

Anticipated acquisition by Diageo Great Britain Limited of Chase Distillery (Holdings) Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6910/20

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 11 February 2021. Full text of the decision published on 19 March 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. Diageo Great Britain Limited (**Diageo**) has agreed to acquire Chase Distillery (Holdings) Limited (**Chase**) (the **Merger**). Diageo and Chase are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the manufacture and supply of each of gin and vodka in the United Kingdom (**UK**), and as a result of conglomerate effects in the manufacture and supply of gin and vodka in the UK.
3. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties and transaction

4. Diageo is a UK-based global manufacturer and supplier of spirits, beer and ready-to-drink alcoholic beverages (RTDs) to principally off-trade¹ and on-trade² channels, distributors and wholesalers.³ Diageo's spirit offering includes gin, vodka, rum, tequila and whisky.⁴ In the financial year ending 30 June 2020, Diageo had a worldwide turnover of £11,752 million, of which approximately £[X] was generated in the UK.⁵
5. Chase is a UK-based manufacturer and supplier of mainly gin and vodka.⁶ Chase primarily supplies its products to off-trade and on-trade channels and wholesalers.⁷ In the financial year ending 31 December 2019, Chase had a worldwide turnover of approximately £10 million, of which approximately £[X] was generated in the UK.⁸
6. On 26 October 2020, Diageo and Chase entered into a share purchase agreement under which Diageo will acquire the entire issued share capital of Chase.⁹

Jurisdiction

7. Each of Diageo and Chase is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
8. The Parties overlap in the supply of gin and vodka. In 2019, the Parties' combined share in the UK (by value of sales) was higher than 25%, both in the supply of gin and vodka in the UK and in both the on-trade and off-trade channels, with an increment of less than [0-5]% brought about by the Merger (see Table 1 and Table 2 below).¹⁰ The CMA therefore believes that the share of supply test in section 23 of the Act is met.

¹ Where beverages are purchased and consumed away from the point of purchase, such as grocery retailers and convenience stores.

² Where beverages are consumed on the premises where they are purchased, such as pubs, bars, restaurants etc.

³ See the Final Merger Notice dated 5 January 2020 submitted on behalf of Diageo (FMN), paragraph 4.1.

⁴ FMN, paragraph 4.2.

⁵ FMN, paragraph 7.2.

⁶ Chase also manufactures and supplies flavoured gin seltzers which are RTDs, and a vodka-based elderflower liqueur. See FMN, paragraphs 4.5-4.8.

⁷ Chase also supplies its spirits directly via its website and from its distillery farm shop. FMN, paragraph 4.5.

⁸ FMN, paragraph 7.1. The turnover of £[X] in the UK is from FMN, Attachment B Chase Distillery Management Accounts of September 2020.

⁹ FMN, paragraphs 3.1 and 3.6.

¹⁰ FMN, Tables 16.2. and 16.7.

9. The CMA therefore believes that it is or may be the case that as a result of the Merger arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
10. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 8 January 2021 and the statutory 40 working day deadline for a decision is therefore 4 March 2021.

Counterfactual

11. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).¹¹ In this case, there is no evidence supporting an alternative counterfactual to the prevailing conditions of competition, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

12. Market definition provides a framework for assessing the competitive effects of a merger. The Parties primarily overlap in the supply of gin and vodka in the UK.¹² Diageo's main gin brands are Gordon's London Dry gin and Tanqueray London Dry¹³ and are promoted as standard and premium gin brands respectively.¹⁴ Diageo's main vodka brands are Smirnoff, Ketel One, and Cîroc which are promoted as standard, premium, and super-premium vodka brands respectively.¹⁵ Chase gin and Chase Original vodka are promoted as super-premium gin and vodka products.¹⁶

¹¹ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

¹² The Parties overlap to a limited extent in the manufacture and supply of RTDs, on the basis that Chase recently launched RTDs in June 2020 with its trial launch of flavoured gin seltzers. However, as Chase's shares of supply is negligible in the market for RTD's in both to on-trade ([0-5]%) and off-trade ([0-5]%) channels, the CMA does not believe the Merger gives rise to a realistic prospect of an SLC in relation to the manufacture and supply of RTDs and this overlap is not considered further in this decision.

