



## DETERMINATION OF MERGER NOTIFICATION M/16/011 - HEINEKEN/COMANS

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### Section 21 of the Competition Act 2002

### Proposed joint venture between Heineken Ireland Limited and Comans Beverages Limited

Dated 5 April 2016

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#### Introduction

1. On 23 February 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 joint venture involving Heineken Ireland Limited (“Heineken Ireland”) and Comans Beverages Limited (“Comans”).

#### The Proposed Transaction

2. The proposed transaction is to be implemented pursuant to a subscription and shareholders agreement between Heineken Ireland, Mr. Geoffrey Coman, Mr. Thomas Coman and Comans dated 22 February 2016 (the “Subscription and Shareholders Agreement”). It is accompanied by a put and call option agreement between Heineken Ireland, Mr. Geoffrey Coman, Mr. Thomas Coman and Comans. Both agreements are linked and have therefore been notified simultaneously to the Commission. The purpose of the notified transaction is to create a joint venture to combine Heineken Ireland's wholesale beverage business, Western Beverages Limited (“Western Beverages”), and Comans. Comans is currently jointly owned by Mr. Geoffrey Coman and Mr. Thomas Coman.
3. Pursuant to the Subscription and Shareholders Agreement, Heineken Ireland is proposing to subscribe for shares in Comans. Once Heineken Ireland becomes a shareholder in Comans, there will be a change in control over Comans whereby each of Mr. Geoffrey Coman, Mr. Thomas Coman and Heineken Ireland will jointly control Comans. The Subscription and Shareholders Agreement also envisages that the parties will enter into a separate asset purchase agreement pursuant to which Comans shall acquire the assets of Western Beverages. Accordingly, it is envisaged that Mr. Geoffrey Coman, Mr. Thomas Coman and Heineken Ireland will, through Comans, jointly control Western Beverages. Following the proposed transaction, Western Beverages and Comans (hereafter referred to as “the joint venture”) will be operated as one business jointly by Heineken Ireland, Mr. Geoffrey Coman and Mr. Thomas Coman.

#### The Undertakings Involved

*Heineken Ireland*



4. Heineken Ireland, a wholly-owned subsidiary of Heineken NV, manufactures alcoholic<sup>1</sup> (primarily beer<sup>2</sup>) beverages which it supplies to wholesalers, who in turn sell such beverages to on-trade outlets (e.g., public houses, restaurants, hotels, etc.) and off-trade outlets (e.g., off licences, supermarkets, catering companies, etc.) in the State. Heineken Ireland is also involved in the wholesale supply of alcoholic and non-alcoholic beverages in the State through its wholly-owned subsidiary Western Beverages. The latter's wholesale operations are primarily confined to the south and west coasts of the State, with distribution depots located in Cork city, Limerick city, Galway city and Letterkenny.
5. In 2015, Heineken NV's worldwide turnover was €20,511 million, of which €513 million was generated in the State.

#### *Comans*

6. Comans is a private limited company incorporated in the State and headquartered in Dublin. Comans is not involved in the brewing or manufacturing of alcoholic and non-alcoholic beverages.<sup>3</sup> Comans is a wholesale supplier of alcoholic and non-alcoholic beverages to on-trade and off-trade outlets in the State (primarily in Leinster), with a single distribution depot located in Tallaght, Co. Dublin.<sup>4</sup> Comans has five business divisions:
  - wholesale distribution;
  - national distribution for international beer suppliers;
  - beverage brand development;
  - wine importation and distribution; and
  - contract keg distribution.
7. For the financial year ending 28 February 2016, Comans' worldwide turnover was €[...], almost all of which was generated in the State.

#### **Rationale for the Proposed Transaction**

8. The parties state in the notification:

*“Both Heineken and Comans have drinks wholesale businesses. Neither has national coverage and while deliveries are generally*

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<sup>1</sup> Heineken Ireland informed the Commission that it does not manufacture any non-alcoholic beverages.

<sup>2</sup> Heineken Ireland's two biggest beer brands are *Heineken* (an own brand) and *Coors Light* (a licensed brand). Heineken Ireland informed the Commission that approximately [...] % of Heineken Ireland's total sales (by volume) of alcoholic beverages in the State comprise sales of *Heineken* and *Coors Light*.

