



## Public Competition Assessment

18 May 2020

### Asahi Group Holdings – proposed acquisition of Carlton & United Breweries

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#### The ACCC's decision

1. On 1 April 2020, the ACCC announced its decision not to oppose the proposed acquisition by Asahi Group Holdings, Ltd (**Asahi**) of Carlton & United Breweries (**CUB**), the Australian business of Anheuser Busch InBev SA/NV (**AB InBev**) (the **proposed acquisition**), after accepting section 87B undertakings from Asahi (**Asahi Undertaking**) and AB InBev (**AB InBev Undertaking**).
2. The ACCC considered that the undertakings sufficiently addressed its competition concerns such that the proposed acquisition would not be likely to contravene section 50 of the *Competition and Consumer Act 2010* (the **Act**). Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
3. The ACCC considered the competitive effects of the proposed acquisition in the following markets:
  - the supply of cider in Australia,
  - the supply of beer in Australia,
  - the supply of non-alcoholic products in Australia, and
  - the supply of spirits in Australia.
4. The ACCC considered that without the divestments of the Strongbow, Bonamy's and Little Green cider brands and the Stella Artois and the Beck's beer brands, the proposed acquisition would or would be likely to substantially lessen competition in the cider and beer supply markets.
5. This Public Competition Assessment outlines reasons for the decision by the ACCC not to oppose the proposed acquisition, taking into account the undertakings.

6. Please note that this and other public competition assessments are subject to the following qualifications:
- The ACCC considers each transaction on a case-by-case basis. The analysis and decision outlined in one assessment will not necessarily reflect the ACCC's view of another transaction, even where that other transaction may involve the same or a related market.
  - As assessments are brief and do not refer to confidential information provided by the parties or other market participants, assessments do not necessarily set out all of the issues and information considered by the ACCC, nor all of the analysis and reasons of the ACCC.

## **The parties and the transaction**

### The acquirer: Asahi

7. Asahi produces and supplies alcoholic beverages, soft drinks and food products in Japan and internationally. In Australia, Asahi manufactures and supplies a range of international and domestic beer, cider and spirits brands, including:
- Beer – Asahi Super Dry, Asahi Soukai, Peroni, Cricketers Arms, Pilsner Urquell, Grolsch, Mountain Goat, Green Beacon and Two Suns.
  - Cider – Somersby (under licence from Carlsberg).
  - Spirits – Nikka Whisky, Vodka Cruiser, Woodstock Bourbon, Mist Wood Gin, Untold Spiced Rum, Tequila Blu, and Spicebox Whisky.
8. Asahi also supplies a portfolio of non-alcoholic beverages (including Schweppes, Pepsi, Mountain Dew, Solo, Sunkist, and Passiona), and a number of water, cordial, sports, juice and iced tea brands.
9. Asahi's main brewery is located in Laverton, Victoria. It also has the smaller Mountain Goat brewery in Richmond (Victoria), Green Beacon brewery in Geebung (Queensland) and the Green Beacon brewpub in Teneriffe (Queensland). Asahi bottles and distributes Somersby cider products at the Laverton brewery.

### The target: CUB

10. CUB is owned by the Belgium-headquartered, multinational brewing company AB InBev. AB InBev acquired CUB from SABMiller in October 2016. CUB is a Victorian-headquartered Australian brewing company, which produces a range of beer, cider and spirit brands, including:
- Beer – Great Northern, Victoria Bitter, Carlton Draught, Carlton Dry, Cascade Premium, Pure Blonde, Matilda Bay, Melbourne Bitter, Crown Lager, Pirate Life, 4 Pines, Foster's Lager, Reschs and Balter.
- (CUB also imports or manufactures and then distributes a range of other beer brands under licence, including Goose Island, Corona, Stella Artois, Belle-vue, Hoegaarden, Leffe, Beck's, Lowenbrau, Spaten and Budweiser).

- Cider – Strongbow, Mercury, Bonamy’s, Little Green, Lumber Yak and Pure Blonde Cider.

(CUB also manufactures and distributes Bulmers under licence from Heineken).

- Spirits – Cougar, Black Douglas, Lexington Hill, Karloff, Continental Liqueurs, Coyote and Prince Albert.

