



DETERMINATION OF MERGER NOTIFICATION M/16/062 - COUNTERPOINT/EAST COAST/KNOCKTON

Section 21 of the Competition Act 2002

Proposed acquisition by Counterpoint Wholesale (Ireland) Limited of Knockton Limited and certain assets of the licensed wholesale business of East Coast Suppliers Limited

Dated 13 January 2017

Introduction

1. On 2 December 2016, 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 transaction whereby Counterpoint Wholesale (Ireland) Limited (“Counterpoint”) would acquire the entire issued share capital of Knockton Limited (“Knockton”) and certain assets of the licensed wholesale business of East Coast Suppliers Limited (“East Coast”) (together, the “Target Businesses”).
2. On 29 November 2016, Counterpoint and East Coast entered into a share purchase agreement (“SPA”) in respect of the acquisition of the entire issued share capital of Knockton¹ and an asset purchase agreement (“APA”) in respect of the acquisition of certain assets of the licensed wholesale business of East Coast.²

The Undertakings Involved

Counterpoint

3. Counterpoint, a private limited company incorporated and registered in the State, is active in the wholesale supply of packaged alcoholic and non-alcoholic beverages and snack products to on-trade outlets (e.g., public houses, restaurants, hotels, etc.) in the State.³ The packaged alcoholic beverages supplied by Counterpoint in the State include

¹ Knockton is currently a wholly-owned subsidiary of East Coast.

² Pursuant to the APA, Counterpoint will acquire ownership and control of the following assets of East Coast: (a) all customer and supplier contracts of the licensed wholesale business of East Coast; (b) the exclusive right to use the name ‘East Coast Suppliers’ together with the exclusive right to carry on the licensed wholesale business of East Coast; and (c) all goodwill, stock, information, intellectual property rights, equipment and licences held in connection with the licensed wholesale business of East Coast. The sales employees of the Target Businesses will also transfer to Counterpoint.

³ Counterpoint also supplies a small volume of draught (i.e., served from a keg or cask) alcoholic beverages to on-trade outlets in the State, which amounts to less than [...] kegs of Molson Coors per annum. The vast majority of alcoholic beverages sold by Counterpoint are in packaged format. This is unsurprising since Counterpoint is not a manufacturer of alcoholic beverages and draught alcoholic beverages are typically sold by manufacturers directly to on-trade outlets. Counterpoint informed the Commission that only [...] % of its total turnover generated from the wholesale supply of alcoholic and non-alcoholic beverages in the State in 2015 was accounted for by sales of draught alcoholic beverages.



Bulmers, Coors, Smirnoff, Corona, Heineken, Budweiser, Kopparberg, West Coast Cooler, Jameson and Guinness. The packaged non-alcoholic beverages supplied by Counterpoint in the State include 7up,⁴ Club, Ballygowan, MiWadi, Robinsons, Fruit Shoot, Britvic Juice, Britvic Squash, Cidona and Pepsi.⁵ Counterpoint is active nationwide, currently supplying approximately [...] customers in the State from its distribution depot in Clondalkin, Co. Dublin. Counterpoint also supplies approximately [...] customers in Northern Ireland from its depot in Co. Antrim. Counterpoint does not supply any products to off-trade outlets (e.g., off-licences, supermarkets, catering companies, etc.) in the State.

4. Counterpoint is wholly-owned by Britvic Irish Holdings Limited which, in turn, is wholly owned by Britvic plc (“Britvic”), a publicly traded company incorporated under the laws of England and Wales and listed on the London Stock Exchange. Britvic manufactures non-alcoholic beverages which it supplies to on-trade (via Counterpoint) and off-trade outlets in the State.⁶ Britvic operates 7 manufacturing plants in the United Kingdom and 2 manufacturing plants in the State.
5. For the financial year ending 30 September 2016, Counterpoint’s worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

The Target Businesses

6. The Target Businesses, both of which are incorporated and registered in the State and are ultimately owned and controlled by Peadar McCaghey, are active in the wholesale supply of packaged and draught alcoholic and non-alcoholic beverages to on-trade outlets, which are located primarily in Leinster.⁷ East Coast operates a distribution depot located in Castlebellingham, Co. Louth, while Knockton operates a distribution depot located in Enniscorthy, Co. Wexford. The Target Businesses do not own or manufacture any alcoholic or non-alcoholic beverages.
7. For the most recent financial year,⁸ the Target Businesses’ worldwide turnover was €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

8. The parties state in the notification:

“The proposed transaction will enable Counterpoint to combine its sales force, distribution logistics and technical support services with those of the Target Businesses so as to compete more effectively in the on-trade segment particularly on the east coast. It will also protect and increase the sales of Britvic brands into the on-trade channel.”