<sup>3</sup> Comans owns six alcoholic brands (*Dutch Gold, Prazsky, Santa Cruz, Hufi, Druids Cider* and *Rosies Cider*) which are manufactured by third parties outside the State. These six brands are sold in packaged (e.g., tins, bottles, etc) format by Comans to on-trade and off-trade outlets in the State.

<sup>4</sup> The vast majority of alcoholic beverages sold by Comans are in packaged format. This is unsurprising since Comans is not a manufacturer of alcoholic beverages and draught (i.e., served from a keg or cask) alcoholic beverages are typically sold by manufacturers direct to on-trade outlets. Comans sells a very small volume (approximately [...] kegs in 2015) of draught alcoholic beverages to on-trade outlets in the State. Comans informed the Commission that approximately [...] % of its total turnover in the State in 2015 was generated by sales of draught alcoholic beverages.



*local, there is a growing number of national accounts for which the merged entity would be better able to compete than if the constituent businesses remained independent and, in any event, there are efficiencies to be achieved by merging the two businesses. The two businesses are complementary and are therefore ideal fits. In essence, it is the commercial objective of both parties to combine their respective wholesale businesses to achieve efficiencies and national coverage.”*

### Third Party Submissions

9. One third party submission was received by the Commission. Issues raised in the third party submission were investigated as part of the review process.
10. [...] expressed the following concerns in its submission:

*“We have recently seen evidence of Heineken engaging in aggressive behaviour in offering financial incentives to pubs to tie them to exclusive arrangements for their products to the detriment of other smaller drinks companies and ultimately to the consumer. ... These practices have been most prevalent in the major cities and particularly in Dublin.”*

*“One approach that is increasingly being used by Heineken involves the making of cash advances to pubs in return for the pubs committing to stock Heineken products to the exclusion of competing products. Heineken is in a position to enter into such arrangements given its portfolio power and scale as part of the international Heineken conglomerate. We have seen the level of this activity by Heineken increase significantly in the past twelve months and it now has these exclusive arrangements with a number of pubs, particularly in Dublin.”*

*“Heineken’s wholesale company, Western Beverages Limited, operates mainly in the west and south of Ireland whereas Comans operates in the eastern region and is particularly strong in Dublin. This transaction with a wholesaler with strength in Dublin, where we have seen the majority of Heineken’s exclusionary activity will increase further and be leveraged into the packaged space.”*

*“The cumulative effect of Heineken providing cash to pubs in return for stocking their products to the exclusion of competing products, their scale as part of the Heineken Group, the strength of the Heineken brand, their share of the important lager category, their portfolio power, and now their merger with a wholesaler which is particularly strong in the Dublin region adds to their potential to block access to the Dublin on-trade for smaller competitors such as [...] and the smaller craft brewers further reducing consumer choice.”*



*“A secondary concern for us is that following this transaction, Heineken would cease supplying Heineken and Coors Light to other wholesalers.”*

### **Industry Background – The Wholesale Supply of Alcoholic and Non-alcoholic Beverages<sup>5</sup>**

11. Manufacturers (also referred to as brewers) typically supply alcoholic and non-alcoholic beverages either direct 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 direct (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.<sup>6</sup>

### **Competitive Analysis**

12. There is both a horizontal and a vertical overlap between the parties’ activities in the State.

#### *Horizontal Overlap*

13. 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.<sup>7</sup> Both parties supply packaged alcoholic and non-alcoholic beverages to a wide variety of on-trade and off-trade customers in the State.

### **Relevant Product Market**

14. 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

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<sup>5</sup> 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>

<sup>6</sup> Some wholesalers also sell their products to customers who are their competitors in the wholesale supply of alcoholic and non-alcoholic beverages.

<sup>7</sup> There is no horizontal overlap between the parties in the State with respect to the manufacture of alcoholic and non-alcoholic beverages since Comans is 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 noted above, however, Comans 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 direct by manufacturers to on-trade outlets. The Commission therefore considers that the proposed transaction raises no competition concerns in the wholesale supply of draught alcoholic beverages to on-trade outlets in the State.



categories of packaged alcoholic and non-alcoholic beverages.<sup>8</sup> 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 the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.

