
Section 57 of the Competition Act (Cap. 50B)

Grounds of Decision issued by the Competition Commission of Singapore

In relation to the notification for decision of the proposed acquisition by Heineken International B.V. of Asia Pacific Breweries Limited pursuant to section 57 of the Competition Act

5 November 2012

Case number: CCS 400/005/12

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I. Introduction

The notification

1. On 25 September 2012, Heineken International B.V. (“Heineken”) filed a notification pursuant to section 57 of the Competition Act, Chapter 50B (the “Act”), applying for a decision by the Competition Commission of Singapore (“CCS”) as to whether the proposed acquisition by Heineken, of up to the entire issued and outstanding ordinary share capital of Asia Pacific Breweries Limited (“APB”) (“the Transaction”), will infringe the section 54 prohibition of the Act if it is carried into effect.
2. Pursuant to paragraph 5(3) of the Competition (Notification) Regulations 2007, where a party to an anticipated merger wishes to make or makes an application under section 57 of the Act, he shall give notice to all other parties to the anticipated merger of whom he knows that the application will be or has been made. Heineken has provided CCS with copies of the notices they had given to APB and Fraser & Neave, Limited dated 25 September 2012.
3. For the purposes of this notification, CCS has taken into consideration the views of 3¹ competitors and 2² customers in the duty-free beer market. There were also 3 third parties³ who indicated that they had no comments or declined to comment on the notified Transaction.
4. CCS has concluded that the Transaction, if carried into effect, will not infringe section 54 of the Competition Act (Cap. 50B) (the “Act”).

II. The Parties Involved in the Transaction

Heineken

5. Heineken belongs to the Heineken corporate group.⁴ Heineken has an international presence through a global network of distributors and breweries.⁵ It owns and manages a portfolio of more than 250 beer brands,

¹ [REDACTED]

² [REDACTED]

³ [REDACTED]

⁴ Paragraph 7.1 of Form M1.

⁵ <http://www.heinekeninternational.com/aboutheineken.aspx>

including but not limited to the principal brand Heineken, Amstel, Foster's, Sol, Star and Primus.⁶

6. Heineken's registered entities in Singapore are Heineken Far East Pte Ltd ("HFE") and Heineken Asia Pacific Pte Ltd ("HAP"). It also has a department called the Global Duty-Free department ("GDF") which is dedicated to duty-free supplies globally. GDF takes custody of the contracts with direct intermediate-customers⁷ that are situated and that have requirements internationally whereas HFE takes custody of direct intermediate-customers that are situated in Asia Pacific, and have requirements regionally and locally.⁸ In the global context, HFE conducts its sales through the duty free and non local duty paid channels. In the local context, HFE does so through the duty-free channels. GDF and HFE are collectively referred to in this decision as "Heineken Duty-Free". HAP provides management services to Heineken offices in the Asia Pacific region and is not involved in trading activity.⁹

Fraser & Neave, Limited ("F&N")

7. F&N is a company listed on the Singapore stock exchange. Its core businesses are the production and sale of soft drinks, beer and stout, dairy products, property investment and development and publishing and printing.¹⁰
8. F&N's largest shareholder, Thai Beverage Plc (and its partner TCC Assets Ltd) ("Thai Beverage"), with more than 30% stake in F&N, has shown intention in acquiring F&N. As of the date of this decision, Thai Beverage is still in the midst of its Mandatory General Offer ("MGO") which is conditional upon them receiving valid acceptances in respect of shares resulting in Thai Beverage having more than 50% of the voting rights.¹¹ As such, it is possible that Thai Beverage could either be simply the largest shareholder of F&N if the conditions of the MGO are not met, or become the controlling shareholder of F&N, thereby becoming the effective joint venture partner of Heineken in APB (in the absence of the Transaction).

⁶ <http://www.heinekeninternational.com/companystrategyprofile.aspx>

⁷ Direct intermediate-customers refer to non end-customers such as duty-free distributors, retailers, ship chandlers and airlines.

⁸ Paragraph 8 of Heineken's Responses (dated 9 October 2012) to CCS' Request for Further Information dated 28 September 2012.

⁹ Paragraph 10.3 of Form M1.

¹⁰ SGX, Fraser & Neave, Limited Company Disclosure, Background.

¹¹ Clause 2.4 of the Announcement of the Mandatory Conditional Cash Offer by UOB, DBS, Morgan Stanley for and on behalf of TCC Assets Limited to acquire all the issued and paid up ordinary shares in the capital of F&N Limited dated 13 September 2012.

