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***Case No COMP/M.7178 - SUNTORY / BEAM***

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**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 16/04/2014

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## EUROPEAN COMMISSION

Brussels, 16.4.2014  
C(2014) 2711 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

### **To the Notifying Party:**

Dear Sir,

**Subject: Case M.7178-SUNTORY/BEAM  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

- (1) On 17 March 2014, the European Commission ("Commission") received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Suntory Holdings Limited ("Suntory", Japan) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Beam Inc. ("Beam", USA) by way of purchase of shares.<sup>2</sup> Suntory and Beam are collectively referred to as "the Parties". Suntory is hereinafter referred to as the "Notifying Party".

### **1. THE PARTIES AND THE OPERATION**

- (2) Suntory is active in various businesses worldwide, including the manufacture and distribution of alcoholic and non-alcoholic beverages. As regards spirits in the EEA, Suntory sells Scotch and Japanese whiskey, liqueurs and cognac. Suntory's main brands sold in the EEA include the Japanese whiskies Yamazaki, Hakushu and Hibiki, the Scotch whiskies Bowmore, Glen Garioch, McClelland's, Morrison's Islay Legend, Auchentoshan; the melon-flavoured liqueur Midori and the chocolate-flavoured liqueur Mozart.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 87, 26.03.2014, p. 14.

- (3) Beam is active in the production and sale of spirits. In the EEA, Beam sells whiskies (including U.S. whiskey, Canadian whisky, Scotch whisky, and Irish whisky), brandy (including cognac and Armagnac), gin, liqueurs, tequila, long drinks/ready-to-drinks (“RTDs”), aniseed spirits, vodka and rum. Beam’s main brands sold in the EEA include Jim Beam and Maker’s Mark bourbon whisky, Teacher’s and Laphroaig Scotch whisky, Canadian Club whisky, Courvoisier cognac and Sauza tequila. Beam is also active in the sale of non-branded bulk spirits for Canadian, Scotch, Irish and Spanish whisky, cognac and other brandies.
- (4) Pursuant to an Agreement and Plan of Merger of 12 January 2014, Beam will merge with a special-purpose vehicle owned by Suntory, with Beam surviving as a wholly owned subsidiary of Suntory. The transaction is valued at about EUR 12 billion. Following the Transaction, Suntory will therefore own 100% of Beam’s outstanding share capital and, thus, will exercise sole control over Beam.

## **2. EU DIMENSION**

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>3</sup> [Suntory: EUR [...] million; Beam: EUR 1 889 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [Suntory: EUR [...] million; Beam: EUR [...] million], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension under Article 1(2) of the Merger Regulation.

## **3. COMPETITIVE ASSESSMENT**

- (6) The Parties are active in the distribution and sale of a range of spirits across the European Economic Area (“EEA”). However, affected markets arise only on the basis of narrow market definitions in the following areas: (i) single malt Scotch whisky, both in the on-trade and off-trade distribution channels, in the Czech Republic, Estonia, Italy, Slovakia, Spain and Sweden; and (ii) melon and chocolate flavoured liqueurs in Germany and the United Kingdom.<sup>4</sup>

### **3.1. Relevant product markets**

- (7) In previous decisions, the Commission has considered that the production and wholesale distribution of each main internationally recognized spirit type constitutes a separate product market (i.e., whisky, brandy, rum, gin, vodka, etc.).<sup>5</sup> The

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p. 1).

<sup>4</sup> Both Parties are also active in the sale of cognac. However, Suntory's market shares are negligible (under [0-5]% in each EEA country) and the Parties' combined market shares remain below [50-60]%, with an HHI increment well below [...] points, in all countries where the Parties' activities overlap. In view of the negligible increment brought about by the transaction, the overlap in cognac will not be further analysed in this decision.

<sup>5</sup> Case/M.938 - *Guinness/Grand Metropolitan*, decision of 15 October 1997, Case/M.2268 - *Pernod Ricard/Diageo/Seagram Spirits*, decision of 8 May 2001, Case/M.3183 - *Fortune Brands/Allied Domecq*, decision of 10 June 2005, Case/M.3779 - *Pernod Ricard/Allied Domecq*, decision of 24 June 2005, Case/M.5114 - *Pernod Ricard/V&S*, decision of 17 July 2008.

respondents to the market investigation continue to be broadly of this view, both from a supply and a demand-side perspective.<sup>6</sup>

### 3.1.1. WHISKY

#### *Segmentation by country of origin*

- (8) The Commission has previously found that a narrower segmentation by country of origin may be appropriate for whisky, and identified the following markets: Scotch whisky, Irish whisky, U.S. whiskey, Canadian whisky and others<sup>7</sup>. In *Guinness/Grand Metropolitan*<sup>8</sup>, the Commission concluded that Spanish whisky and Scotch whisky are two distinct markets, and that Scotch whisky and Irish whisky can be differentiated on the basis of taste and consumption patterns. In addition, for Scotch whisky, national legislation lays down certain requirements, in that it must be wholly distilled in Scotland and matured there for at least three years before it can be sold as Scotch.
- (9) The Notifying Party submits that whereas the segmentation of the whisky market by country of origin might be appropriate, ultimately the exact product market definition can be left open for the purposes of this case.
- (10) The majority of respondents to the Commission's market investigation considered that whiskies from different origins belong to separate markets both from a supply and a demand-side perspective.<sup>9</sup>
- (11) The Commission considers in light of the above and of the other available evidence that the issue whether the market for whisky shall be further segmented on the basis of the country of origin can be left open, since the notified operation does not raise serious doubts under any possible approach.

