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## Completed acquisition by Thresher Group of 200 Unwins stores

The OFT's decision on reference under section 33 given on 8 June 2006. Full text published 26 June 2006.

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**Data in square brackets has been ranged or redacted for reasons of commercial confidentiality**

### **PARTIES**

1. **Thresher Group** (Threshers) comprises a chain of around 2000 specialist off-licence<sup>1</sup> retail outlets selling alcoholic drinks, including beer, wine and spirits, as well as a range of soft drinks, tobacco and snacks.
2. **Unwins Wine Group** and **Unwins Limited** (Unwins) comprised, prior to being placed in administration on 19 December 2005, a chain of 381 specialist off-licence retail outlets located in the South-East of England.

### **TRANSACTION**

3. Through its wholly owned subsidiary, First Quench Group Ltd, Threshers acquired 200 of the total 381 Unwins stores on 23 December 2005. In response to the OFT's enquiry of 3 March 2006, Threshers provided details relating to the merger in the form of an informal submission dated 17 March 2006. The extended statutory deadline is 8 June 2006.

### **JURISDICTION**

4. As a result of this transaction, Threshers and 200 of the former Unwins stores have ceased to be distinct. The parties to the merger are both 'multiple specialists' (i.e. chains of off-licensed specialists operating under their respective standardised business models and fascia). Their joint share of the supply of specialist multiple stores in the UK is [60-70 per cent] and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is consequently met. The OFT

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<sup>1</sup> Specialist off-licences are those whose commercial model is based on the retail of alcoholic drinks - although some specialists offer other goods for sale such as tobacco, snacks and confectionary.

therefore believes that it is or may be the case that a relevant merger situation has been created.

## **RELEVANT MARKET**

### **Product market**

5. The retail of alcoholic drinks is regulated in the UK by the Licensing Act 2003. Outlets such as pubs, restaurants, shops and other premises must be licensed by the relevant local authority. Licences include on-licences which permit the consumption of alcoholic drinks on the premises (pubs, bars etc) – and off-licences which require that the alcoholic drinks purchased within the shop be consumed off the premises.
6. In previous cases the OFT has considered that, although on-licensed and off-licensed premises both retail alcoholic drinks, they nonetheless constitute separate frames of reference for the purposes of a competition assessment. This position has taken due account of the additional service features offered within on-licensed premises and also of the increasing price differentials between the two retail channels. In the course of its most recent merger analysis in the pub sector<sup>2</sup>, the OFT consulted third parties on the existing scope for competitive constraint between pubs and off-licences given the developments that have taken place in the market overall and particularly given the changes to the licensing regime that came into full effect in November 2005. Overall, responses received from third parties did not argue, in the context of that particular case, in favour of on-licences and off-licences being considered as parts of the same product scope. The OFT has not received any evidence to suggest that it is appropriate to consider on- and off-trade together in this case, and therefore does not include on-trade in its analysis.
7. Threshers proposes that, at the off-trade level specialist multiples are subject to keen competition from a wide range of different types of supplier such that there is a single frame of reference encompassing all retailers offering beer, wines and spirits, including supermarkets, garages, convenience store chains and independent off licences and corner shops. It provided internal documents supporting this assertion including a list of its outlets which have lost 10 per cent or more of sales over a 12 month period due, according to Threshers, to the opening of supermarkets.

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<sup>2</sup> Punch Taverns plc/Spirit Group Holdings Ltd - 2 May 2006.