11. CUB produces both beer and cider at CUB plants located at Abbotsford (Victoria), Yatala (Queensland) and Cascade (Hobart, Tasmania). The CUB plants 4 Pines (New South Wales), Pirate Life (South Australia) and Balter (Queensland), produce beer but not cider.

### The transaction

12. On 19 July 2019, Asahi announced that it had entered into a Sale and Purchase Deed with AB InBev, to purchase CUB for A\$16 billion, by way of an acquisition of shares.
13. As part of the proposed acquisition, Asahi will acquire the right to supply and distribute some AB InBev products in Australia.

### Review timeline

14. The following table outlines the timeline of key events for the ACCC in this matter.

Date	Event
23 August 2019	ACCC commenced informal review under the Informal Merger Review Process Guidelines.
12 December 2019	ACCC published a Statement of Issues outlining preliminary competition concerns.
28 February 2020	ACCC commenced market consultation on proposed s87B undertaking.
1 April 2020	ACCC announced it would not oppose the proposed acquisition, subject to section 87B undertakings accepted by the ACCC.

15. The total elapsed time from start to finish was approximately seven months. However, the total period net of time taken by the parties to submit information or documents was 142 business days.

### Market inquiries

16. The ACCC conducted market inquiries with a range of industry participants, including competitors, customers, industry bodies and other interested parties. Submissions were sought in relation to the substantive competition issues and the Asahi Undertaking.<sup>1</sup>

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<sup>1</sup> Consultation was not required on the AB InBev Undertaking as the objective of the AB InBev Undertaking is to require AB InBev to promptly facilitate, and not unreasonably withhold its consent to, the disposal of the divestiture businesses to an ACCC-approved purchaser pursuant to the Asahi Undertaking.

## Statement of Issues

17. On 12 December 2019, the ACCC published a Statement of Issues on the proposed acquisition identifying a number of competition concerns. In the Statement of Issues, the ACCC stated its preliminary view that the proposed acquisition:
- is likely to substantially lessen competition in the supply of cider products in Australia due to significant consolidation in the cider market,
  - may substantially lessen competition in the supply of beer products in Australia due to the removal of Asahi as a vigorous and effective competitor in the beer market, and
  - is unlikely to substantially lessen competition in the supply of spirits and the bundling of alcoholic and non-alcoholic products in Australia.

## Industry background

18. The parties provide wholesale supply to a range of distributors and retailers. Retailers are generally described as either 'on- premise' (for example, pubs, restaurants) or 'off-premise' (for example, bottle shops), according to whether or not alcohol is consumed at the place of sale.
19. In general, off-premise retailers focus on selling packaged alcohol (bottles/cans), whereas on-premise venues sell packaged alcohol and/or alcohol from kegs.

## Other industry participants

20. Lion Pty Limited (**Lion**) is a beverage and food company that operates in Australia and New Zealand, and a subsidiary of Japanese beverage company, Kirin. Lion produces a range of beer, wine, cider and ready to drink (**RTD**) products.
21. Coopers Brewery Ltd (**Coopers**) is based in South Australia and produces a range of beers, ciders, home brews and malt extracts.
22. Coca-Cola Amatil Limited (**CCA**) manufactures and supplies a range of alcoholic and non-alcoholic beverages in Australia and the Asia-Pacific region, including beer and cider products.
23. There are also a large number of independent craft brewers of varying sizes in Australia. Some of the larger craft brewers with a national presence include Stone & Wood, Gage Roads Brewing Co, Colonial Brewing and Young Henrys. There are currently around 600 independent craft brewers that operate in Australia. Many of these craft brewers only produce small volumes and distribute their product in their local area.
24. Major off-premise liquor retailers (such as Coles owned Liquorland and Woolworths owned BWS and Dan Murphy's) also supply private label beer and cider products produced for them via contract brewing arrangements. Some retailers also have exclusive arrangements to sell international brands.

25. **Table 1** below provides an overview of most of the main beer and cider brands in Australia. It is not a comprehensive list of all beer and cider brands. The brands are listed against the broad industry categories commonly used in the industry.

