
Section 58 of the Competition Act (Cap. 50B)

Grounds of Decision issued by the Competition Commission of Singapore

In relation to the application for decision of the acquisition by Heineken International B.V. of GAPL Pte. Ltd. pursuant to section 58 of the Competition Act

30 June 2016

Case number: CCS 400/004/15

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X].
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TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Parties	1
III.	The Transaction	4
IV.	Counterfactuals	6
V.	Competition Issues.....	8
VI.	Relevant Market.....	10
VII.	Competition Assessment.....	14
VIII.	Efficiencies	24
IX.	Ancillary Restraints	25
X.	Conclusion	26

I. Introduction

The notification

1. On 12 November 2015, Heineken International B.V. (“HIBV”) filed a notification pursuant to section 58 of the Competition Act (Cap. 50B) (the “Act”) for a decision by the Competition Commission of Singapore (“CCS”) as to whether the acquisition by HIBV of the entire issued and outstanding ordinary share capital of GAPL Pte. Ltd. (“GAPL”) which HIBV (through its subsidiary, Heineken Asia Pacific Pte. Ltd. (“HAP”))¹ did not already hold (the “Transaction”) has infringed the section 54 prohibition of the Act. The Transaction was completed on 7 October 2015, in parallel with and interconditional on other transactions between Diageo Ireland (“Diageo”) and the Heineken N.V corporate group of companies (“Heineken Group”), including under a Framework Agreement of the same date (i.e., 7 October 2015). As part of the Transaction, Diageo and GAPL entered into a Brewing and Distribution Agreement (“BDA”) on [X].²
2. For the purposes of this notification, CCS has taken into consideration the views of three competitors³ and four customers⁴. There were also nine third-parties⁵ who indicated that they had no comments or declined to comment on the notified Transaction.
3. At the end of the consultation process and after evaluating all the evidence, CCS concludes that the Transaction has not infringed section 54 of the Act.

II. The Parties

Heineken International B.V.

4. HIBV is an international investment holding company within the Heineken Group.⁶ In Singapore, the Heineken Group is involved in the production, marketing, sale, distribution and supply of various brands of beer, ale, lager and stout in Singapore, including brands of beer which are held by the Heineken Group and third-party brands which have been licensed to HAP and other Singapore-registered corporates under the Heineken Group (“Heineken Singapore”) for supply in Singapore.⁷
5. HIBV’s subsidiary, HAP, is a private limited company within the Heineken Group.⁸ HAP was the [X] shareholder of GAPL prior to the Transaction, through its [X]

¹ HAP was formerly known as Asia Pacific Breweries Limited (“APB”), which in turn was formerly known as Malayan Breweries Limited (“MBL”).

² Paragraphs 9.16 to 9.18 of Form M1.

³ [X].

⁴ [X].

⁵ [X].

⁶ Paragraph 7.1 and Part 5 of Form M1.

⁷ Paragraph 15.1.2 and Part 5 of Form M1.

⁸ Paragraph 7.2 of Form M1. HAP was formerly known as Asia Pacific Breweries Limited (“APB”), which in turn was formerly known as Malayan Breweries Limited (“MBL”). HAP is a wholly-owned subsidiary of HIBV.

shares held in GAPL.⁹ HAP, through its wholly-owned subsidiary, Asia Pacific Breweries (Singapore) Pte. Ltd. (“APBS”), brews and sells a wide range of beer brands in the Singapore duty-paid segment.¹⁰

6. The total group worldwide turnover for the Heineken Group in the financial year ended 31 December 2014 was approximately €19,257,000,000 (approximately S\$29,068,441,500).¹¹ The total group turnover for the Heineken Group in Singapore in the financial year ended 31 December 2014 was approximately S\$[X] (comprising turnover for HAP, Heineken Asia Pacific Export Pte. Ltd. (“HAPE”) and APBS amounting to approximately S\$[X]).¹²
7. The table in **Annex A** lists the Singapore-registered entities in the Heineken Group, the trading, business and brand names used by such entities in Singapore, a brief overview of their activities worldwide and in Singapore, and their physical presence in Singapore.¹³

GAPL Pte. Ltd.

8. GAPL is a private limited company incorporated in Singapore.¹⁴ Prior to the Transaction, GAPL was a joint venture company of HAP and Guinness Overseas Limited (“GOL”), where HAP and GOL respectively held [X] and [X] of the issued ordinary shares in GAPL.¹⁵ After the completion of the Transaction, the Heineken Group owns, directly and indirectly, 100% of the entire issued ordinary shares in GAPL.¹⁶
9. GAPL’s principal activity is as a management and investment holding company. Currently, GAPL is the brand licensee for the ABC Extra Stout brand in Singapore [X], and the brand licensee for Guinness Draught and Guinness Foreign Extra Stout (“Guinness FES”) brands in Singapore.¹⁷ These brands are licensed from HAP for the ABC Extra Stout brand, and from Diageo for the Guinness Draught and Guinness FES brands. For ease of reference, Guinness Draught and Guinness FES shall hereinafter be referred to collectively as “Guinness Stout”. GAPL does not, by itself, produce, market or distribute the ABC Extra Stout and Guinness Stout brands in Singapore.¹⁸ Instead, GAPL sub-contracts the production of ABC Extra Stout and Guinness FES to APBS, and has contracts with APBS (for the duty-paid segment) and Heineken Asia Pacific Export Pte. Ltd. (“HAPE”) (for the duty-free segment) for the marketing and distribution of ABC Extra Stout and Guinness FES in Singapore.¹⁹

⁹ Paragraph 9.2 of Form M1.

¹⁰ Paragraph 9.2 of Form M1.

¹¹ Paragraphs 13.1 and 16.1 of Form M1.

¹² Paragraphs 13.3 and 16.1 of Form M1.

¹³ Paragraph 10.1 of Form M1.

¹⁴ See **Annex B** for further details on formation of GAPL.

¹⁵ Paragraph 7.3 of Form M1.

¹⁶ Paragraph 11.1 of Form M1.

¹⁷ Paragraph 9.1 of Form M1.

¹⁸ Part 5 of Form M1.

¹⁹ Whilst HIBV has submitted in paragraph 33.1.1 of Form M1 and paragraph 19.1 of HIBV’s Responses dated 25 November 2015 to CCS’s Request For Information dated 19 November 2015 that “GAPL sub-licences ABC Extra Stout and Guinness FES to APBS for production”, CCS notes that [X].

GAPL imports Guinness Draught from Ireland and appoints APBS to distribute Guinness Draught in Singapore.²⁰ Please refer to paragraphs 11 to 20 below which sets out the background to the brand licences for the ABC Extra Stout and Guinness Stout brands in Singapore.

10. The total group worldwide turnover for the GAPL group (including its subsidiary, Heineken Malaysia Berhad, a company registered in Malaysia²¹) in the financial year ended 30 June 2014 was approximately S\$[X].²² The total group turnover for the GAPL group in Singapore, in the financial year ended 30 June 2014, was approximately S\$[X].²³

Background to the Brand Licence for ABC Extra Stout in Singapore

11. GAPL licenses the use of the ABC Extra Stout brand in Singapore from HAP (formerly known as Asia Pacific Breweries Limited). HAP has been the brand owner of the ABC Extra Stout brand and has held all the rights, title and interests in the ABC Extra Stout trade mark pursuant to an agreement which shall hereinafter be referred to as the “ABC TMLA”, since 23 November 1995.²⁴ Pursuant to the ABC TMLA, HAP has the right to: [X].²⁵
12. GAPL sub-contracts the production of ABC Extra Stout in Singapore to APBS (formerly known as Malayan Breweries (Singapore) Pte. Ltd.), [X].²⁶
13. Since around 3 October 2005, GAPL has appointed APBS as a sub-distributor of ABC Extra Stout in Singapore pursuant to an agreement which shall hereinafter be referred to as the “ABC Distribution Agreement”.²⁷ Prior to that, GAPL had undertaken the distribution of ABC Extra Stout in Singapore under [X].
14. The [X] are not affected by the Transaction. These [X] before and after the Transaction.

Background to the Brand Licences for Guinness FES and Guinness Draught in Singapore

15. GAPL licenses the use of the Guinness Stout brands in Singapore from Diageo. Diageo has been the brand owner of the Guinness Stout brands [X].
16. As part of the Transaction, GAPL and Diageo entered into the BDA on [X], following which the Guinness FES TMLA and the Guinness Draught TMLA were terminated.