#### *Segmentation by type of whisky*

- (12) The Commission has not previously made a distinction between blended and malt whisky<sup>10</sup>. However, the UK Office of Fair Trading ("OFT") has identified separate markets for malted and blended whisky based on differences in the taste and end-consumer preferences.<sup>11</sup>

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<sup>6</sup> Replies to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3) and to on-trade and off-trade customers of whisky (Q2) and replies to question 7 addressed to on-trade customers of liqueurs in Germany and the UK (Q1), dated 18 March 2014.

<sup>7</sup> Case/M.938 - *Guinness/Grand Metropolitan*, decision of 15 October 1997, Case/M.3779 - *Pernod Ricard/Allied Domecq*.

<sup>8</sup> Case/M.938 - *Guinness/Grand Metropolitan*, decision of 15 October 1997.

<sup>9</sup> Replies to questions 10 and 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade and off-trade customers of whisky (Q2) and to competitors and distributors (Q3), dated 18 March 2014.

<sup>10</sup> Malt whisky largely consists of single malts sourced from one distillery and to a lesser extent blended malt whiskies sourced from a range of distilleries. Blended Scotch whisky largely consists of blended products which may be blended from a combination of different grain products and a malt whisky product.

<sup>11</sup> ME/6130/13 - *Completed acquisition by Diageo plc of United Spirits Limited*, OFT Decision of 25 November 2013.

- (13) The Notifying Party submits that whereas the segmentation by type of whisky (blended versus malt whisky) might be appropriate,<sup>12</sup> ultimately the exact product market definition can be left open for the purposes of this case.
- (14) The results of the market investigation suggest that a segmentation by type of whisky might be appropriate. From a production point of view, the majority of respondents to the market investigation considered that malt whisky and blended whisky belong to separate markets, mainly because the equipment, the costs<sup>13</sup> and the scale of production are different.<sup>14</sup>
- (15) From a demand-side perspective, malted and blended whisky are perceived as different products in terms of taste (malt whisky has a greater depth flavour compared to blended whisky), image (malt whisky is generally perceived as more premium due to the nature of its production) and price (malt whisky is more expensive per litre than blended whisky).<sup>15</sup>
- (16) The Commission considers in light of the above and of the other available evidence that the issue whether the market for whisky shall be further segmented on the basis of the whisky type can be left open, since the notified operation does not raise serious doubts under any possible approach.

*Segmentation by quality/price*

- (17) The Commission has previously examined whether segmentation by price or quality may be relevant, but it ultimately left the market definition open.<sup>16</sup> In *Guinness/Grand Metropolitan*, the market investigation suggested that there are separate markets for each quality level, because, for example, a consumer who habitually drinks a premium brand would not consider a cheaper one as an adequate substitute in terms of taste, quality, image, etc.<sup>17</sup> The Commission has also noted that it may be possible *"to identify separate segments for different quality levels within each spirit category such as premium, secondary brands, private labels, low price"* and has also acknowledged that *"there is a continuous price spectrum ranging from the most expensive to the cheapest"*.<sup>18</sup>
- (18) The Parties used the product segmentations tracked by the industry research organization International Wine & Spirit Research (IWSR) as a proxy for identifying quality-based segments in the Scotch whisky market. All the IWSR quality segments are defined on the basis of retail price ranges. The price ranges identified for each quality segment are the following: over €150 (prestige), €50-€149.99 (ultra-

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<sup>12</sup> With the exception of Sweden, Suntory does not sell blended Scotch whisky in the EEA. However, the Parties' combined market share in Sweden for blended Scotch whisky is only [0-5]% (with an increment of [0-5] % from Suntory).

<sup>13</sup> The different distillation process (grain whisky is cheaper to produce than malt whisky) and maturation period (blended whisky is typically sold at younger ages than malt whisky) results in different production costs.

<sup>14</sup> Replies to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014.

<sup>15</sup> Replies to questions 11 and 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade and off-trade customers of whisky (Q2) and to competitors and distributors (Q3), dated 18 March 2014.

<sup>16</sup> Case/M.5114 - *Pernod Ricard/V&S*, decision of 17 July 2008.

<sup>17</sup> Case/M.938 - *Guinness/Grand Metropolitan*, decision of 15 October 1997.

<sup>18</sup> Case/M.2268 - *Pernod Ricard/Diageo/Seagram Spirits*, decision of 8 May 2001.

premium), €30-€40.99 (super-premium), €20-€29.99 (premium), €10-€19.99 (standard), €3-€9.99 (value), and under €2.99 (low-price). The Parties however submit that IWSR's quality-based categories are only approximate, in particular because the price ranges used to define these categories apply to all spirits (rather than being unique to whisky).<sup>19</sup> Ultimately, the Notifying Party submits that the exact product market definition can be left open for the purposes of this case.

