



Determination M/05/027 of the Competition Authority, dated 23rd August 2005, under Section 21 of the Competition Act, 2002 –

Notification M/05/027 - Proposed acquisition by M & J Gleeson and Company of certain assets of United Beverages Sales Ltd.

Introduction

1. On 2nd June 2005, the Competition Authority (“the Authority”), in accordance with Section 18(1) of the Competition Act, 2002 (“the Act”), was notified, on a mandatory basis, of a proposal whereby M & J Gleeson and Company (“MJG”) would purchase the wholesale alcoholic and non-alcoholic beverage distribution business of United Beverages Sales Ltd. (“UBS”), other than its national wine distribution business and its wholesale distribution of alcoholic and non-alcoholic beverages in the Dublin region. The Notification was filed solely by MJG.
2. The Authority did not receive submissions from any third-parties regarding the Notification.

The Parties

3. MJG, the acquirer, is a wholly owned subsidiary of M & J Gleeson (Investments) Limited which, is, in turn, wholly owned by M & J Gleeson (Holdings), a company incorporated with unlimited liability in the State. MJG’s principal place of business is located at 15 Cherry Orchard Estate, Ballyfermot, Dublin10.
4. MJG is active in the manufacture, wholesale and distribution of soft drinks, mineral water, and alcoholic beverages in Ireland. With respect to its wholesale and distribution business, the products distributed by MJG include essentially a full range of beverage products, including, on the alcoholic side, packaged beers, wines, and spirits. In this regard, MJG can be considered to be a “one stop shop” distributor to both the on-licence trade (e.g., pubs, hotels, restaurants, and cafeterias) as well as the off-licence trade. The geographic scope of MJG’s alcoholic and non-alcoholic beverage wholesaling and distribution business can be considered nationwide, although certain portions of the country are not currently serviced by MJG.
5. In 2004, MJG had turnover attributable to its alcoholic and non-alcoholic beverage wholesale and distribution business in the State of approximately €[100-150] million.
6. As noted above, MJG is acquiring UBS’s alcoholic and non-alcoholic beverage wholesale and distribution business, excluding the Dublin Wholesale Region (as defined below) and its national wine distribution business.

7. UBS is active in the wholesale and distribution of alcoholic and non-alcoholic beverages. UBS employs approximately 220 people in the State and had a total turnover of approximately €[150 – 200] million in 2004/05, having its principal place of business at Nangor House, Nangor Road, Dublin 12, Ireland. The value of the business being sold to MJG is approximately €[50-100] million.
8. Ultimately, UBS is an indirect subsidiary of Diageo plc (Diageo Ireland and Diageo plc are collectively referred to herein as “Diageo”). Diageo is globally active in the production, distribution, marketing, exporting and importing of spirits and wine. Diageo owns a number of spirits brands such as “Smirnoff” vodka, “Johnnie Walker” Scotch whisky, “Baileys” cream liqueur and “Captain Morgan” rum. Diageo also brews, markets and distributes beer globally, including “Guinness” stout, “Kilkenny Irish Beer” and “Harp” larger.

The Notified Transaction

9. The transaction that is the subject of the Notification involves the acquisition by MJG of the wholesale distribution business of packaged beers¹, soft drinks, mineral water, cider and spirits of UBS in the State, excluding the “Dublin Wholesale Region”.²
10. The assets to be sold as part of the proposed transaction include UBS’s customer lists and goodwill as well as UBS’s beverage distribution depots located in New Ross (Co. Wexford), Portlaoise (Co. Laois), Oranmore (Co. Galway) and Little Island (Co. Cork) as well as all stock, plant, machinery, fixtures, fittings, equipment, furniture and office equipment situated at these properties and at UBS’s Limerick depot. The sale of the Limerick depot is not included in the transaction.
11. UBS also operates a wine distribution business trading as Gilbeys Wines. The sale of the Gilbeys Wine business is not included in the proposed transaction.
12. After the proposed transaction is consummated, UBS will continue to operate as a going concern, operating an alcoholic and non-alcoholic wholesale distribution business both in the Dublin Wholesale Region and with respect to the Gilbeys Wine, a national business.
13. According to MJG, the proposed acquisition will improve the breadth of MJG’s distribution network in the State. MJG currently does not have any depots in the west of Ireland, in the midlands, or in the Southeast and views the proposed transaction as a means of entering these markets. Diageo, the ultimate parent of UBS cites various reasons for the sale of