²⁰ Paragraph 19.1 of HIBV’s Responses dated 25 November 2015 to CCS’s Request For Information dated 19 November 2015. HIBV submitted that [X].

²¹ Heineken Malaysia Berhad was formerly known as Guinness Anchor Berhad, and is listed on the Main Board of Bursa Malaysia. GAPL holds a 51% shareholding interest in Heineken Malaysia Berhad. [X] (footnote 3 of HIBV’s Responses dated 25 November 2015 to CCS’s Request For Information dated 19 November 2015).

²² Paragraphs 13.2 and 16.2 of Form M1.

²³ Paragraphs 13.4 and 16.2 of Form M1.

²⁴ Paragraphs 9.6 and 9.9 of Form M1.

²⁵ Paragraph 9.7 of Form M1.

²⁶ Paragraph 9.6 of Form M1.

²⁷ Paragraph 9.10 of Form M1.

17. Before the Transaction, GAPL had sub-contracted APBS for the production, packaging and storage of Guinness FES in Singapore, pursuant to an agreement which shall hereinafter be referred to as the “Guinness Production Agreement”.²⁸ GAPL had also appointed APBS to distribute both Guinness FES and Guinness Draught in Singapore pursuant to an agreement which shall hereinafter be referred to as the “Guinness Distribution Agreement”.²⁹ As part of the Transaction, the Guinness FES TMLA, Guinness Draught TMLA, Guinness Production Agreement and Guinness Distribution Agreement have been terminated by GOL.³⁰
18. The BDA [X].³¹ [X].³²
19. Under the BDA, Diageo has granted GAPL the rights: [X].³³ [X].³⁴
20. The term of the BDA is for [X].³⁵

III. The Transaction

Nature of the Transaction

21. The Transaction, which was completed on 7 October 2015, was conducted by way of an acquisition by HIBV of the [X] of the issued and outstanding ordinary shares in GAPL held by GOL, which HIBV (through its subsidiary HAP) did not already hold.³⁶
22. As a result of the Transaction, the Heineken Group now holds, directly and indirectly, 100% of the entire issued ordinary share capital of GAPL.³⁷ CCS notes that the Transaction also resulted in the dismantling of the joint venture agreement (“JVA”) between HAP and GOL.
23. As part of the Transaction, the Heineken Group and Diageo agreed to [X].³⁸ The Heineken Group and Diageo agreed that the BDA would replace the existing agreements³⁹ under which the Guinness Stout brands are licensed to GAPL.⁴⁰ The BDA was entered into by Diageo and GAPL on [X], and the terms of the BDA took effect retrospectively from [X].⁴¹

²⁸ Paragraph 9.11 of Form M1.

²⁹ Paragraph 9.14 of Form M1.

³⁰ Paragraph 9.15 of Form M1 and paragraph 1.2 of HIBV’s Responses dated 25 November 2015 to CCS’s Request For Information dated 19 November 2015.

³¹ Paragraph 9.16 of Form M1.

³² Clause 2 of the BDA.

³³ [X].

³⁴ Response from HIBV dated 16 May 2016 to CCS’s Request for Information dated 9 May 2016; Clause 12.6 of the BDA.

³⁵ Clauses 2 of the BDA.

³⁶ Paragraph 1.1, 8.3 and 11.10 of Form M1.

³⁷ Paragraphs 9.19, 11.1, 11.4 and 11.8 of Form M1.

³⁸ Paragraph 9.16 of Form M1.

³⁹ HIBV submitted that the BDA [X] (paragraph 9.16 of Form M1).

⁴⁰ Paragraph 9.16 of Form M1.

⁴¹ Clause 2 of the BDA.

24. Pre-Transaction, the brand usage rights⁴² for ABC Extra Stout was [X]. Post-Transaction, [X].
25. [X]⁴³ [X]⁴⁴ [X].

Commercial Rationale for the Transaction

26. HIBV submitted that the wider strategic rationale behind the Transaction was to [X].⁴⁵
27. HIBV further submitted that, with the dismantling of the JVA between HAP and GOL, [X].⁴⁶

Merger under Section 54 of the Act

28. HIBV submitted that the Transaction constitutes a merger falling under section 54(2)(b) of the Act.⁴⁷
29. A merger under section 54(2)(b) of the Act occurs when one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more undertakings. Paragraph 3.6 of the *CCS Guidelines on the Substantive Assessment of Mergers* provides that such control acquired may be over one or more undertakings or over the whole or part of the assets of an undertaking. These assets include brands or licences.
30. HIBV submitted that, immediately prior to the Transaction, GAPL was under the joint control of HAP and GOL for the purposes of the Act, for the following reasons:⁴⁸
 - (a) [X];⁴⁹
 - (b) [X];⁵⁰
 - (c) [X]⁵¹[X]⁵²
 - (i) [X];
 - (ii) [X];
 - (iii) [X]; and

⁴² This includes the right to use [X].

⁴³ [X].

⁴⁴ [X].

⁴⁵ Paragraph 12.1 of Form M1.

⁴⁶ Paragraph 9.20 of Form M1.

⁴⁷ Paragraph 11.3 of Form M1.

⁴⁸ Paragraph 9.3 of Form M1.

⁴⁹ Paragraph 9.3.1 of Form M1.

⁵⁰ Paragraph 9.3.2 of Form M1.

⁵¹ Paragraph 9.3.3 of Form M1.

⁵² Paragraph 9.3.3 of Form M1.

- (iv) [X]; and
 - (d) [X].⁵³
 - (i) [X].⁵⁴
 - (ii) [X].⁵⁵
 - (iii) [X].⁵⁶
 - (iv) [X].⁵⁷ and
 - (v) [X].⁵⁸
31. Post-Transaction, the Heineken Group owns, directly and indirectly, 100% of the entire issued ordinary shares in GAPL.⁵⁹ CCS notes that the Transaction also resulted in the dismantling of the JVA between HAP and GOL.
32. CCS therefore assesses that the Transaction has resulted in the Heineken Group acquiring sole control (via HIBV) over GAPL, where there had been joint control by GOL and the Heineken Group (through HAP) immediately prior to the Transaction.⁶⁰ Therefore, the Transaction constitutes a merger pursuant to section 54(2)(b) of the Act.
- IV. Counterfactuals**
33. As set out in paragraph 4.6 of the *CCS Guidelines on the Substantive Assessment of Mergers*, CCS will, in assessing mergers and applying the substantial lessening of competition (“SLC”) test, evaluate the prospects for competition in the future with and without the merger. The competitive situation without the merger is referred to as the “counterfactual”. The SLC test will be applied prospectively, that is, future competition will be assessed with and without the merger.
34. The *CCS Guidelines on the Substantive Assessment of Mergers* also states that in most cases, the best guide to the appropriate counterfactual will be prevailing conditions of competition, as this may provide a reliable indicator of future competition without the merger. However, CCS may need to take into account likely and imminent changes in

⁵³ Paragraph 9.4 of Form M1.

⁵⁴ Paragraph 9.4.1 of Form M1.

⁵⁵ Paragraph 9.4.2 of Form M1.

⁵⁶ Paragraph 9.4.3 of Form M1.

⁵⁷ Paragraph 9.4.4 of Form M1.

⁵⁸ Paragraph 9.4.5 of Form M1.

⁵⁹ Paragraph 9.19 of Form M1.

⁶⁰ CCS considers that decisive influence is generally deemed to exist if there is ownership of more than 50% of the voting rights attributable to the share capital of an undertaking which are exercisable at a general meeting. However, CCS has also assessed whether decisive influence is capable of being exercised by examining the entire relationship between the merger parties. [X]. Please refer to **Annex C** for more details.

the structure of competition in order to reflect as accurately as possible the nature of rivalry without the merger.⁶¹

HIBV's Submissions

35. HIBV submitted that, in the absence of the Transaction, control [X].⁶²
36. HIBV submitted that the appropriate counterfactual to the Transaction should be the pre-Transaction structure of GAPL and its activities,⁶³ which is that:
- (a) GAPL held the brand licences for ABC Extra Stout and Guinness Stout in Singapore, [X];⁶⁴
 - (b) GAPL was under the joint control of HAP and GOL for the purposes of the Act (see paragraph 30 above);⁶⁵
 - (c) control over the strategic commercial and competitive behaviour of ABC Extra Stout and Guinness Stout in Singapore from a Singapore competition law perspective respectively was:⁶⁶
 - (i) held by [X] over ABC Extra Stout, as [X];
 - (ii) held by [X] over Guinness FES, as [X]; and
 - (iii) held by [X] over Guinness Draught, as [X]; and
 - (d) [X]:⁶⁷
 - (i) [X];
 - (ii) [X]; and
 - (iii) [X].
37. HIBV further submitted that competitors are likely to continue to compete for customers with, or without, the Transaction,⁶⁸ given the presence of many other major global beer brewers such as Carlsberg, and the increasing popularity of craft beer, which is easily imported into Singapore.⁶⁹

⁶¹ Paragraph 4.7 of the *CCS Guidelines on the Substantive Assessment of Mergers*.

