



EUROPEAN COMMISSION
DG Competition

***Case M.10436 - MOËT HENNESSY / CAMPARI / CLASS A
TANNICO SHAREHOLDERS / TANNICO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/12/2021

***In electronic form on the EUR-Lex website under
document number 32021M10436***



EUROPEAN COMMISSION

Brussels, 20.12.2021
C(2021) 9884 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Moët Hennessy S.A.S.
24-32 Rue Jean Goujon
75008 Paris
France

Davide Campari – Milano N.V.
Via F. Sacchetti 20
20099 Sesto San Giovanni
Italy

Mr. Marco Magnocavallo
Via Visconti di Modrone 12
20122 Milano
Italy

Mr. Andrea di Camillo
Via Chiossetto 1
20122 Milano
Italy

**Subject: Case M. 10436 — Moët Hennessy/Campari/Class A Tannico
Shareholders/Tannico
Commission decision pursuant to Article 6(1)(b) of Council Regulation**

No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 15 November 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Moët Hennessy S.A.S. ('Moët Hennessy', France), Davide Campari-Milano N.V. ('Campari', the Netherlands) and the Class A Tannico Shareholders acquire joint control of Tannico e Wineplatform S.p.A. ('Tannico', Italy) (the 'Proposed Transaction' or the 'Transaction'). Before the Proposed Transaction Tannico was jointly controlled by Campari and the Class A Tannico Shareholders.³ Moët Hennessy, Campari and the Class A Tannico Shareholders are designated hereinafter as the 'Notifying Parties' and, together with Tannico, the 'Parties'.

1. THE PARTIES

- (2) **Moët Hennessy** is a French company, a subsidiary of LVMH Moët Hennessy Louis Vuitton SE, specialised in the production and distribution (mostly at wholesale level) of wines and spirits worldwide.
- (3) **Campari** is active in the production and distribution of wines and spirits on an international level.
- (4) The **Class A Tannico Shareholders** are Mr. Marco Magnocavallo and Mr. Andrea di Camillo. Mr. Marco Magnocavallo is the current CEO of Tannico. Together with Mr. Andrea di Camillo, they co-control the investment company Boox. Mr. Andrea di Camillo also controls P101, an Italian venture capital firm focused on early-stage investments in the digital sector.
- (5) **Tannico** offers wines and spirits through its e-commerce platform (without any production activities).

2. THE OPERATION

- (6) The Transaction will be carried out through the creation of a 50/50 joint venture⁴ between Moët Hennessy and Campari; the joint venture will hold Campari's stake in Tannico (consisting of [...]% of the share capital and [...]% of the voting rights). Post-Transaction, Moët Hennessy will indirectly hold a minority stake in Tannico ([...] % of the share capital and [...] % of the voting rights). [Corporate governance

¹ 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.

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 475, 25.11.2021, p. 6-7.

⁴ Non-full function in nature, its primary purpose being to carry out Moët Hennessy's and Campari's joint investment in Tannico.

provisions].⁵ Therefore, Moët Hennessy together with Campari and Mr. Marco Magnocavallo and Mr. Andrea di Camillo, will exercise joint control over Tannico.

- (7) Tannico has sufficient own staff, financial resources and dedicated management for its operation and for the management of its portfolio and business interests. Furthermore, Tannico already has a market presence, does not have significant sale or purchase relationships with its parents and is intended to operate on a lasting basis as Tannico is present on the market since 2012 and aims to continue its activity indefinitely. Therefore, Tannico is full-function.
- (8) In light of the above, the Transaction is a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (LVMH Moët Hennessy Louis Vuitton SE: EUR [...], Campari: EUR [...], Class A Tannico Shareholders: EUR [...] and Tannico: EUR [...]). Two of the undertakings concerned have a Union-wide turnover in excess of EUR 250 million (LVMH Moët Hennessy Louis Vuitton SE: EUR [...], Campari: EUR [...]). The undertakings concerned do not all achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. THE PARTIES' ACTIVITIES