¹ The proposed transaction does not include distribution of draught alcoholic beverages to the on-trade (e.g., public houses etc.) as this is supplied by the manufacturers themselves. As used herein, “off-trade” refers to establishments in which alcohol purchased must be consumed off the premises (e.g., off-licences). “On-trade”, on the other hand, refers to establishments in which alcohol can be consumed on the premises (e.g., a public house or “pub”).

² For the purposes of the notified transaction, the “Dublin Wholesale Region” means and includes Dublin City and County and Counties Kildare, Louth, Monaghan, Meath and Wicklow. UBS will retain their wholesale distribution business in the Dublin Wholesale Region.

UBS, with a principal focus on the downturn in its revenues from their wholesale distribution business due in part to a lack of manufactured and/or "own" (exclusive) products.

Relevant Markets

Product market

14. The activities of MJG and UBS overlap within the State since both parties are involved in the wholesale and distribution of alcoholic and non-alcoholic beverages.
15. In the Notification, MJG proposed the adoption of the Authority's approach in defining the relevant market in the Authority's 1998 decision involving the merger between Guinness Ireland Group Limited and United Beverage Holdings Limited³ and provided market share information for several formulations of this product market.
16. For example, MJG contended that the relevant product market definition would be the "*wholesale distribution of packaged alcoholic and non-alcoholic beverages*". Alternatively, MJG argued that this definition may, however be widened to include the wholesale distribution of wines and spirits.
17. MJG argued that its competitors included other national, regional, and local alcoholic and non-alcoholic beverage distributors and wholesalers as well as non-alcoholic only beverage distributors such as Coca-Cola Bottlers Ireland (CCBI). More particularly, MJG submitted that CCBI, GlaxoSmithKline ("GSK"), and wholesalers commonly referred to as "cash & carries" are competitors in the market for distribution of alcoholic and non-alcoholic beverages. Based on MJG's view of the relevant market, it would have a market share of approximately [10-15]%.
18. By contrast with the formulations of the relevant product market as contended by MJG, the Authority has identified at least three product markets at issue in the proposed transaction, each of which has a substantial competitive influence on the others.⁴ The Authority points out that a more accurate rendering of the competitive landscape would show the existence of a "one stop" distributor of both alcoholic and non-alcoholic beverages, with non-alcoholic only and alcoholic only distributors exerting some level of competitive influence on the "one stop" distributors.
19. The three markets considered by the Authority are:

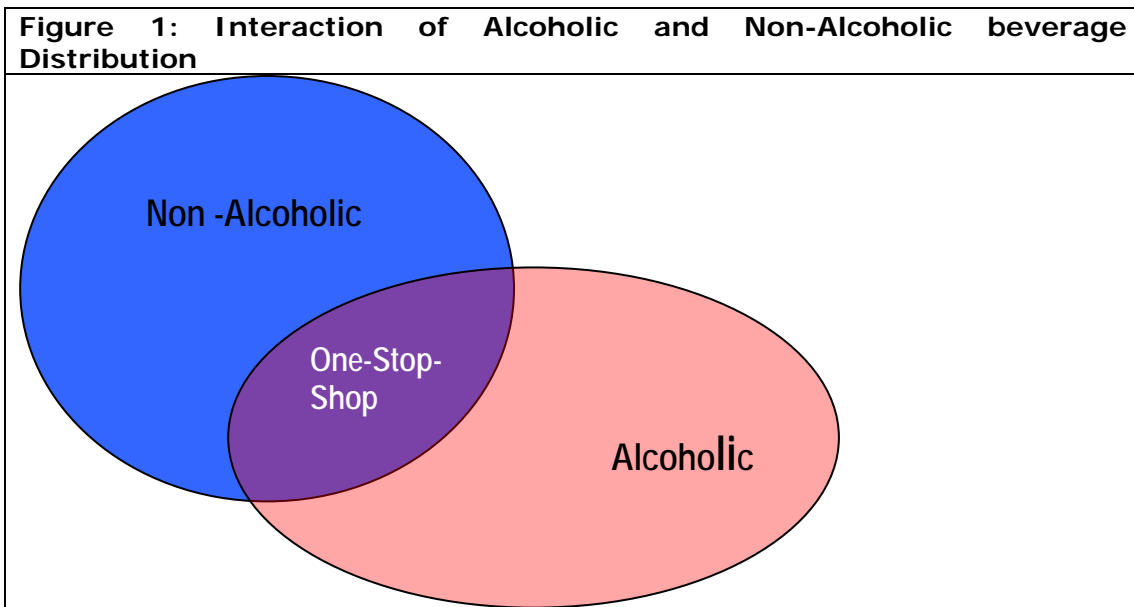
³ Competition Authority Decision of 17th June 1998 relating to the merger of Guinness Ireland Group Limited/ United Beverages Holdings Limited.

⁴ Moreover, the Authority disagrees with MJG's contention that a wholesaler/distributor of non-alcoholic beverages such as soft drinks and mineral waters is, from a demand side, a substitute for distribution and wholesaling services of alcoholic beverages such as packaged beers and spirits. While, from a supply-side substitutability perspective, it is theoretically conceivable that the non-alcoholic distributors could become either a "one stop" distributor (i.e., distributing alcoholic and non-alcoholic beverages) or an alcoholic beverages-only distributor, the Authority does not view this as a likely scenario for many of these non-alcoholic beverage distributors. Specifically, the business models of these types of distributors are quite different.

- a) combined alcoholic and non-alcoholic beverage wholesaling and distribution (i.e., a “one-stop” shop solution);
- b) alcoholic beverage wholesaling and distribution only; and
- c) non-alcoholic beverage wholesaling and distribution only.

The Authority considers that all three product markets identified above, are interacting and interrelated product markets operating within the State.

20. Schematically, a simplified way of viewing the relationship of these three distinct, albeit interrelated, markets would be as follows:



21. Further to the Authority’s investigations, the Authority concluded that GSK is only responsible for the wholesale distribution of the non-alcoholic beverages Lucozade and Ribena in Ireland. Similarly, the Authority considers that CCBI has a negligible existence in the market for alcohol distribution. It is, however, a significant distributor of non-alcoholic beverages in the State.

22. While the Authority does not consider non-alcoholic only wholesalers to be a substitute for “one stop shop” wholesalers (alcoholic and non-alcoholic), the products are not completely independent of each other and are inter-related through the various complexities of the industry, and to some degree act as a constraint on each other. In particular non-alcoholic only wholesalers can act as a constraint on “one stop shop” wholesalers. For example, a significant proportion of MJG’s business (approximately []% of revenue) arises from its manufacture and distribution related sales of non-alcoholic beverages.⁵

23. Given the interrelationships among the three markets, it would appear that non-alcoholic only beverage distributors, while not a substitute for the one-stop shop distributors such as MJG and UBS, nevertheless distribute

⁵ Likewise alcoholic only distributors can act as a constraint on “one stop shop” distributors of both alcoholic and non-alcoholic beverages.

many similar products in common. Accordingly, the Authority believes that non-alcoholic only beverage distributors such as Coca-Cola Ireland and GSK would be likely to have a discernible level of influence upon the behaviour of MJG after the consummation of the transaction in the distribution of both alcoholic and non-alcoholic beverages.