¹³ Diageo sells two other Tanqueray gin products ie Tanqueray Flor De Sevilla which is a flavoured gin retailed at circa £25 and Tanqueray No 10 which is a more premium gin retailed at circa £32. See FMN, paragraphs 16.38-16.39.

¹⁴ Gordon's retails for circa £15.50 and Tanqueray for circa £18. FMN, paragraphs 16.36 and 16.38.

¹⁵ Smirnoff retails at circa £15.50, Ketel One at circa £25.50, and Cîroc at circa £38.50. FMN, paragraph 16.56.

¹⁶ Chase gin (non-flavoured) retails for circa £30, Chase flavoured gin retails at circa £38, and Chase Original vodka retails for circa £37. FMN, paragraphs 16.36 and 16.57.

Product scope

13. The Parties submitted that the appropriate frames of reference are the manufacture and supply of gin and vodka respectively, which can be further segmented between the on-trade and off-trade channels. The Parties also submitted that these markets may be further segmented by (i) flavoured and non-flavoured gin / vodka and (ii) quality (often measured by price as a proxy), but that it was not necessary to conclude on the exact frame of reference since no competition concerns are likely to arise due to the Merger.¹⁷
14. The CMA has not received any evidence indicating that the product frame of reference should be any wider than the manufacture and supply of gin and vodka.¹⁸
15. The CMA considered whether the manufacture and supply of each of gin and vodka should be segmented by (i) customer channel, ie on-trade and off-trade, and (ii) flavour, and quality.

On-trade and off-trade channels

16. The CMA has found some evidence to suggest that there could be segmentation between the two customer channels.¹⁹ For example, the Parties' internal documents show that they [redacted] in the on-trade and off-trade channels separately and have different [redacted] for each channel.²⁰ However, both Parties compete for customers in the on-trade and off-trade channels, and the Parties face broadly the same competitors in both channels of the market.
17. Given that no competition concerns arise on any plausible basis, the CMA has not found it necessary to conclude on whether segmentation by customer channel for each of gin and vodka is appropriate in this case.

¹⁷ FMN, paragraphs 14.1 – 14.2.

¹⁸ The CMA's predecessor, the Office of Fair Trading (**OFT**), and the European Commission (**EC**) have previously considered that the manufacture and supply of each spirit type (eg gin, vodka and whisky) constitutes a separate product market. This is because different types of spirits are not substitutable or interchangeable for either consumers or intermediate customers. See OFT cases: [ME/6130/13 Diageo plc/United Spirits Limited](#), paragraph 68; [ME/3515/08 Diageo plc/Nolet Beheer BV](#); EC Cases: [Case no COMP/M.7178 Suntory Holdings/Beam](#), [Case no COMP/M.3779 Pernod Ricard/Allied Domecq](#), [Case no COMP/M.2268 Pernod Ricard/Diageo/Seagram Spirits](#), and [Case no COMP/M.938 Guinness/Grand Metropolitan](#).

¹⁸ See [ME/6130/13 Diageo plc/United Spirits Limited](#), paragraph 59.

¹⁹ In previous decisions, the CMA's predecessor (OFT) and the EC have recognised a segmentation between the on-trade and off-trade channels on the basis of evidence indicating that competitive conditions are likely to differ for these channels. See OFT's decisions on [ME/6130/13 Diageo plc/United Spirits Limited](#), paragraph 59; [Symington/Cockburn's Port brand](#), paragraphs 22-27.

²⁰ For example, FMN, Attachments E.6, E.40 and C.10.

