (including overseas businesses) you are aware of that do not currently supply the market but which you consider could supply each of the relevant market(s). Discuss the likelihood of such entry.**
- 21.1 In terms of potential new entrants, an international player could readily enter the New Zealand market which is likely to be seen as an opportunity for growth [.²⁵]
- 21.2 That said, given the large numbers of suppliers already present in the market, expansion is likely to be a greater constraint than de novo entry. There are a number of substantial firms that currently only have a modest share of the FB market, but which are well placed to expand in accordance with the LET test, including the likes of Heinz with its recently acquired Golden Circle business, Fonterra and others.

²³ [.]

²⁴ Interim Report for the 6 months ended 31 December 2008. That report also notes that in the period 418 *new* accounts were opened.

²⁵ AC Nielsen scantrack, TSM (NZ) and Nat Grocery (Australia), volume sales, year ended 18 April 2009 (NZ) and year ended 15 April 2009 (AU) & most recent census population counts.

- 21.3 Potential candidates for more traditional 'entry' in response to incentives include National Foods, which is now owned by Kirin. National Foods owns the Berri brand of juices, which are a material player in Australia. Berri is understood to already supply homebrand juice for PEL, and to have supplied branded product into New Zealand in the past year.
- 21.4 Of course, CCA – with its already substantial share of FB and total NAB sales and other strengths – remains able to expand as it wishes.
- 21.5 In addition, given the similarities on the supply side between the manufacture and supply of fruit juice and other NABs, e.g., cordials, there are other manufacturers which could commence the supply of FBs by altering their production mix. (In this regard, the Commission is referred to the comments by CCA in its December 2008 application for clearance to acquire Baker Halls.)
22. **To what extent do you consider that potential entry would be sufficient to constrain the merged entity in the markets affected?**
- 22.1 The Commission has accepted that the FB market is characterized by low entry barriers. In the *Rio* decision, the Commission concluded that "*there are no significant barriers to entry to deter expansion or new entry into the FB market.*"²⁶ For the reasons explained above, Frucor believes this remains the case.
- 22.2 The extent of new (and successful) product entry is illustrated by the fact that:
- (a) In the past year, close to [.] FB skus have been sold in supermarkets.
 - (b) In the year to 19 April 2009, [.] different manufacturers have introduced products individually worth over \$[.] in retail sales per week. Looking at the chilled juice subcategory alone, this rises to [.]% of sales and [.] different manufacturers.
 - (c) Marsanta Foods Limited²⁷, which imports and distributes the Smooze brand from the US, has achieved ranging for its Smooze products in [.]% of Progressive supermarkets within [.] months, and is now also starting to gain ranging in Foodstuffs.
 - (d) The introduction of new products in the wider beverage market has also continued, with [.] completely new brands being ranged in oils over the last year²⁸, and [.] in supermarkets.²⁹ Several of these are foreign brands imported and distributed by companies without any manufacturing facilities. For the 4 weeks to April 19 2009, over [.]% of sales in the supermarket juice category were generated by products introduced within the last year.³⁰ (See Annexure 2) This illustrates that not only are barriers low, but the market is dynamic and highly innovative.
 - (e) Innovation in beverages is further evidenced by the emergence of several new segments including RTD coffee, large format energy cans, functional waters and energy shots.
- 22.3 The success of the high profile Charlie's brand illustrates the growth that entrants can achieve. Since entering the market in 2000, it has grown its market share to [.]% of the total juice market (and [.]% of the chilled juice segment). The below graph highlights Charlie's growth since entering the market in 2000.

²⁶ Rio Beverages, para 128.

²⁷ Marsanta is also involved in importing and distributing dried fruit, nuts, baking goods and catering supplies.

²⁸ Threshold: \$500/week retail sales.

²⁹ Threshold: \$2500/week retail sales.

³⁰ AC Nielsen scantrack, TSM & SSO, volume sales, year to 19th April 2009, condition: new products in last year.

[.]