#### Relevant Geographic Market

15. As noted in paragraph 4 above, Western Beverages has four distribution depots located in Cork city, Limerick city, Galway city and Letterkenny. Western Beverages' sales of packaged alcoholic and non-alcoholic beverages in 2015 were confined to the following 13 counties in the State: Cavan, Clare, Cork, Donegal, Galway, Kerry, Leitrim, Limerick, Mayo, Roscommon, Sligo, Tipperary and Westmeath.<sup>9</sup> Other than Co. Westmeath, Western Beverages made no sales in Leinster in 2015.

16. In contrast, Comans operates one distribution depot located in Tallaght, Co. Dublin. Approximately [...] % of the turnover generated by Comans for the financial year ending February 2016 came from sales of alcoholic and non-alcoholic beverages to customers located in Leinster.<sup>10</sup>

17. The parties state in the notification:

*"The depots of [Western Beverages] and Comans do not overlap. The former's depots are entirely on the west and south coasts. The latter's depot is, by contrast, on the east coast. The latter's depot serves retailers/publicans in a geographical area from around Balbriggan in the north to Greystones in the south to Naas in the west. The Western Beverages' depots do not overlap in anyway."<sup>11</sup>*

18. 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.<sup>12</sup> 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:

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<sup>8</sup> 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.

<sup>9</sup> [...] % of the turnover generated by Western Beverages in 2015 came from sales of alcoholic and non-alcoholic beverages to customers located in counties Cork, Donegal and Galway.

<sup>10</sup> [...] % of the turnover generated by Comans for the financial year ending February 2016 came from sales of alcoholic and non-alcoholic beverages to customers located in counties Dublin and Kildare.

<sup>11</sup> In its third party submission to the Commission, [...] expressed the following view: "Heineken's wholesale company, Western Beverages Limited, operates mainly in the west and south of Ireland whereas Comans operates in the eastern region and is particularly strong in Dublin."

<sup>12</sup> The parties state in the notification that wholesalers of alcoholic and non-alcoholic beverages typically make deliveries to customers over short distances and thus the geographic market is local in nature: "typical maximum delivery ranges would be in urban areas: 50kms and, traffic dependent, 60 minutes while in rural areas, it would be 100kms and, traffic dependent, 75 minutes."



- a) the narrowest possible geographic markets, namely the potential market for wholesale supply of packaged alcoholic and non-alcoholic beverages in each of the following geographic areas:<sup>13</sup>
- Co. Cork;
  - Co. Limerick;
  - Co. Galway;
  - Co. Donegal; and
- b) the potential market for wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.

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

19. Western Beverages' sales of alcoholic and non-alcoholic beverages in Co. Cork in 2015 amounted to €[...] while Comans made sales of €[...] in Co. Cork for the financial year ending February 2016.<sup>14</sup>
20. 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. Cork. There are a number of undertakings currently active in the wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Cork which will act as a competitive constraint on the joint venture post-transaction. These include the following: Barry Group (located in Mallow), BWG (located in Little Island), Classic Drinks Limited (located in Little Island), C&C Gleeson (located in Little Island), M&P O'Sullivan Limited (located in Wilton, Cork City) and Cremin and Radley (located in Little Island).

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

21. Western Beverages' sales of alcoholic and non-alcoholic beverages in Co. Limerick in 2015 amounted to €[...] while Comans made sales of €[...] in Co. Limerick for the financial year ending February 2016.<sup>15</sup>
22. 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. Limerick. There are a number of undertakings currently active in the wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Limerick which will act as a competitive constraint on the joint venture post-transaction. These include the following: BWG (located in Limerick city), Pallas Foods Ireland (located in Newcastle West) and Musgrave MarketPlace (located in Limerick City).

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

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<sup>13</sup> There is no horizontal overlap between the parties in Co. Dublin since Western Beverages made no sales of packaged alcoholic and non-alcoholic beverages in Co. Dublin in 2015.

<sup>14</sup> However, [...] % of Comans' sales in Co. Cork during this time period comprise sales to just three customers, namely: [...].

<sup>15</sup> However, [...] % of Comans' sales in Co. Limerick during this time period comprise sales to just two customers, namely: [...].



