ANTICIPATED ACQUISITION BY CARLSBERG UK HOLDINGS LIMITED OF BRITVIC PLC

Decision on relevant merger situation and substantial lessening of competition

ME 7111/24

The Competition and Markets Authority's decision on relevant merger situation and substantial lessening of competition under section 33(1) of the Enterprise Act 2002 given on 17 December 2024. Full text of the decision published on Tuesday 4 February 2025.

The Competition and Markets Authority has excluded from this version of the decision information which the CMA considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range, which are shown in square brackets.

Contents

SUMMARY

OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Carlsberg UK Holdings Limited (**CUK**), which is indirectly wholly-owned by Carlsberg A/S (**Carlsberg**), of Britvic plc (**Britvic**), is a relevant merger situation that does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) via input foreclosure and conglomerate effects.

2. On 8 July 2024, Carlsberg and Britvic announced that they had agreed on the terms of a recommended cash offer by CUK for the entire issued ordinary share capital of Britvic (the **Merger**). The Merger is conditional on, amongst other conditions, approval from the CMA and European Commission. Carlsberg, CUK, CMBC and Britvic are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

Who are the businesses and what products/services do they provide?

3. Carlsberg produces, wholesales and distributes a variety of both alcoholic and non-alcoholic beverages to different on-trade customers (eg pubs and bars where the consumption takes place on-site) and off-trade customers (eg supermarkets where the consumption takes place away from the point of sale). Some on-trade customers are known as 'licenced outlets' which means they have a licence to sell alcoholic beverages to be consumed on-site.

4. The majority of the wholesaling and distributing activities of Carlsberg, are carried out through Carlsberg Marston's Brewing Company Limited (**CMBC**). CMBC wholesales both alcoholic and non-alcoholic beverages, including Carlsberg's own beer brands and other beer and cider brands such as Brooklyn and Somersby, as well as Coca-Cola and Pepsi. CMBC is a 'bundled wholesaler' which means it also supplies delivery services and dispensing equipment as opposed to just beverages to customers.

5. Britvic is a manufacturer, wholesaler and distributor of soft drinks. This includes its own brands such as Robinsons and J20, as well as PepsiCo brands such as Pepsi Max. Britvic is the exclusive manufacturer and distributor of PepsiCo brands in Great Britain (**GB**).

6. The Parties have a relatively limited presence in Northern Ireland, and therefore the CMA has considered the impact of the Merger with respect to the above products and services in GB.

7. For the purpose of this investigation, the CMA focused on the relationships between:

   (a) The production of soft drinks, where Britvic is active.

(b) The production of beer and ciders, where Carlsberg (primarily through CMBC) is active.

(c) The bundled wholesale of beverages, where Carlsberg (primarily through CMBC) is active.

Why did the CMA review this merger?

8. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so. In this case, the CMA has concluded that the CMA has jurisdiction to review this Merger because each of Carlsberg and Britvic are enterprises that have ceased to be distinct as a result of the Merger, and because the turnover test is met.

What evidence has the CMA looked at?

9. In assessing this Merger, the CMA considered a wide range of evidence in the round.

10. The CMA received several submissions and responses to information requests from the Parties. This included information about the nature of the Parties' businesses, the Merger rationale, the importance of their products to customers, and the extent of their market power across the different beverage segments.

11. The CMA also examined the Parties' own internal documents, which show how they monitor the markets and their competitors and their future business plans, if the Merger were to proceed.

12. The CMA spoke to and gathered evidence from other companies and organisations in the markets, including on- and off-trade customers, rival brewers, wholesalers and soft drinks producers, to better understand the competitive landscape, to get their views on the impact of the Merger and how they view the importance of the Parties' products.

What did the evidence tell the CMA…

…about the effects on competition of the Merger?

13. The CMA considered whether the Merger would lead to competition problems as a result of non-horizontal effects in the market for bundled wholesale supply of beverages or the linking of soft drinks and cider or beer sales to on-trade customers in GB. The CMA found that the Merger does not give rise to a realistic prospect of an SLC in any of these areas for the reasons below.

Theory of harm 1: Input foreclosure in the bundled wholesale supply of beverages to the licensed on-trade in GB

14. The CMA considered whether Britvic's existing range of soft-drinks (including PepsiCo brands) would give CMBC certain advantages to the detriment of its wholesale rivals when supplying beverages to on-trade customers in GB. For example, the CMA considered whether the Merged Entity could harm rivals' competitiveness by refusing to supply Britvic's soft-drink offering or increasing the price of Britvic beverages to CMBC's rivals. Further, the CMA considered whether the Merged Entity would have the incentive to pursue this strategy.

15. The CMA found that the Merged Entity would only have limited ability, if any, to foreclose wholesaling rivals of CMBC. While Britvic is particularly strong in some segments of soft drinks with a number of important brands (such as juice drinks, cola-flavoured soft drinks, lemonade and squashes), none of these brands are 'must haves' for wholesale rivals of CMBC. Furthermore, soft drinks as a whole play a limited role in the competitive offering of wholesalers to on-trade customers such as pubs, as the sale of alcoholic drinks drives customer choice instead.

16. In addition, the CMA found that the Merged Entity would not have the incentive to engage in this strategy. The Parties' internal documents and public statements are clear that a key rationale of the Merger is to grow Carlsberg's relationship with PepsiCo and expand as a leading supplier (and bottler) of PepsiCo. Furthermore, gains in the sales from foreclosing wholesaling rivals are likely to be limited as CMBC is only a moderate competitor with several equally strong or stronger wholesalers being present.

Theory of harm 2: Conglomerate effects through the linking of soft drinks and beer/cider sales to the licensed on-trade in GB

17. The CMA also considered whether the Merged Entity could link the sales of Britvic's soft drinks to Carlsberg's beers and/or ciders in some way when supplying beverages to on-trade customers GB, and whether this could harm CMBC's rival brewers. Further, the CMA considered whether the Merged Entity would have the incentive to pursue this strategy.

18. The CMA found that the Merged Entity would only have limited ability to link the sales of Britvic's soft drinks and CMBC's beer and/or ciders, such that rivals' competitiveness would be harmed. As noted above, Britvic has a strong offering of soft-drinks, but these are not 'must have' products. Alcoholic drinks are the driver of customer choice and, by extension, drive on-trade sales volumes (in particular that of pubs). While it may be theoretically feasible for the Merged Entity to promote CMBC's beers and/or ciders with Britvic's soft-drinks by offering, for example, promotions to customers who would stock Carlsberg alongside Britvic, the CMA does not consider that this would deprive CMBC's key rival brewers of a substantial volume of sales.

19. In addition, the CMA found that the Merged Entity would not have the incentive to engage in this strategy. If Carlsberg refused to supply soft drinks to customers who did not also purchase beer and/or cider, the CMA considers that customers would be able to purchase alternative soft drinks and this would lead to significant losses to Carlsberg. Further, this would in turn directly undermine a key rationale of growing Carlsberg's relationship with PepsiCo. The CMA notes that Carlsberg has made public statements that it intends to cross-sell soft drinks and beers and/or ciders, but the CMA found that there is a limit to which the Merged Entity can engage in this strategy to the detriment of key brewing rivals. This is particularly due to the fact that, given that Carlsberg's offering in beers and/or ciders [✂] compared to the offering of its key rivals (such as Heineken, Molson Coors and AB InBev with which CMBC competes most closely), it would require significant discounts on soft drinks that would not be profitable in the round.

What happens next?

20. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

1. PARTIES, MERGER AND MERGER RATIONALE

1. CUK is an indirectly, wholly-owned subsidiary of Carlsberg which produces, wholesales and distributes a variety of both alcoholic and non-alcoholic beverages to different customers, both in the on-trade and off-trade, in the UK.[1] The majority of the brewing, wholesaling and distributing activities are carried out through CMBC.[2] CMBC wholesales both alcoholic and non-alcoholic beverages, including Carlsberg's own beer brands such as its namesake Carlsberg and other beer and cider brands such as Brooklyn and Somersby, as well as Coca-Cola and Pepsi. CMBC also supplies technical services equipment (**TSE**) and technical services (**TS**) to on-trade outlets via Innserve Ltd (**Innserve**) (a joint venture with Heineken UK Limited). Innserve supplies TSE and TS in on-trade outlets on behalf of its parent companies and certain third-party drinks suppliers and retail groups.[3] The turnover of Carlsberg A/S in FY22/23 was approximately £8.5 billion worldwide and approximately £[✂] in the UK.[4]

2. Britvic is a manufacturer, wholesaler and distributor of soft drinks in the UK. This includes its own brands such as Robinsons and J20, as well as PepsiCo brands such as Pepsi Max. Britvic is the exclusive manufacturer and distributor of PepsiCo brands in GB.[5] The turnover of Britvic in FY22/23 was approximately £1.9 billion worldwide and approximately £[✂] in the UK.[6]

3. On 8 July 2024, Carlsberg and Britvic issued a Rule 2.7 Announcement under the City Code on Takeovers and Mergers, agreeing on the terms of a recommended cash offer by CUK for the entire issued ordinary share capital of Britvic (the **Merger**).[7] The Merger is conditional on, amongst other conditions, approval from the CMA and European Commission.[8]

4. The Parties submitted that the main strategic rationales for the Merger are as follows:

    (a) To diversify Carlsberg's portfolio of beer and cider with the addition of a range of complementary soft drink brands, which is consistent with Carlsberg's SAIL'27 strategy to grow its brand. Carlsberg views soft drinks as a strong

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[1] Final Merger Notice submitted to the CMA on 22 October 2024 (), paragraph 2.3.
[2] FMN, paragraph 2.3. CMBC was originally a joint venture between Carlsberg and Marston's Trading Limited established in 2020, however, in July 2024 Carlsberg bought out Marston's Trading Limited share to become the sole owner of CMBC.
[3] FMN, paragraph 11.28(b).
[4] FMN, paragraph 6.1.
[5] FMN, paragraph 2.4.
[6] FMN, Paragraph 6.1.
[7] FMN, paragraph 2.19(bb).
[8] FMN, paragraph 2.28.

growth market with synergies to the beer market, in particular in being able to cross-sell beer and soft drinks in the on-trade channel.[9]

(b) To build on Carlsberg's existing relationship with PepsiCo and take on the responsibility for PepsiCo's bottling arrangements in GB, which are currently fulfilled by Britvic.[10] Carlsberg is currently the exclusive bottler for PepsiCo in Norway, Sweden and Switzerland and wishes to grow this relationship with PepsiCo across Europe.

(c) For Britvic, the Merger has strategic merits by creating an enlarged international group combining complementary products of beers and soft drinks.[11]

5. The CMA considers that the Parties' internal documents broadly support these stated rationales, particularly noting that Carlsberg sees opportunities to cross-sell beers and soft drinks post-merger and has a desire to grow its relationship with PepsiCo.[12] These are supported by Carlsberg's public statements that it sees a 'highly synergistic relationship between beer and soft drinks, including within the areas of procurement, production, warehousing and distribution to increase efficiency and better serve customer needs,' and that 'the [Merger] will further strengthen Carlsberg's close relationship with PepsiCo.'[13]

2. PROCEDURE

6. The CMA announced the launch of its merger inquiry by notice to the parties on 23 October 2024. As part of its phase 1 investigation, the CMA gathered a significant volume of evidence from the Parties. In response to targeted information requests, the CMA received and reviewed internal documents from Carlsberg and Britvic. The CMA also gathered evidence from other market participants, such as customers, competitors and industry bodies. The evidence the CMA has gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it.

7. Where relevant, this evidence has been referred to within this Decision.

3. JURISDICTION

8. A relevant merger situation exists where two or more enterprises have ceased to be distinct and either the turnover or the share of supply test is met.[14]

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9 FMN, paragraphs 2.30 and 2.39.
10 FMN, paragraph 2.32.
11 FMN, paragraph 2.42.
12 See, for example, Carlsberg Internal Documents, Annex 8.005 to the FMN, '[✂]', 11 March 2024, page 39; Annex 8.004 to the FMN, '[✂]', 11 March 2024, page 3. Britvic's Internal Document, Annex 8.032 to the FMN, '[✂]', 21 June 2024, page 21. Carlsberg has publicly noted the synergies to be achieved through 'leveraging cross-selling between beer and soft drinks' in an investor presentation, Carlsberg Group's recommended offer for Britvic plc, accessed on 17 December 2024.
13 27-announcement_recommended-offer-to-acquire-britvic-plc.pdf, accessed on 17 December 2024.
14 Mergers: Guidance on the CMA's jurisdiction and procedure (**CMA2**), April 2024, chapter 4; Section 23 of the Act.

9. Each of Carlsberg and Britvic is an enterprise within the meaning of section 129 of the Act. As a result of the Merger, these enterprises will cease to be distinct.

10. The UK turnover of Britvic exceeds £70 million in FY22/23,[15] so the turnover test in section 23(1)(b) of the Act is satisfied.

11. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

12. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 24 October 2024 and the statutory 40 working day deadline for a decision is therefore 18 December 2024.

4. COUNTERFACTUAL

13. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).[16]

14. In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the parties to a merger than under the prevailing conditions of competition.[17] In determining the appropriate counterfactual, the CMA will generally focus on potential changes to the prevailing conditions of competition only where there are reasons to believe that those changes would make a material difference to its competitive assessment.[18]

15. The Parties submitted that in the short term the prevailing competitive conditions is the relevant counterfactual.[19] However, the Parties have also submitted that in the medium term, Carlsberg would [✂] as it remains the fourth largest brewer in the UK and [✂] its main competitors Heineken, Molson Coors and AB InBev.[20] Recently, CMBC has lost the production and distribution licence agreement with Mahou San Miguel, which will end on 31 December 2024 and move to Budweiser Brewing Group (a subsidiary of AB InBev).[21]

16. In this case, the CMA has not received submissions (or any other evidence) suggesting that the Merger should be assessed against an alternative counterfactual. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

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[15] See paragraph 2.
[16] Merger Assessment Guidelines (**CMA129**), March 2021, paragraph 3.1.
[17] CMA129, paragraph 3.2.
[18] CMA129, paragraph 3.9.
[19] FMN, paragraph 10.1.
[20] FMN, paragraph 10.2.
[21] FMN, paragraphs 10.2-10.4.

5. COMPETITIVE ASSESSMENT

5.1 Background and nature of competition

5.1.1 Production of alcoholic and non-alcoholic beverages

17. Beers and cider are generally produced by brewers such as Heineken UK, CMBC, AB InBev and Molson Coors whereas soft drinks are produced by different companies including Britvic, Coca-Cola, AG Barr and Suntory.[22]

18. The production of branded beverages can be licensed out by their brand owner to be produced in different geographies by other producers. For instance, San Miguel beer is currently produced and distributed in the UK by CMBC under a license from the brand owner, Mahou San Miguel, who produces this beer in Spain. However, this will change in January 2025, when the licence for San Miguel beer transfers to AB InBev in the UK, such that AB InBev will then produce it under licence in the UK.[23] Britvic currently holds the licence to produce PepsiCo soft drinks in the UK, whereas in Norway, this is done by Carlsberg.

5.1.2 Supply of alcoholic and non-alcoholic beverages

19. Alcoholic beverages (eg beers and wines) and soft drinks (eg carbonated soft drinks and juices) are sold to on-trade outlets[24] such as pubs, and off-trade outlets[25] such as supermarkets, in the UK via a number of different routes.

20. The Parties submitted the below diagrams to explain the supply of beverages to the on- and off-trade.

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[22] In previous decisions, the CMA has referred to these activities as ‘brewing’ or ‘manufacturing’. In this case, given the variety of activities in the production of beverages, the CMA has used the term ‘production’ to more accurately capture the workings at this level of the supply chain. The production of beers and ciders is the brewing of such whilst the production of soft drinks is the combining of syrups with water.
[23] See San Miguel UK distribution, production moves to AB InBev, accessed on 17 December 2024.
[24] Where beverages are consumed on the premises where they are purchased, such as pubs, bars, restaurants etc.
[25] Where beverages are purchased and consumed away from the point of purchase, such as grocery retailers and convenience stores.