⁶² Paragraph 23.1 of Form M1.

⁶³ Paragraph 23.2 of Form M1.

⁶⁴ Paragraph 23.2.1 of Form M1.

⁶⁵ Paragraph 23.2.2 of Form M1.

⁶⁶ Paragraph 23.2.3 of Form M1.

⁶⁷ Paragraph 23.2.4 of Form M1.

⁶⁸ Paragraph 23.5 of Form M1.

⁶⁹ Part 5 of Form M1.

CCS's Conclusion on the Relevant Counterfactual

38. CCS has considered HIBV's submissions. There is no information before CCS to suggest that there are likely and imminent changes in the structure of competition in the supply of beer (including ales, lager and stout) in Singapore. Accordingly, CCS accepts that the relevant counterfactual scenario for the purposes of CCS's competition assessment is the pre-Transaction structure of GAPL and its activities, i.e., a scenario where the [X] issued ordinary shares held by GOL in GAPL have not been transferred to HIBV, the JVA is not dismantled and GAPL's business operates in the manner as set out in the JVA. Hence, in the counterfactual, GOL and the Heineken Group would have each had a close to [X]% equity interest from GAPL's sales of ABC Extra Stout, Guinness FES and Guinness Draught to APBS in Singapore.
39. Importantly, this counterfactual includes the pre-Transaction arrangement that GAPL had sub-contracted to APBS, which is a subsidiary within the Heineken Group, the production of ABC Extra Stout and Guinness FES, and the distribution of ABC Extra Stout, Guinness FES and Guinness Draught, in Singapore, alongside the other beer brands within APBS's portfolio. This arrangement remains unchanged after the completion of the Transaction.
40. In the counterfactual scenario, [X]⁷⁰ [X].

V. Competition Issues

41. For this Transaction, HIBV submitted that any overlap in the goods and services of Heineken Singapore and GAPL in Singapore is only insofar as:⁷¹
- (a) GAPL is the licensee of the ABC Extra Stout and Guinness Stout brands in Singapore, and GAPL in turn sub-contracts and/or sub-licenses these brands to APBS for the production, distribution and supply of the same in Singapore;⁷² and
 - (b) Heineken Singapore, which includes APBS, is involved in the production, marketing, sale, distribution and supply of various brands of beer, ale, lager and stout in Singapore, including brands of beer which are held by the Heineken Group and third-party brands which have been licensed to Heineken Singapore entities for supply in Singapore.⁷³
42. HIBV submitted that the direct overlap in the activities of Heineken Singapore and GAPL is the licensing of brands of beer (including all ale, lager and stout) for production, marketing, sale, distribution and supply in Singapore.⁷⁴ [X].⁷⁵

⁷⁰ [X].

⁷¹ Paragraphs 15.1 to 15.1.2 of Form M1.

⁷² Paragraph 15.1.1 of Form M1. Prior to the Transaction, GAPL had sub-contracted the production of ABC Extra Stout and Guinness FES to APBS, and had appointed APBS as the Singapore distributor for ABC Extra Stout and Guinness Stout. Post-Transaction, GAPL sub-contracts the production, marketing and distribution of ABC Extra Stout and Guinness FES in Singapore to APBS (for the duty-paid segment) and HAPE (for the duty-free segment).

⁷³ Paragraph 15.1.2 of Form M1.

⁷⁴ Paragraph 15.2 of Form M1.

Accordingly, HIBV submitted that the competitive effects of the Transaction should be examined within the supply of beer (including ales, lager and stout) in Singapore (the “Overlapping Product”).

43. The Heineken Group’s turnover in Singapore in respect of the Overlapping Product for the financial year ending 31 December 2014 was approximately S\$[X].⁷⁶ GAPL’s Singapore turnover in respect of the Overlapping Product for the financial year ending 30 June 2014 was S\$[X].⁷⁷
44. HIBV submitted that the Transaction will not give rise to non-coordinated effects in the supply of the Overlapping Product in Singapore in view of: (a) existing and potential competing beer brand owners, breweries and distributors in Singapore and globally which can, and do, supply and distribute beer in Singapore, (b) the absence of prohibitive barriers to entry for the import of beer for sale in Singapore, (c) consumption patterns of end-customers, or corresponding, intermediate-direct customers which exert competitive pressure on prices, and (d) competitive pressure from potential entrants who could enter the Singapore market easily due to the low barriers of entry.⁷⁸
45. HIBV also submitted that the Transaction will not give rise to coordinated effects in the supply of the Overlapping Product in Singapore in view of: (a) existing and potential competing beer brand owners, breweries and distributors in Singapore and globally who can, and do, supply and distribute beer in Singapore, (b) the absence of prohibitive barriers to entry for the import of beer for sale in Singapore, (c) competition for beer sold through intermediate-direct customers and end-customers taking place along a number of dimensions such as price, taste, reputation, quality and branding, which makes it difficult for competitors to monitor and sustain any coordination.⁷⁹
46. HIBV submitted that there is no further strengthening of vertical integration arising from the Transaction as there is no increment to the production and distribution capabilities of Heineken Singapore, or to the brands which APBS is directly contracted, or sub-contracted, to produce and distribute, arising from the Transaction. Both prior to the Transaction and post-Transaction, GAPL sub-contracts the production of ABC Extra Stout and Guinness FES to APBS, and has appointed APBS to distribute ABC Extra Stout and Guinness Stout in Singapore.⁸⁰
47. CCS notes that, conceptually, the supply chain of beers that is relevant to the Transaction can be divided into three functional levels, namely (i) brand ownership; (ii) brand usage rights; and (iii) production and distribution of beer brands. The Transaction only results in a change in level (ii), from joint control between the vendor (Diageo/GOL) and the acquirer (the Heineken Group) pre-Transaction, to sole

⁷⁵ Paragraph 15.2 of Form M1.

⁷⁶ Paragraph 16.1 of Form M1.

⁷⁷ Paragraph 16.2 of Form M1.

⁷⁸ Sections 33 and 34 of Form M1.

⁷⁹ Section 35 of Form M1.

⁸⁰ Section 36 of Form M1.

control by the acquirer post-Transaction. Levels (i) and (iii) are unchanged. In particular:

- For ABC Extra Stout, the brand is owned by the acquirer (the Heineken Group), which licenses the brand usage rights to the target (GAPL) which, in turn, has a sub-contract with the acquirer (the Heineken Group/APBS) for production and a contract for distribution of the same.
- For Guinness Stout, the brand is owned by the vendor (Diageo), which licenses the brand usage rights to the target (GAPL) which, in turn, has a sub-contract with the acquirer (the Heineken Group/APBS) for production and a contract for distribution of the same.

48. In this regard, CCS will assess whether the Transaction has led to any significant change in market structure and/or conditions that might give rise to SLC in any market in Singapore.

VI. Relevant Market

(a) Product Market

49. HIBV submitted that the relevant product market definition is the market for the production, marketing, sale, distribution and supply of beer (which includes all ales, lagers and stouts) in the duty-paid and duty-free segments.⁸¹

Beer as a Distinct Product Market

50. According to HIBV, beer is an alcoholic beverage brewed by the fermentation of carbohydrate based foods, such as wheat, grain and barley, etc.⁸² Beer is produced in breweries both in Singapore and globally, and is typically packaged in cans, bottles and kegs.⁸³ Global breweries range from large scale breweries, which export to several countries, to small microbreweries, which exist in specialised niche markets, including in Singapore.⁸⁴
51. Thus, HIBV submitted that beer can be considered a specialised product that is differentiated from other types of alcoholic beverages, due to its unique taste, smell and flavour.⁸⁵ HIBV referred to *CCS 400/005/12 – Acquisition by Heineken International B.V. of Asia Pacific Breweries Limited* (“Heineken/APB”) where CCS had considered beer products to be distinct from other products like wine and hard liquor. HIBV also referred to several European Commission (“EC”) cases which have decided that beer was in a separate product market from other beverages.⁸⁶

⁸¹ Paragraph 20.1 of Form M1.

