Statement of Issues

12 December 2019

Asahi Group Holdings – proposed acquisition of Carlton & United Breweries

Purpose

1. Asahi Group Holdings, Ltd (**Asahi**) proposes to acquire Carlton & United Breweries (**CUB**), the Australian business of Anheuser Busch InBev SA/NV (**AB InBev**) (the **proposed acquisition**).

2. This Statement of Issues:

   - gives the preliminary views of the Australian Competition and Consumer Commission (**ACCC**) on competition issues arising from the proposed acquisition,

   - identifies areas of further inquiry, and

   - invites interested parties to submit comments and information to assist our assessment of the issues.

3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not necessarily represent a full articulation of the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. The legal test which the ACCC applies in considering the proposed acquisition is set out in section 50 of the *Competition and Consumer Act 2010*. In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there is one 'issue of concern', one 'issue that may raise concerns' and two 'issues unlikely to raise concerns'.

Issue of concern – significant consolidation in cider

6. The ACCC is concerned that the proposed acquisition is likely to substantially lessen competition in the supply of cider products in Australia.

7. The ACCC's preliminary view is that there is a market for the supply of cider in Australia, which is distinct from the supply of beer and other alcoholic products.

8. Asahi has approximately 30-32 per cent of sales in this cider market and CUB has approximately 35-39 per cent of sales. Using the Herfindahl-Hirschman Index (**HHI**), a measure of market concentration, the ACCC estimates that post-acquisition, HHI in the cider market would increase from approximately 2650 to approximately 5150 points, with the delta (change) in excess of 2450 points. The ACCC is generally likely to identify competition concerns when the post-merger HHI is greater than 2000, or less than 2000 with a delta greater than 100.[1]

9. The ACCC's preliminary view is that alternative cider brands do not compete as closely with Asahi and CUB as Asahi and CUB's brands compete with each other, and that the threat of new entry or expansion will not provide a strong competitive constraint on a combined Asahi-CUB. Consequently, the ACCC considers that post-acquisition, there will be a lessening of competitive constraints in the market for the supply of cider in Australia. This is likely to lead to a worsening of market outcomes for consumers, for example, the potential for an increase in the price of Asahi and CUB cider brands relative to what would be likely if the proposed acquisition does not proceed.

Issue that may raise concerns – removing Asahi as a vigorous competitor in beer

10. The ACCC considers that the proposed acquisition may substantially lessen competition in the supply of beer products in Australia.

11. The market for beer in Australia is already highly concentrated. In recent years, Asahi, a global beer company, appears to have emerged as a vigorous and effective competitor to the two major suppliers, CUB and Lion, particularly in relation to the supply of premium international and craft beers. The ACCC is concerned that the proposed acquisition may have the effect of removing the significant competitive constraint that Asahi apparently currently presents. The ACCC is also concerned that the potential for Asahi to expand its existing presence in Australia and pose an even stronger constraint on CUB and Lion would be removed if the proposed acquisition proceeds.

Issue unlikely to raise concerns – bundling of alcoholic and non-alcoholic products

12. Post-acquisition Asahi would be able to offer a large range of beverages - soft drink, beer, cider or spirits - to customers. The ACCC's preliminary view is that there is insufficient demand for bundled offerings, therefore the risk of anti-competitive foreclosure of smaller rivals is low.

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[1] ACCC, *Merger Guidelines 2008* (updated 2017), paragraph 7.14.

Issue unlikely to raise concerns – supply of spirits

13. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the supply of spirits in Australia.

Making a submission

14. The ACCC is seeking submissions from interested parties, particularly on the following key issues:

    - whether beer and cider are in separate markets,
    - the degree to which beer markets are segmented (for example, the extent to which there is a separate segment for premium international beer),
    - the impact of increased consolidation in the cider market,
    - the removal of Asahi's competitive constraint - as a significant supplier of beer that is competing against CUB and Lion,
    - the extent to which alternative suppliers of beer and cider products would impose a competitive constraint on the combined Asahi-CUB, and
    - the height of barriers to entry or expansion into the supply of beer and cider products.

15. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.

16. Interested parties should provide submissions by no later than 5pm on 22 January 2020. Responses may be emailed to mergers@accc.gov.au with the title: *Submission re: Asahi/CUB - attention Robert Janissen / Georgia Zele*. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Robert Janissen on 02 6243 1387 or Georgia Zele on 02 9230 9103.

17. The ACCC anticipates making a final decision on 19 March 2020, however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews.

Confidentiality of submissions

18. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our *Informal Merger Review Process Guidelines* contain more information on confidentiality.

About ACCC 'Statements of Issues'

19. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC's preliminary views and identifies further lines of inquiry.

20. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Timeline

Date	Event
23 August 2019	ACCC commenced review of the proposed acquisition
12 December 2019	ACCC publication of Statement of Issues
22 January 2020	Deadline for submissions from interested parties in response to this Statement of Issues
19 March 2020	Anticipated date for ACCC final decision

The parties

21. Asahi and CUB primarily overlap in the supply of beer and cider products. Both also supply spirits products but the competitive overlap for these products is minimal.

Asahi

22. Asahi produces and supplies alcoholic beverages, soft drinks and food products in Japan and internationally. In Australia, Asahi manufactures and supplies a range of international and domestic beer, cider and spirits brands, including:

- Beer – Asahi Super Dry, Asahi Soukai, Peroni, Cricketers Arms, Pilsner Urquell, Grolsch, Mountain Goat, Green Beacon and Two Suns.
- Cider – Somersby (under licence from Carlsberg).
- Spirits – Nikka Whisky, Vodka Cruiser, Woodstock Bourbon, Mist Wood Gin, Untold Spiced Rum, Tequila Blu, and Spicebox Whisky.

23. Asahi also supplies a portfolio of non-alcoholic beverages. Asahi's carbonated soft drink range includes Schweppes, Pepsi, Phoenix Organics, Mountain Dew, Solo, Sunkist, Alt and Passiona. Asahi also supplies a number of water, cordial, sports, juice and iced tea brands, including Cool Ridge, Frantelle, Voss, Cottees, Gatorade, Charlie's, Spring Valley and Real Iced Tea Co.

24. Asahi's main brewery is located in Laverton, Victoria. It also has the smaller Mountain Goat brewery in Richmond, Victoria. Asahi bottles and distributes Somersby cider products at the Laverton brewery.

CUB

25. CUB is owned by the Belgium-headquartered, multinational brewing company AB InBev. AB InBev acquired CUB from SABMiller in October 2016. CUB is a Victorian-headquartered Australian brewing company, which produces a range of beer, cider and spirit brands, including:

- Beer – Great Northern, Victoria Bitter, Carlton Draught, Carlton Dry, Cascade Premium, Pure Blonde, Matilda Bay, Fat Yak, Melbourne Bitter, Crown Lager, Pirate Life, 4 Pines, Foster's, Reschs and Balter. CUB also imports or manufactures and then distributes a range of other beer brands under licence, including Goose Island, Corona, Stella Artois, Belle-vue, Hoegaarden, Leffe, Beck's, Lowenbrau, Franziskaner, Spaten and Budweiser**.**

- Cider – Strongbow, Mercury, Bonamy's, Little Green, Spring Cider Co, Dirty Granny and Pure Blonde Cider. CUB also manufactures and distributes Bulmers under licence from Heineken.

- Spirits – Cougar, Black Douglas, Lexington Hill, Karloff, Continental Liqueurs, Coyote and Prince Albert.

26. On 16 September 2019, CUB announced that it had entered into an agreement to acquire Riot Wine Co, an Adelaide based seller of canned and kegged wines.

27. Both beer and cider are produced at the CUB plants located at Abbotsford (Victoria), Yatala (Queensland) and Cascade (Hobart, Tasmania). The CUB plants located at 4 Pines (New South Wales) and Pirate Life (South Australia) produce beer but not cider.

The proposed transaction

28. On 19 July 2019, Asahi announced that it had entered into a Sale and Purchase Deed with AB InBev, to purchase CUB for A$16 billion, by way of an acquisition of shares.

29. As part of the proposed acquisition, Asahi will acquire from CUB the right to supply and distribute AB InBev products in Australia.

Other industry participants

Lion

30. Lion Pty Limited (**Lion**) is a beverage and food company that operates in Australia and New Zealand, and a subsidiary of Japanese beverage company, Kirin.

31. Lion produces and supplies a range of beer, wine, cider and ready to drink (**RTD**) products. Lion offers a large portfolio of beers, including XXXX, James Boag's, Tooheys, Furphy, Iron Jack, Little Creatures, Hahn Super Dry, James Squire, Heineken, Guinness, Steinlager and Kirin. Lion also has cider brands including 5 Seeds, James Squire Orchard Crush and Kirin Cider.

Coopers

32. Coopers Brewery Ltd (**Coopers**) is based in South Australia and produces a range of beers, ciders, home brews and malt extracts.

33. Coopers produces and distributes a number of beers, including Coopers, Carlsberg, Kronenbourg, Sapporo, Elephant Lager, Mythos and Fix Hellas. Coopers also distributes the Thatchers cider brand under licence.

Coca-Cola Amatil

34. Coca-Cola Amatil Limited (**Coca-Cola Amatil**) manufactures and supplies a range of alcoholic and non-alcoholic beverages in Australia and the Asia-Pacific region.

35. Coca-Cola Amatil's beer brands include Miller, Coors, Vonu, Yenda and Feral. Coca-Cola Amatil's cider brands include Rekorderlig, Magners and Pressman's.

Craft brewers

36. There are a significant number of independent craft brewers in Australia. Large craft brewers include Stone and Wood, Gage Roads Brewing Co, Colonial Brewing and Young Henrys.

