

COMMERCE COMMISSION

DECISION NO. 283

CONFIDENTIAL

NEW JUICE LIMITED

and

RIO BEVERAGES LIMITED

and

CEREBOS GREGG'S LIMITED

The Commission: J G Auton
R N Taylor

Summary of Proposal: The acquisition by New Juice Limited of:

- (a) the business of Rio Beverages Limited; and
- (b) the fruit juice and ready-to-drink fruit drink business of Cerebos Gregg's Limited.

Determination: Pursuant to s 66(3)(a) of the Act, and in accordance with a delegation granted under s 105 of the Act, the Commission determines to give a clearance for the acquisition.

Date of Determination: 30 January 1997

MEMORANDUM

To: Joe Auton
Roger Taylor

From: Jeff Hamilton John Preston

Date: 30 January 1997 (Working Day 7)

Subject: **Commerce Act 1986: Business Acquisition: New Juice Ltd/Rio Beverages Ltd/ Cerebos Gregg's Ltd**

Working Day 8: 31 January 1997

Working Day 10: 4 February 1997

Confidential material in this report is contained in square brackets

THE PROPOSAL

- 1 Clearance has been sought by New Juice Ltd to acquire the business of Rio Beverages Ltd (Rio), and the fruit juice and ready-to-drink fruit drink business of Cerebos Gregg's Ltd.
- 2 The proposed acquisition covers the entire business of Rio, but only part of the business of Cerebos Gregg's. Cerebos Gregg's will retain its powdered drinks business, which trades under the "Raro" and "Refresh" brands as well as the Horleys Replace business, which comprises sports nutritional products, dietary supplements, slimming products and special dietary foods, some of which will be sold in competition with the new joint venture.

PROCEDURES

- 3 Section 66 (3) of the Commerce Act (the Act) requires the Commission either to clear, or to decline to clear a notice given under s 66(1) within 10 working days, unless the Commission and the person who gave the notice agree. The proposal was registered on 21 January 1997, and therefore the date for a decision of the proposal is 4 February 1997.
- 4 Commission staff discussed the proposal with a representative of the applicant, Frucor Beverages Ltd, the President of the New Zealand Juice Manufacturers' Association, and a representative from a large supermarket chain.

THE PARTICIPANTS

- 5 New Juice is a special purpose company which was formed recently by its joint

shareholders, Rio and Cerebos Greggs's, for the purpose of implementing the proposal. Following implementation of the proposal, it is intended that New Juice will alter its name to "Rio Beverages Ltd".

- 6 Rio is involved in the manufacture and distribution of a range of non-alcoholic beverages, including fruit juices, fruit drinks and mineral waters. Further, it distributes the "Lucozade", "Appletize", "Grapetize", "Sunkist" and "Nippys" beverages, and carries out contract packing and bottling on behalf of major purchasers of fruit juice and fruit drinks. Rio is wholly owned by the David Thexton Family Trust.
- 7 Cerebos Gregg's manufactures and distributes a range of retail and food service branded food products, including teas and coffees, herbs and spices, powdered drinks and cordials, fruit juices and drinks, desserts, toppings and mixes, gravy, sauces and dips, pickles, condiments and snack foods. The ultimate parent company of the company is Cerebos Pacific Ltd.

THE RELEVANT MARKET

Market Definition

- 8 Implementation of the proposal would lead to some aggregation of market share in relation to the manufacture, packaging and wholesale distribution of fruit juice products¹.
- 9 These markets were reviewed last year by the Commission when it considered the then proposed acquisition by Frucor Holdings Ltd and Frucor Beverages Ltd of certain assets of Dew Drop Juices Ltd (M2302). The following market commentary is based on material contained in the staff report on the Frucor/Dew Drop proposal.
- 10 The following products can be classified under the heading of fruit juice:
- short life chilled juice (eg "Stefans");
 - fruit juice made from concentrate (eg "Fresh Up" and "Just Juice"); and
 - fruit drinks containing between 5% and 50% fruit juice content (eg "Rio Splice").
- 11 Further, fruit juice products can be differentiated in terms of taste/flavour, packaging type and size, and price/quality factors.
- 12 There are two major categories of outlets through which fruit juice products are sold at

the retail level:

- major supermarkets (“Key Accounts”), which account for an estimated 55% of retail sales; and
- independent grocery outlets (“Route Trade”), which might include food service, dairies, service stations, fast food outlets, and sporting clubs, which account for the balance of retail sales.

13 Most fruit juice sold at the retail level is manufactured and blended from juice concentrate imported from a variety of countries, or from apple concentrate produced locally. In addition, some juice products are imported in a pre-packaged form. All products in this category have a shelf life of between 6 and 12 months from the time of manufacture.

14 A small percentage of fruit juice sales (about 3% of retail sales), is composed of short life chilled juice products. These are produced from oranges, grapefruit and other fresh fruit or, from blends of juice concentrate and squeezed juice. This segment is often described in the trade as NFC juice (Not from Fruit Concentrate), or squeezed juice, or freshly squeezed juice. These juices require refrigeration, and have a relatively short life (from 1 to about 30 days).

