



## **DETERMINATION OF MERGER NOTIFICATION M/09/018 – C&C GROUP / TENNENT’S BUSINESS**

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### **Section 21 of the Competition Act 2002**

#### **Acquisition by C&C Group plc of the Tennent’s business of InBev UK Limited, InBev Ireland Limited and Brandbrew SA**

**17 September 2009**

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### **Introduction**

1. On 27 August 2009, in accordance with section 18(1) of the Competition Act 2002 (“the Act”), the Competition Authority (“the Authority”) received a notification of the acquisition by C&C Group plc (“C&C Group”) of sole control over of the Tennent’s brands, associated trading assets and other assets in Scotland, Northern Ireland and the State (the “Target Business”). The Target Business would be acquired from certain subsidiaries of the Anheuser-Busch Inbev NV/SA Group (“ABInBev Group”), namely, InBev UK Limited (“InBev UK”), InBev Ireland Limited (“InBev Ireland”) and Brandbrew SA (“Brandbrew”).
2. C&C Group is involved in the manufacture, marketing and supply of cider, spirits and liqueurs. The Target Business manufactures, supplies and sells beer products to off-trade customers and on-trade customers<sup>1</sup>.

### **The Undertakings Involved**

#### *C&C Group plc*

3. C&C Group is a public limited company incorporated under the laws of Ireland. C&C Group manufactures, markets and supplies cider in the State (under the *Bulmers* brand). C&C Group also produces and supplies spirits and liqueur brands (including *Tullamore Dew* and *Frangelico*) in a number of international markets and in the State.
4. Following the sale of its soft drink business in 2007,<sup>2</sup> C&C Group no longer owns or operates a distribution and logistics network in the State. C&C Group outsources the distribution of its products under the following arrangements:

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<sup>1</sup> The off-trade customers are grocery retailers (e.g. Tesco and Aldi), grocery franchisor-wholesalers (e.g., Musgrave) and cash & carry distributors, independent licensed beverage wholesalers, off-licences and petrol stations. The on-trade customers are pubs, clubs, restaurants and hotels.

<sup>2</sup> Determination M/07/027 – Britvic / C&C, dated 13/08/07. Available for download at: [http://www.tca.ie/MergersAcquisitions/MergerNotifications.aspx?selected\\_item=348](http://www.tca.ie/MergersAcquisitions/MergerNotifications.aspx?selected_item=348)

- C&C Group relies on a third party for the delivery of its *Bulmers* draught to on-trade customers (e.g., public houses)<sup>3</sup>; and,
- C&C Group relies on contracted third party logistics providers for the delivery of its packaged products (e.g., bottled and canned *Bulmers* cider products) to off-trade customers (e.g., independent licensed beverage wholesalers, cash & carry distributors and grocery retailers). These off-trade customers then supply to their respective customers such as off-licences outlets, grocery outlets and others<sup>4</sup>.

### *The Target Business*

5. The Target Business manufactures, supplies and sells beer products in Scotland and Northern Ireland. The principal assets forming the Target Business include *inter alia*:
  - The Wellpark Brewery in Scotland which brews all Tennent's products (excluding Tennent's Super and Tennent's Pilsner) including those exported to the State;
  - Stock and associated equipment, such as kegs and dispense equipment;
  - The benefit of contracts relating to the Target Business;
  - The Tennent's brands worldwide (with the exception of *Tennent's Super* and *Tennent's Pilsner* brands) and other associated intellectual property rights; and
  - The outstanding trade loans made by InBev UK and InBev Ireland to outlets (e.g., public houses and off-licences) in the State, Northern Ireland and Scotland.
6. Currently, the Tennent's beer products and a certain range of ABInBev Group beer products are all supplied by InBev Ireland to its off-trade and on-trade customers in the State, relying on the distribution network of third party logistics providers<sup>5</sup>. The range of ABInBev products (collectively the "ABInBev Brands") includes brands *Stella Artois*, *Beck's*, *Lefte Blonde*, *Hoegaarden*, *Staropramen*, *Boddingtons* and *Bass Ale* (with the exception of *Budweiser*)<sup>6</sup>.
7. The Target Business does not manufacture, supply or sell any cider products in the State.

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<sup>3</sup> The C&C Group relies on [...] distribution network. [...] provide this service as a logistics provider, i.e., [...] does not provide this service as a wholesaler, simply as a logistics agent. Therefore, C&C Group directly sets its pricing and terms and conditions to the public houses.

<sup>4</sup> C&C Group has no input into how independent licensed beverage wholesalers and cash & carry distributors set their respective pricing and terms and conditions to their retail customers.

<sup>5</sup> [...] Inbev Ireland currently uses [...] as a logistics provider to deliver all draught beer products to its on-trade customers with no exclusive relationship. Packaged beers are delivered to some off-trade customers (including some volumes to Tesco, Supervalu and Superquinn) via another logistics provider, [...] on a spot basis with no exclusive distribution agreement in place. [...] is an independent company with no connection with the ABInBev Group.