Third Party Submissions

⁴ This product is sold by Counterpoint [through Britvic Ireland’s] licence from PepsiCo.

⁵ This product is sold by Counterpoint [through Britvic Ireland’s] licence from PepsiCo.

⁶ Britvic does not manufacture any alcoholic beverages.

⁷ The Target Businesses also supply alcoholic and non-alcoholic beverages to a small number of off-trade outlets in the State.

⁸ East Coast’s financial year end is 31 August, while Knockton’s financial year end is 30 September.



9. No submission was received.

Industry Background – The Wholesale Supply of Alcoholic and Non-alcoholic Beverages⁹

10. Manufacturers (also referred to as brewers) typically supply alcoholic and non-alcoholic beverages either directly to on-trade (e.g., public houses, restaurants, hotels, etc.) and off-trade (e.g., off-licences, supermarkets, catering companies, etc.) outlets or to wholesalers who in turn sell to on-trade and off-trade outlets. Alcoholic beverages are sold in either packaged (e.g., tins, bottles, etc.) or draught (i.e., served from a keg or cask) format and the route to market for each format tends to differ. Due to the bulky nature of the product and the various ancillary products required with delivery, draught alcoholic beverages are typically distributed by manufacturers directly (either by their own vehicles or by agents such as logistics service providers) to on-trade outlets. In contrast, manufacturers supply packaged alcoholic beverages to wholesalers who in turn sell to on-trade and off-trade outlets.¹⁰

Competitive Analysis

11. There is both a horizontal overlap and a vertical relationship between the parties' activities in the State.

Horizontal Overlap

12. There is a horizontal overlap between the parties' activities in the State with respect to the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.¹¹ Both parties supply packaged alcoholic and non-alcoholic beverages to a wide variety of on-trade outlets in the State.¹²

Relevant Product Market

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. There are various types of alcoholic (e.g., beer, cider, stout, spirits, etc.) and non-alcoholic (soft drinks, water, etc.) beverages. In this instance, the Commission does not need to come to a definitive view on the precise relevant product market since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., in terms of the wholesale supply of specific packaged alcoholic and non-alcoholic beverages) or more broadly to encompass the wholesale supply of all

⁹ Paragraphs 32-38 of the merger Determination of the Commission's predecessor, the Competition Authority, in *M/12/030 – C&C/Gleeson*, provide a detailed description of the supply chain and route to market in the State for alcoholic and non-alcoholic beverages. This can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m12030-cc-gleeson>.

¹⁰ Some wholesalers also sell their products to customers who are their competitors for the wholesale supply of alcoholic and non-alcoholic beverages.

¹¹ There is no horizontal overlap between the parties in the State with respect to the manufacture of alcoholic and non-alcoholic beverages since the Target Businesses are not involved in this business activity. There is a minimal horizontal overlap between the parties in the State with respect to the wholesale supply of draught alcoholic beverages to on-trade outlets (off-trade outlets do not sell draught alcoholic beverages). As indicated in footnote 3, however, Counterpoint sells only a very small volume of draught alcoholic beverages to on-trade outlets in the State, with sales in 2015 amounting to only €[...]. In addition, most draught alcoholic beverages are sold directly by manufacturers to on-trade outlets. The Commission therefore considers that the proposed transaction raises no competition concerns in relation to the wholesale supply of draught alcoholic beverages to on-trade outlets in the State.

¹² As noted above, Counterpoint does not supply any products to off-trade outlets in the State.



categories of packaged alcoholic and non-alcoholic beverages.¹³ The precise product market definition will not materially alter the Commission's assessment of the competitive impact of the notified transaction. In order, however, to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition by reference to a potential market for the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.