Geographic market

24. The geographic scope of the alcoholic and non-alcoholic beverage wholesaling and distribution business covers the entire country, given the areas of coverage of the competitors identified in this market.
25. However, the Authority notes that discrete areas of the country are not currently serviced by either MJG or UBS and testimony from the acquiring party suggests that a practicable radius of supply from its distribution depot for a wholesaler is generally 60 miles. Furthermore, there are varying levels of competition in smaller discrete geographical areas between the larger national wholesalers and local distributors and also from wholesaler/distributors in neighbouring counties who would be willing to supply customers.
26. With respect to the proposed acquisition the Authority has examined the impact on competition in these local sub-markets.

Competitive Analysis

Market Shares

27. Focusing only on the market for wholesale distribution of both alcoholic and non-alcoholic beverages, there are five large-scale national distributors - C&C, Nash, Comans, MJG, and UBS. From the parties' respective submissions, C&C would still be the largest in the market after the consummation of the proposed transaction.⁶
28. The Authority considered that the exclusion of non-alcoholic only distributors, cash and carries and the UBS Dublin wholesale region represents a more accurate formulation of the market in which the merged entity operates. This is set out in Table 1 where the market share of the merged entity would be [25-30]%. In this formulation of the market C&C remain the largest player with approximately 56% of the market.

Distributor⁷	Estimated Share: Pre-transaction	Estimated share: Post-transaction
MJG	[20-25]%	[25-30]%
UBS	[0-5]%	
Showerings	10.7%	10.7%

⁶ Taking the distribution of alcoholic only products into account (except for direct supply of draught beverages from manufacturers), the size of the market in the State is estimated to be between €1-€1.2 billion.

⁷ These figures include MJG's, UBS's, and C&C's respective alcoholic and non-alcoholic volumes.

C&C	55.7%	55.7%
Comans	2.9%	2.9%
Nash/Western Beverages	3%	3%

Changes in the beverages distribution sector

29. In its investigation, the Authority determined that there has been a sustained decline in the wholesale business for various reasons including an increase in central warehousing of the multiples, an increase in “symbol groups”, the importance of having “own brands”, the high level of consolidation of smaller operators in the industry and also legislative changes.
30. Due to the introduction of central warehousing and the direct supply by manufacturers to the large multiples such as Tesco, multiples now have their own central warehousing and, as a result, increasingly no longer use independent wholesalers such as UBS or MJG. This conclusion was supported by the testimony of UBS’s Managing Director and various other sources contacted by the Authority. The decline has been further compounded by the increase in popularity of convenience shopping and symbol groups such as Centra which also have their own central warehousing.
31. The Authority also took into account UBS’s assertions on the importance of “own (exclusive) brands”, which are brands which certain wholesalers “own” the rights to, or else produce themselves. In his testimony, UBS’s Managing Director noted that having access to “own brands” is crucial for any wholesaler. Specifically, having its “own brands” enables a wholesaler to distribute their own manufactured goods not only to customers in the on and off trade but also to other wholesale distributors, multiples and “cash & carries”.
32. Until 2004, UBS had the Finches’ brand as its “own brand” which was then sold to MJG. Also, UBS had Becks beer as its “own brand” but subsequently lost the distribution rights. As a result of the sale or losses of these brands, UBS no longer distributes an “own brand”⁸ product and states that it has suffered detrimentally. MJG, in contrast, has a number of “own brands” including Finches and Tipperary Water on the non-alcoholic side and cider and cream liqueur products on the alcoholic side.
33. UBS also submitted that recent legislative changes have had an adverse affect on its business. For example, it cites changed conditions as resulting in a downturn in distribution to the on-trade and an increase in distribution to the off-trade.

Competition in the beverages distribution

34. The Authority conducted a survey of certain large customers of MJG and UBS to determine the effects of price changes, the ease of switching, and the level of the competition in the industry.