Figure 1: Diagram showing the supply of beverages to the off-trade[26]

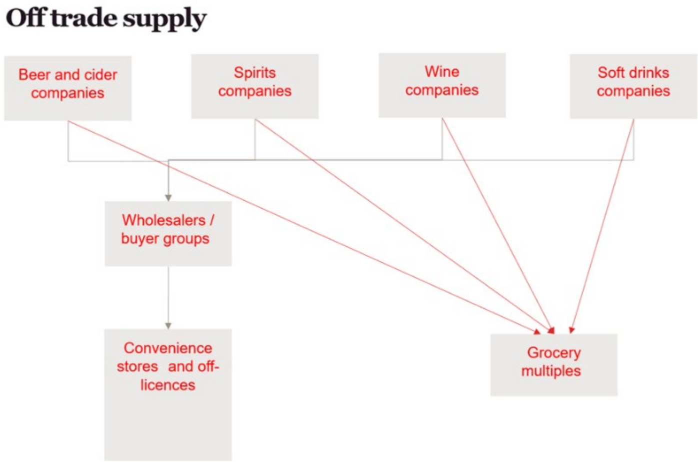
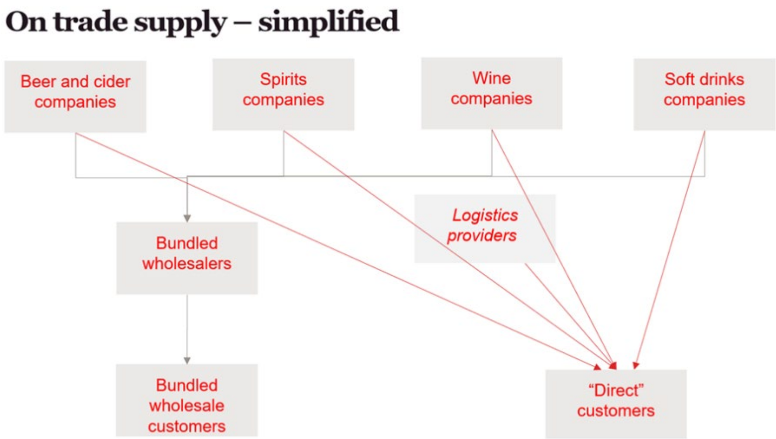


Figure 2: Diagram showing the supply of beverages to the on-trade[27]



21. Figures 1 and 2 show that in both the on- and off-trade, beverages are distributed either via wholesalers, or bought directly from a producer. The producer can provide porterage of the product (ie the logistics and delivery) or this can be organised by the customer themselves.

22. Wholesalers supply a range of alcoholic and non-alcoholic products, wholesaling both the beverages that they produce and a variety of third-party brands from producers.[28] They act as an intermediary between the producers and on- or off-trade customers. Bundled wholesalers can also supply porterage, as well as the TS and TSE, to on-trade customers as necessary.[29]

23. Several beer and cider producers, such as Molson Coors and CMBC, are vertically integrated, and are also active as bundled wholesalers in the UK. Rather than just selling the brands and beverages they produce, they also supply a variety of third-

[26] Parties' response to the CMA's Request for Information of 11 September 2024 (**RFI2**), question 1(c).
[27] Parties' response to RFI2, question 1(a).
[28] Carlsberg UK Holdings Limited / Marston's PLC merger inquiry [ME/6869] (**Carlsberg/Marston's**), paragraph 29.
[29] Carlsberg/Marston's, paragraphs 29 and 34.

party brands (including each other's brands) in addition to their own produced brands.

24. There are also independent wholesalers, such as LWC, whose wholesale offering is solely focused on selling third-party brands.

25. Some on-trade customers, such as major national pub chains like Stonegate and JD Wetherspoon, receive their supply of beverages directly from beverage producers, whereas other on-trade customers purchase their beverages from wholesalers.

26. Larger off-trade customers such as supermarkets (referred to in Figure 1 as 'grocery multiples'), will tend to organize their own delivery and logistics directly with the beverage producers rather than using third-party logistics providers, whereas smaller off-trade customers will use bundled wholesalers.[30]

5.1.3 Multi-sourcing

27. Multi-sourcing refers to situations where customers procure their beverages from more than one supplier (in contrast single-sourcing involves using just one supplier). Evidence collected by the CMA indicates that there is significant multi-sourcing by on-trade customers, even when these customers have a primary supplier. For instance, they may obtain their beer and ciders from a single wholesaler and obtain wines from a specialist provider,[31] or use one wholesaler for the majority of their purchases but take some products from another wholesaler who is cheaper at that specific time for some products.[32]

5.1.4 Parameters of competition

28. With regard to bundled wholesaling, most third-party wholesalers noted that customer service, price and product availability are very important factors that drive an on-trade customer's choice of which wholesaler to purchase their beverages from.[33] The range of alcoholic drinks and range of soft drinks on offer, in turn, were considered less often to be very important factors.[34] For example, one respondent explained that which wholesaler a customer chooses is generally driven by price and service because all wholesalers tend to have the same product offering as their competitors.[35]

29. With regard to the direct supply of beverages, all major national pub chains noted that price is very important when deciding whom to purchase their beers and ciders as well as their soft drinks from. Most of the pub chains also considered

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[30] The CMA notes that neither CMBC nor Britvic are active in wholesaling to UK convenience stores or off-licences.
[31] Note of a call with a third party, November 2024, paragraph 12.
[32] Note of a call with a third party, November 2024, paragraph 24.
[33] Response to the CMA questionnaire (Wholesalers) from a number of third parties, October 2024, question 4.
[34] Response to the CMA questionnaire (Wholesalers) from a number of third parties, October 2024, question 4.
[35] Note of a call with a third party, paragraph 9, November 2024.

product availability to be an important factor.[36] Consistent with the evidence received from direct on-trade customers, most brewers considered both price and product availability to be very important factors that drive customers' choice of which brewer to purchase from.[37] A third party noted that customers in an on-trade outlet may not have a strong preference for soft-drinks when options are limited, but do choose their preferred soft-drink in off-trade outlets where there are more options.[38]

30. In line with the evidence received for on-trade sales, most off-trade customers noted that customer service, price and product availability as very important factors for their choice of who to purchase their beverages from.[39] The range of beverages was also noted by off-trade customers to be a very important factor.[40]

5.1.5 TSE and TS

31. TSE for alcoholic beverages is used to store, cool and dispense draught beer and cider in on-trade outlets. TS refers to the on-site technical maintenance, repair, installation and replacement of TSE at on-trade outlets. Brewers typically supply TSE and TS to on-trade outlets in a bundle with draught beer and cider.[41]

32. The brewer with the most cooled keg lines on the bar is the 'lead brewer.' The lead brewer will typically take ownership of shared generic TSE in an on-trade outlet and will be responsible for providing TS for this TSE. Lead brewers will allow other brewers in an on-trade outlet access to its shared generic TSE, often in return for a one-off or monthly connection charge.[42]

33. TSE for soft drinks is different and involves mixing the components of a soft drink (generally soft drink syrup with water) at the point of dispense and is generally only for cola and non-cola CSDs, as well as mixers.[43]

5.2 Market definition

34. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.[44] An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.[45]

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[36] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, questions 5 and 9.
[37] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 3.
[38] Note of a call with a third party, November 2024, paragraph 13.
[39] Response to the CMA questionnaire (Off-trade customers) from a number of third parties, October 2024, question 2.
[40] Response to the CMA questionnaire (Off-trade customers) from a number of third parties, October 2024, question 2.
[41] Anticipated acquisition by SDE Group of Innserve Limited, [ME/6908/20] (**SDE Group/Innserve**), paragraph 43-48.
[42] SDE Group/Innserve, paragraph 45.
[43] FMN, paragraph 12.19.
[44] Section 22(1) of the Act.
[45] CMA129, paragraph 9.1.

35. While market definition can be an important part of the overall merger assessment process, the CMA's experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger parties' behaviour, captures the competitive dynamics more fully than formal market definition.[46]

5.2.1 Product market

36. The CMA considers that in cases involving differentiated products, such as this one, there is often no 'bright line' that can or should be drawn. Rather, it can be more helpful to describe the constraint posed by different categories of products or suppliers as sitting on a continuum between 'strong' and 'weak'. Accordingly, the CMA will generally not come to finely balanced judgements on what is 'inside' or 'outside' the market. In addition, not every firm 'in' a market will be equal, and the CMA will assess how closely the transacting parties compete, and the constraint posed by firms 'outside' the market will also be carefully considered.[47]

37. For the purpose of its investigation, the CMA focused on the non-horizontal relationships between:

(a) The production of soft drinks, where Britvic is active.

(b) The production of beer and ciders, where Carlsberg (primarily through CMBC) is active.

(c) The bundled wholesale of beverages, where Carlsberg (primarily through CMBC) is active.

5.2.1.1.1 The production of soft drinks

5.2.1.1.1.1 Parties' submissions

38. The Parties submitted that it is not necessary for the CMA to conclude on the precise relevant product market in this case because no competition concerns arise on any basis.[48] The Parties noted that past decisions, of the CMA and its predecessors, have segmented the product market in the manufacture[49] of soft drinks based on whether the products are sold to the on-trade or the off-trade.[50]

39. The Parties noted that in such past cases the product market had been further segmented by:

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[46] CMA129, paragraph 9.2.
[47] CMA129, paragraph 9.4.
[48] FMN, paragraph 12.7.
[49] The Parties made submissions using the term 'manufacture' when referring to activities associated with the production of beers, ciders and soft drinks, in line with the CMA's previous assessments in these markets. As explained in the Background and nature of competition, the CMA considers that the term 'production' more accurately captures the activities at this level of the supply chain and so has used this term in its assessment. This has not affected the nature of the CMA's assessment.
[50] Danone / Harrogate Water Brands Limited merger inquiry [ME/6884/20], paragraphs 40-42, AG Barr / Britvic merger inquiry (CC), paragraphs 4.6-4.11.

(a) Carbonated soft drinks (**CSDs**), further segmented by:

   (i) Cola-flavoured carbonated soft drinks; and

   (ii) Non-cola-flavoured carbonated soft drinks; and

(b) Non-carbonated soft drinks, further segmented by:

   (i) Energy and sports drinks;

   (ii) Juice and juice drinks;

   (iii) Dilutables; and

   (iv) Packaged water.[51]

5.2.1.1.1.2 CMA's assessment

40. The CMA (and its predecessors) has previously considered the production of soft drinks in line with the Parties' submissions.[52] As noted above, pre-Merger, only Britvic is active in the production of soft drinks (ie non-alcoholic beverages).

41. The Parties' internal documents indicate that they tend to monitor the sale of soft drinks along the different segments noted above.[53] Third party evidence also indicted that customers consider soft drink categories along similar lines.[54] Third parties noted that in each category they see distinct important brands such as Pepsi and Coca-Cola[55] in cola-flavoured CSDs, Red Bull in energy drinks[56] and J2O in juice and juice drinks.[57]

42. The CMA notes, that within juice and juice drinks, there are a range of products including freshly squeezed fruit juices and squashes (also called concentrates) which are sometimes monitored separately in industry reports[58] and have been assessed as distinct product markets by the CMA.[59] Given that industry data tracks 'pure juice' (or juice) and 'juice drinks' separately and these are sometimes noted as separate products by the broader market,[60] on a cautious basis the CMA has assessed these as separate products.

43. Accordingly, the CMA has assessed the production of soft drinks as:

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[51] FMN, paragraph 12.4.
[52] Refresco / Cott merger inquiry [ME/6705/17], paragraphs 33-35.
[53] Carlsberg's internal document, Annex 8.001 to the FMN, '[✂]', 5 March 2024, page 73.
[54] Note of a call with a third party, September 2024, paragraphs 2, 3, 8 and 10. Note of a call with a third party, October 2024, paragraph 6.
[55] Note of a call with a third party, November 2024, paragraph 12.
[56] Note of a call with a third party, September 2024, paragraph 10.
[57] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 11.
[58] Such as CGA, which is a research consultancy firm that produces reports on food and beverage sales in the on-trade sector.
[59] Completed acquisition by Hain Frozen Foods UK Limited of Orchard House Foods Limited [ME6585/16], paragraphs 28-49.
[60] FMN, footnote 17, '[i]n the UK drinks sector, the term "juice" is typically reserved for beverages that are made from 100% fruit juice, whereas "juice drink" or "nectar" is used to describe beverages that contain fruit juice, as well as added water and other additives such as sugar, sweeteners or preservatives.'

(a) The production of soft drinks, segmented by the sale to the off-trade and to the on-trade, further segmented by:

   (i) CSDs, further segmented by:

      (1) Cola-flavoured CSDs; and

      (2) Non-cola-flavoured CSDs; and

   (ii) Non-carbonated soft drinks, further segmented by:

      (1) Energy and sports drinks;

      (2) Juice;

      (3) Juice drinks;

      (4) Dilutables; and

      (5) Packaged water.

44. However, the CMA will also take into account any differences between in market strengths of different products and segments where relevant in the competitive assessment.

5.2.1.1.2 The production of beers and cider

5.2.1.1.2.1 Parties' submissions

45. The Parties did not make any submissions with regard to the appropriate product market for the manufacture of beer and ciders as they considered that competition concerns would not arise on any market definition. The Parties did note that this could be segmented by the type of beer (eg lager, ale or stout), distribution channel (ie off-trade or on-trade) or alcohol content (ie premium or standard) in line with previous decisions by the CMA and its predecessors.[61] The Parties stated that while agencies such as CGA have sub-categories such as 'world lager', the Parties consider this to be a part of the 'premium lager' segment.

5.2.1.1.2.2 CMA's assessment

46. The CMA has previously assessed the production of beer in terms of lager (standard and premium) and ale (standard and premium) both to the on-trade and off-trade and the production of cider both to the on-trade and off-trade.[62] The CMA has also previously considered whether world lagers and craft beers should be specific sub-segments but has left this question open.[63]

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[61] FMN, paragraphs 12.26-12.28.
[62] Carlsberg/Marston's, paragraph 64.
[63] Carlsberg/Marston's, paragraphs 41-43.

47. The CMA notes that the Parties' internal documents which monitor the sale of beers, refer to differences such as by the distribution channel[64] and type of beer, while having a singular category for 'cider.'[65]

48. The Parties' internal documents set out sub-categories such as 'world lager,'[66] however, the Parties submitted market share estimates in terms of lager (standard and premium) and ale (standard and premium) in line with the CMA's previous decisions.[67] Further, as the Parties noted, CGA data tracks 'world lager' separately to 'premium lager'.[68]

49. Given that industry data tracks 'world lager' separately to 'premium lager' and the Parties tend to monitor these as sperate categories in their day-to-day monitoring of the market, on a cautious basis the CMA has assessed these as separate products.[69]

50. Accordingly, the CMA has assessed the production of beers and ciders as:

(a) The production of beer segmented between lager (standard, premium and world) and ale (standard and premium) to be sold in the on-trade;

(b) The production of beer segmented between lager (standard, premium and world) and ale (standard and premium) to be sold in the off-trade;

(c) The production of cider to be sold in the on-trade; and

(d) The production of cider to be sold in the off-trade

51. However, the CMA will also take into account any differences between in market strengths of different products and segments where relevant in the competitive assessment.