Asia Pacific Breweries Limited

9. As at 13 August 2012, APB was majority owned (directly and indirectly) by Heineken and F&N, with the remaining approximately 14.23% share capital held by the public on the market. Heineken and F&N indirectly own APB through their respective 50% shareholdings in Asia Pacific Investment Pte Ltd (“APIPL”), which owns approximately 64.80% share capital of APB. In addition, Heineken and F&N also have direct shareholdings of approximately 13.7% and 7.26% respectively in APB.¹²
10. APB was founded and established by Heineken and F&N and was known as “Malayan Breweries Limited” in 1931, with [REDACTED].¹³ The company went on to open its first brewery in Singapore and launched *Tiger Beer* a year later.
11. The company was renamed Asia Pacific Breweries Limited in 1990 and operates a global marketing network spreading across 60 countries. It is supported by 30 breweries in 14 countries, including Singapore, Cambodia, China, Indonesia, Laos, Malaysia, Thailand, Vietnam, and Papua New Guinea. APB has a portfolio of over 40 beer brands and brand variants, including *Tiger Beer*, *Heineken*, *Anchor Beer*, *ABC Extra Stout* and *Baron’s Strong Brew*. Beers brewed by APB are done so under the supervision of Heineken technical experts.¹⁴
12. [REDACTED]¹⁵ [REDACTED]¹⁶
13. While the non-APB assets of APIPL also form part of the Transaction, Heineken submitted that these are shareholdings in companies that operate in [REDACTED] and [REDACTED]¹⁷, and which do not engage in any business in Singapore, and therefore do not affect competition within Singapore.¹⁸
14. Heineken submitted that the global turnover of APB was S\$2.97 billion based on revenue for the year ended September 2011.¹⁹ The beer brands that APB distributes in the duty-paid market (except Heineken beer) are

¹² Paragraph 8.5 of Form M1.

¹³ [REDACTED].

¹⁴ <http://www.apb.com.sg/corporate-profile.html>. See also paragraph 9.4(ii) and Annex 5 of Form M1.

¹⁵ [REDACTED]

¹⁶ [REDACTED]

¹⁷ See paragraph 8.4 of Form M1: [REDACTED]

¹⁸ Paragraph 2 of Heineken’s Responses (dated 9 October 2012) to CCS’ Request for Further Information dated 28 September 2012.

¹⁹ Paragraph 13.2 of Form M1.

distributed in the duty-free market through Tiger Export Pte Ltd (“TEPL”), its wholly-owned subsidiary.²⁰

III. The Transaction

15. The notified Transaction will take place in two phases. The first phase would involve the acquisition by Heineken of F&N’s direct and indirect interests in APB for S\$5.6 billion. Upon the completion of the first phase, Heineken will have no less than 85.77% of the total shareholding interests of APB and gain sole control of APB.²¹
16. The second phase is the subsequent mandatory general offer (“MGO”) of the remaining ordinary shares of APB which Heineken is required to make under the Singapore Code on Take-overs and Mergers.²² After the second phase, APB’s shareholding will change based on the acceptances Heineken receives from its MGO.²³ In the event all the shares are accepted when Heineken makes the MGO, the consideration for the additional shares would be approximately S\$2.5 billion. The consideration for the Transaction would therefore be approximately S\$8.1 billion.
17. The Transaction is subject to certain conditions such as accurate representations by the parties, approval of shareholders of F&N at an extraordinary general meeting, and approval by any regulatory authorities including specifically, CCS making a favourable decision that the Transaction would not infringe section 54 of the Act.²⁴ On 28 September 2012, F&N shareholders voted in favour of the Transaction.²⁵
18. Heineken submitted that APB has, since its formation, been the main corporate vehicle through which Heineken has been able to reach into domestic duty-paid markets in the South-east Asian and broader Asia-Pacific region. According to Heineken, with recent developments in the shareholding of F&N, the fabric of the joint venture relationship has changed whereby a competitor of APB has since become the single largest shareholder of F&N, and Heineken may not be able to fully realize the potential of APB’s business within the constraints of the current joint venture structure²⁶ and the Transaction is a response to this development. Heineken

²⁰ Paragraph 9.6 of Form M1.

²¹ Paragraphs 11.1 and 11.7 of Form M1.

²² Paragraph 1.2 of Form M1.

²³ Paragraph 11.2 of Form M1.

²⁴ Paragraph 11.8 of Form M1.

²⁵ <http://www.channelnewsasia.com/stories/singaporebusinessnews/view/1228538/1/.html>

²⁶ Paragraph 12.1 of Form M1.

further submitted that its offer is in line with the company's strategy to expand its presence in emerging markets. This follows transformational deals in recent years and would strengthen its platform for growth in some of the world's most exciting and dynamic economies with fast-growing populations.²⁷

19. Heineken has submitted that the Transaction involves the acquisition of effective control of APB, and thus falls within section 54(2)(b) of the Act.²⁸ In this regard, the Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), where the definition of a concentration is worded similarly to the definition of "merger" in the Act, covers operations resulting in the acquisition of sole control or joint control, including operations leading to changes in the quality of control. Such a change in the quality of control, resulting in a concentration, can occur if there is a change between sole and joint control.²⁹ A reduction in the number of controlling shareholders constitutes a change in the quality of control and is thus to be considered as a concentration if the exit of one or more controlling shareholders results in a change from joint to sole control.³⁰
20. Based on Heineken's submission and a review of the Joint Venture Agreement in respect of APIPL³¹, CCS is of the view that the Transaction will result in a change from joint control (by Heineken and F&N) to sole control over APB and therefore constitutes a merger pursuant to section 54(2)(b) of the Act.