Segmentation by type of flavour and by quality

18. The Parties manufacture and supply both flavoured and non-flavoured vodka and gin products, and products across different quality categories.
19. The Parties submitted that there is some degree of demand-side substitutability between flavoured and non-flavoured products.²¹ The Parties submitted switching data that showed that non-flavoured products are often one of the most popular substitutes for the Parties' flavoured products.²² The Parties also submitted that, for each of gin and vodka, there is a high degree of supply-side substitutability between flavoured and non-flavoured products.²³ This is because the production process for producing flavoured spirits from non-flavoured spirits is simple and the capital costs for the equipment required are low.²⁴
20. The CMA's investigation found that while some of the Parties' internal documents discuss their marketing strategy and competitor analysis for flavoured and non-flavoured gin and vodka separately, others indicated a certain degree of demand-side substitutability.²⁵ For example, a few Diageo documents mention that '[X]'.²⁶ Both Parties also discuss competitors' non-flavoured gin and vodka alongside flavoured gin and vodka competitors.²⁷ Further, the majority of the competitors that responded to the CMA's Merger investigation supply both flavoured and non-flavoured variants of gin and/or vodka.
21. The Parties further submitted that it was not appropriate to segment the frame of reference based on quality such as standard, premium and super-premium because (i) consumer switching between categories is very common; (ii) there is a fluidity of price distribution across these categories; (iii) frequent promotions mean higher priced brands selling a large amount at lower prices and (iv) there is no industry consensus on how many categories exist or where the boundaries are drawn between each category.²⁸
22. The CMA's investigation found that some third parties classified Chase's gin and vodka as a premium product whereas others considered them to be

²¹ FMN, paragraph 14.4.

²² FMN, Annex 5. For example, non-flavoured [X] is one of the top ten substitutes for flavoured [X] and non-flavoured [X] and [X] gin are in the top ten substitutes for [X] flavoured gin.

²³ FMN, paragraph 14.4. In previous decisions, the OFT considered segmentation of spirit drinks by flavour and by quality, but it did not conclude given the lack of concern. See *ME/6130/13 Diageo/United Spirits*, paragraph 53.

²⁴ FMN, paragraph 14.4. Also, see the Parties response to Question 12 of the CMA's request for information 1 dated 4 December 2020 (RFI 1).

²⁵ See for example, FMN, Attachments D.6 and E.4.

²⁶ See for example FMN, Attachments C.3, and C.4.

²⁷ See for example FMN, Attachments E.40, F.5 and F.8.

²⁸ FMN, paragraphs 14.7-14.14.

super-premium products. One third-party said that there is not a strict separation between the different categories. There were also differences in relation to the price cut-offs between premium and super-premium brands/products.

23. On the basis of the above evidence, the CMA considers that there appears to be a degree of demand and supply-side substitutability between gin and vodka based upon flavour and quality categories. However, as no competition concerns arise on any plausible basis, the CMA has not found it necessary to conclude on whether segmentation by flavour and quality categories for each of gin and vodka is appropriate in this case.

Geographic scope

24. The Parties submitted that the market for gin and vodka is UK-wide, in line with previous OFT decisions.²⁹ The CMA notes from Diageo's internal documents that it discusses its spirits products separately for Great Britain (GB) and Northern Ireland.³⁰ However, the CMA considers that both Parties compete across all regions of the UK and the CMA has seen no evidence from third parties to suggest that the market is any narrower than UK-wide.
25. On the basis of the above evidence, the CMA has assessed the impact of the Merger at a national level, in the UK.

Conclusion on frame of reference

26. For the reasons set out above, the CMA has assessed the impact of the Merger in (i) the manufacture and supply of gin in the UK; and (ii) the manufacture and supply of vodka in the UK. Nevertheless, the CMA considers any differences in the customer channels, customer preferences for flavoured gin and vodka, and quality categories in the competitive assessment.

Competitive assessment

Horizontal unilateral effects

27. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.³¹ Horizontal unilateral effects are

²⁹ FMN, paragraph 14.21. See [ME/6130/13 Diageo plc/United Spirits](#) and [ME/3515/08 Diageo plc/Nolet Beheer BV](#).

³⁰ See for example, FMN, Attachments C.3, E.11, E.17, E.45.

³¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in (i) the manufacture and supply of gin in the UK, and (ii) the manufacture and supply of vodka in the UK.

28. In its assessment, the CMA considered: (i) shares of supply; (ii) closeness of competition between the Parties; and (iii) competitive constraints posed by alternative suppliers.