5.2.1.1.3 Bundled wholesale supply of beverages

5.2.1.1.3.1 Parties' submissions

52. The Parties submitted that the most appropriate market is the supply of bundled wholesale beverages to the on-trade.[70] The Parties further submitted that they do not consider segmentation of on-trade wholesale supply between alcoholic beverages and non-alcoholic beverages (or into any sub-segments thereof) is appropriate, as most wholesalers supply a wide range of beverages (including

[64] Carlsberg's internal document, Annex 11.002 to the FMN, '[✂],' 30 April 2024, page 5.
[65] Carlsberg's internal document, AM Annex 5 to the FMN, '[✂],' Unknown Date, page 1; Carlsberg's internal document, AM Annex 6 to the FMN, '[✂],' Unknown Date, page 1; Carlsberg's internal document, AM Annex 7 to the FMN, '[✂],' Unknown Date, page 1; and Carlsberg's internal document, AM Annex 8 to the FMN, '[✂],' Unknown Date, page 1.
[66] Carlsberg's internal document, AM Annex 5 to the FMN, '[✂],' Unknown Date, page 1; Carlsberg's internal document, AM Annex 6 to the FMN, '[✂],' Unknown Date, page 1; Carlsberg's internal document, AM Annex 7 to the FMN, '[✂],' Unknown Date, page 1; and Carlsberg's internal document, AM Annex 8 to the FMN, '[✂],' Unknown Date, page 1.
[67] FMN, paragraph 19.18 and footnote 78.
[68] See paragraph 185 below.
[69] The CMA notes that Carlsberg's primary world lager is San Miguel, which will be produced by AB InBev from 2025 (see paragraph 18). The impact of this will be assessed in the Competitive assessment.
[70] FMN, paragraph 12.11.

third party brands). Generally, on-trade customers that procure beverages on a bundled wholesale basis mandate this.[71]

53. The Parties further submitted that it would not be appropriate to consider shares of individual soft drink categories in the context of bunded wholesale supply to licensed on-trade outlets. This is because on-trade customers generally want a range of soft-drinks, but do not purchase all categories of soft drinks and choose which categories are appropriate as needed.[72]

5.2.1.1.3.2 CMA's assessment

54. The CMA (and its predecessors) has previously considered the wholesale distribution of beverages (both alcoholic and non-alcoholic) to each of the on-trade and off-trade retail channels.[73] In this case the CMA considered:

(a) whether or not to assess the impact of the Merger in the supply of beverages as a whole or to segment;

(b) whether or not to assess the impact of the Merger to the off-trade and on-trade separately; and

(c) whether to assess the impact on the Merger separately for the licensed and unlicensed on-trade.

55. As noted above at paragraphs 4 to 5, a key aspect of the rationale of the Merger is for Carlsberg to cross-sell both beers and ciders with soft drinks post-Merger. Third parties indicated that they purchase a wide range of both soft-drinks and alcohol from wholesalers and having a wide range of beverages is therefore important to have an effective offering.[74] This tends to support the Parties' position that having a range of beverages is an important proposition.

56. On-trade customers noted that they would be able to switch suppliers if they could not purchase a specific beverage from a certain wholesaler although some beverage brands and categories are more important than others.[75] Third parties said that some end customers will choose certain products from specialist suppliers[76] or choose a supplier by what specific deals are available at the time.[77]

57. The CMA considers it appropriate to consider the wholesale supply of beverages as a whole, and not segmenting by different beverage categories, in line with precedent. The CMA does note, however, that the evidence suggests there are

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[71] FMN, paragraph 12.11.
[72] FMN, paragraph 18.35, 'For instance, [✂] of free trade outlets that CMBC supplies to, purchase cola-flavoured carbonated soft drinks which is CMBC's most popular category of soft drinks.'
[73] Carlsberg/Marston's, paragraphs 56-59, C&C Group / Tennent's [ME/4256/09], paragraph 54, Constellation Brands Incorporated / Punch Taverns plc [ME/3113/07], paragraphs 6-9, Foster's Group Ltd / Southcorp Ltd [ME/1536/05].
[74] Note of a call with a third party, paragraph 4, 24 September 2024. Note of a call with a third party, paragraph 9, 2 October 2024. Note of a call with a third party, paragraph 11, November 2024.
[75] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 15.
[76] Response to the CMA questionnaire (Wholesalers) from a third party, October 2024, question 5. Note of a call with a third party, paragraph 6, November 2024.
[77] Note of a call with a third party, paragraph 24, November 2024.

some differences between beverage categories which will be taken into account as appropriate in the competitive assessment.

58. The Parties’ internal documents indicate that they monitor the competitive conditions for the on- and off- trade separately.[78] Third party evidence indicates that on-trade customers make purchasing decisions for beverages differently to off-trade customers. For the most part, on-trade customers’ purchasing decisions are primarily driven by the choice of beers and ciders. While they generally need to have soft-drinks offerings, these are a secondary consideration.[79] Off-trade customers, however, require a strong offering in both beers and ciders, and soft-drinks for their customers.[80]

59. Off-trade customers also often have separate category buyers for beers and ciders than for soft drinks, whereas on-trade customer generally purchase their beverages from wholesalers which are able to supply the entire range of beverages.[81] As noted by the Parties, Britvic is not active in bundled wholesaling and CMBC is only active in this area to the on-trade. Therefore, the CMA has considered it appropriate to consider the effects of this Merger separately for the on-trade and the off-trade.

60. As noted above at paragraph 19, the ‘on-trade’ sector refers to all places where the consumption of beverages takes place ‘on site’.’ This includes establishments that are licensed to sell alcoholic beverages and those that are not. The Parties did not make any submissions with regards to the appropriate product market definition for licensed or unlicensed customers but noted that CMBC is primarily active in the wholesale of beverages to the licensed on-trade.[82]

61. The CMA notes, however, that a number of the Parties’ internal documents highlight different competitive conditions in certain areas of the on-trade.[83] For instance, alcoholic beverages are not prevalent in fast-food establishments nor are they noted to be a driver of customer choice, unlike in pubs and bars. The Parties did explain that while CMBC does supply the unlicensed on-trade sector, it is ‘[✂]’[84] ‘[✂]’.

62. Given the focus of CMBC’s business,[85] on a cautious basis, the CMA considers that the bundled wholesale of beverages to the licensed on-trade is the appropriate product market in this case.

[78] Carlsberg’s internal document, Annex 8.001 to the FMN, ‘[✂],’ 5 March 2024, pages 14, 38; Carlsberg’s internal document, Annex 8.008 to the FMN, ‘[✂],’ 29 April 2024, page 6.
[79] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 13.
[80] Response to the CMA questionnaire (Off-trade customers) from a number of third parties, October 2024, question 2.
[81] Note of a call with a third party, paragraph 16, November 2024. Note of a call with a third party, paragraph 9, November 2024. Note of a call with a third party, paragraph 9, October 2024.
[82] FMN, paragraph 11.12.
[83] Britvic’s internal document, Annex 1 (to AM Annex 9) to the FMN, ‘,’ 1 September 2024, page 35.
[84] FMN, footnote 47.
[85] FMN, paragraph 18.40(a), ‘CMBC focusses on sales to beer-led on-trade outlets’.

5.2.2 Geographic market

5.2.2.1.1 The production of soft drinks

5.2.2.1.1.1 Parties' submissions

63. The Parties noted that, consistent with past decisions of the CMA and its predecessors, the geographic market for the manufacture of soft drinks is at least national in scope but submitted that that it is not necessary for the CMA to conclude on the precise relevant geographic market in this case because no competition concerns arise on any basis.[86]

5.2.2.1.1.2 CMA's assessment

64. Within the UK, Britvic only produces soft drinks in GB. Britvic's soft drinks in Northern Ireland are sourced from its Republic of Ireland business, which are either manufactured there or sourced from other Britvic locations.[87] As noted above, Carlsberg does not produce soft drinks. Coca-Cola's distribution model is structured similarly (ie separating the UK into GB and Northern Ireland) with Coca-Cola EuroPacifc Partners (**CCEP**) being active in GB,[88] and Coca-Cola Hellenic Bottling Company supplying Northern Ireland along with parts of Europe.[89]

65. The CMA has not received evidence to suggest that any departure from the approach adopted in its previous cases would be warranted. Accordingly, in this case, the CMA has considered that the appropriate geographic market is GB.[90]

5.2.2.1.2 The production of beers and ciders

5.2.2.1.2.1 Parties' submissions

66. The Parties did not make any submissions with regard to the appropriate geographic market for the manufacture of beer and ciders but noted that the CMA has previously looked at this on both a UK- and GB-wide basis.[91]

5.2.2.1.2.2 CMA's assessment

67. The CMA notes that Carlsberg's major competitors generally operate across GB and Carlsberg's internal documents monitor the market on a GB-wide basis. Carlsberg is not active in the production of beer and cider in Northern Ireland

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[86] FMN, paragraph 12.8.
[87] Parties' submission to the CMA, 19 November 2024, paragraph 1.6.
[88] Introducing Coca-Cola Europacific Partners, accessed on 17 December 2024.
[89] Where We Operate | Coca-Cola HBC, accessed on 17 December 2024.
[90] The CMA notes that CMBC does not provide any bundled wholesale services within Northern Ireland, Parties' submission to the CMA, 19 November 2024, paragraph 1.2.
[91] FMN, paragraph 12.27.

either (where Diageo is the licensee for Carlsberg).[92] Therefore, in this case, the CMA has considered that the appropriate geographic market is GB.

5.2.2.1.3 Bundled wholesale supply of beverages

5.2.2.1.3.1.1 Parties' submissions

68. The Parties submitted that the most appropriate geographic market could be UK-wide, however, Carlsberg does not provide bundled wholesaling services in Northern Ireland.[93]

69. The Parties further submitted that CMBC does not directly supply either the on- or off-trade in Northern Ireland. CMBC does sell Carlsberg beverages to national off-trade customers (such as Tesco, Lidl and Asda) that then distribute these around the UK (including Northern Ireland) and supplies Carlsberg beverages to wholesalers that may in turn supply on-trade customers in Northern Ireland (such as [✂]).[94]

5.2.2.2 CMA's assessment

70. In previous cases, the CMA has considered the geographic product market to be GB.[95] The CMA notes that, in this case, Carlsberg has a separate distributor in Northern Ireland for its brands (ie not CMBC)[96] with less than [0-5]% of CMBC's sales by volume being delivered to Northern Ireland.[97] While CMBC does not supply any on-trade customers in Northern Ireland, it does supply wholesalers who may in turn supply on-trade customers in Northern Ireland. Britvic supplies all soft drinks in Northern Ireland from its Republic of Ireland based business.

71. The Parties submitted that some wholesalers operate on a national level (such as Molson Coors, Heineken UK and CMBC)[98] whereas some operate on a more regional level (such as Greene King and St Austell).[99] These regional wholesalers, however, compete with national wholesalers in their regions for customers that do not need a national coverage. The CMA has not seen evidence that any specific parameters of competition differ across regions, but notes that some brands and operators may be stronger in certain regions[100] due to regional tastes, historical preferences and business strategies.[101] These regional differences have been taken into account in the competitive assessment where appropriate.

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[92] Parties' submission to the CMA, 19 November 2024, paragraph 1.2.
[93] FMN, paragraph 12.12.
[94] Parties' submission to the CMA, 19 November 2024, paragraphs 1.4-1.5.
[95] Carlsberg/Marston's, paragraph 64.
[96] Parties' submission to the CMA, 19 November 2024, paragraph 1.2.
[97] FMN, paragraph 6.2.
[98] FMN, paragraph 18.2.
[99] FMN, paragraph 18.2.
[100] For instance, Tennent's being particularly popular lager in Scotland and St Austell operating primarily in the South West of England, FMN, paragraphs 18.2-8.3.
[101] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 5.

72. Given the minimal sales made by CMBC (and none directly by Britvic) to Northern Ireland, in this case, the CMA considers that the appropriate geographic market is GB as it is unlikely the Merged Entity would foreclose rival wholesalers in Northern Ireland.

5.2.2.3 Conclusion on Market Definition

73. Based on the above evidence the CMA has assessed the impact of this Merger on:

(a) The production of soft drinks, segmented by the sale to the off-trade and to the on-trade, further segmented by:

(i) CSDs, further segmented by:

(1) Cola-flavoured CSDs; and

(2) Non-cola-flavoured CSDs; and

(ii) Non-carbonated soft drinks, further segmented by:

(1) Energy and sports drinks;

(2) Juice;

(3) Juice drinks;

(4) Dilutables; and

(5) Packaged water, in GB (upstream);

(b) The production of beer segmented between:

(i) lager (standard, premium and world) and ale (standard and premium) to be sold in the on-trade; and

(ii) lager (standard, premium and world) and ale (standard and premium) to be sold in the off-trade (upstream) in GB;

(c) The production of cider segmented between:

(i) sale in the on-trade; and

(ii) sale in the off-trade (upstream) in GB; and

(d) The bundled wholesale of beverages to the licensed on-trade in GB (downstream).

5.3 Theories of harm

74. The CMA assesses the potential competitive effects of mergers by reference to theories of harm. Theories of harm provide a framework for assessing the effects

of a merger and whether or not it could lead to an SLC relative to the counterfactual.[102]

75. In its investigation of this Merger, the CMA has considered the following theories of harm:

(a) input foreclosure arising from the supply by Britvic of soft drinks to competitors of Carlsberg in the bundled wholesale supply of beverages to the on-trade; and

(b) conglomerate effects arising from the bundling or tying of soft drinks supplied by Britvic with beers/ciders supplied by Carlsberg.

76. Each of these theories of harm is considered below.[103]

5.3.1 Theory of Harm 1: Input foreclosure in the bundled wholesale supply of beverages to the licensed on-trade in GB

77. The concern with an input foreclosure theory of harm is that the merged entity may use its control of an important input to harm its downstream rivals' competitiveness, for example by refusing to supply the input (total foreclosure) or by increasing the price or worsening the quality of the input supplied to them (partial foreclosure). This might then harm overall competition in the downstream market, to the detriment of customers. This may occur irrespective of whether the parties to a merger have a pre-existing commercial relationship.[104]

78. In the present case, the CMA has considered whether, following the Merger, the Merged Entity would be able to disadvantage or foreclose rival bundled wholesalers by restricting their access to Britvic's soft drinks brands or offering those on worse terms.

79. In assessing this concern, the CMA considers whether three cumulative conditions are satisfied.

(a) Would the merged entity have the ability to use its control of inputs to harm the competitiveness of its downstream rivals?

(b) Would it have the incentive to actually do so, ie would it be profitable?

(c) Would the foreclosure of these rivals substantially lessen overall competition?[105]

80. 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 as a result of input foreclosure in the

[102] CMA129, paragraph 2.11.
[103] On the basis of the evidence gathered by the CMA, the CMA considered at an early stage in its investigation that there are no plausible competition concerns of customer or input foreclosure with regards to TS or TSE supplied to the on-trade as a result of the Merger and this is therefore not discussed further in this Decision.
[104] CMA129, paragraph 7.9.
[105] CMA129, paragraph 7.9–7.10.

bundled wholesale supply of beverages to the licensed on-trade in GB. The CMA has considered these cumulative conditions below.

5.3.1.1 Ability

81. To assess the Merged Entity's ability to foreclose other bundled wholesalers of beverages to the licensed on-trade in GB, the CMA has considered evidence from the Parties and from third parties. In particular, the CMA has considered:

(a) Market power upstream; and

(b) The importance of the input.

5.3.1.1.1 Parties' view

82. The Parties submitted that the Merged Entity would not have the ability to foreclose competing bundled wholesalers for several reasons.