- (10) Moët Hennessy and Campari are both active in the wholesale of wines and spirits across the EEA.
- (11) More specifically, Moët Hennessy holds most of the Wines & Spirits Maisons of LVMH. LVMH's Wines and Spirits business group (which Moët Hennessy belongs to) is active in the production and distribution, mostly at wholesale level, of wines and spirits worldwide. It is divided in two parts, namely (i) Champagne and Wines, in which LVMH owns Moët & Chandon, Dom Pérignon, Veuve Clicquot, Ruinart, Krug, Mercier and a variety of wines from France (including Château Cheval Blanc, Château d'Yquem, Clos des Lambrays, Château d'Esclans and Château du Galoupet), Spain, the USA and the other non-EU countries (including Cape Mentelle in Australia and Newton Vineyards in the US); and (ii) Cognac and Spirits, which includes Hennessy (cognac), Glenmorangie, Ardbeg, and Woodinville Whiskey Company (Scotch whiskies), Belvedere (vodka), and Volcan De Mi Tierra (tequila).
- (12) Campari is also active in the production and wholesale distribution of wines and spirits on an international level. Its diversified portfolio covers a wide range of spirits such as aperitifs, liqueurs and rums, as well as champagne and non-alcoholic aperitifs. It includes over 50 brands worldwide, including Aperol, Campari, SKYY, Grand Marnier, Wild Turkey and Appleton Estate.

⁵ [Description of Tannico's corporate governance provisions].

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (13) Tannico primarily acts as a retailer of wines and spirits through its e-commerce platform, launched in 2012 in Italy, which to date is where the vast majority of its worldwide revenues are generated (c. [...]% in 2020). Through the Transaction, Moët Hennessy and Campari intend to build a “*premium pan-European e-commerce player*”⁷.
- (14) The activities of Moët Hennessy and Campari give rise to vertical relationships with those of Tannico.⁸

5. MARKET DEFINITION

5.1. Production and wholesale distribution of wines and spirits (upstream)

5.1.1. Product market

- (15) With respect to wines, in past decisions regarding the production and wholesale distribution of wines, the Commission considered a possible sub-segmentation by type of wine between (i) still wines and (ii) sparkling wines (further segmented into Champagne, Lambrusco, semi-sparkling or flavoured sparkling wine, and sparkling wines other than Champagne).⁹
- (16) With respect to spirits, in the past the Commission considered a segmentation for each of the main spirit categories, i.e. (all) whisky, cognac/armagnac and other brandies, rum, gin, vodka, tequila, aniseed, bitters and liqueurs.¹⁰ Brandy and whisky were further segmented according to origin: (i) for brandy, different markets were considered for Cognac and Armagnac¹¹; and (ii) for whisky different markets were considered for Scotch, Irish, US, Canadian.¹²
- (17) In a previous case, the Commission also considered the possible existence of separate markets for the supply of spirits depending on whether they are on-trade (i.e: sales to hotels, bars, cafés, etc) or off-trade (i.e: sales to the retail sector).¹³ However, the Commission ultimately concluded that this delineation would not change the competitive assessment as the transaction in question in that case would primarily concern off-trade, i.e. sales to wholesalers and large retailers. In the present case the delineation would not change the competitive assessment since Tannico is present essentially in the direct sales to final customers ([...] % of Tannico turnover is represented by sales to final consumers).
- (18) The Notifying Parties consider that for the purposes of the assessment of their vertical relationships with Tannico and in line with previous Commission’s

⁷ <https://camparigroup.com/sites/default/files/downloads/20210712%20%20MH%20Campari%20ENG%20vFINAL.pdf>

⁸ This link was pre-existing to the Transaction as regards Campari, which already jointly controlled Tannico. The Parties confirm that there are no horizontal or vertical relationships between the activities of the Class A Tannico Shareholders and Tannico. (Form CO, paragraph 1.15).

⁹ Case M.5114 – Pernod Ricard/V & S (2008), paragraph 40.

¹⁰ Case M.938 – Guinness/Grand Metropolitan, (1997), paragraph 23.

¹¹ Case M.2268 – Pernod Ricard / Diageo / Seagram Spirits, (2001), paragraph 17.

