



DETERMINATION OF MERGER NOTIFICATION M/21/068 – HEINEKEN/COMANS

Section 21 of the Competition Act 2002

Proposed acquisition by Heineken Ireland Limited of Comans Beverages Limited.

Dated: 16 March 2022

Introduction

1. On 30 November 2021, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby Heineken N.V. (“Heineken”), through its wholly-owned subsidiary Heineken Ireland Limited (“Heineken Ireland”), would acquire the entire issued share capital, and thus sole control of Comans Beverages Limited (“Comans”) (together with Heineken, the “Parties”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement dated 19 November 2021 between Heineken Ireland and two individuals, Geoffrey Coman and Thomas Coman (the “SPA”). Heineken Ireland currently has a 25% shareholding in Comans. Under the terms of the SPA, Heineken Ireland will acquire the entire issued share capital of Comans, and thus move from having joint control of Comans to having sole control of Comans.

The Undertakings Involved

The Acquirer – Heineken

3. Heineken is a multinational brewing company based in the Netherlands.¹ Heineken owns approximately 167 breweries and has a portfolio of over 170 beer brands worldwide, including *Heineken*, *Fosters*, *Tiger*, and *Moretti*.

¹ For more information, please see: <https://www.theheinekencompany.com/>



4. In the State, Heineken is active through its wholly owned subsidiary Heineken Ireland.² Heineken Ireland manufactures alcoholic beverages (primarily beer) which it supplies to wholesalers, who in turn sell to on-trade outlets (e.g. public houses, restaurants, hotels, etc.) and off-trade outlets (e.g. supermarkets, off-licenses, catering companies, etc.). Heineken Ireland carries out its brewing activities from Lady's Well Brewery in Cork city, and sells its products throughout the island of Ireland. Heineken Ireland does not manufacture soft drinks, spirits, or wines in the State.
5. Heineken is also engaged in the wholesale supply of alcoholic and non-alcoholic beverages in the State through its indirectly wholly-owned Northern Ireland-based subsidiary United Wine Merchants Limited ("UWM") (a subsidiary of Heineken Ireland),³ and through its current 25% shareholding in Comans.⁴
6. Heineken also provides sales and marketing services for the *Coors* brand in the State, for which it is the exclusive licensee in the State. Further, Heineken provides sales and marketing for beverage brand owners in the State through UWM and through its shareholding in Comans. Such services are generally provided to beverage brands that wish to grow, foster, and develop their presence in the State. The services provided can include activity planning and forecasting, advertising and marketing, sales manager and representative training, key customer account management, promotional activity, new product development, market opportunity assessment, development of sales targets, etc.
7. UWM is an Armagh-based licensed wholesale business which is active in Northern Ireland, and, to a lesser extent, the State. UWM does not own, manufacture, or brew beverages itself. However, it has entered into a number of agreements with the owners of a variety of beverage brands including *Crabbies*, *Old Speckled Hen*, and *Charmaine*, among others. Pursuant to those agreements, UWM acts for the owners of those brands as exclusive agent in the State.⁵ UWM supplies these brands and other third-party brands to other wholesalers and retailers in the State on a wholesale basis. UWM also provides sales and marketing services for its Agency Brands in the State.

² Company registration number IE090921. For more information, please see: <https://heinekenireland.ie/>

³ Company registration number NI018370

⁴ The acquisition by Heineken Ireland of joint control of Comans was cleared by the Commission in its determination in *M/16/011 – Heineken/Comans*, the text of which is available at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-011-Heineken-Comans-Public.pdf>

⁵ Where a business has such an agreement with the owner of a beverage brand, that brand can be described as an "Agency Brand" of that business.



8. For the financial year ending 31 December 2020, Heineken's worldwide turnover was approximately €23.8 billion, of which €[...] was generated by Heineken Ireland in the State.

The Target – Comans

9. Comans is a private limited company incorporated in the State⁶ and headquartered in Belgard Road, Tallaght, Dublin 24. Comans is jointly owned by Heineken Ireland (which currently owns 25% of the issued share capital of Comans), Geoffrey Coman and Thomas Coman (who together currently own the remaining 75% of the issued share capital of Comans).⁷
10. Comans is a wholesale supplier of alcoholic beverages,⁸ soft drinks, water and miscellaneous bar supplies to on-trade and off-trade customers throughout the State. Comans currently operates from depots in Dublin, Cork city, Limerick city, Galway city, and Letterkenny, Co. Donegal. Comans has five business divisions:
- wholesale supply;
 - national distribution for international beer suppliers;⁹
 - beverage brand development;¹⁰
 - wine importation and distribution;¹¹ and,
 - contract keg distribution (logistics).¹²
11. Comans does not own, manufacture, or brew beverages itself. However, it has a number of Agency Brands which it contract-brews (i.e. it enters into agreements with others whereby those others brew these beverages on behalf of the brand owner), including *Dutch Gold* lager, *Hufi* beer, *Prazsky* lager, *Karpackie* lager, *Santa Cruz* beer, *Lomza* beer, *Druids Celtic* cider, and *Rosie's*

⁶ Company registration number IE574749.