- (19) The market investigation showed that a number of manufacturers and distributors do rely on the IWSR data to categorize whisky in their internal business reporting and market analysis. However, the market investigation also indicated that the price ranges used by IWSR are only indicative as they may vary depending on the country.<sup>20</sup>
- (20) Moreover, the majority of respondents indicated that, both from a supply and demand-side perspective, prestige Scotch whisky is substitutable with ultra-premium, super-premium with ultra-premium or premium, premium with super-premium or standard, standard with premium or value, and value with standard or low-price.<sup>21</sup> Therefore, even if Scotch whisky quality categories at each end of the range do not compete directly with one another, it is arguable that a certain constraining effect exists through a chain of substitution. In any event, even if the effects of the proposed transaction are considered under narrow quality/price segments, no competition concerns arise.
- (21) The Commission considers in light of the above and of the other available evidence that the issue whether the market for whisky shall be further segmented by quality/price can be left open, since the notified operation does not raise serious doubts under any possible approach.

### **3.1.2. LIQUEURS**

- (22) With regard to liqueurs, the Commission found in *Guinness/Grand Metropolitan*<sup>22</sup>, that in general each liqueur constitutes a separate, niche product market given that there are many different liqueurs, each with a highly distinctive taste and other characteristics. In a more recent decision<sup>23</sup>, the Commission did not conclude on whether each flavour of liqueur constitutes a market in itself or whether all types of liqueur should be considered as forming part of the same product market.
- (23) The Parties submitted information about the overall liqueur market, as well as on segments defined by flavour, such as chocolate flavoured liqueurs and crème de cacao liqueurs, where the Parties' activities overlap. Ultimately, the Notifying Party submits that the exact product market definition can be left open for the purposes of this case.

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<sup>19</sup> The Parties also point out that each of Beam's and Suntory's Scotch whisky brands sold in the EEA falls within more than one category.

<sup>20</sup> Replies to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014.

<sup>21</sup> Replies to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014.

<sup>22</sup> Case/M.938 - *Guinness/Grand Metropolitan*, decision of 15 October 1997.

<sup>23</sup> Case/M.5114 - *Pernod Ricard/V&S*, decision of 17 July 2008.

- (24) From a supply-side perspective, the majority of the respondents indicated that different flavoured liqueurs can be regarded as substitutes. Production of liqueurs consists mainly on mixing different ingredients and although there can be significant differences with regard to the initial raw material, the basic production process is similar between different flavoured liqueurs.<sup>24</sup>
- (25) From a demand-side perspective, an overwhelming majority of respondents indicated that there are significant differences between different flavoured liqueurs in terms of consumption patterns (drunk neat, on ice, as an ingredient in long drinks), taste (including between chocolate flavoured and crème de cacao liqueurs), brand image, targeted consumer groups (e.g. young, female) and price.<sup>25</sup>
- (26) The Commission considers in light of the above and of the other available evidence that the precise delineation of the market for liqueurs can be left open, since the notified operation does not raise serious doubts under any possible approach.

### **3.1.3. SEGMENTATION BY DISTRIBUTION CHANNEL**

- (27) The Commission has previously held that a distinction should be made between on-trade distribution (sales to hotels, bars, clubs, restaurants, etc.) and off-trade distribution (sales to retailers) of spirits<sup>26</sup>, based on the different characteristics of each channel (such as differences in volumes purchased or consumer price sensitivity) and the existence of dedicated sales forces for each channel.<sup>27</sup>
- (28) The Parties submitted information about the Scotch whisky and liqueur markets separately for each distribution channel. Ultimately, the Notifying Party submits that the exact product market definition can be left open for the purposes of this case.
- (29) The majority of respondents considered that on-trade and off-trade distribution channels belong to separate markets, in particular because the on-trade channel entails specialised sales forces and lower volumes than the off-trade channel.<sup>28</sup>
- (30) The Commission considers in light of the above and of the other available evidence that the issue whether the markets for whisky and liqueurs shall be further

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<sup>24</sup> Replies to question 21 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014.

<sup>25</sup> Replies to questions 9, 10 and 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade customers of liqueurs in Germany and the UK (Q1) and to competitors and distributors (Q3), dated 18 March 2014.

<sup>26</sup> Case/M.938 - *Guinness/Grand Metropolitan*, decision of 15 October 1997, Case/M.2268 - *Pernod Ricard/Diageo/Seagram Spirits*, decision of 8 May 2001, Case/M.3183 - *Fortune Brands/Allied Domecq*, decision of 10 June 2005, Case/M.3779 - *Pernod Ricard/Allied Domecq*, decision of 24 June 2005, Case/M.5114 - *Pernod Ricard/V&S*, decision of 17 July 2008.

<sup>27</sup> In Case/M.5114-Pernod Ricard/V&S, the Commission has defined a separate market for travel retail distribution although it did not consider it necessary to conclude whether distinct product markets exist in respect of each of wine and spirits sold in the travel retail channel. The transaction does not give rise to any affected market in relation to this distribution channel.

<sup>28</sup> Replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014. Replies to questions 8 and 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade customers of liqueurs in Germany and the UK (Q1) and to on-trade and off-trade customers of whisky (Q2), dated 18 March 2014.

segmented by distribution channel can be left open, since the notified operation does not raise serious doubts under any possible approach.