Private label products

37. Major liquor retailers supply private label beer and cider products produced for them via contract brewing arrangements. Some retailers also have exclusive arrangements to sell international brands.

38. Woolworths supplies a number of private label beer and cider brands. For beer these include John Boston, Sail & Anchor, Steersman and Tun Beer. For cider these include Castaway Cider. Woolworths also supplies a number of international branded beers including Hollandia and Oettinger.

39. Coles supplies a number of private label beer and cider brands. For beer these include Lorry Boys, Maxx, Steamrail Beer, 3 Pub Circus, Hammer N Tongs, Uberbrau and Tinnies. For cider these include Steamrail Cider and Mr Finch. Coles also supplies a number of international beer brands including Henninger, Royal Dutch, Praga Premium Pilsner, Cantina, Radeberger and Parrotdog.

Table 1: Cider and beer brands

Asahi	Carlton & United Breweries	Lion	Coopers	Coca-Cola Amatil	Private label (examples)
Cider					
• Somersby	• Bonamy's • Bulmers • Dirty Granny • Little Green • Mercury • Pure Blonde Cider • Spring Cider Co • Strongbow	• 5 Seeds • James Squire • Kirin Cider • Pipsqueak	• Thatchers Cider	• Angry Orchard • Magners • Pressman's cider • Rekorderlig	• Castaway Cider • Mr Finch Cider • Renberg Swedish Cider • Steamrail Cider • Storm Brewing Co Apple Cider
Beer					
Premium international beer					
• Asahi Soukai • Asahi Super Dry • Grolsch • Peroni • Pilsner Urquell	• Beck's • Belle-vue • Budweiser • Corona Extra • Corona Ligera • Franziskaner • Hoegaarden • Leffe • Lowenbrau • Negra Modelo • Pacifico Clara • Spaten • Stella Artois	• Amstel • Birra Moretti • Guinness • Heineken • Kilkenny • Kirin • Steinlager	• Carlsberg • Fix Hellas • Kronenbourg • Mythos • Sapporo	• Coors • Fiji Bitter • Miller Genuine Draft • Samuel Adams • Vailima • Vonu	• Hollandia • Oettinger • Überbräu • Royal Dutch
Craft beer					
• Cricketers Arms • Mountain Goat • Green Beacon Brewing Co.	• 4 Pines • Balter • Goose Island • Matilda Bay • Pirate Life • Yak Ales	• Byron Bay • James Squire • Knappstein • Kosciuszko Pale Ale • Little Creatures • White Rabbit	• Coopers	• Feral Brewing Co. • Yenda	• 3 Pub Circus • Balmain • John Boston • Lorry Boys • Sail & Anchor • Steamrail • Storm Brewing Co
Other beer					
• Two Suns	• Carlton Draught • Carlton Dry • Cascade Premium • Crown Lager • Foster's • Great Northern • Melbourne Bitter • Pure Blonde • Reschs • Victoria Bitter	• Emu • Furphy • Hahn • Iron Jack • James Boag's • Swan • Tooheys • West End Draught • XXXX	• Coopers • Dr Tim's	• Alehouse • Miller Chill	• Bluey • Hammer 'N' Tongs • Maxx • Steersman • Tun

Industry background

40. Retailers are generally described as either 'on- premise' (for example, pubs, restaurants) or 'off-premise' (for example, supermarkets, bottle shops), according to whether or not alcohol is consumed at the place of sale.

41. Consumers generally do not purchase kegs for consumption off-premise, so off-premise retailers focus on selling packaged alcohol (bottles/cans), whereas on-premise venues sell alcohol in both bottles/cans and/or kegs.

42. In general, the same beer and cider products are used for packaged alcohol and in kegs.

Future with and without the acquisition

43. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future state of competition if the acquisition proceeds (the "with" position) to the likely future state of competition if the acquisition does not proceed (the "without" position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

44. On the basis of the information currently available, the ACCC considers that Asahi would continue to operate independently in the future if the proposed acquisition does not proceed. This is discussed in further detail below.

Market definition

45. The ACCC's starting point for considering which markets will be affected by the proposed acquisition is to identify the areas of overlap between the products actually or potentially supplied by the merger parties. The ACCC then considers other actual or potential suppliers of those products, as well as what other products constitute sufficiently close substitutes to provide a significant source of constraint on the merged entity.

46. The ACCC's preliminary view is that the relevant markets are:

- the supply of cider in Australia,
- the supply of beer in Australia,
- the supply of non-alcoholic products in Australia, and
- the supply of spirits in Australia.

Cider product market

47. In terms of demand-side substitutability, market feedback suggests that while some consumers purchase both cider and other types of alcohol such as beer, wine or RTDs, the majority of consumers do not view them as substitutes.