83. First, the Merged Entity will not hold substantial market power upstream. Across all soft drinks categories, Britvic holds a modest share of supply in licensed on-trade outlets (ie [20-30]% by value) which is below the level typically seen as indicative of market power and significantly lower than CCEP's share.[106]

84. Furthermore, on a segmented basis there are only three segments where Britvic's share of supply exceeds 30% to the licensed on-trade, and the Parties submitted that none of Britvic's brands in these three segments constitute 'must have' products for wholesalers:[107]

(a) In cola-flavoured CSDs, CCEP is the market leader. If the Merged Entity withheld Pepsi, bundled wholesalers would switch to Coca-Cola or Barr Cola (produced by AG Barr).[108]

(b) In juice and juice drinks, Britvic is the leading supplier. However, the Parties argued that this category is not a driver of on-trade outlet's choice of bundled wholesaler. Moreover, if the Merged Entity withheld, for example, J2O from competing wholesalers, they could switch to substitutes such as Oasis, Capri-Sun or Ribena.[109]

(c) In lemonade, CCEP is the market leader. If the Merged Entity withheld R White's, wholesalers would switch to Schweppes and would also have the

[106] FMN, paragraph 18.34. The Parties explained that CCEP is the bottler of Coca-Cola brands in GB and that they understand that The Coca-Cola Company (**TCCC**) is represented in GB by Coca-Cola Great Britain (**CCGB**) which provides local marketing support to CCEP. CMBC itself procures its Coca-Cola products from CCEP. Further, the Parties explained that while CGA data refers to CCGB, they consider that the relevant entity that they compete with is CCEP as the bottler, Parties' submission to the CMA, 02 December 2024. The CMA therefore understands that CCEP is the relevant entity for its competitive assessment in the UK although notes that under any definition, it does not consider that there would be any competitive harm.
[107] FMN, paragraph 18.36.
[108] FMN, paragraph 18.36(a).
[109] FMN, paragraph 18.36(b).

option of selling other competitor brands such as Fentimans, Fever Tree, or Barr Lemonade.[110]

85. Finally, the Parties submitted that brewer wholesalers, including CMBC, focus their activities on beer-led licensed on-trade outlets, such as pubs and bars. Accordingly, customers will base their decision on which wholesaler to use on the draught beer brands, and the pricing of those brands, available from the wholesaler. Soft drinks, in turn, are regarded as an 'add-on' by these customers,[111] which is also illustrated by CMBC's soft drink sales representing only [10-20]% by volume of its overall drinks supply to on-trade outlets.[112]

5.3.1.1.2 CMA's assessment

5.3.1.1.2.1 Market power upstream

86. The CMA obtained a range of evidence in its investigation to understand the current structure of the manufacture and supply of soft drinks in GB, and therefore Britvic's position in this market,[113] including licensed on-trade shares of supply of soft drinks in GB, the Parties' internal documents, and third-party evidence.

87. The Parties' submitted (value) share of supply estimates in the supply of soft drinks to the licensed on-trade in GB based on industry data collected by CGA.[114] This dataset showed that Britvic is within the top three suppliers in a number of segments in the licensed on-trade channel:[115]

(a) Britvic is the leading supplier of juice drinks to the licensed on-trade in GB with a share of supply of [80-90]%.[116] CCEP does not hold a significant share in this segment. The biggest competitors are AG Barr and Refresco who each hold a [0-5]% share.

(b) Britvic is the second largest supplier of soft drinks to the licensed on-trade in GB in a number of segments: lemonade ([30-40]%), cola-flavoured CSDs ([30-40]%), and squashes ([20-30]%). However, CCEP's share of supply is more than twice as large in the former two segments compared to Britvic.

(c) Britvic is the third largest supplier of non-cola flavoured CSDs to the licensed on-trade in GB, holding a similar share of supply to AG Barr (ie around [10-

[110] FMN, paragraph 18.36(c).
[111] FMN, paragraph 18.37(a).
[112] FMN, paragraph 18.37(b).
[113] CMA129, paragraph 7.14(a).
[114] CGA used a sample of around 5,000 outlets to estimate both the volume and value of sales to the on-trade in GB. The most recent available CGA dataset covered the 52 weeks ending 30 June 2024 (Carlsberg's internal document, AM Annex 13 to the FMN, '[✂],' page 1; Parties' response to the CMA's Request for Information of 30 October 2024 (**RFI4**), question 1).
[115] Parties' response to RFI4, Annex 1.1, Nielsen CGA GB - Total Hospitality - Sectors.
[116] The CGA dataset tracks 'juice drinks' separately from 'pure juice'. The Parties submitted that 'juice drinks' have, however, not been considered to be a separate market in previous cases and instead been part of a wider market for the supply of (pure) juice and juice drinks (FMN, paragraph 13.3). For completeness, the CMA notes that Britvic would also be the leading supplier of 'juice and juice drinks' to the licensed on-trade in GB with a share of supply of [50-60]%. The biggest competitor would be CCEP in this wider market with a [10-20]% share, followed by Refresco with an [5-10]% share.

20]%). However, CCEP's share of supply is more than three times as large in this segment compared to Britvic and AG Barr.

(d) Britvic is the third largest supplier of mixers to the licensed on-trade in GB with a share of supply of [10-20]%. However, both Fever Tree ([30-40]%) and CCEP ([40-50]%) are significantly larger than Britvic in this segment.

88. The CMA has also considered the Parties' internal documents to assess Britvic's position in the supply of soft drinks. Consistent with the Parties' share of supply estimates discussed above, the Parties' internal documents noted a duopoly between PepsiCo and TCCC in the supply of cola-flavoured CSDs, with Pepsi Max being the market leader in 'no sugar cola'.[117] Lipton and Robinsons were mentioned as market leading brands in ready-to-drink (**RTD**) iced teas and dilutables,[118] respectively.[119] However, these two brands make up a small proportion of sales volumes and revenues for Britvic in the on-trade (in combination less than [5-10]% by both volume and revenue).[120,121] Besides CCEP, the Parties' internal documents identified few other competitors of Britvic.

89. Consistent with the Parties' share of supply estimates and their internal documents, third parties suggested that Britvic is the clear number two in the supply of soft drinks to wholesalers in GB behind CCEP. Third-party wholesalers rated CCEP's soft drinks offering, on average, as stronger than Britvic's offering, with a number of respondents noting CCEP to be the market leader with a slightly more premium range whilst Britvic offers alternatives to the market leader with a wide portfolio of brands that is competitively priced and performs well in the UK.[122] Third-party wholesalers suggested that other soft drinks producers, such as Fever-Tree, Suntory, Red Bull or AG Barr, provide a more limited constraint on Britvic in the supply of soft drinks to wholesalers, either due to a limited portfolio or due to being regional.[123]

90. Consistent with the feedback received from wholesalers, most soft drinks producers listed Britvic as a competitor in the supply of soft drinks in the UK with a strong or very strong competitive offering.[124] However, one respondent noted that Britvic is particularly strong in the off-trade where it is driving sales growth, whilst in the on-trade Britvic has had declining sales month-on-month recently.[125]

[117] Carlsberg's internal document, Annex 8.001 to the FMN, '[✂],' 5 March 2024, pages17, 95, 100.
[118] 'Dilutables' include squashes, cordials, powders and other concentrates that require dilution to taste by consumers.
[119] Carlsberg's internal document, Annex 8.001 to the FMN, '[✂],' 5 March 2024, pages 95, 100.
[120] CMA's analysis of the Parties' response to RFI2, Annex 9.1.
[121] Consistent with the limited role of Lipton in the on-trade based on Britvic's data, CMBC submitted that it did not wholesale any RTD teas to the licensed on-trade in GB in 2023 (Parties' response to the CMA's Request for Information of 30 October 2024, Annex 2.1, 'Confidential - Contains Business Secrets - ME_7113_24 - RFI 4 Annex 2.1 - Carlsberg-Britvic - Request for Information 4 – Annex.').
[122] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 8.
[123] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 8.
[124] Response to the CMA questionnaire (Soft drinks producer) from a number of third-parties, October 2024, question 4.
[125] Response to the CMA questionnaire (Soft drinks producer) from a third-party, October 2024, question 4.

91. When assessing market power upstream, the CMA may also investigate if there are features of the market that may limit the constraint from upstream rivals.[126]

92. Most soft drinks producers noted some features in the production of soft drinks that impact suppliers' ability to compete effectively.[127] Those included economies of scale and high fixed costs due to the need to invest in manufacturing facilities as well as significant brand loyalty with consumers often preferring familiar established brands with strong reputation,[128] and the existence of large and established brands with proprietary formulas.[129] Capacity, in turn, was usually not regarded as the limiting factor with most soft drinks producers noting that they could scale up production easily if needed.[130]

93. Most wholesalers said that switching suppliers in itself is easy, at least for packaged products.[131] However, some noted that their customers can be brand loyal meaning that the wholesaler would not have a credible alternative to switch to even if switching was technically feasible.[132]

94. Based on the evidence above, the CMA considers that Britvic has a degree of market power in the supply of soft drinks, which is reinforced by certain market features, including economies of scale, high fixed costs, and brand loyalty as these may limit the constraint from smaller upstream rivals besides CCEP.

5.3.1.1.2.2 Importance of the input

95. The CMA obtained a range of evidence in its investigation to understand whether Britvic's brands and soft drinks as a segment play an important role in shaping downstream competition between wholesalers,[133] including the Parties' internal documents, third-party evidence, and Britvic's on-trade sales revenues.

96. Britvic's internal documents indicated that a venue needs to cover a basic, 'non-negotiable' range of soft drinks, including colas, fizzy drink options, lemonade and juices, in order to have something on offer for everyone.[134] At the same time, operators do not view soft drinks as a way to stand out and soft drinks are not considered to be top revenue drivers in the on-trade.[135] Consequently, Britvic's internal documents suggest that soft drinks tend to have low visibility, especially in licensed venues, with soft drinks often being 'relegated to the final page of the drinks menu, forcing the customer to flick through the whole menu to find them.'[136] Britvic's internal documents also indicated that soft drinks are of lower priority than

[126] CMA129, paragraph 7.14(a).
[127] Response to the CMA questionnaire (Soft drinks producer) from a number of third-parties, October 2024, question 3.
[128] Response to the CMA questionnaire (Soft drinks producer) from a third-party, October 2024, question 3.
[129] Response to the CMA questionnaire (Soft drinks producer) from a third-party, October 2024, question 3.
[130] Response to the CMA questionnaire (Soft drinks producer) from a third-party, October 2024, question 8.
[131] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 12.
[132] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 12.
[133] CMA129, paragraph 7.14(b).
[134] Britvic's internal document, Annex 1 (to AM Annex 9) to the FMN, '[✂],' 1 September 2024, pages 36, 113.
[135] Britvic's internal document, Annex 1 (to AM Annex 9) to the FMN, '[✂],' 1 September 2024,' page 14.
[136] Britvic's internal document, Annex 1 (to AM Annex 9) to the FMN, '[✂],' 1 September 2024, pages 34, 71.

alcohol specifically for a number of on-trade customers, including restaurants, pubs, bars and hotels.[137]

97. In terms of brand loyalty, Britvic's internal documents suggested that consumers typically do not care about what cola brand they are served in away-from-home (**AFH**) channels as much as operators believe and that, while customers may ask for a 'coke', they typically mean 'cola'.[138]

98. Evidence from third parties indicated that Britvic's brand portfolio is important for bundled wholesalers in that it provides an alternative to the market leader CCEP and includes brands that are very mature and household names.[139] A limited number of third-party wholesalers noted J2O as a 'must stock' brand for which there are no good alternatives,[140] and a few noted Pepsi/Pepsi Max,[141] or Britvic's growing draught product range (eg London Essence) as important formats for which there are no good alternatives.[142] However, most third-party wholesalers noted that there would be good alternatives for each of Britvic's brands.[143,144]

99. Evidence from third-party wholesalers on the importance of the soft drinks segment in the on-trade is consistent with Britvic's internal documents, with respondents noting that soft drinks play a limited role, if at all, in shaping downstream competition between bundled wholesalers. Particularly for national brewer wholesalers, soft drinks were considered more of a 'service line' in which the best-known brands or brand leaders are stocked.[145] Soft drinks were also noted to be less important for those types of bundled wholesalers because they take up significant space in depots and delivery vehicles whilst having lower margins than beers and ciders, and as they can be bought from cash and carry wholesalers which increases the number of competitors.[146] One respondent explained that pub customers would unlikely discuss soft drinks when making purchases from a bundled wholesaler as what drives foot fall is not whether the pub sells Coca-Cola or Pepsi but whether it has the right beers on the bar.[147]

100. Based on the evidence above, the CMA considers that Britvic has a number of mature brands and a portfolio that provides an important alternative to CCEP. However, it is not clear that any of Britvic's brands would be 'must have' products to be competitive in the bundled wholesaling of beverages to the licensed on-

[137] The remaining on-trade customers for which soft drinks were of higher priority than alcohol were coffee shops, bakeries, and fast food venues (Britvic Annex 1 to AM Annex 9, p.35).
[138] Britvic's internal document, Annex 2 (to AM Annex 9) to the FMN, '[✂],' Unknown Date, page 7.
[139] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 10.
[140] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, questions 10 and 11.
[141] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, questions 10 and 11.
[142] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, questions 10 and 11.
[143] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, questions 10 and 11.
[144] The feedback received from wholesalers was consistent with evidence from pub chains who buy direct from brand owners. The majority considered that there are not any specific Britvic brands for which there are no good alternatives (Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, questions 11and 12. While one respondent considered J2O had no good alternatives, it noted that sales of J2O have fallen recently (Response to the CMA questionnaire (On-trade customers) from a third-party, October 2024, questions 11 and 12).
[145] Note of a call with a third party, October 2024, paragraph 18. Note of a call with a third party, October 2024, paragraph 12.
[146] Note of a call with a third party, October 2024, paragraph 12.
[147] Note of a call with a third party, September 2024, paragraph 15.

trade. Third-party evidence was less conclusive on J2O (paragraph 98). Moreover, J2O falls into the 'juice drinks' segment where Britvic is the market leader in the on-trade in GB and CCEP does not hold a significant share (paragraph 87(a)).

101. To investigate further the importance of J2O in the on-trade, the CMA has considered a breakdown of Britvic's 2023 GB on-trade sales revenues by brand.[148] This showed that J2O was the biggest revenue driver for Britvic in the GB on-trade 'juice drinks' segment in 2023, generating more than [50-60]% of Britvic's revenue in this segment. However, taking Britvic's soft drinks revenues as a whole, the Pepsi range generated significantly more revenue for Britvic than J2O (ie Pepsi accounted for [40-50]% of Britvic's revenue compared to [10-20]% for J2O).[149] The CMA has also considered how important the 'juice and juice drinks' segment is for CMBC's wholesaling business. Overall, it accounted for less than [0-5]% of CMBC's beverage wholesaling volumes and revenues to the licensed on-trade in GB in 2023.[150] As such, the CMA considers that J2O may be strong in its respective segment but is relatively small overall, which in turn will likely limit the role J2O can play in shaping downstream competition between bundled wholesalers.

5.3.1.1.3 Conclusion on Merged Entity's ability to foreclose

102. For the reasons set out above, the CMA considers that the Merged Entity would only have limited ability, if any, to foreclose bundled wholesaling competitors by refusing to supply or increasing the price of Britvic products.

103. In particular, the CMA considers that Britvic has a degree of market power in the supply of soft drinks to bundled wholesalers, being particularly strong in some segments of soft drinks, and has a number of important brands. In particular, Britvic accounts for a significant proportion of sales of juice drinks, cola-flavoured CSDs, lemonade and squashes in the on-trade channel and other smaller soft drinks producers apart from CCEP provide a limited constraint.

104. However, overall the evidence received by the CMA did not suggest any of Britvic's brands were 'must have' to the extent wholesalers needed them to be competitive in the wholesaling of beverages to the licensed on-trade, and critically internal documents and third-party feedback suggest that soft drinks as a segment play a limited role in shaping downstream competition between bundled wholesalers, given alcoholic drinks tend to drive customer choice.

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[148] CMA's analysis of the Parties' response to RFI2, Annex 9.1.
[149] This is consistent with a Carlsberg internal document showing that globally CSDs accounted for [50-60]% of soft drinks sold in 2022 whilst 'juices and nectars' (including J2O) only accounted for [10-20]% of soft drinks (Carlsberg Internal Document, Annex 8.011 to the FMN, '[✂]', page 17).
[150] CMA's analysis of the Parties' response to RFI4, Annex 2.1.

