Political influence and hostile bids: How Scottish & Newcastle became the UK's largest brewer

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As part of the merger process firms engage in a series of interactions with various external entities, most notably government and its regulatory agencies. Despite the extensive 'Regulatory Capture' literature little attention has been given to the sequential, albeit less regular, interactions between acquiring firms and the merger regime. A previous longitudinal analysis of 40 proposed mergers of the leading UK alcoholic beverages firms between 1969 and 2006 confirmed that while mergers were likely to be referred when acquirers were already large the chances of referral could be reduced by refraining from hostile bids and exploiting the political landscape. This paper investigates the merger history of Scottish & Newcastle, exploring the circumstances surrounding its 1995 acquisition of Courage that created the UK's largest brewer with a near 30% market share. The merger was not only significant in that it proceeded without referral; a matter of seven years earlier the almost identical reverse merger proposal by Courage's Australian parent Elders IXL was blocked. Scottish & Newcastle demonstrated how its political acumen was incorporated successfully into its corporate strategy in a way that its major UK competitors were unable to replicate; by 2000, both Bass and Whitbread had exited the UK brewing market following less successful outcomes from the merger policy regime.

Introduction

Mergers and acquisitions are a key feature of industrial and firm development. In countries with open capital markets, hostile bids by competitor firms or new industry entrants are seen as an important mechanism in the market for corporate control whereby weak managements and corporate strategies are exposed and eliminated.

While mergers and hostile bids can occur at any time during the course of an industry's development, there are patterns of activity known as 'merger waves'. In the case of the UK alcoholic beverages industry four such merger waves have been identified by Da Silva Lopes[1]. There are several reasons why mergers might occur in waves; the availability of capital to finance mergers and acquisitions is likely to be cyclical, the natural tendency of firms to copy competitors in the (often mistaken) belief that their firm will suffer if it does not grow comparably, and a political climate that might favour larger firms that are either international in scope or are more diversified.

The 1980s were a particularly acquisitive period for UK alcoholic beverages firms, both domestically and internationally, with the incidence of hostile bids peaking in that decade. The major UK firms were both instigators of and on the receiving end of hostile bids at a time when the political landscape was perceived generally to be pro-business under a deregulating Conservative government. Yet analysis of alcoholic beverages firms' mergers during this period by Bower[2] showed that hostile bids were more likely to be referred to the competition authorities. Moreover, in bids that involved the UK brewing industry specifically, political influence (and possibly lack of it) appeared to have played a role in the likelihood of a merger being referred even where there were no obvious competition issues implied by pre and post merger market shares. With referral in itself often prompting firms to abandon proposed mergers for fear of

being the subject of a lengthy and costly investigation, would-be acquirers had to adapt their merger strategy accordingly. Consequently firms opted increasingly for agreed bids, in some cases forming merger alliances with competitors with the sole aim of gaining regulatory clearance[3]. On the other hand the message to targets of unwelcome bids was clear; exercise political capital to promote a referral.

Table 1: Summary of UK Brewing Industry Mergers 1969-2006

Year	Bidder	Target	R	T	H	D	Bidder %	Target %
1969	Unilever	Allied Breweries	√				0.0%	15.5%
1971	Grand Met	Truman		√	√		0.0%	1.5%
1972	Grand Met	Watney Mann		√	√		1.5%	9.4%
1984	**Scottish & Newcastle**	**JW Cameron**	√			√	9.0%	< 1.0%
1985	**Scottish & Newcastle**	**Matthew Brown**	√	√	√	√	9.0%	< 1.0%
1985	Elders IXL	Allied Lyons	√		√		0.0%	13.0%
1986	**Scottish & Newcastle**	**Home Brewery**		√		√	10.0%	< 1.0%
1986	Elders IXL	Courage		√			0.0%	9.0%
1988	**Elders IXL**	**Scottish & Newcastle**	√		√		10.0%	11.0%
1990	Elders IXL (Courage)	Grand Met (Brewing)	√	√			9.0%	12.0%
1992	Allied Lyons (Brewing)	Carlsberg (UK)	√	√		√	13.0%	5.0%
1993	**S & N (Retail)**	**Grand Met Retail**		√		√	2.7%	2.0%
1995	**Scottish & Newcastle**	**Courage**		√		√	11.0%	17.0%
1996	Bass (Brewers)	Carlsberg Tetley	√				23.0%	14.0%
1999	Whitbread (Retail)	Allied Retail	√				4.3%	4.3%
1999	Punch Taverns	Allied Retail		√	√		1.7%	4.3%
1999	S & N (Retail)	Greenalls Retail		√		√	3.2%	2.2%
2000	Interbrew	Whitbread Beer		√			0.0%	14.0%
2000	Interbrew	Bass Brewers	√				9.5%	23.0%

R= Referred; T= Transacted; H= Hostile; D= Political Donations; % = UK brewing market share

Recent experience in the UK with the hostile approach by the US food conglomerate Kraft for Cadbury shows that notwithstanding the supposed removal of the 'Public Interest' provision from the competition regime following the passing of the Enterprise Act 2002, foreign hostile bids in particular continue to attract intense political interest. There have been calls for the re-introduction of the 'Public Interest' provision and a change to the Takeover Code to deter future bids similar to that of Kraft/Cadbury[4]. If there is the restoration of the pre 2002 environment, the lessons from the history of the UK alcoholic beverages industry demonstrate starkly the role of political influence and hostile bids in the merger process, and how this in turn can shape both firm strategy and industry structure.

This paper describes the emergence of Scottish & Newcastle as the UK's largest brewer via the landmark acquisition of Courage in 1995 that gave it pole position in UK brewing and full geographic coverage of the UK beer market. In 1969 Scottish & Newcastle was the UK's fifth largest brewer with a national market share of 8% underpinned by its strong regional presence in Scotland and the North East. During the 1980s the firm used its political connections to full advantage to both deflect an unwelcome hostile bid and to implement successfully its own somewhat controversial mergers. Whilst its ambitious UK acquisition strategy came to a natural end in the final

days of the Conservative party's time in office, by that stage it had completed the Courage merger that gave it a 30 per cent share of the UK brewing industry that signalled 'game over' for leading competitors, Bass and Whitbread.

The first part of this paper contains a brief discussion of UK merger policy, a branch of the economics literature known as 'Regulatory Capture' and the attitude to hostile bids, in particular those from foreign firms that was evident in the late 1980s merger wave. The main part of the paper explains how Scottish & Newcastle was transformed from a regional brewer to the UK market leader in less than thirty years as a result of a series of sequential mergers and acquisitions. It considers the strategies the firm employed to gain merger clearance and deflect an unwelcome hostile approach from an overseas competitor. Its main focus is the significance of the landmark merger with Courage not just for Scottish & Newcastle but as a defining moment for the UK brewing industry. Finally, in conclusion the paper offers insights for a new era of merger policy where Government might renege on true independence in the competition policy regime under increased political pressure to back domestic 'champions' (Lloyds/HBOS, Kraft/Cadbury) and considers how by studying the merger history of firms such as Scottish & Newcastle today's firms might gain insights on how best to adapt their mergers and acquisitions strategies to deal with political influence and hostile bids.

Background

1. UK merger policy and political influence

A consistent approach to anti-trust and merger policy in the UK has been a post-World War II phenomenon, with 'independence' only being achieved with the passing of the Enterprise Act 2002. The Competition Act 1998 created an independent Competition Commission (CC), albeit wholly funded by the Department of Trade and Industry, with the Secretary of State (SoS) being responsible for making member appointments, and with the option to declare any industry a 'special' case for more direct intervention. The 2001 Competition White Paper set out the Labour government's vision for the CC as a world class competition authority. This led to the passing of the Enterprise Act 2002.

Prior to 2002, the CC and its predecessor the Monopolies and Mergers Commission (MMC) were able to consider mergers not only with respect to their likely impact on prices and consumer choice but also with reference to wider public interest issues, for example, the impact on employment and support of regional businesses. In one specific brewing merger in the 1980s the SoS requested that the MMC investigate a merger on the basis of the prospective leverage of the acquirer and how this might be expected to impact the brewing industry.