<sup>6</sup> The ABInBev Brands are sold to on-trade and off-trade customers with the exception of a small number of international multiples and duty-free customers to whom ABInBev Group supplies directly in Great Britain, pursuant to international agreements with those customers.

### **The Proposed Transaction**

8. Under the proposed transaction, C&C Group will acquire sole control of the Target Business which constitutes part of the assets and business of InBev UK, InBev Ireland and Brandbrew.
9. Following completion of the proposed transaction, the Target Business will be owned by Magners UK Limited ("Magners"). Magners was incorporated and registered in Scotland and was established for the purposes of this transaction. Magners is a wholly owned subsidiary of C&C Group. The Tennent's brands (excluding *Tennent's Super* and *Tennent's Pilsner*) will be owned by C&C International Limited, which is incorporated and registered in the State. C&C International Limited is a wholly owned subsidiary of C&C Group.
10. Under the proposed transaction, the parties will also enter into a 20 year distribution agreement in respect of the exclusive supply by C&C Group of the ABInBev Brands in the State (the "Distribution Agreement"). The Distribution Agreement will take effect from completion of the proposed transaction. The Distribution Agreement is terminable at will by either party on giving a year's notice after the fifth anniversary of the agreement.

### **The Rational of the Proposed Transaction**

11. The ABInBev Group submitted that the rationale of the proposed transaction is to simplify its business whilst ensuring continued investment, support and growth to its brands in the State.
12. According to C&C Group, the acquisition of the Target Business will, through the Distribution Agreement, give it access to some of the ABInBev Group's key international beer brands. The acquisition of the Target Business will also decrease its reliance on the seasonality of cider and its dependence on the Irish market.

### **Third Party Submissions**

13. No submissions were received.

### **Analysis**

14. There is no vertical overlap between the activities of the parties in the State. Neither C&C Group nor the Target Business directly or indirectly own or operate any distribution or logistics network in the State.
15. Both C&C Group and the Target Business are engaged in the supply of alcoholic beverages to on-trade and off-trade customers in the State. However, there is no horizontal overlap between the activities of the parties in the State. The Target Business's activities are limited to the sale of beer products while C&C Group manufactures, markets and supplies cider.
16. The parties submitted that in the Authority's recent decision in *Heineken/Scottish & Newcastle*<sup>7</sup>, the Authority found that there are separate markets for the production and supply of lager and cider in

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<sup>7</sup> Determination M/08/011 - Heineken / Scottish & Newcastle, dated 3 October 2008. Available at: [http://www.tca.ie/MergersAcquisitions/MergerNotifications.aspx?selected\\_item=398](http://www.tca.ie/MergersAcquisitions/MergerNotifications.aspx?selected_item=398)

the on-trade and off-trade channels in the State. Based on this framework of analysis, the parties submitted that there is no horizontal overlap between the activities of the parties in the State. The parties submitted that the market share of the Target Business in the lager market in the State is minimal. The parties estimated that the Tennent's brands which are to be acquired by C&C Group, account for [0-5]% of the supply of lager to the on-trade market and [0-5]% of the supply of lager to the off-trade market (in value terms)<sup>8</sup>.

17. In respect of the ABInBev brands that are subject of the Distribution Agreement, the parties estimated that these brands account for [0-5]% of the supply of lager to the on-trade market and [0-10]% of the supply of lager to the off-trade market<sup>9</sup>.
18. The Authority has no reason to depart from the findings on the relevant product markets in its recent decision in *Heineken/Scottish & Newcastle*<sup>10</sup>. In that decision the Authority concluded that the production and supply of cider and lager are in separate product markets. Based on that framework of analysis, the Authority concludes that there is no horizontal overlap between the activities of the parties in the State and, accordingly the proposed transaction is unlikely to give rise to any competition concerns in any markets in the State<sup>11</sup>.

### **Ancillary Restraints**

19. Clause 22.1 of the Purchase Agreement between the parties provides InBev UK agrees that none of the sellers (i.e., InBev UK, InBev Ireland and Brandbrew) nor any member of the ABInBev Group shall solicit key employees assigned to the Target Business for a period of three years from the date of the Purchase Agreement. The Authority considers that this restriction is directly related and necessary to the implementation of the proposed transaction.

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<sup>8</sup> Source: AC Nielsen Moving Annual Total (MAT) to May 2009.

<sup>9</sup> *Ibidem*.

<sup>10</sup> See footnote n. 7.

<sup>11</sup> In any event, even if the production and supply of cider and lager were considered to be part of a single market for the production and supply of long alcoholic drinks, then the market share of C&C Group post transaction will be less than [10-15]% in value terms ([10-15]% in volume terms).

**Determination**

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the acquisition by C&C Group plc of the Tennent's brands, associated trading assets and other assets in Scotland, Northern Ireland and the State from InBev UK Limited, InBev Ireland Limited and Brandbrew SA will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

**For the Competition Authority**

Dr Stanley Wong  
Member of the Competition Authority