The Competition Authority
An tÚdarás Iomaíochta

DETERMINATION OF MERGER NOTIFICATION M/12/030 – C&C / Gleeson

Section 21 of the Competition Act 2002

Proposed acquisition by C&C Group plc of M&J Gleeson (Investments) Limited

Dated 27/02/2013

Introduction

1. On 18 December 2012, in accordance with Section 18(1)(a) of the Competition Act, 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition by C&C Group plc ("C&C Group"), through its wholly owned subsidiary C&C (Holdings) Limited ("C&C Holdings"), of the entire issued share capital of M&J Gleeson (Investments) Limited ("Gleeson") from M&J Gleeson (Holdings) ("Gleeson Holdings").

The Undertakings Involved

The Acquirer

2. C&C Group is an Irish registered public limited company. C&C Group is headquartered in Dublin and its manufacturing operations are based in Clonmel, Co. Tipperary, Glasgow, Scotland and Somerset, England. The proposed acquisition will be made by C&C Holdings, an Irish registered company, which is a wholly owned subsidiary of C&C Group.

3. C&C Group is involved globally in the manufacture, marketing and supply of branded long alcoholic drinks ("LADs"), specifically cider and beer products, to wholesalers and retailers both in the on-trade and off-trade sectors. C&C Group, through its wholly owned subsidiary Bulmers Limited, manufactures cider in the State and markets and supplies cider in the State under the Bulmers brand, alongside other smaller brands such as Linden Village Cider and Ritz Perry. Internationally, in the UK, some other EEA Member States, North America and the Asia Pacific area the cider manufactured by C&C Group is principally marketed through the Magners brand.[1] C&C Group also manufactures and owns the Gaymer Cider Company range of branded and private label ciders and Hornsby's (a craft cider brand) and Vermont Hard Cider Company, LLC in the US.[2] In addition, C&C Group also manufactures the various Tennent's beer brands following

[1] For the avoidance of doubt, Bulmers brand products sold in the State are produced by Bulmers Limited, a subsidiary of C&C Group plc. Bulmers Limited owns the trade mark Bulmers® in the Republic of Ireland. Cider produced by C&C Group plc is sold outside the State under the Magners brand. Bulmers brand products sold outside of the State are the responsibility of HP Bulmer Limited ("HP Bulmer") of Hereford, UK, a company which is not connected, in any way, with C&C Group. HP Bulmer is ultimately owned and controlled by Heineken International.
[2] C&C Group completed the acquisition of Vermont Hard Cider Company LLC in December 2012.

the acquisition in 2009 of the Tennent's business from InBev UK Limited, InBev Ireland Limited and Brandbrew SA.[3]

4. Through the Tennent's business, the C&C Group acts as the exclusive supplier for a range of AB InBev's (ABI) (excluding Budweiser) products sold in Ireland and Northern Ireland under an agreement entered into in 2009. Within the State, Tennent's is ABI's exclusive supplier for both the on-trade and off-trade (again excluding Budweiser). The principal brands supplied under this agreement are Stella Artois, Beck's, Beck's Vier, Hoegaarden, Leffe, Boddingtons and Bass. In addition, Tennent's supplies Budweiser in Scotland and packaged Budweiser in Northern Ireland.[4] However ABI has reserved the right to supply direct to off-trade national multiple retail customers and the duty free sector.

5. C&C Group has a shareholding of over […] in Five Lamps Dublin Brewery Limited, which produces beer sold in a small number of on-trade licensed premises in Dublin.

6. C&C Group sells its packaged products (e.g., bottled and canned products) to independent wholesalers, cash and carries, and multiples with regional distribution centres. It sells its kegs (draught products) to on-trade customers, (e.g., pubs, hotels, clubs and restaurants). Both packaged products and kegs are delivered by contracted third party logistics service providers ("LSPs"). Similarly, C&C Group sells packed ABI products to independent wholesalers, cash and carries, and multiples with regional distribution centres, and it sells ABI kegs to on-trade customers. Again, the ABI products are delivered by LSPs. Even with respect to the sale of ABI products, C&C Group thus functions quite differently from full-service, multi-product independent wholesalers.

7. In Northern Ireland, the C&C Group, through Tennent's NI, is involved in the distribution of its own products, together with a range of AB InBev products to wholesaler and retailer customers. Tennent's NI also distributes Guinness stout to a number of on-trade customers in Northern Ireland.

8. For the financial year ending 29 February 2012, C&C Group had a worldwide turnover of approximately €716.7 million and a turnover in the State of approximately €142.5 million.

The Vendor

9. Gleeson Holdings is the parent of Gleeson and is an Irish registered private unlimited company. Gleeson Holdings is owned by Mr. Patrick J. Cooney and his immediate family.[5]

10. Gleeson Holdings also owns and controls Adams Cider Company Limited which manufactures cider products (through the Adams Irish, Devil's Bit and Pippins brands). Gleeson submits that the Devil's Bit is

[3] See Merger Determination M/09/018 – C&C Group / Tennent's Business available at http://www.tca.ie/images/uploaded/documents/M-09-018%20C&C%20Group%20-%20Tennents%20Business%20Public.pdf

[4] Diageo has the exclusive licence to produce draught Budweiser in the State and is the exclusive distributor of packaged Budweiser lager in the State.

[5] Mr. Cooney holds […] of the shares in Gleeson Holdings with the remaining […] held […] by five members of the Cooney family.

the only Gleeson Holdings cider brand currently sold in the State. It is primarily distributed by Gleeson.[6] The parties have confirmed that these brands do not form part of the proposed transaction and will not be acquired by C&C Group. Furthermore the parties have confirmed to the Authority that the cider manufacturing business together with the ownership of the Devil's Bit, Adams Cider and Pippins brands are now wholly contained within Adams Cider Company Limited, which is a wholly owned subsidiary of, and solely controlled by, Gleeson Holdings.

11. In addition, Gleeson Holdings, though Gleeson's wholly owned subsidiary Robert A. Merry & Co Limited ("Merry & Co") is involved in the manufacturing of cream liqueur products (under the Merry's brand). This business will not form part of the proposed transaction and is to be transferred to Gleeson Holdings immediately prior to completion of the Proposed Transaction.[7]

12. Gleeson Holdings have confirmed that it will remain active in both the cider and cream liqueur businesses post-completion of the Proposed Transaction. In particular Gleeson Holdings intend to continue to manufacture and market 'Devil's Bit' cider and have entered into Memorandum of Understanding to ensure the continued production, distribution and sale of the cider.[8] Devil's Bit is the only Gleeson Holdings cider brand currently sold in the State, and in 2011 had a market share of […].[9] Gleeson Holdings have confirmed to the Authority that it is envisaged that Gleeson will have the non-exclusive right to distribute Devil's Bit. Adams Cider will continue to make Devil's Bit available to all market channels.

The Target

13. Gleeson is an Irish registered company and is based in Borrisoleigh, Co. Tipperary. Gleeson has 18 wholly-owned subsidiaries and holds in excess of […] in two further subsidiaries.[10] Gleeson is a wholly owned subsidiary of Gleeson Holdings.

