

Completed acquisition by C&C Group plc of the Tennent's business from Anheuser-Bush Inbev NV/SA Group

ME/4256/09

The OFT's decision on reference under section 22(1) given on 30 November 2009. Full text of decision published 17 December 2009.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

1. **C&C Group plc ('C&C')** is a publicly traded company listed on the Irish Stock Exchange and the London Stock Exchange and is headquartered in Dublin. It is active in the manufacture of alcoholic drinks, primarily in the production of cider. C&C does not brew beer.
2. In Northern Ireland ('NI'), C&C holds exclusive distribution rights¹ for some Molson Coors lager and ale brands ('Molson Coors Products'²) through its subsidiary C&C Northern Ireland Limited ("CCNI"). Following the completion of the merger, C&C also holds exclusive distribution rights³ for some beer brands of the Anheuser-Bush InBev NV/SA group ('ABInBev') in NI ('ABInBev Products'⁴). C&C also operates a wholesaling business through another subsidiary, Quinns Rehill McKeown ('Quinns'), which distributes a range of alcoholic and non-alcoholic drinks.

¹ Under the agreement between Molson Coors and CCNI, CCNI purchases products from Molson Coors on an exclusive basis and sells them to on- and off-trade customers in NI. However, some customers—to whom Molson Coors sells directly—are excluded from the agreement, namely: [...]

² The 'Molson Coors Products' are the Caffrey's ale brand and the Carling, Coors, Grolsch and Sol lager brands.

³ See paragraph 10 below.

⁴ The 'ABInBev Products' are the Stella Artois, Leffe, Becks, Hoegaarden and packaged Budweiser lager brands, and the Bass and Boddington's ale brands.

3. **The Tennent's business** ('Tennent's') is being acquired from InBev UK Limited, InBev Ireland Limited and Brandbrew SA, all of which are part of ABInBev. The Tennent's business comprises:
 - the Wellpark Brewery and other properties (primarily depots and lock-ups) in Glasgow, Scotland
 - worldwide rights to the Tennent's brands and other intellectual property rights, with the exceptions of Tennent's Super and Tennent's Pilsner, which will be licensed back to ABInBev (which will also brew and distribute them)
 - [200,000 to 250,000] kegs and beer dispensing equipment and other loose, machinery and equipment
 - contracts to which the Tennent's business is party
 - a loan book consisting of £21m [Endnote 1] in loans made to loan-tied pubs in NI, Scotland, and in the Republic of Ireland ('ROI'), and
 - goodwill related to the Tennent's business.
4. In the last financial year, the total worldwide turnover attributable to the Tennent's business was some £312m [Endnote 2] of which some £[250 - 300]m was generated in the UK.

TRANSACTION

5. On 28 September 2009, C&C bought Tennent's for a consideration of £180m which is payable in two instalments: the first instalment of £153m was paid on completion of the transaction and the second instalment of £27m is to be paid in September 2010.
6. On 9 October 2009, C&C provided initial 'hold separate' undertakings to the OFT pursuant to section 71 of the Enterprise Act 2002 (the Act).

JURISDICTION

7. C&C has acquired control of Tennent's such that these two enterprises have ceased to be distinct for the purpose of Section 23 of the Act. Furthermore, the transaction qualifies as a relevant merger situation on the turnover test under Section 23(1)(b) of the Act as the UK turnover

attributable to the Tennent's business for the last financial year exceeded £70m (see paragraph 4).

8. The OFT therefore believes that it is or may be the case that the transaction results in the creation of a relevant merger situation.

BACKGROUND

9. In order to assess the position of C&C in the supply of beer, the OFT must first consider: (i) whether to treat the additional distribution agreements that have been entered into by the merging parties alongside the merger, as part of the merger; and, more generally, (ii) how to allocate market shares associated with exclusive distribution agreements.

(i) Treatment of the additional distribution agreements entered into by the parties alongside the merger

10. As part of their broader commercial negotiations, the parties have entered into the following agreements, alongside the merger:
 - a three year brewing agreement under which C&C will brew [500,000 – 1,000,000] hectolitres of ABInBev products for sale in GB,⁵ and
 - three distribution agreements under which C&C will distribute some ABInBev products non-exclusively to the on-trade in Scotland (with some exceptions⁶), and exclusively to the on- and off-trade in NI and ROI (with some exceptions⁷) for 20 years.
11. Although the merging parties negotiated these contracts as part of the wider commercial arrangements between them, the contracts do not form part of the relevant merger situation that is being reviewed by the OFT. (The OFT further considered whether the grant of exclusive distribution rights by ABInBev could itself fall for consideration as a relevant merger situation but concluded it could not.⁸) This is because the OFT's merger assessment under the Act focuses on the competitive impact of the acquisition by C&C of Tennent's (that is, the competitive impact arising

⁵ C&C told the OFT that this is to prevent [].

⁶ Namely, national pub companies, wholesalers, brewers and buying groups, and duty free, military and diplomatic sales.

⁷ Namely, national multiples (on- and off-trade), and duty free, military and diplomatic sales.

⁸ For the following reasons: (i) there is no transfer of any ABInBev asset; (ii) although the agreement has a 20 year term, it is terminable at will by either party after the first five

from the enterprises that cease to be distinct). Any competitive effect arising as a result of these side agreements is outside the merger review process and falls for review by the parties (pursuant to normal self-assessment principles) under the Competition Act 1998.

12. Nevertheless, these agreements are not irrelevant to the OFT's competitive assessment of the merger. Whilst they do not form part of the relevant merger situation, they are clearly a relevant fact for the OFT to take into account in assessing the merger, as they will form part of C&C's portfolio going forward. Therefore, the OFT's merger assessment is conducted on the basis that:

- pre-merger, C&C's portfolio contains exclusive rights for the Molson Coors Products only
- but post-merger, C&C's portfolio contains — in addition to the exclusive rights for the Molson Coors Products — Tennent's (as a result of the relevant merger situation) and distribution rights for certain ABInBev products (as a result of separate contractual agreements between C&C and ABInBev).

13. The question for the OFT in assessing the merger is therefore whether adding C&C's pre-merger portfolio to the Tennent's business, while taking into account C&C's distribution of the ABInBev products going forward, is in itself sufficient to create a realistic prospect of a substantial lessening of competition.

years; (iii) ABInBev retains ownership and overall control of its products; (iv) ABInBev will retain the right [...]; and (v) ABInBev is entitled to refuse to [...].

