# SUBMISSION: REFORMING MERGERS AND ACQUISITIONS – EXPOSURE DRAFT

**13 August 2024**

**Competition Taskforce**

**Via email: CompetitionTaskforce@treasury.gov.au**

The beer market in Australia is one of the most restricted in the world, with two large foreign-owned corporations dominating beer supply, and two large companies dominating the retail beer sector. Mergers and acquisitions and the regulatory landscape that have underpinned them has been one of the factors that has contributed to the market landscape we see today.

The Independent Brewers Association is supportive of reform that gives the ACCC stronger powers in assessing mergers and acquisitions. However, in doing so, the ACCC needs to take a thorough and detailed review of whether there is a substantially lessening of competition.

## ABOUT THE IBA

The Independent Brewers Association (IBA) is the peak national industry body representing the nation's 600+ independent craft brewers.

Our members are overwhelmingly small to medium businesses that employ locals and give back to their communities. Two-thirds of these small businesses are based in regional and rural Australia.

Our members provide skilled jobs, tourism destinations and work directly with the agricultural sector through local malted barley, hops and fruit.

The IBA is primarily member funded by small businesses and does not receive any funding from the Federal Government of any kind. We, therefore, do not have the same resources of the major retailers to fight for every one of the issues through litigation or lobbying efforts.

## ECONOMIC IMPACT OF INDEPENDENT BREWERIES

In 2021, an economic impact analysis undertaken by KPMG confirmed that our part of the beer industry contributes approx. $1.93 billion annually to the national economy. We employ 35,000 Australians, 10,000 directly and over 25,000 indirectly in the agricultural, manufacturing, distribution and hospitality industries.

Small independent craft breweries employ 51% of the whole brewing industry.

In FY2020, independent breweries invested $263m in building capability, with an average of 72% or $189m, spent on production. Independent breweries strengthen Australia's manufacturing capability and

rely heavily on agricultural inputs. This demonstrates the ongoing willingness of small brewery business owners to invest in backing themselves and our industry.

## THE AUSTRALIAN BEER MARKET

The Australian beer market is highly concentrated. Approximated market share in 2024 based on publicly available data is:

| | |
|---|---|
| Lion (Kiri) | 33% |
| CUB (Asahi) | 50% |
| Major Retailers (Coles Group / Endeavour Group) | 5% |
| Coopers (Family owned independent) | 5% |
| Good Drinks Australia (ASX listed independent) | 1.25% |
| Independent Breweries (all other independent breweries) | 5.75% |

In 2019, Budweiser/ AB in Bev (who owned Carlton and United at the time) described its view of the Australian beer market:

- "[Australia's Beer market] is one of the most profitable beer markets globally with a relatively high value per hectolitre consumed.
- "Our Company and Lion Nathan (owned by Kirin) represent a significant majority of the beer market in Australia, with a combined market share of over 80% in 2018, both by volume and by value.
- "The beer market is relatively consolidated between our Company and Lion Nathan with structured modern trade, efficient route to market and strong retailer relationships providing a source of relative competitive advantage for us.

The Better Competition, Better Prices: Report noted that "Australia has one of the most restricted beer sectors in the world, with two large foreign-owned corporations dominating beer supply, and two large companies dominating the retail beer sector"[1]. A key finding of the Committee, as it relates to the beer sector, was:

[1] Better Competition, Better Prices Report p186 at [9.57]

> "There appears to be evidence of high margins in the beer brewing sector which may indicate excessive market power. This would contribute to the high cost of beer for consumers".[2]

The dominance of CUB and Lion has had many impacts, but one of which is that Australia's major alcohol retailers have themselves entered the beer market. Coles Group and Endeavour now represent approximately 5% of the beer market.

The unfair market dominance of the foreign owned breweries and now the major alcohol retailers is having negative impacts on consumers and any further consolidation, through mergers and acquisitions, would further exacerbate an already unfair market.