14. Within the State, Gleeson is primarily involved in the wholesale distribution of beverage products (both alcoholic and non-alcoholic) such as LADs, wine, spirits, soft-drinks and water. Gleeson serves […] on-trade outlets (public houses, restaurants and hotels) and delivers to […] off-trade outlets (shops, catering companies, distributors, supermarkets and forecourt retail outlets) across the state.[11] Gleeson currently services approximately […] delivery routes across the State from its nine depots, and this gives its wholesale distribution business national coverage.[12] Gleeson is not engaged in the brewing or manufacturing of alcoholic drinks. Gleeson also supplies polyethylene terephthalate bottles ("PET bottles") to drinks manufacturers.

15. Within the State Gleeson is also engaged in the manufacturing of non-alcoholic products including the Tipperary and Crystal Springs mineral water brands; soft drinks under the Finches, Country Springs, Score

[6] […]
[7] As per Clause 6 of the Share Purchase Agreement dated 22 November 2012
[8] The Memorandum of Understanding is dated […].
[9] Source: Statistics obtained from Euromonitor.
[10] Namely: Labarca Limited and Bavaria City Racing Limited, both Irish registered companies.
[11] Source: [Internal documents provided by the parties].
[12] Information provided by Gleeson in response to questions raised by the Authority.

and Cadet brands; freeze pops under the Magic Stick brand and a range of own-label brands for a number of retailers and suppliers.

16. The wholesale distribution business involves the purchase by Gleeson of beverage products from manufacturers and suppliers and the onward sale of those products to on-trade and off-trade outlets, delivering on a nationwide basis from its nine distribution centers.

17. In Northern Ireland, Gleeson activity is limited to the sale of non-alcoholic beverages (principally soft drinks). It has a warehouse and distribution arrangement with Johnson Bros for this activity. Additionally, Gleeson has a […] stake in Beck & Scott Services Limited, a water container supply company based in Belfast.[13]

18. Gleeson also acts as agent in Ireland for products such as Boost and Monster soft drinks, Bavaria Beer (a lager from the Netherlands) and some "world" beers.[14] In respect of a limited range of Molson Coors products, Gleeson has a logistic support contract under which it delivers and provides technical support.[15]

19. Gleeson also acts as agent in the State for some wine producers such as Blossom Hill, Santa Rita, Faustino, and Yellow Tail. Gleeson purchased the Gilbeys wine business in 2010 and it is now, according to Gleeson, *"the largest wine importer and distributor in Ireland."*[16]

20. Gleeson also manufactures cream liqueur products (under the Merry's brand) through its subsidiary Merry & Co. This business will not form part of the proposed transaction and will be transferred to Gleeson Holdings immediately prior to completion of the Proposed Transaction.

21. For the financial year ending 30 June 2012, Gleeson had a worldwide turnover of €[…] and a turnover in the State of €[…].

The Proposed Transaction

22. This is an acquisition of the entire share capital of Gleeson pursuant to a Share Purchase Agreement dated 22 November 2012. The consideration to be paid is €12.4 million.

23. The proposed acquisition will not include the transfer from Gleeson of the manufacturing, marketing or ownership of the cider business of the Gleeson Group. Nor will the proposed transaction include the Merry's Cream liqueur business. Both of these business units and the brands concerned will be retained by the vendor (please see paragraphs 10 and 11 above). Gleeson Holdings have also confirmed to the Authority that Gleeson Holdings will remain active in both the cider and cream liqueur businesses post-completion of the Proposed Transaction.

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[13] Gleeson submits that Gleeson do not have control over this business and it is purely a financial investment for Gleeson.

[14] The 'world' beers for which Gleeson acts as agent in the State include Warsteinner (a pilsner style beer from Germany), Weihenstephan (a wheat style beer from Germany), Budejovicky Pivo 1795 (a beer from the Czech Republic), Estrella (a beer from Spain), Menabrea (a beer from northern Italy) and Duvel (a Belgian style golden ale)

[15] This contract runs until […].

[16] See: http://www.gleesongroup.ie/brands/wines/index.html

The Rationale

24. C&C Group have stated that the commercial objective sought to be achieved by the proposed transaction is to *"accelerate the re-shaping and diversification of its activities in Ireland"*.[17] Mr. Stephen Glancey, CEO of C&C stated that *"[t]he acquisition has the potential to transform our existing Irish business through the addition of an extensive distribution network and the creation of an attractive, multi-beverage brand platform."*[18]

Third Party Submissions

25. One third party submission was received by the Authority. The submission raised concerns that the proposed transaction would combine the owner of the largest "must stock" packaged brand (i.e. Bulmers cider) with the largest wholesale distributor in the State to the on-trade sector, giving C&C/Gleeson "unassailable market power" that could result in foreclosure. This is in the context of what the third party stated is a move in the State to a 'one-stop-shop' approach to purchasing products for the licensed sector.

26. The submission identified the following key elements that could give rise to the alleged 'unassailable market power' referred to above:

- C&C/Gleeson could use Bulmers as a 'fighting ship' to attract customers to the wholesale arm, thus preventing competition for a range of products at the wholesale level;

- Bulmers might not be made available on fair, reasonable and non-discriminatory terms to other suppliers;

- the supply of Bulmers might be made conditional on the supply of other products, e.g. soft drinks or other LAD products, and thus foreclose other markets to other suppliers;

- the use of the C&C on-trade financing model could enable C&C Group to make financing conditional on exclusive supply from its portfolio of products;[19] and,

- the merged entity's market power could result in a reduction in services and choice for customers (licensed premises) with the result that prices could potentially increase while choice decreased.

27. The Authority engaged with the third party to clarify the concerns identified and full analysis of the issue is considered in paragraphs 32 to 129 below.

The Investigation

28. The Authority conducted an extended Phase 1 review of the proposed transaction. As part of the investigation process, in order to ascertain

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[17] Information submitted in the notification by the parties.
[18] As stated in the C&C stock exchange announcement dated 22 November 2012, available at: http://www.ise.ie/app/announcementDetails.aspx?ID=11404961
[19] The on-trade financing model operated by C&C Group essentially involves the advance of a loan to licensed premises (e.g. public houses) and the repayment of this loan in cash or off-set against purchases of product.

the views of other participants in the market, including wholesalers, beverage manufacturers and retailers (both in the on-trade and off-trade sectors) and trade associations, the Authority designed separate questionnaires for each category of market participant.

29. The questionnaire consisted of general questions about the industry and sought to ascertain the views of the respondents about the proposed transaction. In total 22 questionnaires were issued and the Authority received 17 responses. During the investigation, one third party summons was issued by the Authority, compelling the third party to appear before the Authority as that party had failed to respond to the questionnaire. The third party duly appeared and complied fully with the provisions of the witness summons.

Requirement to provide Further Information

30. The Authority required further information from the parties to assist it with its investigation into the likely effects of the proposed transaction. Therefore, on 16 January 2013, the Authority served Requirements to provide Further Information ("RFI") pursuant to section 20(2) of the Act on C&C Group and Gleeson.

