



DETERMINATION OF MERGER NOTIFICATION M/10/024 -

Gleeson/Gilbeys

Section 21 of the Competition Act 2002

Proposed acquisition by Gleeson Wines & Spirits Limited of certain assets of Gilbeys of Ireland Limited

Dated 24 August 2010

Introduction

1. On 30 July 2010, in accordance with section 18 of the Competition Act 2002, the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Gleeson Wines and Spirits Limited ("GWS") would acquire certain assets of Gilbeys of Ireland Limited ("GL").

The Undertakings Involved

The Acquirer

2. GWS is a wholly-owned subsidiary of M. & J. Gleeson (Investments) Limited which is, in turn, controlled by M. & J. Gleeson Holdings, the ultimate holding company of the group ("the Gleeson Group").
3. The Gleeson Group is engaged in the following activities:
 - The manufacture and sale of the following alcoholic and non-alcoholic beverages in the State: cider under the "Devils Bit" and "Adams Irish Cider" brand names, cream liqueurs under the "Merrys Irish Cream Liqueur" brand name, mineral water under the "Tipperary" brand name, soft drinks under the "Finches" brand name, and freeze pops under the "Magic Stick" brand name;
 - The wholesale distribution of alcoholic (wine, beer and spirits) and non-alcoholic (mineral water and soft drinks) beverages in the State. The Gleeson Group has, however, very limited involvement in the wholesale distribution of wine in the State. The Gleeson Group has nine distribution depots in the State and one in Northern Ireland; and,
 - The manufacture and sale of PET pre-forms and bottles in the State (i.e., specialist containers and bottles both for its own production of soft drinks and mineral water and for sale to third parties).
4. The Gleeson Group's worldwide turnover for the year ending 30 June 2009 was €230 million. Of this, approximately €[...] was generated in the State.

The Target

5. The assets to be acquired by the Gleeson Group as part of the proposed acquisition include the use of the 'Gilbeys' and 'Gilbeys of Ireland' brand names in the State. GL does not manufacture any alcoholic or non-alcoholic beverages. GL is involved in the wholesale distribution of wine in the State. GL has exclusive distribution agreements for [...] wine brands sold in the State.
6. In addition, GL is also involved in the wholesale distribution of other alcoholic (beer and spirits) and non-alcoholic (mineral water¹ and soft drinks) beverages in the Greater Dublin Area (the "GDA").² However, GL states in the notification that it has significantly reduced its non-wine wholesale distribution business in the GDA over the last 12 months.³
7. In terms of physical distribution, GL currently outsources the entirety of its warehousing, depot and distributor services to a third party.
8. GL's turnover in the State for the year ending 30 June 2009 was €[...]. GL did not generate any turnover outside the State.

The Proposed Transaction

9. The assets to be acquired by the Gleeson Group as part of the proposed acquisition include goodwill, contracts to distribute certain alcoholic and non-alcoholic beverages, records (including customer lists), stock, equipment (including computer equipment) and the use of the 'Gilbeys' and 'Gilbeys of Ireland' brand names in the State.

Rationale for the Proposed Transaction

10. According to the Gleeson Group, the proposed acquisition should significantly improve its wholesale wine distribution business given that the Group has, at present, limited involvement in the wholesale distribution of wine in the State. Also, the Gleeson Group states that GL's portfolio of beverages will lend to the credibility and recognition of the Gleeson Group in the wine category of the wholesale distribution market.

Third Party Submissions

11. No submissions were received.

Background – The Wholesale Distribution of Alcoholic and Non-Alcoholic Beverages

12. The parties overlap in the wholesale distribution of alcoholic and non-alcoholic beverages in the State. Market inquiries indicate a distinction between the activities of wholesalers and distributors.⁴ Wholesalers

¹ GL's sales of mineral water in the GDA are negligible, accounting for only [0-10]% of total revenue generated by GL for the year ending 30 June 2009.

² The parties state in the notification that the GDA is commonly thought to extend from Greystones, Co. Wicklow in the South to Skerries/Balbriggan, Co. Dublin in the North and to Leixlip, Co. Kildare in the West.

³ [50-60]% of GL's turnover in the State for the year ending 30 June 2009 was generated by the wholesale distribution of wine with the remaining [40-50]% generated by non-wine wholesale distribution. GL estimates that the equivalent figures for the year ending 30 June 2010 are [70-80]% and [20-30]%, respectively.

