

**COMMERCE COMMISSION**

**DECISION NO. 303**

Determination pursuant to the Commerce Act 1986 (the Act) in the matter of an application for clearance of a business acquisition involving:

BULMER TRADING (NZ) LIMITED

and

HARVEST WINE COMPANY LIMITED

- The Commission:** Alan Bollard (Chairman)  
Terry Stapleton  
Cathie Harrison
- Summary of Proposal:** That Bulmer Trading (NZ) Ltd acquire the cider making assets and undertaking and the goodwill of that business from Harvest Wine Company Ltd.
- Determination:** Pursuant to s66(3)(a) of the Act, the Commission determines to give a clearance for the proposed acquisition.
- Date of Determination:** 22 July 1997.

AUT/BA - B11/1  
M2346

MEMORANDUM

To: Alan Bollard  
Terry Stapleton  
Cathie Harrison

From: John Preston  
Jane Chilcott

Date: 21 July 1997

Subject: **Business Acquisition: Bulmer Trading (NZ) Ltd/  
Harvest Wine Company Ltd**

**Working Day 10: 16 July 1997**

**Working Day 15: 23 July 1997**

**[Confidential information is contained in square brackets]**

THE PROPOSAL

- 1 On 2 July 1997, the Commission registered a notice from Bulmer Trading (NZ) Ltd (“Bulmer”) seeking clearance to acquire the cider making assets (plant and equipment used in the brewing, production and distribution of cider), and undertaking and the goodwill of that business from Harvest Wine Company Ltd (“Harvest Wine”).

THE PROCEDURES

- 2 Section 66(3) of the Commerce Act 1986 (“the Act”) requires the Commission either to clear, or to decline to clear, a notice given under s66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period.
- 3 The applicant requested confidentiality for the fact of the proposed acquisition on the basis that the parties had not then signed a sale and purchase agreement and that the release of any information relating to the fact of the proposed acquisition could prejudice the applicant’s negotiating position. The application for fact confidentiality

was withdrawn on 10 July 1997. The applicant then agreed to a five working day time extension, so a determination is required by 23 July 1997.

- 4 This report concludes that staff are satisfied that implementation of the proposal would not result, and would not be likely to result, in Bulmer acquiring or strengthening a dominant position in a market, and recommends that in terms of s66(3)(a) of the Act, the Commission give clearance to the proposed acquisition.

## THE PARTIES

### **Bulmer Trading (NZ) Ltd (“Bulmer”)**

- 5 Bulmer is 100% owned by Bulmer Australia Ltd (“Bulmer Australia”). Bulmer Australia produces and distributes cider throughout Australia and New Zealand under the “Strongbow” brand. Bulmer is not involved in the production of cider in New Zealand at the present time.
- 6 HP Bulmer Holdings plc is the English parent company of the Bulmer group of companies, which are also involved in the production and distribution of cider in the UK, Belgium and the Netherlands.

### **Harvest Wine Company Ltd (“Harvest Wine”)**

- 7 Harvest Wine, situated in Gisborne, is involved in the production, distribution and export of cider under the “Harvest” brand, sparkling apple juice, wine and mead. The proposal considered in this report covers only the cider business of Harvest Wine.

## THE MARKET

- 8 Bulmer Australia and Harvest Wine are both involved in the production and distribution of cider, the demand for which has been growing steadily in New Zealand since the early 1990s in line with worldwide trends. The largest producers of cider in New Zealand are Harvest Wine and Montana Wines Ltd. There are also a number of boutique cideries around the country.
- 9 The applicant has submitted that the market can be narrowly defined as the market for the production and distribution of cider, or more widely and accurately defined as the market for the production and distribution of ‘Long Alcoholic Drinks’. That is, it is contended that cider is one small segment of the Long Alcoholic Drinks market which

includes beers, wine coolers, and alcoholic sodas such as “Stinger”, “Vault” and “Sub-Zero”. The applicant also submits that the market is not segregated into local or regional areas and can be looked at as a nationwide market.