**Table 1: Cider and beer brands**

Asahi	CUB	Lion	Coopers	CCA	Private label (examples)
<b>Cider</b>					
<ul style="list-style-type: none"> <li>• Somersby</li> </ul>	<ul style="list-style-type: none"> <li>• Bonamy's</li> <li>• Bulmers</li> <li>• Little Green</li> <li>• Lumber Yak</li> <li>• Mercury</li> <li>• Pure Blonde Cider</li> <li>• Strongbow</li> </ul>	<ul style="list-style-type: none"> <li>• 5 Seeds</li> <li>• James Squire</li> <li>• Kirin Cider</li> <li>• Pipsqueak</li> </ul>	<ul style="list-style-type: none"> <li>• Thatchers Cider</li> </ul>	<ul style="list-style-type: none"> <li>• Angry Orchard</li> <li>• Magners</li> <li>• Pressman's cider</li> <li>• Rekorderlig</li> </ul>	<ul style="list-style-type: none"> <li>• Castaway Cider</li> <li>• Mr Finch Cider</li> <li>• Renberg Swedish Cider</li> <li>• Steamrail Cider</li> <li>• Storm Brewing Co Apple Cider</li> </ul>
<b>Beer</b>					
<b>"Premium international beer"</b>					
<ul style="list-style-type: none"> <li>• Asahi Soukai</li> <li>• Asahi Super Dry</li> <li>• Grolsch</li> <li>• Peroni</li> <li>• Pilsner Urquell</li> </ul>	<ul style="list-style-type: none"> <li>• Beck's</li> <li>• Belle-vue</li> <li>• Budweiser</li> <li>• Corona Extra</li> <li>• Corona Ligera</li> <li>• Franziskaner</li> <li>• Hoegaarden</li> <li>• Leffe</li> <li>• Lowenbrau</li> <li>• Negra Modelo</li> <li>• Pacifico Clara</li> <li>• Spaten</li> <li>• Stella Artois</li> </ul>	<ul style="list-style-type: none"> <li>• Amstel</li> <li>• Birra Moretti</li> <li>• Guinness</li> <li>• Heineken</li> <li>• Kilkeny</li> <li>• Kirin</li> <li>• Steinlager</li> </ul>	<ul style="list-style-type: none"> <li>• Carlsberg</li> <li>• Fix Hellas</li> <li>• Kronenbourg</li> <li>• Mythos</li> <li>• Sapporo</li> </ul>	<ul style="list-style-type: none"> <li>• Coors</li> <li>• Fiji Bitter</li> <li>• Miller Genuine Draft</li> <li>• Samuel Adams</li> <li>• Vailima</li> <li>• Vonu</li> </ul>	<ul style="list-style-type: none"> <li>• Hollandia*</li> <li>• Oettinger*</li> <li>• Überbräu*</li> <li>• Royal Dutch*</li> </ul>
<b>"Craft" beer</b>					
<ul style="list-style-type: none"> <li>• Cricketers Arms</li> <li>• Mountain Goat</li> <li>• Green Beacon</li> <li>• Brewing Co.</li> </ul>	<ul style="list-style-type: none"> <li>• 4 Pines</li> <li>• Balter</li> <li>• Goose Island</li> <li>• Matilda Bay</li> <li>• Pirate Life</li> <li>• Yak Ales</li> </ul>	<ul style="list-style-type: none"> <li>• Byron Bay</li> <li>• James Squire</li> <li>• Knappstein</li> <li>• Kosciuszko Pale Ale</li> <li>• Little Creatures</li> <li>• White Rabbit</li> </ul>	<ul style="list-style-type: none"> <li>• Coopers</li> </ul>	<ul style="list-style-type: none"> <li>• Feral Brewing Co.</li> <li>• Yenda</li> </ul>	<ul style="list-style-type: none"> <li>• 3 Pub Circus</li> <li>• Balmain</li> <li>• John Boston</li> <li>• Lorry Boys</li> <li>• Sail &amp; Anchor</li> <li>• Steamrail</li> <li>• Storm Brewing Co</li> </ul>
<b>Other beer</b>					
<ul style="list-style-type: none"> <li>• Two Suns</li> </ul>	<ul style="list-style-type: none"> <li>• Carlton Draught</li> <li>• Carlton Dry</li> <li>• Cascade Premium</li> <li>• Crown Lager</li> <li>• Foster's Lager</li> <li>• Great Northern</li> <li>• Melbourne Bitter</li> <li>• Pure Blonde</li> <li>• Resch's</li> <li>• Victoria Bitter</li> </ul>	<ul style="list-style-type: none"> <li>• Emu</li> <li>• Furphy</li> <li>• Hahn</li> <li>• Iron Jack</li> <li>• James Boag's</li> <li>• Swan</li> <li>• Tooheys</li> <li>• West End Draught</li> <li>• XXXX</li> </ul>	<ul style="list-style-type: none"> <li>• Coopers</li> <li>• Dr Tim's</li> </ul>	<ul style="list-style-type: none"> <li>• Alehouse</li> <li>• Miller Chill</li> </ul>	<ul style="list-style-type: none"> <li>• Bluey</li> <li>• Hammer 'N' Tongs</li> <li>• Maxx</li> <li>• Steersman</li> <li>• Tun</li> </ul>