## THE IMPACT OF MERGERS AND ACQUISITIONS ON THE BEER MARKET

One way in which the major foreign-owned multinational breweries have maintained their position is by acquiring any smaller, but successful brewery in a growth phase that may have ultimately created significant competition for them. This is not the opinion of the IBA but widely accepted as the truth of the conduct.

In assessing the Australian Beer market, Professor of Economics Kym Anderson stated as fact:

> "Once it became clear that craft breweries were here to stay and were growing in number, traditional brewers began responding in several ways…[a] strategy has been to acquire emerging microbreweries."[3]

Since 2015 the following breweries have been acquired by the major foreign-owned breweries:

| | | |
|---|---|---|
| 2015 | Mountain Goat | CUB (Asahi) |
| 2017 | 4 Pines Brewing Company | CUB (Asahi) |
| 2017 | Pirate Life | CUB (Asahi) |
| 2019 | Balter | CUB (Asahi) |
| 2019 | Green Beacon | CUB (Asahi) |
| 2021 | Stone and Wood (Fermentum) | Lion (Kirin) |

[2] Pg 1986
[3] Anderson, K. (2023). The emergence of lower-alcohol beverages: The case of beer. Journal of Wine Economics, 18(1), 66-86.

| | | |
|---|---|---|
| 2021 | Fixation (Fermentum) | Lion (Kirin) |
| 2021 | Two Birds (Fermentum) | Lion (Kirin) |

Each of the above independent breweries were acquired at a time of significant growth for the companies and with significant consumer following.

In 2020, in evaluating the sale of CUB to Asahi the ACCC concluded with two seemingly inconsistent statements:

- "small players can significantly affect the intensity and/or quality of competition…
- "although there are a large number of individual craft beer brands being sold in Australia, with apparent low barriers to smaller-scale entry, these independent craft brewers only have shares of no more than 0.5–1 per cent each. The ACCC considered that while the presence of independent craft brewers may increase consumer choice, individual craft brewers may not place effective competitive constraint on the two large incumbents."

In response to the consultation on the sale of CUB to Ashah, the then IBA Chair, Pete Phillips, made the following statements:

"The move by Asahi to acquire CUB is an admission that this space is already too concentrated and that the only way to break into the draught beer market is to acquire businesses with existing tap contracts.

"The large brewers know this and use their scale and resources to implement a number of restrictive business practices which have severely constrained the growth of small independent brewers when it comes to on-premise supply of draught beer.[4]

Lion and CUB, in their testimony before the House of Representatives Standing Committee on Economics Inquiry into promoting economic dynamism, competition and business formation, both argued that competition from small craft breweries had increased sizeably over the last few years. While there has been significant growth in the number of independent breweries over the last decade, market share overall has remained fairly static.

If the effect of the acquisition strategy of the multinational breweries is such that no single independent brewery can ever grow to the size to be considered a competitive force that has a 'competitive constraint on the two large incumbents' - then it is clear that the outcome is a market with substantially lessened competition than would have been possible but for those acquisitions.

By allowing mergers and acquisitions to take place – and the incumbent multinational breweries to be free from the fear of displacement – we have seen the effect of lessened competition and the artificial constraining of choice for consumers.

[4] IBA Media Release "ACCC throws draught beer drinkers to the wolves: Asahi acquisition of CUB will lead to further restriction in consumer beer choice". 2 April 2020. Available: https://brewsnews.com.au/asahi-cub-approval-a-blow-to-the-industry-says-iba/

## THE PROPOSED REFORMS

It remains the IBA's position that the multi-national breweries have retained their market position, in part through acquisition, of smaller players.

We are supportive of the ACCC having stronger powers in assessing mergers and acquisitions but expect that significant emphasis will be placed on the detail of each merger or acquisition to determine whether a merger or acquisition further entrenches market power.

If you would like to discuss any aspect of this submission in more detail, please do not hesitate to contact me, I am available at Kylie.Lethbridge@iba.org.au

Yours sincerely,

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