- 22.4 For the above reasons, Frucor believes that the Commission's conclusion in its *Rio* decision that the threat of new entry met the LET test and hence constituted a constraint remains accurate.
23. **How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential entrants named in question 21 above? Provide reasons for your estimates.**

See 19.

COUNTERVAILING POWER OF BUYERS

24. **To what extent do you consider that the merged entity would be constrained in its actions by the conduct of buyers in the markets affected?**
- 24.1 Supermarkets, who are the largest purchasers of FBs (the grocery channel accounts for [.]% of Frucor's total FB sales), have considerable purchasing power. This power arises for the following reasons:
- (a) Each of the two supermarket chains accounts for a very large proportion of total sales and therefore no supplier can afford to get "off side" with either, e.g. by attempting to increase price where the supermarket does not consider it justified.
 - (b) Supermarkets have the ability to sanction a supplier by allocating less shelf space to a supplier and/or more shelf space to other suppliers. In the *Goodman Fielder/River Mill* decision, this was considered to be a major contributor towards the countervailing power wielded by supermarkets.
 - (c) Supermarkets are able to exercise countervailing power through the award of contracts to manufacture their housebrand juices. They can also promote their housebrands more heavily, thus reducing the all-important value of the branded suppliers' brands over time as they encourage more consumers to substitute to housebrand products.
 - (d) Perhaps the most potent weapon in the supermarkets arsenal is the allocation of promotional slots. Demand for FBs is highly price elastic. Accordingly, suppliers are particularly reliant on supermarket promotional slots to drive volume (and hence production and other efficiencies). A number of graphs are reproduced in Annexure 7 (confidential) to illustrate the sensitivity of volumes to promotional slots – one of which is reproduced below.

[.]

- (e) The net result is that the mere threat by a supermarket to reduce a supplier's share of promotional slots will be treated very, very seriously. If a supermarket determined to 'punish' a supplier by withdrawing its access to promotional slots there would be substantial market share implications for that product, and consequent benefits to its competitors.
- (f) Finally, supermarkets can exercise countervailing power by supporting a new entrant if the incumbents attempted to increase prices post-acquisition.

25. If you consider that there is a constraint from buyers, identify the top five buyers by sales and/or volume (including overseas companies/importers) in the relevant market(s), Where there are significant differences in the size of the buyers please provide details for five medium and five small buyers.

- 25.1 The table below illustrates the relative size of Frucor's major customers.

Juice \$ GSV	2008		2009 YTD	
Total Juice GSV (Including Arano)	[.]		[.]	
Foodstuffs	[.]	[.]	[.]	[.]
PEL	[.]	[.]	[.]	[.]
Total BP	[.]	[.]	[.]	[.]
Restaurant Brands*	[.]	[.]	[.]	[.]
Tahi Pacific (NZ) Ltd	[.]	[.]	[.]	[.]
Total Mobil	[.]	[.]	[.]	[.]
Total Caltex	[.]	[.]	[.]	[.]
The Warehouse Limited	[.]	[.]	[.]	[.]
Total Shell	[.]	[.]	[.]	[.]
*No longer a juice customer.				

COORDINATED MARKET POWER

26. Identify and discuss the various characteristics of the market that, post-merger, you consider would either facilitate or impede coordination.

- 26.1 The market does not currently display any signs of co-ordinated market power. The main factors that currently, and will continue to, preclude any tacit collusion are:

- the differentiated product market – making it very hard to tacitly collude on price, for instance, because products have a range of non-price attributes;
- the presence of a competitive fringe;
- an absence of price transparency;
- the price elastic nature of demand; and
- the presence of large buyers able to detect and punish any attempts to exercise co-ordinated market power.

- 26.2 Because none of the factors currently precluding co-ordinated conduct will change as a result of the acquisition, Frucor does not believe it can be said that the acquisition would facilitate tacit collusion.

- 26.3 The following table applies the facts of this acquisition to the factors considered relevant by the Commission.