### **3.2. Relevant geographic markets**

- (31) As regards the production and distribution of spirits, previous Commission decisions concluded that the market is national in scope, reflecting differences in consumption patterns, logistics and distribution networks, marketing strategies, taxation and duties, and legislation.<sup>29</sup>
- (32) The replies to the market investigation indicated that Scotch whisky, liqueurs and more generally spirits are not priced homogeneously across the EEA.<sup>30</sup> Whereas distributors source spirits from manufacturers on a worldwide basis, they usually sell spirits (to retailers and off-trade customers), including liqueurs and Scotch whisky, at national level. Within the EEA, manufacturers appoint third-party distributors to supply their products on a country by county basis.<sup>31</sup>
- (33) The Commission considers in light of the above and of the other available evidence that the exact delineation of the relevant geographic markets can be left open since the notified operation does not raise serious doubts under any possible approach.

### **3.4. Competitive assessment**

#### *3.4.1 GENERAL MARKET CHARACTERISTICS*

- (34) In the spirits industry, most manufacturers are vertically integrated (spanning from production to wholesale distribution and marketing), but some of them rely on third-party distributors to sell their products in all or certain territories. Third-party distributors are often also brand owners or manufacturers themselves.
- (35) According to the Parties, the arrangements with third-party distributors are generally [description of geographic coverage and length of distribution agreements] .The Parties maintain that independent distributors are generally in charge of [...]. Therefore, the Parties maintain that the sales of so-called "agency brands" (i.e. brands not owned by the distributor) must be attributed to distributors rather than to the brand manufacturers. Nevertheless, the Parties provided market shares also on the basis of the sales of their own brands (even when distributed by third parties).
- (36) The respondents to the market investigation also considered that distribution agreements vary between one and five years and usually cover a country's domestic market. The agreements tend to cover the manufacturers' whole portfolio, but can

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<sup>29</sup> Case/M.3779 - *Pernod Ricard/Allied Domecq*, decision of 24 June 2005, Case/M.5114 - *Pernod Ricard/V&S*, decision of 17 July 2008.

<sup>30</sup> Replies to question 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014.

<sup>31</sup> Replies to questions 25, 26 and 27 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014. Replies to questions 11 and 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade customers of liqueurs in Germany and the UK (Q1) and to on-trade and off-trade customers of whisky (Q2), dated 18 March 2014.



sometimes be limited to specific brands only. On a case-by-case basis, the agreements may include exclusivity (for distributor and geographic coverage) and non-compete clauses. The manufacturers fix the export price (which is subject to periodical review) and third-party distributors are free to fix the resale/wholesale price. Advertising and promotional activities are funded, monitored, and approved by manufacturers and executed by the third-party distributors. Agreements between suppliers of spirits and retailers or on-trade customers are non-exclusive and are of a shorter duration (generally one year).<sup>32</sup>

- (37) The Parties rely almost entirely on third-party distributors for the sale of their products in the EEA.<sup>33</sup> Beam distributes its own brands and limited amounts of agency brands in Austria and Germany<sup>34</sup>. In Spain and the United Kingdom, Beam is active as distributor through a joint venture with The Edrington Group (Maxxium Spain and Maxxium U.K.), which distribute the Parties' own brands as well as relatively small quantities of third-party agency brands.
- (38) For the purpose of assessing the present transaction, in line with the most conservative approach, the Commissions considers that Beam's market shares in the countries where Beam is directly or indirectly active as a third-party distributor include not only Beam's own brands but also third-party agency brands distributed by Beam or the Maxxium joint ventures.

#### 3.4.2. SCOTCH WHISKY

- (39) In the EEA, Suntory is active in the distribution of the following Scotch whisky brands: (i) single malt whisky sold within the premium and super-premium categories (*Bowmore, Auchentoshan, Glen Garioch*), (ii) single malt whisky sold within the standard and premium categories (*McClelland's*), and (iii) blended whisky sold within the standard category (*Morrison's Islay Legend*).
- (40) Beam sells the following Scotch whisky brands<sup>35</sup>: (i) single malt whisky sold within the value and standard categories (*Teacher's*), (ii) single malt whisky sold within the premium and super-premium categories (*Laphroaig, Ardmore*).
- (41) Overall, at an EEA level, the merged entity would remain a relatively small operator in Scotch whisky with a combined market share of [5-10]%, especially when compared to leading competitors such as Diageo ([20-30]%) and Pernod Ricard ([10-20]%).

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<sup>32</sup> Replies to questions 28 and 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014. Replies to questions 12 and 17 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade customers of liqueurs in Germany and the UK (Q1) and to on-trade and off-trade customers of whisky (Q2), dated 18 March 2014.

<sup>33</sup> Suntory has some limited activities as a third-party distributor of liqueur, gin and vodka in Austria, where it sells through its Mozart Distillerie (sales for EUR [...] in 2012). In France, Suntory distributes bottled cognac through its controlled subsidiary Louis Saveur, [...] such sales are [...] (in 2012, [...] cases, amounting to approximately €[...]).