48. On the supply-side, while an existing beer producer may be able to use *some* of the same facilities at its disposal to also produce cider, there are other factors likely to limit its ability to quickly and profitably commence supplying cider products. In this respect, the ACCC notes there are likely to be considerable time and investment costs required to establish a successful brand to profitably supply a cider product.

49. Market participants have also indicated that there are differences in cider and beer production processes. Cider has different inputs and production tanks may not easily be switched, or at a minimum, require additional cleaning procedures to switch between beer and cider production. However, market participants have noted that brewers can use the same bottling or canning packaging line for both beer and cider products.

50. The ACCC considers that supply of cider in both keg and bottled/canned form are likely to be in the same market, as most producers produce in both forms.

51. The ACCC's preliminary view is that for the purposes of analysing this proposed acquisition, cider should be considered a separate product market.

The ACCC invites comments from market participants on its preliminary views about distinguishing the cider market. In particular, market participants may wish to comment on:

- Consumer behaviour across purchasing and consuming cider and other alcoholic beverages.
- The ease or difficulty of switching production between cider and beer.
- The ease or difficulty of establishing a successful cider brand for a beer company.
- The differences between kegs and packaged cider.

Beer categories

52. The ACCC is considering whether there are separate markets for different types of beer (such as 'premium international' and 'craft' beers); or whether all beer is supplied in the same market.

53. Information provided to the ACCC suggests that most industry participants categorise beer brands into different segments (such as 'premium international'; 'classic'; and 'craft' beers), and assess and compare the performance of beer brands against others within the same segment.

    a. 'Premium international' beer brands include Corona (CUB), Stella Artois (CUB), Asahi (Asahi), Peroni (Asahi) and Heineken (Lion).

    b. 'Classic' beer brands include Carlton Draught (CUB), and Tooheys New (Lion).

    c. 'Craft' beer brands include 4 Pines (CUB), James Squire (Lion), Green Beacon (Asahi), Stone and Wood, Young Henrys, Gage Roads and Colonial Brewing.

54. The ACCC is considering whether there are separate ‘premium international’; ‘classic’ and ‘craft’ beer markets. The segmentation of beer brands by industry participants suggests that the relevant markets may be for the supply of particular beer segments, rather than a broader market encompassing all types of beer. Asahi’s current portfolio of beers is focused on the ‘premium international’ and ‘craft’ beer segments.

55. On the demand-side, the ACCC is considering the level of demand-side substitution across brands in a particular beer segment against the level of demand-side substitution across brands in different segments.

56. On the supply-side, it is likely that a producer of ‘classic’ beer could commence supplying ‘premium international’ or ‘craft’ beer with little capital investment. The ACCC understands that ‘classic’, ‘premium international’ and ‘craft’ beer can be supplied from the same brewery. However, the time and sunk investment in branding required to profitably produce a new product in a new category may represent a significant barrier to entry or expansion in the relevant market(s).

The ACCC invites comments on its preliminary view that there is a market for beer that captures all categories of beer. In particular, market participants may wish to comment on:

- The differences between classic, premium international and craft beer brands.
- Consumer behaviour across different beer segments and brands.
- The ease or difficulty of switching supply between different beer segments.
- The differences between kegs and packaged beer.

Non-alcoholic products

57. The ACCC’s preliminary view is that non-alcoholic products constitute a separate market for the purposes of analysing this proposed acquisition.

Spirits

58. The ACCC’s preliminary view is that spirits constitute a separate market for the purposes of analysing this proposed acquisition.

Issue of concern: significant consolidation of cider brands

59. The ACCC’s preliminary view is that the proposed acquisition is likely to substantially lessen competition in the market for the supply of cider in Australia. The proposed acquisition would reduce the number of major suppliers of cider brands in Australia, resulting in a significant consolidation of cider brands. In turn, this is likely to lead to a lessening of competitive constraints in the market for the supply of cider in Australia; and a worsening of market outcomes for consumers (for example, an increase in the price of Asahi and CUB cider brands) relative to what would be likely if the proposed acquisition does not proceed.

Market concentration

60. As stated in the ACCC's *Merger Guidelines*, market concentration refers to the number and size of participants in the market. It provides a snapshot of market structure as well as an approximation of the size of the merger parties, which can assist when considering the other merger factors. The ACCC typically measures concentration with reference to market shares, concentration ratios and the HHI.[2]

61. The proposed acquisition will result in the consolidation of the two largest cider suppliers in Australia, with Asahi having approximately 30-32 per cent share and CUB having approximately 35-39 per cent share of the market. The next largest cider suppliers are Coca-Cola Amatil and Lion, each with approximately 5-10 per cent share. Post-acquisition, the combined entity will control most major cider brands by volume in Australia, with a market share estimate of approximately 65-70 per cent.