31. The parties duly complied with the RFI on 29 January 2013. Section 19(6)(b)(i) of the Act provides that the date of compliance with an RFI becomes the new date from which the one-month Phase 1 period runs, thereby resetting the deadline by which the Authority must make its Phase 1 Determination Thus, the one-month period recommenced on 29th January 2013.

Analysis

Description of the Supply Chain in the State

32. In recent years the Authority has conducted analyses of wholesale distribution in the grocery and drinks sector in the State. This provides a useful background for the Authority's assessment of the proposed transaction in terms of the supply and route to market for beverage products.

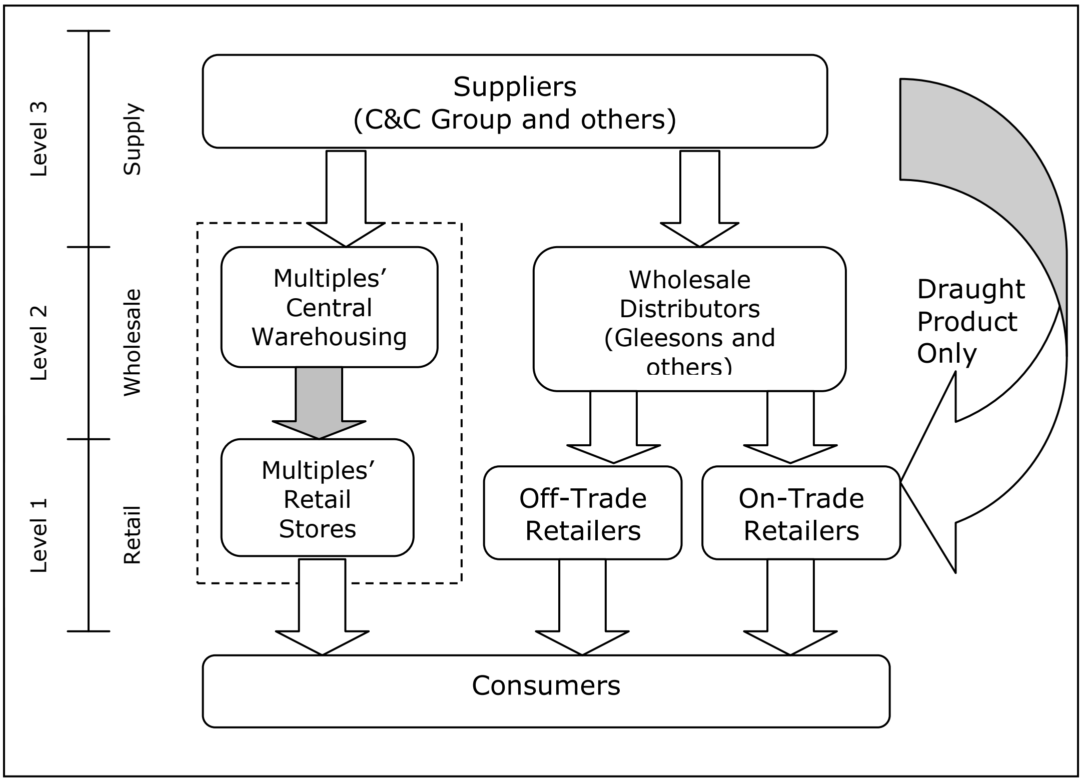
33. As indicated by Figure 1 below, suppliers typically provide beverage products either directly to retailers or to wholesalers who in turn sell to retailers. The choice of direct supply versus supply via wholesalers depends on various considerations including how best to manage:

- The physical delivery of beverage products from suppliers to wholesale or retail buyers; and,

- The financial risks associated with supplying beverage products from suppliers to wholesale or retail buyers.

Supply of Beverages in the State

Figure 1 Illustration of Supply Chain



Source: Adapted from the Grocery Monitor Report No. 1 pp. 15.

34. In addition, there is a further distinction in the provision of alcoholic beverages in either packaged format or draught format and consequently what route to market to take for each. In *Guinness/UB* the Authority took the view that there are significant differences in the manner in which draught beer and packaged beers are distributed.[20] The decision notes that draught products are generally distributed by brewers directly (either through their own vehicles or by agents such as LSPs), and this is principally due to the large bulky nature of the product and the varied ancillary products required with delivery, whereas there are not the same requirements for packaged products (i.e. bottled or can produce).

35. Bulmers, the principal product of C&C, is made primarily in packaged format. C&C Group have confirmed that its packaged products are delivered direct to wholesalers (who then sell them on to retailers) and to C&C Group's largest off-trade customers (e.g. the multiples). C&C's draught product is delivered to the on-trade by an LSP.

36. Based on the information available to the Authority, the differentiation in distribution of draught and packaged products appears to apply to all LADs and seems likely to continue. The Authority therefore considers that the delivery of draught products to the on-trade should be excluded from this analysis of distribution, with the focus being on packaged beverages.

[20] CA/17/97 Guinness Ireland Group Limited/United Beverages Holdings at paragraph 54

Wholesaling of Beverages

37. Wholesaling typically consists of five key activities:

- Purchase of goods from suppliers;
- Storage of goods;
- Sale of goods to retailers and other customers who are not end consumers;
- Delivery/distribution of goods to those customers;
- Provision of credit to those customers.

Retailing of Beverage Goods

38. Retailers are the final link in the distribution chain of beverage goods from the supplier to the end consumer. It is at the retail level that competition is most apparent as this is where the end customer chooses which beverage product to purchase and from whom. In the retail of alcoholic beverages in particular this can be further sub-divided between licensed off-trade retail outlets (multiples, garage forecourts, small independent specialist retailers or the symbol group stores) and licensed on-trade retail outlets (pubs, hotels, clubs, restaurants etc).

Horizontal Overlap in the Activities of the Parties

Manufacture of alcoholic beverages

39. C&C Group is principally engaged in the manufacture, marketing and supply of cider and beer products in the State. C&C Group produce beer under various 'Tenants' brands. In addition, C&C Group acts as the exclusive supplier for a range of ABI products in the State as set out at paragraph 4 above.

40. Prior to the proposed transaction Gleeson was involved in the manufacturing of cider and cream liqueur products. However, the parties have confirmed to the Authority, as discussed at paragraphs 10 to 12, 20 and 23 above, that these activities will not form part of the proposed transaction and will be transferred to Gleeson Holdings immediately prior to completion of the Proposed Transaction.

Manufacture of non-alcoholic beverages

41. Gleeson manufactures a range of non-alcoholic beverages and products, namely Tipperary and Crystal Springs water brands; soft drinks Finches, Country Spring, Score and Cadet; and freeze pops Magic Stick. C&C Group does not manufacture, market or sell any non-alcoholic beverages. Thus, in the context of manufacturing or marketing of non-alcoholic drinks, there is no horizontal overlap between the activities of the parties.