5.3.1.2 Incentive

105. To assess the Merged Entity's incentive to foreclose other bundled wholesalers of beverages to the licensed on-trade in GB, the CMA has considered evidence from the Parties and from third parties. In particular, the CMA has considered:

(a) Business strategy;

(b) Gains in downstream sales;

(c) Losses of upstream sales; and

(d) Relative profit margins.

5.3.1.2.1 Parties' view

106. The Parties submitted that the Merged Entity would not have the incentive to foreclose competing bundled wholesalers for several reasons.

107. First, a strategy of refusing to sell Britvic soft drinks to wholesalers which compete with CMBC's beverage wholesaling business would be inconsistent with the existing strategy of both Parties' businesses. In particular, the CMBC's wholesaling strategy is to promote Carlsberg brands and grow its 'share of throat' which will also apply to Britvic soft drinks post-Merger. Likewise, Britvic's soft drinks brands are not as popular as the market-leading brands of CCEP which CMBC will need to sell to gain market share.[151]

108. Second, the Parties submitted that a foreclosure strategy would also be inconsistent with the rationale for the Merger. In particular, Carlsberg aims to grow the value of Britvic's soft drinks brands post-Merger [✂].[152]

109. Finally, the Parties noted that both a refusal to supply competing bundled wholesalers with Britvic brands, as well as a partial foreclosure strategy by increasing the price of the Britvic offer to competing bundled wholesalers, would lead to a significant loss in upstream sales since Britvic is not a 'must-stock' brand in the on-trade channel. The Merged Entity would, in turn, not be capable to recoup these losses from additional sales downstream as foreclosure would unlikely lead to material switching to CMBC's wholesaling business. This is because customers choose a wholesaler based on their preferred beer brands, and CMBC's beer brand portfolio is [✂].[153]

[151] FMN, paragraphs 18.39(a) and (b).
[152] FMN, paragraph 18.39(c).
[153] FMN, paragraphs 18.40 and 18.41.

5.3.1.2.2 CMA's assessment

5.3.1.2.2.1 Business strategy

110. The CMA has considered a range of evidence to understand the Merged Entity's future behaviour from the Parties' past conduct, business strategy and deal rationale,[154] including the Parties' internal documents and third-party evidence.

111. Carlsberg's internal documents show that it is exploring soft drinks, and CSDs in particular, as a means to transform itself from a brewer into a full beverage company.[155] Carlsberg identified CSDs as this segment [✂] and is needed to gain scale in soft drinks.[156] [✂].[157] Moreover, PepsiCo, has spoken of its desire to 'drive consolidation of its bottling partners across contiguous markets' and '[i]n this context, Carlsberg and PepsiCo are also longstanding partners.'[158] PepsiCo has also expanded its collaboration with the Carlsberg Group in a number of countries.[159]

112. As such, Carlsberg is aiming to use the Merger [✂].[160] In addition, Carlsberg's internal documents suggest [✂].[161]

113. Carlsberg's internal documents discuss several commercial terms that are negotiated with PepsiCo as part of the deal. These include [✂]. Moreover, Carlsberg's internal documents show [✂].[162]

114. Consistent with Carlsberg's internal documents, several third-party wholesalers noted that they see the Merger rationale as future-proofing Carlsberg's business given that alcohol sales are in decline,[163] as well as an opportunity for strategic growth in the (adult) soft drinks market.[164] Furthermore, none of the third-party wholesalers raised concerns about the Merger, including in relation to CMBC obtaining control of an input which Britvic currently supplies to competing

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[154] CMA129, paragraph 7.19(a).
[155] Carlsberg's internal document, Annex 8.001 to the FMN, '[✂],' 5 March 2024, page.6; Carlsberg Group 2023 Annual Report, page 19.
[156] Carlsberg's internal document, Annex 8.001 to the FMN, '[✂],' 5 March 2024, pages 14,17; Carlsberg's internal document, Annex 8.003 to the FMN, '[✂],' 5 March 2024, page 1.
[157] Carlsberg's internal document, Annex 8.003 to the FMN, '[✂],' 5 March 2024, page 1.
[158] 27-announcement_recommended-offer-to-acquire-britvic-plc.pdf, accessed on 17 December 2024, pages 17-18.
[159] Newsroom » Carlsberg to become new PepsiCo bottler in Kazakhstan and Kyrgyzstan « Carlsberg Group, accessed on 17 December 2024.
[160] Carlsberg's internal document, Annex 8.003 to the FMN, '[✂],' 5 March 2024, page 1. The CMA notes that there are multiple references in the Parties Rule 2.7 announcement of 8 July 2024 to the growth of the relationship with PepsiCo such as 'the Acquisition will further strengthen Carlsberg's close relationship with PepsiCo, who have been a long-standing partner for Carlsberg in a number of Carlsberg's core markets across Europe and Asia,' 'following completion Carlsberg is expected to become the largest PepsiCo bottling partner in Europe,' and '[i]n selecting these partners, PepsiCo is seeking industry participants with scale infrastructure across multiple markets, ultimately enabling the consolidation of bottling into multi-market anchor bottlers.'
[161] Carlsberg's internal document, Annex 8.003 to the FMN, '[✂],' 5 March 2024, page 1.
[162] Carlsberg's internal document, Annex 8.008 to the FMN, '[✂],' 29 April 2024, pages16, 21.
[163] Note of a call with a third party, October 2024, paragraph 20.
[164] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 15.

wholesalers of CMBC,[165] with a number of respondents explaining that they do not expect to be impacted by the Merger.[166]

115. With regard to an input foreclosure strategy whereby on-trade customers could buy Pepsi brands only from CMBC and no other bundled wholesaler, the CMA understands that this [✂].[167]

116. The CMA's assessment usually is unlikely to place material weight on contractual protections.[168] In the present case, however, the CMA considers that, [✂], the Parties have a strong incentive not to engage in such strategies given that the rationale behind the deal is to expand Carlsberg's relationship with PepsiCo (see paragraph 112 above).

5.3.1.2.2.2 Gains in downstream sales

117. The CMA's assessment of incentives also considers the extent to which the Merged Entity would gain downstream sales from foreclosing other competing bundled wholesalers. Those gains will be greater if the Merged Entity has a more successful downstream offering, and if it competes closely with the rivals that may be foreclosed.[169]

118. The Parties submitted that the bundled wholesale of beverages is a fragmented market and CMBC would expect that a number of players would have reasonably significant shares, but no individual supplier is likely to have a share above 20%.[170] In particular, the Parties estimated that, based on CGA data for volume of beverages sold into free-trade outlets, CMBC's share of supply for the bunded wholesale supply of beverages in GB was [10-20]%.[171,172]

119. As part of its investigation, the CMA gathered data from CMBC and bundled wholesale competitors to undertake its own share of supply analysis in the bundled wholesaling of beverages to the licensed UK on-trade. The CMA was only able to gather such information from a subset of bundled wholesalers. As such, the CMA's estimates do not include some wholesalers considered to be large by the Parties. This means that the shares of both the Parties and third parties will be overestimated in Table 1 below.

[165] Response to the CMA questionnaire (Wholesaler) from a number of third parties, October 2024, question 15.
[166] Response to the CMA questionnaire (Wholesaler) from a number of third parties, October 2024, question 15.
[167] Carlberg's internal document, Annex RFI02/13.3 to the FMN, 'Confidential - Contains Business Secrets - ME_7113_24 RFI 2 - Annex 13.3 (Carlsberg),' 23 September 2024, paragraphs 3.4 and 5.1.1. FMN, paragraph 18.39(c).
[168] CMA129, paragraph 7.15.
[169] CMA129, paragraph 7.19(b).
[170] FMN, paragraph 13.20 9(a).
[171] FMN, paragraph 13.11.
[172] The Parties noted that (i) its estimates were a 'very rough approximation of CMBC's position as a wholesaler of various types of beverage but does accurately reflect the fact that it is a draught beer-led operation', and (ii) that '[✂]' (FMN, paragraphs 13.4 and 13.7).

Table 1: Shares of supply in the bundled wholesale of all beverages and soft drinks by volume to the licensed on-trade in the UK in 2023

Wholesaler	*All beverages*	*Wholesaler*	*Soft drinks*
Wholesaler 1	[30-40]%	Wholesaler 5	[20-30]%
CMBC	**[10-20]%**	Wholesaler 3	[20-30]%
Wholesaler 2	[10-20]%	Wholesaler 1	[20-30]%
Wholesaler 5	[5-10]%	Wholesaler 2	[10-20]%
Wholesaler 3	[5-10]%	**CMBC**	**[5-10]%**
Wholesaler 4	[5-10]%	Wholesaler 4	[0-5]%
Wholesaler 6	[0-5]%	Wholesaler 7	[0-5]%
Wholesaler 7	[0-5]%	Wholesaler 6	[0-5]%
Total	**100%**		**100%**

Source: CMA analysis of sales volumes supplied to the licensed UK on-trade in 2023 based on CMA questionnaire (Wholesaler) question 3 and Parties' response to the RFI4, Annex 2.1.
Notes: Wholesalers are ranked in order of their volume share of supply. The CMA was not able to collect information from all third-party wholesalers (including [✂]) which meant that the CMA's market size estimates are likely understated, and CMBC's wholesale share of supply overstated. Moreover, the CMA's analysis included, on a conservative basis, only bundled wholesalers. A number of third parties noted, however, that cash-and-carry wholesalers compete to some extent with bundled wholesalers for packaged products (Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 6; Note of a call with a third party, October 2024, paragraph 5).

120. Table 1 shows that, amongst those who provided data, CMBC was the second largest bundled wholesaler of beverages to the licensed on-trade in the UK in 2023 with a share of supply of [10-20]%. Wholesaler 1 held a significantly larger share of supply than CMBC, and a number of other wholesalers also had a material presence with shares of supply in excess of 5%. As noted above, the CMA did not receive data from a number of bundled wholesalers, some of which may be larger than CMBC. As such, CMBC's share is overstated here.

121. To consider CMBC's strength specifically in the bundled wholesaling of soft drinks (see paragraph 57), the CMA also considered shares on a narrower basis in the soft drinks segment. Table 1 shows that, amongst those who provided data, CMBC was the fifth largest bundled wholesaler of soft drinks to the licensed on-trade in the UK with a share of supply of [5-10]%. The top four wholesalers for whom the CMA obtained data were all significantly larger than CMBC in this segment. Together they supplied more than [80-90]% of soft drinks to the licensed on-trade.

122. The CMA considers that based on its partial market reconstruction above, the Merged Entity's gains in downstream sales from foreclosing competing wholesalers are likely limited as CMBC's share of supply as a bundled wholesaler of beverages, and specifically its share in the soft drinks segment, to the licensed on-trade is limited.

123. The CMA has also considered qualitative evidence from third parties on the strength of CMBC's offering in the bundled wholesale supply of beverages to the licensed on-trade in GB. This evidence is consistent with shares presented above on shares of supply.

124. In particular, only about half of the respondents to the CMA's investigation identified CMBC as a competitor.[173] Moreover, CMBC's competitive strength was

[173] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 6.

rated, on average, as moderate with respondents explaining that CMBC's offering is price led but its range is not as strong as some other wholesalers,[174] or that CMBC's own brands (which a national brewer wholesaler would usually be leading with) are 'not dominant in the market'.[175]

125. A number of bundled wholesale competitors were rated, on average, as significantly stronger than CMBC. This included both the national brewer wholesalers Matthew Clark and Molson Coors, as well as the independent wholesaler LWC.[176]

5.3.1.2.2.3 Losses of upstream sales

126. The CMA's assessment of incentives also considers the extent to which the Merged Entity would incur losses upstream from foreclosing other competing bundled wholesalers. Those losses are likely lower if the Merged Entity has strong market power upstream, and if it can engage in price discrimination or similar targeted deterioration of supply.[177]

127. The CMA has considered market power upstream as part of the ability assessment in Section 5.3.1.1.2.1 above. Regarding price discrimination, and consistent with the Parties' submissions, a number of third parties suggested that the Merged Entity would not be able to engage in a targeted deterioration of supply of other competing bundled wholesalers as they would be able to go and source Britvic products on the 'secondary' market which could include other bundled wholesalers as well as cash and carry operators.[178,179]

5.3.1.2.2.4 Relative profit margins

128. Input foreclosure is more likely profitable if margins downstream are relatively large compared to those upstream.[180] A more qualitative approach to considering the costs and benefits of foreclosure may be more suitable in complex markets, particularly where broader strategic issues may play a greater role (see paragraphs 113-114 above).[181]

129. Accordingly, the CMA has considered the Parties' profit margins in the round together with the other pieces of evidence discussed above. In particular, Britvic earns a [✂] margin upstream on its sales of soft drinks to bundled wholesalers compared to CMBC's margin on soft drinks downstream.[182] This would suggest that a total input foreclosure strategy is less likely to be profitable, and is in line

[174] Response to the CMA questionnaire (Wholesaler) from a third-party, October 2024, question 6.
[175] Response to the CMA questionnaire (Wholesaler) from a third-party, October 2024, question 6.
[176] Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 6.
[177] CMA129, paragraph 7.19(c).
[178] Note of a call with a third party, October 2024, paragraph 18. Note of a call with a third party, November 2024, paragraph 17.
[179] Sourcing from cash and carry operators would be limited to packaged products.
[180] CMA129, paragraph 7.19(d).
[181] CMA129, paragraph 7.18.
[182] CMA's analysis of the Parties' response to RFI2, Annex 8.1 and Annex 9.1.

with the CMA's analysis above showing that gains in downstream sales are likely limited (paragraph 122) whilst losses of upstream sales may be more significant given that a targeted deterioration of supply does not appear to be feasible (paragraph 127).

5.3.1.2.3 Conclusion on Merged Entity's incentive to foreclose

130. For the reasons set out above, the CMA considers that the Merged Entity would not have the incentive to foreclose other bundled wholesalers of beverages to the licensed on-trade in GB.

131. In particular, the Parties' internal documents show that Carlsberg aims to grow its relationship with Pepsi through this deal, [✂].

132. Moreover, gains in downstream sales from foreclosing competing wholesalers are likely limited based on the CMA's market reconstruction and wholesalers considering CMBC to be moderate competitor.

5.3.1.3 Effect

133. Given the CMA has found that the Merged Entity would not have the incentive to foreclose, the CMA has not considered the effect of such a foreclosure strategy.

5.3.2 Conclusion on Theory of Harm 1

134. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of input foreclosure in the bundled wholesale supply of beverages to the licensed on-trade in GB.

5.3.3 Theory of Harm 2: Conglomerate effects through the linking of soft drinks and beer/cider sales to the licensed on-trade in GB

135. The concern with a conglomerate theory of harm is that the merged entity may restrict its rivals in one 'focal' market from accessing customers using its strong position in an 'adjacent' market.[183] The merged entity could do this through linking the sales of the two products in some way, thereby encouraging customers who want its product in the adjacent market to also purchase its product in the focal market, at the expense of rivals.[184]

136. This loss of sales by competitors is not problematic in and of itself, and linked sales of related products can result in efficiencies. However, competition concerns may arise if such a strategy would result in rivals in the focal market becoming less

[183] This can also apply to leveraging between different segments of the same market as well as between different markets.
[184] CMA129, paragraph 7.30.

effective competitors, which may result in higher prices or lower quality in the longer term.[185]

137. In the present case, the CMA has considered whether, following the Merger, the Merged Entity would be able to link the sales of Britvic's soft drinks (ie adjacent products) to Carlsberg's beers/ciders (ie focal products) in some way when supplying beverages to the licensed on-trade in GB, and whether the Merged Entity could harm rival brewers' competitiveness by doing so. The Merged Entity may link the sales of these beverages when selling to major national pub chains or bundled wholesalers, or both. It may only offer the products as a bundle, or offer customers of Britvic's products (ie the adjacent product) a discount if they also purchase Carlsberg's products (ie the focal product).

138. In assessing this concern, the CMA considers whether the following three cumulative conditions are satisfied:

(a) would the merged entity have the ability to link the sales of two products in some way and to harm the competitiveness of its rivals by doing so?