⁴ In the notification, the parties listed their five largest competitors in the State with respect to (a) the wholesale distribution of wine; and, (b) the wholesale distribution of alcoholic and non-

and distributors purchase alcoholic and non-alcoholic beverages from manufacturers and sell them to a broad array of customers across the on-trade (pubs, hotels, and restaurants) and off-trade (off-licences, large supermarkets, and convenience stores) channels.⁵

13. In addition to buying and selling alcoholic and non-alcoholic beverages, distributors also have distribution agreements with manufacturers for particular alcoholic and non-alcoholic beverage brands. As part of the distribution agreement, distributors market and advertise the brand(s) throughout the State in order to maximise sales. Some distributors refer to these distribution agreements as agency agreements.
14. GL has exclusive distribution agreements for [...] wine brands sold in the State.⁶ [In general,] the Gleeson Group [does not have] formal distribution agreements with drinks manufacturer[s].⁷
15. The parties informed the Authority that these distribution agreements are generally based on oral arrangements [...]. The parties also informed the Authority that these distribution agreements do not prevent other wholesalers or distributors from parallel importing the brands concerned.⁸

Relevant Product Market

Views of the Undertakings

16. The parties submit that the wholesale distribution of wine should be included within the market for the wholesale distribution of alcoholic and non-alcoholic beverages, since the business of distributing wine is the same as distributing other beverages. In addition, the Gleeson Group submits that direct supply to the on-trade and the off-trade by drinks manufacturers that may also be supplied by wholesalers should be included within the relevant product market (since customers can choose between both channels when obtaining supplies).

Views of the Competition Authority

17. In its 2005 Determination in M&J Gleeson/United Beverages,⁹ three product markets were considered by the Authority:
 - Combined alcoholic and non-alcoholic beverage wholesaling and distribution;

alcoholic beverages. During the investigation, the Authority contacted five undertakings involved in the wholesale distribution of alcoholic (including wine) and non-alcoholic beverages in the State.

⁵ In addition, some wholesalers and distributors also supply alcoholic and non-alcoholic beverages to other wholesalers and distributors.

⁶ For [...] such wine brands, formal [...] contracts exist between GL and the manufacturer. The other contracts are based on oral arrangements and custom going back, in some cases, a number of years.

⁷ The Gleeson Group, however, does have informal distribution agreements for [...] beer brands and [...] energy soft drink brand in the State.

⁸ The parties state that parallel importing is the term used to describe the importation of leading alcoholic brands into the State and the selling of such brands at a discount to the prices charged by the Irish agents of the relevant brands. This is facilitated by brand-owners practicing differential pricing in different countries and also by currency fluctuations. Parallel importing is freely available through wholesalers in the UK and on the Continent. In addition, large multiple supermarkets such as Tesco purchase alcoholic brands centrally through their international buying divisions and then retail them via their national outlets.

⁹ Determination M/05/027 M&J Gleeson/United Beverages.

- Alcoholic beverage wholesaling and distribution only; and,
 - Non-alcoholic beverage wholesaling and distribution only.
18. The Authority concluded that “all three product markets are interacting and interrelated”. Furthermore, in considering the competitive constraint exercised by non-alcoholic only wholesalers, the Authority found that “non-alcoholic only wholesalers can act as a constraint on “one stop shop” wholesalers (alcoholic and non-alcoholic)” and “would be likely to have a discernible level of influence upon the behaviour of [the Gleeson Group] after the consummation of the transaction”.
19. The Authority considers that it is unlikely that the wholesale distribution of wine is sufficiently different from the wholesale distribution of other alcoholic and non-alcoholic beverages to conclude that they represent distinct product markets. It is significant in this regard that the vast majority of the biggest wine wholesalers in the State are also engaged in the wholesale distribution of other alcoholic and non-alcoholic beverages.
20. For the purposes of examining the competitive effects of the proposed transaction, the Authority will examine the following two product markets:
- the wholesale distribution of wine; and,
 - the wholesale distribution of alcoholic and non-alcoholic beverages.
21. These are the narrowest possible product markets in which the proposed acquisition is likely to have an adverse impact.
22. The Authority, however, does not need to come to a definitive view on the precise relevant product market since its conclusions concerning the competitive effects of the proposed acquisition will be unaffected whether the relevant product market is narrow (i.e., the wholesale distribution of wine) or broad (i.e., the wholesale distribution of alcoholic and non-alcoholic beverages).

Relevant Geographic Market

Views of the Undertakings

23. The parties submit that the relevant geographic market is national. The parties state that many of the major alcoholic and non-alcoholic beverage wholesalers in the State operate on a national basis. In addition, the parties refer to the Authority’s 2005 Determination,¹⁰ where it concluded that the relevant geographic market for alcoholic and non-alcoholic beverage wholesaling is national.

