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Our ref: IM-71397
Contact officer: Sam Campbell / Annabel Garrard
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Date 21 September 2021

Dear Interested Party

Request for submissions: Lion-Beer, Spirits & Wine Pty Ltd's proposed acquisition of Fermentum Pty Ltd

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the proposed acquisition of Fermentum Pty Ltd (**Fermentum**) by Lion-Beer, Spirits & Wine Pty Ltd (**Lion**) (the **proposed acquisition**).

Fermentum and Lion manufacture and distribute, or have interests in companies which manufacture and distribute, a range of alcoholic and non-alcoholic beverages including beer, cider, alcoholic seltzer and kombucha. Further details are provided at **Attachment A**.

The ACCC's investigation is focused on the impact on competition. In particular, we are seeking your views on:

- whether Lion and Fermentum compete closely for the supply of beer
- the likely impact of the proposed acquisition on the price or service levels for the supply of beer, and
- the availability of alternatives to customers and the ability of these alternatives to expand.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by 5 October 2021 via email with the title: *Submission re: Lion / Fermentum - attention Sam Campbell / Annabel Garrard*. If you require more time to respond, please let us know.

If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Sam Campbell on 03 9290 1870 or Annabel Garrard on 02 9102 4028.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC treats sensitive information it receives during a merger review as confidential, and will not publish your submission. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the Competition and Consumer Act 2010. Where the ACCC is required to disclose confidential information, we will notify you in advance where possible so that you have an opportunity to be heard. Therefore please clearly indicate if any information you provide is confidential.

Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Daniel McCracken-Hewson
General Manager
Merger Investigations

Attachment A

The proposed acquisition

Lion proposes to acquire 100% of the issued securities of Fermentum.

The parties primarily overlap in the supply of beer.

Lion

Lion is a global beverage business that manufactures and distributes alcoholic and non-alcoholic drinks across Australia, New Zealand, the United States and the United Kingdom. Lion is a wholly-owned subsidiary of Japan-based food and beverage company, Kirin Holdings Company Limited.

Lion owns and operates 10 breweries in Australia and its Australian beverage portfolio consists of:

- **Beer** – XXXX, Tooheys, Iron Jack, Furphy, Little Creatures, Hahn, James Squire, Byron Bay, James Boag, Kirin, Emu, Swan Draught, West End Draught, Kosciusko Pale Ale, White Rabbit, Bevy Brewing Co, Malt Shovel Brewer, Eumundi, Tiny Mountain, Heineken, Guinness, Birra Morretti, Kilkenny, Panhead, Brooklyn and Voodoo Ranger.
- **Cider** – Tooheys 5 Seeds, James Squire Orchard Crush, Little Creatures Pipsqueak.
- **Alcoholic Seltzer** – White Claw Hard Seltzer.

Lion also has shareholdings in gin company Four Pillars (50%) and non-alcoholic beverage companies Remedy Drinks (49%) (kombucha) and Schibello Coffee (50%).

Fermentum

Fermentum manufactures and distributes a range of alcoholic beverages, including its flagship brand Stone & Wood. Headquartered in Byron Bay, New South Wales, Fermentum's primary brewery operation is located in Murwillumbah, New South Wales. It also owns and operates smaller breweries in Byron Bay, Brisbane and Melbourne.

Fermentum's beverage portfolio consists of:

- **Beer** – Stone & Wood, Fixation, Two Birds, Forest for the Trees.
- **Cider** – Granite Belt Treehouse Cider.
- **Alcoholic seltzer** – Sunly Seltzer.
- **Ginger Beer** – Little Dragon Ginger Beer.
- **Kombucha** – Kombucha Brewing Co.

Attachment B

1. Please provide a brief description of your business or organisation and explain your interest in the proposed acquisition, including any commercial relationship(s) with Lion or Fermentum.
2. Please provide your views on how beer is marketed, supplied and consumed in Australia. We are particularly interested in:
 - a. whether there are different and distinct categories of beer (for example whether craft beer is distinct from classic or premium beer) and, if so:
 - i. what are the different characteristics of beers in each category that make them distinct from beers in other categories? You may wish to comment on factors such as price, taste, packaging design, marketing or ownership.
 - ii. how likely are consumers to switch between different categories of beer and does this differ between on-premise (keg) and off-premise (packaged) beer?
 - iii. how easily can manufacturers and suppliers of beer switch between supply of different beer categories?
 - b. whether Fermentum has a stronger presence in certain states or regions of Australia and if so, why?
3. How closely do Lion and Fermentum compete with each other in the supply of beer?
 - a. Please comment on whether there is anything about the products supplied by Lion and Fermentum that make them close competitors.
 - b. Please identify the other close competitors to Lion and Fermentum and comment on whether they are likely to be strong competitors to a combined Lion and Fermentum.
4. The ACCC understands that Fermentum has plans to expand, including through the construction of a new brewery in Murwillumbah, but would need to raise capital to do so. If the merger did not go ahead, what impact (if any) do you consider Fermentum's expansion would be likely to have on competition?
5. Please outline your views on barriers to entry and expansion in the manufacture and supply of beer, having regard to the following factors:
 - a. set up costs and capital requirements
 - b. the scale necessary to supply at competitive prices
 - c. timeframe for new entry
 - d. existing brand loyalty and recognition
 - e. any relevant strategic alliances, long-term supply contracts or exclusionary arrangements.

6. Please identify any independent beer suppliers that you consider would be able to expand to replicate the volume and product offering of Fermentum (in particular Stone & Wood) if there was an increase in the price of Lion and/or Fermentum brands. Are these suppliers able to overcome the barriers identified in your answer to 5.?
7. Please comment on the extent to which large customers (such as supermarket chains) currently supply craft beer, and the extent to which they could sponsor entry or expansion by rival suppliers.
8. How readily can overseas beer brands not currently supplied in Australia be introduced into the Australian market(s)? Is it likely that new overseas brands would enter Australia if there was an increase in price of Lion and/or Fermentum brands?
9. The ACCC is also considering the impact of the proposed acquisition on the markets for the manufacture and supply of alcoholic cider, alcoholic seltzer and kombucha.
 - a. Please provide your views (to the extent held) on the relevant markets for these products, how closely Lion and Fermentum compete, the alternative suppliers to Lion and Fermentum, and what impact, if any, the proposed acquisition will have on competition for the supply of these products.
10. Please provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's consideration of the proposed acquisition under section 50 of the Act.