23. Western Beverages' sales of alcoholic and non-alcoholic beverages in Co. Galway in 2015 amounted to €[...] while Comans made sales of €[...] in Co. Galway for the financial year ending February 2016.<sup>16</sup>
24. 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. Galway. There are a number of undertakings currently active in the wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Galway which will act as a competitive constraint on the joint venture post-transaction. These include the following: Musgrave MarketPlace (located in Galway City), BWG (located in Galway city), J&C Kenny (located in Oranmore) and C&C Gleeson (located in Oranmore).

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

25. Western Beverages' sales of alcoholic and non-alcoholic beverages in Co. Donegal in 2015 amounted to €[...] while Comans made sales of €[...] in Co. Donegal for the financial year ending February 2016.
26. 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. Donegal. There are a number of undertakings currently active in the wholesale supply of packaged alcoholic and non-alcoholic beverages in Co. Donegal which will act as a competitive constraint on the joint venture post-transaction. These include the following: BWG (located in Letterkenny), Mcfadden & Sons (located in Letterkenny), J Kelly & Sons (located in Stranorlar), C&C Gleeson (located in Donegal town) and Buncrana Bottling (located in Buncrana).

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

27. For the reasons set out below, the Commission considers that the proposed transaction raises no competition concerns in the potential market for the wholesale supply of packaged alcoholic and non-alcoholic beverages in the State.
28. First, the parties are not particularly close competitors since, as detailed above, they operate, to a large extent, in different parts of the State, with Western Beverages wholesaling to customers in the west and south of the State and Comans predominantly wholesaling to customers in Leinster.
29. Second, in addition to facing a competitive constraint from wholesalers of packaged alcoholic and non-alcoholic beverages who operate at a regional level (such as, for example, those listed in paragraphs 19-26 above), the joint venture created by the proposed transaction will face competition from the following two wholesalers of packaged alcoholic and non-alcoholic beverages who operate at a national level in the State: C&C Gleeson (which is part of C&C Group Ireland) and Counterpoint Ireland. C&C Gleeson informed the Commission that it is the biggest wholesaler of alcoholic and non-alcoholic beverages in the State with an estimated segment share of approximately 30-35%. C&C Gleeson also informed the Commission that it estimates that Heineken

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<sup>16</sup> However, [...] % of Comans' sales in Co. Limerick during this time period were to Western Beverages.



Ireland has a segment share in the State of around 15-20% with Comans accounting for around 10%. Thus, following the proposed transaction, the joint venture's combined segment share in the State will be approximately 25-30%.

#### *Vertical Overlap*

30. There is a vertical relationship between the parties in the State since Heineken Ireland, as a manufacturer, sells alcoholic beverages<sup>17</sup> to downstream wholesalers such as Western Beverages and Comans. In addition, Comans sells six alcoholic beverage brands (which are owned by Comans but manufactured by third parties outside the State on behalf of Comans) to downstream wholesalers in the State, including Western Beverages.<sup>18</sup> Comans also sells wine and some agency beer brands (mainly *Karpackie* and *Lomza*) to Western Beverages.
31. Two theories of competitive harm were assessed by the Commission: input foreclosure and customer foreclosure.

#### Input Foreclosure

32. The Commission considered the likelihood that the proposed transaction would provide Heineken Ireland with the ability and incentive to foreclose downstream wholesalers which compete with the joint venture by, for example, refusing to supply them with the alcoholic beverages manufactured by Heineken Ireland.<sup>19</sup> This theory of harm is sometimes referred to as input foreclosure.<sup>20</sup>
33. 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.”*
34. Since manufacturers sell draught alcoholic beverages direct to on-trade outlets (thereby by-passing wholesalers), input foreclosure concerns do not arise with respect to the supply of draught alcoholic beverages. This is significant since, as noted by the parties, 90% of all beer sold by on-trade outlets in the State is sold in draught format.
35. Heineken Ireland manufactures sixteen beer products and four cider products. Heineken Ireland informed the Commission that [...] % of its total sales of alcoholic beverages to all customers (i.e., on-trade, off-trade and wholesalers) in the State comprise sales of the following two beer brands: *Heineken* and *Coors Light*. Heineken Ireland also informed the Commission that *Heineken* is its biggest selling beer brand in the State, with an estimated share of the total beer sector in the State of [15-20]%.<sup>21</sup> Heineken Ireland informed the Commission that *Heineken* has an estimated share of

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<sup>17</sup> Heineken Ireland does not manufacture any non-alcoholic beverages.