¹² Case M.3779 – Pernod Ricard /Allied Domecq, paragraph 12. Case M.2268 – Pernod Ricard / Diageo / Seagram Spirits, (2001), paragraph 17.

¹³ Case M.3779 – Pernod Ricard /Allied Domecq, paragraph 13.

decisions, it would be sufficient to examine the following hypothetical product markets at the production and wholesale level: (i) Still Wines, (ii) Sparkling Wines, (iii) Agave-Based Spirits, (iv) Brandy, (v) Rum, (vi) Vodka, and (vii) Whisky. These correspond to the wines and spirits segments in which Moët Hennessy generates sales in the EEA.¹⁴

- (19) The Commission considers that, consistently with its past practice and absent indications to the contrary from the market investigation, plausible relevant product markets for the production and wholesale distribution of wines and spirits can be defined according to the product categories referred to in paragraphs 14-15 above.
- (20) In any event, it can be left open whether the market for the production and wholesale distribution of wines should be segmented (i) by product type for wines, and (ii) product category or origin for spirits; and (iii) by sales to the on-trade channel and sales to the off-trade channel,¹⁵ as the assessment of the Transaction's compatibility with the internal market or the functioning of the EEA Agreement would not change under any plausible product market definition.

5.1.2. *Geographic markets*

- (21) As to the geographic scope, in previous decisions concerning the production and wholesale distribution of wines and spirits,¹⁶ the Commission found that the geographic scope of the various product markets is national, mainly because of strong national preferences and consumption behaviours.
- (22) The Notifying Parties consider that the geographical relevant markets are wider than national because in their view consumers do not have strong national preferences, the wholesale price differences between countries are not substantial and the characteristics of the wines and spirits do not vary materially according to the geographic area.¹⁷
- (23) In any event, for the purposes of this Decision, it can be left open whether the markets for the production and wholesale of wines and spirits are national or EEA wide in scope as the assessment of the Transaction's compatibility with the internal market or the functioning of the EEA Agreement would not change under any plausible product market definition. Under a conservative approach, the Transaction will be assessed at a national level.

5.2. **Retail of wines and spirits (downstream)**

5.2.1. *Products market*

- (24) For the retail of wines and spirits, the Commission previously considered only the travel retail segment¹⁸, which is not relevant for the present case.

¹⁴ Form CO, paragraph 6.15.

¹⁵ For the reasons stated in paragraph 16, the distinction between sales to the on-trade and the off-trade will not be considered in the competitive assessment.

¹⁶ Case M.5114 – Pernod Ricard/V & S (2008), paragraph 43.

¹⁷ Form CO, paragraph 6.25.

¹⁸ Case M.5114 – Pernod Ricard/V & S (2008), paragraph 44.

- (25) The Notifying Parties consider that the retail market for wines and spirits should not be further sub-segmented, e.g. according to the sales channel or type of beverage sold.¹⁹ As to sales channel, because Tannico is active essentially on the online sales channel, the Notifying Parties consider that the Proposed Transaction should be assessed only on the online segment since this is the narrowest segment should a segmentation between online and brick-and-mortar sales channels be considered. As to the type of beverage sold, the Notifying Parties consider that it is not relevant to segment the retail market by type of beverage, as retailers of wines and spirits typically offer a broad portfolio across the board of wines and spirits (as well as other alcoholic beverages, such as beer, cider, and ready-to-drink beverages), and could easily shift their capacity/shelf space from one product offered in store towards another in reaction to price increases.²⁰
- (26) The results of the market investigation support the fact that retailers purchase the whole range of wines and spirits as all retailers that expressed a view explained that they purchase the whole range of wines and spirits.²¹ Indeed, the retailers aim to offer a broad selection of wines and spirits to the final consumer to maximise their revenues. For example, one retailer pointed out in the market investigation that ‘*Our product portfolio has 3000 wine references and 3000 spirits references*’²². The Commission therefore considers that, for the purposes of this Decision, the market for retail encompasses all wines and spirits.
- (27) In addition, for the purposes of this Decision, it can be left open whether the retail market for wines and spirits can be segmented by sales channel as the as the assessment of the Transaction’s compatibility with the internal market or the functioning of the EEA Agreement would not change under any plausible product market definition. Since Tannico is active only in the online sales channel, taking a conservative approach, the Commission will assess the Proposed Transaction only for the online segment.