Agency / Exclusive Distributor

42. Gleeson also acts as agent or exclusive distributor in Ireland for several beer products. This includes taking full title to the products,

setting prices and carrying out the marketing and sales functions with respect to those products. The products for which Gleeson acts as exclusive agent include the Dutch Beer 'Bavaria', the German beers 'Warsteinner' and 'Weihenstephan', the Czech beer 'Budejovicky Pivo 1795', the Spanish beer 'Estrella', the Italian beer 'Menabrea' and the Belgian beer 'Duvel'. In addition, in respect of a limited range of Molson Coors products, Gleeson has a logistic support contract under which it delivers and provides technical support.[21]

43. Gleeson also acts as agent in the State for some wine producers such as Blossom Hill, Santa Rita, Faustino, and Yellow Tail. Gleeson purchased the Gilbeys wine business in 2010 and it is now, according to Gleeson, *"the largest wine importer and distributor in Ireland"*

44. C&C Group acts as the exclusive supplier for a range of AB InBev's (ABI) products sold in Ireland and Northern Ireland discussed at paragraph 4 above.

Wholesale distribution of beverages

45. Within the State Gleeson is primarily involved in the wholesale distribution of beverage products (both alcoholic and non alcoholic), such as LADs, wine, spirits, soft-drinks and water. Gleeson distributes on a nationwide basis to customers in the on-trade (public houses, restaurants and hotels) and the off-trade (shops, catering companies, distributors, supermarkets and forecourt retail outlets).

46. C&C Group is not active in the wholesale distribution of beverage products (both alcoholic and non alcoholic) in the State.

Conclusion on Horizontal Overlap in the Activities of the Parties

47. It is possible to argue that a horizontal overlap exists within the State between the activities of the parties in a wider supply and distribution context, particularly in the distribution of beer products and agency beer arrangements. However the Authority considers that, to the extent that such overlap exists, it is competitively insignificant. If one considered a wider LAD market, any increase in market share is minimal, and if one considered the narrower market of beer, the market shares are even smaller. C&C has only a […] share of the beer category within the State. In addition, C&C Group has confirmed to the Authority that it supplies the ABI products in the same way as its own manufactured cider and beer products, as set out at paragraph 6 above.

48. For the reasons given above, the Authority has concluded that horizontal issues will not result in a substantial lessening of competition. The most significant issues are vertical, and relate to wholesale distribution. These are addressed below.

[21] This contract runs until […].

Competitive Assessment of Vertical Issues Related to Wholesale Distribution

Relevant Product Market

Views of the Parties

49. In the notification the parties submit that the narrowest possible product market in which the competitive effects of the Proposed Transaction should be analysed is the wholesale distribution market for LAD beverages, i.e. the wholesaling of packaged beer (stout, ale and larger) as well as cider and alcopops, and excluding soft drinks, mixers and water. In support of this view the parties referred to a number of previous determinations by the Competition Authority, namely:

   (i) CA/17/97 Guinness Ireland Group Limited/United Beverages Holdings ("*Guiness/UB*");

   (ii) M/05/027 – Gleeson/United Beverages ("*Glesson/UB*");

   (iii) M/09/018 – C&C Group/Tennent's Business ("*C&C/Tennets*"); and

   (iv) M/10/024 – Gleeson/Gilbeys of Ireland ("*Gleeson/Gibleys*").

View of the Authority

50. As C&C Group is primarily involved in the manufacturing and supply of branded LADs, specifically cider and beer products, and the target Gleeson's activities are concentrated on the wholesale distribution of packaged beverages (both alcoholic and non-alcoholic), the Authority will focus the product market definition below on the wholesale distribution level. The Authority includes Cash & Carries in wholesale distribution, as it did in previous determinations.

51. The Authority has examined a number of mergers in the wholesaling and distribution in the beverage sector in recent years, identified above at paragraph 49. Although changes over time may mean that a market appropriate for one merger may not be appropriate for another, those investigations nonetheless provide a useful background for the Authority's assessment of the proposed transaction.

52. In Guinness/UB, the Authority considered a relevant product market to be "*the wholesaling of packaged beer and soft drinks*".[22] This product market included beer (stout, ale and larger), cider, alcopops, soft drinks, mixers and mineral water.

53. In Gleeson/UB the Authority identified three product markets at issue in the proposed transaction, each of which had a substantial competitive influence on the others. These were the "one stop" wholesaling and distribution of both alcoholic and non-alcoholic beverages, wholesaling and distribution of alcoholic beverages, and wholesaling and distribution of non-alcoholic beverages.[23]

[22] At paragraph 55.
[23] At paragraph 19.

54. In Gleeson/Gilbeys, the Authority also examined the wholesale distribution market. Gilbeys was principally involved in the wholesale distribution of wine. For the purpose of the competitive effects analysis, the Authority assessed the proposed transaction by reference to both a "narrow" market for the wholesale distribution of wine, and a broader market for the wholesale distribution of alcoholic and non-alcoholic beverages.[24]

55. This suggests that there may be a number of different product market definitions. However, in the present case it is not necessary to reach a definitive conclusion on the market definition. The Authority's investigation found any adverse effect on competition from the acquisition would most likely be manifested in the wholesaling and distribution of packaged cider. Accordingly, this is the focus of the competitive effects analysis.

On-trade versus Off-trade

56. As stated in paragraph 34, in *Guinness/UB* the Authority was of the view that there were significant differences in the manner in which draught beer and packaged beers are distributed. The decision notes that draught products are generally distributed by brewers directly (either through their own vehicles or by agents), and this is principally due to the large bulky nature of the product and the varied ancillary products required with delivery.

57. Based on the information supplied by the parties in the notification and in the responses received to the RFI this differentiation appears to remain and to apply to all LADs. The Authority therefore considers that the delivery of draught products to the on-trade should be excluded from the market analysis, and it is thus correct to focus on packaged beverages.[25]

58. Regarding the proposed transaction, the information received from the parties and from third party submissions indicate that there are significant differences in the characteristics of the on-trade and off-trade and in the type of service that the wholesale distribution sector offers. There are significant differences for example in how wholesalers set prices to the on-trade and off-trade, in how products are marketed, and in how these products are distributed and supplied.

59. Like the other beverage manufacturers, C&C delivers its LAD products directly to its larger retail customers – i.e. the multiples. Smaller retailers and off-licences are serviced indirectly by the wholesale distribution sector.

60. For packaged LAD products C&C relies on the wholesale distribution sector for its route to market to the on-trade retailers other than the multiples. Due to the fragmented nature of the 'on-trade' channel and the frequent purchases of small quantities, and the lack of any longer term contracts, brand owners tend not to deal directly with the non-multiple on-trade channel.

[24] At paragraph 20.
[25] In Heineken/S&N, the Authority also found that it was appropriate to make a distinction between supply to the on-trade channel and supply to the off-trade channel. See paragraph 3.26 of the Heineken Decision available on the Authority website at http://www.tca.ie/images/uploaded/documents/M08011%20Heineken-S&N%20Determination%20public.pdf

61. As will be discussed at paragraphs 69 to 116 below, the key concern arising out of this acquisition is the suggestion that C&C/Gleeson might engage in input foreclosure and deny competing wholesale distributors access to its products (particularly Bulmer's and other C&C LADs). It is the Authority's view that any foreclosure that might result would have the greatest impact on the on-trade sector. C&C currently supplies larger retail customers directly, and this will not change as a result of the merger. Information received from the parties and from third parties indicates that Bulmers is not a critically important "must have" brand for the smaller off-trade outlets. In contrast, one third party submission from a wholesale distributor to the on-trade stated that the first question their on-trade customers ask is "what price can you supply Bulmers?". This level of brand importance was not as evident in the off-trade sector.