<sup>18</sup> Four are lager brands (*Dutch Gold*, *Prazsky*, *Santa Cruz* and *Hufi*) and two are cider brands (*Druids Cider* and *Rosies Cider*). Comans does not own or manufacture any non-alcoholic beverages.

<sup>19</sup> This concern was also raised by [...] in its third party submission to the Commission.

<sup>20</sup> 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.cpc.ie/sites/default/files/CCPC%20Merger%20Guidelines\\_1.pdf](http://www.cpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf)

<sup>21</sup> This includes sales of both packaged and draught beer in the State. It excludes sales of cider.





[10-15]% in the off-trade beer segment in the State (which comprises entirely packaged beer sales as no draught beer sales are made to off-trade customers). Heineken Ireland also informed the Commission that Diageo holds a [50-55]% share of the total beer sector in the State, with *Guinness* being its biggest beer brand.

36. Within the beer segment, there are three categories of alcoholic beverages: lager, stout and ale. The *Heineken* brand is a lager. Heineken Ireland informed the Commission that within the lager segment (off-trade and on-trade), Heineken Ireland has an estimated share in the State of around [45-50]% (with the *Heineken* brand accounting for most of Heineken Ireland's lager sales in the State) with Diageo having a [30-35]% segment share and other manufacturers/brewers accounting for the remaining [20-25]% of the lager segment. Diageo manufactures the *Budweiser* and *Carlsberg* lager brands. In the off-trade lager segment, Heineken Ireland has an estimated share in the State of around [30-35]% with Diageo having a [25-30]% segment share and other manufacturers/brewers accounting for the remaining [40-45]% of the lager segment.
37. Comans informed the Commission that *Heineken* and *Coors Light* have a 15% and 7% share, respectively, of the off-trade lager segment in the State. Diageo's *Budweiser* and *Carlsberg* brands have segment shares in lager of 16% and 9%, respectively, while private label sales account for 12% of the off-trade lager segment in the State.
38. The Commission does not consider that Heineken Ireland has sufficient market power in the lager segment in the State such that Heineken Ireland would have the ability to foreclose downstream wholesale competitors post-transaction. Any attempt by Heineken Ireland to restrict sales of *Heineken* (or indeed any of its lager brands) would likely result in downstream wholesalers increasing their purchases of lager products from competing upstream manufacturers such as, for example, Diageo (which manufactures two well-known lager brands, *Budweiser* and *Carlsberg*).
39. The Commission also considers it significant that there is no evidence of Heineken Ireland currently seeking to restrict sales of *Heineken* (or any of its lager brands) to downstream wholesalers who currently compete with Western Beverages in the State.
40. In conclusion, the Commission considers that Heineken Ireland will not have the ability to foreclose downstream wholesalers which compete with the joint venture post-transaction. Similarly, the Commission considers that Comans will not have the ability to foreclose rival wholesalers post-transaction since none of the four lager brands (*Dutch Gold*, *Prazsky*, *Santa Cruz* and *Hufi*) that it currently sells to wholesalers (including Western Beverages) is an important lager brand with a significant share of the lager segment (on-trade or off-trade) in the State.<sup>22</sup>

#### Customer Foreclosure

41. The Commission considered the likelihood that the proposed transaction would provide the joint venture with the ability and incentive to foreclose upstream alcoholic beverage

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<sup>22</sup> Comans informed the Commission that *Dutch Gold* has a [0-5]% share of the off-trade lager segment in the State with *Prazsky* accounting for [0-5]% of the off-trade lager segment. *Hufi* has a negligible share of the off-trade lager segment in the State. None of these three brands are sold to on-trade outlets in the State. Finally, *Santa Cruz* also has a negligible share of the off-trade lager segment in the State. Comans informed the Commission that over [...] % of *Santa Cruz*'s sales in the State are to off-trade customers.



manufacturers which compete with Heineken Ireland by, for example, restricting their ability to supply their products to wholesalers in the State. This theory of harm is sometimes referred to as customer foreclosure.<sup>23</sup>

42. 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.”*

43. The Commission considers that the joint venture will not have the ability or incentive post-transaction to foreclose upstream alcoholic beverage manufacturers which compete with Heineken Ireland. There are two main reasons for this view.