(\*) Liquor retailer has an exclusive arrangement to sell this international brand.

## Market definition

26. Market definition establishes the relevant fields of inquiry for competition analysis. The ACCC's starting point involves identifying the products actually or potentially supplied by the parties to the acquisition. The ACCC then considers what other products constitute sufficiently close substitutes to provide a significant source of competitive constraint on those products.
27. While the ACCC also considered the markets for spirits and non-alcoholic beverages, the discussion focusses on the cider and beer markets. The ACCC considered that these were the markets in which competitive harm was likely to arise.

### Whether beer and cider are in separate markets

28. The ACCC considered that for the purpose of analysing this proposed acquisition, cider is a relevant product market, separate to beer.
29. In terms of demand-side substitution, the ACCC's investigation showed that while some consumers purchase cider and other types of alcohol such as beer, wine or RTDs, the majority of consumers do not view them as substitutes.
30. The ACCC was provided data indicating that some consumers buy beer and cider products in the same purchase. However, the ACCC was not persuaded that this, of itself, means those products are necessarily substitutes. The concurrent purchase of two products does not mean the two products are substitutes for each other. The relevant issue is whether consumers are likely to switch from one product to another in response to a change in relative price, service or quality.
31. The ACCC noted from market feedback that while some customers may increase their cider consumption in response to an increase in the price of beer, and vice-versa, the substitution was unlikely to be sufficient to indicate that beer and cider are in the same market.
32. With regard to supply-side substitution, the ACCC noted that brewers can use the same packaging line for beer and cider. While this is the case, there are other differences in beer and cider production processes that make changing between beer and cider production costly. These include:
  - production tanks that cannot be easily switched, or at a minimum, require additional cleaning procedures to switch between beer and cider production, and
  - significant time and sunk investment, particularly in marketing, are required to establish profitable cider and beer brands.

### Whether different categories of beer are in separate markets

33. The ACCC noted in its Statement of Issues that it was considering whether there are separate markets for different types of beer (such as "premium international" and "craft" beers) or whether all beer is in the same market.

34. Many industry participants place beer brands into different categories. For example:
- “Premium international beer” brands include Corona (CUB), Stella Artois (CUB), Asahi (Asahi), Peroni (Asahi) and Heineken (Lion).
  - “Craft” beer brands include 4 Pines (CUB), James Squire (Lion), Green Beacon (Asahi), Stone & Wood, Young Henry’s, Gage Roads and Colonial Brewing.
  - Other “classic” beer brands include Carlton Draught (CUB) and Tooheys New (Lion).

Further examples can be seen in **Table 1** above.

35. Following the Statement of Issues, the ACCC analysed the extent to which consumers switched between different categories of beer (demand-side substitution) and the extent to which beer suppliers can switch their production capacity from one beer category to another (supply-side substitution).
36. The ACCC did not reach a concluded view on whether different categories of beer are in the same or separate markets. Consideration of separate category-based markets would not have significantly affected the ACCC’s analysis or its decision to accept the undertakings.

#### Whether on-premise and off-premise are in the same market

37. The ACCC considered that the supply of beer, irrespective of location of purchase (i.e. on-premise or off-premise) or how it is packaged (i.e. packaged in bottles/cans or in kegs) is likely to be a single market. However, the ACCC does recognise that there are some characteristics that are unique to on-premise channels. The same conclusion was reached for cider.