IV. Competition Issues

21. In view of Heineken's submission that APIPL's non-APB assets do not engage in any business in Singapore, CCS' competition assessment for this notification will focus on APB. Heineken submitted that the change in ownership structure of APB in itself will not alter the competitiveness [*sic*] structure of the beer market in Singapore (including the duty-free market).³²

²⁷ Paragraph 12.2 of Form M1.

²⁸ Paragraph 11.3 of Form M1.

²⁹ Paragraph 83 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

³⁰ Paragraph 89 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

³¹ [X]

³² Paragraph 9.2 of Form M1.

22. [REDACTED]³³³⁴³⁵

23. Heineken submitted that the only overlap between Heineken's and APB's business activities in Singapore is within the broader global duty-free market, i.e. markets where, in accordance with applicable law, sales of the products to end customers for their personal consumption are free of consumer sales taxes and duties where such sales take place, including but not limited to supplies to intermediate direct-customers, i.e. duty-free shops, bonded stores, diplomatic representations, ship chandlers, seagoing vessels, airlines and airline catering, drilling rigs, foreign military forces, etc.³⁶

V. Counterfactuals

24. As stated in paragraph 4.6 of the *CCS Guidelines on 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. In which case 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.

25. The *CCS Guidelines on 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 the structure of competition in order to reflect as accurately as possible the nature of rivalry without the merger.³⁷

(i) The Party's Submissions

26. Heineken submitted that in the absence of the Transaction, there are two possible scenarios.

27. In the first scenario, control over APB will remain status quo and the business operations of APB will remain the same. APB is currently jointly

³³ [REDACTED]

³⁴ APBS is the brewery under APB that is responsible for the production, distribution (including local), sale and exports of beer including Tiger and Heineken.

³⁵ Paragraph 9.2 of Form M1.

³⁶ Paragraph 9.3 of Form M1.

³⁷ Paragraph 4.7 of the *CCS Guidelines on Substantive Assessment of Mergers*

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controlled by Heineken and F&N, [X]. In the first scenario, Heineken's behaviour in the global duty-free market will [X].³⁸³⁹

28. [X]⁴⁰
29. In the second scenario Thai Beverage could take a majority shareholding in F&N. In that case Heineken will [X].⁴¹⁴²
30. Heineken further submitted that it is not able to predict which scenario is more likely to occur in the absence of the proposed acquisition and that the outcome is largely dependent on Thai Beverage.⁴³

(i) *CCS' Assessment*

31. CCS is of the view that given the recent changes to the shareholding structure of F&N, in which Thai Beverage has become the largest shareholder of F&N (and possibly the effective owner of F&N in view of the F&N MGO), the market structure has changed such that the prevailing market conditions before the Transaction and the acquisition of F&N shares by Thai Beverage would no longer be the appropriate counterfactual by which CCS should assess the Transaction.
32. Heineken has submitted two possible scenarios in the absence of the proposed acquisition and both posit the continuance of APB as a joint venture between Heineken and F&N, with [X]. Assuming that [X], CCS agrees that these are two possible counterfactuals.
33. CCS has considered a third possible scenario, namely the termination of the joint venture in APB, with Heineken either manufacturing and/or distributing its beer products in the Singapore market on its own or with another joint venture partner and/or licensee/distributor. [X]

³⁸ Prior to the announcement of the Transaction, Thai Beverage, a competitor to Heineken and APB, had shown an interest in APB by acquiring 22% of the shares of F&N and a combined shareholding of 8.4% of the shares of APB. This prompted Heineken to make an offer to F&N for the acquisition of F&N's entire direct and indirect interests in APB. In the meantime, Thai Beverage has increased its shareholding in F&N and on 13 September 2012, Thai Beverage (through a concert party) has made an offer for all issued and outstanding shares in F&N.

³⁹ Paragraph 23.2 of Form M1.

⁴⁰ Heineken's Response (dated 18 October 2012) to Question 1 of CCS' Request for Further Information dated 15 October 2012.

⁴¹ Paragraph 23.3 of Form M1.

⁴² Heineken's Response (dated 18 October 2012) to Question 2 of CCS' Request for Further Information dated 15 October 2012.

⁴³ Heineken's Response (dated 18 October 2012) to Question 3 of CCS' Request for Further Information dated 15 October 2012.

34. CCS has reviewed the internal papers tabled to the Heineken Board seeking approval for the proposed acquisition. [§<]⁴⁴⁴⁵⁴⁶⁴⁷
35. In view of the above, CCS is of the view that the scenario in which Heineken would continue the joint venture of APB with F&N (with Thai Beverage as the largest shareholder or as controlling shareholder of F&N) would be the more likely scenario. As such, CCS will proceed to assess the Transaction and apply the SLC test using this scenario as the counterfactual.