62. As part of its overall assessment of a merger, the ACCC will take into account the HHI, as a preliminary indicator of the likelihood that the merger will raise competition concerns requiring more extensive analysis. The ACCC will generally be more likely to identify horizontal competition concerns when the post-merger HHI is greater than 2000, or less than 2000 with a delta greater than 100.[3] The ACCC estimates that post-acquisition, HHI in the cider market would increase from approximately 2650 to approximately 5150 points, with the delta in excess of 2450 points.

Removal of Asahi and CUB as each other's closest competitors in cider

63. Market feedback indicates that Asahi's Somersby brand is the strongest performing cider, followed by the CUB cider brands, particularly Strongbow, Bulmers and Mercury. The ACCC considers that Asahi and CUB are likely to be each other's closest competitors in the supply of cider.

64. Many market participants have indicated that Asahi's Somersby and CUB's Strongbow cider products are 'must-haves' for both on and off-premise retailers. Customers have expressed concern that post-acquisition the two 'must-have' brands would be controlled by the same entity.

65. Market feedback and information considered by the ACCC indicates that the cider brands from Lion (for example, 5 Seeds), Coca-Cola Amatil (for example, Rekorderlig), craft and independent brewers, and private label products are not as close competitors as the Asahi and CUB brands.

66. Market inquiries suggest that other suppliers of cider have a significantly smaller presence than the major incumbents, Asahi and CUB, reflecting the difficulty of introducing new ciders and winning share from established brands. For example, Somersby was developed in 2008 and is a global cider brand in more than 50

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[2] ACCC, *Merger Guidelines 2008* (updated 2017), paragraphs 7.6-7.16.
[3] ACCC, *Merger Guidelines 2008* (updated 2017), paragraph 7.14.

countries;[4] while Strongbow has been sold in Australia since 1970 and is also a global cider brand.[5]

67. While there are some craft cider brewers (for example, Bilpin Cider, Coldstream, Hills Cider, Sunshack, Young Henrys) that may compete to some extent with Asahi and CUB, the ACCC considers that most craft cider brewers are unlikely to impose as strong a competitive constraint on the Asahi and CUB brands as each applies to the other. This is because craft brewers tend to operate on a smaller scale due to the limited capacity of their breweries and tend to be regionally focussed.

68. Private label cider brands (for example, those offered by Woolworths and Coles) have a growing presence in Australia, but most market participants consider private label cider brands do not compete closely with Asahi and CUB's cider brands. Market participants have indicated that while private label products are generally priced low relative to other cider products, they do not have mass market appeal and only have limited consumer brand awareness.

Barriers to entry and expansion

69. While small-scale new entry (or entry into cider by an existing beer producer) appears likely to continue, the ACCC's preliminary view is that there are significant barriers to timely and profitable entry or expansion on a scale sufficient to constrain a combined Asahi-CUB. These barriers include:

    a. capital requirements, such as the capital required to construct a large brewery or expand capacity at an existing brewery,

    b. high sunk costs, such as marketing and advertising, to build a successful brand,

    c. the time required to build a successful and reputable brand,

    d. access to on-premise taps to build a successful brand, and

    e. achieving the scale and distribution necessary to supply product at competitive prices.

70. The emergence of contract brewing has lowered barriers to entry and facilitated the expansion of smaller players to some extent, by providing potential suppliers with access to high quality equipment without the need to make as substantial a level of upfront capital investment. However, the other barriers mentioned above remain.

71. Additionally, the incentive to enter and expand in the cider market is likely to have reduced in recent years due to the decline in sales of cider products (cider consumption has declined by 9 per cent during the 2017-2018 period).[6] The ACCC is not aware of any recent medium to large-scale entry or expansion in Australia for cider products.

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[4] Somersby website, https://www.somersby.com/en/homepage.

[5] Strongbow website, https://www.strongbow.com.au/pages/about.

[6] Australian Bureau of Statistics, '4307.0.55.001 - Apparent Consumption of Alcohol, Australia, 2017-18', Issue released 9 September 2019 at https://www.abs.gov.au/ausstats/abs@.nsf/mf/4307.0.55.001/.

ACCC's preliminary views

72. In summary, the ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the cider market.

The ACCC invites comments from market participants on the issues outlined in relation to cider. In particular, market participants may wish to comment on the following:

- Closeness of competition between the Asahi and CUB cider brands and strength of the brands of other cider suppliers.
- Whether there are 'must have' cider brands for off-premise and on-premise venues.
- The barriers to entry and expansion in cider, in particular the likely timeframe, capital requirements, marketing and advertising costs.
- Likelihood of new entry or expansion in cider despite the cider market being in decline.

Issue that may raise concerns: removing Asahi as a vigorous competitor in beer

73. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in the supply of beer in Australia. The beer market is already highly concentrated and in recent years Asahi appears to have emerged as a vigorous and effective competitor in the supply of beer, imparting significant competitive tension on CUB and Lion.