⁷ Supra, note 4.

⁸ Including beer, cider, wines, spirits, and ready-to-drink beverages.

⁹ Comans acts as the distributor of a brand which would not otherwise be present in the State. This occurs where, for example, the economics of the brand would not, at least at that stage of the product's lifecycle in the territory, justify the brand owner establishing a local operation. There are several undertakings in Ireland which perform this function and they include companies such as Barry & Fitzwilliam Unlimited Company and Richmond Marketing Unlimited Company.

¹⁰ This involves either developing an existing brand or creating an entirely new brand identity. The development of new beer and drinks brands has been facilitated by the growth of the internet, social media and a willingness of publicans/outlets and consumers to try new beers (e.g., imported and craft beers).

¹¹ There are a large number of wine importers and distributors in the State (of varying sizes), each providing a service to international wine producers who require distribution in the State.

¹² [...].



Dew cider. The Parties state in the notification that Comans will continue to act as agent for these brands in the State following implementation of the Proposed Transaction.¹³

12. As outlined in paragraph 6 above, Comans also provides sales and marketing services for its Agency Brands in the State. The provision of these services results in benefits to the brand owner (promotion of the brand, etc.), to Comans (increased wholesale sales of the brand), and to the retail business customer (increased sales, marketing and display assistance, etc.).
13. For the financial year ending 31 December 2020, Comans' worldwide turnover was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

14. The Parties state the following in the notification:

“The wholesale channel acts as a route to market for Heineken Ireland’s packaged goods (i.e., bottled and canned products) into the on-trade and independent off-trade. [...].

In this context, Heineken Ireland formed a joint venture with Comans in 2016, to which it contributed its wholesale business in the west of Ireland (Western Beverages Limited). [...].

Under the Proposed Transaction, Heineken Ireland will continue to achieve the same outcomes as outlined above, albeit that it will now exercise sole, rather than joint, control over Comans.

Comans will continue to operate as a strong national wholesale distribution company. It has built a solid and credible presence in this sector and has become a successful brand developer and partner for brand owners looking to enter the Irish market. [...].”

Third Party Submissions

15. No third-party submissions were received.

Contact between the Commission and the Undertakings involved

16. On 07 January 2022, the Commission served Requirements for Further Information (“RFIs”) on both Heineken Ireland and Comans, pursuant to section 20(2) of the Act. The service of these RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

¹³ A number of [...] brands [...] are owned by Patrick Coman Unlimited Company, which is solely owned by Geoffrey Coman.



17. The Commission received a full response to the RFI from Comans on 04 February 2022. Upon receipt of a full response to the RFI from Heineken Ireland on 07 February 2022, the “appropriate date” (as defined in Section 19(6)(b)(i) of the Act) became 21 March 2022.¹⁴
18. During the Phase 1 investigation, the Commission requested and received further information and clarifications from the Parties on an ongoing basis.

Market Enquiries

19. During its review of the Proposed Transaction, the Commission contacted a number of third parties, including competitors and customers of the Parties. No competition concerns were raised by any of the third parties contacted by the Commission.

Competitive Assessment

Horizontal Overlap

20. There are horizontal overlaps between the Parties’ activities in the State in respect of: (i) the wholesale supply of packaged alcoholic and non-alcoholic beverages; and (ii) the provision of sales and marketing services for beverage brands. These overlaps were in existence at the time of the joint venture cleared by the Commission in 2016,¹⁵ which resulted in Heineken Ireland’s joint control in Comans.^{16 17}

The Wholesale Supply of Packaged Alcoholic and non-Alcoholic Beverages

Relevant Product Market

21. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission has previously considered the wholesale supply

¹⁴ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

¹⁵ Supra, note 4.

¹⁶ The Parties state in the notification that although Comans also supplies a limited volume of draught alcoholic beverages to on-trade outlets in the State, this is minimal (amounting to sales of only €[...]in 2020), and that its wholesale activities are concentrated largely on the supply of packaged beverages. Therefore, the Commission does not consider any meaningful horizontal overlap to occur in relation to draught alcoholic beverages in the State.