It is clear why the existence of a public interest provision might reasonably be expected to open the door for political interference at all levels. Wilks concluded that UK competition policy developed "*incrementally and piecemeal as a product of consensus building by a powerful civil service, heavily influenced by business lobbying, increasingly responding to developments in economic thought, and operating under a benign and exceptional mantle of political bi-partisanship*"[5].

A body of economics research known as 'Regulatory Capture' provides some interesting insights into the interplay between government and its agencies and private

firms. Early theories of regulatory capture were established in economics by Stigler and in law by Posner. According to Dal Bó[6], Stigler presented a view of public policy that emphasised the idea that regulators could be swayed by 'special interests'. In his view, however, a narrower definition of regulatory capture is the process through which regulated monopolies end up 'manipulating' the state agencies that are supposed to control them.

There has to date been only limited extension of regulatory capture into merger analysis and non-utility areas of anti-trust, arguably because repeated interaction between firms and the same investigating authority – calling for a longitudinal study - has not been addressed. Cross-sectional studies covering many types of firms are unlikely to reveal deep-seated political effects.

In a controversial 'insiders' analysis of US merger practices, Coate et al[7], while acknowledging Stigler's early work concluded that the anti-trust process had escaped characterization as a '*political, interest-group bargain*' due to the general assumption that it was one of the few remaining areas in which it was commonly assumed that government operated in the public interest. The authors sought to test the hypothesis that US anti-trust was politically driven using internal Federal Trade Commission (FTC) files on challenged horizontal mergers. They considered the relative influence within the FTC of two distinct professional groups – the lawyers and the economists – in the merger process, in addition to the impact of the external environment, namely Congress. Their model, '*A Bureaucratic-Political Model of Antitrust Enforcement*' revealed that pressure from politicians (who tend to favour merger challenges in order to prevent the exit of resources from their jurisdictions) caused the FTC to challenge more mergers. In other words they demonstrated that politics played an important role in the merger process in the 'independent' US.

Recent work by Bougette and Turolla that looked at 229 merger cases accepted at Phase I or Phase II of the European merger process between 1990 and 2005, found that there was a difference in the type of merger remedy proposed (behavioural or structural) depending on the firm's industry and who was the European Commissioner at the time. Moreover, they found some evidence of a country-specific outcome in their work[8].

To understand better the role of political influence at firm and industry level, more detailed case study and longitudinal enquiry is needed. Work in the US by Shaffer and more recently Watkins[9] has looked at specific cases where firms have sought to adapt to the regulatory environment as an important aspect of sustainable competitive advantage. However, while this is an emerging area of the corporate strategy literature the general conclusion is that few firms are good at integrating government relations and corporate strategy at a time when responsiveness to public policy issues seems to be of increasing – and sustained – importance to firms and their performance.

As part of a detailed historical analysis of Unilever, Jones and Miskell[10]presented an insight into the role of lobbying and political influence within the European Union. While acknowledging Unilever's stated policy of not funding political parties directly they discussed what some might consider a backdoor route to currying political favour through the firm's financial support for pro-entry campaigns in countries seeking entry to the EU. Its support for European integration grew out of its widespread business in many European countries. Until the 1980s Unilever appears to have been the only firm that had regular high-level meetings with the EC; between 1963 and 1987 the EC's efforts to

introduce a tax on vegetable oil (one of Unilever's key products) that would have narrowed the price differential with butter never got past the opposition of the margarine lobby and various consumer groups.

Looking closer to home, the political influence of the UK brewing industry, encapsulated in the nickname of 'The Beerage' ('beer' plus 'peerage'), lasted well beyond the honours attributed the family-led firms of the 19th century. As major supporters of the UK Conservative party, supported by firm donations that lasted well into the 1990s, the extent to which the industry worked together as a powerful lobbying force was illustrated by the degree to which it was successful in mitigating partly the disruptive impact of the second major anti-trust investigation into the brewing industry by the MMC in 1989[11]. Even after the MMC had published its findings [*The Supply of Beer: A Report on the Supply of Beer for Retail Sale in the United Kingdom into the Beer Market*] known as the 'Beer Orders' the less than happy industry was able to force a partial climb-down by the then deregulating Conservative government[12]. The political power of various firms, evidenced here by the merger history of Scottish & Newcastle, transcended even the more general lobbying power of the industry as a whole.

2. Hostile bids

During the 1980s hostile bids became an increasingly common event as the former conglomerates of the 1960s were dismantled by larger industrial competitors and 'corporate raiders'. By the early 1990s, however, with economies struggling in the aftermath of the 1987 stock market crash and the demise of the junk bond market[13], hostile bids almost disappeared. It could be argued that litigation and the acceptance of poison pill defences (in the US) and various regulatory challenges to hostile bids, in particular from foreign firms, played their part in deterring would-be acquirers from attempting anything but agreed deals that would meet simultaneously with approval from the competition policy regime.

In their analysis of the merger and acquisition market of 1980s US, two New York lawyers, Herzel and Shepro outlined the many pitfalls for would-be hostile bidders that are still applicable in today's market for corporate control[14]. They offered some unique insights into the interaction between hostile bids by foreign firms and the US regulatory and political system, referencing specific cases such as Sir James Goldsmith's 1986 attempt to buy Goodyear Tire & Rubber Company that created a firestorm of disapproval in Congress and in the state legislature of Ohio. The hostility to the British businessman continued through subsequent contested bids, notably in the US authority's response to the 1989 attempt to carve up the British firm, British American Tobacco (BAT). Soon after his announcement of the $21bn bid for BAT, 200 members of Congress signed a letter urging the US State Department to convey their concern to the UK Government that Goldsmith intended to '*purchase and then destroy a company that is important to hundreds of (US) communities*'. This highlights the nature of the debate that frequently accompanies hostile bids, namely resorting to local political interests to derail would-be acquirers. Jonas discussed how a community-based anti-takeover movement developed to bring forward new legislation to thwart a hostile bid by the UK conglomerate, BTR, for the US abrasives firm Norton Company[15].

The merger history of Scottish & Newcastle illustrates how the combination of political interference and influence in addition to the treatment of hostile bids from foreign firms can have a dramatic effect on the structure and operation of an industry. The lessons of history in this UK brewing case study that witnessed a fair share of controversial hostile bids, most notably from the 1980s Australian conglomerate, Elders IXL, are significant because controversial hostile bids appear to have returned (Kraft/Cadbury), and politics and competition policy seem to have moved closer again (Lloyds/HBOS merger) notwithstanding the passing of the 2002 Enterprise Act that was designed to remove politics from the merger process. Of course it was the very existence of the 'public interest provision' that gave the Secretary of State and regulators license to block a hostile bid whether or not it was justified on competition grounds – which frequently it was not.

Scottish & Newcastle: Regional brewer to UK market leader in 30 years

1. Introduction

At the time of the publication of '*Beer: A Report on the Supply of Beer*' in 1969, the first anti-trust investigation into the UK brewing industry, seven major brewers operating 70 of the 240 registered breweries in the UK together accounted for 73% of total UK beer production, as shown in Table 2 below; Bass Charrington, Allied Breweries, Whitbread, Watney Mann, Scottish & Newcastle, Courage Barclay & Simonds, collectively known as the 'Big 6' and Arthur Guinness. Scottish & Newcastle was one of the smaller 'Big 6' brewers with a limited tied pub estate owing to the larger free trade that characterized the Scottish (and Northern Irish) beer market.

Table 2: The principal UK brewers in 1967

Company	Production m bls	Share UK production (%)
Bass Charrington	5.64	18.1
Bass	*3.05*	*9.8*
Charrington	*2.59*	*8.3*
Allied Breweries	4.83	15.5
Whitbread	3.46	11.1
Watney Mann	2.94	9.4
Scottish & Newcastle	2.51	8.0
Courage Barclay & Simonds	1.78	5.7
Arthur Guinness	1.53	4.9
Total 'Big 7'	22.69	72.7
Next 11 brewers	4.46	14.3
Final 93 brewers	4.06	13.0
Total	**31.20**	**100.0**

Source: A Report on the Supply of Beer, HMSO, 1969

These market shares of the seven brewers reflected their regional strengths with only a handful of what would constitute 'national' brands, such as Guinness, bottled Bass and Worthington[16]. This was the period prior to the emergence of lager as an important beer category in England and Wales, with imported beer (excluding stout exported from the

Irish Republic) accounting for less than 1% of total consumption. Regional taste preferences coupled with the difficulties in transporting draught ales had limited the scope for the development of national brands. In total there were around 3,000 different brands.