- 10 The applicant argues that all of those drinks are substitutable for one another and that they must all retain a close pricing relationship to beer, as the volume leader in the market. For example, it is submitted that if cider is incorrectly priced in relation to beer, the “change” to cider during a drinking session will not occur and retail sales of cider will fall.
- 11 Most cider makers<sup>1</sup> contacted considered that the introduction of ‘new age beverages’ such as alcoholic sodas had impacted on the demand for cider, and had seen the development of new cider products in response. It was also considered by Montana Wines Ltd, and a number of the smaller cideries, that beer was not substitutable for cider.
- 12 Cider has the same method of delivery and to the same outlets as beer and other alcoholic beverages. For example, cider is delivered in kegs and bottles to bars and hotels, and is delivered in both glass and PET bottles of varying sizes (eg: 330 ml glass bottles, multi-packs, 1.25l and 1.5l PET bottles) to wholesale and retail liquor outlets and supermarkets. Montana Wines Ltd estimates that cider sales in New Zealand would be split 70:30 between bar, hotel and “traditional liquor wholesaler” sales and supermarket sales.
- 13 While the applicant contends that cider is part of a wider Long Alcoholic Drinks market, it has adopted the narrow market definition in providing production and market share figures for existing competitors. On the basis of this data, and on the information provided by other cider makers, it is proposed to adopt the narrow market definition.

### **Conclusion on Market Definition**

- 14 For the purposes of this report, the relevant market is defined to be the market for the production and distribution of cider in New Zealand (“the New Zealand cider market”).

## ASSESSMENT OF DOMINANCE IN THE MARKET FOR THE PRODUCTION AND DISTRIBUTION OF CIDER IN NEW ZEALAND

### **Current Competition**

- 15 There are a number of cider makers engaged in the production and distribution of cider in New Zealand. Harvest Wine produces the “Harvest” brand of cider from its cidery in Gisborne. The cider is distributed nationwide.
- 16 Harvest Wine also produces the “Stonehouse” brand of cider under contract to New Zealand Breweries Ltd (“NZ Breweries”), a subsidiary of Lion Nathan Ltd. The existing agreement with NZ Breweries, [ ], is to be assigned to Bulmer. The agreement provides for the brewing and keggering of “Stonehouse” cider, which NZ Breweries distributes around the North Island.
- 17 Montana Wines Ltd produces the “Brightstone”, “Kaos” and “Emerald Peak” brands of cider, which are distributed nationwide. McCashins Brewery Ltd produces the “Rochdale” brand of cider from its cidery in Nelson. The company distributes cider throughout the country. Bulmer Australia distributes the “Strongbow” brand of cider in New Zealand.
- 18 St Andrews Estate Cider Company produces the “St Andrews” brand from its cidery in Havelock North. The cider is distributed mainly in the North Island. Plumpton Park Estate in Napier produces the “Ballydooly” brand, which is distributed around the middle and lower parts of the North Island. Plumpton Park Estate does not distribute cider in the South Island. Bengel Gold Juice Company in Central Otago produces the “Bengel Gold” brand of cider. The company distributes cider only in the South Island. [ ]

### **Market Shares**

- 19 The applicant estimates that the size of the New Zealand cider market is approximately 2,478 kilolitres and that the combined entity would have a market share of around 55% of that market.
- 20 On the basis of production figures supplied by market participants, market shares for existing competitors are estimated as follows:

Market Participant	Approximate Production Volume (kilolitres)	Estimated Market Share
Harvest Wine	[	
Bulmer Australia		
Lion Nathan Ltd <sup>2</sup>		
<b>Combined entity</b>		
Montana Wines Ltd <sup>3</sup>		
McCashins Brewery Ltd <sup>4</sup>		
St Andrews Estate Cider Co <sup>5</sup>		
Plumpton Park Estate <sup>6</sup>		
Benger Gold Juice Co <sup>7</sup>		
<b>TOTALS</b>		100%]

- 21 The applicant submits that the constraint imposed by the conduct of existing competitors is sufficient to ensure that the merged entity will not, and will not be likely to, acquire or strengthen a dominant position in the New Zealand cider market.
- 22 The proposed acquisition would result in some horizontal aggregation of market share, with the combined entity having a post-acquisition market share in the New Zealand cider market of approximately [ ]. This market share would fall within one of the “safe harbours” set out in the Commission’s Business Acquisition Guidelines. The merged entity has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share, Montana Wines Ltd with a market share of approximately [ ]. It would appear that Montana Wines Ltd, at least, would provide a sufficient constraint on the combined entity.
- 23 In addition to an analysis of existing competitors’ market power, the Commission considers additional factors in reaching a conclusion as to the acquisition or strengthening of a dominant position in any market, such as the constraint from the threat of market entry, and barriers to entry.