⁸ Examples of “own brands” distributors by other competitors would include C&C’s product “WKD” cider and Coman’s product “Dutch Gold” beer.

35. Calls to selected UBS and MJG customers conducted by the Authority revealed that if customers were faced with a 5-10% increase in the price of products of MJG and UBS, the customers would be in a position to move to another wholesaler/distributor. As a general matter, customers replied that they would be in a position to switch to other distributors, either local wholesalers or other regional/national distributors (e.g., C&C, Nash's, or Comans).
36. The Authority's survey also revealed that there is a high level of competition in smaller geographical areas from local distributors and also from wholesaler/distributors in neighbouring counties who would be willing to supply customers. In testimony to the Authority, MJG's Managing Director stated that a practicable radius of supply from its distribution depot for a wholesaler is generally 60 miles.
37. The Authority also examined the ease of switching by customers of wholesalers and distributors. A significant majority of customers stated that they could easily and quickly switch wholesalers/distributors without any cost or disruption to their businesses.
38. Importantly, a significant amount of the customers contacted indicated that all beverages were readily available to both the "on" and "off" trades and that they did not foresee any significant issues with the proposed transaction.
39. Taken as a whole, it would appear that the level of competition in the beverages distribution market in the State would tend to minimise any deleterious unilateral or coordinated effects that would stem from the consummation of the proposed transaction.⁹

Barriers to entry

40. With regards to regulatory barriers to entry, wholesalers of beer, wines and spirits must obtain a licence from The Revenue Commissioners. From information provided by The Revenue Commissioners, it would appear that the process of obtaining or renewing such a licence does not pose a significant entry barrier.
41. The Authority also examined whether there are any barriers in the form of exclusive purchase orders. This does not occur in the industry as all wholesalers appear to have access to the major "must-stock" brands, and base their orders on customer demand and not what is supplied to them by the wholesalers.

⁹ During 1998 and 1999, the Authority conducted an investigation into the packaged beer and soft drinks wholesale distribution trade in Ireland. As a result of that investigation, the Authority instituted proceedings against each of the merging parties to the proposed transaction alleging that UBS and MJG had, along with a number of other undertakings, engaged in practices that breached section 4(1) of the Competition Act, 1991 (as amended). The Authority's allegations related to agreements or concerted practices regarding the prices at which the merging parties sold packaged beer and soft drinks to licensed premises and off-licences and to the exchange of information regarding the Defendants' pricing and discounting policies.

Shortly after the filing of the Notification, each of MJG and UBS (and certain affiliated companies) entered into settlement discussions with the Authority. UBS (and its affiliated companies) settled the matter prior to the issuance of the Determination. MJG settled the matter shortly after the Authority's Determination.

42. The Authority identified the only potential barrier to entry for a new competitor to be building up a strong customer base, as many customers have long-standing relationships and a great deal of goodwill built up with individual wholesalers.

Portfolio effects

43. The Authority considered whether the proposed transaction would lead to anti-competitive portfolio effects¹⁰ by Diageo and MJG, for example by refusing to supply a particular product(s) to a customer who is not willing to buy a certain range of products.