62. Therefore, in order to examine the sector in which the proposed acquisition is most likely to have an adverse impact, the Authority will focus its analysis on the on-trade sector.

Geographic market

63. The parties submit that the relevant geographic market is national. In response to the RFI, Gleeson described the national distribution network for its main competitors. Two of these are national (Comans and Britvic) while Western Beverages, East Coast Supplies Ltd and Kelly & Co. Ltd., although not national, have wide geographical distribution areas. In addition, the parties refer to the Authority's Guinness/UB, Gleeson/UB and Gleeson/Gilbeys determination in which the geographic markets were found to be national. In Gleeson/UB the Authority also examined the transaction with respect to local submarkets.[26]

64. The Authority sees no reason to depart from the view expressed in its previous determinations to the effect that a national geographic market is appropriate.

Conclusion on Relevant Market

65. For reasons given above, the Authority will evaluate the competitive effects of the proposed transaction by examining the wholesale distribution of packaged cider to the on-trade sector in the State.

Competitive Assessment of Vertical Issues

Introduction

66. Non-horizontal mergers do not raise the same competition concerns as horizontal mergers.[27] They do not entail the loss of direct competition between merging firms and vertical integration can provide significant opportunities for the achievement of efficiencies.

[26] At paragraph 26.

[27] Competition Authority, Notice in Respect of Guidelines for Merger Analysis ("Merger Guidelines") section 6.4 , Decision No. N/02/004 (16 December 2002), available at http://www.tca.ie/images/uploaded/documents/n_02_004%20Merger%20Analysis%20Guidelines.PDF; see also European Commission, "Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings" ("EC Non-horizontal Merger Guidelines"), Official Journal C 265 18/10/2008, P. 06-25, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:265:0006:01:EN:HTML

67. However, vertical mergers such as the proposed transaction can lessen competition through integration of a production/distribution chain.[28] This integration can result in the creation or strengthening of a dominant position. For instance, a non-horizontal merger may increase entry barriers and thus facilitate collusion or otherwise lessen competition.

68. In its assessment of the proposed transaction the Authority identified two theories of harm that raised concerns with respect to vertical issues:

a) the likelihood that the merger would raise the costs of downstream rivals by restricting their access to an important input (input foreclosure), and

b) the likelihood that C&C/Gleeson would foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).

The first issue was emphasized by the majority of third parties who responded to questionnaires. The second issue was identified in the third party submission.

Input Foreclosure

Introduction

69. Assessing the likelihood of anticompetitive input foreclosure in this case calls for a three stage analysis:[29] first, whether C&C/Gleeson would have the ability to foreclose; second, whether it would have the incentive to do so, and, finally, whether a foreclosure strategy would have a significant detrimental effect on competition. If C&C/Gleeson does not have the ability or incentive to foreclose, the merger should not be blocked on this ground.

i) Ability to foreclose

Views of the parties

70. For input foreclosure to be a concern, the vertically integrated firm resulting from the proposed merger must have a significant degree of market power in the upstream market.[30]

71. The parties submit that they do not have this degree of market power and thus do not have the ability to substantially foreclose access to inputs. They state that the downstream product that Gleeson and its rivals seek to sell to their on-trade and off-trade customers is a full range of LAD products. In response to the RFI, C&C Group estimate that its sales do not exceed […] of the total LAD products offered by wholesalers to their customers. C&C Group submit that if Gleeson's rivals were denied supplies of C&C Group LAD products (including Bulmer's cider) they could easily replace them with supplies from other LAD producers.

[28] See Merger Guidelines sections 6.4 – 6.5.
[29] See EC Non-horizontal Merger Guidelines paragraph 32. The EC's Guidelines set out a helpful exposition of the theories of harm highlighted by the third parties.
[30] EC Non Horizontal Guidelines paragraph 35.

72. C&C Group submitted to the Authority that in the case of cider, competing products are easily available to Irish wholesale distributors, including such brands as Stella Artois Cidre, Kopparberg, Rekorderlig, Druids Celtic Cider and Devils Bit.[31] Additionally, Heineken, through Heineken Ireland, supplies Cashels Cider, Scrumpy Jack Cider and Stonehouse Cider within the State, and through Heineken International, via HP Bulmers in the UK, manufactures and markets Bulmers, Woodpecker and Strongbow ciders in the UK. Strongbow cider is also available on sale within the State. Potential suppliers of branded cider to Irish wholesale distributors exist such as Carlsberg, which has launched Somersby cider in a number of markets including the UK, and Molson Coors, which announced the launch of Carling cider in the UK in March 2013.[32]

Views of the Authority

73. The information supplied by the parties and third parties indicates that the Bulmers brand is an important input for wholesalers in the market for the wholesale distribution of packaged cider to the on-trade sector in the State. Cider accounts for over a quarter of total packaged beverages sold to the on-trade. Bulmers accounts for approximately 85% of the on-trade cider market in the State.[33]

74. C&C Group Investor Reports state that Bulmers is the number one cider brand by volume, and that 49% of drinkers claim it as one of their three favourite LAD brands.[34]

75. Bulmers is known as a premium brand in the LAD category.[35] The C&C Group states that it has sought to position the brand as a premium brand and the premium nature of the brand is driven by a well invested brand strategy which consistently registers strong brand scores (in terms of consumer recognition) and helps drive consumer preferences for the product.

76. The parties submitted that there are substitutes on the market for packaged cider. However figures supplied by the parties, illustrated in Table 1 below, indicate that these products have very small market presence by comparison to the Bulmers cider.

[31] These ciders are distributed by Diageo on behalf of ABI, supplied by Richmond Marketing, supplied by GDK Drinks Ltd, Manufactured by Coman's Wholesale and Gleeson Holdings respectively.
[32] UK division of Moolson Coors is to launch Carling Cider – see http://www.just-drinks.com/news/molson-coors-carling-british-cider_id109172.aspx
[33] Figures provided to the Authority by a third party.
[34] Available to download from http://www.candcgroupplc.com/investors/meetings/investor-day-webcast
[35] […].

Table 1 – Cider Market Share

ROI Market Share (On-trade and Off-trade)			
	2007	**2009**	**2011**
Bulmers	[…]	[…]	[…]
Kopparberg	[…]	[…]	[…]
Druids Celtic Cider	[…]	[…]	[…]
Devil's Bit	[…]	[…]	[…]
Linden Village[36]	[…]	[…]	[…]
Strongbow	[…]	[…]	[…]
Source: Euromonitor[37]			

77. These figures suggest that while there are substitutes available on the market, Bulmers remains extremely popular. The Bulmers brand ranks high in consumer preference surveys, and alternative products have made limited inroads.

