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 Where possible the information omitted has been replaced by ranges of figures or a general description.

CVC Capital Partners SICAV-FIS S.A.
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Luxembourg

Subject: **Case M.10459 – CVC / STOCK SPIRITS GROUP**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 7 October 2021, the Commission received notification of a concentration, pursuant to Article 4 of the Merger Regulation, which would result from a proposed transaction by which CVC Capital Partners SICAV-FIS S.A. ("CVC", Luxembourg) intends to acquire sole control, under the meaning of Article 3(1)(b) of the Merger Regulation, over Stock Spirits Group plc ("Stock Spirits", United Kingdom) by means of a public bid ('the Transaction').[3] In this Decision, CVC is referred to as 'the Notifying Party' and, together with Stock Spirits, collectively referred to as the

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 421, 18.10.2021, p. 7.

'Parties'. The entity that would result from the Transaction is referred to as 'the Merged Entity'.

1. THE PARTIES

(2) Stock Spirits is a producer and distributor of spirit drinks in Europe, including in Poland.

(3) CVC and its subsidiaries manage investment funds and platforms. Zabka Polska ("Zabka", Poland) is one of the portfolio companies controlled by CVC and is active in the retail distribution of consumer goods in non-specialized stores in Poland.

2. THE CONCENTRATION

(4) The concentration is to be achieved by means of the launch of a public bid, which was announced on 12 August 2021 and after which CVC expects to indirectly own 100% of the share capital of Stock Spirits.

(5) In light of the above, the Transaction would thus result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The Parties have a combined aggregate world-wide turnover of more than EUR 5 000 million (CVC: EUR […]; Stock Spirits: EUR […]).[4] Each of them has a Union-wide turnover in excess of EUR 250 million (CVC: EUR […]; Stock Spirits: EUR […]), but neither of the Parties achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(7) The concentration therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

(8) The Parties' activities do not give rise to any horizontal overlap. They give rise to vertical relationships between Stock Spirits' activities in the wholesale supply of wine and spirit drinks to off-trade retailers in Poland and CVC' activities (through Zabka) in the retail supply of daily consumer goods in Poland.

4.1. Product market definition

4.1.1. Production and distribution of spirit drinks

4.1.1.1. The Commission's precedents

(9) In previous decisions, the Commission defined distinct markets for the production and distribution of different types of spirit drinks (e.g. vodka, whisky, brandy, rum,

[4] Turnover calculated in accordance with Article 5 of the Merger Regulation.

gin etc.).[5] The Commission has also contemplated further segmentations according to (*i*) product characteristics (e.g. blended malt whisky,[6] cognac or Armagnac brandy[7]), (*ii*) price/quality,[8] (*iii*) the country of origin (e.g. Scottish whisky) and (*iv*) distribution channels (e.g. on-trade or off-trade).[9]

(10) As for vodka in particular, while leaving the exact market definition open, the Commission contemplated in previous decisions plausible segmentations (*i*) between flavoured and clear (i.e. non-flavoured) vodka and (*ii*) according to price.[10] To date, the Commission has never contemplated the definition of separate markets for different bottle sizes.

4.1.1.2. The Notifying Party's views

(11) The Notifying Party does not contest the definition of a separate market for the supply of vodka in the off-trade channel.[11] However, the Notifying Party explains that a further segmentation between clear and flavoured vodka is irrelevant. In this respect, the Notifying Party submits that the production process of clear and flavoured vodka is very similar and providers typically offer both types of products, which they sell side-by-side in retail stores, under the same brand names, with similar ads and promotions.

(12) Likewise, the Notifying Party argues that a further segmentation according to bottle sizes[12] is irrelevant because: (*i*) from the point of view of consumers, the product is the same, whatever the size of the bottle and, (*ii*) from the point of view of suppliers, most bottling lines allow for filling of different sizes or can be modified easily and inexpensively.[13]

(13) Regarding a possible sub-segmentation based on price, the Parties take the view that such a segmentation would not be relevant because the manufacturing equipment and processes for producing lower-priced and higher-priced vodka are identical and most manufacturers supply both "*premium*" and "*mainstream*" brands.