VI. Relevant Markets

(a) Product Markets

Beer as a Distinct Product Market

36. Heineken submitted that beer, including all lagers, ales and stouts, is likely to be in a separate product market from other types of liquors as consumers of beer are not generally likely to switch due to the product differentiation and inherent characteristics of beer. Beer is considered a specialized product that can be differentiated from other types of alcoholic beverages, due to the unique taste, smell, and flavor of beer.⁴⁸ Heineken also referred to several European Commission cases which have decided that beer was in a separate product market from other beverages.⁴⁹
37. Based on the foregoing, CCS agrees with Heineken's submissions that beer products are the relevant focal products in the Transaction and that beer products are distinct from the other products like wine and hard liquor.

Duty-Paid and Duty-Free Markets

38. Heineken also submitted that the beer market can be further divided into the duty-paid and duty-free markets as it is not likely that end-customers in the duty-free market would consider purchasing alcohol through another

⁴⁴ See paragraph 12 for a discussion of [§<]

⁴⁵ Internal Paper tabled to Heineken Board dated [§<]

⁴⁶ Paragraph 9.1 of Form M1

⁴⁷ Heineken's Response (dated 22 October 2012) to Question 5 of CCS' Request for Further Information dated 15 October 2012.

⁴⁸ Paragraph 19.8 of Form M1.

⁴⁹ See *Heineken/Scottish & Newcastle Assets* (Case No. COMP/M.4999), *Carlsberg/Scottish & Newcastle Assets* (Case No. COMP/M.4529), *Carlsberg/Holsten* (Case No. COMP/M.3372), *Interbrew/Spatenfranziskaner* (Case No. COMP/M.3289) and *Orkla/Volvo* (Case No. IV/M.582).

distribution channel (e.g. duty-paid local market) as a close substitute to a duty-free purchase due to the unique characteristics of duty-free purchases.⁵⁰ Heineken further submitted that it would not be realistic or appropriate to segment the distribution of the duty-free beer into narrower product market.⁵¹

39. CCS notes that beer products are dutiable goods which are subjected to the regulation of Singapore Customs. Local manufacturers of beer products, besides having to apply for a manufacturing licence with fees ranging from S\$8,400 per year, for companies that manufacture less than 1.8 million litres of beer a year, to S\$43,200 per year⁵², are required to pay excise duty of S\$ 48.00 per litre of alcohol sold. For importers of beer products, a customs duty of S\$ 16.00 per litre of alcohol will be imposed in addition to the excise duty.⁵³
40. With regard to customs and excise duties, CCS understands that there are various schemes in place that allow beer products sold in Singapore to be sold with their duties suspended or exempted (“duty-free schemes”). However, these separate schemes apply mainly to beer products that are not consumed locally, for example the sale of beer products to airlines for inflight catering (“airstores scheme”), or to cruise ships or liners calling on ports in Singapore (“seastores scheme”), or for consumption by military camps and foreign embassies in Singapore (“duty-exempt”). The only scheme which grants duty-free concessions for beer products consumed locally is the duty-free shop (“DFS”) scheme. A DFS is a designated area approved and licensed by the Singapore Customs for selling dutiable goods such as liquor and tobacco to tourists and returning or departing residents of Singapore free of duty.
41. Heineken submitted that duty-free import allowances bought at DFS for alcohol varies in each country and has the potential to significantly affect the definition of the relevant product market. In relation to duty-free allowances for alcoholic beverages imported into Singapore, there are duty-free limits that each traveller can buy in duty-free shops. If a *bona fide* traveller above 18 years of age has spent 48 hours or more outside Singapore (with the exception of Malaysia) immediately before arrival, the traveller may bring into Singapore the following alcoholic beverages free of any duties:
- 1 litre of spirits, 1-litre of wines and 1-litre of beer; or

⁵⁰ Paragraph 20.1 of Form M1.

⁵¹ Paragraph 19.13 of Form M1.

⁵² <http://www.customs.gov.sg/NR/rdonlyres/E2437B38-96E8-4BC5-86D8-E9A90B60E4A3/23968/MicrobreweryDialogueFeb2012.pdf>

⁵³ Retrieved from the Singapore Customs website at <http://www.customs.gov.sg/leftNav/trad/val/List+of+Dutiable+Goods.htm> on 19 October 2012.

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- 2 litres of wines and 1-litre of beer; or
 - 1 litre of wines and 2-litres of beer.
42. However, from a demand perspective Heineken submitted that it is plausible that the product market is wider than just duty-free beer, to include all other products purchased in duty-free channels through DFS. Essentially, this is because significant amounts of duty-free purchase are made as gifts⁵⁴ and therefore international passengers on airlines or cruise lines may consider other duty-free products, such as wine, substitutable for duty-free beer.^{55 56}
43. From a supply perspective, Heineken submitted that brewers that are not already supplying beer through duty-free channels can do so fairly quickly and easily. This is due to the low entry costs and few regulatory restrictions in relation to the distribution of beer through the duty-free channels. Suppliers consider beer supplied through the duty-free channels to be fairly similar to that of the non-duty-free distribution channels. Compliance with relevant regulations by the authorities is usually uncomplicated and quick.⁵⁷
44. Heineken has observed that a number of beers have entered the duty-free market through Singapore over the past years, such as Hoegaarden (owned by Anheuser Busch Inbev) and Kronenbourg 1664 and Blanc (owned by Carlsberg). Heineken is of the view that the regular market entries are evidence of easy entry to the duty-free market.
45. Heineken submitted that while the relevant product market may be wider than beer, Heineken has conservatively assumed for the purposes of this merger submission that the relevant product market is duty-free beer. Heineken also submitted that it would not be realistic or appropriate to segment the distribution of the duty-free beer into narrower product markets.⁵⁸ In respect of the duty-paid market, Heineken submitted that given the high degree of supply side substitutability in the supply of beer through different distribution channels, the delineation of narrower markets in duty paid beer markets in Singapore may not be appropriate. Heineken submitted that, at its narrowest, the supply of duty-paid beer in the Singapore market