⁸² Paragraph 19.1 of Form M1.

⁸³ Paragraphs 19.1 and 19.2 of Form M1.

⁸⁴ Paragraph 19.2 of Form M1.

⁸⁵ Paragraph 19.7 of Form M1.

⁸⁶ See the EC’s decision in *EC Case No. COMP/M.4439 – Heineken/ Scottish & Newcastle Assets*, *EC Case No. COMP/M.4952 – Carlsberg/Scottish & Newcastle Assets*, *EC Case No. COMP/M.3372 – Carlsberg / Holsten*, *EC Case No. COMP/M.3289 – Interbrew/ Spatenfranziskaner*, and *EC Case No. IV/M. 582 – Orkla/ Volvo*.

CCS's Assessment on the Relevant Product

52. CCS has considered the possibility of a narrower product market definition, i.e., stout only, which may be considered to be distinct from other types of beer.
53. Market feedback on the market definition is mixed. While feedback from an intermediate-direct consumer suggests that a narrower definition may be plausible insofar as Guinness is a stout brand and it does not compete with other lager and ale brands such as Heineken,⁸⁷ a competitor considered all types of beer to be substitutable as there is a high level of supply-side substitutability and there are no switching costs when switching between production of different types of beer.⁸⁸
54. The feedback also suggests that it is common for intermediate-direct customers, including on-premise and off-premise outlets, to purchase a variety of beer brands including stout brands, rather than to purchase only stout brands, from suppliers.⁸⁹ Intermediate-direct customers take into consideration not only the available stout brands but also the full portfolio of beers, including lagers and ales, when choosing between suppliers.
55. CCS also notes that [X].⁹⁰ This might suggest that ABC Extra Stout and Guinness Stout are “must-have” brands for intermediate-direct customers and therefore form a separate market.
56. Based on the information available, CCS is unable to conclude whether a narrower market comprising only stouts should be considered. CCS notes that the Transaction has resulted in a horizontal overlap in the broader market of beers, as the Heineken Group has acquired sole control over Guinness Stout, in addition to ABC Extra Stout, and various lagers and ales that it had already had control over. As such, CCS will adopt the broader relevant product market of beer, which includes lagers, ales and stouts. CCS notes that, regardless of whether the market comprises only stouts or includes other beers such as ales and lagers, the competitive assessment remains the same.

Duty-Paid and Duty-Free Segments

57. HIBV submitted that the relevant market includes duty-paid and duty-free segments.⁹¹ CCS has therefore considered whether it is appropriate to delineate the product market into two separate segments, i.e., duty-paid and duty-free.

⁸⁷ Response from [X].

⁸⁸ Response from [X].

⁸⁹ Responses from [X].

⁹⁰ Paragraph 3.1 and 18.2 of HIBV's Responses dated 22 June 2016 to CCS's Request For Information dated 10 June 2016.

⁹¹ Paragraph 20.1 of Form M1.

Demand-side substitutability

58. HIBV identified two groups of intermediate-direct customers in the duty-paid segment, including on-premise outlets (e.g., food and beverage establishments), and off-premise outlets (e.g., supermarket, liquor stores).⁹² The duty-free segment includes duty-free distributors, retailer airlines, ship chandlers, cruise lines and military forces.⁹³
59. With regard to customs and excise duties on alcohol, there are schemes in place that allow retailers to sell beer products with duties suspended or exempted under certain conditions. The “Duty Free Shop Scheme”⁹⁴ (“DFS Scheme”) allows retail operators to sell dutiable goods such as liquor free of duty to travellers departing from or returning to Singapore while the “Air Store Bond Scheme”⁹⁵ licenses stores which supply duty-free goods to airlines operating out of Changi Airport. Thus, existing regulations only allow end-consumers to purchase duty-free beer products upon return or departure from Singapore, and not at other on-premise or off-premise outlets.
60. From the end-customers’ perspective, it is unlikely that the majority of customers in the duty-paid segment would substitute their purchases with that from the duty-free segment due to the inherent differences in the nature of purchases. For example, a customer who purchases beer in a pub or bar will be unlikely to substitute his/her purchase with beer from a duty-free shop.
61. Therefore, on the demand-side, there are some regulatory barriers preventing intermediate-direct customers in the duty-paid segment from purchasing from brewers or distributors through the duty-free channel and vice versa.

Supply-side substitutability

62. HIBV submitted that [X]. However, it submitted that [X].⁹⁶
63. A competitor, [X], provided feedback that beer brands which are not well-known are generally not able to enter the duty-free segment initially.⁹⁷ [X]. However, CCS also notes feedback from another competitor, [X], that there are no barriers to entry in the duty-free segment and that the determining factor is price.⁹⁸

CCS’s Assessment on the Segmentation of the Product Market

64. Based on the above, CCS is of the view that demand-side substitution is generally not viable, and it is unclear whether supply-side substitution is feasible, as the market feedback gathered by CCS is inconclusive in that regard. CCS further notes that there is a lack of reliable evidence from third-party sources to analyse values and volumes

⁹² Paragraph 18.4 of Form M1.

⁹³ Paragraph 18.4 of Form M1.

⁹⁴ <http://www.customs.gov.sg/businesses/customs-schemes-licences-framework/duty-free-shop-scheme>

⁹⁵ <http://www.customs.gov.sg/businesses/customs-schemes-licences-framework/air-store-bond-scheme>

⁹⁶ Paragraph 26.2 of Form M1.

⁹⁷ Response from [X].

⁹⁸ Response from [X].

for beer sold, hence market shares, in the duty-free segment in Singapore. CCS is therefore unable to ascertain that the duty-paid and duty-free segments should be considered as two separate markets, as HIBV has submitted. Accordingly, CCS will adopt the position that duty-paid and duty-free segments are in the same market. CCS also notes that, regardless of whether the duty-paid and duty-free segments are defined separately, that the conclusion of its competitive assessment will remain the same.

(b) Geographic Market

HIBV's Submissions

65. HIBV submitted that the relevant geographic market is the global supply of duty-paid and duty-free beers to Singapore.⁹⁹
66. HIBV submitted that there presently are various companies in Singapore dealing with the distribution of beer, which potential market players could easily contract with for the distribution and sale of beer in Singapore. As such, there are multiple distributorship options which local or overseas firms that are not currently providing beer in Singapore could take up if they decide to do so.¹⁰⁰
67. HIBV also submitted that any foreign brewer and brand owners of foreign beer may enter the Singapore market relatively quickly on a material scale¹⁰¹ because such brewers would already have the necessary setup and expertise to import beer into Singapore. They would not face prohibitive costs or capital expenditure to import beer into Singapore.¹⁰² Import restrictions in Singapore with regard to alcohol also do not pose a high barrier to entry because import procedures are easily complied with.¹⁰³
68. HIBV has also submitted a list of brands which have successfully entered the Singapore market between 2011 and 2015. Out of the 57 brands which have entered the Singapore market over the last five years, 36 of these have maintained their presence in Singapore for a period of at least two years.¹⁰⁴

CCS's Assessment on the Geographic Market

69. Based on feedback received by CCS, some customers consider the geographical location of suppliers may be an important consideration insofar that proximity ensures reliability of supply.¹⁰⁵ Notwithstanding, CCS notes feedback received from competitors stating that foreign brewers or brand owners can introduce their beer

⁹⁹ Paragraph 20.2 of Form M1.

¹⁰⁰ Paragraph 24.5 of Form M1.

¹⁰¹ Paragraph 24.4 of Form M1.

¹⁰² Paragraph 24.6 of Form M1.

¹⁰³ Paragraph 28.3 of Form M1.

¹⁰⁴ Paragraph 18.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹⁰⁵ Responses from [X].

brands to the Singapore market.¹⁰⁶ For instance, [X] indicated that intermediate-direct customers are able to easily parallel import beers into Singapore for sale.¹⁰⁷

70. Based on the foregoing, CCS considers the geographical market to be the supply of beer in Singapore.

CCS's Assessment on the Relevant Market

71. In summary, CCS is of the view that the relevant market for the competition assessment of the Transaction is the supply of beers (which includes ales, lagers and stouts) in Singapore, including both the duty-paid and duty-free segments. However, CCS also notes that alternative permutations of market definition (such as separating ales, lagers and stouts, and/or separating duty-paid and duty-free segments) would not affect the conclusions of its competition assessment.