Chart 1: Details of C&C's portfolio at the supply level in NI – post merger and post ABInBev exclusive distribution agreement

C&C' S PORTFOLIO IN NORTHERN IRELAND 'GOING FORWARD'			
C&C's PORTFOLIO PRE-MERGER		TENNENT'S BUSINESS MERGER DELTA	SIDE AGREEMENT BETWEEN MERGING PARTIES
OWNERSHIP	Molson Coors Exclusive rights	OWNERSHIP	ABInBev Exclusive rights
Cider brands <i>Magners</i>	'Molson Coors Products' Lager / Ale Brands (on- and off-trade) <i>Caffrey Carling Coors Grolsch Sol</i>	Lager brand <i>Tennent's</i> + <i>Loan tied pubs</i>	'ABInBev Products' Lager brands (on- and off- trade) <i>Stella Artois, Leffe, Bass, Becks, Hoegaarden, Boddingtons, Packaged Budweiser</i>

Chart 2: Details of C&C's portfolio at the supply level in Scotland – post merger and post ABInBev distribution agreement

C&C'S PORTFOLIO IN SCOTLAND 'GOING FORWARD'		
C&C PRE-MERGER	TENNENT'S BUSINSS MERGER DELTA	SIDE AGREEMENT BETWEEN MERGING PARTIES
OWNERSHIP	OWNERSHIP	ABI non-exclusive rights
Cider brands <i>Magners</i>	Lager brand <i>Tennent's</i> + <i>Loan tied pubs</i>	Lager and ale brands (on-trade only) <i>Bass, Becks</i>

14. In light of the above:

- in NI, the merger brings together Tennent's lager (popular in Scotland and NI), C&C's cider brands and its exclusive rights for the Molson Coors Products (Carling, Coors, Grolsch and Sol lagers and Caffrey's ale); going forward, C&C will also distribute (as a result of certain exclusive distribution rights) the ABInBev Products (lagers Stella Artois, Leffe, Becks, Hoegaarden and packaged Budweiser, as well as Bass and Boddington's ales), and
- in Scotland, the merger brings together Tennent's lager and C&C's cider brands; going forward, C&C will also distribute (as a result of certain non-exclusive distribution rights) some ABInBev brands (Bass ale and Becks lager).

(ii) Allocation of market shares associated with exclusive distribution rights

15. As the parties do not overlap in the supply of beer (or lager) in Scotland, the OFT has ruled out concerns arising there (see paragraphs 34-35) and has focused its competitive assessment on NI. In NI, there is a pre-existing exclusive distribution agreement between C&C and Molson Coors for the Molson Coors Products (see footnote 2). In addition, there is the exclusive distribution agreement for NI entered into by C&C and ABInBev alongside the present merger for the ABInBev Products (see footnote 4).
16. Under the Molson Coors exclusive distribution agreement, C&C purchases products from Molson Coors, which it sells to the on- and off-trade in NI. In addition, under the ABInBev exclusive distribution agreement, C&C will purchase products from ABInBev and sell them on to the on- and off-trade in NI. The parties submit that the OFT should not consider C&C to be operating in the supply of beer on the basis of these agreements and therefore, should not attribute to C&C the market shares associated with the Molson Coors Products and the ABInBev Products.
17. In support, the parties submit that Molson Coors and ABInBev retain ownership and overall control over their respective products because:
- Molson Coors and ABInBev retain the rights to [], (ABInBev recently sold its Staropramen brand which had until then been part of the ABInBev exclusive distribution agreement)
 - Molson Coors and ABInBev retain []

- ABInBev retains a direct interest in the success of its brands as it is paid an annual royalty based on the net sales value of the ABInBev Products sold
 - some customers — including [] — fall outside the exclusive distribution agreements
 - the Molson Coors exclusive distribution agreement expires on [], and
 - the ABInBev exclusive distribution agreement, nominally for twenty years, is terminable at will by either party after the first five years on payment of an agreed sum.
18. The OFT recognises that brand ownership, on the one hand, and holding exclusive distribution rights, on the other hand, involve different levels and types of control over a brand. However, for the purpose of identifying competitive constraints within the supply of beer, the OFT notes that in its Bass/Interbrew⁹ decision, the Competition Commission ('CC') considered the activity of beer brewing as consisting inter alia of 'marketing the beer that is, the activity carried out by the brand owner or the exclusive distributor' (emphasis added).
19. The OFT further notes that C&C sets prices and markets the Molson Coors Products and the ABInBev Products independently of the brand owners, taking strategic decisions on the commercial position of the brands in NI independently of Molson Coors and ABInBev. Of itself, this ability to independently determine prices for, and market the brands in NI is sufficient for the OFT to consider C&C as active in the supply of beer via these agreements. As a consequence, C&C and Tennent's overlap in the supply of beer in NI.
20. Notwithstanding this, the degree of control of C&C over the Molson Coors Products and the ABInBev Products does merit a degree of caution on the part of the OFT in attributing their respective market shares to C&C.
21. In particular, the parties provide share of supply data based on retail data from AC Nielsen.¹⁰ This data is gathered from the national multiple grocery retailers, Musgraves, and on-trade outlets. However, the national multiple retailers are excluded from the exclusive distribution agreements entered

⁹ See *Interbrew SA and Bass plc*, January 2001, Cm 5014, paragraph 4.13.

¹⁰ AC Nielsen is a Global marketing research firm.

into by C&C with ABInBev []. (National multiple retailers negotiate bi-lateral national agreements directly with [] ABInBev [].)

22. In its AB/InBev decision,¹¹ the OFT found that national multiple grocery retailers (for example, Tesco, Asda, Sainsbury's and Musgrave) account for around 40 per cent of off-trade beer sales in NI. The OFT has seen no evidence that their share of lager sales is significantly different to their share of sales of all beer. Consequently, market shares attributable to C&C for [] the ABInBev Products in the off-trade (where national multiples operate) are likely to be little more than half that suggested by the raw AC Nielsen data. For instance, in the supply of all lager to the off-trade, [], the market share of the ABInBev Products is likely to be around [10-15] per cent instead of [20-25] per cent.
23. Furthermore, the parties submitted that [] is excluded from C&C's exclusive rights for Molson Coors Products. That [] obtains its supply of [] products directly from Molson Coors. A third party further estimates that [] per cent of Molson Coors packaged products sold in NI are not sourced from C&C. On this basis, the market share of the Molson Coors Products is likely to be even lower.
24. Finally, although previous decisions have addressed NI separately from GB, the OFT agrees with the parties that the NI border is not 'hermetically sealed' from ROI or from mainland GB. The parties submit that given the existence of beer imports into NI from GB and ROI (the latter albeit on a smaller scale), the raw AC Nielsen data are likely to overestimate the market shares attributable to the Molson Coors Products and the ABInBev Products distributed by C&C.
25. Third party responses corroborate the parties' point. Notably, one wholesaler informed the OFT that around 40 per cent of its purchased packaged lager comes directly from ABInBev in GB. In addition, a purchasing group representing around [] on-trade establishments in NI told the OFT that it finds it cheaper to purchase packaged beer from wholesalers in GB rather than from those in NI. Further, a competitor of the merging parties also indicated to the OFT that 'it regularly purchases lager from outside NI. [] And that for certain brands, the proportion of stock obtained outside NI can be very significant.' Finally, the exclusive

¹¹ OFT decision ME/3826/08, on the 'Anticipated acquisition by Inbev NV/SA of Anheuser-Busch companies, INC', 18 November 2008.

distributor of a popular brand in NI estimates that around 85 per cent of that packaged brand sold in NI is sourced from outside NI.

26. In light of the above, the OFT recognises that the raw AC Nielsen data lead to overestimating the market shares of the Molson Coors Products and the ABInBev Products that are attributable to C&C. The overestimate is likely to be greater in the off-trade, where national multiple retailers operate and where imports are most likely to occur.
27. In summary, the OFT considers that market share for the Molson Coors Products should be attributed to C&C's pre-merger position, and the market share attributable to the ABInBev Products (as well as the Molson Coors Products) should be attributed to C&C's post-merger position. For simplicity, the OFT has used the AC Nielsen data as a basis for estimating C&C's market share. Only where concerns may arise as a result of the merger has the OFT then considered the extent to which they may constitute significant overestimates.