Horizontal unilateral effects in the manufacture and supply of gin in the UK

Shares of supply

29. The Parties submitted shares of supply estimates, by value of sales in 2019, for the supply of gin in GB,³² which are presented below in Table 1.

Table 1: Total gin shares of supply (flavoured and non-flavoured) in the on-trade and off-trade by value, in GB (2019)

	<i>On-trade</i>	<i>Off-trade</i>
Diageo	[50-60]%	[40-50]%
Chase	[0-5]%	[0-5]%
Combined	[50-60]%	[40-50]%
Pernod Ricard	[10-20]%	[0-5]%
Bacardi-Martini	[5-10]%	[10-20]%
William Grant & Sons	[5-10]%	[0-5]%
Halewood International	[5-10]%	[10-20]%
Quintessential	[0-5]%	[5-10]%
Others	[10-20]%	[10-20]%

Source: Parties submissions using CGA and Nielsen data.

30. The above estimates demonstrate that the Parties' combined share of supply to on-trade and off-trade customers is high, but the increment brought to Diageo's share by the Merger is very low (less than [0-5]%).³³ These estimates also show that the Parties face competition from other suppliers.

Closeness of competition

31. The Parties submitted that their gin products are not close competitors due to differentiation in price, taste, branding, and style.³⁴ The Parties submitted that

³² The Parties shares of supply figures were based on CGA and Nielsen data that provide data for GB excluding Northern Ireland. The CMA considers these figures to be reasonably accurate for the UK as well given that Chase has de minimis sales in Northern Ireland. See FMN, paragraph 14.22.

³³ Diageo's share of supply (flavoured and non-flavoured) to on-trade and off-trade customers is predominantly driven by sales of Gordon's gin (including its flavoured variants) which represents approximately [40-50]% in the on-trade and [40-50]% in the off-trade. See FMN, Table 16.2.

³⁴ FMN, paragraph 16.34.

Chase's main gin products have higher retail prices than all of Diageo's Gordon's range and most of its Tanqueray range (these gin products of Diageo account for its largest sales), with the exception of Tanqueray No 10.³⁵

32. The Parties also submitted switching analysis, based on Dunnhumby Data in the off-trade,³⁶ which showed that switching rates between the Parties' brands were low (between [0-5]%).³⁷
33. The CMA's investigation also found that:
 - (a) evidence from the Parties' internal documents largely showed that they did not consider each other as a close competitor;³⁸
 - (b) evidence from the Parties' internal documents³⁹ and third parties broadly indicated that Chase's gin products (flavoured and non-flavoured) are generally positioned as more premium products and sold at higher price points compared to Diageo's main Gordon's and Tanqueray gin products; and
 - (c) the majority of third parties that responded to the CMA's Merger investigation did not consider Diageo's main gin brands, ie Gordon's and Tanqueray, to compete closely with Chase's gin products. Third parties generally noted that Chase is a relatively small supplier of gin in the UK, and that its gin products differed with Diageo's in terms of price, brand positioning and taste.⁴⁰
34. Overall, based on the evidence above, the CMA considers that the Parties are not particularly close competitors.

³⁵ FMN, paragraphs 16.36, 16.38, 16.39.

³⁶ The Dunnhumby Data collects customer data based on Tesco's Clubcard used by Tesco to track instances where consumers switch from one brand to another over time. The Dunnhumby Data also provides a Ranging Optimiser dataset which identifies the patterns of products purchased by individual households, but on separate occasions. See FMN, Annex 4, paragraphs 4.1-5.1.

³⁷ The Dunnhumby data showed that only [0-5]% of Tesco customers switched from Tanqueray No 10 to Chase non-flavoured gin, [0-5]% of customers switched from Chase to Tanqueray London Dry, [0-5]% of customers switched from Chase flavoured gin to Tanqueray Flor de Sevilla, and [0-5]% of customers switched from Chase flavoured gin to Tanqueray Rangpur.