4.1.1.3. The Commission's assessment

(A) Distinction by type of spirits

(14) In the case at hand, the Commission considers that there is no reason to depart from the Commission's precedents regarding the existence of separate markets for each

5 Case M.5114 – *Pernod Ricard / V&S*.
6 Case M.3779 – *Pernod Ricard / Allied Domecq*.
7 Case M.5114 – *Pernod Ricard / V&S*.
8 Case M.5114 – *Pernod Ricard / V&S*.
9 Case M.2268 – *Pernod Ricard / Diageo / Seagram Spirits*; Case M.3779 – *Pernod Ricard / Allied Domecq*.
10 Case M.5114 – *Pernod Ricard / V&S*.
11 Form CO, paras. 62-63.
12 E.g. less than 350 ml, between 500 ml and 700 ml, or above 1000 ml.
13 Form CO, paragraphs 64 to 68.

type of spirits.[14] This is not contested by the Notifying Party and is consistent with the internal documents provided by the Parties, which look at vodka separately.[15]

(15) For the purpose of this case, the Commission considers that there is a separate market for the production and distribution of vodka. The Transaction will focus on that market because the Transaction does not give rise to affected markets for the production and distribution of other spirits.[16]

(B) Distinction by distribution channel

(16) The market investigation supported the relevance of the segmentation between on-trade and off-trade. From a demand point of view, these two channels differ in terms of clients, prices,[17] product characteristics[18] and brands.[19] By way of illustration, one retailer explained that: "*Each channel has* [its] *own specific […] model of distribution.*"[20]

(17) In any event, whether the overall market for the production and distribution of vodka has to be segmented by distribution channel, i.e. between off-trade and on-trade can be left open, as the Transaction does not give rise to competition concerns under any plausible market definition. For the purposes of this Decision and under a conservative approach, the Commission will factor into its assessment of the Transaction a distinction by distribution channel. Given that the overlap between the Parties' activities only concern the off-trade channel, the competitive analysis will be conducted on that basis.

(C) Distinction by format of vodka bottle

(18) The Commission also examined whether the segmentation according to bottle sizes is relevant. In this respect, the market investigation elicited mixed results.

(19) On the one hand, several elements suggest that a segmentation according to bottle sizes could be relevant as: (*i*) the Parties make a distinction between different bottle sizes in their internal documents[21], (*ii*) a majority of retailers explained that the

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14 I.e. each individual internationally recognised spirit type (whiskey, gin, vodka, rum, etc.). See M.5114 – *Pernod Ricard / V&S*, para. 8

15 Annex 8 - CVC Final Investment Recommendation.

16 Zabka is active only in Poland and Stock Spirits' sales of vodka in Poland represent [90-100]% of its total volume of sales. As explained in further detail below, CVC's market share on the downstream market for the retail supply of daily consumer goods remains below 30% under any plausible market definition. In the meantime, Stock Spirits' market share remains below 30% under any plausible market definition for the supply of wine or spirit drinks other than vodka to off-trade retailers in Poland

17 Prices are higher in the on-trade channel than the off-trade channel (Response to Questionnaire 1 to retailers, question 4.1).

18 E.g. small-format vodka is less sold in the on-trade channel which is more focused on larger formats (Responses to Questionnaire 1 to retailers, question 4.1).

19 Mainstream brands of vodka are mostly sold on the off-trade channel (Responses to Questionnaire 1 to retailers, question 4.1).

20 Response to Questionnaire 1 to retailers, question 4.1.

21 Annex 8 (CVC Final Investment Recommendation).

supply of vodka to off-trade retailers differs depending on the format[22] and (*iii*) not all suppliers are active on the segment for small format vodka.[23]

(20) On the other hand, the Commission found evidence suggesting that different bottle sizes may be substitutable: (*i*) from a demand-side perspective, because a large majority of retailers purchase all formats of vodka; and (*ii*) from a supply-side perspective, because a large majority of spirits manufacturers indicated that they sell all formats of vodka.[24]

(21) In any event, whether the overall market for the production and distribution of vodka has to be segmented according to bottle sizes (i.e. between small, medium and large bottles) can be left open, as the Transaction would not give rise to competition concerns under any plausible market definition.

(22) For the purposes of this Decision and under a conservative approach, the Transaction will be assessed based on a distinction by bottle size.

(D) Distinction between clear and flavoured vodka

(23) The Commission also investigated whether the segmentation between clear and flavoured vodka is relevant. The market investigation elicited mixed results in this respect.