VII. Competition Assessment

(a) Market Shares and Market Concentration

HIBV's Submissions

72. At the outset, CCS notes that HIBV is only able to provide market share figures for the duty-paid segment. While HIBV has submitted Heineken Singapore's volume and turnover in the duty-free segment, HIBV is unable to provide the same for its competitors, and as such, a market share assessment is not possible for the duty-free segment or the combined duty-paid/duty-free market. However, CCS also notes that the size of the Heineken Group's duty-free turnover is [X]. As such, CCS will focus on the assessment of market shares in the duty-paid segment as a proxy for the relevant market which also includes the duty-free segment.
73. HIBV submitted the market share figures (by sales volume) for duty-paid beer in Singapore as follows:¹⁰⁸

Table 1: Market shares by sales volume

	Year ended 31 July 2013	Year ended 31 July 2014	Year ended 31 July 2015
Guinness Stout	[X]%	[X]%	[X]%
ABC Extra Stout	[X]%	[X]%	[X]%
The Heineken Group's total for duty-paid beer (pre-Transaction)	[X]%	[X]%	[X]%

¹⁰⁶ Responses from [X].

¹⁰⁷ Response from [X].

¹⁰⁸ Paragraphs 21.2, 21.3 and 21.4 of Form M1; Paragraph 11.2 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015. Percentage figures shown in the table are based on the Customs MLM Data for the total market volume for duty-paid beer.

GAPL's total for duty-paid beer	[X]%	[X]%	[X]%
The Heineken Group's total for duty-paid beer (pro forma post-Transaction)	[X]%	[X]%	[X]%
Competitors	[X]%	[X]%	[X]%
Total volume of the market for duty-paid beer	100%	100%	100%

74. HIBV submitted that the market share figures were calculated using government-sourced data relating to the market size (by volume) of the total duty-paid malt liquor market in Singapore, and comparing such data with Heineken Singapore's internal sales figures, for the years ended 31 July 2013, 31 July 2014 and 31 July 2015 ("Customs MLM Data").¹⁰⁹

CCS's Assessment on Market Shares and Market Concentration

75. CCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless:

- (a) The merged entity will have a market share of 40% or more; or
- (b) The merged entity will have a market share of between 20% and 40%, and the post-merger CR3 is 70% or more.¹¹⁰

76. CCS notes that the pro forma market shares of the merged entity exceeded the threshold of 40%. However, this would be the case with or without the Transaction; the change in the market share due to the Transaction was [X]%. In any case, the thresholds set out in CCS's Guidelines are indicators of potential competition concerns. As such, it is necessary to consider other factors in assessing the change in market power attributable to the Transaction, as well as the coordinated and non-coordinated effects on competition in the supply of beer into Singapore.

(b) Barriers to Entry and Expansion

HIBV's Submissions

Role of intellectual property rights (i.e. technological know-how)

77. HIBV submitted that beer brewing technology is relatively straightforward, and does not constitute a high barrier to entry as information on beer brewing is widely available on the internet.¹¹¹ The increase in the trend of home-brewing kits and

¹⁰⁹ Paragraph 21.1 of Form M1.

¹¹⁰ Paragraph 5.15 of *CCS Guidelines on Substantive Assessment of Mergers*.

¹¹¹ Paragraph 28.2 of Form M1.

microbreweries over recent years is evidence that beer brewing technology is accessible by lay people.¹¹²

Role of branding

78. HIBV submitted that intellectual property rights, such as the trademarks of brand owners, have a significant role in the supply of beer as end-customers associate the taste of beer with its branding, image and marketing.¹¹³ Intellectual property rights are integral to the business of GAPL as GAPL's key business activity is to hold the brand licences for ABC Extra Stout and Guinness Stout in Singapore.¹¹⁴

Role of regulation

79. HIBV submitted that the supply of alcoholic beverages in Singapore is subject to various regulations at both the international and national levels, with regard to imports, labelling and marketing requirements, licences and restrictions on liquor consumption.¹¹⁵ However, in HIBV's view, import restrictions in Singapore with regard to alcohol do not pose a high barrier to entry for potential new entrants, as the import procedures can be easily complied with.¹¹⁶ Even though national laws which impose restrictions on liquor consumption may affect the demand for duty-paid beer, these do not present a barrier to entry per se as suppliers are not restricted from competing with incumbent brewers and distributors of beer.¹¹⁷

Ease of entry into the Singapore market

80. [REDACTED].¹¹⁸ However, [REDACTED].¹¹⁹ [REDACTED].¹²⁰
81. Based on the Heineken Group's observation, the estimated capital expenditure and timeframe for a brewer or distributor to enter into the on-premise or off-premise duty-paid retail segment varies depending on the scale and type of operations.¹²¹ Broadly, the Heineken Group estimates the following:¹²²
- (a) approximately S\$[REDACTED] and [REDACTED] months to open a 300 square metre bar;¹²³
 - (b) approximately S\$[REDACTED] and [REDACTED] months to open a 100 square metre grocery store;¹²⁴ and

¹¹² Paragraph 28.2 of Form M1.

¹¹³ Paragraph 18.7 of Form M1.

¹¹⁴ Paragraph 18.8 of Form M1.

¹¹⁵ Paragraphs 18.9 to 18.15 of Form M1.

¹¹⁶ Paragraph 28.3 of Form M1.

¹¹⁷ Paragraph 28.3 of Form M1.

¹¹⁸ Paragraph 19.10 of Form M1.

¹¹⁹ Paragraph 19.10 of Form M1.

¹²⁰ Paragraph 19.10 of Form M1.

¹²¹ Paragraph 15.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹²² Paragraph 15.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹²³ Paragraph 15.1.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

- (c) approximately S\$[X] and [X] months to open an online store.¹²⁵
82. Similarly, HIBV submitted that the capital expenditure and timeframe for a brewer or distributor to enter the duty-paid segment in Singapore as a distributor or wholesaler would also vary depending on the scale and type of operation.¹²⁶ Based on the Heineken Group's observations, the estimated capital expenditure and timeframe required may be as follows:¹²⁷
- (a) approximately S\$[X] and [X] months for solely distribution or wholesale activities;¹²⁸ and
- (b) approximately S\$[X] and [X] months for building a brewery and carrying out distribution and wholesale activities.¹²⁹
83. HIBV submitted that, compared to the duty-paid segment, it would be more difficult for a brewer to enter the duty-free segment, as the latter is closed and less accessible.¹³⁰ HIBV estimated that an approximate capital expenditure of S\$[X] and [X] months would be required for a brewer to enter the market for the supply of duty-free beer in Singapore.¹³¹ This includes the time taken to negotiate contracts, build relationships with intermediate-direct customers, and market the brand.¹³² HIBV submitted that these entry costs are usually recoverable from sales within a [X] period.¹³³
84. HIBV submitted that it would be difficult to estimate the specific costs and resources that are likely to be required for a beer brewer or distributor to enter the duty-free retail side of the supply chain in Singapore (which includes airlines and airport duty-free retailers), and the costs and resources required could vary from case to case.¹³⁴
85. HIBV submitted that the key factor affecting entry of new players to Singapore is the [X].¹³⁵ Nonetheless, HIBV submitted that, over the past five years, 57 brands

¹²⁴ Paragraph 15.1.2 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹²⁵ Paragraph 15.1.3 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹²⁶ Paragraph 15.2 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹²⁷ Paragraph 15.2 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹²⁸ Paragraph 15.2.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹²⁹ Paragraph 15.2.2 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹³⁰ Paragraph 26.2 of Form M1.

¹³¹ Paragraph 26.2 of Form M1.

¹³² Paragraph 26.2 of Form M1.

¹³³ Paragraph 26.2 of Form M1.

¹³⁴ Paragraph 10.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹³⁵ Paragraph 28.1 of Form M1.

(including two brands which are owned and managed by the Heineken Group)¹³⁶ and eight brands¹³⁷ have respectively entered the duty-paid and duty-free segments in Singapore (see **Annex D** for a list of these brands, as submitted by HIBV).