³⁸ See for example, FMN, Attachments E.5, E.14, E.39, E.48, and F.8. While there are some internal documents from Diageo that compare and discuss its [] gin with [] gin products, the CMA considers that [] has a very small market share by value in both on-trade ([0-5]%) and off-trade ([0-5]%). See FMN, Table 16.2 and for example Attachments E.35, E40, and E41.

³⁹ See for example, FMN, Attachments E.5, E.39, E.48 and F.8.

⁴⁰ The CMA's investigation found that while Chase's gin was moderately growing in the past few years, Chase's market share would still remain very low in the next few years. Therefore, the CMA considers that the Parties would not have become closer competitors in the foreseeable future.

Competitive constraints

35. The Parties submitted that the gin market in the UK is highly fragmented and has a large number of suppliers.⁴¹ Moreover, the Parties submitted that the Merged Entity will remain subject to significant constraints from a long list of competitors, in particular from Bacardi-Martini, William Grant & Sons, Pernod Ricard, Whitney Neill (Halewood International), and a long tail of smaller competitors.⁴²
36. The share and supply data and the Parties' internal documents broadly confirm that there are a range of alternative suppliers of gin.⁴³
37. Similarly, third-party feedback generally indicated that the gin market was growing, with many competitors and new entrants in the last few years. Overall, third parties identified around 25 different competitors to both Diageo and Chase's gin products.⁴⁴
38. Overall, the evidence indicates that the Parties will continue to face competition from a wide variety of gin suppliers post-Merger.

Conclusion on horizontal unilateral effects in the manufacture and supply of gin in the UK

39. For the reasons set out above, the CMA considers that the Merger would result in a very small increment to Diageo's share of supply of gin. The CMA also considers that the Parties are not close competitors in the manufacture and supply of gin in the UK, and that the Merged Entity will continue to face competitive constraints from a wide variety of alternative suppliers of gin.

Horizontal unilateral effects in the manufacture and supply of vodka in the UK

Shares of supply

40. The Parties submitted shares of supply estimates, by value of sales in 2019, for the supply of vodka in GB, which are presented below in Table 2.

⁴¹ FMN, paragraph 16.40.

⁴² FMN, Paragraph 16.33.

⁴³ See Table 1 above for alternative suppliers such as Pernod Ricard, Bacardi-Martini, William Grant & Sons, Halewood International etc. See for example, FMN, Attachments E.19, E.39, E.40, E.48, F.4, F.5, and F.8.

⁴⁴ Other smaller competitors include: Kopparberg, Cellar Trends, Hi-Spirits, Ian Macleod & Co, Remy Cointreau UK, Adnams, Brewdog, Proximo Spirits, Sipsmith, Penderyn Distillery, Inver House Distillery, Martin Miller's, Warner Edward's Distillery, AB Inbev, Brockman's Gin, Distil, Silent Pool Distillery, and Leelex.

Table 2: Total vodka shares of supply (flavoured and non-flavoured) in the on-trade and off-trade by value, in GB (2019)⁴⁵

	<i>On-trade</i>	<i>Off-trade</i>
Diageo	[60-70]%	[40-50]%
Chase	[0-5]%	[0-5]%
Combined	[60-70]%	[40-50]%
William Grant & Sons	[5-10]%	[10-20]%
Pernod Ricard	[5-10]%	[5-10]%
Loch Lomond	[0-5]%	[10-20]%
Bacardi-Martini	[5-10]%	[0-5]%
Others	[10-20]%	[10-20]%

Source: Parties submissions using CGA and Nielsen data.

41. The above estimates demonstrate that the Parties' combined share of supply in the on-trade and off-trade is high, but the increment brought to Diageo's share by the Merger is very low at less than [0-5]%. Diageo's share of supply is predominantly driven by sales of Smirnoff vodka (flavoured and non-flavoured) which represents [50-60]% in the on-trade and [40-50]% in the off-trade.⁴⁶ These estimates show that the Parties face competition from other suppliers.