RATIONALE

28. The OFT understands that ABInBev is seeking to sell Tennent's to concentrate on its core markets within the UK (that is, England and Wales) and to ensure consistency in the distribution of its products in NI, Scotland and the ROI. From C&C's perspective, the transaction represents a platform for developing its existing business, with potential to increase the position of its cider brand, Magners, in its core market and provide portfolio diversification in the island of Ireland.
29. The parties submit that from a commercial point of view, the ABInBev distribution agreements entered into by the parties alongside the Tennent's acquisition are an integral part of the transaction. The parties indicate that prior to this, the marketing, sales and distribution of the ABInBev Products was carried out by the Tennent's staff and that this will continue.

MARKET DEFINITION

30. The parties are both active in the production of alcoholic beverages and in the wholesale of beverages in NI. More specifically, the merger brings together:
 - (i) at the supply level: the production of Tennent's lager with C&C's portfolio of Magners cider, other spirits, and the Molson Coors Products;

separately, and after the conclusion of the ABInBev distribution agreements, C&C will also distribute the ABInBev Products, and

(ii) at the wholesale level: Tennent's wholesaling activities with C&C's wholesaling arm, Quinns.

Brewing/supply level

Geographic scope

31. The parties submit that, consistent with the European Commission's 2008 decision in Carlsberg/Scottish & Newcastle,¹² the geographic scope of the supply of beer is UK wide.
32. However, in its AB/InBev decision,¹³ the OFT considered the impact of the merger in GB and NI separately. In that case, the OFT did not need to conclude on geographic market definition as no concern arose even on the narrowest candidate market. In the present case, the OFT has seen no evidence to depart from considering the impact of the merger in GB and NI separately.
33. Given that the parties overlap only in NI, on a cautious basis, the OFT assesses the competitive impact of the merger there. In any event, it does not need to conclude on the relevant geographic market as no concern arises as a result of the transaction on the narrowest NI geographic market.
34. The OFT has also considered whether it should address Scotland as a separate relevant geographic market. The OFT notes that previous cases suggest that Scotland should not be considered separately from the rest of GB. While no evidence was put to the OFT during the present investigation to depart from the above, the OFT does not need to conclude on this issue. Whereas Tennent's is the most popular lager in Scotland, C&C only distributes packaged cider there. Previous cases involving beer¹⁴ suggest that the relevant product market should not include other alcoholic beverages like cider, and therefore the merger does not result in any relevant product overlap in Scotland.¹⁵

¹² Case COMP/M.4952.

¹³ OFT decision ME/3826/08, on the 'Anticipated acquisition by Inbev NV/SA of Anheuser-Busch companies, INC', 18 November 2008.

¹⁴ See Report in *Interbrew SA and Bass plc*, January 2001, Cm 5014, paragraph 4.22.

¹⁵ Going forward, C&C will have limited distribution rights for certain ABInbev brands in Scotland (the rights cover only two ABInBev brands (Becks lager and Bass ale in the on-trade) and are non-exclusive). The OFT has not needed to conclude on whether these

35. Consequently, the OFT's assessment focuses on NI.

Product scope

Beer versus other alcoholic beverages and types of beer (lager, ale, stout)

36. C&C brews and supplies cider and spirits. In NI, it also operates as the exclusive distributor of the Molson Coors Products. It will also hold the exclusive distribution rights for the ABInBev Products. Tennent's supplies the Tennent's lager brands. As noted above, previous cases involving beer suggest that the relevant product market should not include other alcoholic beverages like cider or spirits.
37. Further, within beer (lager, ale and stout), the parties overlap only in the supply of lager. Again based on previous decisions, the relevant product market appears to be no wider than lager. Third party views in the present case corroborate this and the OFT has seen no evidence to draw the boundaries of the product market any wider than lager.

Standard and premium lager

38. Within lager, the parties overlap in the supply of standard lager¹⁶ (C&C markets both standard and premium lager, whereas Tennent's is a standard lager). Notwithstanding that the standard/premium classification is used by the industry, in line with the OFT's findings in AB/InBev, third party responses suggested that there is no clear delineation for the purposes of market definition between standard and premium lager. The OFT has therefore conducted its assessment on the basis of both 'all lager' and 'standard lager'.

On- and off-trade retail channels

39. Pubs, bars and restaurants, where consumers drink on the premises, are referred to as the on-trade, whereas supermarkets, off-licences and other retail outlets where consumers purchase alcohol for consumption away from the premises are referred to as the off-trade.

rights should be treated in the same way as the exclusive distribution rights for the ABInBev Products given that they are not relevant for the purposes of establishing any overlap between the parties as a result of the merger.

¹⁶ Lagers that have an ABV (alcohol by volume) above 4.3 per cent have traditionally been considered to be premium, whereas those with an ABV below 4.3 per cent have been considered to be standard.

40. In Bass/Interbrew, the CC found that at the retailing level, the on-trade and the off-trade can be considered to be different markets.¹⁷ In its AB/InBev decision, the OFT did not conclude on whether the on- and off-trade were separate markets. However, it did examine the merger separately in each retail channels.
41. The parties submit that given the distinct licensing laws in NI, licensed premises there are more likely to have both on- and off-licences and therefore this distinction may make it easier for publicans in NI to switch between packaged beer purchases for their on- and off- premises. If so, this means participants in both channels are the same for supply-side reasons and both channels are best viewed as being in the same market.
42. Set against this, some off-licences operate without on-licences and therefore without this ability to switch on the supply-side between off- and on-trade sales.
43. Furthermore, third party submissions to the OFT indicate that demand-side substitution between on- and off- sales is not symmetric: it is plausible that a sufficient number of customers would switch to purchasing in the off-trade following a 10 per cent price increase in the on-trade to render that price increase unprofitable. However, it is implausible that a sufficient number of customers would switch to purchasing in the on-trade following a 10 per cent price increase in the off-trade to render that price increase unprofitable.
44. In light of the above, the OFT has assessed the impact of the transaction considering the on- and off-trade channels separately.

Packaged formats

45. The OFT has also considered whether it should examine narrower packaging markets separately such as bottles and cans, as was done in its recent AB/InBev decision. In that decision, the OFT narrowed its assessment to focus on Budweiser as a premium bottled lager, in part because Budweiser held the leading position in this segment. In addition, the ratio of sales of bottled Budweiser to draught Budweiser was significantly greater than that of the average lager (that is, Budweiser was a 'bottle brand'). So premium bottled lager was a sensible narrow candidate market for the purposes of the OFT's assessment in that case.

¹⁷ See Report in *Interbrew SA and Bass plc*, January 2001, Cm 5014, paragraph 4.25.

46. The same is not true in the present case, where the merging parties do not overlap in premium lager (classically defined). In addition, the OFT has not seen any evidence that any of the merging parties' lager brands are particularly strong in packaged lager (bottles or cans). Besides, the vast majority of packaged lager is sold in the off-trade in NI, and the OFT considers the sale of lager in the off-trade separately below.
47. Consequently, the OFT is satisfied that there is no need to delineate the market more narrowly than all packaged lager in the present instance given that this is almost synonymous with the off-trade.
48. In respect of whether to view draught lager separately, the OFT notes that the only complaint received during its investigation relates to finding a route to market for draught lager in the on-trade. In any event, the AC Nielsen data indicate that a strong competing player in NI, Diageo, has a market share of 62 per cent of the draught lager segment by volume. By contrast, the OFT notes that pre-merger, C&C accounts for a very small proportion of draught lager (around [0-5] per cent by volume¹⁸). On the basis of such a small market share, the OFT is satisfied that there is no need to assess the present transaction focussing on draught lager separately from packaged lager.