Views of the Competition Authority

24. The Authority sees no reason to depart from the view expressed in its 2005 Determination concerning the relevant geographic market. Thus, the Authority will examine the competitive effects of the proposed transaction in the market for the wholesale distribution of wine in the

¹⁰ *Supra* Note 9

State. In addition, the Authority will examine the competitive effects of the proposed transaction in the market for the wholesale distribution of alcoholic and non-alcoholic beverages in the State.

Conclusion on the Relevant Product and Geographic Market

25. In conclusion, for the purposes of examining the competitive effects of the proposed acquisition, the Authority will examine the following markets:
- The wholesale distribution of wine in the State; and,
 - The wholesale distribution of alcoholic and non-alcoholic beverages in the State.

Competitive Assessment

The Wholesale Distribution of Wine in the State

Views of the Undertakings

26. In the notification, the parties estimate that in 2009 the Gleeson Group had a [0-10]% share in the wholesale distribution of wine in the State and GL had an estimated share of [10-20]% giving the parties a combined share of approximately [10-20]%. The parties state that, on this basis alone, the increment in the parties' combined share of the wine wholesale distribution market as a result of the proposed acquisition is insignificant and therefore should not give rise to a competition concern.
27. The parties also state that the merged entity will face competition from major wholesalers and distributors of wine such as Edward Dillon & Company (estimated share in the wholesale distribution of wine in the State of approximately [0-10]%), Irish Distillers (estimated share of [0-10]%), Barry & Fitzwilliam (estimated share of [0-10]%), Findlaters (estimated share of [0-10]%), and Cassidy Wines (estimated share of [0-10]%). The parties also state that given the large number of specialist wine importers in the State, the wholesale distribution of wine is particularly competitive.

Views of the Competition Authority

28. The Authority considers that the proposed acquisition raises no competition concerns in the market for the wholesale distribution of wine in the State. The Gleeson Group's share of this market is minimal. The Authority's market inquiries with competing wine wholesalers and distributors have confirmed that the Gleeson Group is a small player in the wholesale distribution of wine in the State. There are five wine wholesalers and distributors active in the State (Edward Dillon & Company, Irish Distillers, Barry & Fitzwilliam, Findlaters, and Cassidy Wines) with market shares greater than that of the Gleeson Group.
29. Furthermore, the Authority contacted the five largest wine customers of GL in the State.¹¹ All five indicated that they have no competition

¹¹ These five customers accounted for [50-60]% of GL's total revenue generated from wine sales in the State for the financial year ending 31 May 2010.

concerns with the proposed acquisition due to the Gleeson Group's minimal presence in the wine wholesale distribution market and the large number of competing wine wholesalers and distributors active in the State.

The wholesale distribution of alcoholic and non-alcoholic beverages in the State

Views of the Undertakings

30. In the notification, the parties estimate that in 2009 GL had a [0-10]% share of the wholesale distribution of alcoholic and non-alcoholic beverages in the State. The parties estimate that the Gleeson Group's share is approximately [10-20]% giving the parties a combined share of supply in the State of [10-20]%. The parties state that, on this basis alone, the proposed acquisition should not give rise to any competition concerns.
31. The parties also state that the merged entity will face competition from major national, regional, and local wholesalers and distributors of alcoholic and non-alcoholic beverages. The parties state that key competitors in the State include Coca-Cola Bottlers (estimated share of [10-20]%), Irish Distillers (estimated share of [0-10]%), Britvic Licensed Wholesale (estimated share of [0-10]%), Edward Dillon (estimated share of [0-10]%), Comans Wholesale (estimated share of [0-10]%), Barry & Fitzwilliam (estimated share of [0-10]%), and cash & carries (combined estimated share of [10-20]%).

Views of the Competition Authority

32. The Authority considers that the proposed acquisition raises no competition concerns in the wholesale distribution of alcoholic and non-alcoholic beverages in the State. GL [has minimal involvement] in the wholesale distribution of non-wine alcoholic and non-alcoholic beverages outside the GDA. Furthermore, GL's share of the non-wine wholesale distribution market in the GDA is minimal and declining.¹² The Authority's market inquiries with competing wholesalers and distributors active in the GDA have confirmed this view.
33. Furthermore, all five of GL's largest customers in the State contacted by the Authority expressed no competition concerns in relation to the wholesale distribution of alcoholic and non-alcoholic beverages in the State due to the large number of competing wholesalers and distributors active in the State. Drinks manufacturers who wish to switch distributor can do so easily given the industry practice of using informal distribution agreements. In addition, all five customers informed the Authority that GL is primarily involved in the wholesale distribution of wine in the State with a small and declining presence in the wholesale distribution of other alcoholic and non-alcoholic beverages in the GDA.

¹² See Footnote 3 above.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Gleeson Wines and Spirits Limited of certain assets of Gilbeys of Ireland Limited will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. Stanley Wong

Member of the Competition Authority