During the 1960s complaints began to surface about anti-competitive behaviour in the UK brewing industry due to the powerful market positions of the seven large brewers. With the exception of Guinness these firms had vertically integrated businesses that encompassed brewing, wholesaling and retailing. 66 per cent of beer sold went through tied estates with the free trade supplied increasingly by the 'Big 6'. They offered wider portfolios of brands as a result of 'factoring' that is supplying other brewers' brands from reciprocal or straight buying-in arrangements.

The 1969 MMC report identified adverse public interest issues from the structure of the industry and the collective power of the vertically integrated national brewers. However, it concluded that none of the remedies proposed (including a full elimination of the vertical tie) was a practicable alternative given the restrictive licensing laws that prevailed. Consequently, industry structure and practices remained in place.

Merger and acquisition activity in the early 1970s saw Courage extend its geographic scope and the entry of hotel and property conglomerate Grand Metropolitan through the acquisition of the London-based Truman followed by Watneys. However, in the aftermath of the 1973/74 recession and with the prospect of further anti-trust pressure[17] the 1970s was characterized by piecemeal consolidation between small family brewers while the larger brewers diversified into other business sectors, such as food and leisure.

2. Scottish & Newcastle: The early acquisition years

During the 1970s Scottish & Newcastle pursued an organic growth strategy designed to extend its base in Scotland and the North East into the free trade of the South. While the strategy was initially successful, as beer consumption started to decline nationally the other brewers responded aggressively and Scottish & Newcastle's beer sales declined[18]. Heading into the 1980s the firm abandoned the organic approach in favour of an acquisition-led strategy in an attempt to further its aims of becoming a national brewer. The 1980s and 1990s would see the firm transformed from a regional brewer to the UK market leader with a near 30 per cent share of national beer sales through a series of ever larger and ambitious acquisitions of rivals' brewing and pub assets. The key events in the development of Scottish & Newcastle prior to 1995, and the Courage acquisition, are shown in Table 3 below.

In 1984, Scottish & Newcastle proposed an agreed acquisition of its Hartlepool-based neighbour, JW Cameron, the ailing brewing subsidiary of industrial conglomerate Ellerman Group. Cameron controlled 460 pubs and owned the Lion Brewery. The acquisition was referred to the MMC and subsequently abandoned; consequently there was no investigation report on the proposed merger. It is unclear why the bid was referred given the relative sizes of both firms and fairly limited geographic overlap in the pub estates. Following the lapse of the merger, the two firms reached an agreement in July 1985 to swap nine Scottish & Newcastle Tyneside pubs for 12 from Cameron's estate in

Cleveland and North Yorkshire. Cameron continued to struggle as an independent firm and was eventually acquired by Wolverhampton & Dudley Breweries in 1992.

Table 3: Scottish & Newcastle: Events leading to the acquisition of Courage

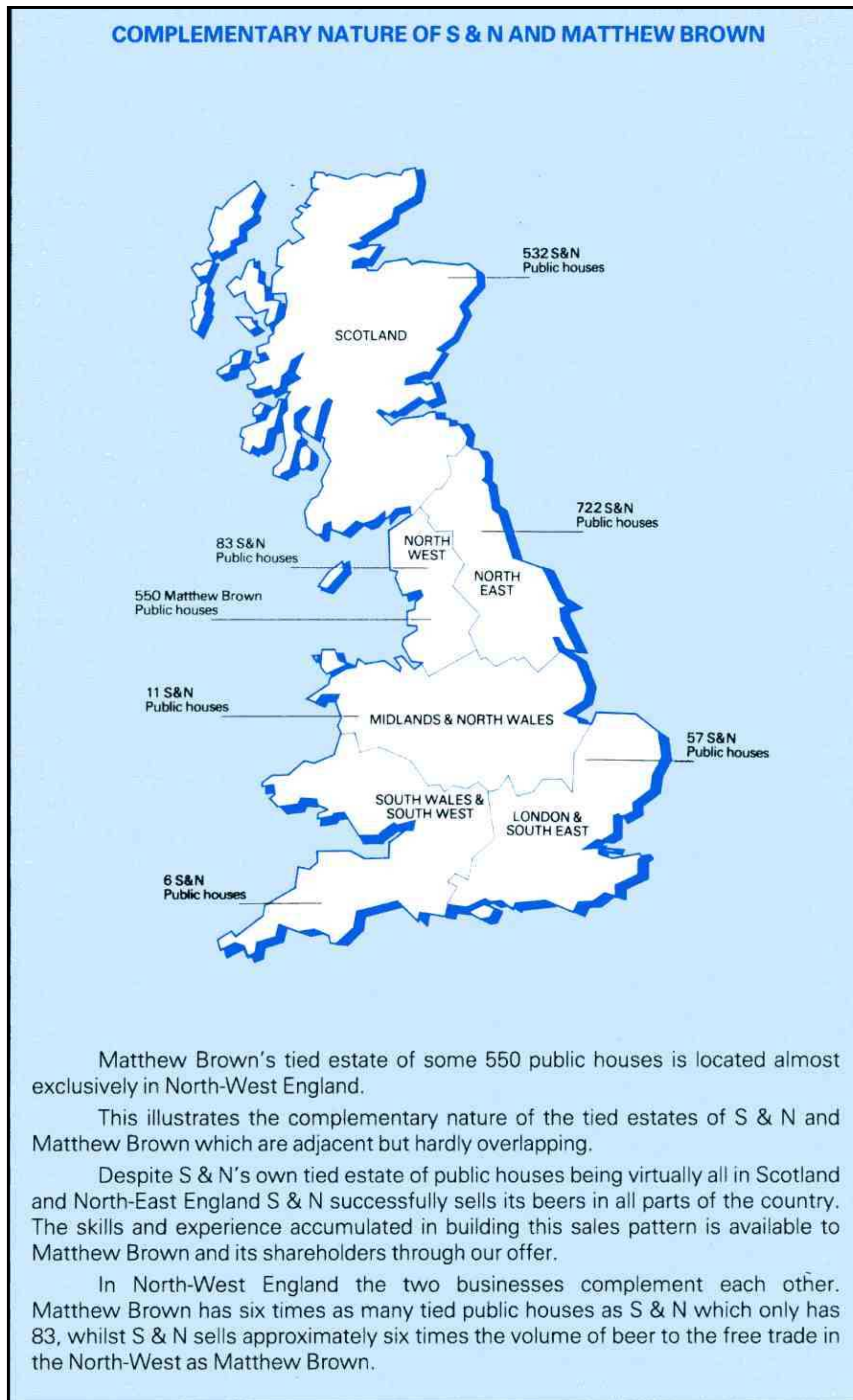
Year	Event
1995	Acquired Courage for £430m (owned John Smith, Foster's European and Kronenbourg UK distribution rights)
1993	Acquired Chef & Brewer managed pub estate for £628.5m
1991	Bought remaining minority 25.2% in Center Parcs
1989	Defended successfully hostile bid from Elders IXL Disposed of Thistle Hotels for £645m Purchased controlling stakes in Center Parcs and Pontin's
1988	Hostile bid announced by Elders IXL, owner of Courage.
1987	Acquired Matthew Brown for £118m.
1986	Acquired Home Brewery for £123m
1985	Launched hostile bid for Matthew Brown. Acquired Moray Firth Maltings for £23m. Sold Scotch whisky interests, Charles Mackinlay to Invergordon Distillers.
1984	Abandoned acquisition of JW Cameron following referral to MMC Disposed of Gough Brothers.
1979	Acquired Royal Brewery (Manchester), and Gough Brothers (off licences)
1965	Formed Thistle Hotels from existing hotel assets
1960	Scottish Brewers merged with The Newcastle Breweries to form Scottish & Newcastle Breweries Ltd
1931	William Younger and William McEwan merged to form Scottish Brewers Ltd.
1913	William McEwan died. William Younger, his nephew, took on the running of the Edinburgh brewery
1890	Newcastle Breweries launched at Tyne brewery
1884	John Barras took over Tyne brewery
1856	William McEwan established Fountain brewery in Edinburgh
1803	William Younger II acquired Abbey brewery at Holyrood
1770	John Barras established in Gateshead by John Barras Snr and William Johnston
1749	William Younger brewery established in Leith

Source: Scottish & Newcastle

Undeterred by the failure of its first significant acquisition, Scottish & Newcastle announced a hostile bid for Blackburn-based Matthew Brown on 18 March 1985. Matthew Brown was one of the larger and more successful of the regional brewers that had grown by acquisition in the North West, latterly extending into Yorkshire with the 1984 acquisition of Theakston. At the time it comprised four breweries and 527 tied houses.