<sup>34</sup> In Austria, Beam did not distribute any third-party products in 2012 and in 2013 only sold one third-party product, namely Glenrothes Scotch whisky for an amount of €[...]. In Germany, Beam sold and distributed [...] 9-liter cases of its own spirits, and distributed [...] 9-liter cases on third parties' behalf, accounting for [0-5]% of spirits sales in Germany.

<sup>35</sup> [...].

- (42) The positioning of the Parties in the Scotch whisky market at the EEA level broadly reflects their positioning in the individual EEA countries. Specifically, the transaction would not give rise to any affected market in the overall product market for Scotch whisky in any of the EEA countries.
- (43) When considering narrower segmentations by type (i.e. single malt/blended whisky), quality and distribution channel, the transaction gives rise to a number of horizontally affected markets in Spain, Czech Republic, Italy, Estonia, Slovakia and Sweden.

*Spain*

- (44) In Spain, the Parties' combined market shares<sup>36</sup> exceed [50-60]% in the following segments: (i) super-premium Scotch whisky ([50-60]%), (ii) super-premium single malt Scotch whisky ([60-70]%) and (iii) super-premium single malt Scotch whisky both in the on-trade ([60-70]%) and the off-trade ([60-70]%) channels. However, in each of these hypothetical markets, the market share increment remains below [0-5]%. Moreover, the Parties argue that Beams' high market shares result from the sales made by the Maxxium joint venture of the Scotch whisky brands owned by The Edrington Group and other third-parties. Were those sales to be excluded, Beam's market shares in the hypothetical sub-segments for Scotch whisky defined on the basis of quality or price levels would not be higher than [0-5]%.

**Table 1. Suntory's and Beam's market shares (by volume) for Scotch whisky by price/quality range, including sales of agency brands in Spain.<sup>37</sup>**

	Suntory	Beam <sup>38</sup>	Combined
Scotch whisky super-premium	[0-5]%	[50-60]%	[60-70]%
Single malt Scotch whisky super-premium	[0-5]%	[60-70]%	[60-70]%
Single malt Scotch whisky super-premium <i>on-trade</i>	[0-5]%	[60-70]%	[60-70]%
Single malt Scotch whisky super-premium <i>off-trade</i>	[0-5]%	[60-70]%	[60-70]%

- (45) According to the Parties, even on these narrow hypothetical sub-segments for Scotch whisky, Suntory and Beam will be constrained by Diageo (market shares up to [20-30]%), followed by smaller suppliers such as William Grant ([5-10]%), J & G Grant ([0-5]%) or Pernod Ricard ([0-5]%). In the course of the market investigation, customers considered that post-transaction there will continue to be enough alternative suppliers of Scotch whisky in Spain such as Diageo, Pernod

<sup>36</sup> In line with the Commission's precedents in this industry, sales and shares of sales data are provided on the basis of volume data (in thousands of nine-liter cases) and have been drawn from IWSR, a well-established third-party research organization covering the spirits industry. See e.g. Case/M.3779 - *Pernod Ricard/Allied Domecq*, decision of 24 June 2005.

<sup>37</sup> Source: IWSR data.

<sup>38</sup> Including sales by the Maxxium joint venture of The Edrington Group and other third party products.

Ricard, Bacardi-Martini and others,<sup>39</sup> including single malt Scotch whisky brands such as *Talisker*, *Lagavuling*, *Dalwhinnie* and *Balvenie*, which are considered to compete closely with the Parties' brands in Spain<sup>40</sup>.

- (46) The Commission notes that none of the on-trade and off-trade customers approached have raised concerns regarding the impact of the proposed transaction on the price and availability of Scotch whisky (including single malt super-premium) in the Spanish market.<sup>41</sup> One competitor raised some concerns, but only in relation to possible portfolio effects (see section 3.5).<sup>42</sup>
- (47) In addition, in light of the replies to the market investigation, the Commission notes that Suntory's brands and Beam's brands for Scotch whisky are not each other's closest competitors, except for *Bowmore* and *Laphoraig* single malt whisky which both come from Islay, have similar peat taste profiles and both fall within the super-premium to premium segments<sup>43</sup>. However, Beam does not currently sell *Laphoraig* in Spain and Suntory's sales of *Bowmore* are limited.<sup>44</sup>
- (48) Therefore, the Commission concludes that in light of the presence of several competitors in Scotch whisky, the small increment in the combined market shares and in the absence of concerns voiced during the market investigation, the proposed concentration does not raise serious doubts as to its compatibility with the internal market with respect to Scotch whisky in Spain under any plausible market definition.

#### *Other countries*

- (49) In the Czech Republic, Italy, Estonia, Slovakia and Sweden, a number of affected markets arise on the basis of narrow market definitions relating to single malt Scotch whisky. However, the Parties' combined market shares do not exceed [30-40]% on any hypothetical quality-based segments for single malt Scotch whisky, further broken down by on-trade and off-trade channel.

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<sup>39</sup> When considering the overall market for Scotch whisky (all price/quality categories), the market shares of the main competitors in Spanish are even higher (Diageo: [30-40]%, Pernod Ricard: [20-30]% and Bacardi-Martini: [10-20]%).