(b) would it have the incentive to actually do so, ie would it be profitable?

(c) would the foreclosure of these rivals result in substantial harm to overall competition in the focal market?[186]

139. 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 as a result of conglomerate effects in the supply of beverages to the licensed on-trade in GB. The CMA has considered these cumulative conditions below.

5.3.3.1 Ability

140. To assess the Merged Entity's ability to link the sales of Britvic's soft drinks to Carlsberg's beers/ciders when supplying beverages to the licensed on-trade in GB in such a way that on-trade customers would stop purchasing from rival brewers, the CMA has considered evidence from the Parties and from third parties. In particular, the CMA has considered:

(a) Market power in adjacent market;

(b) Importance of adjacent product;

(c) Feasibility of combined offering;

(d) Importance of scale; and

(e) Loss of sales by rivals.

[185] CMA129, paragraph 7.31.
[186] CMA129, paragraphs 7.33–7.35.

5.3.3.1.1 Parties' view

141. The Parties submitted that the Merged Entity would not be able to harm its rivals' competitiveness by doing so, for several reasons.

142. First, the Merged Entity will not have market power in the adjacent market in which Britvic competes and Britvic's portfolio is not a 'must have' for major national pub chains who buy directly from brand owners or for independent free-trade customers who buy from bundled wholesalers.[187]

143. Moreover, both major national pub chains and independent free-trade customers are beer-led outlets and would not permit the availability of specific soft drinks brands to drive their choice of which beers to sell.[188] The Parties provided customer research to show that soft drinks are less important than food, alcohol and coffee across a range of on-trade outlets.[189] They also argued that the importance of beer is reflected in the fact that bundled wholesalers selling to independent free-trade customers have a 'beer-led proposition'.[190]

144. In relation to major national pub chains, the Parties further noted that their business model is to offer their customers a wide range of beers.[191] The Parties noted these customers typically purchase beverages on a category-by-category basis rather than all together.[192]

145. In relation to bundled wholesalers, the Parties further noted that a number of CMBC's rival bundled wholesalers are owned by brewers and so the prospect of these wholesalers agreeing to reduce sales of rival products to benefit Carlsberg is 'fanciful'.[193]

5.3.3.1.2 CMA's assessment

5.3.3.1.2.1 Market power in adjacent market

146. The CMA has considered whether Britvic occupies an important position in an adjacent market as part of its assessment of Theory of Harm 1. Based on the evidence assessed in Section 5.3.1.1.2.1 above, the CMA considers that Britvic has a degree of market power in the supply of soft drinks, which is reinforced by certain market features, including economies of scale, high fixed costs, and brand loyalty as these may limit the constraint from smaller upstream rivals besides CCEP.

147. Consistent with feedback from wholesalers, most major national pub chains indicated that switching suppliers of beverages in itself would be relatively easy to

[187] FMN, paragraphs 19.6, 19.31(a), and 19.36(b) – On ability (i).
[188] FMN, paragraphs 19.7 and 19.31(b).
[189] FMN, paragraph 19.31(b).
[190] FMN, paragraphs 19.36(b) – On ability (iii).
[191] FMN, paragraph 19.31(d).
[192] FMN, paragraph 19.31(e).
[193] FMN, paragraphs 19.36(b) – On ability (ii).

do.[194] However, the ability to switch would be impacted by brand loyalty,[195] and whether the customer is switching supplier of packaged or draught soft drinks with one respondent noting that for draught branded carbonated dispense there are only two key suppliers in GB (ie Britvic and CCEP).[196]

5.3.3.1.2.2 Feasibility of combined offering

148. The CMA has also considered a range of evidence, including internal documents and evidence from third parties, to understand whether it would, in principle, be possible for the Merged Entity to link sales of the two products in some way.[197] The extent to which customers' behaviour, in practice, could easily be influenced by the combination will be discussed further below (paragraphs 162-163).

149. Carlsberg's internal documents show that part of the deal rationale is to cross-sell beers and soft drinks, drawing on overlapping customers and the fact that both beers and soft drinks are consumed at social events, [✂]:

(a) large UK bundled wholesalers already acting as total beverage players,

(b) smaller geographic distances between on-trade outlets in the UK,[198]

(c) both Parties holding a [✂] in the UK, and

(d) a smaller customer overlap in the UK on-trade as pubs and bars are the only subset of the AFH channel with a true overlap of customers (ie beers tend to not be consumed in quick-service restaurants).[199]

150. Most third parties indicated that a combined offering would, in theory, be feasible by offering pricing incentives or promotions to customers who would stock Carlsberg's beers and/or ciders alongside Britvic's soft drinks (ie by offering a mixed bundle).[200] One respondent noted that the Merged Entity could offer integrated contracts and stronger incentives, particularly when negotiating with on-trade customers that have multiple venues,[201] whilst two other respondents noted that the Merged Entity would be uniquely positioned in the UK with a portfolio of beers and soft drinks and a stronger commercial proposition to customers prepared to purchase them together.[202] One respondent further believed that the

[194] Response to the CMA questionnaire (On-trade customer) from a number of third-parties, October 2024, questions 14 and 15.
[195] Response to the CMA questionnaire (On-trade customers) from a third-party, October 2024, question 15.
[196] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 15.
[197] CMA129, paragraph 7.33(b).
[198] With smaller distances, the cost of serving each outlet is lower, making a joint fleet of trucks less synergetic relative to the cost of co-production and co-warehousing (Carlsberg's internal document, Annex 8.006 to the FMN, '[✂],' 20 March 2024, page 60).
[199] Carlberg's internal document, Annex 8.006 to the FMN, '[✂],' 20 March 2024, pages 58, 61.
[200] Response to the CMA questionnaire (Brewers) from a number of third parties, October 2024, question 7; Response to the CMA questionnaire (Soft drinks producer) from a number of third-parties, October 2024, question 10; Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 13; Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 16.
[201] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 7.
[202] Response to the CMA questionnaire (Soft drinks producers) from a number of third-parties, October 2024, question 10.

Merged Entity would use efficiencies and cost savings to invest in price to encourage customers to favour their brands over others.[203]

151. A few third parties indicated two reasons that there was limited feasibility of a combined offering. The first was because Carlsberg's beers would be the driver of on-trade customers' purchases rather than Britvic's soft drinks and, as such, these third parties could only see a scenario whereby Carlsberg's brands were the 'adjacent' product.[204,205] The second reason related to the fact that beers and soft drinks are procured at separate times and that conversations are being kept separate between those two beverage segments currently and for the foreseeable future.[206]

152. As regards the feasibility of a combined offering whereby the Merged Entity would only offer Britvic's soft drinks (including Pepsi) as part of a bundle with Carlsberg's beers/ciders (ie pure bundling), the CMA understands that this may [✂].[207] The CMA's assessment usually is unlikely to place material weight on contractual protections.[208] In the present case, however, the CMA considers that even without any such contractual provisions, the Parties have a strong incentive not to engage in such strategies given that the rationale behind the deal is to expand Carlsberg's relationship with PepsiCo (see paragraph 112 above).

153. Finally, the CMA notes that, although a mixed bundle was considered feasible in theory, the majority of third parties who responded to the CMA's questionnaires, including bigger brewers, soft drinks producers, wholesalers, on-trade customers and off-trade customers, did not raise concerns about the Merger.[209] Whilst a number of soft drink producers raised concerns about bundling or tying, those concerns tended to centre on leveraging Carlsberg's position in beers with the view to restrict stand-alone soft drinks competitors with smaller portfolios from accessing customers.[210]

154. At an early stage of its investigation, the CMA received complaints from industry bodies that, if the acquisition was allowed to proceed, it would enable Carlsberg to leverage the newly acquired soft drink customers in the licensed on-trade to expand its range and volume of beer sales to these customers. This, in turn, would enable Carlsberg to restrict access to these customers for other suppliers,

[203] Response to the CMA questionnaire (Wholesaler) from a third-party, October 2024, question 7.
[204] Response to the CMA questionnaire (Wholesaler) from a third-party, October 2024, question 13.
[205] For completeness, the CMA considers that there is no prospect of the Merged Entity leveraging Carlsberg's beers/ciders to foreclose competing soft drink producers by pursuing a tying or bundling strategy as Carlsberg has a [✂] in the licensed on-trade in GB (see paragraphs 185-188 and footnote 235 below).
[206] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 16.
[207] Carlberg's internal document, Annex RFI02/13.3 to the FMN, '[✂],' 23 September 2024, paragraphs 3.4 and 5.1.1. FMN, paragraph 18.39(c).
[208] CMA129, paragraph 7.15.
[209] Response to the CMA questionnaire (Brewers) from a number of third parties, October 2024, question 10; Response to the CMA questionnaire (Soft drinks producer) from a number of third-parties, October 2024, question 11; Response to the CMA questionnaire (Wholesaler) from a number of third-parties, October 2024, question 15; Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 17; Response to the CMA questionnaire (Off-trade customer) from a number of third parties, October 2024, question 8.
[210] Response to the CMA questionnaire (Soft drinks producer) from a number of third-parties, October 2024, question 10 and 11. As discussed in footnote 205, the CMA considers that there is no realistic prospect of an SLC with regard to these concerns.

particularly for smaller and independent brewers.[211] The CMA notes that, whilst industry bodies voiced concerns about the foreclosure of smaller brewers by linking the sales of Britvic soft drinks to Carlsberg's beers/ciders in some way, the responses to the CMA's questionnaire from smaller brewers were mixed.[212] This issue is further discussed and assessed in paragraphs 164-170 below.

155. For completeness, the CMA notes that it considered some further concerns from competitors and industry bodies at an early stage of its investigation. These are assessed in Section 7.1 below.

5.3.3.1.2.3 Importance of scale in focal market

156. The CMA has also considered the importance of scale in beer manufacturing, as a loss of customers in the focal market would typically only result in other firms becoming less effective rivals if there is a link between volumes and competitiveness.[213]

157. Most respondents to the CMA's investigation noted that economies of scale, as well as brand and reputation are important features that impact on the ability of brewers to compete effectively in the market,[214] with one respondent explaining that large brewers benefit from economies of scale and brand recognition but may be less agile in responding to trends.[215] Only one respondent to the CMA's investigation considered that with the growth of craft beer and the increasing willingness of consumers to try new brands of beer, having an established brand or achieving economies of scale is no longer essential to be a viable competitor.[216]

5.3.3.1.2.4 Loss of sales by rivals

158. The CMA has also considered the extent to which the Merged Entity can deprive competitors in the focal market (ie beer/cider) of a substantial volume of sales. This will be the case if a sufficiently large number of customers in the focal market are or could be customers in the adjacent market, and if their behaviour can be easily influenced by the combination. It is less likely if rivals can realistically mitigate any loss, for example by developing or partnering to create their own combined offering.[217]

159. The CMA has first considered the extent to which a sufficiently large number of customers in the focal market are or could be customers in the adjacent market (ie common customers). Evidence from the Parties is consistent with there being a large number of common customers.

[211] Submission from a third party to the CMA dated 8 August 2024; Submissions from a third party to the CMA dated 23 August 2024.
[212] Response to the CMA questionnaire (Brewers) from a number of third parties, October 2024, question 10.
[213] CMA129, paragraph 7.33(d).
[214] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 4.
[215] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 4.
[216] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 4.
[217] CMA129, paragraph 7.33(c).

160. CMBC submitted that it has a relationship with all of the ten largest national pub companies (based on number of outlets), whilst Britvic has a relationship with all ten, except for [✂],[218] suggesting that there is significant customer overlap among the major national pub chains that buy beverages directly from brand owners.

161. With regard to bundled wholesalers, CMBC submitted that Carlsberg deals with all notable wholesalers and a large number of smaller ones.[219] Britvic also supplies a number of them, including brewer wholesalers such as Molson Coors and Greene King, as well as licensed wholesalers, such as LWC.[220] Consistent with this, third parties also suggested that there is significant customer overlap among bundled wholesalers, with two respondents noting that all wholesalers sell the major brands,[221] and that wholesalers have access to, and sell, all of the same products as their competitors.[222]

162. The CMA has also considered the extent to which licensed on-trade customers' behaviour can be easily influenced by a bundled wholesaler's soft drinks offering as part of its assessment of Theory of Harm 1. Based on the evidence assessed in Section 5.3.1.1.2.2 above, the CMA considers that alcoholic drinks tend to drive customer choice.

163. Consistent with the Parties' internal documents, most major national pub chains considered that soft drinks are important for the licensed on-trade in that they act as mixers for spirits, and cater to those that do not drink alcohol and the increasing consumer demand for low- and non-alcoholic alternatives.[223] However, consistent with evidence from third-party wholesalers, the majority of responses suggested that soft drinks are significantly less important for their business in terms of sales volume than alcoholic drinks.[224] In particular, soft drinks represented only [5-10]% of the pub chains' sales volumes across beers, ciders and soft drinks combined (ie excluding the spirits and wine segments).[225] A number of respondents further noted that soft drinks would be more important in food- and family-led pubs than wet-led pubs.[226]

164. Finally, the CMA has considered who might be the most likely foreclosure target(s) in the focal market, and whether the Merged Entity would be able to deprive these brewers of a substantial volume of sales.

165. To identify Carlsberg's key rivals in the supply of beers/ciders to the licensed on-trade in GB, the CMA first considered Carlsberg's internal documents. These

[218] FMN, paragraphs 18.8-18.9.
[219] Submission from Carlsberg, AM Annex 1 to the FMN, 'Confidential - Contains Business Secrets - ME_7113_24 - Carlsberg-Britvic - Note on Brewer-Wholesaler Relationship (16.10.2024),' 16 October 2024, paragraph 1.1.
[220] Britvic's internal document, Annex RFI03/1.1 to the FMN, 'Confidential - Contains Business Secrets - ME_7113_24 RFI 3 - Annex 1.1 (Britvic),' 3 October 2024.
[221] Response to the CMA questionnaire (Wholesaler) from a third-party, October 2024, question 3.
[222] Note of a call with a third party, October 2024, paragraph 9.
[223] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 13.
[224] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 13.
[225] CMA analysis of volumes of beers, ciders and soft drinks purchased based on CMA questionnaire (On-trade customers) questions 3 and 7.
[226] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 13.

suggested that the main competitors of the key beer brands that Carlsberg wishes to grow over the next three years ([✂])[227] are owned by the major brewing rivals,[228] with [✂],[229] [✂].[230] Smaller breweries were not mentioned as competitors.

166. Consistent with Carlsberg's internal documents, the smaller breweries that responded to the CMA's questionnaire did not identify Carlsberg as a competitor at all or only as a 'very weak' competitor,[231] with one respondent explaining that it only competes with other local microbreweries in the area.[232] One respondent further noted that as a regional brewer this acquisition has minimal impact on it.[233]

167. To identify Carlsberg's key rivals the CMA also considered the Parties' share of supply estimates.[234] This dataset showed that, besides Carlsberg, six other brewers have a material presence in the supply of one or more of the beer segments to the licensed on-trade in GB. These are Heineken UK, Molson Coors, Budweiser Brewing Group UK&I (ie AB InBev), Greene King, C&C Group, and Asahi.[235] The CMA considers that the extent to which the Merged Entity can deprive these six rivals of a substantial volume of sales is, in most cases, likely limited.