⁵⁴ CCS notes that the Goods and Services Tax (Imports Relief) Order which states that in order for liquors to be granted duty-free concessions, the liquors must, amongst other conditions, be for personal consumption.

⁵⁵ Paragraph 19.9 of Form M1.

⁵⁶ Paragraph 12 of Heineken's Responses (dated 9 October 2012) to CCS' Request for Further Information dated 28 September 2012.

⁵⁷ Paragraph 19.14 of Form M1.

⁵⁸ Paragraph 19.13 of Form M1.

could not be appropriately disaggregated into markets narrower than that for the supply of beer to on and off premise outlets.⁵⁹

46. In relation to the separation of the beer market into duty-free and duty-paid, CCS is of the view that while supply side substitution is relatively easy for suppliers of the duty-paid beer market into the duty-free beer market since they are essentially the same products, the presence of customs and excise duties, except for certain allowances, means that demand side substitution by customers in either duty-free or duty-paid is greatly limited, hence the definition of the duty-free and duty-paid markets into separate product markets would be appropriate.
47. While it is recognised that both duty-free and duty-paid markets can be further delineated into narrower markets, such as airstores, seastores, DFS and duty-exempt for duty-free beers and on and off-premise consumption or by beer type (i.e. canned, bottled or draught) for duty paid beers, CCS is of the view that the further segregation is not necessary for the purpose of the assessment of this Transaction and in any event, does not affect the eventual competition assessment.

(b) Geographic Market

48. From a demand perspective, Heineken submitted that the intermediate direct-customers of Heineken and APB in the market for duty-free beer include international distributors, retailers, cruise liners, airlines, and ship chandlers. Some of these intermediate direct-customers have a global presence and undertake a global strategy in relation to their procurement of supplies. This indicates that competition does not take place solely in Singapore. Such intermediate direct -customers do not travel to purchase their beer but instead would restock their beer at relevant hubs internationally, or at airports or ports internationally when there is a need to do so.
49. End -customers are generally passengers and crew travelling through air and sea routes. Air passengers travel internationally and may therefore easily purchase at duty-free zones at destinations including Singapore. Such end-customers may be willing to travel to their next international destination to obtain their duty-free goods.⁶⁰
50. From a supply perspective, Heineken submitted that large brewers that have global reach generally export their beer internationally and would supply

⁵⁹ Heineken's Response to Question 4 (dated 18 October 2012) of CCS' Second Request For Information dated 18 October 2012 .

⁶⁰ Autogrill/World Duty-free (Case No.: COMP/M.5123).

through most duty-free channels internationally. Heineken's most significant competitors are based internationally.⁶¹ It is also submitted by Heineken that transport costs to suppliers in this market are low.⁶²

51. Based on feedback received by CCS, geographical locations of suppliers are not major concerns of customers and they have not encountered any difficulty in sourcing for beer products outside of Singapore.⁶³ One of the parties' customer also commented that even if they are currently not sourcing supplies from global suppliers, they do not foresee any concerns in doing so.⁶⁴ This view was echoed by one of the parties' competitors in the duty-free market.⁶⁵
52. Based on the submissions and third parties' comments, CCS is of the view that the geographical market is the global supply of beers to Singapore.
53. Accordingly, the relevant markets for the purposes of this assessment are the global supply of beers to Singapore in the duty paid market and duty free market respectively ("Duty-Paid Relevant Market" and "Duty-Free Relevant Market").

VII. Duty-Paid Relevant Market

54. [X]⁶⁶⁶⁷
55. With the likely continuation of the TMLA where Heineken still supplies its beer through APB and in view of the circumstances set out in the above paragraph, CCS is of the view that there will be no discernible change in competition in the local duty-paid market arising from a switch from joint control to sole control over APB.

VIII. Duty-Free Relevant Market

(i) Market Structure

⁶¹ Paragraphs 19.18 to 19.20 of Form M1.

⁶² Paragraph 20.4 of Form M1.

⁶³ See [X] responses to questions 10 and 11 of customer's questionnaire dated 10 October 2012.

⁶⁴ See [X] response to question 10 of customer's questionnaire dated 11 October 2012.

⁶⁵ See [X] response to question 7 of competitor's questionnaire dated 12 October 2012.