<sup>40</sup> Replies to question 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade and off-trade customers of whisky (Q2), dated 18 March 2014.

<sup>41</sup> Replies to questions 23, 24 and 25 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade and off-trade customers of whisky (Q2), dated 18 March 2014.

<sup>42</sup> Replies to questions 34, 35 and 37 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014.

<sup>43</sup> Replies to questions 30 and 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade and off-trade customers of whisky (Q2), dated 18 March 2014.

<sup>44</sup> According to the Parties' own data, the market share (by value) of Bowmore in the market for single malt Scotch whisky is only [0-5]%. Even considering IWSR retail value data, the market share of Bowmore in this sub-segment is only [0-5]%.

**Table 2. Suntory's and Beam's market shares (by volume) for Scotch whisky, including sales of agency brands in Czech Republic, Italy and Sweden.<sup>45</sup>**

<i>Czech Republic</i>	Suntory	Beam	Combined
Single malt Scotch whisky-premium quality	[10-20]%	[5-10]%	[20-30]%
Single malt Scotch whisky-premium quality <i>on-trade</i>	[10-20]%	[10-20]%	[20-30]%
<i>Italy</i>	Suntory	Beam	Combined
Single malt Scotch whisky-premium quality <i>off-trade</i>	[0-5]%	[10-20]%	[20-30]%
<i>Sweden</i>	Suntory	Beam	Combined
Single malt Scotch whisky-premium quality	[5-10]%	[10-20]%	[20-30]%
Single malt Scotch whisky-premium quality <i>on-trade</i>	[5-10]%	[10-20]%	[20-30]%

- (50) In Estonia and Slovakia, the Parties submit that their sales are trivial, amounting to no more than [...] cases per year, and that generally single malt whisky represents an insignificant segment. As regards Slovakia, the Parties submit that [...] in the country. The market shares reflect sales of products that [...].

**Table 3. Suntory's and Beam's market shares (by volume) for Scotch whisky, including sales of agency brands in Estonia and Slovakia.<sup>46</sup>**

<i>Estonia</i>	Suntory	Beam	Combined
Single malt Scotch whisky	[10-20]%	[5-10]%	[20-30]%
Single malt Scotch whisky <i>on-trade</i>	[10-20]%	[10-20]%	[20-30]%
<i>Slovakia</i>	Suntory	Beam	Combined
Single malt Scotch whisky premium quality	[20-30]%	[0-5]%	[20-30]%
Single malt Scotch whisky <i>on-trade</i>	[20-30]%	[0-5]%	[20-30]%
Single malt Scotch whisky premium quality <i>on-trade</i>	[20-30]%	[5-10]%	[20-30]%
Single malt Scotch whisky premium quality <i>off-trade</i>	[20-30]%	[0-5]%	[20-30]%

- (51) The Parties generally remark that their Scotch whisky products focus on different quality/price segments and in any case they do not compete closely with each other. In particular, the Parties' internal documents<sup>47</sup> confirm that when analysing its

<sup>45</sup> Source: IWSR data.

<sup>46</sup> Source: IWSR data.

<sup>47</sup> Annex 7.2.2 - Presentation from Beam dated November/December 2013, entitled "Laphroaig Brand Health Slides".

competitive position in the Scotch market, Beam benchmarks the performance of its Scotch brands vis-à-vis the performance of [competitors' brands].

- (52) The Commission notes, in light of the Parties' submissions, that post-transaction the merged entity would continue to face strong competition from global players, such as Diageo and Pernod Ricard, each accounting for more than [20-30]% of the Scotch whisky sales in most EEA countries.
- (53) In particular, in the Czech Republic, Estonia, Italy, Slovakia and Sweden, the Parties' main competitors in Scotch whisky are Pernod-Ricard (with shares between [20-30]% and [40-50]% in those countries), Diageo (with shares between [10-20]% and [30-40]%) and William Grant (with shares between [5-10]% and [10-20]%).<sup>48</sup> Moreover, a number of additional players exert competitive pressure on the Parties in the Czech Republic (United Brands with [30-40]%), Italy (Campari [10-20]%), Slovakia (Sodiko [10-20]%) and Sweden (The Edrington Group [10-20]%).
- (54) The Commission notes that none of the competitors and customers approached raised concerns regarding the price and availability of Scotch whisky in the Czech Republic, Estonia, Italy, Slovakia or Sweden. As mentioned in relation to Spain, the Commission considers that in light of the replies to the market investigation the Parties' brands are not each other's closest competitors, with the exception of *Bowmore* and *Laphroaig*<sup>49</sup> single malt whiskies which are both present in each of the countries mentioned above. However, the Commission notes that the market participants also indicated that there are other close brands to *Bowmore* and *Laphroaig*, such as *Highland Park* (Edrington), *Talisker*, *Lagavulin*, *Caol Ila*, *Cardhu* (Diageo), *Ardbeg* (LVMH), *Glenmorangie* (Moët-Hennessy), *Bruichladdich* (Remy Cointreau), *Bunnahabain* (Burn Stewart/Distell).<sup>50</sup>
- (55) Therefore the Commission concludes that in light of the presence of other strong competitors in Scotch whisky and in the absence of any concerns voiced during the market investigation, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to Scotch whisky in Czech Republic, Estonia, Italy, Slovakia and Sweden under any plausible market definition.