5.2.2. Geographic market

While the Notifying Parties consider the relevant geographic market for the retail of wines and spirits to be nation-wide in scope, they consider that the online retail of wines and spirits to be at least EEA-wide. They argue that on-line retailers are able to ship from a few locations on a worldwide basis and that shipping costs tend to represent a small portion of an order’s value depending on the size of the order.²³

- (28) The majority of the retailers that expressed a view in the market investigation state that they purchase their portfolio of wines and spirits on a national level.²⁴

¹⁹ Form CO, paragraph 6.10.

²⁰ Form CO, paragraph 6.10.

²¹ Answers to question 2 from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

²² Answer to question 2 from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

²³ Form CO, paragraph 6.22.

²⁴ Answers to question 3 from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

- (29) The Commission therefore considers that, for the purposes of this Decision, the market for the retail of wines and spirits is national in scope.

6. COMPETITIVE ASSESSMENT

- (30) The Proposed Transaction give rises to a vertical relationship between the upstream production and wholesale activities of Moët Hennessy and Campari and the downstream online retail business of Tannico in several Member States or EEA countries.

6.1. Market shares

- (31) The following table shows the market shares of the Parties which lead to vertically affected markets. The Transaction gives rise to vertically affected markets on a national level with respect to (i) the upstream sub-segments for production and wholesale distribution of champagne, sparkling wines and cognac (wines and spirits overall are not affected)²⁵ and (ii) the downstream segment of online retail of wines and spirits²⁶.

²⁵ The Proposed Transaction gives rise to combined market shares above 30% only if wines are sub-segmented by type into champagne and sparkling wines and brandy is sub-segmented by origin into cognac.

²⁶ The vertical relationship in all other plausible markets does not give rise to any affected markets.

Table 1 – Market shares in vertically affected markets

Upstream markets of production and wholesale distribution of wines and spirits								Downstream online retail of wines and spirits
		Moët Hennessy		Campari		Combined		Tannico
		Value (%)	Volume (%)	Value (%)	Volume (%)	Value (%)	Volume (%)	Value (%)
Champagne	Austria	[50-60]%	[40-50]%	[0-5]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
	Germany	[50-60]%	[30-40]%	[0-5]%	[0-5]%	[50-60]%	[30-40]%	[0-5]%^27
	Greece	[80-90]%	[80-90]%	0%	0%	[80-90]%	[80-90]%	[0-5]%
	Iceland	[60-70]%	[60-70]%	0%	0%	[60-70]%	[60-70]%	[0-5]%^28
	Italy	[40-50]%	[30-40]%	[0-5]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%
	The Netherlands	[50-60]%	[40-50]%	[0-5]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
	Portugal	[40-50]%	[40-50]%	0%	0%	[40-50]%	[40-50]%	[0-5]%
	Spain	[50-60]%	[40-50]%	[0-5]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Cognac	Greece	[60-70]%	[60-70]%	0%	0%	[60-70]%	[60-70]%	[0-5]%
Sparkling wines	Greece ²⁹	[30-40]%	[10-20]%	[0-5]%	[0-5]%	[40-50]%	[10-20]%	[0-5]%

Source: Annex 7.1 - Market Shares Estimates (Updated December 3, 2021) and Annex PN RFI 1.9 - 2018-2020 Market Share Estimates (Updated December 3, 2021)

- (32) As can be seen from Table 1, the Proposed Transaction gives rise to vertically affected markets between, at the upstream level, (i) the Champagne sub-segment in eight geographies (in particular Austria, Germany, Greece, Iceland, Italy, the Netherlands, Portugal and Spain) and (ii) the Cognac sub-segment in Greece; and the corresponding downstream relevant markets for online retail of wines and spirits in Austria, Germany, Greece, Iceland, Italy, the Netherlands, Portugal and Spain. The markets are essentially affected due to Moët Hennessy's market shares at the upstream level of production and wholesale distribution of the respective types of wines and spirits, since Campari's presence is *de-minimis*. For all affected downstream markets, with the exception of Italy, Tannico's market shares are *de-minimis* (below [0-5]%).