Wholesale level

Geographic scope

49. The parties submit that the relevant geographic market at the wholesale level should be limited to NI.
50. The OFT notes that in the Constellation Brands and Punch Taverns case,¹⁹ evidence pointed to a UK-wide market for the wholesale distribution of alcoholic and non-alcoholic beverages. In addition, the OFT is aware of at least one purchasing group based in NI obtaining packaged lager from GB-based wholesalers.
51. However, the OFT has not received any additional evidence showing that the practice of acquiring packaged lager from GB wholesalers for consumption in NI is widespread amongst publicans. Conversely, the OFT

¹⁸ OFT calculation based on AC Nielsen data provided by the parties.

¹⁹ OFT Decision ME30/13/07, on the completed joint venture between Constellation Brands Incorporated and Punch Taverns plc relating to Matthew Clark Wholesale Limited, Forth Wines Limited and Wine Studio Limited, 5 July 2007.

notes that a number of wholesalers with operations in GB have separate wholesaling functions to service NI. Further, a number of local wholesalers operate within NI only, with no other activity in other parts of the UK.

52. In the present case the parties overlap in NI only. The OFT has therefore assessed the transaction in relation to that narrow geographic market, without having to draw a definitive conclusion on the relevant geographic frame, in the absence of any competitive concern arising at the wholesale level.

Product scope

53. The merging parties overlap in the wholesale distribution of beverages to the on-trade and the off-trade retail channels.
54. The wholesale distribution of beverages consists of purchasing alcoholic and non-alcoholic drinks (in addition, occasionally, to purchasing food products) from different suppliers and selling these products to retail outlets. The parties submit that assessing the on- and off-trade channels separately in NI is not appropriate, given the absence of any significant distinction between the conditions of competition in them.
55. In light of previous decisions,²⁰ and on a cautious basis, the OFT has considered the impact of the transaction in the wholesale distribution of beverages separately to each of the on- and off-trade channels. The OFT has also considered the impact of the transaction on both channels together. Given the absence of concerns under any of these various delineations, the OFT has not considered it necessary to conclude on the appropriate scope of the product market.

Conclusion

56. At the supply level, the OFT has examined the impact of the merger in the supply of standard lager and all lager respectively, to each of the on-trade and off-trade channels. At the wholesale level, the OFT has considered the impact of the merger in the wholesale distribution of beverages in NI, in each of the on-trade and off-trade channels and in both retail channels taken together.

²⁰ OFT Decision ME30/13/07, on the completed joint venture between Constellation Brands Incorporated and Punch Taverns plc relating to Matthew Clark Wholesale Limited, Forth Wines Limited and Wine Studio Limited, 5 July 2007 and Report in *Interbrew SA and Bass plc*, January 2001, Cm 5014, paragraph 4.61.

57. In the absence of concerns arising as a result of the transaction in any of these candidate markets, the OFT does not consider it necessary to conclude on the precise boundaries of the relevant markets in this case.

HORIZONTAL UNILATERAL EFFECTS

The supply of standard lager in the on-trade in NI

58. The merger adds the Tennent's brand to C&C's lager portfolio, which is currently composed of Carling and which will also include Becks Vier as a result of the ABInBev exclusive distribution agreement.
59. As shown in Table 1 below, the merger adds [0-5] per cent (C&C's market share) to Tennent's [35-45] per cent market share. Taking into account the additional [0-5] per cent associated with the Becks Vier brand, which is attributable to the merged entity as a result of the ABInBev exclusive distribution agreement, the merged entity's combined market share amounts to [40-50] per cent (increment [0-5] per cent).

Table 1: Market shares for standard lagers with and without Harp in the NI on-trade, by volume (source: AC Nielsen)

Brand owner / exclusive distributor	Brands	On-trade market share by volume	On-trade market share by volume (including Harp)
C&C	- Carling (as a result of the Molson Coors exclusive distribution agreement)	[0-5]	[0-5]
	- Becks Vier (going forward post ABInBev exclusive distribution agreement)	[0-5]	[0-5]
Tennent's business	Tennent's	[35-45]	[20-30]
Merged firm	- Carling (as a result of the Molson Coors exclusive distribution agreement) - Becks Vier (post ABInBev exclusive distribution agreement) - Tennent's	[40-50]	[25-35]
Diageo	Carlsberg (+ Harp for the right column)	[45-55]	[65-75]
S&N Heineken	Fosters	< [0-5]	< [0-5]

60. The supply of standard lager to the on-trade is concentrated. The merger reduces the number of players from four to three. The OFT notes that C&C will be left facing only two other players in the market, Heineken with a market share of less than one per cent and Diageo, a major player with a strong brand (Carlsberg) and a market share of [45-55] per cent.
61. In that context, the OFT has considered whether the merged firm's combined [40-50] per cent market share gives cause for concern over unilateral effects.
62. Consistent with its previous AB/InBev decision, the evidence available to the OFT in this case reveals an absence of well-defined customer preferences for either premium or standard lager, highlighting the arbitrariness of segmenting lagers by alcohol content. For example, market responses to OFT questions indicated that, in response to a 10 per cent increase in the price of C&C's Carling, customers would switch to Carlsberg (Diageo) – seemingly in proportions consistent with its market share in Table 1 – but also to Harp (Diageo), in spite of Harp having a premium ABV (4.3 per cent). Consistent with this, a third party indicated in its response to the OFT that brand perception/positioning is a more appropriate categorisation of lager products than is alcohol content, and that brand perception is much more fluid and complex than a binary categorisation of beer by alcohol content into standard and premium.
63. On the basis of the above, the OFT takes the view that not only Carlsberg but also Harp would constrain a possible price increase by C&C post merger – that is, the candidate standard lager market should be widened to include Harp lager. Doing so significantly increases Diageo's market share and alters the distribution of shares of other brewers/exclusive distributors. As can be seen from Table 1, including the Harp brand results in the merged entity having a much lower [25-35] per cent combined market share (with an increment of [0-5] per cent) – not generally high enough to give the OFT cause for concern over unilateral effects unless the parties were particularly close competitors – and in Diageo having a [65-75] per cent market share.
64. The OFT further notes that in terms of volume sold (million of hectolitres), the most popular brands in this segment are, in decreasing order, Carlsberg (Diageo) with [110-120], Harp (Diageo) with [110-120], Tennent's (C&C post merger) with [95-105], Carling (C&C) with [5-10] and Becks (C&C post ABInBev exclusive distribution agreement) with [0-5]. The significant

drop in terms of volume between the third and the fourth brands, in the OFT's view, indicates the closeness of competition between the leading Carlsberg, Tennent's and Harp brands in comparison to Carling and the other brands (where C&C is present).

65. Finally, the OFT has seen no evidence that the merged firm's rivals may be capacity constrained in the supply of lager in NI. Conversely, in response to the recent AB/InBev investigation, one competing player advised that it was able to increase output. Another competing player indicated in the course of the present investigation that it is not capacity constrained. The OFT is therefore satisfied that rivals would be able to react to either an increase in price or a decrease in outputs.