Scope for co-ordinated market power	Present	Effect of Acquisition
High seller concentration	YES (concentration ratio > 70% in a FB market)	Some change
Undifferentiated product	NO	No change

Scope for co-ordinated market power	Present	Effect of Acquisition
Static production technology	YES (largely)	No change
New entry slow	NO	No change
Absence of fringe competitors	NO	No change
Acquisition of an unusually vigorous or effective competitor	NO	No change
Price inelastic market demand	NO	No change
History of co-ordinated conduct	NO	No change
Absence of countervailing power of acquirers	NO	No change
Existence of excess capacity	YES ³¹	No change
Industry associations/fora	YES (but of limited significance)	No change
Detection of deviation from co-ordination	Presence	Effect of Acquisition
High Seller concentration	See above	Some change
Frequent sales	YES	No change
Vertical integration	Very limited	No change
Growth in demand	Yes	No change
Cost similarities	No	No change
Multi market contact	Some	No change
Price transparency	No	No change

³¹ []

EFFICIENCIES

27. If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition?

27.1 [.] It will also generate efficiencies in the distribution of product to the HORECA outlets in particular, enabling Frucor to better compete with CCA and Charlie's in this channel.

27.2 More generally, there will be efficiencies gained by reducing duplication and spreading costs across a greater base.

OTHER FACTORS

28. Where relevant, provide a description of any other features of the market(s) that should be taken into account in considering the effect of the proposed merger.

N/A.

Part 6: Further Information and Supporting Documentation

29. Provide the contact details of relevant competitors, buyers and suppliers and any other relevant market participants in the form of the example table shown below.

	NAME OF COMPANY	CONTACT DETAILS	RELEVANT CONTACT PERSON
	BOTH LEGAL AND TRADING NAMES	POSTAL AND PHYSICAL ADDRESS, TELEPHONE AND FAX, WEBSITE	NAME, POSITION AND CONTACT DETAILS INCLUDING TELEPHONE PHONE, FAX, EMAIL
COMPETITORS	Large: Coca-Cola Amatil (N.Z.) Limited	Head Office: The Oasis Mt Wellington Auckland www.coke.co.nz/ / http://www.makeeverydropmatter.co.nz/	09 570 3000
	Small: Teza Juiced Teas (The Greenstone Drinks Company Ltd)	58 Benson Rd, Remuera Auckland. Phone:09 974 4474 Fax: 09 950 7750 www.teza.co.nz	Daphne Raj 09 9744474 whatsup@greenstonedrinks.co.nz
BUYERS	Progressive Foodstuffs Gilmours		Peter Smith Tony Carter Tony Carte
SUPPLIERS (NFC)			
	Directus International	9 Earle Street Parnell	Tony Beattie

		PO Box 2025 Auckland Ph 3097783	
	Tradex Asia (NZ) Ltd	PO Box 56277 Dominion Rd Auckland Ph 6384301	Julian Charteris
	RD2 International Ltd	Level 1, 40 Drake Street Freemans Bay Auckland Ph 3761124	Damian Honiss
TRADE ASSOCIATIONS	NZ Juice and Beverage Association		Kerry Tyak
	The New Zealand Food & Grocery Council (Inc.),	PO Box 1925, Wellington, New Zealand 04-473 9223 http://www.fgc.org.nz/AboutUs.asp	Katherine Rich (CEO)
ANY OTHER RELEVANT MARKET PARTICIPANTS OR INTERESTED PARTIES			

30. Please provide a copy of the most recent annual report for each of the merger parties. If an annual report is not available, please provide a copy of the audited financial statements of the merger parties (profit and loss account, showing total turnover and profit before tax, and balance sheet). If the merger only relates to a segment of the

business of the merger parties, please also provide a copy of any management accounts for the relevant business segment.

- 30.1 The proposal relates only to Frucor's FB business, which is a segment of Frucor's overall business. Accordingly, management accounts for Frucor's FB business in FY 08 are included in the Confidential Schedule.