²⁷ LVMH is active in the retail sale of wines and spirits in Germany to a limited extent through Clos19, a specialized e-commerce platform. LVMH's market share is [0-5]%, Tannico's market share is [0-5]%.

²⁸ The Parties were unable to provide market share estimates for the online segment for Iceland, but the Parties confirmed that Tannico's market share for the overall retail of wines and spirits is below 1%; moreover Tannico's sales in Iceland were below 10 000 EUR with no direct retail activities of Moët Hennessy and Campari.

²⁹ The broader market of production and wholesale distribution of sparkling wines in Greece is also affected considering Moët Hennessy's market share of [30-40]% in value, which gives rise to a combined market share of [40-50]% in value (the combined market share in volume is [10-20]%). This market will not be assessed further because the Commission will conduct the assessment on the narrowest segment of Champagne.

6.2. The Notifying Parties' views

- (33) The Notifying Parties' view is that the Transaction would not result in a significant impediment of effective competition in the online retail of wines and spirits, and Champagne/Cognac in particular, because (i) Tannico's market share downstream is below 5% in most countries, and below 30% in all of the countries (ii), Champagne represents a negligible portion of Tannico's sales of wines and spirits and (iii) post-Transaction, neither the Parties, in particular Moët Hennessy, nor Tannico will have the ability or incentive to pursue any plausible input or customer foreclosure strategy.³⁰

6.3. The Commission's assessment

6.3.1. Legal framework for the assessment

- (34) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. In this respect, a merger can entail horizontal and/or non-horizontal effects.
- (35) As regards non-horizontal effects, the Commission Non-Horizontal Merger Guidelines³¹ distinguish between the effects of vertical mergers, which involve companies operating at different levels of the supply chain, and of conglomerate mergers, which involve companies that are active in closely related markets.
- (36) According to paragraph 29 of the Non-Horizontal Merger Guidelines, a vertical merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.
- (37) Paragraph 30 of the Non-Horizontal Merger Guidelines distinguishes two forms of vertical foreclosure. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).
- (38) The present Section 6.3 assesses whether the Transaction is likely to raise vertical effects on the affected markets identified in Section 6.1.

6.3.2. Italy

- (39) Italy is the main market where Tannico is currently active in the EEA through the Tannico e-commerce platform³². Italy represents [...] % of the Tannico platform sales in 2020³³. The market shares of the Parties give rise to affected market in Italy due to (i) the upstream market share of [40-50] % in value in 2020 ([30-40] % in

³⁰ Form CO, paragraphs 7.9-7.10.

³¹ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Merger Guidelines') (2008/C 265/07).

³² Tannico also owns a separate e-commerce platform in France named Venteàlapropriété.com. However, the Transaction does not lead to affected markets in France.

³³ Form CO, paragraph 7.5.

volume) in the Champagne sub-segment and (ii) the downstream market share of [20-30]% on the market of online retail of wines and spirits.

6.3.2.1. Input foreclosure

(40) The Commission considers that, post-Transaction, neither the Notifying Parties, in particular Moët Hennessy, nor Tannico will likely have the ability or incentive to pursue any plausible input foreclosure strategy in the Champagne sub-segment in Italy for the reasons set out below.

(A) Lack of ability to foreclose competitors downstream

(41) First, a number of alternative producers to Moët Hennessy and Campari are active in the sub-segment for the production and wholesale of Champagne in Italy. Those alternatives includes Pernod Ricard ([5-10]% in value, [5-10]% in volume in 2020), Vranken Pommery ([5-10]% in value, [0-5]% in volume in 2020), Laurent Perrier ([0-5]% in value, [0-5]% in volume in 2020), Louis Roederer ([0-5]% in value, [0-5]% in volume in 2020), Billecart Salmon ([0-5]% in value, [0-5]% in volume in 2020)³⁴ and a number of other smaller players. The market investigation confirmed the existence of a number of alternative suppliers, with retailers in Italy mentioning Laurent Perrier, Vranken Pommery, Domori (Taittinger), Pernod Ricard, Perrier Jouet, or Nicolas Feuillatte.³⁵