78. The parties submit that there is potential for entry in the market, and provide a number of potential entrants. A recent Bord Bia report also showed that globally, the number of new cider products launched in 2011 was almost three times higher than in 2007, with the bulk of the new launches from European producers – mainly Ireland, UK and Finland.[38] While the Authority agrees that the market for LAD products is innovative, with frequent launches of new brands, there is no evidence to suggest that in the short term a product may emerge to combat the popularity of Bulmers. C&C has itself sought to introduce new variants of the original apple Bulmers product, but these have had little attraction for consumers who prefer and continue to buy the original cider product.

79. The Authority therefore concludes that in the market for the wholesale distribution of packaged cider to the on-trade sector in the State, the Bulmers brand is such an important input for the downstream product that C&C/Gleeson would have the ability to foreclose should it wish to do so.

ii) Incentive to foreclose

Views of the parties

80. The parties maintain that there is no economic reason for C&C/Gleeson to deny other wholesale distributors the ability to distribute its principal brands, in particular Bulmers.

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36 Manufactured by C&C Group (see paragraph 3 above)
37 […].
38 The Bord Bia Report is available for down load on the Bord Bia website at: http://www.bordbia.ie/industryservices/information/alerts/Pages/Potentialforfurtherinnovationincidermarket.aspx

81. The parties claim that, given the financial importance of the Bulmers brand to C&C Group, failure on its part to allow other wholesalers to carry the brand would lead to an immediate loss of revenue. According to the parties, other wholesalers carry a full portfolio of LADs and will continue to exercise a considerable competitive constraint on C&C/Gleeson post-acquisition.

82. C&C Group also submit that […] making this type of foreclosure even less likely.

View of third parties

83. The majority of third parties contacted by the Authority (including competing wholesale distributors, retail customers and trade associations) confirmed that currently wholesale distributors carry the full range of stock that might be required by their customers. (Two respondents stated that due to exclusive arrangements with respect to some brands they are required to buy specific beverage products from specific wholesale distributors.) Investigations also confirmed that customers use multiple wholesalers at any one time and will frequently buy one product from one and a different product from another. When asked if they see this changing post transaction, again the majority of respondents stated that they did not see this changing.

84. Some third party wholesalers expressed concerns that post transaction C&C/Gleeson could do any one of the following:

- refuse to supply Bulmers to them completely; or
- supply Bulmers to them but supply it through Gleeson to retailers at a more competitive or unsustainably low price which they would be unable to match; or
- make supply of Bulmers conditional on the purchase of other products such as other LADs or soft drinks from the C&C Group's combined repertoire.

The complaint was that if one of these strategies was pursued, C&C/Gleeson would essentially foreclose access to the products and marginalise competing wholesalers.[39]

Views of the Authority

85. When examining whether C&C/Gleeson would have the incentive to carry out input foreclosure the Authority is essentially asking whether the benefits of the foreclosure strategy would seem likely to outweigh the costs. Were C&C/Gleeson to explicitly or implicitly deny Bulmers to rival wholesalers, it would face a trade-off between the profits lost in the upstream market (due to the loss in sales of C&C products, in particular Bulmers that would otherwise have been made available to rival wholesale distributors) and the profit gained from expanding sales

[39] Many third party wholesale distributor respondents also sought to highlight to the Authority that wholesale distributors faced increased competition from both cash and carries and the multiples in the sale of alcoholic beverages to the on-trade. In particular, the third party wholesalers highlighted the practice of the multiples in promoting and providing 'special offers' on the sale of alcoholic beverages. Many stated that there is little customer loyalty and customers have arrangements with multiple wholesale distributors and switching suppliers occurs frequently. However, this concern was not identified as a merger specific concern.

in the downstream (wholesale) market through Gleeson's. Weakened downstream (wholesale) competition from rivals no longer able to offer Bulmers conceivably might also allow C&C/Gleeson to raise prices to consumers. The foreclosure strategy is likely only if the trade-off is positive.

86. To estimate the profitability of such a strategy, the Authority has examined the upstream and downstream margins that are currently achieved, Gleeson's capacity to distribute C&C's volumes, the degree to which customers are prepared to switch away from other wholesalers or distributors if they do not have access to Bulmers, and the likely reaction from competitors upstream.

Current Margins Upstream and Downstream

87. The EC Non-Horizontal Guidelines state that, in relation to the incentive to foreclose access to inputs, *"other things constant, the lower the margins upstream, the lower the loss from restricting input sales. Similarly, the higher the downstream margins, the higher the profit gains from increasing market share downstream at the expense of foreclosed rivals".*[40]

88. Information obtained from the parties in response to queries indicates that currently the level of profits C&C/Gleeson can expect to obtain upstream is considerably higher than the level of profits it could expect to achieve downstream.

89. The current operating margin on the sale of packaged Bulmers products by C&C Group to wholesalers is […]. This ranges from an operating margin of […] on Bulmers Litre Bottle, to […] on a can of Bulmers to […]on Bulmers Pint and Longneck Bottles.

90. When compared with the operating margins C&C is making on other LAD products, the margins on Bulmers are […]. For example on a can of AB InBev beer, the net operating margin is […]. On 275ml, 284ml, 300ml and 500ml bottles of the net operating margin is […]. Overall, on all the beer supplied by C&C, C&C submit that they are making net operating margins of […].

91. Gleeson has provided gross margin figures before delivery and other costs on Gleeson's sale of LAD to on-trade customers for a number of different Bulmers SKUs.[41]

Table 2 – Gross Margins.

Bulmers Products	On-trade % gross margin	Off-trade % gross margin
6 months to June 2011	[…]%	[…]%
12 months to June 2012	[…]%	[…]%

Source: Gleeson

92. Table 2 below sets out the gross margins achieved on sales on Bulmers products from January 2011 to June 2012. For the 6 months to June 2011 Gleeson made a gross margin profit of […] (the net margin would be even less) on the sale of Bulmers products to the on-trade sector. This fell to […] in the following 12 months to June 2012.

[40] EC Non-Horizontal Guidelines paragraph 41.
[41] SKUs refers to Stock Keeping Units

93. Additional data submitted by Gleeson showed that for the 12 months to December 2012, Gleeson made […] on trade gross margin on Bulmers products

94. On individual items, Gleeson is making a gross margin of […] on a case (1x12) of Bulmers litre bottle, […] on a case of Bulmers pint bottles and […] on a case (1 x 24) of Bulmers cans. In addition one third party wholesaler confirmed to the Authority that the margin it achieved on the sale of Bulmers products was between […].

95. The figures above show that the margin achieved from the sale of Bulmers products to the on trade sector is declining for wholesalers. Gleeson submit that this is as a consequence of fierce competition between wholesalers regarding the supply of Bulmers Cider pint bottles.

96. For the on-trade sector, Gleeson's gross margins for the wholesale sale of Bulmers products are significantly lower than for other (non-Bulmers) LAD products. Gleeson submit that on non-Bulmers products they are making on-trade gross margins of […]

97. These figures indicate that C&C are currently making […] margins upstream than Gleeson are making downstream, particularly with regard to Bulmers products. Information received for third parties also indicates that across wholesalers margins are much lower than what is being made upstream by manufacturers. If C&C/Gleeson went ahead with an input foreclosure strategy and restricted input sales to other wholesalers, it appears that the initial impact on profits from loss of sales upstream would be considerable. Currently […] of C&C Group sales volume is distributed by routes to market other than Gleeson. The impact on lost profits due to the quantity of sales lost and the margins achieved on those sales would be sizeable.