### Competition analysis

38. The ACCC analysed a range of information, including internal documents and financial information from Asahi and CUB. The ACCC also conducted extensive market inquiries with industry participants about the likely effect of both the proposed acquisition and Asahi Undertaking.

#### Competition issues in the cider market

39. Asahi and CUB were the two largest suppliers of cider in Australia. Information received by the ACCC indicated that a combined Asahi and CUB would have a cider market share of approximately 65–70 per cent. Further, a combined Asahi and CUB would supply most major cider brands (in particular Somersby, Strongbow and Mercury), which have high brand awareness among consumers.
40. The next largest cider suppliers in Australia are CCA and Lion, each with approximately 5–10 per cent market share. Market feedback and information considered by the ACCC indicates that cider brands supplied by Lion (for example, 5 Seeds), CCA (for example, Rekorderlig), craft and independent brewers, and private label products compete with the Asahi and CUB brands, but

are not nearly as close competitors as the Asahi and CUB brands are with each other.

41. Moreover, ACCC data analysis and market feedback provided to the ACCC indicated that Strongbow (CUB) and Somersby (Asahi) are likely to be each other's closest competitors. A significant number of consumers appear to switch between Strongbow and Somersby in response to changes in their relative prices.
42. The ACCC considered that the threat of timely and profitable new entry or expansion of sufficient scale would not provide a strong competitive constraint on the combined entity.
43. On the basis of the above, the ACCC concluded that the removal of the competitive rivalry between Asahi and CUB would be likely to enable a combined CUB and Asahi to profitably increase the price of cider products by a significant amount. The ACCC concluded that, absent the Asahi Undertaking, the proposed acquisition would have the effect of substantially lessening competition in the supply of cider in Australia.
44. To remedy this concern, Asahi has given a court enforceable undertaking pursuant to s87B of the Act that it will divest the following CUB cider brands to an ACCC-approved purchaser after acquiring CUB:
  - Strongbow,
  - Bonamy's, and
  - Little Green.
45. Sold together, the divestment of these brands (which together have the second-highest cider market share) is intended to enable a new or existing supplier of cider to replace the competition lost between Asahi and CUB.
46. Taking into account the undertakings, the ACCC concluded the proposed acquisition was unlikely to substantially lessen competition in the market for the supply of cider in Australia. Further information about the Asahi Undertaking and the AB InBev Undertaking is set out below.

### Competition issues in the beer market

47. As noted in the section on market definition above, the ACCC did not form a view on whether different beer categories are part of the same market, or form separate markets. For the purpose of this competition assessment, the ACCC treated each beer category as a segment of the beer market, recognising the closeness of competition within each segment.
48. The beer market in Australia is highly concentrated with CUB and Lion accounting for approximately 80 per cent of the market. The next largest beer suppliers are Coopers with approximately 5–7 per cent share, Asahi with approximately 3.5 per cent share and CCA with approximately 1–2 per cent share.



49. Small players can significantly affect the intensity and/or quality of competition and the ACCC considered Asahi's impact on competition was significant, despite having 3.5 per cent market share.
50. The ACCC considered that Asahi is in a unique position to compete against the two main incumbents, Lion and CUB, particularly in craft beer and premium international beer.
51. Asahi is a well-resourced global competitor and offers a strong portfolio of brands in Australia. Prior to the proposed acquisition, Asahi was committed to growing its Australian operations. Asahi's presence in the on-premise channel made it a key competitor for taps that were not contracted to Lion and CUB. Market feedback indicated that Asahi acted in a way that constrained the beer prices of Lion and CUB.
52. The ACCC considered that a new entrant or smaller competitors are unlikely to replicate Asahi's competitive presence. Although there are a large number of individual craft beer brands being sold in Australia, with apparent low barriers to smaller-scale entry, these independent craft brewers only have shares of no more than 0.5–1 per cent each. The ACCC considered that while the presence of independent craft brewers may increase consumer choice, individual craft brewers may not place effective competitive constraint on the two large incumbents.
53. The ACCC also noted that brand awareness, along with marketing expenditure, are extremely important to increasing share in the beer market. Market feedback indicated that even competitors with established distribution networks can face difficulties in establishing new profitable brands.
54. The ACCC also noted market feedback indicating particularly close competition between some Asahi and CUB brands in the "premium international beer" segment. As shown in **Table 1**, Asahi and CUB supply a significant number of premium international beer brands in Australia.
55. In response to the ACCC's concerns, Asahi offered a court enforceable undertaking pursuant to section 87B of the Act, to divest the following CUB beer brands to an ACCC-approved purchaser after acquiring CUB:
  - Stella Artois, and
  - Beck's.
56. Taking into account the undertakings, the ACCC concluded that the proposed acquisition was unlikely to substantially lessen competition in the market for the supply of beer in Australia. Further information about the Asahi Undertaking and the AB InBev Undertaking is set out below.