86. In HIBV's view, the success of a new market entrant to the beer market in Singapore, and the likely market share gain, is [X].¹³⁸ It is [X].¹³⁹

CCS's Assessment on Barriers to Entry and Expansion

87. CCS notes third-party feedback that the beer market is characterised by certain "must-have" brands,¹⁴⁰ and that consumers tend to associate the taste of the beer with its branding, image and marketing.
88. With regard to entry and exit of brands, CCS notes that one customer submitted that [X]¹⁴¹ CCS further notes that [X] provided feedback that it [X]¹⁴² CCS, however, also notes that the challenge faced by competitors that are seeking to not only introduce, but also build, new brands in the beer market and to gain any significant market share for such new brands may be evidenced by the entry of 57 brands and exit of 40 brands in the duty-paid segment for the last five years.¹⁴³
89. CCS finds that branding plays an important role in competition within the beer market. Even in the absence of any regulatory barriers, potential new entrants to the beer market may face obstacles in building their brand and/or gaining market share, whether in the duty-free or duty-paid segment of the beer market. Branding plays an especially important role in the duty-free segment, as indicated by third-party feedback that only fast-moving brands are able to enter this segment of the market due to space constraints.¹⁴⁴ CCS has also noted at paragraph 64 above that demand-side substitutability may not be viable.
90. Hence, CCS is of the view that branding can constitute a material entry barrier for new brewers and distributors seeking to gain entry to the beer market. However, CCS notes that the Transaction has not brought about any change to the extent of entry barriers.

¹³⁶ Paragraph 18.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹³⁷ Paragraph 29.4 of Form M1; paragraph 18.3 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹³⁸ Paragraph 16.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹³⁹ Paragraph 16.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹⁴⁰ Response from [X].

¹⁴¹ Response from [X].

¹⁴² Response from [X].

¹⁴³ Paragraphs 18.1 and 18.2 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

¹⁴⁴ Response from [X].

(c) Countervailing Buyer Power

HIBV's Submissions

91. HIBV submitted that there is strong countervailing buyer power in the relevant market. Firstly, intermediate-direct customers of the merger parties are able to switch suppliers with relative ease based on the availability of various beer brands at competitive prices.¹⁴⁵ It is general market practice for intermediate-direct customers to source contracts and sponsorship offers from various suppliers, and there is strong competition between suppliers for intermediate-direct customers.¹⁴⁶ Secondly, intermediate-direct customers are able to import beer into Singapore for sale.¹⁴⁷ In HIBV's view, the import of beer for supply into Singapore is not prohibitive, in view of currency trends, economic outlook and various free trade agreements.¹⁴⁸ Thirdly, end-customers may opt to self-supply through home-brewing beer kits for personal consumption, though such self-supply is not generally for mass production and distribution in the Singapore market.¹⁴⁹

CCS's Assessment on Countervailing Buyer Power

92. Feedback received by CCS suggests that the bargaining power of customers varies across different segments. In the off-premise segment, feedback received indicates that the large supermarkets and top chain stores can exercise some degree of bargaining power.¹⁵⁰ However, the on-premise segment is more fragmented, particularly for retailers which are not large chains. One retailer [X] stated that [X].¹⁵¹ In the duty-free segment, a competitor noted that [X].¹⁵²
93. While one competitor indicated that Singapore's open market and competition from parallel imports confers some degree of countervailing buyer power,¹⁵³ another pointed out that any customer bargaining power in the duty-paid segment may be mitigated by [X].¹⁵⁴ The latter is consistent with feedback from an intermediate-direct consumer which noted that the brands of the merged parties are well-known.¹⁵⁵
94. Given the above, CCS is of the view that certain customers, other than the larger supermarkets or chain stores in the off-premise segment, may not be able to exercise buyer power against beer suppliers. However, CCS also notes that the Transaction has not resulted in any change in the relative bargaining power between suppliers and customers. In particular, the production and distribution of Guinness Stout and ABC Extra Stout had already been sub-licensed to APBS before the Transaction, and

¹⁴⁵ Part 5 of Form M1.

¹⁴⁶ Paragraph 32.2 of Form M1.

¹⁴⁷ Paragraph 32.1 of Form M1.

¹⁴⁸ Paragraphs 24.6 and 32.1 of Form M1.

¹⁴⁹ Paragraph 32.1 of Form M1.

¹⁵⁰ Response from [X].

¹⁵¹ Response from [X].

¹⁵² Response from [X].

¹⁵³ Response from [X].

¹⁵⁴ Response from [X].

¹⁵⁵ Response from [X].

customers in Singapore had been purchasing a variety of beer brands, including stout brands, from APBS [X].¹⁵⁶

(d) Actual and Potential Competition

HIBV's Submissions

95. HIBV has listed the following as its competitors for the supply of beer in Singapore: (i) Carlsberg, (ii) Brewerkz, (iii) Tawandang Microbrewery, (iv) Red Dot Brewhouse, (v) Paulaner Brauhaus, (vi) Level 33, and (vii) AdstraGold Microbrewery.¹⁵⁷
96. HIBV submitted that there are no prohibitive costs or capital expenditure for existing brewers outside of Singapore, or distributors in Singapore, to import beer for supply into Singapore, in view of currency trends, economic outlook and various free trade agreements.¹⁵⁸ Such brewers and distributors also would have the existing infrastructure setup and expertise to import beer for supply in Singapore.¹⁵⁹
97. HIBV also submitted that the craft beer segment [X].¹⁶⁰ The rise in the number of microbreweries in Singapore, in HIBV's view, pushes [X].¹⁶¹
98. HIBV submitted that competitors compete on various aspects, such as [X].¹⁶² Any of the foreign brewers and brand owners of foreign beer, [X].¹⁶³
99. According to HIBV, large breweries and microbreweries around the world are [X].¹⁶⁴ Further, there are presently a number of companies in Singapore dealing with the distribution of beer, [X].¹⁶⁵
100. HIBV also submitted that there are no, or only minimal, switching costs involved for intermediate-direct customers, as they are able to do so fairly quickly without any financial penalties.¹⁶⁶

CCS's Assessment on Actual and Potential Competition

101. As CCS has noted in previous sections, in considering actual and potential competition, the merged entity possesses a high market share; branding can constitute a material entry barrier for new brewers and distributors seeking to gain entry to the beer market; and countervailing buyer power is generally weak, save for a few large retailers in specific segments. Based on feedback from customers, CCS also notes that although some retailers stated that they are open to switching suppliers following a

¹⁵⁶ Responses from [X].

¹⁵⁷ Paragraph 24.1 of Form M1.

¹⁵⁸ Paragraph 24.6 of Form M1.

¹⁵⁹ Paragraph 24.6 of Form M1.

¹⁶⁰ Paragraph 18.17 of Form M1.

¹⁶¹ Paragraph 18.17 of Form M1.

¹⁶² Paragraph 24.2 of Form M1.

¹⁶³ Paragraph 24.4 of Form M1.

¹⁶⁴ Paragraph 30.1 of Form M1.

¹⁶⁵ Paragraph 24.5 of Form M1.

¹⁶⁶ Paragraph 24.3 of Form M1.

significant price increase, they note that the Heineken Group owns and/or distributes a number of well-known brands. One customer also mentioned other difficulties in switching suppliers owing to reasons such as the need to renegotiate with suppliers [X].¹⁶⁷

102. Specifically for the duty-free segment, third-party feedback indicated that branding and price are important factors for suppliers competing to supply beer. HIBV submitted that it would be [X] for a brewer to supply duty-free beer as it is [X], compared to the duty-paid segment. A competitor provided feedback that beer brands which are not well-known are generally not able to enter the duty-free segment initially.¹⁶⁸
103. Accordingly, CCS is of the view that competitive constraints from actual and potential competitors are limited. It is therefore necessary to consider the degree to which market power has increased due to the Transaction.

(e) Non-coordinated Effects

104. Non-coordinated effects may arise where, as a result of the acquisition, the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities. Other firms in the market may also find it profitable to raise their prices because the higher prices of the merged entity's product will cause some customers to switch to rival products, thereby increasing demand for the rivals' products.¹⁶⁹

HIBV's Submissions

105. HIBV submitted that non-coordinated effects are unlikely to arise from the Transaction as there is marginal change, if at all, to the competitive structure of the markets for the supply of beer in Singapore,¹⁷⁰ and further having regard to the following factors:¹⁷¹
- (a) Global competitors: Existing and potential competing beer brand owners, breweries and distributors in Singapore and globally who can, and do, supply and distribute beer in Singapore;
 - (b) Barriers to entry are not significant: There are no prohibitive barriers to entry for the import of beer for sale in Singapore. The import of beer for sale in Singapore is relatively easy and non-prohibitive in view of currency trends, economic outlook and various free trade agreements; and
 - (c) No change in the nature of competitive pressures: The Transaction does not fundamentally change the consumption patterns of end-customers, or correspondingly, intermediate-direct customers. Existing competitors will

¹⁶⁷ Response from [X].