(42) The market investigation also supports the fact that if Moët Hennessy were to cease supplying, or increase prices for its Champagne products in Italy, certain retailers could source from the existing players or other players with a more established presence in other geographies that could expand their presence in Italy in response to a price increase. While some market participants mentioned that Moët Hennessy owns leading champagne brands such as Dom Perignon³⁶ a retailer explains that in case of a price increase or reduction of supplies the market would support the growth of other brands: *“In this case, the whole Italian market would try to support the fast growth of other brands [...]”*³⁷

(43) Overall, given the number of credible alternative suppliers and the ability for certain retailers to turn to and potentially support or promote other players, Moët Hennessy and Campari would likely have no ability to engage in an input foreclosure strategy post-Transaction.

(B) Lack of incentive to foreclose competitors downstream

(44) The Commission considers that the Parties would have a very limited incentive to engage into input foreclosure for the following reasons.

(45) First, if Moët Hennessy were to attempt to restrict access to its Champagne products, it would merely limit its own sales opportunities with no clear prospect to recoup

³⁴ Form CO, reply to request for information 3, Annex 1.9.

³⁵ Answers to question 4 from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

³⁶ Answer to question 7 from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

³⁷ Answer to question 7 from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

foregone revenues at the retail level. This is confirmed by the market investigation, in which several retailers explain that such strategy would likely not be profitable for Moët Hennessy. A retailer in Italy explains that given the market structure the strategy is unlikely to be profitable: *“Tannico will not be sufficient output for Moët and Campari, therefore Moët would not have cost-effectiveness to supply only Tannico with champagne”*.³⁸ Another retailer explains that the market would turn to alternative brands: *“In my opinion, it would not make economic and strategic sense in Italy to have only one distribution player for Moët products. In my opinion, the market would react by generating the goal of creating and supporting new brands”*.³⁹

- (46) Second, Moët Hennessy would only benefit from a portion of the profits resulting from such a strategy, as any profits from such a strategy would be shared with Campari and the other controlling shareholders as post Transaction Moët Hennessy will hold a minority stake in Tannico ([...]%) of the share capital) as described in paragraph (6). Conversely, the loss due to switching customers would be suffered exclusively by Moët Hennessy, which would therefore render this strategy less likely to be profitable for Moët Hennessy.
- (47) Third, Moët Hennessy also sells other spirits and wines to retailers. Therefore, restricting access to Champagne specifically could jeopardize its relationship with distributors and penalize all the other products in Moët Hennessy’s portfolio.
- (48) In conclusion, given the risk of loss of revenue, the limited potential return due to ownership structure, and the risk of jeopardizing sales of other products in Moët Hennessy’s portfolio, the Commission considers that the Parties would likely have no incentive to engage in an input foreclosure strategy post-Transaction.

(C) Conclusion on input foreclosure

- (49) In light of the above, the Commission considers that the new entity would have neither the ability nor the incentive to engage in an input foreclosure strategy against its downstream competitors in the retail of wines and spirits. As the requirements to prove the risk of foreclosure are cumulative, there is no need for the Commission to examine the impact on competition of a hypothetical input foreclosure strategy.

6.3.2.2. Customer foreclosure

(A) Lack of ability to foreclose competitors upstream

- (50) First, if Tannico were to cease procuring and selling Champagne from producers and distributors competing with Moët Hennessy in the upstream market, or reduce its purchases, those competing producers and distributors would be largely unaffected due to the existing alternatives to Tannico. Tannico’s market share is of [20-30]%. Moreover, there are several other major competitors on the online retail market for wines and spirits in Italy, such as Amazon ([20-30]% in value in 2020), Vino.com ([10-20]%) Callmewine ([5-10]% in value in 2020), Barnabei ([5-10]% in

³⁸ Answer to question 6.b from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

³⁹ Answer to question 6.b from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

value in 2020) or Vivino ([0-5]% in value in 2020)⁴⁰ and a number of smaller competitors. The presence of alternatives on the online retail of wines and spirits has been confirmed by the market investigation in which market participants specifically listed a number of alternatives such as vino.com, Bernabei or Vivino.⁴¹