168. This is because these players have strong offerings in the focal market which will mitigate any loss in sales, with major pub chains explaining that Heineken, Molson Coors, AB InBev and Asahi are all key brands in the market.[236] In particular, third party evidence indicates that Heineken has the best lager portfolio,[237] Molson Coor's Carling is particularly strong in certain geographies and generally Molson Coor's has the number two brands to Heineken,[238] AB InBev performs well in the packaged range with brand equity of Stella Artois and Bass, [239] and Asahi has a good premium range with brand equity of Peroni and Asahi.[240] In contrast, as set out in paragraph 187, third parties generally considered Carlsberg to have a

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[228] Carlsberg's internal document, Annex 7(e).001 to the FMN, '[✂],' 30 April 2024, page 2; Carlsberg's internal document, Annex 8.001 to the FMN, '[✂],' 5 March 2024, page 145; Carlsberg's internal document, Annex 8.013 to the FMN, '[✂]' 30 June 2024, page 8.
[228] Carlsberg's internal document, Annex 7(e).001 to the FMN, '[✂],' 30 April 2024, page 2; Carlsberg's internal document, Annex 8.001 to the FMN, '[✂],' 5 March 2024, page 145; Carlsberg's internal document, Annex 8.013 to the FMN, '[✂]' 30 June 2024, page 8.
[229] Carlsberg's internal document, Annex 11.001 to the FMN, '[✂],' April 2024, pages 5, 15.
[230] Carlsberg's internal document, Annex 11.002 to the FMN, '[✂],' 30 April 2024, pages 3, 17-18.
[231] Response to the CMA questionnaire (Brewers) from a number of third parties, October 2024, question 5.
[232] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 5.
[233] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 10.
[234] The estimates were based on industry data collected by the consultancy firm CGA which used a sample of around 5,000 outlets to estimate both the volume and value of sales to the on-trade in GB. The most recent available CGA dataset covered the 52 weeks ending 10 August 2024 (Carlsberg's internal document, AM Annex 13 to the FMN, '[✂],' Unknown Date, page 1; FMN, footnote 77).
[235] The CMA defined 'material presence' in a beer segment (standard and premium lager, standard and premium ale, and world lager) as having a share of supply of more than 5% in the CGA dataset. The CMA did not consider ciders in this context as Carlsberg's share in the supply of ciders to the licensed on-trade in GB was less than [5-10]%.
[236] Response to the CMA questionnaire (On trade-customer) from a third party, October 2024, question 6.
[237] Response to the CMA questionnaire (On trade-customer) from a third party, October 2024, question 6.
[238] Response to the CMA questionnaire (On trade-customer) from a number of third parties, October 2024, question 6.
[239] Response to the CMA questionnaire (On trade-customer) from a number of third parties, October 2024, question 6.
[240] Response to the CMA questionnaire (On trade-customer) from a number of third parties, October 2024, question 6.

weaker offering which will be weakened when it loses the San Miguel brand in the UK.

169. Of the third parties who responded to the CMA's investigation of how bundling or tying would impact their ability to compete, a number noted that the market for beers and ciders is highly competitive and fragmented. As such, any bundling or tying strategy would not have any significant impact on competition in practice.[241] However, one rival brewer considered that a mixed bundling strategy could potentially push it out of certain outlets (particularly on-trade customers with multiple venues and those with established Britvic relationships).[242]

170. In relation to whether rivals would be able to realistically mitigate any loss, one third party further noted that other brewers would be able to replicate similar strategies by partnering with CCEP.[243]

5.3.3.1.3 Conclusion on Merged Entity's ability to bundle/tie

171. For the reasons set out above, the CMA considers that the Merged Entity would only have limited ability to link the sales of Britvic's soft drinks to Carlsberg's beers/ciders when supplying beverages to the licensed on-trade in GB, in such a way that on-trade customers would stop purchasing from rival brewers and thereby harm its rivals' competitiveness.

172. As in Theory of Harm 1, the CMA considers that Britvic has a degree of market power in the adjacent market, however, overall the evidence received by the CMA did not suggest that on-trade customers' behaviour could easily be influenced as alcoholic drinks tend to drive customer choice and pub chains' sales volumes.

173. Moreover, whilst a mixed bundle is theoretically feasible (eg by offering pricing incentives or promotions to customers who would stock Carlsberg's beers alongside Britvic's soft drinks), it is not clear that the Merged Entity would be able to deprive its key rivals in beers of a substantial volume of sales.

5.3.3.2 Incentive

174. To assess the Merged Entity's incentive to link the sales of Britvic's soft drinks to Carlsberg's beers/ciders in some way when supplying beverages to the licensed on-trade in GB, the CMA has considered evidence from the Parties and from third parties. In particular, the CMA has considered:

(a) Business strategy;

(b) Gains in sales in focal market; and

(c) Losses in sales in adjacent market.

[241] Response to the CMA questionnaire (Brewers) from a number of third parties, October 2024, question 8.
[242] Response to the CMA questionnaire (Brewers) from a third party, October 2024, questions 7 and 8.
[243] Note of a call with a third party, November 2024, paragraph 23.

5.3.3.2.1 Parties' view

175. The Parties submitted that the Merged Entity would not have the incentive to link the sales of Britvic's soft drinks to Carlsberg's beers/ciders for several reasons.

176. First, in order for a bundling/tying strategy to be effective in foreclosing rival brewers, the Merged Entity would need to restrict or degrade access to Britvic across all channels, including grocery multiples, food-led wholesalers, as well as cash and carry wholesalers. The cost of doing this would be 'prohibitively high' as the Merged Entity would need to forego the associated profits from all of the channels through which customers could purchase Britvic's soft drinks.[244]

177. Moreover, a bundling/tying strategy would directly undermine Carlsberg's ability to build a stronger working relationship with PepsiCo across Europe, which is one of the primary rationales for the deal.[245]

178. A bundling/tying strategy would also not be profitable as it may lead to a loss in the adjacent market when customers leverage negotiations to demand rebates on a mixed bundle whilst still being able to source beverages from rivals.[246] The Merged Entity would also risk a significant sales loss given the relatively higher volumes of beer that on-trade customers buy compared to soft drinks.[247] Absent exclusivity, which the Parties consider to not be realistic, major national pub chains and bundled wholesalers would continue to stock a range of beer brands and, therefore, there is a very low likelihood of gains in the focal market. Any anticipated sales uplift would also be limited due to [✂], making major national pub chains or bundled wholesalers reluctant to switch to stocking CMBC's beers to retain their access to Britvic's soft drinks.[248]

179. Finally, the Merged Entity would not have the incentive to tie/bundle given the possibility of retaliation by vertically integrated brewers who would delist Carlsberg products in their pub estates or refuse to stock Carlsberg products in their bundled wholesaling business.[249]

180. The Parties further noted that the Merged Entity would not have the incentive to implement a more targeted bundling/tying strategy with the goal to foreclose smaller brewers as Carlsberg's beer brands are predominantly lager-led and its closest competitors are the other major international brewers with similar international lager brands (including Molson Coors, Heineken, AB InBev). Carlsberg's beers do not compete closely with beers from smaller brewers, particularly local ales. Carlsberg has little to gain in attempting to foreclose smaller brewers by bundling/tying soft drinks with beers/ciders.[250]

[244] FMN, paragraph 19.8.
[245] FMN, paragraphs 19.9, 19.32(a), 19.36(b) – On incentive (i)-(ii).
[246] FMN, paragraph 19.32(b)(i).
[247] FMN, paragraph 19.32(b)(ii).
[248] FMN, paragraphs 19.32(b)(iii), 19.36(b) – On incentive (iii).
[249] FMN, paragraphs 19.32(b)(iv), 19.36(b) – On incentive (iii).
[250] FMN, paragraphs 19.33; 19.36(b) – On incentive (iv), 19.25(d), 19.27.

5.3.3.2.2 CMA's assessment

5.3.3.2.2.1 Business strategy

181. The CMA has considered a range of evidence to understand the Merged Entity's future behaviour from the Parties' past conduct, business strategy and deal rationale,[251] including the Parties' internal documents and third-party evidence.

182. As set out in Theory of Harm 1 (Section 5.3.1.2.2.1), the CMA considers that part of the rationale for the Merger is that Carlsberg aims to grow its relationship with PepsiCo. In particular, Carlsberg's internal documents show [✂] for all of PepsiCo's key beverage segments, including full sugar cola, no sugar cola, other CSD flavours, energy, and sports/hydration.[252]

183. At the same time, Carlsberg's internal documents consider cross-selling to the on- and off-trade as part of the Merger rationale, with the aim of becoming the leading multi-beverage operator in the UK and leveraging Britvic's brands more internationally,[253] and discuss [✂].[254] Carlsberg considers that there is an opportunity to cross-sell due to a stronger negotiation position post-Merger from combined scale, utilising strong brands in the portfolio as 'door openers' for selling in less strong brands.[255] Carlsberg's internal documents also note that soft drinks are synergetic with beer throughout the value chain relative to other beverages.[256]

5.3.3.2.2.2 Gains in sales in focal market

184. The CMA's assessment of incentives also considers the extent to which the Merged Entity would gain sales in the focal market when linking the sales of Britvic's soft drinks to Carlsberg's beers/ciders in some way. Those gains will be greater if the Merged Entity has a more attractive offering in the focal market, and if it competes closely with the rivals that may be foreclosed.[257]

185. To first understand the extent to which Carlsberg has an attractive offering in the supply of beers/ciders to the licensed on-trade in GB, the Parties submitted share of supply estimates based on industry data collected by the consultancy firm CGA.[258] This dataset showed that Carlsberg has a material presence in all beer segments (ie a share of supply of more than [5-10]%). However, it is not a market leader in any of them. In particular:

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[251] CMA129, paragraph 7.34(a).
[252] Carlsberg's internal document, Annex RFI02/13.2 to the FMN, '[✂],' 23 September 2024, Sections 3.2-3.3; Carlsberg's internal document, Annex 8.002 to the FMN, '[✂],' 5 March 2024, page17.
[253] Carlsberg's internal document, Annex 8.017 to the FMN, '[✂],' 8 July 2024, page18; Carlberg's internal document, Annex 8.018 to the FMN, '[✂],' 8 July 2024, question 24.
[254] Carlsberg's internal document, Annex 8.006 to the FMN, '[✂]' 20 March 2024, pages 57-61.
[255] Carlsberg's internal document, Annex 8.005 to the FMN, '[✂]l,' 11 March 2024, page 17; Carlsberg's internal document, Annex 8.006 to the FMN, '[✂],' 20 March 2024, page 59.
[256] Carlsberg's internal document, Annex 8.001 to the FMN, '[✂],' 5 March 2024, page 14.
[257] CMA129, paragraph 7.34(b).
[258] CGA used a sample of around 5,000 outlets to estimate both the volume and value of sales to the on-trade in GB. The most recent available CGA dataset covered the 52 weeks ending 10 August 2024 (Carlsberg's internal document, AM Annex 13 to the FMN, '[✂],' Unknown Date, page 1; FMN, footnote 77).

(a) Whilst Carlsberg is the second-biggest supplier of premium lager and premium ale to the licensed on-trade in GB, its market share is nonetheless limited in both segments (ie [10-20]% and [10-20]%, respectively). The market leader in premium lager (ie AB InBev) is significantly larger than Carlsberg with a share of supply of [70-80]%. In premium ale, in turn, there are a number of other players (ie Heineken UK, Greene King) that have a similar share of supply as Carlsberg, and this segment is generally more fragmented.[259]

(b) Whilst Carlsberg is the third-biggest supplier of standard lager and standard ale to the licensed on-trade in GB, its share of supply is similarly limited (ie [10-20]%). In both segments, the market leaders are significantly larger than Carlsberg, with Molson Coors having a [30-40]% share in standard lager, Heineken having a [50-60]% share in standard ale.

(c) Carlsberg is the fourth-biggest supplier of world lager to the licensed on-trade in GB, and has a significantly smaller share of supply (ie [10-20]%) than each of the three bigger players Heineken UK ([30-40]%), Molson Coors ([20-30]%), and Asahi UK ([20-30]%). Moreover, the San Miguel brand, which will be distributed in the UK by AB InBev from January 2025, accounts for [✂] in this segment. Therefore, following the transfer of the San Miguel license, Carlsberg's share will be even lower and [✂]%.

(d) Carlsberg is the seventh-biggest supplier of cider to the licensed on-trade in GB, with a share of supply of less than [0-5]%.

186. Consistent with the Parties' share of supply estimates, evidence from third parties indicated that CMBC's beer offering is not seen as being as strong as other major brewers' beer portfolio.

187. Whilst most major national pub chains identified Carlsberg as a supplier of beers and ciders, its competitive strength was rated as significantly lower than Heineken, Asahi, Molson Coors, and AB InBev,[260] with one respondent noting that with the loss of the San Miguel license Carlsberg will have limited brand strength going forward,[261] and another respondent explaining that Carlsberg's beer brands are poor and not a good fit for its pubs.[262] Consistent with this, one third-party wholesaler noted that it cannot see any real attraction to purchase Carlsberg's products as brand strength always wins and new product development within Carlsberg has never been exciting enough.[263]

188. Most brewers considered Carlsberg's strength to be similar to that of other major brewers, including AB InBev, Heineken, and Molson Coors,[264] and in some

[259] See also FMN, paragraph 19.18(c)(iv).
[260] Response to the CMA questionnaire (On-trade customers) from a number of third-parties, October 2024, question 6.
[261] Response to the CMA questionnaire (On-trade customers) from a third-party, October 2024, question 6.
[262] Response to the CMA questionnaire (On-trade customers) from a third-party, October 2024, question 6.
[263] Response to the CMA questionnaire (Wholesaler) from a third-party, October 2024, question 13.
[264] Response to the CMA questionnaire (Brewers) from a number of third parties, October 2024, question 5.

instances, Asahi.[265] However, a number of them noted the transfer of the San Miguel license to AB InBev/BGG from January 2025 with one respondent considering Carlsberg's competitive strength to be 'weak' due to that transfer.[266]

189. The CMA has also considered the extent to which a bundling or tying strategy would result in gains in the focal market in the context of who would most likely be foreclosed. As explained in paragraphs 164-168 above, the most likely targets are Molson Coors, Heineken UK, Budweiser Brewing Group UK&I (ie AB InBev), Greene King, C&C Group, and Asahi. The CMA considers that most of these rivals are vertically integrated (ie own pubs and/or are active in bundled wholesaling) and currently stock Carlsberg's brands,[267] or have other commercial ties with Carlsberg to date (or both).[268] As a result, most of them could threaten to retaliate against the Merged Entity by, for example, delisting Carlsberg's brands or by terminating any other exclusive or outsourced relationships post-Merger. To the extent that these actions would reduce the Merged Entity's gains in the focal products, for example, by leading to losses of Carlsberg lager sales to the free-trade in GB, the threat of retaliation may reduce the Merged Entity's incentive to bundle/tie.

5.3.3.2.2.3 Losses in sales in adjacent market

190. The CMA's assessment of incentives also considered the extent to which the Merged Entity would incur losses in the adjacent market when linking the sales of Britvic's soft drinks to Carlsberg's beers/ciders in some way. Those losses are likely to be greater if many customers of the adjacent product have little interest in purchasing the focal product, and if the merged entity would need to pursue an aggressive strategy, such as by tying sales. These losses may be lower if the merged entity can provide the combined offering on a targeted basis to only those customers who would be likely to accept it.[269]

191. The CMA has considered the extent to which the Merged Entity could pursue a pure bundling strategy as part of the ability assessment in Section 5.3.3.1.2.2 above.

192. Evidence from third parties further suggests that losses in the adjacent market could be significant if customers did not see value in a tied or bundled offering. In particular, respondents noted that, whilst the Merged Entity could propose that on-trade customers purchase Carlsberg and Britvic products, for example by offering below market rates to incentivise them to buy both, it is ultimately the decision of the on-trade customer what to buy and they purchase what they believe will best

[265] Response to the CMA questionnaire (Brewers) from a number of third parties, October 2024, question 5.
[266] Response to the CMA questionnaire (Brewers) from a number of third parties, October 2024, question 5.
[267] Response to the CMA questionnaire (Wholesaler) from a third-party, October 2024, question 14. Note of a call with a third party, October 2024, paragraph 3. Note of a call with a third party, September 2024, paragraph 2.
[268] Note of a call with a third party, October 2024, paragraph 3; Submission from Carlsberg, AM Annex 1 to the FMN, 'Confidential - Contains Business Secrets - ME_7113_24 - Carlsberg-Britvic - Note on Brewer-Wholesaler Relationship (16.10.2024),' 16 October 2024, paragraph 4.2(c).
[269] CMA129, paragraph 7.34(c).

meet the demands of the end consumers, regardless of whether the products originate from the same or a different supplier.[270] A respondent also noted that customers would buy alternative brands if they felt obliged to purchase additional brands that they would not usually purchase.[271]

5.3.3.2.3 Conclusion on Merged Entity's incentive to bundle/tie

193. For the reasons set out above, the CMA considers that the Merged Entity would not have the incentive to link the sales of Britvic's soft drinks to Carlsberg's beers/ciders in some way when supplying beverages to the licensed on-trade in GB.