#### 3.4.2. LIQUEURS

- (56) Suntory's liqueur offering in the EEA is limited to two liqueurs, namely a chocolate-flavoured liqueur (*Mozart*) and a melon-flavored liqueur (*Midori*). Beam sells a variety of different flavored liqueurs in the EEA (apple, berry, blackcurrant,

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<sup>48</sup> These competitors are leading Scotch whisky suppliers in the EEA: Diageo is market leader in 12 countries (with shares ranging from [20-30]% to [50-60]% across those countries, and the leading global brand Johnnie Walker); Pernod Ricard in 5 countries (with shares ranging from [10-20]% to [70-80]% and the leading global brands Ballantine's and Chivas Regal), and William Grant in 2 countries (with a [20-30]% share in each of them).

<sup>49</sup> The Parties submit that Bowmore and Laphroaig are not each other's closest competitors because Bowmore falls under the premium range category, while Laphroaig falls under the super-premium range category. In addition, the Parties indicate that the prices at which Beam's products are sold in the single malt segment in Estonia and Slovakia are 41% and 89% above the prices at which Suntory's products are sold.

<sup>50</sup> Replies to questions 32 and 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3) and to on-trade and off-trade customers of whisky (Q2), dated 18 March 2014.

cinnamon, cherry, citrus, cranberry, orange, mandarin, mango, pineapple, raspberry, summer berry, toffee, and tropical). Beam also acts as a third-party distributor in Germany for the Lucas Bols liqueur range (which includes chocolate- and melon-flavored liqueurs), as well as Galliano and Pisang Ambon liqueurs, while the Maxxium distribution joint ventures purchase and re-sell the Lucas Bols liqueur range in Spain and the United Kingdom. In addition, Maxxium U.K. distributes Grand Marnier (an orange-flavored liqueur) and Drambuie (a whisky-flavored liqueur) on a limited scale in the United Kingdom.

- (57) The wider liqueur market in the EEA is fragmented. Overall, at the EEA level, the merged entity would remain a relatively small operator in the market for liqueurs with a combined share of [0-5]%, especially when compared to leading competitors such as Diageo ([5-10]%), Stock Spirits ([5-10]%) and Pernod Ricard ([5-10]%).
- (58) The positioning of the Parties in an overall liqueur market at the EEA level broadly reflects their positioning in the individual EEA countries. Specifically the transaction would not give rise to any affected market in any of the EEA countries.
- (59) When considering narrower segmentations by flavour, a direct overlap arises only if Beam’s and the Maxxium joint ventures’ sales as third-party distributors of the Lucas Bols “agency brands” are attributed to Beam. In that case, the hypothetical markets for chocolate- and melon-flavoured liqueurs in Germany and the United Kingdom sold to on-trade customers are affected.

**Table 4. Suntory's and Beam's market shares (by volume) for liqueurs, including sales of agency brands in Germany and the UK.<sup>51</sup>**

<i>Germany</i>	Suntory	Beam	Combined
Chocolate liqueurs <i>on-trade</i>	[40-50]%	[10-20]%	[60-70]%
Melon liqueurs <i>on-trade</i>	[40-50]%	[40-50]%	[90-100]%
Melon liqueurs ( <i>on-trade</i> + <i>off-trade</i> )	[20-30]%	[20-30]%	[50-60]%
<i>United Kingdom</i>	Suntory	Beam	Combined
Melon liqueurs <i>on-trade</i>	[90-100]%	[0-5]%	[90-100]%

- (60) The Parties submit that Suntory's liqueurs are significantly different from Lucas Bols' liqueurs and that their products are not each other's closest competitors.
- (61) The Commission notes that, according to the Parties, Midori is the only liqueur that contains Japanese Yubari and Musk melons, which convey a unique flavour. By contrast, the Bols' melon flavor comes from the more common honeydew melon. Similarly, according to the Parties, Suntory’s Mozart line is not a close competitor of the Bols’ chocolate-flavored offerings. Suntory focuses on the “chocolate cream liqueurs” and “chocolate liqueurs” categories, while the chocolate-flavored liqueurs in the Lucas Bols range fall into the “crème de cacao” category.
- (62) The Commission notes that in light of the replies to the market investigation Suntory's and Beam's liqueurs are not close substitutes, but rather complementary

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<sup>51</sup> Source: IWSR data

products.<sup>52</sup> In particular, the *Midori* liqueur belongs to the premium range category, "almost exclusive in its category due to high quality and use of natural fruit into its production"<sup>53</sup>, whereas Beam's *Aftershock* and *Sourz* (non-melon flavoured liqueurs) belong to the value category competing with other fruit flavoured liqueurs.

- (63) The Commission considers that in light of the market investigation, the closest competitors to *Midori* liqueur are *Bols* (Lucas Bols' brand distributed by Beam), *Passoa* (Remy Cointreau), *DeKuyper* (De Kuyper Distilleries), *Marie Brizard* (Groupe Belvédère) and *Malibu* (Pernod Ricard).<sup>54</sup> The closest competitor to Suntory's chocolate flavoured liqueur (*Mozart*) is *Baileys* (Diageo), followed by other brands such as *Godiva* (Godiva Liqueur Co's) and *Chocovine* (Chocovine LLLP).
- (64) The Commission notes that post-transaction the Parties would continue to face strong competition from large and often vertically integrated players. Moreover, even if in certain segments the Parties' combined market shares appear significant, it should be considered that the overall value of these hypothetical segments and consequently the value of the Parties' combined sales in these segments are relatively small (see table 5 below).