In the offer document to Matthew Brown's shareholders on 3 April 1985, Scottish & Newcastle, which had already amassed a 12.8% shareholding in its target, warned the shareholders that regional brewers such as Matthew Brown would find it increasingly difficult to survive on their own in the fiercely competitive UK beer market. The offer document argued that by joining forces with Scottish & Newcastle (as a much larger regional firm that had a successful track record in selling nationally to the free trade) the merger would offer new commercial opportunities to Matthew Brown that would guarantee its future. The two firms' tied estates were adjacent but they were complementary in the North West, where Scottish & Newcastle had a much larger free trade business, as shown in Figure 1 below.

Figure 1: Pre-merger public house ownership[19]



The acquisition was referred to the MMC on 24 April 1985. Scottish & Newcastle argued that Matthew Brown presented a means of strengthening its ability to compete more effectively with the other five national brewers in addition to the regional brewers. The vertical tie provided the nationals with secure outlets for a high proportion of their output from which they could attack Scottish & Newcastle's prominent position in the free trade. The nationals each controlled between 5,000 and 7,000 tied outlets whereas Scottish & Newcastle controlled a mere 1,450 and Matthew Brown, 525. Whilst it was well placed to offer greater competition to the nationals because of its size and proven ability to compete successfully in the free trade it needed to establish a larger platform in the North West and Yorkshire and gain access to Matthew Brown's English 'heritage' ale brands to strengthen its own ale portfolio. Significantly, it had the backing of the Industry Department of Scotland (and one other smaller brewer).

The MMC was concerned that whilst there was no significant increase in concentration of tied outlets in Cumbria as a result of the proposed merger (Matthew Brown already owned 40% of all tied outlets), once free trade outlets with exclusive supply contracts were included in the analysis, market share would rise from 33% to around 50% as a result of the merger. However, while the MMC considered that this was problematic, it agreed with Scottish & Newcastle that it was necessary to consider what this actually meant for ongoing competition given that free trade supply contracts could change hands (many, however, were tied to the brewer through the provision of cheap loans)[20]. Elsewhere in the pub portfolio, the removal of 'new entrant' Matthew Brown into Scottish & Newcastle's heartland of the North East did not amount to a material public interest detriment. In Yorkshire and Lancashire where both firms were active in the on-trade, the merged firm would still have been a minor player in the market.

In its concluding remarks the MMC gave general pointers on how the public interest arguments had been addressed in this case and how subsequent mergers might be considered. Referring to the 1977 Price Commission findings that the combination of high concentration and vertical integration in the industry had made entry more difficult, creating a platform that allowed managed houses to lead market prices of beer upwards, the MMC report considered that the objective of enhancing competition to the major national tied estate brewers was a matter of public interest. The proposed merger would assist Scottish & Newcastle's ability to compete with the other 'Big 6' national brewers but the effect would not be that great because it would still be much smaller than any of the others. In allowing the merger to proceed, the MMC concluded:

"*There may well be a strong case on public interest grounds against acquisition of a regional brewer by any of the five largest national tied estate brewers, but we are not convinced that in the interests of averting further concentration there is a strong enough case to prevent the acquisition*"[21]

One of the main emotive aspects of MMC investigations prior to the removal of the public interest provision in 2002 was the impact of a merger on local employment. The Matthew Brown bid defence had argued vociferously that if the bid proceeded, jobs would be lost across the region as a result of some or all of its breweries being closed. In its submission to the MMC Scottish & Newcastle gave assurances "*categorically, publicly, and in writing that without any question whatsoever the Blackburn and Masham breweries are sacrosanct for continued brewing purposes*"[22]. As will be discussed below, like many prospective bidders, assurances often fail to materialise once, unencumbered,

they have their hands on the prize. No such assurances were given, however, on the Carlisle and Workington breweries that employed collectively some 170 people. Although the bid was cleared in November 1985, it took more than a year of negotiations between the parties before the deal was consummated in early 1987. During that time Scottish & Newcastle raised its offer considerably from 442p per share to 598p per share. The price of Matthew Brown shares on the dealing day before Scottish & Newcastle first bought shares was 273p.

In the midst of the lengthy bid battle for Matthew Brown, Scottish & Newcastle announced on 18 August 1986 that it had reached an agreement to acquire Home Brewery, a Nottingham-based regional brewer with 474 mainly tenanted pubs. Although Home Brewery had made the initial approach, the justification for the deal as outlined in the offer document was stated by the management of Scottish & Newcastle:

"*…the acquisition of Home Brewery represents an important step in achieving its objective of creating a business of major scale, depth of resource and range of products to compete even more effectively against much larger rivals….. Home Brewery's licensed estate is well positioned at the southern end of S&N's area of strategic interest……Home Brewery's brands will broaden the range of popular regional beers offered by your Company and S&N's leading national brands will complement Home Brewery's brands in its tied estate*[23]"

The acquisition proceeded without referral; Scottish & Newcastle had a negligible licensed estate presence in Home Brewery's East Midland heartland, where the target's pub market share was approximately 7.8 per cent[24].

3. The Elders IXL hostile bid

Elders IXL, one of the largest firms in 1980s Australia, bought into the Australian brewing industry with the 1983 purchase of Carlton United Breweries (CUB), the larger of Australia's duopoly brewers with a market share of 47 per cent and the leading brand of Foster's lager. Its ambitious management believed that the UK beer market was ripe for rationalisation. It saw the beer industry as becoming increasingly international and sought to use the UK as the platform for growth into Europe as part of a larger plan to 'Fosterise' the world.

In October 1985 Elders IXL launched a hostile bid for Allied-Lyons. The bid was referred to the MMC on 5 December 1985. In what was an unusual reference, that seemed to owe more to the bidder's financial structure if not its overseas domicile (Elders IXL had no presence in the UK other than a licensing agreement with Watney's for the production and distribution of the Fosters brand), the bid was cleared in September 1986. In the intervening period, the lengthy inquiry gave Allied-Lyons enough time to embark on its own 'poison pill' acquisition strategy that saw it buy the Canadian major spirits firm, Hiram Walker, and woo The City with a visit – on a specially chartered Concorde – to its newly acquired North American operations[25].

Elders IXL did not abandon its hopes of gaining a foothold in the UK and emerged as the successful bidder in the auction for Courage in November 1986, an orphan asset from Hanson Trust's acquisition of Imperial Tobacco. Significantly, in the auction process Hanson Trust had held discussions with Scottish & Newcastle but the

two parties could not agree a price for Courage and Hanson Trust believed there would be problems in gaining regulatory clearance.

Elders IXL had contacted the Scottish & Newcastle management with a view to forging a national distribution agreement with its Courage subsidiary. As discussions continued, the debate centred on an agreed merger of the two beer businesses under Scottish & Newcastle control. However, Elders IXL, in an attempt to move the process forward quickly, started to buy shares in Scottish & Newcastle. The two companies had more meetings during which time Elders increased its shareholding in Scottish & Newcastle further. When no agreement was reached between the parties, Elders launched a £1.6bn hostile bid on 17 October 1988.