¹⁷ There is also a further horizontal overlap and two related potential vertical relationships arising out of the Parties’ activities in the State, as both UWM and Comans can supply their Agency Brands to other wholesale suppliers in the State, including one another. However, as both UWM and Comans’ Agency Brands have a share of less than 0-5% in relation to the upstream supply of alcoholic beverages in the State, and less than 0-5% in any individual beverage category, the Commission does not consider any meaningful horizontal overlap or vertical relationship to occur in relation to the wholesale supply of Agency Brands in the State.



of packaged alcoholic and non-alcoholic beverages in its determination in *M/16/011 – Heineken/Comans*¹⁸ and in its determination in *M/16/062 – Counterpoint/East Coast/Knockton*.¹⁹ While ultimately leaving open the precise product market definition, the Commission assessed the impacts of these transactions by reference to the wholesale supply of packaged alcoholic and non-alcoholic beverages.

22. In respect of the Proposed Transaction, the Commission has found no reason to depart from the approach taken in the determinations referred to above. Therefore, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has conducted its competitive assessment by reference to the wholesale supply of packaged alcoholic and non-alcoholic beverages.

Relevant Geographic Market

23. While ultimately leaving the precise geographic market definition in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages open, in its determinations in *M/16/011 – Heineken/Comans* and *M/16/062 – Counterpoint/East Coast/Knockton*, while ultimately leaving open the question of the precise relevant geographic market definition in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages, the Commission assessed the impacts of these transactions in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages by reference to regional²⁰ and national markets.
24. In respect of the Proposed Transaction, the Parties state in the notification that pricing in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages is set nationally, that marketing is carried out on a national basis and that all customer accounts are treated the same regardless of geography. The Commission understands that following its determination in *M/16/062 – Heineken/Comans*, Heineken and Comans have amalgamated their wholesale distribution business in the State into a single nationwide network. Further, the responses to the Commission's market enquiries referred to in paragraph 19 above indicate that both Heineken and Comans sell their products to customers on a State-wide basis.

¹⁸ Supra, note 4.

¹⁹For more information, please see the Commission's determination in *M/16/062 - Counterpoint/East Coast/Knockton*, the text of which is available at the following link: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-062-Counterpoint-East-Coast-Public.pdf>

²⁰ Co. Cork, Co. Limerick and Co. Donegal in *M/16/011 – Heineken/Comans*, and Co Dublin in *M/16/062 – Counterpoint/East Coast/Knockton*



25. In light of the above, and in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has assessed its impact by reference to the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.

The Provision of Sales and Marketing Services for Beverage Brands

Relevant Product Market

26. In respect of the provision of sales and marketing services for beverage brands, the Commission has previously considered sales and marketing services in respect of general distribution services. In its determination in *M/17/004 - T Cummins & D Geoghegan (Primeline)/Shannon Transport Limerick (Johnson Brothers)*,²¹ while ultimately leaving open the precise product market definition, the Commission assessed the impacts of that transaction by reference to the provision of sales and marketing services in the distribution sector.

27. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market definition in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the market is defined narrowly (i.e. the provision of sales and marketing services in the beverages sector) or more broadly (i.e. the provision of sales and marketing services in the distribution sector).

28. As outlined in paragraphs 6 and 12 above, the Parties provide sales and marketing services for beverage brands in the State, primarily in respect of alcoholic beverages. The Parties provide these services for beverage brands only, and do not provide these services for any other brands in the State.

29. In light of the above, and in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has assessed its impact by reference to the potential product market for the provision of sales and marketing services for beverage brands.

Relevant Geographic Market

²¹The text of which is available at the following link: https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-17-004-Determination-T-Cummins-D-Geoghegan-Primeline_-Johnson-Brothers.pdf



30. In its determination in *M/17/004 - T Cummins & D Geoghegan (Primeline)/Shannon Transport Limerick (Johnson Brothers)*,²² while ultimately leaving the question of the precise relevant product market definition open, the Commission assessed the competitive impact of the transaction by reference to the provision of sales and marketing services in the distribution sector in the State. In this instance the Commission has found no reason to depart from the approach taken in the determination outlined above in respect of the geographic market definition.
31. In light of the above, and in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has assessed its impact by reference to the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.