74. The ACCC considers that the proposed acquisition may change Asahi's incentives to use its products to compete against brands presently supplied by CUB and Lion; and remove the apparent constraint presently posed on the supply of CUB products by the risk of a loss of sales to Asahi brands. In particular, the proposed acquisition may result in the loss of competition between Asahi's premium international brands and CUB's premium international brands.

Market shares

75. As noted above, the ACCC considers that the relevant market for assessing the competition effects of the proposed acquisition is the national market for the supply of beer.

76. The beer market is already highly concentrated, with CUB and Lion accounting for approximately 80 per cent of sales in the market. CUB is currently the largest supplier of beer in Australia having approximately 45 per cent of beer sales in Australia, followed by Lion having approximately 35 per cent.

77. Following the two major suppliers, Coopers has a share of approximately 5-7 per cent of beer sales; while Asahi has a share of approximately 3.5 per cent and Coca-Cola Amatil has a share of approximately 1-2 per cent. The share of remaining beer sales is relatively fragmented, with a large number of craft brewers having shares of no more than 0.5-1 per cent each.

78. The proposed acquisition would result in the consolidation of the first and fourth largest suppliers of beer in Australia.

Changing Asahi's incentives to behave as a vigorous and effective competitor

79. As outlined above, Asahi's beer market share is substantially smaller than that of CUB and Lion. However, the market for beer is already highly concentrated; and the proposed acquisition would lead to a further significant increase in concentration in this market. In this respect, the ACCC estimates that post-acquisition, HHI in beer would increase from approximately 3350-3500 to approximately 3650-3850 points (with the delta of 300-350 points). As noted above, the ACCC will generally be more likely to identify horizontal competition concerns when the post-merger HHI is greater than 2000, or less than 2000 with a delta greater than 100.[7] In this instance, the proposed acquisition will result in both a post-acquisition HHI that is substantially greater than 2000; and a delta well in excess of 100.

80. Even where an acquisition leads to a relatively small increase in market concentration, it can still lead to a substantial lessening of competition if the acquisition involves a vigorous and effective competitor. This is because, in some cases, the desire for small market participants to expand their share of a market can significantly influence the intensity or quality of competition in that market.

81. Vigorous and effective competitors will sometimes drive significant aspects of competition, such as pricing, innovation or product development, even though their own market share may be modest. These firms tend to be less predictable in their behaviour and deliver benefits to consumers beyond their own immediate supply, by forcing other market participants to deliver better and cheaper products. They also tend to undermine attempts to coordinate the exercise of market power.[8]

82. An acquisition that changes the incentives of a vigorous and effective competitor may therefore remove one of the most effective competitive constraints on market participants and thereby result in a substantial lessening of competition.[9] In these situations, the removal of a small participant from a market may have an impact on competition that is disproportionately large compared to its market share, and this could amount to a substantial lessening of competition.

83. Asahi is a global beer company and some market participants have noted that while Asahi is currently smaller in market share terms than CUB and Lion in Australia, it is well resourced to compete vigorously and effectively with its larger rivals. These market participants also note that recent behaviour by Asahi suggests it has been committed to growing its Australian operations. In particular, in the on-premise channel, some market participants have expressed that Asahi is currently a key competitor for taps that are not contracted to CUB or Lion, and is offering favourable trading terms to increase sales.

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[7] ACCC, *Merger Guidelines 2008* (updated 2017), paragraph 7.14.

[8] ACCC, *Merger Guidelines 2008* (updated 2017), paragraph 7.56.

[9] ACCC, *Merger Guidelines 2008* (updated 2017), paragraph 7.57.

84. The ACCC is concerned that removing the competitive tension that Asahi appears to impose on the two large incumbent brewers may lead to higher prices, less favourable trading terms for off-premise retailers and on-premise venues, and a less competitive market.

Removal of potential future expansion by Asahi

85. The ACCC applies a forward looking test when considering the likely effect of the proposed acquisition on competition (see earlier section regarding future with and without section). The ACCC compares the likely future with the acquisition to the likely future without the acquisition. While the current situation can be relevant to, or in some cases the same as, the likely future without the merger, this is not necessarily the case. Therefore the ACCC is considering not only the competitive presence that Asahi has now, but also the possibility of future expansion if the proposed acquisition does not proceed.

86. As noted in the previous section, the ACCC considers that Asahi appears to be a vigorous and effective competitor in the beer market. Asahi also appears to impose a competitive constraint on both CUB and Lion with the effect that if they were to provide less desirable terms for their products, they would risk losing customers (and market share) to Asahi. Asahi is a global beer company and the threat of Asahi expanding in Australia is likely to provide a significant competitive constraint on the behaviour of CUB and Lion presently (and in a future without the proposed acquisition) even if Asahi has not (and does not) expand its share of sales in the market.