⁶⁶ Paragraph 9.1 of Form M1

⁶⁷ Heineken's Response (dated 22 October 2012) to Question 5 of CCS' Request for Further Information dated 15 October 2012.

56. Heineken is the owner and distributor of the following beer brands appearing downstream in duty-free retail outlets in Singapore⁶⁸:
- Heineken
 - Amstel
 - Murphy
57. APB is the owner and/or distributor of the following beer brands appearing downstream in duty-free retail outlets in Singapore⁶⁹:
- Tiger
 - Anchor
 - Raffles Export Lager
 - Baron's Strong Brew
 - ABC Extra Stout
58. CCS understands that the percentage of duty-free beer as a whole of the Singapore beer market is [X]. [X], the percentage of beer distributed by APB and Heineken in the local duty-free market is approximately [X] and the rest of the market is [X].⁷⁰

(a) Market Share

59. Heineken submitted that there are no known reliable third-party sources which collate and analyze duty-free goods values and volumes sold through the various duty-free channels including the cruiseships, ferries, airlines and military bases. In addition, Heineken and APB are not in a position to obtain such data from their global intermediate direct-customers, which may each have their respective supply data sets, but do not share such information with them. As such, Heineken and APB are not able to provide comprehensive, accurate and independently-verifiable market share data on beer sales and volumes as a percentage of total duty-free good sales in these channels. In this regard, Heineken and APB are only able to provide their respective turnover values (in S\$) and volumes (in hls) as follows⁷¹:

⁶⁸ Paragraph 15.1 of Form M1.

⁶⁹ Paragraph 15.5 of Form M1.

⁷⁰ See Notes of Meeting with [X] dated 17 October 2012.

⁷¹ Paragraph 21.1 of Form M1.

Table 1: HDF and TEPL 2011 Turnover Values and Volumes

| Heineken Duty-Free (for calendar year 2011) | | TEPL (for FYE Sept 2011) | |
|--|--------------|-------------------------------------|--------------|
| Value (S\$) | Volume (hls) | Value (S\$) | Volume (hls) |
| [X] | [X] | [X] | [X] |

60. Heineken submitted that due to the lack of accurate and reliable data sources from independent third-parties, Heineken is only able to provide an internal estimate of the total size of the global duty-free market, which, based on general market knowledge, is approximately 2,580,000 hls in volume. Extrapolating from this estimate of the total market size, the market shares of Heineken Duty-Free and TEPL based on 2011 volume sold would be as follows⁷²: [X]

Table 2: HDF and TEPL 2011 Estimated Worldwide Duty-Free Market Shares

| Firm | 2011 Estimated Worldwide Duty-Free Market Shares (%) |
|------------------------------|---|
| Heineken Duty Free | [X] |
| TEPL | [X] |
| <i>Combined market share</i> | [10-20]% |

61. Based on the market share estimates set by the CCS, Heineken submitted that the merged entity will have a combined market share of less than [10-20]% of the global duty-free beer market. The CR3 is not known but Heineken assumes that it would not exceed [65-70] %.⁷³
62. CCS is unable to take into consideration the market share submitted by Heineken as it is for the global duty-free market (covering all countries with duty free sales) whereas CCS is focusing on the global supply of beers to Singapore in the duty-free market. While CCS does not have the breakdown of the market shares of the players in the Duty-Free Relevant Market, CCS notes that the market share thresholds set out in paragraph 5.15 of the CCS *Guidelines on the Substantive Assessment of Mergers* are simply indicators

⁷² Paragraph 21.2 of Form M1.

⁷³ Paragraph 21.6 of Form M1.

of potential concerns.⁷⁴ CCS will consider other factors such as entry and expansion, countervailing buying power and efficiencies to determine whether there will be a substantial lessening of competition in this particular market post-Transaction.

(b) Barriers to Entry and Expansion

63. Heineken submitted that for a brewer to enter the global duty-free beer market on a scale necessary to gain a reasonable market share for a new entrant, the brewer would have to invest on various items including advertising and promotion, listing fees, marketing support fees, etc. [§<].⁷⁵
64. The amount of time taken to enter the global duty-free beer market would be attributed to the time required to negotiate contracts, build relationships with intermediate direct-customers and the supply lead-time. Such time may be shortened for more competitively driven brewers. [§<].⁷⁶
65. Heineken also submitted that the factors affecting entry into the global duty-free beer market are⁷⁷:
- (i) Brand equity: Brand equity is an important factor in gaining an invitation to tender which will be an entrance into the duty-free markets. Intermediate direct-customers in the global duty-free market generally wish to have a brand that suits the perception of their own brand and they want a brand that matches that perception; and
 - (ii) Intermediate direct-customer knowledge: Knowledge of the intermediate direct-customer and the travel behaviour of their end-customers is another important factor in gaining entry to global duty-free market. Being able to prove that the supplier's beer brand is accepted by end-customers, and understanding how to assist the intermediate direct-customers in growing their sales is important.
66. CCS also notes that it is possible for players who are currently in the duty-paid market to enter the duty-free market. As submitted by Heineken, the number of beers that have entered the global duty-free beer market through Singapore over the past years, such as Hoegaarden (owned by Anheuser Busch Inbev) and Kronenbourg 1664 and Blanc (owned by Carlsberg), shows that entrance by existing suppliers and brewers that are not currently

⁷⁴ Paragraph 5.16 of the *CCS Guidelines on the Substantive Assessment of Mergers*.