(24) On the one hand, the Commission found evidence suggesting that a further segmentation between clear and flavoured vodka could be relevant as: (*i*) the Parties make a distinction between clear and flavoured vodka in their internal documents[25] and (*ii*) a majority of retailers consider that the conditions for the supply of vodka to off-trade retailers differ between clear and flavoured vodka.[26] One retailer explained for instance that the "*Main difference is higher price pressure on clear vodka (excise tax higher/lower margins)*".[27]

(25) On the other hand, several elements tend to mitigate the relevance of such segmentation because: (*i*) most spirits manufacturers sell both types of products[28] and (*ii*) a majority of retailers buy both types of products[29]. By way of illustration, according to one retailer: "*Regarding [the] comparison of clear and flavored vodka there are no significant differences. Price levels, packaging, process of supply is similar between these two lines of products*".[30]

(26) In any event, whether the overall market for the production and distribution of vodka has to be segmented between cleared and flavoured vodka can be left open, as the Transaction does not give rise to competition concerns under any plausible market definition. For the purposes of this Decision and under a conservative approach, the

22 Response to Questionnaire 1 to retailers, question 4.

23 Responses to Questionnaire 2 to spirits manufacturers, questions 1.1 and 1.2.

24 *i.e.*, small format of <350 ml, medium format of between 500 ml and 700 ml, and large format of >1000ml (Responses to Questionnaire 2 to spirits manufacturers, question 1.1.).

25 Annex 8 (CVC Final Investment Recommendation).

26 Responses to Questionnaire 1 to retailers, question 4.

27 Response to Questionnaire 1 to retailers, question 4.1.

28 Responses to Questionnaire 2 to spirits manufacturers, question 1.2.

29 Responses to Questionnaire 1 to retailers, question 1.2.

30 Response to Questionnaire 1 to retailers, question 5.1.

Commission will factor into its assessment of the Transaction a possible distinction between clear and flavoured vodka.

(E) Distinction between premium and mainstream vodka

(27) The Commission notes that the Parties refer to a distinction between premium and mainstream spirits in their internal documents (without further segmentations). By way of illustration, CVC's investment recommendation refers to [Information on CVC's views on market practice] for the supply of vodka[…].[31] Likewise, Stock Spirits' annual report explains that "*Total premium vodka achieved value growth of +16.0%, significantly ahead of the total category, reflecting Polish consumers' readiness to pay more for premium quality vodka as affluence increases*".[32]

(28) In any event, whether the overall market for the production and distribution of vodka has to be segmented between premium and mainstream vodka can be left open, as the Transaction does not give rise to competition concerns under any plausible market definition. For the purposes of this Decision and under a conservative approach, the analysis will be conducted based on a distinction between premium and mainstream vodka.

4.1.2. Retail of daily consumer goods

4.1.2.1. The Commission's precedents

(29) In its precedents, the Commission defined a distinct market for the retail provision of daily consumer goods, including dry food-stuffs and non-food household consumables sold in a supermarket environment.[33] Within this market, the Commission contemplated further segmentation between specialised stores on the one hand, and hypermarkets, supermarkets and discount chains, on the other hand.[34]

4.1.2.2. The Notifying Party's view

(30) The Notifying Party does not contest the product market definition set out by the Commission in its precedents.

4.1.2.3. The Commission's assessment

(31) In the case at hand, the Commission does not see any reason to depart from its previous decisional practice. In any event, whether the market for retail distribution of daily consumer goods has to be segmented between hypermarkets, supermarkets, discount chains, on the one hand, and specialised stores, on the other hand can be left open, as the Transaction does not give rise to competition concerns under any plausible market definition. For the purposes of this Decision and under a conservative approach, the analysis will be conducted also based on the narrowest possible product segments, i.e. (i) market for the retail distribution of daily consumer

31 Annex 8 (CVC Final Investment Recommendation), p. 9.

32 Annex 7 (Stock Spirits' annual report), p. 28.

33 Case M.803 – *Rewe / Billa*; Case M.914 – *Tesco / ABF*.

34 Case M.784 – *Kesko / Tuko*; Case M.803 – *Rewe / Billa*; Case M.914 – *Tesco / ABF*; Case M.1221 – *Rewe / Meinl*; Case M.1832 – *Ahold / ICA Förbundet / Canica*; Case M.3905 – *Tesco / Carrefour (Czech Republic and Slovakia)*; Case M.4590 – *Rewe / Delvita*; Case M.5790 – *Lidl / Plus Romania / Plus Bulgaria*; Case M.9495 – *Fortenova Grupa / Poslovni Sistemi Mercator*.

goods in hypermarkets, supermarkets and discount chains and (ii) market for the retail distribution of daily consumer goods in specialised stores.

4.2. Geographic market definition

4.2.1. Production and distribution of spirit drinks

4.2.1.1. The Commission's precedents

(32) In past decisions, the Commission considered the markets for the production and distribution of spirit drinks to be national in scope, mainly because of strong national preferences and consumption behaviours.[35]

4.2.1.2. The Notifying Party's view

(33) The Notifying Party does not contest the geographic market definition set out by the Commission in its precedents.