Closeness of competition

42. The Parties submitted that their vodka brands are not close competitors and that they differ in terms of price, taste, branding, and style.⁴⁷ The Parties provided retail prices for Diageo's vodka and Chase's vodka products in the UK which showed that Chase's vodka products were priced higher than all of Diageo's Smirnoff and Ketel One products.⁴⁸ Diageo's Cîroc vodka is priced similarly to Chase's vodka products, but Cîroc only has a share of supply of [0-5]% in the on-trade and [0-5]% in the off-trade.⁴⁹
43. The Parties submitted that there was limited switching analysis available from the Dunnhumby data due to the [REDACTED].⁵⁰ Overall, the available switching data indicates that there is limited switching between the Parties' vodka products.⁵¹

⁴⁵ The Parties' shares of supply figures were based on CGA and Nielsen data that provide data for GB excluding Northern Ireland. The CMA considers these figures to be reasonably accurate for the UK as well given that Chase has de minimis sales in Northern Ireland. See FMN, paragraph 14.22.

⁴⁶ FMN, Table 16.7.

⁴⁷ FMN, paragraph 16.63.

⁴⁸ Chase's non-flavoured vodka retails at circa £37 for a 700ml bottle. This contrasts with circa £15 for non-flavoured Smirnoff and £25.50 for non-flavoured Ketel One.

⁴⁹ Cîroc retails at circa £38.50 compared with £37 for Chase's non-flavoured vodka.

⁵⁰ FMN, paragraph 3.6 of Annex 5.

⁵¹ The switching analysis which is available shows that [REDACTED] vodka is not a top ten substitute for [REDACTED] non-flavoured vodka and that [REDACTED] vodka is only purchased by [0-5]% of customers which purchase [REDACTED]. FMN, paragraph 3.7 of Annex 5.

44. Evidence from the Parties' internal documents showed that they do not consider each other as close competitors.⁵²
45. Third-party responses to the CMA's Merger investigation broadly indicate that Chase's vodka offering represents a premium product and faces a different set of competitors compared to Diageo's vodka brands, especially Smirnoff and Ketel One. Although some third parties considered Diageo's Cîroc vodka to be similarly priced to Chase's vodka, several third parties stated that the branding differences between the Parties' vodka products (flavoured and non-flavoured) meant that they are not close competitors.⁵³
46. Overall, based on the evidence above, the CMA considers that the Parties are not particularly close competitors.

Competitive constraints

47. The Parties submitted that the Merged Entity will remain subject to constraint from a large range of competitors post-Merger, including Pernod Ricard, Bacardi-Martini, William Grant & Sons, Moët Hennessy, and a long tail of smaller competitors.⁵⁴
48. The share and supply data and the Parties' internal documents broadly confirm that there are a range of alternative suppliers of vodka.⁵⁵
49. Third-party feedback indicates that the market for vodka has many competitors. Moreover, third parties identified up to 30 competitors which compete with the Parties.⁵⁶ One competitor told the CMA that there is a large variety of competitors to Diageo's main vodka brands.
50. Overall, the evidence indicates that the Parties will continue to face competition from a wide variety of vodka suppliers post-Merger.

⁵² See for example FMN, Attachments E.53, E.55, E.58, E.62 and F.8.

⁵³ The CMA's investigation found that while Chase's vodka was moderately growing in the past few years, Chase's market share would still remain very low in the next few years. Therefore, the CMA considers that the Parties would not have become closer competitors in the foreseeable future.

⁵⁴ FMN, paragraph 16.62.

⁵⁵ See Table 2 above for alternative suppliers such as William Grant & Sons, Pernod Ricard, Loch Lomond, Bacardi-Marini, etc. See for example FMN, Attachments E.53 and E.58, F.4 and F.8.

⁵⁶ Other smaller competitors include: Halewood International, Moët Hennessy, Brown Forman, Penderyn Distillery, Campari, Pure Milk Vodka, Heroes Drinks, Hi-Spirits, Crystal Head, Chapel Down, The Lakes Distillery, Ramsbury Brewery, Spirit of the Lakes, Arbikie, and Moorland Spirit.

Conclusion on horizontal unilateral effects in the manufacture and supply of vodka in the UK

51. For the reasons set out above, the CMA considers that the Merger will result in a very small increment to Diageo's share of supply. The CMA has found that the Parties are not particularly close competitors in the supply of vodka in the UK, and that the Merged Entity will continue to face competitive constraints from a wide variety of alternative suppliers of vodka.