Conclusion on the supply of standard lager in the on-trade

66. Given the level of competitive constraint that will remain in the market post merger, the OFT considers that the merger does not result in a realistic prospect of a substantial lessening of competition in the supply of standard lager to the on-trade.

The supply of standard lager in the off-trade in NI

67. The situation in the off-trade is similar to that in the on-trade with the exception that, in addition to the same leading brands as in the on-trade, retailers' own-label brands (referred to below as Private Label) are sold in the off-trade.
68. As can be seen from Table 2 below, the merger results in an increment of [5-10] per cent (C&C's market share from the Molson Coors exclusive distribution agreement) to Tennent's [25-35] per cent market share. The market share attributable to the AB/InBev exclusive distribution agreement adds less than [0-5] per cent to this, meaning the parties' post-merger share is [35-45] per cent.

Table 2: Market shares for standard lagers with and without *Harp* in the NI off-trade, by volume (source: AC Nielsen)

Brand owner / exclusive distributor	Brands	Off-trade market share by volume	Off-trade market share by volume + Harp
C&C	- Carling (as a result of the Molson Coors exclusive distribution agreement)	[5-10]	[5-10]
	- Becks Vier (going forward post ABInBev exclusive distribution agreement)	< [0-5]	< [0-5]
Tennent's business	Tennent's	[25-35]	[25-35]
Merged firm	- Carling (as a result of the Molson Coors exclusive distribution agreement) - Becks Vier (post ABInBev exclusive distribution agreement) - Tennent's	[35-45]	[30-40]
Diageo	Carlsberg (+ Harp in the right column)	[45-55]	[50-60]
Private Label	Private Label	[5-10]	[5-10]
S&N Heineken	Fosters	[0-5]	[0-5]

69. The off-trade appears to be less concentrated than the on-trade: the merger reduces the number of players from five to four. Post merger, C&C faces Diageo — accounting for [45-55] per cent of the market — as well as Heineken with four per cent and Private Label with a seven per cent market share.
70. As in the on-trade, third party responses suggest that in response to a possible 10 per cent price increase of Carling, customers would switch to Carlsberg (Diageo) and to Harp (Diageo). The OFT notes that including Harp in its assessment results in the combined share of the merged firm dropping from [35-45] to [30-40] per cent (with C&C adding a [5-10] per cent market share to Tennent's [25-35] per cent) and Diageo's market share increasing from 47 to 53 per cent.
71. Finally, the same significant drop as in the on-trade is evident between the first three brands (Carlsberg, Harp and Tennent's) and the fourth in terms of volume sold. Again this suggests that Tennent's competes more closely with Carlsberg and Harp than it does with C&C's Carling and Becks Vier.

Conclusion on the supply of standard lager in the off-trade

72. While C&C's market share pre-merger is somewhat larger than it is in the on-trade, the OFT notes that this [5-10] per cent figure is likely to be an overestimate (for the reasons explained in para. 20 to 26). This fact combined with additional constraints brought by competing own label brands in the off-trade lead the OFT to conclude that the merger does not result in a realistic prospect of a substantial lessening of competition in the supply of standard lager to the off-trade.

The supply of all lager in the on-trade in NI

73. Table 3 shows the leading lager brands in the on-trade in NI in order of volume sold. Although packaged Budweiser will be exclusively distributed by C&C going forward, draught Budweiser will remain exclusively distributed by Diageo.

Table 3: Leading lagers in the NI on-trade, by volume (source: AC Nielsen)

	Brewer/Exclusive Distributor	Brand	Volume²¹ ('000 Hectolitres)
1	Diageo	Carlsberg	[110-120]
2	Diageo	Harp	[110-120]
3	C&C (post merger)	Tennent's	[95-105]
4	C&C (post ABInBev exclusive distribution agreement)/Diageo²²	Budweiser	[20-30]
5	C&C (Molson Coors exclusive distribution agreement)	Coors	[5-15]
6	Golf Holdings	Corona	[5-15]
7	Miller Brands	M.G.D.	[5-15]
8	C&C (Molson Coors exclusive distribution agreement)	Carling	[5-10]
9	C&C (post ABInBev exclusive distribution agreement)	Stella Artois	[5-10]
10	C&C (post ABInBev exclusive distribution agreement)	Becks Vier	[5-10]
11	Heineken	Heineken	[0-5]
12	Other	Warsteiner	[0-5]
13	Diageo	Satzenbrau	[0-5]
14	C&C (post ABInBev exclusive distribution agreement)	Becks Bier	[0-5]
15	Miller Brands	Miller Beer	[0-5]

74. On the basis of Table 3, the merger combines one of the leading lager brands (Tennent's) with the mid-ranking brands in C&C's portfolio, namely Coors and Carling and, as a result of the ABInBev exclusive distribution agreement, packaged Budweiser, Stella Artois, Becks and Becks Vier.
75. In terms of market shares, Table 4 presents AC Nielsen market share data by brand owner/exclusive distributor by (i) splitting sales of Budweiser in the on-trade 50:50 between draught and packaged²³ and (ii) attributing the market share of packaged Budweiser to C&C and the market share of draught Budweiser to Diageo.

²¹ Moving Average Total ('MAT') to 30/05/2009 over a one year period.

²² Information sourced from a third party: the split between packaged and draught Budweiser in the on-trade is estimated to be around 50/50.

²³ Information sourced from a third party.

Table 4: Market shares for 'all lager' in the NI on-trade, by volume (source: AC Nielsen)

Brand owner / exclusive distributor	Brands	On-trade market share by volume
C&C	- Coors, Carling (as a result of the Molson Coors exclusive distribution agreement)	[0-5]
	- Packaged Budweiser, Stella Artois, Becks Vier (post ABInBev exclusive distribution agreement)	[5-10]
Tennent's business	Tennent's	[15-25]
Merged firm	- Coors, Carling (as a result of the Molson Coors exclusive distribution agreement) - Packaged Budweiser, Stella Artois, Becks Vier (post ABInBev exclusive distribution agreement) - Tennent's	[30-40]
Diageo	Harp, Carlsberg, draught Budweiser	[55-65]
S&N Heineken	Heineken, Fosters	< [0-5]
SAB Miller	M.G.D., Miller beer	[0-5]
Other		[0-5]

76. On the basis of Table 4, the merger results in an increment of just [0-5] per cent (C&C's market share from the Molson Coors exclusive distribution agreement) to Tennent's [15-25] per cent market share. The market share attributable to the ABInBev exclusive distribution agreement adds [5-10] per cent to this, meaning the parties' post-merger share is [30-40] per cent.
77. Post merger, C&C will continue to face a strong market leader, Diageo with a market share of [55-65] per cent (six percentage points of which is attributable to draught Budweiser). The remaining firms, S&N Heineken, SAB Miller and 'others' constitute a fringe of smaller players capable of placing a residual but nonetheless non-negligible constraint on C&C post merger. In that respect, the OFT notes that Heineken has recently expanded its wholesale activity (Heineken has recently acquired a wholesaler in NI) and is the second largest player in the ROI. Heineken told the OFT that [].
78. Furthermore, the significant drop in volume in Table 4 above, between the third and fourth brands again points to Carlsberg, Harp and Tennent's competing more closely with each other than with the C&C's brands.