44. First, there are a number of other wholesalers currently active in the State through which upstream alcoholic beverage manufacturers can sell their products. These include C&C Gleeson and Counterpoint Ireland (both of which have a national footprint) and numerous wholesalers who operate at a regional level in the State, including, for example, those listed in paragraphs 19-26 above.

45. Second, in order to compete effectively with rival wholesalers, the joint venture would need to offer customers a full range of alcoholic and non-alcoholic beverages. The joint venture would not have the ability post-transaction to rely solely on Heineken Ireland (and/or Comans) for supplies of alcoholic and non-alcoholic beverages. This is highlighted by the fact that approximately [...] % of the turnover generated by Western Beverages in 2015 from wholesaling in the State was generated by sales of alcoholic and non-alcoholic beverages manufactured by brewers other than Heineken Ireland. Similarly, approximately [...] % of the turnover generated by Comans from wholesaling in the State for the financial year ending February 2016 was generated by sales of alcoholic and non-alcoholic beverages owned by manufacturers other than Comans.

46. In conclusion, the Commission considers that the joint venture will not have the ability or incentive to foreclose rival upstream alcoholic beverage manufacturers post-transaction.

#### Issues Raised in Third Party Submission

47. The main competition concern raised by [...] in its third party submission is that the proposed transaction will give Heineken Ireland greater ability and incentive to foreclose other competing alcoholic beverage manufacturers through the “*making of cash advances to pubs in return for the pubs committing to stock Heineken products to the exclusion of competing products.*”

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<sup>23</sup> Paragraphs 5.14-5.17 of the Guidelines for Merger Analysis provide a detailed description of customer foreclosure. See [http://www.cpc.ie/sites/default/files/CCPC%20Merger%20Guidelines\\_1.pdf](http://www.cpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf)



48. While it is alleged that Heineken Ireland is currently engaged in the activity described above, the Commission considers that the proposed transaction will not increase the ability and incentive of Heineken Ireland to continue doing so. In other words, the ability and incentive of Heineken Ireland to foreclose other competing alcoholic beverage manufacturers through the “*making of cash advances to pubs in return for the pubs committing to stock Heineken products to the exclusion of competing products*” is not merger specific. There are two main reasons for this view.
49. First, the alcoholic beverage brands owned by Comans (*Dutch Gold, Prazsky, Santa Cruz, Hufi, Druids Cider and Rosies Cider*) are not important brands for on-trade and off-trade outlets.
50. Second, the *Heineken* lager brand (Heineken Ireland’s biggest alcoholic beverage brand) does not possess sufficient market power to foreclose other competing alcoholic beverage manufacturers/brewers post-transaction. As noted in paragraph 36 above, there are a number of upstream manufacturers/brewers that compete with Heineken Ireland such as, for example, Diageo which manufactures two well-known lager brands, *Budweiser* and *Carlsberg*.
51. Although Heineken Ireland is allegedly currently engaged in the activity described in the third party submission, there is no evidence to indicate that it has been successful in foreclosing other competing alcoholic beverage manufacturers/brewers in the State. The Commission considers it significant that [...] listed only [...] on-trade outlets in the State in which the alleged behaviour by Heineken Ireland has taken place in the past 12 months. This represents less than [...] % of the total number of pubs currently operating in the State which indicates that if Heineken Ireland has been engaging in the alleged activities described by [...], the effect has been limited to a small number of on-trade outlets in the State
52. 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

53. In the notification, the parties provided a copy of the Subscription and Shareholders Agreement, which contains a number of restrictive obligations on Heineken Ireland, Mr. Geoffrey Coman, Mr. Thomas Coman and Comans. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.<sup>24</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the proposed transaction.

#### Determination

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<sup>24</sup> 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)



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 joint venture involving Heineken Ireland Limited and Comans Beverages Limited will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Isolde Goggin**  
**Chairperson**  
**Competition and Consumer Protection Commission**