98. Looking at the impact on the merged entity's profits in the downstream market, there are substantial challenges in the entity's ability to recoup upstream losses. As noted above, downstream margins earned on the sale of LAD products and Bulmers in particular are […] less than those earned upstream. This indicates that the costs of the strategy (the upstream margins foregone) outweigh the potential benefits (downstream margins on sales through Gleeson). For the strategy to be profitable it would require C&C/Gleeson to gain much higher quantities downstream than it loses upstream.

Ability to capture diverted demand

99. In examining the merged entity's ability to recoup sales the Authority has examined Gleeson's capacity to distribute C&C's volumes, the degree to which customers are prepared to switch away from other wholesaler distributors if they do not have access to Bulmers, and the likely reaction from competitors upstream.

100. The incentive for C&C/Gleeson to foreclose depends in part on the extent to which downstream demand is likely to be diverted away from foreclosed rivals and the share of that diverted demand that Gleeson would capture.

101. The EC Non-horizontal Guidelines state that the share of the diverted demand that C&C/Gleeson can capture *"will normally be higher the*

less capacity constrained the merged entity will be relative to non-foreclosed downstream rivals and the more of the products of the merged entity and foreclosed competitors are close substitutes".[42]

102. C&C have submitted that based on Moving Annual Total ("MAT") sales to December 2012, […] of C&C Group's total sales volumes (both draught and packaged products) is currently distributed through routes to market other than Gleeson. For packaged sales through the wholesale and cash and carry sector, […] of C&C Group sales volume is distributed by routes to market other than Gleeson.

103. Given the strong position of C&C Group and the volume of sales using distribution routes other than Gleeson, the Authority does not believe that it would be feasible for C&C Group to distribute entirely through Gleeson, and that Gleeson could not sufficiently quickly increase distribution capacity to deliver the full amount of C&C products.

104. C&C's products to the on-trade are consumed principally in packaged form rather than in draught. C&C have stated that […] of all on–trade sales of C&C products are in packaged form and that […] are in draught. As most of their sales of LAD products are in packaged form, and because C&C do not own a distribution network, C&C state that […].

105. Bulmers is C&C's flagship product in the State. It currently has 100% distribution, and it is the only C&C brand described in third party submissions as being a "must have" brand. While Bulmers is by far the number one cider product on the Irish market, market shares of some competitors are modestly increasing, and C&C might not unreasonably worry that the Heineken Group, which markets the Cashels Cider, Scrumpy Jack Cider and Stonehouse Cider in the State and which owns HP Bulmers in the UK, a company that manufacturers and markets Woodpecker, Strongbow and Bulmers ciders in the UK, could be capable of responding quickly to opportunities.[43] The on-trade sector could be more open to looking for a substitute product from a competitor than they have been in the past, if C&C/Gleeson cut off (or effectively cut off) access to its products to wholesale distributors. A strategy that could potentially reduce Bulmers availability in on-trade outlets, particularly when there is so much product innovation going on in the cider market, seems to be quite a risky one.

Extent of diverted demand – reaction from customers

106. For the input foreclosure strategy to be an attractive option lost sales upstream must be minimised and recouped downstream through additional C&C/Gleeson sales. Given the low margins currently being made downstream, C&C/Gleeson would find the strategy profitable only if it captured not only increased sales of Bulmers products but also increased sales of a full range of LAD products.

107. The third party submission highlights this as a key concern. This third party believes that the merger will allow Bulmers to be used as a "fighting ship" to attract as much distribution business as possible to the merged firm thereby preventing competition for a range of

[42] EC Non-Horizontal Guidelines paragraph 42
[43] Heineken Group here refers collectively to both Heineken Ireland and Heineken International.

products at the wholesale level. The third party submited that customers are moving towards a one-stop-shop approach to purchasing products from wholesalers. The third party believes that this could mean that customers would effectively buy their entire portfolio from C&C/Gleeson as it leverages its Bulmers product.

108. If C&C/Gleeson went ahead with its foreclosure strategy, there is no doubt that other wholesalers would be at a competitive disadvantage. However, the information received from the parties, supported by customers and other third parties including bodies representing the interests of the on-trade and off-trade sectors, suggests that the majority of customers are not constrained from buying from more than one wholesaler. The principal factors affecting customers' choice of wholesaler are first and foremost price, followed by speed, quality of service, availability of local distribution and breadth of portfolio. Most customers (on-trade and off) conduct business with more than one wholesaler, selecting to source particular products from alternative suppliers. Even if there is some movement toward more one-stop shopping, nothing would prevent a movement back if Bulmers was not available.

109. Therefore while the on-trade sector may have customer loyalty to Bulmers products, there is no assurance that they would then purchase their entire LAD requirements from Gleeson. If a wholesale distributor is more competitive across the other range of products which the on-trade sector needs then that wholesale distributor will continue to makes sales.

Upstream reaction – other manufacturers

110. The profitability of a foreclosure strategy would also depend crucially on the upstream reaction. In the current context C&C compete in selling LADs with both domestic manufacturers including Diageo[44], Heineken[45] and Molson Coors[46] and with importers such as AB InBev[47] and Richmond Marketing (beers plus Kopparberg cider). While these manufacturers are not as dependent on the services of wholesale distributors as C&C – example 96% of Diageo's sales and 92% of Heineken's sales are draught and thus distributed direct to the on-trade – they seem likely to try to prevent a situation where they become excessively dependent on another LAD owner's distribution network to distribute their packaged products.

111. For example, if a foreclosure strategy resulted in Gleeson becoming the dominant distribution wholesaler to such an extent that other wholesalers could not compete, other LAD owners might fear that C&C/Gleeson would promote their own products to the on-trade sector at the expense of their own. One dominant wholesaler distributor could also result in an increase in distribution costs, as the loss of competing wholesalers allows those remaining to increase prices.

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[44] Diageo not only produces its own suite of products but it also brews draft Carlsberg lager under exclusive license and also acts as the exclusive importer and distributor for branded packaged beer products on behalf of Carlsberg (including Carlsberg Larger and Carlsberg Special Brew).
[45] Heineken Ireland distributes Coors Light, a Molson Coors brand, under licence.
[46] In Ireland, Molson Coors markets and distributes Carling, Grolsch and Cobra; along with a portfolio of world beer brands, including Blue Moon Kastel Cru and Zatec. In addition, it recently purchased the Franciscan Well craft beer brand and micro-brewery in Cork City,
[47] For example direct sales by AB InBev to customers it has reserved for itself under the agreement with C&C Group.