Relevant Geographic Market

14. As noted in paragraph 3 above, Counterpoint currently supplies customers throughout the State from its distribution depot in Clondalkin, Co. Dublin. In contrast, the Target Businesses currently supply packaged alcoholic and non-alcoholic beverages primarily to customers located in Leinster. Over [...]% of the turnover generated by the Target Businesses in 2015 came from sales of packaged alcoholic and non-alcoholic beverages to customers located in Leinster. Within Leinster, the majority of the Target Businesses' sales of packaged alcoholic and non-alcoholic beverages are made in Co. Dublin. [...]% of the turnover generated by the Target Businesses in 2015 came from sales of packaged alcoholic and non-alcoholic beverages in Co. Dublin.
15. The Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its assessment of the competitive impact of the proposed transaction will be unaffected whether the relevant geographic market is defined as local, regional or national. In order, however, to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition in the narrowest possible geographic market, namely the potential market for wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Dublin.¹⁴

The Wholesale Supply of Packaged Alcoholic and Non-alcoholic Beverages in Co. Dublin

16. The Commission considers that the proposed transaction will not substantially lessen competition in the potential market for the wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Dublin for the following reasons. There are a number of undertakings currently active in the wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Dublin which will act as a competitive constraint on Counterpoint post-transaction. These include the two of the largest wholesalers currently active in the State, namely: C&C Gleeson (with a distribution depot located in

¹³ Although alcoholic and non-alcoholic beverages are unlikely to be substitutable from the perspective of the end consumer, wholesalers typically supply a full range of alcoholic and non-alcoholic beverages to on-trade and off-trade customers. The Commission therefore considers it reasonable to include alcoholic and non-alcoholic beverages in the same wholesale product market for the purpose of its competitive analysis in this instance.

¹⁴ Since the majority of the Target Businesses' sales of packaged alcoholic and non-alcoholic beverages are made in Co. Dublin, the Commission considers that, if an assessment of the competitive impact of the proposed transaction reveals no competition concerns in relation to Co. Dublin, it follows that no competition concerns are likely to arise in relation to the wholesale supply of packaged alcoholic and non-alcoholic beverages in the rest of Leinster.



Crumlin) and Western Beverages Limited/Comans Beverages Limited¹⁵ (with a distribution depot located in Tallaght).¹⁶

17. Counterpoint informed the Commission that it estimates that each of Counterpoint and the Target Businesses had a [10-15]% share of the wholesale supply of packaged alcoholic and non-alcoholic beverages to on-trade outlets in Co. Dublin in 2016.¹⁷ Thus, following implementation of the proposed transaction, Counterpoint's share of the wholesale supply of packaged alcoholic and non-alcoholic beverages to on-trade outlets in Co. Dublin would be approximately [25-30]%. Counterpoint estimates that each of C&C Gleeson and Western Beverages Limited/Comans Beverages Limited had a [15-20]% share of the wholesale supply of packaged alcoholic and non-alcoholic beverages to on-trade outlets in Co. Dublin in 2016. Other wholesalers identified by Counterpoint as competitors for the wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Dublin include Coca-Cola HBC Ireland Limited, J.J. Mahon & Sons Limited, and G.H. Lett & Co. Limited.

Vertical Relationship

18. There is a vertical relationship between the parties in the State since Britvic, the parent company of Counterpoint, manufactures non-alcoholic beverages which it supplies to downstream wholesalers such as Counterpoint and the Target Businesses.¹⁸
19. Two theories of competitive harm were assessed by the Commission: input foreclosure and customer foreclosure.

Input Foreclosure

20. The Commission considered the likelihood that the proposed transaction would provide Britvic with the ability and incentive to foreclose downstream wholesalers which compete with Counterpoint by, for example, refusing to supply them with the non-alcoholic beverages manufactured by Britvic. This theory of harm is sometimes referred to as input foreclosure.¹⁹
21. Paragraph 5.10 of the Guidelines for Merger Analysis states the following:

“Competition concerns may arise from input foreclosure only when the merged entity has market power in the upstream market.”

¹⁵ On 5 April 2016, the Commission approved the joint venture involving Heineken Ireland Limited's wholesale beverage business, Western Beverages Limited, and Comans Beverages Limited. The Commission's merger Determination in *M/16/011 – Heineken/Comans* can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m16011-heineken-comans>.

¹⁶ The Commission considers that the same conclusion applies to the competitive impact of the proposed transaction in the rest of Leinster (excluding Co. Dublin): following implementation of the proposed transaction, Counterpoint will continue to face a competitive constraint from C&C Gleeson and Western Beverages Limited/Comans Beverages Limited.

¹⁷ No estimates were provided by Counterpoint for the parties' shares of the wholesale supply of packaged alcoholic and non-alcoholic beverages to both on-trade and off-trade outlets in Co. Dublin. Counterpoint expressed the view to the Commission, however, that *“If the on-trade and off-trade segments were combined, Counterpoint's share [in Co. Dublin] would be considerably diluted and Counterpoint would represent a smaller player in this wider market.”*

¹⁸ Britvic does not manufacture any alcoholic beverages.