- (51) Second, the brick and mortar retail channel would still remain the main commercial outlet. Indeed, Tannico only represents sales of EUR [...], which would amount to less than [0-5]% of the sales of Champagne in Italy. This makes it unlikely for Tannico to be considered a key customer for Champagne producers/wholesale distributors. In other words, Tannico's sales channel does not appear indispensable for competing Champagne producers/wholesale distributors.
- (52) Overall, given the number of other competitors on the online retail market for wines and spirits in Italy, and the traditional retail importance as a commercial outcome for Champagne producers/distributors, the Parties would likely not have the ability to engage in a customer foreclosure strategy post-Transaction.

(B) Lack of incentive to foreclose competitors upstream

- (53) First, the market investigation supports the fact that end-customers value a broad product offering including a variety of products with different characteristics. It would thus appear against Moët Hennessy's interest to restrict Tannico's relationships with competing Champagne producers/distributors. This is confirmed by a producer and distributor of wine and spirits which explains: "*Please note that, from a purely business point of view, it is commonly considered that a single player wine and spirits e-commerce platform, with little or no diversity (e.g. a platform that would only sell its two parent companies' products), is not very attractive to customers and would thus not be profitable. An e-commerce platform's best interest is to offer a large choice to its customers and potential customers, and therefore to offer a broad range of competing products.*"⁴²
- (54) Second, Campari (and other controlling shareholders) would not have a clear benefit from a hypothetical customer foreclosure strategy favouring Moët Hennessy vis-à-vis other Champagne producers/distributors. Any such strategy would therefore most likely be opposed by the other controlling shareholders in Tannico.
- (55) In conclusion, given the necessity for online retailers to have a broad offer of competitive products and the diverging interests of the shareholders, the Parties would likely not have the incentive to engage in a customer foreclosure strategy post-Transaction.

(C) Conclusion on customer foreclosure

- (56) In light of the above, the Commission considers that the new entity would have neither the ability nor the incentive to engage in a customer foreclosure strategy against its upstream competitors in the production and wholesale distribution of

⁴⁰ Form CO, Annex 7.1.

⁴¹ Answers to question 5 from the e-mail responses to the questionnaire Q2 – Retail of wines and spirits submitted on 22-24 November 2021.

⁴² Answer to question 8.a from the e-mail responses to the questionnaire Q1 – Q1 wholesale of wines and spirits submitted on 22-24 November 2021.

wines and spirits. As the requirements to prove the risk of foreclosure are cumulative, there is no need for the Commission to examine the impact on competition of a hypothetical customer foreclosure strategy.

6.3.2.3. Exchange of competitively sensitive information

- (57) During the market investigation, two Champagne producers/distributors mentioned a risk of information sharing on customers' behaviour and competitor strategy between Tannico's e-commerce platforms and Moët Hennessy. A competing champagne producer/distributor explains: "*Firstly, while Tannico is not, itself, involved in wine and spirits production activities, and therefore does not compete with either third-party brand owners or wholesalers using the platform, the contemplated transaction can raise concerns due to the fact that it will belong to Campari and Moët Hennessy, i.e. two producers whose products compete directly with third party products [...] sold on the platform.*"⁴³ Another champagne producer/distributor explains that the Transaction could trigger a potential "*Almost exclusive and direct collection of customer's data for the benefit of the brands of their groups.*"⁴⁴
- (58) However, the Commission considers that, post-Transaction, several elements will likely prevent such behaviour and in any case limit its competitive impact.
- (59) First, as explained at recital (50) there are a number of alternatives on the online retail of wine and spirit, even in Italy where Tannico's position is the strongest. Therefore, there would be alternatives for Champagne producers/distributors in case they would like to avoid any potential risk of information sharing.
- (60) Second, Campari's acquisition of a 49% stake in Tannico was closed in June 2020. However, following the acquisition the Commission has no indication of any exchange of sensitive information between, on the one hand, Campari and, on the other hand, Tannico (including its French e-commerce platform Ventealapropriete.com)⁴⁵. It therefore appears that, in accessing Tannico's data, Campari is treated like any other supplier of Tannico and does not enjoy any privileges/advantages. This past example suggests that the acquisition of joint control by an additional spirit and wine producer, namely Moët Hennessey, will not change Tannico's strategic behaviour and commercial approach.