⁷⁵ Paragraph 26.1 of Form M1.

⁷⁶ Paragraph 26.2 of Form M1.

⁷⁷ Paragraph 28.1 of Form M1.

supplying in the global duty free beer market is relatively easy.⁷⁸ One of Heineken's competitors shared that it is possible for them to switch from the duty-paid market to the duty-free market.⁷⁹ Furthermore, CCS also understands [X].⁸⁰

(c) Countervailing Buyer Power

67. Heineken submitted that [X]⁸¹

68. CCS also notes that the ease of sourcing for alternative suppliers by intermediate customers is mitigated by end customers' preferences for the different brand of beers as well as the beer suppliers' marketing influence in the consumer markets.⁸² However, feedback from intermediate customers showed that in the event of unjustifiable price increases, it is possible for them to switch to other beer suppliers.⁸³ In this regard, intermediate customers are able to source for suppliers without geographical constraints.⁸⁴ Furthermore, feedback from a competitor indicated that in the duty-free segment of air bonded stores, competition for contracts is high as airlines carry only a few beer brands.⁸⁵ CCS notes that such competition is not limited to a particular segment of the duty-free market given the availability of different beer brands in the market. CCS therefore concludes that intermediate customers would have some bargaining power over beer suppliers.

(ii) Non-coordinated effects

69. Non-coordinated effects may arise where, as a result of the Transaction, the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities.⁸⁶ 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.⁸⁷

⁷⁸ Paragraph 19.16 of Form M1.

⁷⁹ See [X] response to question 10 of CCS' questionnaire dated 12 October 2012.

⁸⁰ See Notes of Meeting [X] dated 17 October 2012, paragraph 13.

⁸¹ Paragraph 32.1 of Form M1.

⁸² See [X] response to question 4 and 10 of customer's questionnaire dated 10 October 2012.

⁸³ See [X] and [X] response to question 7 of customer's questionnaire dated 10 and 11 October 2012.

⁸⁴ See [X] response to question 10 of customer's questionnaire dated 10 October 2012.

⁸⁵ See [X] response to question 5 of competitor's questionnaire dated 23 October 2012.

⁸⁶ Paragraph 6.3 of *CCS Guidelines on the Substantive Assessment of Mergers*.

⁸⁷ *Ibid.*

70. Heineken submitted that non-coordinated effects are unlikely to arise in the global duty-free beer market as a result of the Transaction for the following reasons⁸⁸:
- (i) Buyer power of intermediate direct-customers: For example, there is only one retailer, DFS, in Singapore that is licensed to sell duty-free beer at airports and seaports in Singapore (e.g. in Changi Airport and the Tanah Merah Ferry Terminal). Such an intermediate direct-customer would be able to restrict the ability of the merged entity from increasing its prices since it is the only intermediate direct-customer available to it in Singapore;
 - (ii) Barriers to entry not significant: All brewers can enter the global duty-free beer fairly easily. The largest expenditure for entrance into the global duty-free beer is on advertising fees and/or promotions, which would generally apply similarly across all brewers;
 - (iii) Global market: The market for duty-free products is global and therefore Heineken competes with many other larger international beer brewers globally. There are many brewers globally that would be able to restrict the behaviour of the merged entity. Accordingly, the merged entity would have to behave competitively; and
 - (iv) No change in market structure: The marginal increase in Heineken's market share post-Transaction will not allow Heineken to unilaterally increase its beer prices in the global duty-free beer market.
71. Feedback from competitors and customers show that price increases by the merged entity post-Transaction are unlikely due to the highly competitive nature of the beer industry⁸⁹ and that customer bargaining power is present⁹⁰. It can therefore be concluded that the Transaction does not raise competition concerns as a result of non-coordinated horizontal effects.

(iii) Coordinated effects

72. 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

⁸⁸ Paragraph 34.1 of Form M1.

⁸⁹ See [X] and [X] response to question 2 of CCS' questionnaire dated 10 and 11 October 2012.

⁹⁰ See [X] response to question 6 of CCS' questionnaire dated 12 October 2012.

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.⁹¹

73. Heineken submitted that, in addition to the reasons set out in paragraph 70 above such as strong buyer power from intermediate direct-customers, the insignificant barriers to entry, and the competitive nature of the global duty-free beer market, the following are reasons why the Transaction would not lead to coordinated effects⁹²:

- (i) Global market: Given the global nature of the end-customer and unique distribution of duty-free products, the market is inherently competitive on a global scale. Some countries also have many airports and ports which are designated free trade zones; end-customers at such areas may behave differently such that the suppliers would find it difficult to coordinate their behaviour in the global duty free beer market. It is also unlikely that any competitor would be able to influence another to behave in a coordinated manner in the global duty free beer market;
- (ii) No change in the market structure: Heineken's very marginal increase in market share post-transaction will not make any difference to the competitors of Heineken and APB in the global duty-free beer market, and therefore it would not be likely that such competitors would be able to align their behaviour or behave differently after the acquisition; and
- (iii) Unsustainable constraints in a buyer driven market: The intermediate direct-customers in the global duty free beer market have strong buyer power and are generally varied in nature such that coordination of behaviour may be difficult. Heineken submitted that competition for beer sold through duty-free channels occurs along a number of dimensions, such as price, taste, reputation, quality and branding. In certain channels, certain characteristics may be more important than others. Some of these are from the end-customer perspective. For example, in the duty-free retail shops, packaging may be more important than taste since the end-customer may not drink the beer himself. As these are qualitative and subjective

⁹¹ Paragraph 6.7 of *CCS Guidelines on Substantive Assessment of Mergers*.

⁹² Paragraph 35.1 of Form M1.

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measures, it would be difficult for competitors to coordinate due to the Transaction.

74. CCS notes Heineken's submissions on the above factors, and also considered feedback from customers of Heineken and APB, noting that they are able to source for other suppliers of beer relatively easily, including switching to suppliers that are not based in Singapore.⁹³ As the market from which customers of beer source their products from is likely to be global in nature, coupled with the fact that [X] and the presence of product differentiation, CCS concludes that the Transaction does not raise concerns in terms of coordinated effects on competition.

IX. Efficiencies

75. Heineken submitted that besides the strategic rationale highlighted in paragraph 18 above, the Transaction will generate further efficiency gains such as cost savings that will result from streamlining operations, i.e. eliminating duplication in marketing and corporate functions.⁹⁴
76. CCS is unable to comment on the likely savings in time and costs as this information was not provided by Heineken.

X. Ancillary Restrictions

77. Heineken submitted that [X] of the APIPL Share Purchase Agreement, [X], is connected to the merger in such a manner whereby without them, the merger would not be able to go ahead or would only go ahead at substantially higher costs. Heineken further submitted that the ancillary restrictions set out in [X] of the APIPL Share Purchase Agreement are of reasonable scope and duration.
78. [X]⁹⁵
79. [X]
80. Pursuant to CCS' request to Heineken to explain why [X] is directly related and necessary to the Transaction, Heineken submitted that the undertakings set out in [X].⁹⁶

⁹³ See [X] and [X] response to question 12 of CCS' questionnaire dated 10 and 11 October 2012.

⁹⁴ Paragraph 42.1 of Form M1.

⁹⁵ [X].

81. The *CCS Guidelines on the Substantive Assessment of Mergers* state that non-compete clauses, if properly limited, are generally accepted as essential if the purchaser is to receive the full benefit of any goodwill and/or know-how acquired with any tangible assets. The CCS will consider the duration of the clause, its geographical field of application, its subject matter and the persons subject to it. Any restriction must relate only to the goods and services of the acquired business and apply only to the area in which the relevant goods and services were established under the previous/current owner.⁹⁷
82. CCS is of the view that in respect of [X]. For the same reason, CCS is also of the view that the geographical scope of [X] is necessary and reasonable for the Transaction. Accordingly, [X] of the APIPL Share Purchase Agreement constitutes an ancillary restriction and consequently falls within the exclusion under paragraph 10 of the Third Schedule of the Act.
83. However, CCS does not agree with Heineken that [X] is directly related and necessary to the Transaction and therefore is an ancillary restriction. As mentioned above, any restriction must relate only to the goods and services of the acquired business. In this regard, CCS notes that [X]. Further, as set out in the *European Commission Notice on Restrictions directly related and necessary to Concentrations*, in general terms, the need for the purchaser to benefit from certain protection is more compelling than the corresponding need for the vendor and it is the purchaser who needs to be assured that she/he will be able to acquire the full value of the acquired business. Thus as a general rule, restrictions which benefit the vendor are either not directly related and necessary to the implementation of the concentration at all, or their scope and/or duration need to be more limited than that of clauses which benefit the purchaser.⁹⁸
84. CCS is of the view that Heineken has not sufficiently justified how the restriction to compete imposed upon Heineken should be regarded as necessary to the implementation of the Transaction. Accordingly, [X] does not fall within the exclusion under paragraph 10 of the Third Schedule of the Act.

⁹⁶ Paragraph 21 of Heineken's Responses (dated 9 October 2012) to CCS' Request for Further Information dated 28 September 2012.

⁹⁷ Paragraph 10.15 of the *CCS Guidelines on the Substantive Assessment of Mergers*.

⁹⁸ Paragraph 17 of the *Commission Notice on Restrictions directly related and necessary to Concentrations* OJ C 56, 05.03.2005.

XI. Conclusion

85. For the reasons above and based on the information available, CCS assesses that the Transaction, if carried into effect, will not infringe the section 54 prohibition.
86. Pursuant to section 57(7) of the Act, CCS states that this decision shall be valid for a period of one year from the date of the decision.



Yena Lim
Chief Executive
Competition Commission of Singapore