4.2.1.3. The Commission's assessment

(34) In the case at hand, the market investigation confirmed that there is no reason to depart from the Commission's precedents. *First*, some elements show the existence of national consumer preferences. In this respect, one retailer explained that "[the typical] *Polish client prefers clear vodka.*"[36]

(35) *Second*, a vast majority of retailers confirmed that purchases are conducted centrally at national level. As explained by one retailer: "*All trade conditions and terms are negotiated centrally as well as all current orders for all shops*."[37] According to another retailer: "*Contracts with suppliers negotiated centrally by sourcing department for all clients*".[38]

(36) For the purpose of this Decision, the overall market for the production and distribution of vodka to the off-trade channel[39] will thus be considered as national in scope.

4.2.2. Retail of daily consumer goods

4.2.2.1. The Commission's precedents

(37) The Commission considered those markets to be local, with a radius of 20 to 30 minutes by car, with the exact length of time depending on the specific market being examined or, in specific cases, regional or national.[40]

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35 See *e.g.*: M.5114 – *Pernod Ricard / V & S*.

36 Response to Questionnaire 1 to retailers, question 5.1.

37 Response to Questionnaire 1 to retailers, question 3.1.

38 Response to Questionnaire 1 to retailers, question 3.1.

39 As mentioned in paragraph (77), the overlap between the Parties' activities only concerns the off-trade channel.

40 Case M.784 – *Kesko / Tuko*; M.1684 – *Carrefour / Promodes*; Case M.1832 – *Ahold / ICA Förbundet / Canica*; Case M.3464 – *Kesko / ICA / JV*; Case M.3905 – *Tesco / Carrefour (Czech Republic and Slovakia)*.

4.2.2.2. The Notifying Party's view

(38) The Notifying Party does not contest these market definitions.

4.2.2.3. Commission's assessment

(39) In the case at hand, the Commission does not see any reason to depart from its previous decisional practice. In any event, the exact scope of the relevant geographic market for the retail distribution of daily consumer goods can be left open as the Transaction does not give rise to competition concerns under any plausible market definition. For the purposes of this Decision, the Transaction will also factor into its assessment the narrowest possible geographic segments, i.e. local markets.

5. COMPETITIVE ASSESSMENT

(40) In Poland, Spirit Stocks supplies sparkling wine and various spirit drinks,[41] mainly to off-trade retailers, while CVC, through Zabka, is active on the retail distribution of daily consumer goods. As set out in paragraph (8) above, the Parties' activities do not give rise to any horizontal overlaps. The Transaction does, however, give rise to vertically affected markets between:

(a) Stock Spirits' activities on the upstream markets for the production and distribution of (i) small format clear vodka (overall and with a distinction between premium and mainstream) and (ii) small format flavoured vodka (overall and with a distinction between premium and mainstream); (iii) medium format flavoured vodka (overall and with a distinction between premium and mainstream)[42] to off-trade retailers in Poland:

(b) CVC's activities (through Zabka) on the downstream markets for (i) the off-trade retail distribution of daily consumer goods in specialized stores in Poland and (ii) the off-trade retail distribution of daily consumer goods in hypermarkets, supermarkets and discount chains in Poland.

5.1. Legal framework

(41) Pursuant to Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a 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.

(42) With particular regard to non-horizontal effects, a merger can entail such effects when it involves companies operating at different levels of the same value chain or in closely related markets.

(43) In assessing potential vertical effects of a merger, the Commission analyses, among others, whether the merger results in foreclosure so that actual or potential rivals'

41 Vodka, whisky, brandy, gin, genever, rum, cream liqueurs, tequila, cognac, Armagnac and Spirytus Lubelski.

42 Stock Spirits' market share remains below 30% under any plausible market definition for the supply of wine or spirit drinks other than vodka to off-trade retailers in Poland.

access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[43] Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Foreclosure thus can be found even if the foreclosed rivals are not forced to exit the market. It is sufficient that the rivals are disadvantaged and consequently led to compete less effectively. Such foreclosure is regarded as anti-competitive where the merging companies — and, possibly, some of their competitors as well — are as a result able to profitably increase the price charged to consumers.

(44) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure: (*i*) input foreclosure, when access of downstream rivals to supplies is hampered;[44] and (*ii*) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[45]

(45) In assessing both types of foreclosure, the Commission assesses whether the merged entity (*i*) would have the ability to engage in foreclosure, (*ii*) whether it would have the incentive to do so, and (*iii*) what would be the overall impact on effective competition in the affected markets.