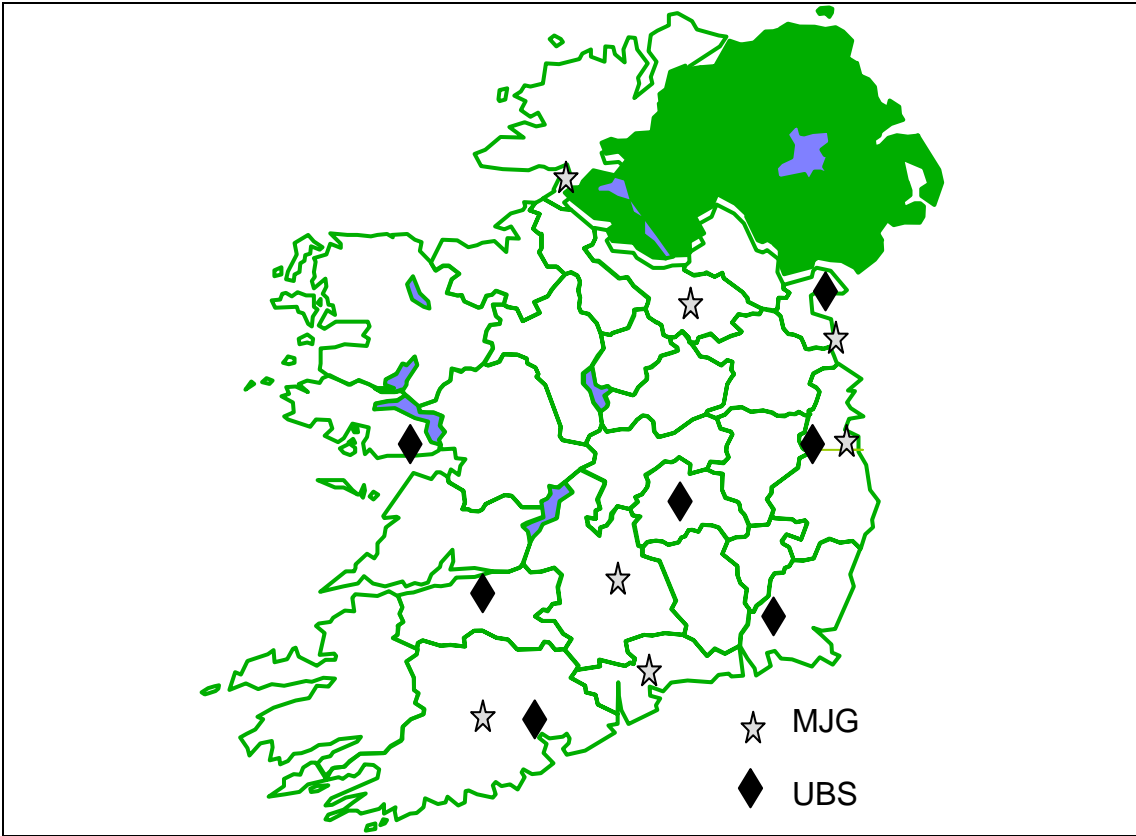
44. The Authority considers that the proposed transaction is unlikely to lead to anti-competitive portfolio effects. From the Authority's customer calls, the Authority established there is no past evidence of tying occurring in the industry and is highly unlikely to happen in the future due to the presence of other wholesalers in the market. Additionally, all wholesalers had a full portfolio of beverages, and there was no element of exclusive distribution of certain popular brands in the market detected.

Overlapping Distribution Depots of MJG and UBS in County Cork

45. With respect to overlapping physical activities of MJG and UBS in Ireland, it appears that both MJG and UBS have depots that overlap in only one area, namely in County Cork. MJG is located in Macroom, Co. Cork while UBS has a depot in Cork City. The following map illustrates the location of the two companies' respective distribution depots in the State.

Figure 2: UBS and MJG Distribution Depots

¹⁰ See Competition Authority Merger Guidelines pp. 29-30.



46. The Authority examined in more detail the Cork region. Table 2 illustrates further market share information received by the Authority from MJG).

Table 2: Wholesale Distribution of Alcoholic and Non-Alcoholic Beverages- Cork region.