Competitive Assessment

The Wholesale Supply of Packaged Alcoholic and Non-Alcoholic Beverages in the State

32. As previously outlined, Heineken's activities in relation to the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State are carried on both via its joint interest in Comans and through its wholly owned subsidiary UWM, as outlined in paragraph 7 above.
33. The Parties submit that they do not typically track the size or performance of the wholesale beverage sector, and are unaware of any third party that does so. However, the Parties estimated their shares in respect of the potential market for the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State in 2019²³ based on sales figures and business activities, as detailed in footnotes 24 and 25 below. The Parties submitted these estimated shares to the Commission, as outlined in Table 1 below:

Table 1: Parties' estimated shares in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State in 2019

Undertaking	Estimated Share
UWM (Heineken)	0-5% ²⁴

²² Ibid.

²³ The Parties submit that sales analyses from 2019 as opposed to 2020 are more appropriate given the effect of Covid-19 on the wholesale distribution sector in general.

²⁴ Heineken Ireland derived this estimate on the basis that total alcohol sales in the State in 2019 amounted to approximately €[...], according to Nielsen market data. UWM's total alcohol sales in the State amounted to €[...], representing [...] % of total alcohol sales in the State in 2019. Heineken submits that it is unclear what proportion of total alcohol sales is represented by wholesale supply of packaged alcoholic beverages, but it considers this 0-5% market share estimate to be conservatively high. This is particularly the case given that the



Comans (incl. Heineken 25% interest)	30-40% ²⁵
Combined	30-40%

34. As is evident from Table 1 above, the Parties' combined share in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages is approximately 35% in the State in 2019.
35. Following implementation of the Proposed Transaction, a significant number of competing wholesalers of packaged alcoholic and non-alcoholic beverages will continue to exert a competitive constraint on Heineken, including C & C Group Plc ("C&C"),²⁶ Musgrave MarketPlace ("Musgraves"),²⁷ BWG Group Unlimited Company ("BWG"),²⁸ Barry & Fitzwilliam Unlimited Company ("B&F"),²⁹ and Ghs Classic Drinks Limited.³⁰
36. Further, the Commission understands from its market enquiries that there are low switching barriers for the wholesale supply of alcoholic and non-alcoholic beverages. It is common for retail customers to source their products from a variety of wholesalers, and it is unusual for a wholesaler to impose an exclusive purchasing agreement upon a retail customer.
37. Finally, Heineken's activities in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State are primarily carried out through its joint control of Comans, as opposed to UWM. The Parties submit in the notification that the nexus of UWM's operations are based in Northern Ireland, as it has no physical depots in the State. The Commission understands following its contact with third parties that UWM has a minimal presence in the State in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages.

wholesale supply of packaged non-alcoholic beverages is included in this potential market, and UWM is primarily focused on the wholesale supply of packaged alcoholic beverages in the State (approximately 80-90% of total net sales in 2019).

²⁵ Comans derived this estimate from its on-trade business activities, in that Comans transacted business with approximately [...] on-trade outlets out of an estimated population of 7,200 on-trade outlets in 2019. Given that Comans' split in net sales between the on- and off-trade segments is relatively even, the Commission considers that this estimate is a reasonable indication of Comans' market share in respect of the wholesale supply of packaged alcoholic beverages in the State.

²⁶ For more information, please see: <https://candcgroupplc.com/>

²⁷ For more information, please see: <https://www.musgravemarketplace.ie/>

²⁸ For more information, please see: <https://www.bwg.ie/>

²⁹ For more information, please see: <https://www.bandf.ie/>

³⁰ For more information, please see: <https://www.classicdrinks.com/>



38. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in respect of the potential market for the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.

The Provision of Sales and Marketing Services for Beverage Brands in the State

39. Heineken does not provide any sales and marketing services in the State itself, other than for its own brands, and for the *Coors* brand for which it is the exclusive licensee in the State (as outlined in paragraph 6 above). However, Heineken also provides sales and marketing services for beverage brands via its jointly controlling interest in Comans and through its ownership of UWM. Both Comans and UWM provide sales and marketing services for their Agency Brands in the State.

40. The Parties were unable to provide estimated market shares in respect of the provision of sales and marketing services for alcoholic and non-alcoholic beverage brands in the State, as they do not typically track the size or performance of the beverage brands sales and marketing sector, and are unaware of any third party that does so. However, the Parties did provide estimated shares in respect of the provision of sales and marketing services for alcoholic beverage brands only in the State, as outlined below in Table 2:

Table 2: Parties' estimated shares in respect of the provision of sales and marketing services for alcoholic beverage brands in the State in 2019.