The bid was referred to the MMC on 9 November 1988. Two days earlier Scottish & Newcastle had published its defence document in which it pointed to an '*already overgeared*'[26] Elders IXL balance sheet – a principal reason for the Secretary of State's decision to refer Elders' earlier hostile bid for Allied-Lyons. Referring to discussions with its previous owner, Hanson Trust, Scottish & Newcastle claimed while Courage had once been a broad, well balanced business which held considerable appeal it had been weakened by asset disposals by successive owners, over-emphasis on Foster's and major restructuring. Further, "*Courage is now poorly positioned for the future. It is trying to buy the success that it will find hard to achieve through organic growth*"[27]. The irony of these arguments would become apparent when Scottish & Newcastle acquired Courage some seven years later.

Scottish and Newcastle's auditors, Arthur Young, provided a detailed balance sheet analysis of Elders IXL that supported the view that once all Elders' finance subsidiary debts were fully consolidated, this was a highly leveraged deal (that should be referred, and possibly blocked). The defence document was also bolstered by helpful comments from The City and leading newspapers. Lex Column of the Financial Times concluded "*the deal is a straight forward financial manoeuvre*"[28].

Scottish & Newcastle mustered support from all official quarters in its defence. Those that provided supportive submissions to the inquiry included the Industrial Department of Scotland, the Scottish Development Agency, Scottish Financial Enterprise, Scottish Trades Union Congress and various regional chapters of specific trades union, The Bank of Scotland, and a host of Scottish MPs spanning all political parties. The Scottish Council on Alcohol recorded its view that the social awareness shown by Scottish & Newcastle regarding the alcohol abuse debate might be "*jeopardised if the merger proceeded*"[29] (presuming the Australian firm had less social awareness!). Interestingly, however, the Bank of England made a written submission that the financing of either Elders IXL or the merged entity did not raise material concerns for either competition or the public interest.

The actions of Elders IXL regarding the Takeover Code were somewhat aggressive by UK standards. On the morning of the referral, Elders bought more shares in the stock market, taking its holding in Scottish & Newcastle to 23.6%, and prompting the Secretary of State to take unprecedented action to order a freeze of the shareholding and limit the voting rights to 15% of the equity. Elders justified its actions on the basis they were designed to stop Scottish & Newcastle instigating a 'poison pill' during the course of the MMC investigation. Moreover it claimed its actions did not breach the Substantial Acquisition Rules or the Fair Trading Act. In fact, during the course of this bid, Scottish

& Newcastle spent £115m acquiring Pontin's from the management team that had bought it from Bass two years earlier for £57.5m, for reasons that team explained later: "*Scottish & Newcastle were under threat from Elders IXL, which had launched a bid and S&N wanted to buy a UK leisure business….It was a sort of poison pill*"[30]

The decision to block the merger was published on 8 March 1989, a little over a month after the publication of the anti-trust enquiry into the UK brewing industry (the 'Beer Orders'). The MMC merger team had been in contact with the anti-trust investigating team and had seen its report in advance of reaching its decision on the merger. However, it stated clearly that the decision had been reached on the basis of the evidence in front of it. An interesting fact, however, and one that might have been of significance is that three of the six members of the MMC investigation team for the merger were also on the investigation team that considered the Scottish & Newcastle bid for Matthew Clark some two years earlier.

The MMC's conclusion that the merger would act against the public interest as a result of the loss of the independence of one of the major suppliers to the market seemed to be vindicated solely on consumer choice decisions in the free on trade. Leading beer buyers such as Tesco, and J Sainsbury gave evidence that they saw no adverse impact from the merger. In its deliberations to the merger enquiry in addition to offering general criticisms of the structure and operation of the UK brewing industry, Elders suggested that the industry attracted an unusual amount of political interest. In its opinion the industry "*had a poor image appearing to be introverted and defensive…… attracted an unusual amount of sentimental interest which should not be confused with genuine public interest issues….was highly regulated and very 'political'*"[31]

It is difficult to conclude that the decision to block was anything but a political one, given the position of Scottish & Newcastle as a leading firm in the Scottish business establishment. The Independent newspaper's obituary of Sir Alick Rankin, chief executive officer of Scottish & Newcastle at the time of the Elders IXL bid, and latterly the firm's chairman alluded to the political and business prowess of the firm:
"*Elders was a daunting opponent but, to its apparent surprise, it found Rankin's S&N equal to the challenge. In a campaign that was not without subsequent irony, Rankin played the Scottish card to mobilize both public and political opinion in defence of S&N…..The episode made Rankin's reputation, and saw him invited on to numerous blue-chip boards….At the same time he was gaining public recognition as a leading light in the ranks of the quangocracy which ran much of public policy in pre-devolution Scotland, and he became a key ally of Scotland's embattled Tory ministers.*"[32]

4. The Courage merger and its significance

Following the ratification of the 1989 'Beer Orders' there was a period of unprecedented and immense upheaval as the UK brewing industry was forced to cope with the sale of substantial parts of the major brewer/retailers tied estates. The firms were given until November 1992 to comply with the orders; in the intervening period the UK economy entered a deep recession that impacted both beer consumption and pub visits.

Having escaped the clutches of Elders IXL, Scottish & Newcastle was in the fortunate and unique position among the 'Big 6' in not having an estate large enough to

require divestment to comply with the 'Beer Orders' and the firm was content to watch from the sidelines while developing its leisure business; the proceeds from the sale of the home-built Thistle hotel chain were redirected to acquiring and developing the holiday park operators Center Parcs and Pontin's.

On 12 March 1990, Elders IXL and Grand Met announced their agreement to swap brewing and pub assets through a complex three-stage process. The merger was referred to the MMC on 27 April 1990, and cleared with remedies. In summary, Elders IXL, through its Courage subsidiary, acquired Watney Mann Truman, the brewing assets of Grand Met and holder of the exclusive licence to brew Foster's in the UK. Grand Met took a 50 per cent shareholding in the Courage tenanted pub operation, renamed Inntrepreneur Estates Ltd (IEL) and injected its 3,565 tenanted pubs to create an enlarged IEL. IEL was administered under a service agreement by Grand Met's property subsidiary, Grand Met Estates Ltd. Both the wholly owned Grand Met managed pubs, Grand Met Retailing (GMR) and IEL signed ten year exclusive supply contracts to Courage, subsequently revised to five years to comply with EU law.

On 22 October 1991 Allied-Lyons announced an agreement to merge its UK brewing operations with those of Carlsberg AS, forming Carlsberg-Tetley Ltd as a response to the Grand Met/Courage tie-up, and aimed similarly at improving brewing efficiency. The merger was referred to the MMC on 9 March 1992, and was cleared with remedies in July 1992. However, by this time the market had deteriorated significantly and two years before the termination of the five year supply agreement to Allied Retail, the renamed Allied Domecq, announced its intention to quit brewing (which it did in 1996).

As the 'Beer Orders' deadline approached, therefore, two of Scottish & Newcastle's major competitors had established exit strategies from the UK brewing market in favour of a retailing position. In September 1993, Scottish & Newcastle announced that it had reached an agreement to buy the Chef & Brewer retail outlets for £622m, an acquisition that was well-received by The City. There was considerable scope for operational improvements in what was seen as a well-sited but underinvested estate. However, there was doubt that Chef & Brewer would provide a significant platform for growth of Scottish & Newcastle's beer brand portfolio; while brands such as Theakstons and Newcastle Brown Ale already had something of a cachet in London, it seemed unlikely that Younger's, McEwan's and other mainstream Scottish brands would displace the non-contracted Courage portfolio that supplied Chef & Brewer when the supply contract ended in March 1995.

On 18 May 1995, less than two years after acquiring Chef & Brewer and a matter of months after the supply contract from Courage to the Chef & Brewer estate ended, Scottish & Newcastle announced that it had reached an agreement with Elders IXL (now renamed as Fosters Group) to acquire Courage for £425m, giving Scottish & Newcastle the rights to brew, package and market Foster's brands in the UK, Republic of Ireland and Continental Europe. The rationale for the acquisition was[33]:

i. UK brewers are becoming increasingly dependent on free trade sales, where success relies on the strength of their brands and the quality and price competitiveness of their products and services.

ii. S&N, with its traditional strengths as a free trade brewer is well placed to respond to these challenges. However…. it is important to develop the Group's presence in geographic areas where it is currently under-represented and to continue to develop its brand portfolio.

iii. The acquisition of Courage will complement this (Chef & Brewer's) geographic expansion and will enable the Group to create a brewing business with a distribution network, brand portfolio and cost profile which will provide a strong base for growth in the UK and Continental Europe.

iv. The combined product ranges will provide the merged business with an enhanced portfolio of strong brands with which to compete in the free on and off trade sectors.

v. The merged business will provide opportunities for significant cost savings through purchasing efficiencies, reductions in overheads and the integration of operating resources.