⁴³ Answer to question 8 from the e-mail responses to the questionnaire Q1 – Q1 wholesale of wines and spirits submitted on 22-24 November 2021.

⁴⁴ Answer to question 8 from the e-mail responses to the questionnaire Q1 – Q1 wholesale of wines and spirits submitted on 22-24 November 2021.

⁴⁵ Reply to request for information 3 dated 1 December 2021, paragraph 2.1.

- (61) Moreover, on March 18, 2021, Tannico’s board of directors adopted (with Campari’s agreement) a resolution that introduced measures aiming to preserve Tannico’s fair and transparent commercial approach vis-à-vis all of its suppliers in the years to come. The Resolution⁴⁶ introduces the following prohibitions upon Campari and Tannico’s directors appointed by Campari:
- A prohibition to access data available in Tannico’s sale platform in a different manner⁴⁷ from any other of its suppliers; and
 - A prohibition to access certain data of Tannico from which Campari could, directly or indirectly, obtain sensitive information relating to its competitors.
- (62) Third, as explained in paragraph (53) end-customers of online retail platforms value a broad product offering including a variety of products with different characteristics. Therefore, a strategy whereby Tannico would seek to favour Moët Hennessy and/or Campari to the detriment of other suppliers would risk damaging Tannico’s business to an extent that outweighs the hypothetical economic benefit for the Parties of such strategy, if such strategy results in discouraging third parties from using the platform.
- (63) Fourth, as explained in paragraph (6), Tannico will be jointly controlled with certain Class A Tannico shareholders, in particular Mr. Marco Magnocavallo and Mr. Andrea di Camillo. Any potential strategy pursued by Tannico aiming to favour Moët Hennessy and/or Campari would likely be opposed by the above-mentioned Class A jointly controlling shareholders.
- (64) In light of the above, the Commission considers that it is unlikely that post-Transaction any exchange of commercially sensitive information between Campari/Moët Hennessy and Tannico would take place or, in any event, that it would have any significant impact on competition in the production and wholesale distribution of wines and spirit within the EEA.

6.3.3. *Other vertically affected markets*

- (65) The other vertically affected markets are due to the position of Moët Hennessy in the upstream markets of (i) the Champagne sub-segment in seven Member States or EEA countries (in particular Austria, Germany, Greece, Iceland, the Netherlands, Portugal and Spain) and (ii) the Cognac sub-segment in Greece.
- (66) However, at the downstream level, while Tannico has a significant presence as an online retailer in Italy, it has very limited presence in other countries. As detailed in table 1, Tannico has a *de minimis* presence in all the other affected markets with a market share inferior to [0-5]%. The limited presence in other countries has been confirmed by the market investigation. As explained by a producer of wine and spirit: “*Regarding other EU countries, Tannico is a very small e-commerce player so*

⁴⁶ M.10436 - Annex RFI 2.4 - March 18, 2021 Resolution of Tannico's board of directors.

⁴⁷ As all of Tannico’s suppliers, Campari can access data on the sales of its products made through Tannico’s e-commerce platform via Tannico Intelligence.

that the contemplated transaction should not have any measurable impact on the online retail market therein.”⁴⁸

- (67) Therefore, due to the extremely limited market share of Tannico downstream on these markets, the Commission considers that, post-Transaction, the new entity is unlikely to have the ability or the incentive to engage in an input or customer foreclosure strategy.

6.3.4. Conclusion on the competitive assessment

- (68) In light of the above considerations and of all evidence available to it, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement due to potential vertical non-coordinated effects under any plausible market definition.

7. CONCLUSION

- (69) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

⁴⁸ Answer to question 8.c from the e-mail responses to the questionnaire Q1 – Q1 wholesale of wines and spirits submitted on 22-24 November 2021.