Part 7: Confidentiality

31. **If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.**
- 31.1 Confidentiality is sought in respect of the information in this application that is contained in square brackets. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:
- (a) the information is commercially sensitive and contains valuable information which is confidential to the Applicant and/or the Vendor; and
 - (b) disclosure would be likely unreasonably to prejudice the commercial position of the Applicant and/or the Vendor, as the parties providing the information.
- 31.2 The Applicant also requests it is notified of any request made to the Commerce Commission under the Official Information Act 1982 for the confidential information, and that the Commission seeks the Applicant's views as to whether the information remains confidential and commercially sensitive at the time those requests are being considered.
- 31.3 The foregoing applies equally in respect of any additional information provided to the Commission that is expressed to be confidential.
32. **Provide a separate schedule of all confidential information claimed in the application.**

Please see Schedule 1.

THIS NOTICE is given by Peter Lamb.

I hereby confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant(s) which is relevant to the consideration of this application/notice has been supplied; and
- all information supplied is correct as at the date of this application/notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

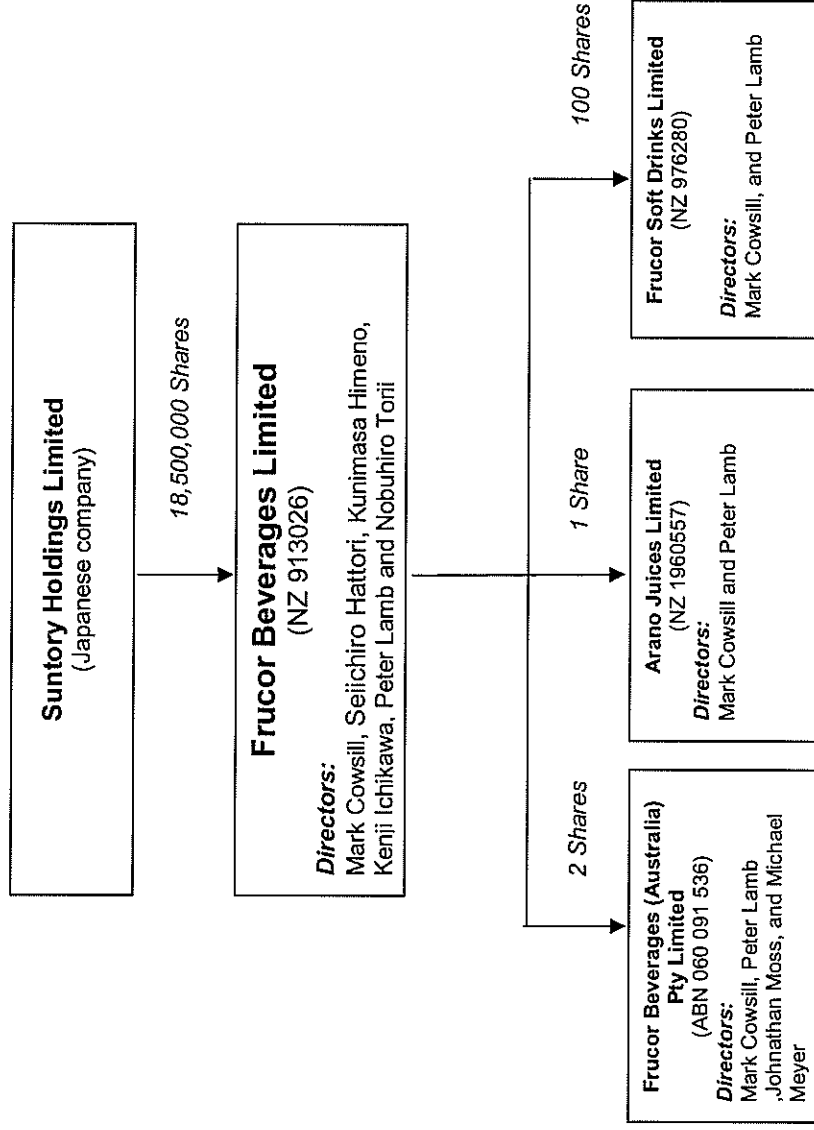
Dated this 7th day of July 2009.