The Courage deal catapulted Scottish & Newcastle into the number one spot in UK brewing, displacing long-term leader Bass. The acquisition gave Scottish & Newcastle two of the UK's leading beer brands, Foster's and John Smith's that collectively accounted for nearly 30 per cent of Courage's 17.6mhl volume. Foster's was the second largest lager brand in the UK by volume. The deal also brought modern and relatively more efficient plants at Reading (5mhl lager capacity) and Tadcaster (2.5mhl ale capacity). Scottish's existing brewery in Edinburgh that had been responsible for most of the group's lager and ale production, had capacity of 3.25mhl, with a then state-of-the-art canning line that met demand in the off trade. Collectively these were three of the largest sites in the UK, spread optimally across the country and rendering the rest of the combined firms' brewing capacity more or less redundant. Forecast year three cost savings were at least £40m per annum – the figure came in at closer to £75m, and arguably, should have been pushed harder, as Scottish & Newcastle admitted several years later.

Through the Courage acquisition Scottish & Newcastle became a truly geographically balanced national brewer with a market share close to 30%, some seven percentage points higher than long-term market leader Bass. With the Conservative party's term in office coming to an end, a Scottish firm that had thus far faired well in front of the MMC, was, perhaps, the only one of the big brewers that had enough confidence to attempt to breach the 25% market share 'rule' through merger. It was clear from various debates in the House of Commons that a future Labour Government would offer few favours to Scottish & Newcastle or The Beerage in general[34].

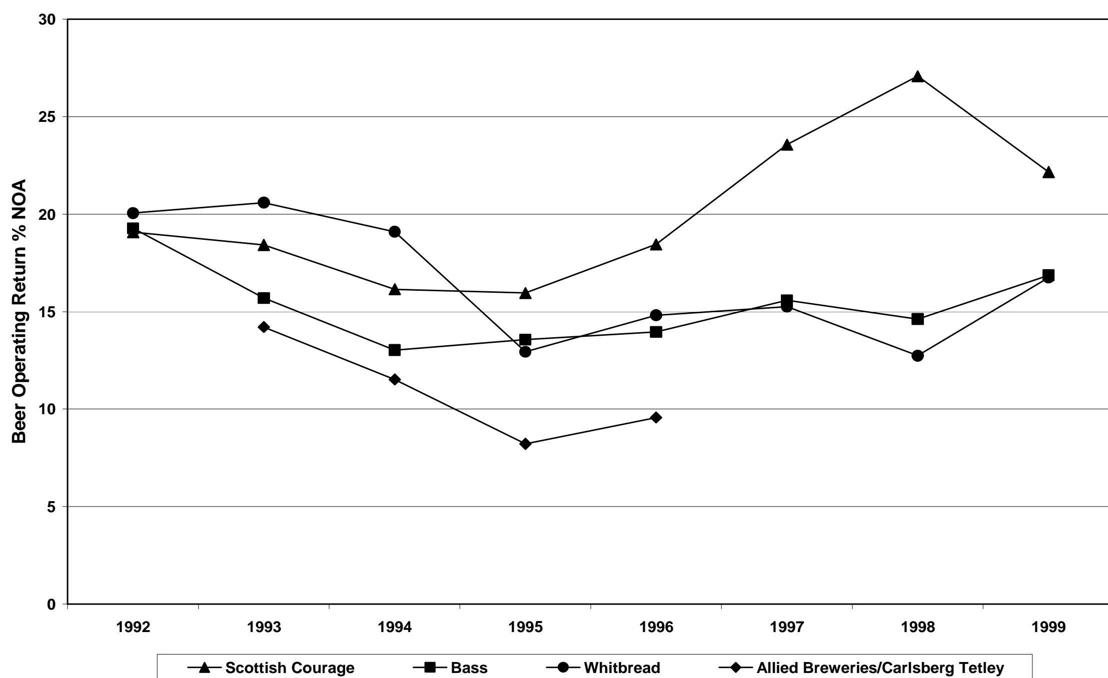
Scottish & Newcastle was confident that the merger would proceed unchallenged on the basis of 'soundings' that it (its advisers) had taken from the Office of Fair Trading. Much was made of the changing state of the UK beer market in the aftermath of the 'Beer Orders'; Scottish & Newcastle pointed to the more significant free on-trade as brewers had sold or leased formerly tied outlets, with the emergence of the multiple pub operators (known as the 'PubCos'). The stock market was accustomed to hearing about the pressure on the brewers from the buying power of the PubCos and the supermarket groups as they were able to negotiate ever larger per barrel discounts. Notwithstanding the withdrawal from brewing of some operators and brewery closures, the industry was laden with significant overcapacity not just in the UK but in nearby countries in Europe. These

arguments were not new and had been used in the recent MMC inquiries into Grand Met/Courage, and Allied/Carlsberg. What was new, however, was the lack of even an investigation for a merger that tested the 25 per cent market share threshold.

5. Industry restructuring post Courage

Scottish & Newcastle's ability to transact the Courage merger without the imposition of a lengthy competition inquiry came as a surprise to most industry observers. Scottish & Newcastle gained national brewing coverage with the ability to rationalize its capacity nationally, the benefits of which are evident from the following chart:

Figure 2: Operating returns of major UK brewers



The threat to the industry of a more powerful Scottish & Newcastle forced an almost immediate reappraisal of strategies at the remaining UK national brewer/retailers. With the UK regulatory regime now apparently allowing greater horizontal integration, even beyond the 25% market share hurdle, a complete dismembering of the vertical tie ahead of the 1997 deadline for the end of the 'Block Exemption' for the UK brewing industry under EU law now seemed likely. The optimal strategy for each firm was to concentrate at one end of the value chain, that is, either brewing or pub retailing and divest the other business interest to a competitor; considerable merger and acquisition activity was inevitable. The challenge, with the benefit of hindsight, was to transact during the 'favourable' political regime.

Although Bass had been the market leader in the UK brewing industry since the 1960s, with its position underpinned by powerful local pub franchises in regions such as the West Midlands and North East and Scotland, the group also housed ambitions to be a

global hotel player, having purchased the Holiday Inn franchise system in the late 1980s. As a remnant of the past it entered the 1990s with a collection of peripheral leisure interests that included gaming (Coral Racing), bingo (Gala) and amusement with prizes (AWP) machine manufacturing, in addition to a controlling interest in the Britvic soft drinks business. As the 1990s progressed the group came under significant pressure from shareholders to simplify its structure and develop a cohesive group strategy around the 'core' businesses of brewing, pub retailing and hotels. At an investor conference in early 1994 the group outlined its objective to become 'the Anheuser-Busch of UK brewing'. Given the firm's track record in gaining market share (and the vertically integrated structure of the UK brewing industry) it would, realistically have taken 21 years to attain an Anheuser-type market share of 44%, requiring considerable patience on the part of the already disgruntled shareholder base.

While the strategic discussion continued both within Bass and with its shareholders, Scottish & Newcastle announced the landmark merger with Courage. Bass was no longer market leader. Moreover, Scottish & Newcastle appeared effortlessly to have breached the 25% market share rule. To say the management team at Bass was unhappy would be something of an understatement. On 25 August 1996 Bass announced that it was acquiring Allied Domecq's 50% stake in Carlsberg-Tetley. Subject to regulatory approval Bass agreed to merge its brewing operations with those of CTL and acquire an additional 30% shareholding in the enlarged enterprise, Bass Carlsberg-Tetley (BCT). The merger would have created the UK's largest brewer with 37% market share of beer production and with a tied estate of 4,400 pubs. (Scottish & Newcastle had a market share of 28% with 2,700 tied outlets. Whitbread had a market share of 13% and a tied estate of 4,400 outlets.)