79. Finally, the evidence available to the OFT suggests that brewers/suppliers in the on-trade face some countervailing buyer power. The parties submit that wholesalers play a major role in terms of supplying free trade independent outlets. Further, some on-trade establishments belong to purchasing groups. One such group, which accounts for [] on-trade outlets in NI, told the OFT that it purchases products from wholesalers in GB and that, even with shipping costs, GB prices are cheaper than sourcing in NI. In addition, the parties submit that their customers play them off against this purchasing group to obtain better terms and conditions. Hence it appears as though the countervailing buyer power of purchasing groups may act to constrain prices to other on-trade customers. This purchasing group did not voice any concerns to the OFT about the merger.
80. On the basis of the above, the OFT considers it likely that C&C will face some countervailing buyer power post merger. Lastly, the OFT notes that third parties are not concerned about the merger.

Conclusion on the supply of all lager in the on-trade

81. In light of the above, the OFT does not consider that the merger results in a realistic prospect of a substantial lessening of competition in the supply of all lager in the on-trade.

The supply of all lager in the off-trade in NI

82. Leading lager brands in the off-trade in NI are given in Table 5 in order of volume sold.

Table 5: Leading lagers in the NI off-trade, by volume (source: AC Nielsen)

	Brewer/Exclusive Distributor	Brand	Volume²⁴ ('000 Hectolitres)
1	Diageo	Carlsberg	[65-75]
2	C&C (post-merger)	Tennent's	[45-55]
3	C&C (post ABInBev exclusive distribution agreement)	Budweiser	[30-40]
4	C&C (post ABInBev exclusive distribution agreement)	Stella Artois	[15-25]
5	Diageo	Harp	[15-25]
6	Miller Brands	M.G.D.	[10-20]
7	Private label		[10-20]
8	C&C (Molson Coors exclusive distribution agreement)	Carling	[5-15]
9	C&C(Molson Coors exclusive distribution agreement)	Coors	[5-15]
10	C&C (post ABInBev exclusive distribution agreement)	Becks Bier	[5-10]
11	Heineken	Heineken	[5-10]
12	Miller Brands	Miller Beer	[5-10]
13	Golf Holdings	Corona	[0-5]

Nb: In the above table, Budweiser's market share is entirely attributable to C&C (as a result of the ABInBev exclusive distribution agreement) given that only packaged Budweiser is sold in the off-trade.

83. The merger adds the Tennent's brand to C&C's off-trade portfolio, which is similar to its portfolio in the on-trade. However, the OFT notes that the ABInBev brands distributed by C&C as a result of the ABInBev exclusive distribution agreement are significantly stronger in the off-trade than they are in the on-trade (by virtue of being packaged and not draught, essentially).

84. Thus, the OFT notes that in the off-trade, the ABInBev Products account for a [15-25] per cent market share on the basis of the raw AC Nielsen data. However, as explained above, the OFT has considered evidence that the market shares attributable to the ABInBev and the Molson Coors exclusive distribution agreements are in practice likely to be much lower than suggested by the AC Nielsen data. In particular, the raw AC Nielsen data ignores (i) the exact scope of C&C's exclusivity for [] the ABInBev Products and (ii) the fact that a significant proportion of beer sold in NI is imported directly from GB or from ROI.

(i) Scope of C&C's exclusivity

85. National multiple retailers (which account for approximately 40 per cent of NI off-sales) are excluded from the ABInBev [] exclusive distribution

²⁴ Moving Average Total ('MAT') to 30/05/2009.

agreement. They source their products from [] ABInBev directly. Adjusting for this, the market share figure attributable to the [] ABInBev exclusive distribution agreement is [] [5-15] per cent, [].

86. In addition, the evidence before the OFT indicates that the ability of national multiple retailers to negotiate lower wholesale prices directly with ABInBev also constrains the retail prices of the other off-trade wholesalers in NI. Therefore, if C&C were to raise wholesale prices to its off-trade customers post-merger, the latter would find themselves unable to successfully pass this price increase through into retail prices to consumers, given the competitive constraint placed on them by the national multiple retailers.

(ii) Imports

87. The parties submit that NI-based wholesalers import significant volumes of lager from GB, rather than buying from the appointed exclusive distributor in NI. The parties provide estimates for the volume of the merging parties' brand sales that are sourced from outside NI. Given the unavoidably arbitrary nature of some aspects of the methodology used by the parties to arrive at these estimates, the OFT is not able to attach very much weight to the exact market shares arrived at. Nonetheless, the OFT accepts that – under a range of plausible assumptions – parallel imports dilute the parties' combined market shares significantly. Third party comments corroborate this.
88. On the basis of Table 6 below, the merger results in an increment of just [0-5] per cent (C&C's market share from the Molson Coors exclusive distribution agreement) to Tennent's [10-20] per cent market share. The market share attributable to the ABInBev exclusive distribution agreement adds [5-15] per cent to this, meaning the parties' post-merger share is [30-40] per cent.

Table 6: Market shares for all lager in the NI off-trade, by volume (source: AC Nielsen)

Brand owner / exclusive distributor	Brands	Off-trade market share by volume
C&C	- Coors, Carling (as a result of the Molson Coors exclusive distribution agreement)	[0-5]
	- Packaged Budweiser, Stella Artois, Becks Vier (post ABInBev exclusive distribution agreement)	[5-15]
Tennent's business	Tennent's	[10-20]
Merged firm	- Coors, Carling (as a result of the Molson Coors exclusive distribution agreement) - Packaged Budweiser, Stella Artois, Becks Vier (post ABInBev exclusive distribution agreement) - Tennent's	[30-40]
Diageo	Harp, Carlsberg, draught Budweiser	[30-40]
S&N Heineken	Heineken, Fosters	[5-10]
SAB Miller	M.G.D., Miller beer	[5-10]
Other		[5-10]

89. Post merger, C&C becomes the market leader, ahead of Diageo whose market share is [30-40] per cent. Diageo is weaker in the off-trade channel than in the on-trade mainly because it does not account for any of the off-trade Budweiser share and also because Harp is less popular in the off-trade than in the on-trade (Harp falls from number two in the on-trade to number five in the off-trade).
90. From the above table, the split by volume of lager sold is more balanced among the different brands in the off-trade than in the on-trade. However, even though popular competing brands like Carlsberg and Harp appear weaker in the off-trade, they still appear strong enough to constrain C&C post merger. Given the greater balance between brands in the off-trade, smaller rivals like MGD, Heineken and Private Label lagers could also provide some constraint.
91. Finally the parties submit, and third parties corroborate, that brewers/suppliers in the off-trade face some countervailing buyer power. As discussed above, purchases from GB-based major multiple grocery retailers represent 40 per cent of beer sales in the off-trade in NI. Furthermore, the parties submit that these national multiples' negotiating power constrains prices to other off-trade resellers. For example, the

parties presented evidence that several times a year, CCNI (C&C's subsidiary with exclusive rights for the Molson Coors Products in NI) [].

92. In addition, the parties submit that the NI-based off-licence chains such as Winemark and Wineflair – which account for approximately [30-40] per cent of beer sales to the off-trade in NI – also have buyer power, as do wholesalers such as GHL (which is also a retailer) which accounts for 20 per cent of off-trade sales in NI (and [20-30] per cent of Tennent's sales). The OFT notes that for example, as discussed above, the major wholesaler, GHL, []. Similarly, when GHL acquired the off-trade retailer Philip Russell in 2005, [].