Chief Financial Officer

I am a director of the company and am duly authorised to make this application/notice.

Annexure 1 Frucor structure diagram

CORPORATE STRUCTURE OF FRUCOR GROUP AS AT 27 MAY 2009



Annexure 2 [.]

Annexure 3 [.]

Annexure 4 [.]

Annexure 5 other FB manufacturers

Pinto

Pinto Limited (**Pinto**) is the largest New Zealand owned and operated fruit juice company, and is based in the Bay of Plenty. Pinto is one of New Zealand's longest standing brands of FBs, having been in use for over 40 years.³²

Pinto is New Zealand's prevalent processor of feijoas and New Zealand grapefruit and has particular expertise in the processing of feijoas and grapefruit into fruit juice. It has high quality factory facilities with spare capacity, an established nationwide distribution network³³ and well secured lines of supply with reputable suppliers.³⁴

- (a) Pinto also operates Pinto Solutions (contract packing).
- (b) Pinto's retail products include:
 - (i) Concentrates (Pinto 1 & 2 litre);
 - (ii) Fruit Juices and Drinks (Pinto 1, 2 & 3 litre);
 - (iii) Single Serve Fruit Juices and Drinks (Pinto 375ml);
 - (iv) Single Serve Fruit Juices (Pinto 250ml);
 - (v) The SeJuice brand of FB; and
 - (vi) Water (Hydr8 Water).
- (c) Pinto Express products (currently delivered to foodservice) include:
 - (i) Pinto Viva Chilled Juices, Smoothies, Chilled Nectars and Concentrate Cordials;
 - (ii) The SeJuice brand of FB; and
 - (iii) Pinto Concentrate Juices & Drinks;
 - (iv) Pinto Sauces, Dressings & Flavourings;
 - (v) Chai Tea;
 - (vi) Zeta Sparkling Organic Juices;
 - (vii) Fruity Flavorits Kids Range; and
 - (viii) Sparkling & Still Mineral Waters.

Marsanta Foods Limited (Smooze)

Marsanta Foods was established in 1987 and is a 100% New Zealand owned private company. Its website states that it imports a range of food ingredients from diverse worldwide locations, with a focus on dried fruit, nuts and canned fruit and vegetables. It also sources a range of organic and specialty produce including herbs and spices.
<http://www.marsanta.co.nz/>

Marsanta Foods imports and distributes the Smooze brand of FB from the US. <http://www.smooze.co.nz/>

³² www.pinto.co.nz

³³ Pinto Limited. Retrieved June 4, 2009 from http://www.pinto.co.nz/x_distribution.htm.

³⁴ Pinto Limited. Retrieved June 4, 2009 from http://www.pinto.co.nz/r_mission.htm.

Tasman Bay

- (a) Tasman Bay Food Group Limited (**Tasman Bay**) is a contract manufacturer of bakery and beverage products based in Nelson, New Zealand. Tasman Bay beverage products include:
- (i) Tasman Bay Juice Company Premium Fruit Juice; and
 - (ii) Orchard Road Fruit Drink Concentrates.
- (b) Tasman Bay also owns FutureFoods New Zealand Ltd (**Future Foods**). Future Foods beverage products include;
- (i) Frozen Juicies range;
 - (ii) Moosies Milk Freeze;
 - (iii) Cool Sips Flavoured Water and Fruit Drinks;
 - (iv) Calcium Flavoured Milk; and
 - (v) Fruit Hitz.

GlaxoSmithKline

- (a) GlaxoSmithKline NZ Limited (**GSK**) produces Ribena. Ribena is made from blackcurrants and has been a brand for over 55 years. GSK's Ribena products include:
- (i) Ribena Ready to Drink;
 - (ii) Ribena Blackcurrant and Cranberry Ready to Drink;
 - (iii) Ribena Squeezee Pack;
 - (iv) Ribena Sparkling;
 - (v) Ribena Light Syrup; and
 - (vi) Ribena Light Ready to Drink.