On 9 December 1996 the proposed merger was referred to the MMC. It was given clearance on a majority decision subject to Bass reducing the size of its pub estate to 2,500 outlets. However, the publication of the findings corresponded with a change in Government. The new Labour Party Secretary of State, Margaret Beckett, did not accept the advice of the MMC, agreeing with dissenter Professor David Newbery, and blocked the merger. In any event, Bass had concluded that the remedy to sell down to 2,500 outlets and in the manner suggested by the MMC was onerous and the fallback arrangements of the merger were enacted.

At the end of 1997, and prompted partly by the failure to acquire a greater share of the UK brewing industry, Bass embarked on the first stage of restructuring of its portfolio of businesses. It sold its tenanted pub estate to Punch Taverns, and its gaming and bingo operations. At that stage it was operating at some 2000 pubs below its 'Beer Orders' licence limit. It eventually expanded its managed pub portfolio to exploit the licence limit through a side agreement to buy 550 of the largest Allied Retail pubs from Punch Taverns following the latter group's successful bid for Allied Retail in 1999. Bass also acquired the Inter-Continental Hotel operation in March 1998 for £1.78bn, giving it a step change in scale as an international hotel operator. Finally, in 2000 it sold its brewing operation to Interbrew for £2.3bn.

Even prior to the 'Beer Orders' Whitbread's survival as a first division brewer was questionable, and given the firm's early success in developing more innovative restaurant and pub concepts, its future seemed assured as the market leader in pub retailing. Notwithstanding the success of the Whitbread Beer Company (WBC) as a beer

marketer, the reliance on Heineken and Stella Artois was problematic, not least because the barrelage licence fee presented a cost disadvantage. WBC was gradually de-emphasised. The cross-shareholding relationship with the Whitbread Investment Company (WIC) was unwound and its equity stakes in various regional brewers were sold. The brewing operation was placed on an 'arms length' relationship with the retailing business. In essence the foundation was laid for an independent WBC.

On 25 May 1999, Whitbread announced that it had reached an agreement with Allied Domecq, subject to shareholder and regulatory approval, to buy Allied Domecq Retailing UK for £2.36bn. This was the division of Allied Domecq that comprised 3,500 leased and managed pubs, a 50% share in the off-licence chain First Quench (the other 50% owned already by Whitbread as a result of the merger of Thresher and Victoria Wine) and 25% stake in Britannia Soft Drinks (the parent company of Britvic that was controlled by Bass, and in which Whitbread also had a 25% stake). In order to comply with established regulatory requirements Whitbread announced that it would separate WBC following completion of the acquisition.

Following a surprise intervention by the new Secretary of State, Stephen Byers and the prospect of a CC investigation, Whitbread withdrew from the acquisition, clearing the way for the Punch Taverns/Bass bid that many believed raised more significant competition concerns. Whitbread carried through its objective of exiting brewing, however, and in May 2000, sold WBC to Interbrew for £400m.

Conclusions

The merger history of Scottish & Newcastle presents a unique opportunity to investigate the role of politics, political influence and hostile bids in determining a firm's future and the ultimate structure of an industry. It illustrates how firms can internalize the mechanism for dealing with the regulatory policy environment and align it with its own merger growth strategy. Perhaps, most importantly, it demonstrated the benefits of timing and perseverance as a core competence for a firm that aspires to shape its own future and that of its industry.

Previous research demonstrated the significance of political affiliations and hostile bids in the consolidation of the UK brewing industry, with all hostile bids referred under the pre-2002 public interest provision irrespective of post-merger concentration in the relevant market. But two specific mergers stand out as being particularly significant; the blocking of Elders IXL's 1988 hostile bid for Scottish & Newcastle and the waving through without referral of Scottish & Newcastle's agreed deal to buy Elders IXL's expanded Courage brewing business in 1995 that brought Scottish & Newcastle market leadership with a 30% market share.

Contemporaneous documents point to the strength of the political connections of Scottish & Newcastle, in particular in the Edinburgh financial and business establishment. This was already evident in the firm's successful hostile bid for Matthew Brown. However, the full scale of the Scottish lobby became clear in Scottish & Newcastle's defence of the hostile approach from Elders IXL, a firm that aspired to shake up the 'traditional' UK brewing industry ahead of the liberation of trade in the European Union in 1992. Indeed the MMC team that investigated Elders' failed bid for Allied-

Lyons in 1986 had commented on the strength of the management team at Elders and its arguments; Elders might have anticipated some sympathy from the MMC two years later.

The prospect of the Edinburgh establishment losing another leading corporate player heralded a brutal fight. It was, after all, a matter of months since Guinness had gone back on the agreement to retain the Distillers head office in Scotland following the successful 1986 hostile bid. Moreover, Scottish & Newcastle was a key supporter of the Conservative Government and embattled Scottish Conservative MPs and ministers. The aggressive behaviour of Elders in its interpretation of the Takeover Code presented sufficient cover for the bid to be blocked on public interest grounds when pure competition concerns were more difficult to justify.

It is possible to overplay the importance of political influence and the role of hostile bids in the outcome of any particular merger case. But it is difficult to explain fully how Scottish & Newcastle could gain approval on the basis of prior soundings alone (no referral) for the 1995 Courage acquisition, especially given the prospective post-merger market share of 30%. The two previous mergers that also took place after the MMC's 1989 anti-trust report (albeit before the 'Beer Orders' deadline for compliance) were referred automatically. The Courage merger was not hostile, but as political comment at the time shows, by 1995 the Conservative Government was under pressure to appease 'The Beerage', and Scottish & Newcastle was a key player in that system.

Having established tentatively that post-merger market share of 25% was no longer a block to horizontal integration in brewing Bass, unhappy to have been demoted to number two brewer thought best to test this with its own merger with Carlsberg-Tetley. Had Bass made its move some six months earlier, the same SoS that oversaw the Courage merger would have been in place. However, Margaret Beckett, had just been installed as the first Labour SoS when the Bass/CT MMC report landed on her desk; she decided to over-rule the clearance (with remedies) granted by the MMC. What would be the structure and ownership of the UK brewing industry today had that merger happened?

Certainly it seemed that the Enterprise Act 2002 would remove the SoS from the merger process. By 2002 the UK brewing industry had been more or less restructured; Allied, Bass and Whitbread had all exited by sale to Carlsberg, Interbrew and Coors, and Interbrew respectively. In general with a wider industry trend, these mergers had all been agreed between the parties. Yet the removal of the public interest provision that had tended to protect the status quo of an industry gave the green light to would-be hostile bidders again. Whilst falling under EC jurisdiction few domestic eyebrows were raised, nonetheless, when Scottish & Newcastle was victim to the hostile approach from Heineken and Carlsberg in 2007. In contrast, Kraft's hostile bid for Cadbury provoked calls for the reinstatement of the public interest provision and the possible amendment of the Takeover Code to protect domestic targets in echoes of the 1980s. In the event that merger policy reverts to protecting domestic 'champions' there are indeed many things to re-learn about the role of politics and hostile bids in the process; the merger history of Scottish & Newcastle has many lessons for us all.

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Notes

[1] Whilst the occurrence of 'merger waves' is well documented in the Economics literature and is generally seen as trans-industry and even jurisdiction, Da Silva Lopes (2002) ascribed those of the alcoholic beverages industry to a combination of several factors related to the evolution of the industry (consumption, competition and institutional environment) and also to the strategy of the firms (in particular brands and marketing knowledge).

[2] The author's PhD thesis (Bower, 2007) used Discriminant Analysis modelling to answer the core research question "What economic, political and social factors should merging firms exploit to minimize the probability of a referral to, and minimize the impact of any remedies imposed by, the competition authorities?"

[3] Typified, for example, by the 2001 Diageo and Pernod Ricard joint bid for Seagram's spirits operations where a 'Framework and Implementation Agreement' was established by the firms specifically to circumvent likely competition concerns.

[4] See for example "*Lord Mandelson calls for overhaul of takeover rules*" The Guardian (1 March 2010) that referred to the then Business Secretary's keynote Mansion House speech the previous evening and the furore that accompanied Kraft's hostile bid for Cadbury.