## Undertakings

57. The ACCC concluded that the Asahi Undertaking and AB InBev Undertaking addressed its competition concerns with the proposed acquisition. A copy of the Asahi Undertaking and the AB InBev Undertaking is available on the ACCC mergers register and undertakings register.

## Asahi Undertaking

58. In order to address the ACCC's competition concerns in relation to the cider and beer markets, Asahi offered a court enforceable undertaking pursuant to section 87B of the Act. The ACCC spoke to a range of market participants, including potential purchasers about the Asahi Undertaking.
59. The key elements of the Asahi Undertaking are set out below:
- Asahi will divest the Strongbow, Bonamy's and Little Green cider brands which are currently CUB brands (the **Cider Business**) and the Stella Artois and Beck's beer brands, which are AB InBev global brands and are currently supplied by CUB in Australia (the **Beer Business**). Divestiture will include all relevant inventory, business records, employees, contracts and intellectual property rights.
  - The Cider Business and Beer Business may be sold to a single ACCC-approved purchaser or to separate ACCC-approved purchasers. One of the factors the ACCC may consider in making the decision whether to approve a proposed purchaser, is the effectiveness of a proposed purchaser if the Beer Business and the Cider Business are not both acquired.
  - At the option of the ACCC-approved purchaser(s), Asahi must supply any technical assistance, transitional supply or co-packing arrangements that are required by the purchaser to establish itself as a competitor in the beer/cider market.
  - Asahi will provide the ACCC-approved purchaser(s) with, customer information, the number of taps dedicated to the divestiture business product, mapping or planograms of the divestiture business products in the possession of Asahi, and the total volume of divestiture business products sold at on and off premise venues. This information is required to be provided to cover specified time periods set out in the undertaking.
  - For a period of three years:
    - Asahi will treat divestiture business products as Asahi products for the purposes of any supply arrangement with an on-premise or off-premise venue.
    - Additionally, if a venue wishes to remove Stella Artois from its taps during the three year period, Asahi will not agree with an on-premise venue to replace a Stella Artois tap (with another Asahi branded tap) if the ACCC-approved purchaser has not been given a reasonable opportunity (being a period of not less than 5 business days) to replace the Stella Artois tap.
    - Asahi will not exercise or threaten to exercise any right under any supply arrangement, with the purpose of adversely influencing the venue's decision in relation to purchase, tap usage, or representation of the divestiture brands.

- In relation to the Beer Business, the ACCC-approved purchaser will also be offered the opportunity to participate in key planned sponsorship arrangements in line with pre-existing CUB promotional plans.
- Asahi must appoint an ACCC-approved independent manager to manage the divestiture businesses from completion of the proposed acquisition until the divestiture of the divestiture businesses.
- Asahi must appoint an ACCC-approved independent auditor to monitor Asahi's overall compliance with the undertaking.

### AB InBev Undertaking

60. To support the Asahi Undertaking, the ACCC also accepted an undertaking from AB InBev to address the ACCC's concerns that AB InBev may not provide its consent to the transfer of the rights and obligations to an ACCC-approved purchaser that are necessary for Asahi to complete the sale of the divestiture business.
61. The objective of the AB InBev Undertaking is to address the ACCC's concerns by requiring AB InBev to promptly facilitate, and not unreasonably withhold its consent to, the disposal of the divestiture businesses to an ACCC-approved purchaser pursuant to the Asahi Undertaking.