Undertaking	Turnover Generated (€m)	Estimated Share (%)
Heineken and UWM	[...] ³¹	5-10%
Comans	[...]	0-5%
Combined	[...]	5-10%
Others	[...]	80-90%
Total	[...]	100%

Source: The Parties' estimates. ³²

³¹ This figure refers to turnover generated by Heineken and UWM through the provision of sales and marketing services to beverage brand owners, i.e. it does not refer to revenue generated by Heineken through sales and marketing of the brands which it owns.

³² [...]. Given the wide variety of beverage brands in the State for which sales and marketing services could be provided by competitors of the Parties, the Commission considers that these estimates are reasonable indications of the Parties' market shares in respect of the provision of sales and marketing services for beverage brands in the State.



41. As is evident from Table 2 above, the Parties have a combined share of 5-10% in respect of the provision of sales and marketing services for alcoholic beverage brands in the State in 2019. Given that the Parties' sales and marketing services for beverage brands are almost entirely focused on alcoholic beverages, the Parties submit that these share estimates would decrease further should non-alcoholic beverages be included within the scope of the potential market.
42. There is a large number of competitors currently providing sales and marketing services for alcoholic and non-alcoholic beverage brands in the State. Competitors in this sector include subsidiaries of large and well-resourced international operators, as well as domestic operators, including C&C, Allegro Limited (a subsidiary of Total Produce Limited),³³ Valeo Foods Unlimited Company,³⁴ Richmond Marketing Unlimited Company ("Richmond Marketing"),³⁵ Boyne Valley Unlimited Company,³⁶ and SHS Sales & Marketing Limited, among others.³⁷
43. The Parties submit that brand owners will typically seek to procure an agent/licensee either through a competitive bidding process, or by approaching a number of operators directly, and choosing one in view of capabilities etc. Exclusive agency/licensee contracts generally last for a period of two to five years, and it is not uncommon for brand owners to switch between service providers once this period has elapsed.³⁸
44. In light of the above, and considering that Heineken (through Heineken Ireland) already exercises joint control over Comans, the Commission considers that the Proposed Transaction does not raise any competition concerns in respect of the market for the provision of sales and marketing services for beverage brands in the State.

Conclusion on Horizontal Overlap

45. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in any market for goods or services in the State.

Vertical Relationship

46. The following three existing vertical relationships arise in respect of the Parties' activities in the

³³ For more information, please see: <https://www.allegro.ie/>

³⁴ For more information, please see: <http://www.valeofoodsgroup.com/>

³⁵ For more information, please see: <https://richmondmarketing.com/>

³⁶ For more information, please see: <https://www.boynevalley.com/>

³⁷ For more information, please see: <https://www.shs-sales.ie/>

³⁸ The Parties have provided examples of brand owners switching service provider once a period such as this has elapsed.



State:

- (i) Comans currently supplies Heineken-owned brands to retail customers as a wholesale supplier of packaged alcoholic and non-alcoholic beverages;
- (ii) Comans currently provides logistics services (keg distribution) for Heineken in the State; and,
- (iii) Comans provides sales and marketing services [...].

Wholesale Supply of Packaged Alcoholic and Non-Alcoholic Beverages

47. As outlined previously in paragraphs 3 and 4, Heineken owns a number of brands worldwide, and manufactures some of these brands via Heineken Ireland in the State [...]. Comans is a wholesaler for a wide portfolio of Heineken-owned brands to on-trade and off-trade retail customers throughout the State.
48. In terms of input foreclosure, Heineken estimates in the notification that it has a share of no more than 20-30% in relation to sales of its manufactured alcoholic and non-alcoholic beverages in the State. Even in the beer category (which accounts for the majority of Heineken's sales in the State), Heineken estimates in the notification that it has a share of no more than 30-40% in the on-trade segment, and 30-40% in the on- and off-trade combined segment. In addition, following implementation of the Proposed Transaction wholesale suppliers will be able to source packaged alcoholic and non-alcoholic beverages from competitors of Heineken in the State such as C&C and Diageo Unlimited Company ("Diageo"). Further, as Comans is estimated to have a share of only 30-40% in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State, Heineken's sales of its beverage brands in the State would decrease substantially if Heineken chose to engage in input foreclosure. Accordingly, the Commission considers that Heineken would not have sufficient market power to enable it to engage in any form of input foreclosure in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.
49. In terms of customer foreclosure, Heineken's competitors in the State will be able to sell their beverage products through a wide range of wholesalers, such as those previously listed in paragraph 35 above, following implementation of the Proposed Transaction. Further, in order to compete effectively with such wholesalers, Comans would need to offer customers a full range of alcoholic and non-alcoholic beverages, such as those provided by C&C, Diageo Ireland Unlimited Company ("Diageo"), etc., and accordingly the Commission does not consider that



there would be any incentive for Heineken and Comans to engage in customer foreclosure following implementation of the Proposed Transaction.

50. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in respect of the vertical relationship between the Parties in respect of the wholesale supply of packaged alcoholic and non-alcoholic beverages arising as a result of Heineken's brand ownership/beverage manufacturing activities and Comans' wholesale activities in the State.

Provision of Logistics Services (Keg Distribution)

51. As outlined in paragraph 10 and footnote 12 above, Comans is active in the provision of logistics services, primarily in relation to its own products, and pursuant to a pre-existing distribution arrangement with Heineken whereby Comans physically delivers Heineken's keg products to Heineken's customers throughout Ireland.
52. Comans does not provide this service to any suppliers of keg products in the State other than Heineken. Further, this is a pre-existing vertical relationship, and not one that will be newly created following implementation of the Proposed Transaction.
53. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in respect of the vertical relationship between the Parties arising as a result of the logistics services provided by Comans to Heineken in the State.

Provision of Sales and Marketing Services for Beverage Brands

54. As outlined in paragraphs 6 and 12 above, Comans provides sales and marketing services in respect of its Agency Brands in the State. Comans also provides sales and marketing services for [...]. The Commission notes that this is a pre-existing vertical relationship, not one that will be newly created following implementation of the Proposed Transaction.
55. In terms of input foreclosure, as previously outlined, Heineken estimates that it has a share of no more than 20-30% in relation to the supply of alcoholic beverages in the State. In addition, there are a significant number of alcoholic and non-alcoholic brands sold in the State which are owned by other beverage manufactures, such as Diageo, Van Pur SA, etc. Providers of sales and marketing services will be able to provide services to these beverage brand owners in the State. Accordingly, the Commission considers that input foreclosure is unlikely.



56. In terms of customer foreclosure, the Parties' combined estimated share in respect of the provision of sales and marketing services for beverage brands in the State is 5-10%, as outlined in Table 2 above. Further, the Commission understands from its market enquiries that it is common for brand owners to carry out their own sales and marketing services. Following implementation of the Proposed Transaction, there will remain a number of suppliers for sales and marketing services to beverage brand owners in the State, including C&C, B&F, Richmond Marketing, etc. Therefore, the Commission considers that customer foreclosure is unlikely.
57. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in respect of the provision of sales and marketing services for beverage brands in the State.

Conclusion on Vertical Relationship

58. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in any market for goods or services in the State.

Conclusion

59. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.



Ancillary Restraints

60. The Parties state in the notification that Clause 3.1 of a draft Non-Compete Agreement (the “NCA”) relating to Comans includes certain restrictive covenants which the Parties consider to be directly related and necessary to the implementation of the Proposed Transaction. The Parties confirmed to the Commission that the draft NCA is to be entered into by [...] and Heineken Ireland, following implementation of the Proposed Transaction.
61. The Commission notes that the restrictions referred to by the Parties appear to be contained in Clauses 3.1.1 – 3.1.6 of the draft NCA.
62. The Commission notes that Clause 3.1.1, 3.1.2, 3.1.3(a), 3.1.4, 3.1.5, and 3.1.6 of the draft NCA contain restrictive obligations upon the Covenantor, including [...]. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission. On the basis of the draft NCA, the Commission considers these [...] obligations to be directly related and necessary to the implementation of the Proposed Transaction, insofar as they relate to the State.
63. The Commission notes that Clause 3.1.3(b) of the draft NCA imposes an obligation upon [...]. The Commission is of the view that, when read in the context of Clause 3.1 as a whole, Clause 3.1.3(b) of the draft NCA appears to function as a ‘non-disparagement’ clause rather than a ‘non-compete’ or ‘non-solicitation’ clause. For this reason, the Commission has not reached a view as to whether or not Clause 3.1.3(b) of the draft NCA is directly related and necessary to the implementation of the Proposed Transaction. Therefore, on the basis of the draft NCA, the Commission considers that Clause 3.1.3(b) of the draft NCA will not benefit from the protections offered by section 4(8) and section 5(3) of the Act.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Heineken N.V., through its wholly-owned subsidiary Heineken Ireland Limited, would acquire the entire issued share capital, and thus sole control of Comans Beverages Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission