

6 February 2013

## OFT response to: Home Office Alcohol strategy consultation

---

### Introduction

1. Thank you for the opportunity to respond to the Government's Alcohol strategy. The views in this response follow on from those expressed by the OFT in its response to the Health Committee inquiry into the Government's Alcohol Strategy 8 May 2012<sup>1</sup>.
2. We are aware of the evidence demonstrating the harmful effects of excessive alcohol consumption and fully support the Government's desire to reduce that harm. The views expressed here are not in any way intended to challenge the Government's wider policy objectives. The OFT has a remit to comment solely on the competition and consumer aspects of Government policies.<sup>2</sup> We recognise that the Government must weigh any concerns relating to competition and consumers against its wider policy goals. However, the setting of minimum retail prices does raise a number of competition and policy concerns.
3. Taken in isolation, a minimum unit price for alcohol and possible multi-buy restrictions may not be too significant. However, we are very concerned that, by legitimising intervention to control prices in a competitive market, it will be harder for the Government to resist calls for similar measures in other parts of the retail sector in future. This could have significant long-term costs for competition and ultimately consumers.
4. At its simplest, setting a minimum unit price (MUP) would require retailers to charge more for low cost alcohol. There is good evidence that this price increase would lead to some reduction in demand for alcohol, as the Government intends. However, setting a minimum price will result in some negative consumer and competition impacts, not all of which are explicitly

---

<sup>1</sup> [http://www.offt.gov.uk/shared\\_offt/public-markets/120508\\_OFT\\_submission\\_to\\_He1.pdf](http://www.offt.gov.uk/shared_offt/public-markets/120508_OFT_submission_to_He1.pdf)

<sup>2</sup> Under section 7 of the Enterprise Act 2002 the OFT has the function of giving information and advice to Ministers and public authorities in relation to any of its functions.

considered in the Impact Assessment published alongside the Alcohol Strategy. These impacts include:

- Increasing margins for retailers on the sale of alcohol this could encourage retailers to put more effect into promoting its sale by means other than discounts, for example by setting aside additional space for alcoholic products through enhanced marketing efforts which may serve to limit any decline in consumption resulting from the MUP.
  - There will also be a reduction in incentives for manufacturers and retailers to compete on cost. This reduction in competitive pressure will also most likely be felt throughout the market for off-sales rather than just at the low cost end.
  - New market entry could be discouraged because potential new products cannot compete on cost/price or use promotional discounts to encourage customers to try their product and so gain market share.
  - Introducing a minimum unit price and restricting the use of multi-buy promotions will increase the transparency in the retail pricing of alcoholic beverages, which is one of the conditions for anti competitive collusion the OFT is concerned about as part of its work in making market work better for consumers.<sup>3</sup>
  - There may be some potential for gaming by bundling alcoholic beverages with other products, or using other products as loss leaders, resulting effective unit prices that are lower than the MUP.
  - A minimum price, unlike a tax increase, may generate additional profits for retailers (and/or manufacturers depending on relative bargaining power and the interaction with the alcohol duty), and these could potentially be used in the marketing of alcoholic beverages.
5. Should the MUP be introduced the OFT has some concerns about any potential involvement of the industry in setting the minimum price level and the annual adjustment of that level. This can be an occasion for considerable information exchange between manufacturers and an opportunity to exchange pricing intentions up the value chain. The potential for information sharing is another condition that the OFT has identified as a factor that can increase the potential for collusion in a market.<sup>4</sup>

---

<sup>3</sup> See OFT guidelines on 'Agreements and concerted practices' for how information sharing and transparency can reduce or remove the uncertainties inherent in the process of competition.

<sup>4</sup> See OFT guidelines on 'Agreements and concerted practices'

6. For the reasons outlined above it is possible there may be a substantive impact on the competition in this sector and/or the fall in demand that the policy is designed to achieve might fail materialise. For these reasons we would suggest the introduction of sunset clause which would require an assessment of how the policy is working in practice, before potentially being renewed at some future point in time.

**Question 2: Should other factors or evidence be considered when setting a minimum unit price for alcohol?**

7. As set out above the OFT consider that more weight should be given to the dynamic competitive effects of the imposition of a MUP. In particular there is some potential for the introduction of an MUP to both reduce incentives for price competition and to increase the potential for collusion. In addition there is the potential for new entry to be discouraged as new products cannot compete on price.
8. As noted above, the OFT does not consider that the competitive impact of the introduction of an MUP will necessarily be limited to the low price end of the market. The reduction in competitive pressure will most likely be felt throughout the spectrum of alcoholic products sold in the off trade as to some extent mid price alcohol will be a substitute for low price alcohol and that products in the mid range would feel less pressure to limit their differential with the low cost end of the market. Indeed they might be incentivised to increase prices to maintain a differential that support a perception of better quality. Similarly mid price alcohol will to an extent be a substitute for high priced alcohol and the reduction of price pressure at for mid price product could in turn reduce price pressure for more expensive products.
9. Several compelling international studies by the OECD and others suggest that restrictions on retail prices, such as banning below cost selling, ultimately lead to lower productivity and worse outcomes for consumers. For example in France, between 1997 and 2002, food prices increased faster than general inflation – 11.8% compared to 6% - in part because of retail restrictions . In relation, it has been estimated that Irish families were paying €500 more per year for retail items in 2005 because of rules preventing below cost selling.<sup>5</sup>

---

<sup>5</sup> OECD policy roundtable on Resale below cost 2005:  
<http://www.oecd.org/competition/abuseofdominanceandmonopolisation/36162664.pdf>

**Question 3: How do you think the level of minimum unit price set by the Government should be adjusted over time?**

10. Should the MUP be introduced the OFT has some concerns about any potential involvement of the industry in setting the minimum price level and adjusting it in line with inflation or real disposable income. . This can be an occasion for considerable information exchange between manufacturers and an opportunity to exchange pricing intentions up the value chain. The potential for information sharing is another condition that in the OFT has identified as a factor that can increase the potential for collusion in a market.<sup>6</sup>
11. The OFT's experience of investigating price fixing arrangements in grocery sectors would suggest that setting up any mechanism that might encourage and to an extent legitimise discussion between industry players about issues of pricing could increase the opportunities for co-ordination on setting prices.

**Question 5: Do you think there should be a ban on multi-buy promotions involving alcohol in the off-trade?**

12. The ban on multi-buy promotions is not likely to have a significant additional effect (on top of the MUP) on levels of demand for alcohol as, even if such promotions were allowed, retailers could not lower prices below MUP. However, the OFT feels that the combination of MUP and the ban on multi-buy promotions has the potential to encourage coordination between firms.
13. A multi-buy restriction on top of the imposition of a MUP will greatly increase price transparency within the sector and this could have the potential to facilitate coordination between will facilitate coordination in the setting of prices for alcoholic beverages. The potential for price transparency to facilitate coordination in setting prices is highlighted in the OFT/CC's Merger Assessment Guidelines.<sup>7</sup>
14. Multi-buy restrictions would also be difficult to enforce as there is the potential for some gaming. For example would the rules be able to prevent the introduction of essentially similar, but differently named/branded products that are only available in larger volumes or multipacks but sold at an effective lower unit price?

---

<sup>6</sup> See OFT guidelines on 'Agreements and concerted practices'

<sup>7</sup> [www.of.gov.uk/shared\\_of/mergers/642749/OFT1254.pdf](http://www.of.gov.uk/shared_of/mergers/642749/OFT1254.pdf)