Conclusion on the supply of all lager in the off-trade

93. In light of the above, the OFT does not consider that the merger results in a realistic prospect of a substantial lessening of competition in the supply of all lager in the off-trade.

The wholesale distribution of beverages in NI

94. The parties overlap at the wholesale level in NI through C&C's subsidiary Quinns and the Tennent's wholesale activity. The parties indicate that no independent source of information is available on market shares at the wholesale level. As presented in Table 7, the parties therefore provide their own estimates of the wholesale market shares in NI.

Table 7: NI wholesale distribution market share, per cent, 2009 (parties estimates)

Wholesaler	On-trade wholesale	Off-trade wholesale	Total
C&C ²⁵	[15-25]	[10-20]	[10-20]
Tennent's	[5-15]	[0-5]	[5-10]
Combined	[25-35]	[10-20]	[20-30]
Golf Holdings Ltd	[25-35]	[40-50]	[30-40]
Diageo	[15-25]	[10-20]	[10-20]
Heineken ²⁶	[10-20]	[10-20]	[10-20]
Others	[5-10]	[5-10]	[5-10]
Total	100	100	100

95. The parties submit that around [55-65] per cent of Tennent's wholesaling of third-party brands is to its own loan-tied on-trade outlets. The OFT also notes that Tennent's loan-tied pubs can, in practice, obtain supplies of packaged beer from any of the other competing wholesalers.

²⁵ Trading as Quinn's Reihill McKeown.

²⁶ Waverley TBS and United Wine.

96. From the table, it appears that at least three other firms will remain at the wholesale level: There will remain at least one other competitor with a market share similar to (in the on-trade) or greater than (in the off-trade or both) the merging parties' combined share. The third and fourth placed competitors have non-trivial market shares.

Conclusion on the wholesale distribution of beverages

97. In light of the above, and in the absence of any third party concern, the OFT is satisfied that no unilateral concern arises as a result of the merger in the wholesaling of beverages in NI.

COORDINATED EFFECTS

98. Post-merger, C&C becomes the firm with the second largest market share in the supply of beer in NI. The supply of beer is also very concentrated with the two leading players — the merged firm and Diageo — accounting for over 90 per cent of the total post-merger supply of beer to the on-trade, notwithstanding that the addition of C&C's market share ([0-5] per cent in 'all lager in the on-trade') to that of Tennent's does not increase concentration by much.
99. On this basis, the OFT has considered whether the merger may give cause for concern over coordinated effects. These arise where, recognizing their mutual interdependence, firms in the same market tacitly coordinate their behaviour to raise prices, lower quality, reduce output etc (this does not necessarily mean express collusion of the type prohibited by the Competition Act 1998 or Article 81 of the EC Treaty). Coordinated effects may arise where a merger either increases the probability that competitors will collude or strengthens a pre-existing tendency to do so.
100. In order for a merger to create or strengthen coordinated effects, the OFT considers that the following conditions must all be met:
- firms must be able to reach and monitor the terms of coordination (for example, the focus of any coordination, such as price, needs to be apparent to all coordinating suppliers — for instance because the market is sufficiently transparent)
 - coordination must be internally sustainable, meaning suppliers must have the incentive to coordinate and not cheat (for instance, their incentives to coordinate must be aligned and they must be able to

monitor each others' behaviour in order to detect deviations from the coordinated outcome and to punish such deviations), and

- coordination must be externally sustainable, that is not undermined by factors outside of the coordinating group (for example, entry or countervailing buyer power).

101. The OFT has not received any evidence of tacit collusion pre-merger and so has examined two potential concerns in relation to the merger creating (not strengthening) coordinated effects in the on-trade. The first concern is whether the merger creates the ability and incentive for C&C and Diageo to co-ordinate their behaviour and raise prices in the supply of beer in NI.

102. Post-merger, around [50-60] per cent of NI on-trade establishments are loan-tied to either Diageo or C&C – [55-65] per cent to Diageo and [35-45] per cent to Tennent's (C&C has no loan-tied pubs pre-merger). The OFT's second concern is whether, by removing C&C as a credible alternative choice, the merger may create the ability and the incentive for Tennent's and Diageo to collectively tie all remaining free (untied) pubs with the intention of raising barriers to entry, and eventually increasing prices in the long run.

103. On neither basis does the OFT consider that the merger gives rise to a realistic prospect of coordinated effects. In particular:

- although the evidence available to the OFT indicates that wholesale prices are likely to be quite transparent (for example, [35-45] per cent of Diageo's wholesale beer and cider volumes are purchased from C&C) the same does not appear to be the case for loan-tying (for example, given the bilateral nature of negotiations over such ties)

- coordination over neither price²⁷ or loan-tying²⁸ appears sufficiently internally stable, and
- as a consequence, it is not necessary for the OFT to conclude on whether coordination over price or loan-tying is sufficiently externally stable but, as discussed below, barriers to entry do not appear insurmountable.²⁹

BARRIERS TO ENTRY AND EXPANSION

Supply of beer in NI

104. The parties submit that even though previous decisions have considered barriers to entry and expansion to be high, recent successful entry and expansion has occurred (albeit in the wider UK and not NI). In particular, the parties refer to Heineken's expansion in the UK since 2004, the significant increase in Corona's UK sales in the same period, the UK market penetration of SAB Miller's Peroni brand since 2006 and the recent introduction of the Stella Artois '4%' brand.
105. The OFT notes that it is hard to assess the height of any barriers to entry in the NI market as new entry there has often been by way of expansion from

²⁷ There is limited symmetry between the merged firm and Diageo in terms of the demand and costs that they face, indicating that their incentives to coordinate do not appear to be well aligned. In particular, Diageo's portfolio of alcoholic beverages extends to all types of beer including stout, several types of spirits (such as brandy, whisky and vodka), and liqueurs. C&C's portfolio post-merger includes cider, lager and ale as well as a few types of whiskeys and liqueurs. However, in terms of both size and variety of products, Diageo's portfolio covers a far wider range of beverages than does C&C's. Likewise, the business models – and therefore the costs – of the two firms appear to be markedly different. For instance, Diageo produces beer in ROI for distribution in the UK, whereas C&C will produce lager in Scotland for sale in NI and GB, and will be supplying lager and ale from GB to NI. Finally, Diageo's market share is more than double that of the merged firm and the addition of C&C's market share (four per cent in 'all lager in the on-trade') to that of Tennent's appears unlikely to counteract this imbalance in incentives post-merger.

²⁸ Coordination over the loan-tying of pubs appears to be lumpy (periodic, with each pub tied of a large scale relative to the market) and irreversible given the length of loan-ties. Coordination over such lumpy and irreversible market outcomes is thought to be inherently less internally stable than coordination over more continuous and reversible market decisions such as price, because it is hard to punish deviations from the coordinated outcome. Further, the asymmetry between the parties' shares of loan-tied pubs in NI indicates that their incentives to coordinate on loan-tying are not well aligned – each pub tied is a greater increment to Tennent's estate than to Diageo's, meaning Tennent's incentives to deviate exceed Diageo's which makes coordination unstable. Lastly, the OFT received no evidence that C&C was a 'maverick' firm disrupting attempts by Diageo and Tennent's to collectively loan-tie pubs.

²⁹ Further, in terms of coordination over loan-tying, pre-merger all brewers/distributors sell beer to untied pubs, not just C&C.