15 Demand for large volume juice products, which include “Just Juice” and Fresh Up” appears highly sensitive to price. As a result, a significant degree of switching can take place between the different brands in this product range in response to relative price movements. At the lower price end of the market, powdered drinks and cordials may represent substitutes for fruit drinks and juices.

16 There appears to be a wide range of cold and hot beverages which may be substituted for fruit juice in certain circumstances. These include:

- carbonated soft drinks (eg “Coke” and “Pepsi Cola”);
- “New Age” beverages (eg “Fruition” and “Congo”);
- mineral waters (eg “Evian” and “H GO”);
- sports drinks (“Gatorade” and “Powerade”);
- milk and flavoured milk products; and

- hot beverages (tea, coffee and “Milo”).

17 The extent to which the above beverage products are substitutable for fruit juice products will depend on a range of factors, including the occasion on which they are consumed.

Conclusion on Market Definition

18 There is a range of fruit juice which may be differentiated in terms of packaging, price, taste and quality factors. These may be substituted by various other beverage products in certain circumstances. However, for the purpose of considering the likely competitive effect of this proposal, we consider that it is appropriate to define the relevant product and function markets using a narrow market definition. That is, for the manufacture, importation and wholesale distribution of fruit juice products. The geographic market is national.

Market Overview

19 Rio and Cerebos Gregg’s are two of the three principal manufacturers and distributors of fruit juice. Rio’s major brands are “Rio Gold”, “Rio Splice” and “Robinson Bros”, which was acquired last year from Robinson Brothers Ltd. Cerebos Gregg’s markets its fruit juice products under the “Keri”, “Choice” and “Real Raro” brands.

20 The principal competitor to the merger parties is Frucor Holdings Ltd, and its subsidiaries - Frucor Beverages Ltd, which markets the “Fresh Up”, “Just Juice”, “Citrus Tree”, “Dew Drop” and “McCoy” brands, and The Fresh Juice Company Ltd, which manufactures and distributes short life chilled juice under the “Stefans” and “McCoy” brands.

21 The remaining manufacturers comprise a large number of smaller manufacturers (eg Pinto Fruit Juice Co Ltd and NZ Milk Corporation Ltd), and the suppliers of a range of imported pre-packaged juice products, including Golden Circle (Australia), Dole (USA), Sunraysia (Australia), Berrivale (Australia) and Ocean Spray (USA).

Market Shares

22 Estimated market shares by volume for Key Accounts for the quarter ending December 1996 are as follows:

% (Approx)

Rio [

Cerebos Gregg's

Frucor

Golden Circle

Others

1

100.0

(Source of Estimates: A C Nielsen and Rio)

Route Trade

- 23 As noted previously, the Route Trade sector of this market incorporates a range of outlets, including dairies, fast food stores, food service companies and service stations. In general, juice products sold to the retail part of the Route Trade are distributed in smaller single serve packaging, although dairies do carry some larger 1 to 3 litre containers of fruit juice.
- 24 There is no reliable market share information available in respect of fruit juice sold through the Route Trade. However, on the basis of comments from market participants, the market share figures for this segment appear to be similar to those provided in para 22.
- 25 Rio undertakes the distribution of its fruit juice products to the Route Trade through contracted drivers, but Cerebos Gregg's has no involvement in this sector. Some of the brands of fruit juice produced by the manufacturers and suppliers cited above, are also available through the Route Trade. These are delivered through independent distribution companies, grocery wholesalers or, on certain occasions, might be purchased directly from supermarkets.
- 26 In addition, there is a range of other "ready to go" drinks which are available from outlets in the Route Trade. These include carbonated soft drinks, flavoured milks and mineral waters.

Entry/Expansion Conditions

- 27 Factors which affect entry and expansion into the manufacture and distribution of fruit juice include the following:

Brand Promotion

- 28 Brand promotion appears to be an important factor which influences entry into the fruit juice market. The successful introduction of a new brand, particularly in the high volume end of the market, is likely to require an investment of several million dollars annually. It

appears that only large well funded companies would seriously contemplate entry at this level.

Capital Cost and Technology

- 29 The technology required to manufacture fruit juice does not appear complex, and does not constitute a major impediment to entry.
- 30 The capital cost of establishing a fruit juice manufacturing plant will vary, depending on the size and scale of the operation. Last year, Frucor Holdings advised the Commission that a manufacturing and bottling plant using a combination of new and used equipment, and on a scale similar to that of Dew Drop, would involve a capital outlay of about []. Entry on a smaller scale, or by using a contract packer, could be achieved for a significantly lower cost.

Imports

- 31 There are no major impediments to the importation of pre-packaged fruit juice. As noted above, a range of imported pre-packaged fruit juice products is available on the local market. These include “Ocean Spray”, a cranberry fruit juice manufactured in Australia by a US-owned company, which holds a market share of about 1.5%. Other imported brands include the “Golden Circle” and “Berri” range of fruit juice products, both of which are supplied from Australia.