¹⁹ Paragraphs 5.10-5.13 of the Commission's Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the *“Guidelines for Merger Analysis”*), provide a detailed description of input foreclosure. See http://www.ccpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf



22. The Commission does not consider that Britvic has sufficient market power in the non-alcoholic segment in the State such that Britvic would have the ability to foreclose downstream wholesalers which compete with Counterpoint post-transaction. Any attempt by Britvic to restrict sales of its non-alcoholic beverages to downstream wholesalers would likely result in downstream wholesalers increasing their purchases of non-alcoholic beverages from upstream manufacturers which compete with Britvic such as, for example, Coca-Cola HBC Ireland Limited (which manufactures non-alcoholic beverage brands such as Coca-Cola, Diet Coke, River Rock water, Fanta, Sprite, Fruice and Kia Ora), C&C Group plc (which manufactures Tipperary Water and Finches) and Lucozade Ribena Suntory Ireland Limited (which manufactures Lucozade, Ribena and Orangina).
23. The Commission also considers it significant that there is no evidence of Britvic currently seeking to restrict sales of its non-alcoholic beverages to downstream wholesalers who currently compete with Counterpoint in the State.
24. In conclusion, the Commission considers that the proposed transaction is not likely to provide Britvic with the ability to foreclose downstream wholesalers which compete with Counterpoint.

Customer Foreclosure

25. The Commission considered the likelihood that the proposed transaction would provide Counterpoint with the ability and incentive to foreclose upstream non-alcoholic beverage manufacturers which compete with Britvic by, for example, restricting their ability to supply their products to Counterpoint in the State. This theory of harm is sometimes referred to as customer foreclosure.²⁰
26. Paragraph 5.15 of the Guidelines for Merger Analysis states the following:

“The ability of a merged entity to harm an upstream competitor through customer foreclosure depends on a number of factors. For example, harm to competitors is more likely if the merged entity is a significant customer and hence a significant source of sales revenue for the upstream competitor than if the merged entity is but one of many customers.”
27. The Commission considers that Counterpoint will not have the ability or incentive post-transaction to foreclose upstream non-alcoholic beverage manufacturers which compete with Britvic. There are two main reasons for this view.
28. First, there are a number of other wholesalers currently active in the State through which upstream non-alcoholic beverage manufacturers can sell their products. These include C&C Gleeson and Western Beverages Limited/Comans Beverages Limited (both

²⁰ Paragraphs 5.14-5.17 of the Guidelines for Merger Analysis provide a detailed description of customer foreclosure. See http://www.ccpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf



of which have a national footprint) and numerous other wholesalers who operate at a regional level in the State.²¹

29. Second, in order to compete effectively with rival wholesalers, Counterpoint needs to offer customers a full range of non-alcoholic beverages. Counterpoint would not have the ability post-transaction to rely solely on Britvic for supplies of non-alcoholic beverages. This is highlighted by the fact that approximately [...] % of the turnover generated by Counterpoint from the wholesale supply of non-alcoholic beverages to on-trade outlets in the State in 2015 was generated by sales of non-alcoholic beverages manufactured by entities other than Britvic.
30. In conclusion, the Commission considers that the proposed transaction is not likely to provide Counterpoint with the ability or incentive to foreclose upstream non-alcoholic beverage manufacturers which compete with Britvic.
31. 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

32. In the notification, the parties provided copies of the SPA and APA, which contain a number of restrictive obligations on Peadar McCaghey, Eamon McCaghey, Fionnuala McCaghey and Nick Browne. These include non-compete and non-solicitation clauses.²² None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.²³ The Commission considers these restrictions to be directly related to and necessary for the implementation of the proposed transaction.

²¹ In the notification, the parties list over 20 wholesalers which are currently active in the State.

²² The notification states that Peadar McCaghey, Eamon McCaghey, Fionnuala McCaghey and Nick Browne “*will be subject to a non-solicitation obligation for a period of 2 years after the Completion Date with regard to (i) any customer or supplier who has been a customer or supplier of the Target within two years prior to Completion; and (ii) soliciting or enticing away from employment, any officer, employee or consultant of the Target.*”

²³ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Counterpoint Wholesale (Ireland) Limited would acquire the entire issued share capital of Knockton Limited and certain assets of the licensed wholesale business of East Coast Suppliers 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

Patrick Kenny
Member
Competition and Consumer Protection Commission