(46) The present Section 5 assesses whether the Transaction is likely to raise vertical non-coordinated effects on the markets examined in Section 4.

5.2. Assessment

(47) In light of the above, this Decision will first provide an overview of the Parties' market shares (5.2.1) and will examine successively the risk of input foreclosure (5.2.2) and customer foreclosure (5.2.3).

5.2.1. Market shares

(48) Table 1 outlines the Parties' market shares on the overall upstream market for the production and distribution of vodka in Poland and on the overall downstream market for the retail of daily consumer goods in Poland:

43 Non-Horizontal Merger Guidelines, paras. 20-29.

44 Non-Horizontal Merger Guidelines, para. 31.

45 Non-Horizontal Merger Guidelines, para. 58.

Table 1

Vertically affected markets - Parties' market shares

2020	Upstream market		Downstream market	
	Production & distribution of vodka Off-trade[46] (Poland)		Retail of daily consumer goods (Poland)	
	Value (€)	*Volumes (Litres)*	*Value (€)*	*Volumes (Nbr. Stores)*
CVC (Zabka)	*Not active*	*Not active*	[10-20]%	[10-20]%
Stock Spirits	[30-40]%	[20-30]%	*Not active*	*Not active*
Combined	***[30-40]%***	***[20-30]%***	***[10-20]%***	***[10-20]%***
Competitor 1	Roust: [40-50]%	Roust: [40-50]%	Biedronka: [20-30]%	Eurocash: [40-50]%
Competitor 2	Pernod Ricard: [5-10]%	Pernod Ricard: [0-5]%	Lidl: [5-10]%	Grupa Kapitalova Specjal: [10-20]%
Competitor 3	United Beverages [0-5]%	United Beverages: [5-10]%	Auchan: [0-5]%	Makro: [5-10]%

Source: Form CO and Annex 11

5.2.1.1. Wholesale market for the supply of vodka on the off-trade channel in Poland (upstream)

(49) On the upstream market for the supply of vodka to off-trade retailers in Poland, Tables 2 to 4 provide Stock Spirits' and its main competitors' market shares on each plausible segment:[47]

Table 2

Production and distribution of vodka by the bottle size (off-trade)

Total vodka Poland 2020	All formats		Small		Medium		Large	
	Vol	Val	Vol	Val	Vol	Val	Vol	Val
Stock Spirits	*[20-30]%*	*[30-40]%*	*[30-40]%*	*[40-50]%*	*[20-30]%*	*[20-30]%*	*[10-20]%*	*[10-20]%*
Roust	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[30-40]%	[30-40]%
Brown-Forman	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%
Marie Brizard	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Pernod Ricard	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Polmos	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Private label	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%	[0-5]%

Source: Annex 10 based on Nielsen data

46 Zabka is only active on the off-trade retail supply of daily consumer goods in Poland.

47 These market share estimates take account of Stock Spirit's sales volumes of Spirytus Lubelski. This is a high percentage alcoholic beverage (95% and above) that cannot be consumed undiluted. Its primary uses are for "*home-brew*" fruit spirit maceration, culinary uses, and sterilisation (*e.g.* hand sanitiser).

Table 3

Production and distribution of vodka by i) bottle size and ii) character (off-trade)

Clear vodka Poland 2020	All formats		Small		Medium		Large	
	Vol	Val	Vol	Val	Vol	Val	Vol	Val
Stock Spirits	*[20-30]%*	*[20-30]%*	*[30-40]%*	*[30-40]%*	*[20-30]%*	*[20-30]%*	*[10-20]%*	*[10-20]%*
Roust	[40-50]%	[40-50]%	[40-50]%	[50-60]%	[40-50]%	[40-50]%	[30-40]%	[30-40]%
Brown-Forman	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%	[20-30]%
Marie Brizard	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Pernod Ricard	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Polmos	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Private label	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Annex 10 based on Nielsen data

Table 4

Production and distribution of vodka by i) bottle size and ii) character (off-trade)

Flavoured vodka Poland 2020	All formats		Small		Medium		Large	
	Vol	Val	Vol	Val	Vol	Val	Vol	Val
Stock Spirits	*[40-50]%*	*[40-50]%*	*[40-50]%*	*[40-50]%*	*[30-40]%*	*[30-40]%*	*[0-5]%*	*[0-5]%*
Roust	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[30-40]%
Brown-Forman	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Marie Brizard	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Pernod Ricard	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Polmos	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Private label	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Response to P1 RFI 3 based on Nielsen data.