Regulations

- 32 The principal regulatory entry requirements into juice manufacturing are the necessity to comply with the food contents and labelling requirements of the Food Regulations. Hygiene regulations must be met also. While compliance with such requirements may raise entry costs, this does not appear to constitute a significant impediment to entry in this market.

Access to Raw Materials

- 33 The major inputs into fruit juice manufacture are fruit juice and/or concentrates, and packaging materials. A wide range of juice concentrates are available from various overseas sources, while apple juice concentrate is sold by Frucor Processors Ltd (100% owned by Frucor Holdings) to a number of local fruit juice manufacturers, including Rio.

Access to Customers

- 34 Supermarkets account for an estimated 55% of total retail fruit juice sales. Accordingly, it is important to secure access to such outlets and there is intense competition for shelf space.
- 35 Major factors which influence a supermarket when purchasing fruit juices and fruit drinks include the cost and quality of the product, the ability of the supplier to offer product in sufficient quantity on a regular basis, and the promotional incentives offered by manufacturers of these products. To service the Route Trade, it is possible to arrange for the supply of the product through grocery wholesalers as well as other distribution channels.

Countervailing Power of Supermarkets

- 36 The major supermarket chains, which include various banner groups in the Woolworths, Foodstuffs and Progressive Enterprises groups of companies, are substantial purchasers of fruit juice. They have the buying power to switch with relative ease from one juice supplier to another, depending in part on price and quality considerations, and on the basis of the promotional incentives offered by fruit juice manufacturers. In addition, some supermarkets have their own house brand juice products which are offered alongside branded product. As a consequence, supermarkets are able to exercise significant countervailing power in the fruit juice market as large scale purchasers of juice products.

ASSESSMENT OF DOMINANCE

- 37 Implementation of the proposal would lead to some aggregation of market share, with New Juice holding around [] of the Key Account segment of the fruit juice products market, compared with market shares of around [] and about [] held respectively by Rio and Cerebos Gregg's. While there are no market share figures available on the Route Trade, there will be no aggregation of market share in that segment of the market as a result of the proposal.
- 38 The major effect of the proposal will be to combine the fruit juice operations of the second and third largest participants in this market. The principal competition will continue to be provided by Frucor Holdings, whose subsidiary companies account for around [] of the fruit juice products market.
- 39 In addition, there is a large number of fringe competitors who are active in either the

manufacture or importation of fruit juice, although their individual market shares are relatively small. These include local manufacturers such as NZ Milk Corporation, and importers such as Golden Circle, Berrivale and Ocean Spray. There does not appear to be any significant impediments facing those companies from expanding their existing sales.

40 Nor do there appear to be any significant barriers facing those contemplating entry into the fruit juice products market. While it would be necessary to make a significant outlay to establish a new brand, we consider that there is a number of local and overseas companies who possess the expertise and resources to market a locally or overseas produced fruit juice, given the appropriate profit incentives. These might include food and beverage companies such as Heinz Wattie and Coca Cola.

41 We consider that the supermarket chains would also continue to exercise a major discipline on New Juice post-implementation in their capacity as large scale purchasers of fruit juice products.

42 In this report, we have adopted a narrow market definition for the purpose of examining the impact of this proposal. However, if the market definition were extended, this would introduce a competitive constraint from the suppliers of other beverage products, including powdered drinks, cordials and a variety of cold non-alcoholic beverages.

CONCLUSION

43 We conclude that the proposed acquisition, if implemented, would not result in, or would not be likely to result, in any person acquiring or strengthening a dominant position in the market for the manufacture, importation and wholesale distribution of fruit juice products.

RECOMMENDATION

44 We recommend that you give clearance to the proposal under s 66 (3) (a) of the Act.

Investigator

Chief Investigator

DETERMINATION TO GRANT NOTICE OF CLEARANCE:
NEW JUICE LTD/RIO/CEREBOS GREGG'S

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We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66 (3) (a) of the Commerce Act 1996 (the Act), and in accordance with a delegation given under s 105 (1) of the Act, we hereby give clearance for New Juice Limited, or any interconnected body corporate thereof, to acquire:

- (a) the business of Rio Beverages Limited; and
- (b) the fruit juice and ready-to-drink fruit drink business of Cerebos Gregg's Limited.

In terms of s 66(5) of the Act, this clearance shall expire twelve months after the date of this notice. Brief particulars of this clearance will appear in the Commission's public register.

This clearance is given only to the proposed acquisition described in the notice seeking clearance dated 15 January 1997.

Dated at Wellington this day of 1997

J G Auton
Member

R N Taylor
Member

The Seal of the Commerce Commission
was affixed hereto in the presence of:

J G Auton
Member

Date: / /1997

¹ In this report, the term fruit juice product covers both 100% juice products and fruit drinks which contain a proportion of fruit juice.