Distributor ¹¹	Estimated Share: Pre-transaction	Estimated Share: Post-transaction
UBS	[15-20]%	[0-5]%
C&C Wholesale (Cork city)	18%	19%
Nash Beverages	10%	10%
MJG	[0-5]%	[15-20]%

47. According to testimony of MJG's Managing Director, there are approximately 5 competitors of significance serving the Cork region with an additional number of operators (both wholesalers and resellers of varying size and influence) supplying local markets. Three of the largest national operators (namely C&C, Nash, and UBS) are located in Cork City

¹¹ Various other smaller wholesalers are present in the market including Barrys of Mallow (8%), O'Connor Wholesale (1.5%), Killarney Mineral Water (4%), Nash Beverages-Limerick (2%), Galvins Wholesale Cork (1.5%), and Aqua Blue, Cork City (1%). It is important to note that, in many instances, these distributors may actually in effect be sub-distributors of the five national distributors. All figures in relation to market share in the Cork region were submitted by MJG.

whereas MJG is located outside the city in Macroom. In addition, there are large regional players in the form of Barry's of Cork and Kelly's of Tipperary.

48. The Authority contacted several customers of UBS in the Cork region. Customers expressing a view indicated that they were unconcerned about the proposed transaction due to the presence of other wholesalers in the area. For example, one customer stated there were various competitors in the area ranging from other national wholesalers such as Nash and C&C to smaller local wholesale distributors such as West Cork Bottlers.

Proposal made by MJG regarding future acquisitions

49. While, *prima facie*, it appears that, after consummation of the proposed transaction, there would be sufficient competition both nationally and in the Cork region (where MJG and UBS both have distribution depots) to act as a competitive check on MJG, the Authority was concerned about future acquisitions by MJG in the alcoholic and non-alcoholic beverages wholesale distribution industry. In particular, the Authority was concerned about future transactions by MJG in the Cork region (due to the overlap highlighted at paragraph 46, *supra*) and in the Dublin region (due to the exclusion of these assets from the notified transaction) that would not be notifiable under the thresholds set forth in Section 18(1) of the Act.
50. In order to assuage the Authority's concerns, MJG made the following proposal regarding its future acquisitions in the Cork and Dublin regions.

"For five years from the date on which its proposed acquisition of certain assets of United Beverage Sales Limited is put into effect, M. & J. Gleeson and its affiliated companies will inform the Competition Authority in writing in advance of all proposed mergers or acquisitions of any wholesale distributor of alcoholic or non-alcoholic beverages based in one or more of the following regions, Cork City and County; Dublin City and County; and counties Kildare, Louth, Monaghan, Meath and Wicklow; in which it is the proposed acquirer and will notify such transactions to the Authority under Section 18 (3) of the Competition Act, if and when requested to do so by the Authority."

51. The proposed transaction will not substantially lessen competition given the large amount of competitors (both local and national), as well as the relative ease of entry (notwithstanding the importance of "reputational" barriers to entry) into the market for new competitors. The proposal submitted by MJG gives the Authority an opportunity to assess future mergers or acquisitions by MJG to determine whether any increase in market power would result in a detriment to consumers.
52. Consequently, the Authority accepts the proposal, takes it into account in making this determination, and confirms that it forms part of the basis of this determination, pursuant to Section 20(3) of the Act.
53. The proposal submitted by MJG is deemed to take effect and become binding on the merged entity as and from the date of this determination.

Determination

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002 ("the Act"), and having taken into account the proposal made by M & J Gleeson and Company in accordance with Section 20 (3) of the Act, has determined that, in its opinion, the result of the proposed transaction will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the proposed transaction may be put into effect subject to the following:

"For five years from the date on which its proposed acquisition of certain assets of United Beverage Sales Limited is put into effect, M. & J. Gleeson and its affiliated companies will inform the Competition Authority in writing in advance of all proposed mergers or acquisitions of any wholesale distributor of alcoholic or non-alcoholic beverages based in one or more of the following regions, Cork City and County; Dublin City and County; and counties Kildare, Louth, Monaghan, Meath and Wicklow; in which it is the proposed acquirer and will notify such transactions to the Authority under Section 18 (3) of the Competition Act, if and when requested to do so by the Authority."

For the Competition Authority

Edward Henneberry
Member of the Competition Authority

Paul Gorecki
Member of the Competition Authority

Declan Purcell
Member of the Competition Authority