[5] For a detailed background on the development of UK competition policy in the post-World War II period, including the establishment of the Office of Fair Trading and the relevant legislation refer to Wilks' book "*In the Public Interest: Competition Policy and the Monopolies and Mergers Commission*"

[6] Dal Bó (2006) reviews the work of leading academic economists and lawyers in the area of 'regulatory capture', including Stigler (1971) and Posner (1974). He illustrates with some specific examples, including contemporary pricing decisions in the US Telecommunications industry and the relationship to incumbent firm campaign contributions.

[7] Malcolm Coate, Richard Higgins and Fred McChesney published this paper in 1990 with the following disclaimer: "*We have rather reluctantly agreed to recite the following, written by the FTC's Office of General Counsel: This paper was prepared using nonpublic information from Federal Trade Commission internal files. Access to this information was available to Messrs. Higgins and Coate because they were employees of the Commission, and it was made available to Mr McChesney because he was a consultant to the FTC Bureau of Economics. The Commission's Bureau of Economics has major disagreements with the methodology, analysis, inferences, and conclusions contained in this paper, and neither the Commission nor any of its members has authorised or endorsed its creation or publication. The FTC General Counsel determined that precluding publication would not be in the public interest.*"

[8] Bougette and Turolla (2007) used Multinomial Logit modelling of cross-sectional data from European merger cases to establish the determinants of merger remedies. Their work showed (unsurprisingly) that variables related to high market power led more frequently to a remedy outcome, but also demonstrated "*Mario Monti had an effect on the shape of the remedy decisions. This is something new. So far several studies couldn't have detected his influence on a merger being accepted or blocked.......Countries of origin also reinforce the political aspect of the decisions since US and French acquirers lead to a merger decision with commitments*"

[9] Shaffer (1995) raises the prospect of firms gaining competitive advantage by seeking (being pro-active) to influence the legislative and regulatory process. Watkins (2005) makes conclusions from a detailed analysis of the anti-trust lawsuit against Microsoft.

[10] Jones and Miskell (2005) through an analysis of the restructuring of the Anglo-Dutch food group, Unilever, sought to shed light on whether business interest groups were the main driving force behind the *Single European Act* or whether their lobbying was done mainly through national governments.

[11] In '*The Supply of Beer*' (1989) commenting specifically about the industry lobby group, The Brewers Society, the MMC commented "*we were struck by the vigour and thoroughness of the Brewers Society response to the many questions we asked and the points we put back to it ...... the Society is formidably effective in championing its members' interests*" Specific evidence for this came in the aftermath of the March 1989 publication of the MMC report. On 31 October 1989, new Secretary of State, Nicholas Ridley

announced that the '*draconian*' condition on pub divestment would be amended materially ('*Decision on Beer Orders*', DTI Press Notice 89/745).

[12] Hansard (15 February 1995). In a House of Commons debate on extending Sunday trading hours various insights into the political influence of the brewers were offered. Mr Donald Anderson, Labour MP for Swansea, East: "*...the brewers were becoming pretty unhappy with the performance of what they deemed to be their Government, and the Government hoped to win back the support of the brewers, which, after all, had provided 10 per cent of Conservative party funds at the previous general election. Several key brewers, including Allied Domecq – a major contributor to Conservative party funds – withdrew their funding from the Conservative party in 1994*".

[13] For a detailed discussion of the emergence of the 1980s junk bond market see Euromoney (2 January 1986) "*Leveraged buyouts: The LBO craze flourishes amid warnings of disaster*"

[14] Herzel and Shepro (1990) outline in detail many of the controversies that surrounded the 1980s merger boom, and in particular the incidence of foreign hostile bids and poison pill defences. See specifically P124 for general disadvantages of hostile bids, for example, "*hostile bids generate ill will and can be risky and costly....Many potential foreign bidders believe, with some justification, that their reputations are more fragile than those of US companies*".

[15] Jonas (1992) observes how "*Takeovers can there-fore provide fascinating insights into the social and economic conditions that prompt locally dependent businesses, workers, and public officials to unite and fight collectively for the future of their community.*" P349

[16] "*Beer: A Report on the Supply of Beer*" (1969) at P7 cites Mr JAP Charrington, President of Bass Charrington in *The Times* (22 April 1968) in ascribing regional taste preferences that underpinned the regional nature of the UK brewing industry at that date. Charrington's London brewery had then 65% of its trade in 'best bitter' compared to 4% in 1929, and none at all in 1900, when only mild ale and stout were produced. He considered this to be replicated across other London breweries, but that mild ale was still a favourite in the Midlands and lager was (and had been for a long time) popular in Scotland.

[17] The 1977 Price Commission report '*Beer Prices and Margins*' Report No 31, pointed to the adverse effect of a combination of high concentration and vertical integration in the brewing industry, reinforced by restrictive licensing laws, on prices of beer in public houses.

[18] In '*Scottish & Newcastle Breweries plc and Matthew Brown plc*' (1985) at P16 the MMC commenting on Scottish & Newcastle's 1985 beer sales being some 20% below their 1975-6 peak, attributed "*the decline ...... was largely due to a reversal of its successful penetration of the free trade in England and Wales. This was associated with falling demand for Tartan Bitter. The company also suffered from the absence, in its portfolio, of lager brands other than Harp at a time when national demand was growing*."

[19] Excerpt from Scottish & Newcastle's first offer document for Matthew Brown (3 April 1985) at P6

[20] The traditional vertically integrated structure of the UK beer market (in common with that in Germany) was underpinned by a property tie. The brewers owned licensed premises, both managed and tenanted, where only its brands were sold. However, a significant part of the free (non-property tied) trade was also tied to the brewers, in particular the large nationals, by way of loan ties. The brewers made loans, often at levels significantly below market interest rates to free trade outlets in return for various buying obligations. As the MMC observed in '*The Supply of Beer*' (1989): "*The terms of the loan often restrict, for the duration of the loan, the retailer's ability to choose between suppliers.*" at P25.

[21] '*Scottish & Newcastle Breweries plc and Matthew Brown plc*', MMC report on the merger (1985) at P64, para. 7.16

[22] '*Scottish & Newcastle Breweries plc and Matthew Brown plc*', MMC report on the merger (1985) at P66, para. 7.25

[23] *Scottish & Newcastle Breweries plc*', offer document for Home Brewery (1986) at P2

[24] Sourced from the author's PhD thesis, Bower (2007)

[25] *The Telegraph* (24 June 2000) "*Drinks analysts wistfully recall the heady 1980s, when Allied Domecq hired Concorde for a week, and flew them all to whisky distilleries in Scotland, Canada, America and France "I think that marked the peak," says one.*"

[26] '*Scottish & Newcastle Breweries plc: Reject the Elders Offers*', bid defence document (7 November 1988) at P3

[27] '*Scottish & Newcastle Breweries plc: Reject the Elders Offers*', bid defence document (7 November 1988) at P3

[28] *Financial Times*, Lex Column (12 May 1988), as quoted in '*Scottish & Newcastle Breweries plc: Reject the Elders Offers*' at P 5

[29] '*Elders IXL Ltd and Scottish & Newcastle Breweries plc*, MMC report on the merger (1989) at P94, para. 7.19

[30] *The Telegraph* (30 March 2008) '*Parr is taking another punt on Pontin's*' at P2

[31] '*Elders IXL Ltd and Scottish & Newcastle Breweries plc*, MMC report on the merger (1989) at P63-4, para. 6.17

[32] Excerpts from *The Independent* (6 August 1999) '*Obituary: Sir Alick Rankin*'

[33] Taken from Scottish & Newcastle's offer document for Courage (19 May 1995) '*Reasons for and benefits of the acquisition*' at P8

[34] *Hansard* (22 November 1990). In an unusual Adjournment debate granted to Mr Jack Straw, shadow Cabinet Minister and MP for Blackburn, a heated discussion took place regarding the decision by Scottish & Newcastle to close, without notice, the Matthew Brown brewery in Blackburn. Mr Straw drew the attention of The House to the "*flagrant breach of categorical undertakings to keep open the Blackburn brewery given by Scottish & Newcastle to the Monopolies and Mergers Commission in 1985 and repeated on many subsequent occasions in 1987, 1988 and 1989. The question raised by Scottish & Newcastle's conduct is identical to that which arose in the takeover of Distillers by Guinness*".