¹⁶⁸ Response from [X].

¹⁶⁹ Paragraph 6.3 of *CCS Guidelines on the Substantive Assessment of Mergers*.

¹⁷⁰ Paragraph 34.1 of Form M1.

¹⁷¹ Paragraph 34.2 of Form M1.

continue to subject the merged entity to price competition. There will also continue to be competitive pressure from potential entrants who could enter Singapore easily due to the low barriers to entry.

106. Prior to the Transaction, [X] (see paragraphs 24 and 25 above).¹⁷²
107. Post-Transaction, the [X]¹⁷³ [X].¹⁷⁴ [X].¹⁷⁵ The clauses of the BDA relating to these matters are reproduced in **Annex E**.

CCS's Assessment on Non-coordinated Effects

108. CCS notes that the Transaction has resulted in the Heineken Group (through GAPL) adding the brand usage rights of the Guinness Stout brands to its portfolio. Although the Heineken Group (through GAPL and its appointed distributor, APBS) had been distributing Guinness Stout in Singapore pre-Transaction, CCS notes that [the Transaction has resulted in [X].¹⁷⁶ That being said, the ability of the Heineken Group to raise the prices of Guinness Stout after the Transaction requires an assessment of the extent to which prices for Guinness Stout had not already been raised to the maximum possible before the Transaction.
109. CCS further notes from the feedback provided that none of the four retailers which responded were of the view that they would be adversely affected by the Transaction, based on their understanding that APBS was the sole distributor of Guinness Stout pre-Transaction and continues to be the sole distributor of Guinness Stout post-Transaction.
110. In this regard, CCS notes that these off-premise retailers and distributors may not have been privy to how pricing decisions are made in relation to Guinness Stout and, specifically, whether the distributor (APBS) had the ability to determine prices for Guinness Stout. This is because such information is non-public and commercially sensitive information of the Heineken Group and GAPL. However, CCS also notes that off-premise retailers and distributors have been purchasing APBS's portfolio of beer brands, including Guinness Stout, [X]. Therefore, even though [X], APBS would have been able to [X], in determining the contractual value of distributing its portfolio of beers.
111. Moreover, CCS notes that, pre-Transaction, [X].¹⁷⁷
112. Therefore, CCS is of the view that any incremental market power acquired by HIBV as a result of the Transaction would only be to a small degree, given that the Heineken Group and Diageo, respectively, [X]. It follows that there is unlikely to be a significant increase in the Heineken Group's ability or incentive to raise prices for

¹⁷² Paragraph 33.2.1 of Form M1.

¹⁷³ Paragraph 33.2.2 of Form M1.

¹⁷⁴ Paragraph 33.2.2 of Form M1.

¹⁷⁵ Response from HIBV dated 16 May 2016 to CCS's Request for Information dated 9 May 2016; Clause 12.6 of the BDA.

¹⁷⁶ Under the Guinness Distribution Agreement, [X].

¹⁷⁷ Annex 18 and 19 of Form M1.

Guinness Stout, ABC Extra Stout or its other beer brands in Singapore post-Transaction, such that SLC concerns would arise.

113. Accordingly, CCS finds that the Transaction does not raise concerns of non-coordinated effects in the broader beer market.

(f) Coordinated Effects

114. A merger may also lessen competition substantially by increasing the possibility that, post-merger, firms in the same market may coordinate their behaviour to raise prices, or reduce quality or output. Given certain market conditions, and without any express agreement, tacit collusion may arise merely from an understanding that it will be in the firms' mutual interests to coordinate their decisions. Coordinated effects may also arise where a merger reduces competitive constraints in a market, thus increasing the probability that competitors will collude or strengthen a tendency to do so.¹⁷⁸

HIBV's Submissions

115. HIBV submitted that, in addition to the reasons set out in paragraph 105 above, the Transaction will not give rise to coordinated effects in the supply of beer in Singapore in both the duty-paid and duty-free segments, in view of: (a) existing and potential competing beer brand owners, breweries and distributors in Singapore and globally who can, and do, supply and distribute beer in Singapore, (b) the absence of prohibitive barriers to entry for the import of beer for sale in Singapore, (c) competition for beer sold through intermediate-direct customers and end-customers taking place along a number of dimensions such as price, taste, reputation, quality and branding, which makes it difficult for competitors to monitor and sustain any coordination.¹⁷⁹

CCS's Assessment on Coordinated Effects

116. CCS has also considered feedback from [X] customers of Heineken Singapore (including APBS) indicating that [X].¹⁸⁰ Customers also generally expressed a preference for obtaining their supply from [X].¹⁸¹
117. Notwithstanding the above, CCS notes that there is no change in the Heineken Group's portfolio of "must have" brands as a result of the Transaction. Retailers in Singapore had been dealing, and continue to deal, with APBS in their purchases of all the overlapping products on an integrated basis, before and after the Transaction. Accordingly, CCS finds that there is no increase in the likelihood of coordinated effects arising from the Transaction.

¹⁷⁸ Paragraph 6.7 of *CCS Guidelines on Substantive Assessment of Mergers*.

¹⁷⁹ Section 35 of Form M1.

¹⁸⁰ Responses from [X].

¹⁸¹ Responses from [X].

(g) Vertical Effects

HIBV's Submissions

118. HIBV submitted that there is no further strengthening of vertical integration arising from the Transaction as there is no increment to the production and distribution capabilities of the Heineken Group in Singapore, or to the brands which APBS is directly contracted, or sub-contracted, to produce and distribute, arising from the Transaction. Both pre-Transaction and post-Transaction, GAPL sub-contracted and sub-contracts, respectively, the production of ABC Extra Stout and Guinness FES to APBS, and GAPL had and has, respectively, a contract with APBS for the distribution of ABC Extra Stout and Guinness Stout.¹⁸²

CCS's Assessment on Vertical Effects

119. CCS notes concerns raised by third-parties in respect of the duty-paid segment. The feedback indicates that major players, [X].¹⁸³ Further, it was mentioned that major players can outbid smaller players in the beer market as they are, for instance, able to afford higher listing fees.¹⁸⁴
120. In this regard, CCS notes that the potential vertical effects alleged by the respondents would have to be carried out through APBS, which had already been a wholly-owned subsidiary of the Heineken Group, and the sole producer and/or distributor of ABC Extra Stout, Guinness Stout and other beer brands within its portfolio, even before the Transaction. As such, there is no addition of beer brands to APBS's portfolio resulting from the Transaction that would increase APBS's ability to, for instance, impose exclusivities [X] to impair competition in the supply of beers in Singapore.
121. With regard to concerns relating to impediments to competition from APBS's current portfolio, it is also noted that ABPS had previously been investigated by CCS in relation to the section 47 prohibition of the Act for suspected abuse of its dominant position, and has since carried out a commitment (accepted by CCS) not to impose any exclusivity conditions in the supply of draught beer to retail outlets in Singapore. This commitment is currently in effect.¹⁸⁵
122. Based on the above, CCS is of the view that the Transaction does not give rise to vertical effects that would raise incremental competition concerns.

VIII. Efficiencies

123. HIBV submitted that the Transaction enables the Heineken Group to consolidate its control over GAPL with a view to, among other things: (a) improving on the suboptimal medium and long-term management of GAPL's portfolio, (b) putting

¹⁸² Section 36 of Form M1.

¹⁸³ Responses from [X].

¹⁸⁴ Response from [X].

¹⁸⁵ CCS media release, *Asia Pacific Breweries (Singapore) Ends Exclusive Business Practices Following CCS Investigation*, 28 October 2015.

across the Heineken Group's cost efficiency measures more easily, and (c) decreasing reporting complexity.¹⁸⁶

124. CCS is unable to comment on these claimed efficiencies as HIBV has not provided information to substantiate these claims.