Zeagold

- (a) Zeagold Foods (**Zeagold**), a privately owned New Zealand company, is a leading egg producer, manufacturer of egg products and beverages nationally and internationally.
- (b) Zeagold's new range of juice and smoothies, SeJuice, have earned industry accolades, with Feijoa Fling being awarded Best Smoothie by the independent panel at the recent NZ Juice & Beverage Awards. SeJuice Feijoa Fling also won the Premier Award, which judges the best beverage made by a New Zealand owned company, beating rivals Charlie's and Simply Squeezed.³⁵

Nekta

- (a) Nekta Products Ltd (**Nekta**) supplies its kiwifruit drinks range domestically and exports to many different countries.³⁶ Nekta products include:

³⁵ Fresh Communications Ltd. Retrieved June 4, 2009 from http://www.freshinthekitchen.co.nz/food_news_show.asp?id=42.

³⁶ New Zealand Trade and Enterprise. Retrieved June 4, 2009 from <http://www.marketnewzealand.co.nz/MNZ/CompanyProfile/0/2096/120/Nekta-Products-Ltd.asp>.

- (i) Chilled Beverages (Nekta liquid kiwifruit juice);
- (ii) Protein enriched beverages (Nekta liquid kiwifruit and Goji Berry juice);
- (iii) Bottled fruit and vegetable juices (Nekta liquid kiwifruit with Aloe Vera juice); and
- (iv) Concentrated fruit juices (Nekta liquid gold kiwifruit).

Robinsons

- (a) Robinsons was acquired by Britvic in 1995 and is one of the biggest grocery brands in the United Kingdom.³⁷ The Robinsons product range includes:
 - (i) Fruit squash;
 - (ii) Fruit and barley;
 - (iii) High Juice (squash with 55% juice); and
 - (iv) Barley water.
- (b) As well as New Zealand, Britvic exports to over 50 countries through its subsidiary, Britvic International Ltd.

Sunsweet

- (a) Americana Limited is the New Zealand agent for Sunsweet Growers Inc (**Sunsweet**), importing prunes, apricots, mango, and prune juice.³⁸ Sunsweet's beverage products include:
 - (i) Prune juice;
 - (ii) Prune juice with pulp; and
 - (iii) Plum juice (PlumSmart and PlumSmart Light).³⁹

Mill Orchard

- (a) Mill Orchard Limited (**Mill Orchard**) is a 100% New Zealand family owned and operated company. Together the family has about 60 hectares of apples and pears, with over 15 varieties of apples. Mill Orchard is the largest apple grower in Canterbury, with nationwide distribution contacts.
- (b) All Mill Orchard juices are made from fresh fruit with no added sugar or preservatives.⁴⁰ Mill Orchard's beverage product range includes:
 - (i) Fruit juices; and
 - (ii) Slurpas.⁴¹

Other Major Companies:

- (a) **Fonterra** sells the Zing Fruit Drink (along with functional and bottled water).⁴²

³⁷ Britvic. Retrieved June 4, 2009 from <http://www.britvic.com/Brand.aspx?id=55>.

³⁸ Americana Limited. Retrieved June 4, 2009 from <http://www.americana.co.nz/>.

³⁹ Sunsweet Growers Inc. Retrieved June 4, 2009 from <http://www.sunsweet.com/>.

⁴⁰ Mill Orchard Limited. Retrieved June 4, 2009 from <http://www.millorchard.co.nz/aboutus.htm>.

⁴¹ Mill Orchard Limited. Retrieved June 4, 2009 from <http://www.millorchard.co.nz/juices.htm>.

⁴² http://www.fonterrafoods.co.nz/index.php?option=com_ffpr&view=category&id=19&Itemid=5

- (b) **Goodman Fielder** sells Cool Change.
- (c) **Kirin (Berri (AU))**, supplies Progressives Home Brand juice and have supplied their branded product into New Zealand within the past year.

Annexure 6 Golden Circle Australia website (supplied as a separate PDF document)

Annexure 7 [.]

Annexure 8 [.]

Schedule 1 – Confidential Information

Confidential schedule provided as a separate document