(50) In addition, Table 5 provides the market share of Stock Spirits and its competitors on the segments for premium and mainstream vodka (including all bottle sizes, as well as clear and flavoured vodka):

Table 5

Production and distribution of vodka by quality (off-trade)[48]

Production and distribution of vodka (off-trade) Poland 2020	Premium		Mainstream	
	Vol	Val	Vol	Val
Stock Spirits	*[20-30]%*	*[20-30]%*	*[30-40]%*	*[30-40]%*
Roust	[10-20]%	[10-20]%	[50-60]%	[50-60]%
United Beverages	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Pernod Ricard	[20-30]%	[20-30]%	[0-5]%	[0-5]%
Polmos	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Brown -Forman	[10-20]%	[10-20]%	[0-5]%	[0-5]%

Source: Response to P1 RFI 3 based on Nielsen data. The Nielsen definitions of premium, top premium and ultra-premium comprise premium vodka while the Nielsen definitions of economy and mainstream comprise non-premium vodka.

48 The Parties indicated that Stock Spirits' market shares in this table would not differ significantly if the segmentation between premium and mainstream vodka were to be combined with the other aforementioned plausible segmentations (response to question 3, RFI 4).

5.2.1.2. Retail distribution of daily consumer goods in Poland (downstream)

(51) Table 6 focuses on the downstream market for retail distribution of daily consumer goods and provides CVC's (Zabka's) market share on all plausible segments:

Table 6

Retail distribution of daily consumer goods - Zabka's market share (national)

Poland 2020	Market shares (in value)
All grocery retail	[5-10]%
Small format grocery retail[49]	[10-20]%
Small format grocery retail ***(excl. petrol stations and kiosks)***	[10-20]%

Source: Form CO, para. 98 based on Nielsen data.

(52) CVC also provided market share estimates at regional level for 2020 based on Nielsen data confirming that Zabka's market shares at regional level in Poland are always below 30%.

Table 7

All grocery retail - Zabka's market shares (regional)

Poland 2020	Market shares (in value)
Central	[5-10]%
East	[0-5]%
North	[5-10]%
South	[5-10]%
South East	[0-5]%
South West	[5-10]%
Warsaw	[10-20]%
West	[5-10]%
Total	[5-10]%

Source: Form CO based on Nielsen data.

(53) Finally, the Notifying Party confirmed that Zabka's market share would not exceed 30% in a market for the sale of daily consumer goods at a local level.

5.2.2. Input foreclosure

5.2.2.1. Ability

(54) Some retailers expressed concerns in the course of the market investigation alleging that Stock Spirits' brands of vodka would include must-have brands[50] and that Zabka may benefit from preferential conditions post-Transaction for the purchase of these brands.[51]

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49 Excluding supermarkets, hypermarkets and discounters.

50 Responses to Questionnaire 1 to retailers, questions 6 and 7.

51 Responses to Questionnaire 1 to retailers, question 9.

(55) As shown in Table 1, Stock Spirits' market share amounts to [30-40]% on the overall off-trade market for the production and distribution of vodka. There are 12 narrower segments that are affected, with the Parties' combined market shares ranging from [30-40]% to [40-50]%. For the reasons set out below, however, the Commission considers that CVC will lack the ability to engage in input foreclosure post-Transaction.

(56) *First*, CVC will lack a significant degree of market power on the upstream market[52] as it will continue to face significant competitive pressure from Roust, which has a higher market share on all segments, to the exception of the segment for small flavoured vodka. Even on this segment, however, Roust has a market share of [40-50]% and is a close competitor of Stock Spirits. This is consistent with CVC's internal investment recommendation, which [Information on CVC's views on market conditions].[53]

(57) This is also consistent with the fact that a large majority of retailers (80%) acknowledged that they would continue to have credible alternative suppliers, including for small bottles of flavoured vodka.[54]

(58) *Second*, there does not seem to be significant switching costs for retailers[55] as the large majority of retailers who participated in the market investigation already multisource from several suppliers (including for small bottles of flavoured vodka).[56] In response to an input foreclosure strategy, these retailers could thus easily switch to the remaining alternative suppliers.

(59) *Third*, on the segment for small flavoured vodka, CVC will continue to face a certain degree of competitive pressure from other formats. In this respect, the Commission notes that after the introduction on 1 January 2021 of an additional tax in Poland on small bottles of vodka (the "Small Format Tax") a number of customers switched to purchasing larger formats.[57]

(60) In this respect, the figure below shows the total sales of vodka by bottle size for the months following the introduction of the tax in January 2021 versus sales in the preceding year.

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52 Non-Horizontal Merger Guidelines, para. 35.