87. The ACCC understands that in the absence of the proposed acquisition, Asahi will continue to operate independently and compete with CUB and Lion. For example, in September 2019, Asahi launched its first easy drinking beer (Two Suns). The ACCC is concerned that the proposed acquisition will remove the competitive constraint that Asahi apparently currently imposes, as well as the possibility of Asahi becoming an even more significant competitor to CUB and Lion in the beer market. Specifically, the ACCC is concerned that the proposed acquisition may remove the potential for a third significant supplier of beer to expand its existing presence in Australia and compete directly with CUB and Lion.

88. The ACCC's preliminary view is that Asahi's position as a meaningful beer competitor that appears to constrain CUB and Lion will be difficult to replicate. The ACCC is concerned that if Asahi's incentive to behave as a vigorous and effective competitor is removed, a new entrant or expanding business may be unlikely to replicate this competitive presence. The ACCC understands that brand strength and marketing spend to promote brand awareness is extremely important, such that other competitors with established distribution networks have still faced difficulties in establishing successful brands.

Other suppliers may not constrain a combined Asahi-CUB

89. Based on feedback from market inquiries, the ACCC is concerned that if the proposed acquisition proceeds and Asahi is no longer competing independently against CUB and Lion, other suppliers of beer may not be able to impose the same level of constraint on the combined entity and Lion, as Asahi presently appears to impose on CUB and Lion (and would be expected to impose in a future without the proposed acquisition). Of all the current market participants,

Asahi is likely to be the most able to rapidly and profitably expand to constrain CUB and Lion if they were to lower the competitiveness of their offerings.

90. Coopers and Coca-Cola Amatil are also present in the beer market, but market feedback suggests that Asahi has a stronger portfolio of brands and is significantly more active in growing its share of beer sales through relationships with retailers and venues, and attractive trading terms.

91. Craft brewers may be able to introduce new brands, but they tend to operate on a smaller scale due to the limited capacity of their breweries and tend to be regionally focussed. By way of comparison, each of CUB and Lion have production capacities that are at least 100 times the capacity and scale of a large craft brewer. Some craft brewers have built up their presence in particular regional areas (for example, Stone and Wood, Gage Roads, Colonial Brewing and Young Henrys) and may therefore provide some competitive constraint on a combined Asahi-CUB in the regions they are focused on.

92. However, the ACCC considers that most craft brewers would be unlikely to impose as effective a competitive constraint on the combined entity and Lion as Asahi acting independently is able to do, given the significant and national scale of its business. Further, the ACCC notes that some market participants have expressed that craft brewers tend to enter and build up their brand before being acquired by the large brewers, Lion, CUB and Asahi.

93. Private label beer brands (for example, those offered by Woolworths and Coles) have a growing presence in the market, but the market share of private label beer is significantly smaller as compared to private label wine and private label spirits. Private label beers tend to be lower-priced and also tend to be limited to sales in the off-premise channel. Additionally, market participants consider that the private label brands do not compete closely with Asahi and CUB's beer brands as they are regarded as lower quality products and primarily attract price-conscious customers.

Closeness of competition between brands in premium international segment

94. As part of the proposed acquisition, Asahi will acquire the right to supply and distribute AB InBev products in Australia. AB InBev has many overseas brands (such as Patagonia, Skol, Alexander Keith's and Camden Town Brewery) that are not currently marketed in Australia. It also owns popular beer brands currently distributed in Australia by CUB, including Corona and Stella Artois.

95. The ACCC considers that Asahi's brands compete closely with AB InBev brands, particularly within the premium international beer segment. For instance, the ACCC's market inquiries suggest AB InBev's Corona and Stella Artois brands compete closely with other premium international beer brands including Heineken and Asahi's Asahi and Peroni brands. As a result, the ACCC considers that Asahi's strength in the premium international beer segment gives it a strong basis to compete with and constrain the major incumbents, CUB and Lion.

Imports may not constrain a combined Asahi-CUB

96. Importers of overseas brands would be likely to face significant obstacles to expansion and entering the Australian beer market, including sunk costs to build brand awareness in Australia.

97. Market inquiries have indicated that as the Australian beer market is already highly saturated, although there are many overseas beer brands that are not in Australia, these brands would need to invest significant marketing and advertising costs to establish a presence in the Australian beer market. Market inquiries have also indicated that the most popular overseas beer brands are already supplied in Australia in some form, whether it is through a producer, distributor or retailer. For example, while Heineken and Carlsberg are both large global groups with multiple beer brands, some of their products including their headline Heineken and Carlsberg brands are already distributed in Australia through Lion and Coopers, respectively.

98. As many international brands are already supplied or distributed in Australia through local producers or retailers, and there are significant obstacles to other international brands entering the Australian beer market, the ACCC does not consider that imports would be likely to be a significant constraint on the combined entity.