ROI (for example, Heineken) or GB. Nonetheless, on the basis of previous decisions, a new entrant in the supply of beer is likely to face (i) high marketing/branding costs and (ii) limited access to loan tied pubs for the sales of draught.

Branding

106. As stated in previous cases, the major cost in expanding in the supply of beer is marketing. In the Bass/Interbrew case, Interbrew submitted that it could take up to 20 years to build a leading brand. In the recent AB/InBev case, another third party told the OFT that building up a market share of any significance in GB and or NI can take more than 10 years and considerable marketing expenditure.

107. According to a market research report,³⁰ Molson Coors and ABInBev's Stella range are amongst the most heavily advertised brands in the main media in the UK (for example, television, national printed media and regional and national radio).

108. A recent entrant advised the OFT that it incurred £10m of costs (£5m in advertising/branding and £5m in trade equipment and maintenance). This new entrant added that the costs for a firm already active in the supply of beer of extending its brand would be around 30 per cent lower than this. In this regard, the OFT's previous AB/InBev decision found that the cost of marketing, though high and largely unrecoverable, can be spread across several countries.

Access to the on-trade

109. In Bass/Interbrew,³¹ the CC concluded that barriers to entry were likely to be greater in the supply of draught beer than in the supply of packaged beer given the difficulty faced by new entrants in accessing the on-trade.

110. In the present case, one third party suggested that it is particularly important to be able to serve draught beer in the on-trade and that it is difficult to secure a route to market for draught beer given that around [50-60] per cent of on-trade establishments in NI are tied to Diageo or Tennent's, and are therefore unlikely to consider purchasing draught beer from other brewers. According to that third party, these loan-tied pubs account for around [75-85] per cent of the value of sales in the on-trade

³⁰ Keynote, Drinks Market Review, 2009, p55.

(although another third party response suggests that this may be an overestimate).

111. The OFT understands that a new entrant offering loan-tying agreements to on-trade establishments requires a sufficiently diversified portfolio of beers to make the offer attractive. That said, the OFT notes that a portfolio can be made attractive not only through brand ownership but also through the distribution of third-party brands. For example, Tennent's was able to add a stout brand to its portfolio in NI by purchasing Guinness from Diageo in Scotland and selling it on to its loan-tied pubs in NI.
112. In any event, [40-50] per cent of on-trade establishments in NI are not loan-tied to any supplier. The OFT understands from the parties and from third party responses that a potential entrant can start supplying draught beer to untied pubs simply by putting a sales team together and appointing a logistics firm, such as Britvic or Trade Team, to distribute draught beer to pubs. Additional tasks such as the provision of technical services may also be outsourced to a third party contractor. Indeed, this is the business model that C&C has used to date, employing Britvic as its distributor.
113. In that respect, one of the logistics firm operating in NI told the OFT that it currently has the capacity to deliver beer (including draught) for a new entrant. The cost would depend on the scale and complexity of drops. This logistics firm also indicated that there are a number of firms active in providing drinks logistics services in NI including DHL, Bond Delivery, Trade Team and smaller firms such as Montgomery.
114. The OFT understands that an alternative way of entering the market in NI is to appoint an exclusive distributor already operating in the market. The OFT notes that several of them apparently compete against each other to exclusively distribute brands. For example, S&N/Heineken recently lost the exclusive rights to distribute SABMiller's beers to Richmond Marketing and Diageo is the exclusive distributor of Carlsberg in NI.
115. Finally, the OFT notes that vertical integration has been used as another route to market with, for example, Heineken recently acquiring the wholesaler United Wines in NI.

³¹ See Report in *Interbrew SA and Bass plc*, January 2001, Cm 5014, paragraph 4.40.

116. In light of the above, the OFT considers that barriers to entry or expansion in the supply of draught beer in NI are high but not insurmountable, given the examples above. Entering the supply of packaged beer appears easier.

Wholesale distribution of beverages in NI

117. The parties and third parties all suggested that barriers to entry at the wholesale distribution level are low. This is borne out by evidence of recent, successful entry in NI at the wholesale level.

Conclusion on barriers to entry and expansion

118. In light of the above, the OFT notes that barriers to large scale entry in the supply of beer in NI appear high but not insurmountable (and do not appear to have been made higher by the merger). However, the OFT does not need to reach a definitive conclusion on this given the absence of concerns arising as a result of the merger.

THIRD PARTY VIEWS

119. The OFT received only one complaint during the investigation which concerned the difficulty of finding a route to market for draught lager in the on-trade. This concern is addressed above in para. 111 to 115. Some third parties mentioned that the merger should be seen as rivalry-enhancing as C&C post-merger should be able to impose an efficient competitive constraint on Diageo, which until now, has been a particularly strong market leader.

ASSESSMENT

120. The parties overlap in the supply of lager and in the wholesale distribution of beverages in NI. At the supply level, the acquirer, C&C, holds exclusive distribution rights for some Molson Coors products. The target business, Tennent's, owns the Tennent's lager brand. As part of their wider commercial negotiations, the parties have entered into a distribution agreement alongside the merger situation, under which C&C has the exclusive distribution rights for some ABInBev brands in NI.

121. The ABInBev exclusive distribution rights are considered as falling outside the scope of the relevant merger situation. However, these exclusive rights have been considered as part of C&C's portfolio going forward alongside the Tennent's business and the Molson Coors exclusive distribution rights.

The question for the OFT in assessing the merger is therefore whether adding C&C's pre-merger portfolio to the Tennent's business, while taking into account C&C's distribution of the ABInBev products going forward, is in itself sufficient to create a realistic prospect of a substantial lessening of competition.

122. The OFT has assessed the impact of the transaction on the supply of 'standard lager' and 'all lager' respectively to each of the on-trade and off-trade channels in NI. At the wholesale level, the OFT has assessed the impact of the transaction in the wholesale distribution of beverages in NI in each of the on-trade and off-trade channels and in both together.
123. In relation to the supply of standard lager to the on- and off-trade as well as for the supply of all lager to the on-trade, the combined market share of the merged entity ranges from [25-35] to [30-40] per cent with C&C adding a [0-5] to [5-10] per cent market share to the Tennent's business. In all three candidate markets, the OFT was able to rule out concerns given C&C's low market shares pre-merger and the competitive constraint which will remain in the market post-merger.
124. In the supply of all lager to the off-trade, the merger results in an increment of just [0-5] per cent (C&C's market share from the Molson Coors exclusive distribution agreement) to Tennent's [10-20] per cent market share. The market share attributable to the ABInBev exclusive distribution agreement adds [5-15] per cent to this, meaning the merged entity becomes the market leader with a [30-40] per cent combined market share. Even though competing popular brands are somewhat weaker in that segment, they will still be capable of constraining C&C post merger. Consequently, the OFT is also able to rule out concerns in relation to the supply of all lager to the off-trade.
125. Although the supply of beer to the on-trade is very concentrated, the OFT finds that coordinated effects on prices or on loan-tied pub agreements would be internally unstable. The OFT does not consider that the merger creates any competition concern on the basis of coordinated effects in NI.
126. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

127. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act”.

END NOTES

1. Correction: The parties have informed the OFT that the loan book included within the Tennent's business consists of £27m rather than £21m.
2. Correction: The parties have informed the OFT that the total worldwide turnover attributable to the Tennent's business in the last financial year was some £291m rather than £312m.