IX. Ancillary Restraints

125. Paragraph 10 in the Third Schedule to the Act states that the "section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct that is directly related and necessary to the implementation of a merger" ("Ancillary Restriction Exclusion").
126. In order to benefit from the Ancillary Restriction Exclusion, the agreement or conduct "must be directly related and necessary to the implementation of the merger".¹⁸⁷ A restriction is not automatically deemed directly related to the merger simply because it is agreed at the same time as the merger or is expressed to be so related¹⁸⁸ but needs to be connected with the merger and subordinate to its main object.¹⁸⁹ In determining the necessity of the restriction to the implementation of the merger, considerations such as whether its duration, subject matter and geographical field of application are proportionate to the overall requirements of the merger will be taken into account. CCS will consider all these factors in the context of each case.¹⁹⁰

HIBV's Submissions

127. HIBV submitted that Clause 10.1(b) of the Framework Agreement (mentioned in paragraph 1 above) constitutes an ancillary restriction to the Transaction.
128. Clause 10.1(b) of the Framework Agreement provides that, with certain exceptions:¹⁹¹
- " [X] ."
129. HIBV submitted that the portion of the above clause which relates to the [X] relates to other transactions between Diageo and the Heineken Group, and they have no bearing and are completely unrelated to the Transaction.¹⁹² Accordingly, HIBV is not seeking a determination by CCS as to whether this portion of the clause constitutes an ancillary restriction to the Transaction.
130. As to the portion of Clause 10.1(b) of the Framework Agreement which relates to GAPL (the "[X]"), HIBV submitted that the [X].¹⁹³

¹⁸⁶ Paragraphs 42.1 to 42.1.3 of Form M1.

¹⁸⁷ Paragraph 10.9 of *CCS Guidelines on the Substantive Assessment of Mergers*.

¹⁸⁸ Paragraph 10.12 of *CCS Guidelines on the Substantive Assessment of Mergers*.

¹⁸⁹ Paragraph 10.10 of *CCS Guidelines on the Substantive Assessment of Mergers*.

¹⁹⁰ paragraph 10.13 of *CCS Guidelines on the Substantive Assessment of Mergers*.

¹⁹¹ Paragraphs 43.1 and 43.6 of Form M1.

¹⁹² HIBV's response dated 1 June 2016 to CCS's Request for Information dated 31 May 2016.

¹⁹³ Paragraph 43.13 of Form M1.

131. HIBV submitted that [X] is necessary for the implementation of the Transaction in order to [X].¹⁹⁴ HIBV further submitted that the scope and duration of [X] is required to [X].¹⁹⁵

CCS's Assessment on Ancillary Restraints

132. CCS is of the view that the [X], insofar as it impacts a market in Singapore, does not exceed the scope of the Transaction. Specifically, the restriction is limited to [X]. Further, the restriction is limited to a period of [X] following the completion of the share acquisition by HIBV on [X], and applies only in respect of [X].
133. CCS also accepts the submissions made in paragraph 129 above and is therefore satisfied that the [X] is directly related and necessary to the implementation of the Transaction, insofar as it applies to Singapore.
134. In view of the above, CCS concludes that the [X] constitutes an agreement falling within the exclusion under paragraph 10 of the Third Schedule of the Act, insofar as it applies to Singapore.

X. Conclusion

135. For the reasons above and based on the information available, CCS assesses that the Transaction does not lead to SLC concerns and accordingly, has not infringed the section 54 prohibition. CCS also concludes that the [X] constitutes an agreement falling within the exclusion under paragraph 10 in the Third Schedule of the Act.



Toh Han Li
Chief Executive
Competition Commission of Singapore

¹⁹⁴ Paragraph 43.5.1 of Form M1.

¹⁹⁵ Paragraph 43.9 of Form M1.

ANNEX A

Singapore-registered entities in the Heineken Group ¹⁹⁶	Trading, business and brand names	Worldwide activities	Singapore activities	Physical presence in Singapore
[X] ¹⁹⁷	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X] ¹⁹⁸	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]

¹⁹⁶ Paragraph 10.1 of Form M1.

¹⁹⁷ [X].

¹⁹⁸ HIBV noted that Guinness FES, among others, are currently distributed, marketed and sold through local duty-free channels in Singapore by HAPE. [X]. (Paragraph 4.2 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015).

ANNEX B

Background of formation of GAPL

1. GAPL was founded and established by Malayan Breweries Limited (“MBL”)¹⁹⁹ and GOL in 1989.
2. With MBL and GOL carrying on the business of brewing and selling stout in Singapore and other countries, MBL and GOL entered into a joint venture (i.e., GAPL) which would, among others, brew, market, sell and distribute their combined portfolio of stouts in Singapore.
3. A joint venture agreement dated 15 November 1989 was entered into between MBL and GOL (the “JVA”), governing the formation, management and operation of the business of GAPL.
4. A memorandum of understanding dated 21 August 2015 was also entered into between HAP and GOL, representing a written record of the understanding reached by HAP and GOL for the day-to-day operations of GAPL with regard to Singapore (the “MOU”).²⁰⁰

¹⁹⁹ MBL was subsequently known as Asia Pacific Breweries Limited, and is currently known as HAP.

²⁰⁰ Paragraph 9.5 of Form M1.

ANNEX C

Aspects on which the Heineken Group has acquired control over the strategic commercial behaviour of ABC Extra Stout and Guinness Stout in Singapore

Brand	Aspects of Decision-Making	Pre-Transaction	Post-Transaction
ABC Extra Stout	[X]	[X]	[X]
	[X]	[X]	[X]
Guinness FES	[X]	[X]	[X]
	[X]	[X]	[X]
Guinness Draught	[X]	[X]	[X]
	[X]	[X]	[X]

ANNEX D

List of brands that have entered the duty-paid segment²⁰¹

S/N	Brand	Year of entry	Brewers/distributors
1.	[X]	[X]	[X]
2.	[X]	[X]	[X]
3.	[X]	[X]	[X]
4.	[X]	[X]	[X]
5.	[X]	[X]	[X]
6.	[X]	[X]	[X]
7.	[X]	[X]	[X]
8.	[X]	[X]	[X]
9.	[X]	[X]	[X]
10.	[X]	[X]	[X]
11.	[X]	[X]	[X]
12.	[X]	[X]	[X]
13.	[X]	[X]	[X]
14.	[X]	[X]	[X]
15.	[X]	[X]	[X]
16.	[X]	[X]	[X]
17.	[X]	[X]	[X]
18.	[X]	[X]	[X]
19.	[X]	[X]	[X]
20.	[X]	[X]	[X]
21.	[X]	[X]	[X]
22.	[X]	[X]	[X]

²⁰¹ Paragraph 18.1 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

S/N	Brand	Year of entry	Brewers/distributors
23.	[X]	[X]	[X]
24.	[X]	[X]	[X]
25.	[X]	[X]	[X]
26.	[X]	[X]	[X]
27.	[X]	[X]	[X]
28.	[X]	[X]	[X]
29.	[X]	[X]	[X]
30.	[X]	[X]	[X]
31.	[X]	[X]	[X]
32.	[X]	[X]	[X]
33.	[X]	[X]	[X]
34.	[X]	[X]	[X]
35.	[X]	[X]	[X]
36.	[X]	[X]	[X]
37.	[X]	[X]	[X]
38.	[X]	[X]	[X]
39.	[X]	[X]	[X]
40.	[X]	[X]	[X]
41.	[X]	[X]	[X]
42.	[X]	[X]	[X]
43.	[X]	[X]	[X]
44.	[X]	[X]	[X]
45.	[X]	[X]	[X]
46.	[X]	[X]	[X]
47.	[X]	[X]	[X]
48.	[X]	[X]	[X]

S/N	Brand	Year of entry	Brewers/distributors
49.	[X]	[X]	[X]
50.	[X]	[X]	[X]
51.	[X]	[X]	[X]
52.	[X]	[X]	[X]
53.	[X]	[X]	[X]
54.	[X]	[X]	[X]
55.	[X]	[X]	[X]
56.	[X]	[X]	[X]
57.	[X]	[X]	[X]

[X]²⁰²

List of brands that have entered the duty-free segment²⁰³

S/N	Brand	Year of entry	Brewer/ distributor	Industry
1.	[X]	[X]	[X]	[X]
2.	[X]	[X]	[X]	
3.	[X]	[X]	[X]	
4.	[X]	[X]	[X]	
5.	[X]	[X]	[X]	[X]
6.	[X]	[X]	[X]	
7.	[X]	[X]	[X]	[X]
8.	[X]	[X]	[X]	

²⁰² Paragraph 29.1 of Form M1.

²⁰³ Paragraph 18.3 of HIBV's Responses dated 25 November 2015 to CCS's Request For Information dated 19 November 2015.

ANNEX E

**Extracts from the Brewing and Distribution Agreement between GAPL and Diageo
dated [X]**

[X]