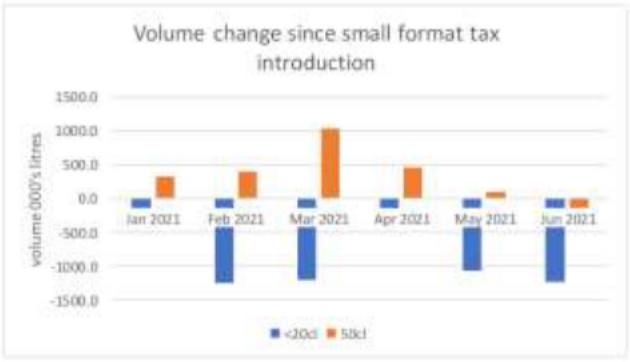
53 As for the segment of premium vodka, Stock Spirits will have a market share of [20-30]% whereas Roust's market share will be limited to only [10-20]%. On this segment, however, Stock Spirits will continue to face significant competitive pressure from Pernod Ricard ([20-30]%) and other competitors with sizeable market shares, including Polmos ([10-20]%) and Brown-Forman ([10-20]%).

54 Responses to Questionnaire 1 to retailers, question 8.

55 Non-Horizontal Merger Guidelines, para. 34.

56 Responses to Questionnaire 1 to retailers, question 2.

57 The Small Format Tax comprises a duty increase imposed on wholesalers of PLN 25 (c. EUR 5.5) per litre of pure alcohol on formats of 300ml or less. For example, a 100ml bottle of 40% ABV spirit would incur an additional duty of PLN 1, and an equivalent 40% ABV spirit packaged in a 200ml bottle would incur an additional duty of PLN 2. The Target is not aware of how the Polish government determined the level of the Small Format Tax as the Polish authorities have not publicly indicated on what basis the amount of 25 PLN per litre of pure alcohol was decided. The Small Format Tax does not technically apply to sales to consumers via the on-trade, but in any case, the Target notes that in practice, it is very difficult for manufacturers such as itself to ascertain whether products will ultimately be sold by wholesalers to retailers and consumers via the on- or off-trade. The Target also notes that sales of small format spirits to the on-trade are minimal.



Source: Nielsen, total vodka (off-trade only)

(61) As shown above, total volume sales of bottle sizes below 200ml have declined year-on-year in every month since the tax was introduced, whilst volume sales of 500ml have increased.[58] This is consistent with the table below, which shows the decrease in purchases of smaller formats since the introduction of the Small Format Tax and corresponding increase in purchases of bottles larger than 350ml.

Table 8

Evolution of purchases of vodkas following the introduction of the Small Format Tax

Pack size	Total sales Jan-June '20 (000s of litres)	Total sales Jan-June '21 (000s of litres)	% sales change YOY	Average retail price per litre 2020 (€)	Average retail price per litre 2021 (€)	Average retail price change % YOY
Small format vodka (350 ml and below)	[…]	[…]	[…]	[…]	[…]	[…]
Medium format vodka (500 ml and 700 ml)	[…]	[…]	[…]	[…]	[…]	[…]
Large format vodka (1000 ml and larger)	[…]	[…]	[…]	[…]	[…]	[…]

(62) Although it is not possible to ascribe this change to a single factor, the above figures suggest a certain degree of competitive pressure exerted by larger bottle formats over smaller formats.

[58] With the exception of June 2021, which, according to the Notifying Party, is an aberration attributable to COVID-19 according to the Notifying Party due to the disproportionately high sales of 500ml bottle sales in June 2020, owing to the impact of COVID-19 on international travel, which precipitated a larger number of Polish consumers remaining in Poland for their summer holiday (rather than travelling abroad), and therefore a higher number of vodka purchases for these "staycations".

(63) Based on the considerations above, and in light of the results of the market investigation and of all the evidence available to it, the Commission finds that the Merged Entity will lack the ability to engage in input foreclosure post-Transaction.

5.2.2.2. Incentive

(64) For the reasons set out below, the Commission considers that the Merged Entity will lack the incentive to engage in input foreclosure post-Transaction.

(65) *First*, the limited market share of Zabka (CVC) on the downstream market at national level ([10-20]%) makes it less likely that it will have the incentive to engage in input foreclosure because the base of sales on which Stock Spirits would enjoy increased margins would be limited[59].