Conglomerate effects

52. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same market. In certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, including through a tying or bundling strategy.
53. The CMA's approach to assessing conglomerate theories of harm is to analyse (i) the ability of the merged entity to foreclose competitors; (ii) the incentive of it to do so; and (iii) the overall effect of the strategy on competition.⁵⁷
54. In the present case, the CMA has considered whether the Merger could change the Merged Entity's ability to bundle its range of gin and vodka products, resulting in the foreclosure of rival gin and vodka suppliers.
55. The Parties submitted that on-trade and off-trade customers can buy from a range of spirits manufacturers (typically via wholesalers) to meet individual supply.⁵⁸ Diageo also submitted that it has not in the past, and does not currently, supply its gin and vodka products together using any bundling or tying strategies.⁵⁹
56. The CMA received some mixed evidence from third parties. While the majority of third parties did not raise concerns, some competitors and a small number of customers were concerned that the Merger would strengthen Diageo's position in the markets for the supply of gin and vodka, and enable it to leverage its market power by offering portfolio discounts or dictate pricing to the exclusion of rivals. One customer raised the concern that the Merged Entity could offer discounts on its "must-have" drinks, such as Gordon's and Smirnoff, conditional on them stocking Chase's gin and vodka, which could lead to the foreclosure of other smaller gin and vodka suppliers.

⁵⁷ [Merger Assessment Guidelines](#), from paragraph 5.6.13

⁵⁸ FMN, paragraph 21.5.

⁵⁹ FMN, paragraph 21.4; See also the Parties response to question 16 of RFI 1.

57. The CMA has found that Diageo has a strong presence in the supply of gin and vodka, and it typically negotiates prices with customers across a portfolio of products.ⁱ However, the CMA does not consider that the acquisition of Chase will materially change Diageo's ability to bundle and foreclose rivals on the basis of the following assessment:
- (a) the CMA has not seen any evidence from the Parties' internal documents that the Parties plan to pursue foreclosure strategies;
 - (b) in principle, Diageo's existing strength in the supply of gin and vodka could allow it to engage, to some degree, in bundling and tying practices. However, as discussed in paragraphs 30 and 41 above, there are a large number of other smaller gin and vodka manufacturers and suppliers in the UK that exert constraint over the Parties which will continue post-Merger. Moreover, the CMA has found that customers often source from more than one spirits manufacturer (largely via wholesalers). The CMA has also found, based on third parties' evidence and the share of supply data that barriers to entry in the market for the manufacture and supply of gin and vodka are low, which indicates that additional suppliers could emerge.⁶⁰ The CMA therefore believes that any tying or bundling strategy by the Merged Entity would not enable it to put its rivals at a competitive disadvantage; and
 - (c) in addition to this, as set out in Table 1 and Table 2 above, Chase represents a very small increment to Diageo's share of supply. Therefore, the CMA considers that the Merger is unlikely to substantially enhance Diageo's market power such to enable Diageo to implement foreclosure strategies.
58. For the reasons set out above, the CMA believes that to the extent Diageo has engaged in portfolio negotiation practices or will engage in such negotiations after the Merger, the CMA has not seen any evidence suggesting that rivals may be foreclosed as a result. In any event, the Merger will not materially change Diageo's ability (if any) to foreclose its rivals. Therefore, the CMA has not found it necessary to consider the Parties' incentives or the effects of foreclosing rivals through a tying or bundling strategy.
59. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to the supply of gin and vodka products in the UK.

⁶⁰ See paragraphs 37 and 49. See also Table 1 and Table 2 above.

Decision

60. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.
61. The Merger will therefore **not be referred** under section 33(1) of the Act.

Eleni Gouliou
Director, Mergers
Competition and Markets Authority
11 February 2021

ENDNOTE

ⁱ Paragraph 57 should be read as follows: 'The CMA has found that Diageo has a strong presence in the supply of gin and vodka, and evidence from some customers indicated that Diageo's negotiations with customers sometimes takes place across a portfolio of products'.