112. The Authority believes that rather than allow the emergence of a single dominant LAD wholesaler, other LAD manufacturers would vertically integrate. The parties have submitted that there are low barriers to entry in the market for the distribution of LAD beverages.[48] The Authority's analysis of the evidence, including its consideration of the views of third parties, has found that the other LAD manufacturers could easily integrate vertically if that were thought necessary to prevent harm to competition in distribution. The parties also estimate that 84% of the total wholesale distribution market for LADs currently is not integrated with existing brewers/manufacturers. The acquisition would change this, of course, but there would be more than sufficient capacity for other brewers/manufacturers post-acquisition. This would ensure that competition downstream is maintained post acquisition. It would also diminish the chances that C&C/Gleeson would be able recoup margins downstream to ensure foreclosure is profitable.

Other evidence

113. The Authority has not seen any other evidence suggesting that a vertically integrated firm in the situation in which C&C/Gleeson would find itself would engage in anticompetitive foreclosure.

Conclusion

114. The Authority has given careful consideration to whether C&C/Gleeson would have (A) the ability to substantially foreclose access to inputs post-merger, and (B) the incentive to do so.

115. Based on the narrowest possible product market in which the proposed acquisition is likely to have an adverse impact, i.e. the wholesale distribution of packaged cider to the on-trade sector in the State, the Authority believes that the parties could have the ability to foreclose Bulmers products.

116. In examining whether post-merger C&C/Gleeson would foreclose, the Authority believes that for the following reasons the parties would not have the incentive to take such a post-merger strategy:

- The information on margins currently being made upstream and downstream by the C&C Group and Gleeson indicates that the level of profits C&C/Gleeson can expect to obtain upstream is […] higher than the level currently of profits it can expect to make downstream.

- It is very unlikely that Gleeson could sufficiently quickly increase distribution capacity to deliver the full amount of C&C products.

- The uncertainty surrounding Gleeson distribution capabilities could put at risk the 100% presence in the on-trade sector that Bulmers products currently have in the on-trade sector. This could in turn lead to the on-trade sector looking to replace Bulmers with cider substitutes.

- There is uncertainty surrounding the extent of demand that would be diverted to Gleeson as a result of foreclosure.

[48] They claim that essentially what is required is a License to distribute alcoholic beverages.

Information from the parties and third parties indicate that the on-trade sector is not constrained from buying from multiple wholesalers and that they source products primarily based on price. Therefore while they may solely use Gleeson to purchase Bulmers products, there is nothing preventing them from continuing to use other wholesaler distributors (including cash and carries) for their other LAD requirements.

- A foreclosure strategy would likely lead to further vertical integration within the sector, which would limit the merged entity's ability to expand sales downstream and thus recoup the profits needed to make foreclosure profitable.

- The Authority also notes that it can investigate any allegation of anticompetitive behavior under section 4 and/or section 5 of the Act.

On-Trade Financing Model

117. As noted in paragraph 26 above, one third party expressed a concern regarding the possible use by C&C Group of its 'On-Trade Financing Model'. The on-trade financing model involves the advance of a loan to licensed premises (e.g. public houses) and the repayment of this loan either in cash or off-set against purchases of product. This is a model widely used in Scotland but not very widely within the State. The third party identified a concern that C&C/Gleeson will use this model to make financing conditional on exclusive supply from the C&C/Gleeson portfolio of products.

118. C&C Group confirmed to the Authority that it began to provide this facility in the State in September 2012 and to date it has […] financing agreements with a total value of about […]. The typical amount advanced so far has been […] with the largest being […]. This activity represents approximately […] of the total on-trade licensed premises in the State (i.e. 8,314 premises) as of July 2012.[49] This facility has therefore […] been taken up by […] number of participants in the on-trade sector. It is something that the C&C Group was engaged in prior to the proposed transaction and has not yet gained significant traction in the sector within the State.

119. The Authority consider that this activity will not result in a significant change with respect to the reaction of customers or result in diverting demand from other products to products of the merged entity. The Authority considers that other suppliers could introduce a similar 'on-trade' financing model of their own if the market began to move in that direction.

120. Similarly, if C&C Group were to increase the use of its on-trade financing and make financing conditional on exclusive supply from the C&C/Gleeson portfolio of products, it would likely invoke a similar reaction from other suppliers. Given alternative sources of products, wholesale supply and financing, the Authority does not believe that it is likely that on-trade financing by C&C/Gleeson – or, more precisely,

[49] Estimate of number of on-trade licensed premises was provided by the parties and is taken from the "Budget 2013 Submission to the Minister for Finance from the Drinks Industry Group of Ireland" available at: http://www.oireachtas.ie/parliament/media/committees/finance/01-DIGI-Budget-Submission-2013---FINAL.pdf

changes in that initiative associated with this acquisition – would substantially lessen competition.

Customer Foreclosure

121. In assessing the likelihood of anticompetitive customer foreclosure, it must be determined whether C&C/Gleeson would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals.[50]

View of the parties

122. The parties submit that there is no reason post merger why C&C/Gleeson would deny rival LAD manufacturers access to its wholesale distribution network. They state that a decision to refuse to distribute competing cider and beer products would mean that C&C/Gleeson would be unable to offer its customers a full range of products and its profitability would likely be adversely affected.

123. The parties also submit that if they did go ahead and foreclose rivals' access to the Gleeson distribution platform, the significant un-integrated capacity in the wholesale distribution market for LADs would be more than sufficient for other brewers/manufactures post-acquisition.

View of third parties

124. The third party submission did raise a concern that C&C/Gleeson might make the supply of Bulmers conditional on the supply of other products (LAD and/or soft drinks), and thus foreclose other markets to other suppliers to on-trade retailers. However, no third party supplier contacted by the Authority raised customer foreclosure as a concern.

View of the Authority

125. The Authority is satisfied that there is sufficient un-integrated capacity and sufficiently easy entry into wholesale distribution that the parties would not have the ability to prevent upstream manufacturers' access to the downstream market.

126. A LAD manufacturer that wishes to distribute its products or indeed that wishes to launch a new cider product on the Irish market would find plenty of wholesale capacity that is not integrated with existing manufacturers.

127. The C&C Group have also provided information which shows that […] in recent years. This supports previous evidence that there is no precedence of customer foreclosure within the sector.

Table 3 – Gross Revenue on Sales to […]

Gross Revenue as values	2008 €	2009 €	2010€	2011 €	2012 €
C&C sales of beer to […]	[…]	[…]	[…]	[…]	[…]

Source: C&C Group

[50] EC Non-Horizontal Guidelines paragraph 59.

128. For these reasons, the Authority does not consider that the transaction would give C&C/Gleeson the ability or the incentive to carry out customer foreclosure.

Authority Conclusion

129. In light of the above, the Authority concludes that the proposed transaction does not raise competition concerns in the State.

Ancillary Restraints

130. Both Gleeson Holdings and Patrick J. Cooney have entered into non-solicitation and non-compete covenants to apply for a period of two years post completion. These restrictions are consistent with past Authority guidance and can be considered as directly related to and necessary for the implementation of the proposed transaction.

Determination

The Competition Authority, in accordance with Section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by C&C Group plc, through its wholly owned subsidiary C&C (Holdings) Limited of the entire issued share capital of M&J Gleeson (Investments) Limited will not be to substantially lessen competition in any market for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins

Member of the Competition Authority

Director, Mergers Division