**Table 5. Suntory's and Beam's sales of chocolate and melon liqueurs in Germany and the UK.**<sup>55</sup>

Parties' Sales of Chocolate and Melon Liqueurs in 2012 (Euros)				
Country/ Region	Chocolate liqueurs		Melon Liqueurs	
	Suntory	Beam	Suntory	Beam
Germany	€[...]	€[...]	€[...]	€[...]
The United Kingdom	€[...]	€[...]	€[...]	€[...]

- (65) The Commission notes that none of the competitors and on-trade customers approached raised concerns regarding the price and availability of liqueurs in Germany and the UK.<sup>56</sup> The Commission considers that in light of the replies to market investigation given by customers there are enough alternative suppliers in Germany and the UK to Suntory's melon liqueur, including Borco (which distributes *DeKuyper*), Beveland (spirits and liqueur producer and export company based in Spain), Giffard, and Monin (manufacturer of liqueurs with two production facilities

<sup>52</sup> Replies to question 31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014. Replies to question 14 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade customers of liqueurs in Germany and the UK (Q1), dated 18 March 2014.

<sup>53</sup> Replies to question 31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Perelada Comercial S.A. (Questionnaire to competitors and distributors –Q3), dated 18 March 2014.

<sup>54</sup> Replies to questions 32 and 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3) and to on-trade customers of liqueurs in Germany and the UK (Q1), dated 18 March 2014.

<sup>55</sup> Source: Form CO.

<sup>56</sup> Replies to questions 36 and 37 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014. Replies to questions 19 and 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade customers of liqueurs in Germany and the UK (Q1), dated 18 March 2014.

in Europe), as well as alternative suppliers for chocolate flavoured liqueur such as Campari, Diageo, Giffard, Henkell, Pernod Ricard, Waldemar Behn, and Schwarze und Schlichte.<sup>57</sup>

- (66) Therefore the Commission concludes that in light of the Parties' limited sales of chocolate and melon liqueurs, the presence of alternative suppliers and in the absence of any concerns raised during the market investigation, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to chocolate and melon flavoured liqueurs in Germany and the UK.

### 3.5. Portfolio effects

- (67) The Transaction will essentially further broaden Beam's spirits product portfolio (which includes various whiskies, brandy, gin, tequila, rum, vodka, RTDs, and liqueurs) by adding Japanese whisky to its offering and further widening the range of Scotch whisky and liqueurs offered in the EEA.
- (68) The Commission notes that the leading spirits suppliers, including Bacardi-Martini, Campari, Diageo, Pernod Ricard, and Remy Cointreau, many of which have much more significant EEA-wide spirits businesses and a much stronger presence in the segments in which the Parties' activities overlap (e.g. Scotch) and in which they do not (e.g., gin/genever, aniseeds), have similar or broader portfolios and could easily counter any attempted tying or bundling strategy with a bundled offering of their own. In some internal documents, the Parties acknowledge that further to the transaction, the combined entity will have only [...] of the worldwide top 100 spirit brands, whereas competitors such as Diageo and Pernod Ricard will still have [...] and [...] respectively.<sup>58</sup> Furthermore, the Commission considers, in light of the Parties' submissions, that customers appear to enjoy strong buying power and are likely to continue to multisource brands and extract cost savings from all suppliers.
- (69) The Commission notes that post-transaction the Parties' main competitors will continue to have stronger product portfolios than the merged entity. Therefore, the combined entity is unlikely to be able to foreclose effective competition in any spirits category in the EEA through a tying strategy.
- (70) One competitor raised concerns about the possibility of Suntory's Scotch whisky brands being diverted from a third-party distributor to Beam's Maxxium joint venture in Spain. Consequently, this would give a "*competitive advantage to Maxxium into the negotiation of this products category and a high concentration of brands, limiting the possibilities of other brands to develop in this product category*".<sup>59</sup> However, the Commission considers that Suntory's sales of Scotch whisky in Spain amount to less than [0-5]% of the market for Scotch whisky and its sub-segments in Spain. Even if Suntory's brands in future were to be distributed through the Maxxium joint venture, the limited competitive presence of Suntory's

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<sup>57</sup> Replies to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to on-trade customers of liqueurs in Germany and the UK (Q1), dated 18 March 2014.

<sup>58</sup> Annex 5.5 - Presentation for Suntory's Group Strategy Meeting, dated November 7, 2013, entitled "Beam Inc. Acquisition" (English and Japanese versions).

<sup>59</sup> Replies to questions 34 and 37 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors and distributors (Q3), dated 18 March 2014.



brands in Spain make it very unlikely that the merged entity would be able to foreclose rivals.

#### **IV. CONCLUSION**

- (71) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*

*signed*  
*Joaquin Almunia*  
*Vice-President*