### **Potential Competitors**

- 24 The applicant argues that there are potential entrants into the New Zealand cider market from the wine making industry who possess the necessary facilities, equipment and knowledge required to produce cider. The entry by such companies would result from either the diversion of existing capacity or expanding existing capacity, involving minimal capital costs and delay.

- 25 St Andrews Estate Cider Company's sales and marketing manager, Mark Thompson, also noted that cider makers use similar methods and processes to wine makers, and that it would be feasible for wine makers to expand into the New Zealand cider market utilising existing equipment and technology.

### **Barriers to Entry**

- 26 The applicant submits that there are few, if any, barriers to entry to the New Zealand cider market. Bulmer states that the only barrier to imports into New Zealand from Australia is the Trans-Tasman freight costs. There is also a customs duty imposed on cider imports, based on the alcohol content of the cider.<sup>8</sup>
- 27 Staff consider that there are no onerous barriers to entry or expansion in the New Zealand cider market. A new entrant would incur costs associated with obtaining the required supply of apple juice, the necessary brewing and bottling equipment, and establishing brand loyalty. Cider production also attracts excise duty, which is based on the alcohol content of the product.
- 28 McCashins Brewery Ltd identified a further barrier to entry into the New Zealand cider market. It said that it would be difficult for a new entrant to obtain taps in hotels and bars to supply cider 'on tap' unless the cider maker was prepared to install its own taps in each outlet, as taps are "generally not available".

### **CONCLUSION**

- 29 Staff consider that the New Zealand cider market is competitive, with the combined entity facing competition from Montana Wines Ltd and a number of boutique cideries around the country. Furthermore, there do not appear to be any onerous barriers to entry, so there is potential for new entrants to enter the market given the appropriate incentives. For example, it would be feasible for wine producers to use their existing technology to move into cider production if the combined entity were to raise its prices or lower the quality of its products.
- 30 Staff conclude that the proposed acquisition, if implemented, would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in the market for the production and distribution of cider in New Zealand.

## RECOMMENDATION

- 31 It is recommended that you give clearance to the proposal under s66(3)(a) of the Act.

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Investigator

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Chief Investigator

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Manager



**DETERMINATION ON NOTICE SEEKING CLEARANCE: BULMER TRADING (NZ) LTD/HARVEST WINE COMPANY LTD**

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposal would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s66(3)(a) of the Commerce Act 1986 (the Act), we hereby give clearance for Bulmer Trading (NZ) Ltd, or any interconnected body corporate thereof, to acquire the cider making assets and undertaking and the goodwill of that business from Harvest Wine Company Ltd.

In terms of s66(5) of the Act, this clearance shall expire twelve months after the date of this determination. Brief particulars of this clearance will appear in the Commission's public register.

This clearance is given only to the proposed acquisition described in the notice seeking clearance dated 1 July 1997.

Dated this                      day of                      1997

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A E Bollard  
Chairman

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T G Stapleton  
Member

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E C Harrison  
Member

<sup>1</sup> Plumpton Park Estate considered that cider was in a separate market from other alcoholic beverages.

<sup>2</sup> The "Stonehouse" brand, distributed by Lion Nathan Ltd, is produced and bottled by Harvest Wine.

<sup>3</sup> Bulmer estimated that Montana Wines Ltd would produce approximately 731,000 litres of cider per annum.

<sup>4</sup> Bulmer estimated that McCashins Brewery Ltd would produce approximately 45,000 litres of cider per annum.

<sup>5</sup> Bulmer estimated that St Andrews Estate Co would produce approximately 100,000 litres of cider per annum.

<sup>6</sup> Bulmer estimated that Plumpton Park Estate would produce approximately 120,000 litres of cider per annum.

<sup>7</sup> Bulmer estimated that Bengel Gold Juice Co would produce approximately 60,000 litres of cider per annum.

<sup>8</sup> For example, cider with an alcohol content of more than 6% but less than 9% has a customs duty of \$1.5253 per litre. For cider with an alcohol content of more than 9% but less than 14%, there is a customs duty of \$1.9067 per litre.