Barriers to entry and expansion

99. As noted above in the discussion for cider, the ACCC's preliminary view is that there are significant barriers to timely and profitable entry or expansion on a scale sufficient to constrain a combined Asahi-CUB. These barriers include:

    a. capital requirements, such as the capital required to construct a large brewery or expand capacity at an existing brewery,

    b. high sunk costs, such as marketing and advertising, to build a successful brand,

    c. the time required to build a successful and reputable brand,

    d. access to on-premise taps to build a successful brand, and

    e. achieving the scale and distribution necessary to supply product at competitive prices.

100. Additionally, market participants have expressed that it is important to access on-premise taps for a successful launch of even a small-scale brand, and that tap access can be difficult. Products on tap attract more volume (and visibility) than packaged fridge products. Market participants have indicated that post-acquisition, craft and independent brewers may face greater difficulties accessing taps at on-premise venues, because the combined entity will likely have an even broader range of beer and cider brands to cover a greater number of the available taps.

101. While there is evidence of new and regular craft brewer entry, the ACCC is not aware of any recent medium to large-scale entry or expansion in Australia for beer products, of a similar scale to Asahi's current operations.

ACCC's preliminary views

102. In summary, the ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in the market for the supply of beer in Australia, by changing the incentives of Asahi to compete directly with the large brewers, CUB and Lion.

The ACCC invites comments from market participants on the issues outlined in relation the beer market. In particular, market participants may wish to comment on the following:

- Whether Asahi is a vigorous and effective competitor to CUB (and Lion) in the beer market.
- Whether the possibility of future expansion by Asahi imposes constraints on the conduct of CUB and Lion.
- The likely effects of Asahi's removal as a standalone competitor to CUB and Lion.
- The impact of Asahi acquiring a licence to distribute AB InBev's products in Australia.
- Strength of the brands of other beer suppliers, including imports and private label.
- Performance and availability of craft beer brands.
- The barriers to entry and expansion in beer, in particular the likely timeframe, capital requirements, marketing and advertising costs.
- Likelihood of medium to large scale new entry or expansion of beer products.
- Access to on-premise taps.

Issue unlikely to raise concerns: bundling of alcoholic and non-alcoholic products

103. Asahi already has a broad beverage portfolio. Asahi currently supplies cider, beer and spirits, and through Asahi Lifestyle Beverages (formerly Schweppes Australia) also supplies a number of branded non-alcoholic beverages. The proposed acquisition would increase Asahi's beer, cider and spirit ranges.

104. Some market participants have expressed concerns that post-acquisition, the combined entity could leverage its dominant position in cider (and potentially premium international beer) to bundle the supply of cider, beer, spirits and/or non-alcoholic beverages in a way that will lessen competition. It has also been noted that CUB's recent expansion into the supply of wine will further enhance the combined entity's ability to provide a unique bundled offering.

105. The ACCC would be concerned if the proposed acquisition allowed Asahi to alter its product offerings in a way that forecloses its rivals and reduces competition. For example whether, as a result of the acquisition, the combined entity will have the ability to foreclose smaller suppliers that are focused on single product categories.

106. The ACCC considers that while the combined entity would be able to offer a large range of beverages to customers, our investigation to date suggests there is insufficient demand for bundled offerings such that the risk of anti-competitive foreclosure of smaller rivals is low. We understand that some on-premise venues and off-premise retailers obtain alcoholic beverages as part of product bundles, but market participants have not suggested that this practice is the norm. In the case of festival and stadium contracts, market participants have advised that there are generally separate tendering processes for different types of alcoholic beverages.

107. The ACCC's preliminary view is that the proposed acquisition is unlikely to reduce competition in this way because a combined Asahi-CUB will likely continue to be constrained by rivals. While soft drinks, beer, cider, spirits and wine are 'must have' products for pubs, they can be readily sourced from other channels and suppliers. Market participants have advised that competitors such as Lion and Coca-Cola Amatil have alcoholic and non-alcoholic brands that are important for sales.

The ACCC invites comments from market participants about its preliminary views on whether or not a combined Asahi-CUB will be able to supply a unique bundled offering and reduce competition by foreclosing other suppliers.

Issue unlikely to raise concerns: supply of spirits

108. Both Asahi and CUB also supply some spirits but the overlap for these products is minimal. A combined Asahi-CUB will only have a combined share of approximately 2.5-4 per cent of total spirits.

109. Market feedback also indicated that a combined Asahi-CUB would not have a significant share of brands for any particular spirits category (for example, vodka, bourbon, gin, tequila). Other spirits suppliers such as Diageo, Beam Suntory, Pernod Ricard, Campari, Brown-Forman and Bacardi-Martini would continue to strongly compete against a combined Asahi-CUB in the supply of sprits.

110. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the supply of spirits products in Australia.

The ACCC invites comments from market participants about its preliminary views on whether or not the proposed acquisition is unlikely to substantially lessen competition in the supply of spirits.

ACCC's future steps

111. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than 22 January 2020 and should be emailed to mergers@accc.gov.au.

112. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.

113. The ACCC intends to publicly announce its final view by 19 March 2020. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.