194. With regards to a pure bundling strategy, the CMA considers that it would likely lead to significant losses of soft drink sales as licensed on-trade customers would buy alternative soft drink brands if they had to purchase Carlsberg's beers/ciders in order to access Britvic's soft drinks. Moreover, the harm that this strategy would cause to Carlsberg's relationship with PepsiCo would directly undermine the rationale for the Merger which is to deepen that relationship and includes volume and net revenue growth targets for all of PepsiCo's key beverage segments.

195. With regards to a mixed bundling strategy, the CMA considers that whilst the Parties clearly intend to engage in some form of cross-selling of their products post-Merger, there is a limit to which the Merged Entity would engage in such behaviour. In particular, given the [✂] compared to its key rivals, including Heineken, Molson Coors and AB InBev, the CMA considers that it would require significant discounts on Britvic's soft drinks to foreclose rival brewers and gain sales in Carlsberg's beers/ciders. Therefore, any potential gains in beer/cider sales revenue would likely be outweighed by the significant losses of soft drink sales revenue from offering discounts, which would similarly undermine the rationale for the Merger.

5.3.3.3 Effect

196. Given the CMA has found that the Merged Entity would not have the incentive to foreclose, the CMA has not considered the effect of such a foreclosure strategy.

5.3.4 Conclusion on Theory of Harm 2

197. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in the supply of beverages to the licensed on-trade in GB.

[270] Response to the CMA questionnaire (On-trade customers) from a third-party, October 2024, question 16. Response to the CMA questionnaire (Soft drinks producer) from a number of third-parties, October 2024, question 10.
[271] Response to the CMA questionnaire (Brewers) from a third party, October 2024, question 7.

6. ENTRY AND EXPANSION

198. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. The CMA will consider entry and/or expansion plans of rivals who do so in direct response to the merger as a countervailing measure that could prevent an SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[272]

199. As the CMA has concluded that the merger does not give rise to competition concerns, it is not necessary to consider countervailing factors in this decision.

7. OTHER THEORIES OF HARM CONSIDERED

200. In this section, the CMA sets out its analysis on the impact of the Merger in relation to a further three non-horizontal competition concerns which were dismissed at an early stage of the investigation:

(a) Conglomerate effects through the integration of the Parties' dispense equipment to the licensed on-trade in GB.

(b) Customer foreclosure in the bundled wholesale supply of beverages to the licensed on-trade in GB.

(c) Conglomerate effects through the linking of soft drinks and beer/cider sales to the off-trade in GB.

201. The CMA assesses each of these concerns in turn below.

7.1 Non-horizontal effects through combining Carlsberg's proprietary beer dispense equipment and Britvic's proprietary soft drink dispense equipment

202. The CMA's investigation elicited some concerns from other competitors and industry bodies at an early stage of its investigation. The CMA has considered these complaints carefully and has assessed the extent to which these concerns were specific to the Merger. The CMA's remit in this investigation is limited to assessing the specific changes brought about by the Merger and its impact on the relevant market(s) and has not assessed complaints unrelated to this remit in this investigation.

203. A few third parties told the CMA that, post-Merger, the Merged Entity may be able to combine Carlsberg's proprietary beer dispense equipment with that of Britvic's proprietary soft drink dispense equipment into a new type of combined dispense system that dispenses both soft drinks and beer.[273] As explained above at

[272] CMA129, paragraph 8.31.
[273] Note of a call with a third-party, October 2024, paragraph 11. Note of a call with a third-party, September 2024, paragraph 6.

paragraphs 31 to 33, currently these two systems are separate with beer dispense equipment provided by the lead brewer and any soft drink dispense equipment provided by the relevant supplier of the soft drinks. The concern from the third parties is that Carlsberg would be able to leverage its market power in either the supply of beer or the supply of soft drinks and drive customers to take a single dispense system for both beer and soft drinks which would foreclose rivals that cannot provide a similar system.

7.1.1 Ability

204. The Parties submitted that Britvic only provides TS and TSE with respect to its own equipment used to dispense soft drinks and that CMBC only provides TS and TSE via Innserve for Carlsberg and Heineken, and on an outsourced basis for third party beverage suppliers.[274] The only soft drink TS and TSE that CMBC provides is [✂].[275]

205. From a technical point of view, the combining of these different dispense systems would be difficult as TSE for beer and cider is designed to dispense ready-to-serve beer and cider from kegs stored in the outlet's cellar whereas TSE for soft drinks involves mixing the drink at the point of dispense.[276] [✂].[277]

206. The CMA did not see any evidence in the Parties' internal documents that discussed the combining of beer and soft drink TSE post-Merger, or any references to the technical feasibility of this. Where the Parties noted synergies through the Merger, this was rather in relation to operational efficiencies such as joint purchasing and increased distribution networks.[278]

207. The CMA received evidence from multiple third parties stating that they did not believe that this combination is technically possible, at least in the near future. They stated that there is limited similarity between the systems for dispensing beer and for those systems that dispense soft drinks[279] and the third parties did not consider that the technology to combine the two dispense systems currently exists or would be technically feasible given the limited overlaps in the technology.[280]

208. Given the above evidence, the CMA does not consider that that the Merged Entity would have the technical ability to foreclose rival soft drink or beer or soft drink providers, through combining Carlsberg's proprietary beer dispense equipment and Britvic's proprietary soft drink dispense equipment.[281] As such, the CMA does

[274] FMN, paragraph 11.28.
[275] FMN, paragraph 11.28.
[276] FMN, paragraph 12.19.
[277] FMN, paragraphs 10.5-10.6.
[278] See paragraphs 110-114 above.
[279] Note of a call with a third party, September 2024, paragraph 6.
[280] Note of a call with a third party, September 2024, paragraph 17.
[281] In SDE Group / Innserve Limited merger inquiry [ME/6908/20] paragraph 66, the CMA has already previously noted that '[t]he CMA understands that the technical expertise required for servicing soft drinks equipment is somewhat different than for beer and cider equipment' and that '[t]hird parties said that, while the skills required were not dissimilar and could be transferable, the technical expertise required to install and maintain the two types of TSE are different as the functionality of the TSE is different (due to soft drinks being mixed at the point of dispense whereas beer, cider and other draught beverages are pre-mixed products).' The CMA has received no evidence that contradicts this in this case.

not consider it necessary here to assess the Merged Entity's incentive here, or the effects on the market.

7.2 Customer foreclosure in the bundled wholesale supply of beverages to the licensed on-trade in GB

209. The concern with a customer foreclosure theory of harm is that the merged entity may use its control of a downstream firm to switch purchases from rivals to itself, and thereby restrict its competitors' access to customers. While a loss of sales by competitors is not problematic in and of itself, and a firm using its own inputs can result in efficiencies, this may be a concern if it would result in these rival suppliers becoming less effective competitors for other customers. The merged entity would then face less competition in the upstream market, resulting in higher prices and lower quality.[282]

210. In the present case, the CMA considered at an early stage of its investigation whether, following the Merger, the Merged Entity's bundled wholesale business would have the ability to disadvantage or foreclose rival suppliers of soft drinks by refusing to purchase soft drinks from them.

7.2.1 Ability

211. The Parties submitted that the Merged Entity would not have the ability to foreclose competing suppliers of soft drinks because:

(a) CMBC is not a sufficiently important customer of soft drinks for suppliers to be foreclosed if CMBC no longer purchased from them. CMBC estimated that its share of supply of soft drinks on a bundled wholesale basis is around [0-5]%.[283]

(b) There are several other important distribution channels for soft drinks suppliers, including national pub chains, other on-trade outlets that are not beer-led or licensed, and large grocery multiples in the off-trade.[284]

(c) There is no likelihood of foreclosing rival international soft drink providers such as Coca-Cola in any case.[285]

212. The CMA considers that Britvic's key rival in the supply of soft drinks to the on-trade in GB is CCEP. As set out in Section 5.3.1.1.2.1, other smaller soft drinks producers apart from CCEP provide a limited constraint. The CMA considers that the extent to which the Merged Entity could restrict CCEP's access to customers is limited as CCEP is the clear market leader in most soft drink segments with a share of supply [✂] as large as Britvic's (see paragraph 87).

[282] CMA129, paragraph 7.23.
[283] FMN, paragraph 18.45.
[284] FMN, paragraph 18.45.
[285] FMN, paragraph 19.14.

213. Consistent with the Parties' submissions, the CMA received evidence from multiple third parties that suggested CMBC does not appear to be an important customer that would account for a substantial proportion of purchases from any of the responding soft drinks producers.[286] Whilst two smaller producers noted that they consider CMBC to be an important route to market for the UK on-trade and raised concerns about customer foreclosure, CMBC only accounted for a limited percentage [0-5]% of their UK on-trade revenue.[287]

214. Consistent with the Parties' submissions, a number of third parties also noted that soft drinks suppliers have a number of other distribution channels and that they could revert to those if CMBC decided to stop buying from them.[288] Specifically, soft drink producers noted that their customer bases are made up of various types of wholesalers, including national and regional brewer wholesalers, mixed (ie food and drink) and specialised on-trade wholesalers, as well as selling directly to on-trade customers.[289] As discussed in paragraph 121, a number of those other wholesalers are significantly larger than CMBC in the bundled wholesale supply of soft drinks specifically, which soft drink producers could revert to. Moreover, whilst one larger producer stated that it expected the Merged Entity to sell products from its own portfolio to the exclusion of competitor products, it noted that the soft drinks market has strong competition and that there are enough routes to market to accommodate products in demand by consumers.[290]

215. Given the above evidence, the CMA does not consider that that the Merged Entity would have the ability to foreclosure competing suppliers. As such, the CMA does not consider it necessary to assess the Merged Entity's incentive, or the relevant effect on the market.

7.3 Conglomerate effects in the supply of beverages to the off-trade in GB

216. The concern with a conglomerate theory of harm is that the merged entity may restrict its rivals in one 'focal' market from accessing customers using its strong position in an 'adjacent' market (see paragraph 135 above).

217. In the present case, the CMA considered at an early stage of its investigation whether, following the Merger, the Merged Entity would have the ability to link the sales of Britvic's soft drinks to Carlsberg's beers/ciders when supplying beverages to the off-trade in GB in such a way that that off-trade customers would stop purchasing from rival brewers, and thereby harm its rivals' competitiveness.[291]

[286] Response to the CMA questionnaire from a number of third parties, October 2024, question 6.
[287] Response to the CMA questionnaire from a number of third parties, October 2024, question 6 and 7.
[288] Response to the CMA questionnaire from a number of third parties, October 2024, question 7 and 11.
[289] Response to the CMA questionnaire from a number of third parties, October 2024, question 2.
[290] Response to the CMA questionnaire from a third party, October 2024, question 11.
[291] CMA129, paragraph 7.33.

7.3.1 Ability

218. The Parties submitted that the Merged Entity would not have the ability to link the sales of beverages in different categories, and would not be able to harm its rivals' competitiveness by doing so, as:

(a) The Merged Entity would not have market power in the adjacent products (ie soft drinks), and there are no 'must have' brands in the Britvic portfolio that the Merged Entity could leverage. The Parties noted that Britvic is the number two soft drinks supplier in the UK, and it also faces strong competition from several rival suppliers across different categories of soft drinks, including from private label alternatives in the off-trade. Further, the Parties submitted that CMBC is [✂] in the supply of beer in the UK behind [✂], and [✂].[292] The Parties said that this is reinforced by the significant countervailing buyer power of off-trade retailers on their suppliers, with retailers being able to 'delist products and switch purchase volumes to defeat suppliers' attempts to increase prices or impose unfavourable commercial terms.[293]

(b) Off-trade retailers want to stock a range of products in each category and would not offer exclusivity to the Merged Entity in beers. Absent that exclusivity, a mixed-bundling strategy would not be able to foreclosure rival brewers.[294]

(c) Off-trade retailers commonly procure food and drink products on a category-by-category basis. As such, the retailers' buyer teams for beer and soft drinks are different and they will resist attempts by suppliers to link the supply of beers and soft drinks.[295]

(d) Scale is not a fundamental requirement to compete in brewing in the UK and this is not a sector where a market could 'tip'. Brewers can and do compete at small and large scale.[296]

219. The Parties' internal documents considered the feasibility of a combined offering in the off-trade as limited due to a relatively low proportion of cross-category buyers in the UK.[297]

220. Consistent with the Parties' internal documents, none of the retailers that responded to the CMA's investigation raised concerns about bundling in the off-

[292] FMN, paragraphs 19.18(c) and 19.25(a).
[293] FMN, paragraph 19.25(a).
[294] FMN, paragraph 19.25(b).
[295] FMN, paragraph 19.25 (c).
[296] FMN, paragraph 19.25 (d).
[297] The Parties contrasted this with the market structure in Norway where CMBC has successfully become a one-stop shop as retailers have integrated these functions, allowing CMBC to gain scale in supplier negotiations and cross-sell less popular brands during joint business planning sessions. Carlsberg's Internal Document, Annex 8.006 to the FMN, '[✂],' March 2024, page 61.

trade.[298] Consistent with the Parties' understanding of their market positions, third parties suggested that whilst CMBC ranks as part of the big four brewers (the others being AB InBev, Heineken and Molson Coors), it is seen as the [✂] brand of standard lagers and ranked as either the third or fourth largest off-trade beer supplier more generally.[299] Further, a few retailers noted that CMBC has lost San Miguel and this will decrease CMBC's brand power.[300] In relation to soft drinks, retailers rated CCEP's soft drink offering, on average, as stronger than Britvic's offering. A number of respondents also described CCEP as the market leader and Britvic the 'number two' with a good, but more limited, brand portfolio than CCEP.[301] Whilst two respondents expected that the Merged Entity will utilise the strength of Britvic's portfolio to promote Carlsberg's beers, both noted that this strategy would have little effect, since the combined offering has limited attractiveness to retailers. This was supported by other retailers who stated they would continue to stock other brands.[302] Consistent with the Parties' submissions, respondents also noted that there are different buying teams for soft drinks and beers, limiting the feasibility of a combined offering.[303]

221. Given the above evidence, the CMA considers that the Merged Entity would not have the ability to link the sales of Britvic's soft drinks to Carlsberg's beers/ciders when supplying beverages to the off-trade in GB, in such a way that off-trade customers would stop purchasing from rival brewers and thereby harm its rivals' competitiveness. As such, the CMA does not consider it necessary to assess the Merged Entity's incentive, or the relevant effect on the market.

[298] Further, a number of off-trade respondents] noted that, in fact, they expect the Merger to create efficiencies with cost savings to be passed onto consumers. Response to the CMA questionnaire from a number of third parties, October 2024, question 8.
[299] Response to the CMA questionnaire from a number of third parties, October 2024, question 6.
[300] Response to the CMA questionnaire from a number of third parties, October 2024, question 6.
[301] Response to the CMA questionnaire from a number of third parties, October 2024, question 3.
[302] Response to the CMA questionnaire from a number of third parties, October 2024, question 7.
[303] Note of a call with a third party, September 2024, paragraph 8 and 9. Note of a call with a third party, October 2024, paragraph 11 and 12.

DECISION

222. 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 United Kingdom.

223. The Merger will therefore not be referred under section 33(1) of the Act.

Oliver Norden
Director, Mergers
Competition and Markets Authority
17 December 2024