(66) *Second*, several participants to the market investigation confirmed that Zabka would be too small on the downstream markets for the Merged Entity to have an incentive to engage in input foreclosure. In addition, the market investigation did not reveal that Zabka would be a significant player on any local market. According to one retailer, for instance: "*Zabka is too small in terms of volume and do[es] not have full coverage in total Poland*".[60] Likewise, according to another retailer: "*We do not see a real risk that Stock Spirits would stop selling us vodka*".[61]

(67) Based on the considerations above, and in light of the results of the market investigation and of all the information available to it, the Commission considers that CVC will lack the ability and incentive to engage in input foreclosure post-Transaction. As a result, the Commission concludes that the contemplated Transaction does not give rise to input foreclosure concerns without there the need to consider the overall impact that such a strategy would have on the market.

5.2.3. Customer foreclosure

5.2.3.1. Ability

(68) Some competitors of Stock Spirits expressed concerns during the market investigation alleging that Zabka would be an unavoidable trading partner for the supply of vodka in Poland, in particular because Zabka is a big and fast-growing retailer, especially on the segment for small convenience stores.[62] However, for the reasons set out below, the Commission considers that CVC would lack the ability to foreclose Stock Spirits' competitors upstream.

(69) *First*, Zabka lacks a significant degree of market power downstream for the retail distribution of daily consumer goods. As explained above, on this market Zabka's share at national level is equal to [10-20]% and this market share remains also limited at regional level (below [10-20]%). At local level, based on the Parties' best

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59 Likewise, when considering local markets for the retail distribution of daily consumer goods, the limited size of local markets downstream would limit the incentive of the new entity to engage in input foreclosure because (*i*) the base of sales on which Stock Spirits would enjoy increased margins would be local; whereas (*ii*) all competing retailers confirmed that they purchase vodka at national level (*i.e.* centrally for all their stores in Poland) so the base of sales on which Stock Spirits would lose volumes would be national (response to Questionnaire 1 to retailers, question 3).

60 Response to Questionnaire 1 to retailers, question 9.

61 Response to Questionnaire 1 to retailers, question 9.

estimates, Zabka's market share would remain below 30% so Stock Spirits' competitors would remain able to sell their products to a sufficient number of alternative customers.

(70) *Second*, the market investigation confirmed that Stock Spirits' competitors will continue to have a sufficient client base post-Transaction as Zabka only represents approximately [10-20]% of their sales of vodka.[63] Based on the Parties' internal data, this figure does not appear to change significantly across segments.

(71) *Third*, Stock Spirits' competitors already supply Zabka's competitors[64]. This shows that Zabka's competitors constitute credible alternatives to which Stock Spirits' competitors upstream could easily switch. Therefore, the Commission is of the view that CVC will lack the ability to engage in customer foreclosure post-Transaction.

5.2.3.2. Incentive

(72) For the reasons set out below, the Commission considers that the Merged Entity will lack the incentive to engage in customer foreclosure.

(73) *First*, Zabka's limited market share downstream limits the base of sales on which Stock Spirits could benefit from increased margins as a result of a customer foreclosure strategy.[65]

(74) *Second*, only a minority of upstream competitors expressed concerns that the transaction would have an impact on the distribution of vodka in retail stores in Poland.[66] One competitor of Stock Spirits explained in particular that "*given the percentage share of Zabka stores in vodka sales in Poland, there will be no impact*".[67]

(75) Accordingly, the Commission finds that the Merged Entity will lack the ability and incentive to engage in customer foreclosure so there is no need to consider the effect of any such strategy.

5.2.4. Conclusion on vertical non-coordinated effects

(76) In light of the considerations above and based on the results of the market investigation and of all the information available to it, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market and the EEA agreement with respect to vertical non-coordinated effects in:

(a) the upstream markets for the production and distribution of (i) small format clear vodka (overall as well as distinguishing between premium and mainstream) and (ii) small format flavoured vodka (overall as well as distinguishing between premium and mainstream); (iii) medium format

62 Responses to Questionnaire 2 to competitors, question 5.
63 Non-Horizontal Merger Guidelines, para. 61.
64 Responses to Questionnaire 1 to retailers, question 2.
65 Non-Horizontal Merger Guidelines, para. 70.
66 Response to Questionnaire 2 to competitors, question 7.
67 Response to Questionnaire 2 to competitors, question 8.1.

flavoured vodka (overall as well as distinguishing between premium and mainstream)[68] to off-trade retailers in Poland;

(b) the downstream markets for (i) the off-trade retail distribution of daily consumer goods in specialized stores in Poland and (ii) the off-trade retail distribution of daily consumer goods in hypermarkets, supermarkets and discount chains in Poland.

6. CONCLUSION

(77) For the above reasons, the 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

[68] Stock Spirits' market share remains below 30% under any plausible market definition for the supply of wine or spirit drinks other than vodka to off-trade retailers in Poland.