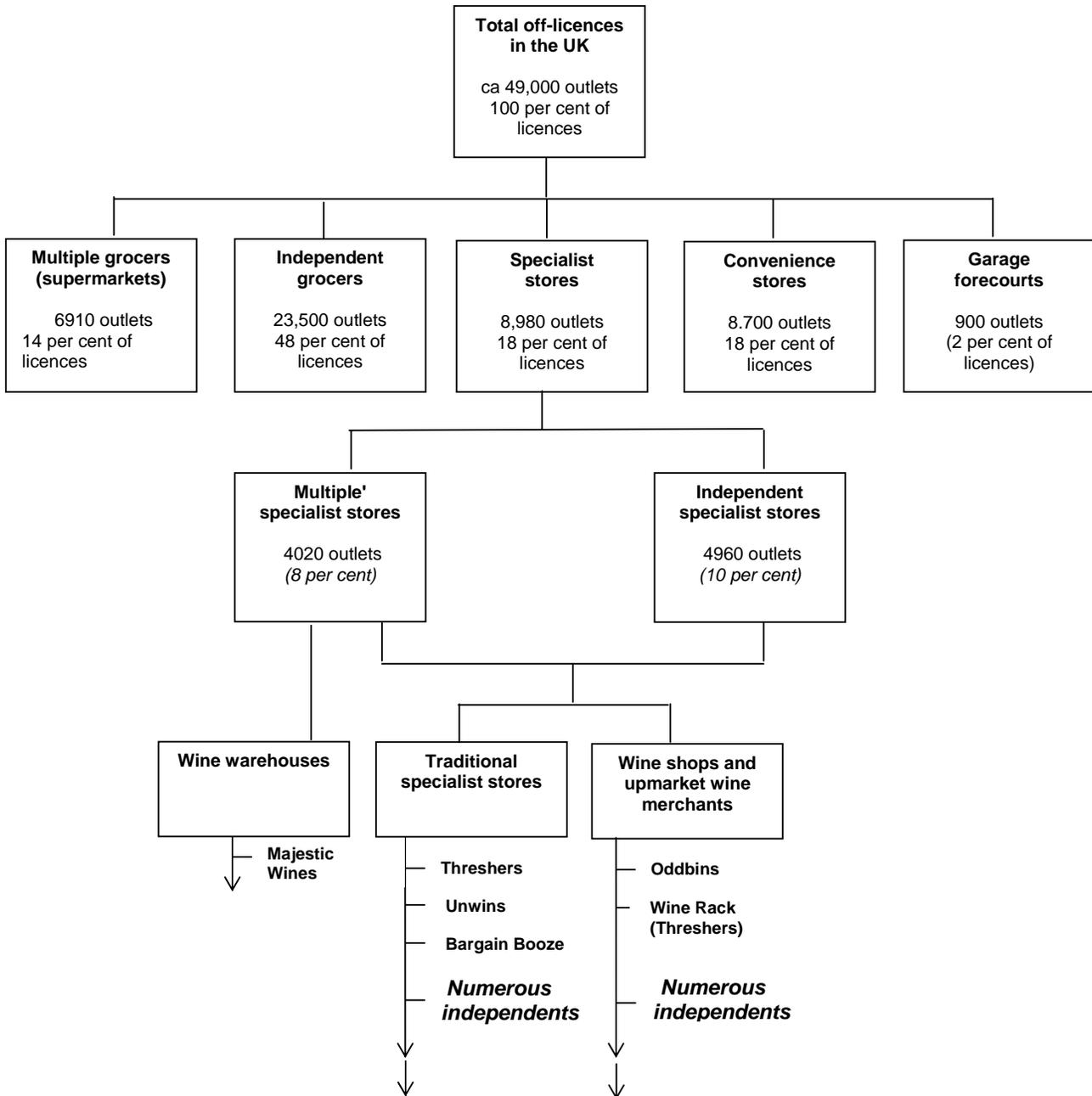
8. Independent market research supports this view of the frame of reference. According to independent research undertaken by Mintel<sup>3</sup>, some 49,000 retail outlets in Great Britain each held an off-licence in 2003. These are segmented broadly in line with the approach proposed by Threshers.
9. Independent research undertaken by Key Note<sup>4</sup> suggests a further segmentation of specialist off-licences broadly into three types:
  - a. traditional off-licences (which sell a range of alcoholic and soft drinks as well as tobacco, confectionary and savoury snacks)
  - b. wine shops and upmarket wine merchants; and
  - c. wine warehouses, which sell wine in bulk.
10. On the basis of those reports the off-licence sector can be considered as set out in Figure 1 below.
11. The various categories of off-licensed retail outlet may be differentiated by their respective sizes, the amount, range and qualities of stocks of alcoholic drinks and other goods that they carry, and the service they offer. On this basis some specialist competitors suggest that specialist stores are distinct from other types of off-licensed outlet because:
  - a. the specialists provide a particular combination of range, quality and customer service that is not provided by either the supermarkets or by convenience stores
  - b. whilst there may be some overlap between convenience stores and specialist stores – particular in the offer of well-known brands – the specialists are able to offer a better product selection and better advice from staff.

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<sup>3</sup> Off-licences, Retail Intelligence, July 2003.

<sup>4</sup> The Take Home Trade - Market Report 2004.

figure 1 – Off-licences held by the various types of retail outlet in Great Britain, 2001-2003



Sources: (1) Mintel, *Off-licences, Retail Intelligence*, and (2) Key Note, *The Take Home Trade – Market Report 2004*

12. However, independent research and comment from these same specialist competitors also suggest that supermarkets exert a strong constraint (in effect they are considered key competitors) and that there is also competition from other types of off-licensed retail outlet. One third party submitted that it monitored

supermarkets' prices particularly closely and assembled its promotional pricing packages accordingly.

13. Key Note observed that the four leading multiple grocers – Tesco, ASDA, Sainsbury's and Morrisons – account for over half of the take home market.
14. Mintel's research indicates that the multiple grocers in Great Britain now account for over a quarter of volume sales of alcoholic beverages and over 60 per cent of the total off-trade. The research further indicates that the proportion of sales from multiple grocers is growing (due in part to hefty price cutting and promotional campaigns) whilst sales from specialist off-licences and independents are, at best, static. Whereas consumer expenditure on alcoholic drinks through all retail outlets has increased by over 50 per cent since 1995, specialist stores have seen their sales stagnate and their share of off-trade sales had slipped from 44.2 per cent of the market in 1995 to 28 per cent in 2002. Furthermore, supermarkets are expanding their range, with Mintel noting that one group carries a range of more than 800 different wines – more than many specialist stores – and any major supermarket will now typically offer a range of forty bottled ales;
15. Third party comment and independent research therefore indicates that, while there are differences between each of the above off-licence retail formats, the scope for and the effects of demand-side substitution between them support a proposition for a single frame of product reference comprising all retailers offering beer, wines and spirits.

### **Geographic market**

16. Threshers submits that competition takes place primarily at the national level and that the majority of national chains, including Threshers:
  - a. apply a national pricing policy [ ]
  - b. organise store layout according to a standard planogram that is determined nationally
  - c. procure stock at national level
  - d. determine their product range and roll-out at national level (subject only to the available floor space within each store).
17. Threshers also considers that smaller, local players such as independent stores and other local specialists are able to compete on price, range, quality and service with their national counterparts and also have the advantage of being able to adapt their product offering to meet with local demand (which the national players have significantly less flexibility to do given their national policies).

18. Although it submitted that it does not specifically monitor the distances travelled by customers to its stores, Threshers does use [ ] stores in the same catchment area. Furthermore data provided to Threshers by the market research agency HIM in 2003 suggests that around 80 per cent of customers of a traditional off-licence are based within one mile of the store. Another third party competitor submitted that it used a one mile radius of its stores to benchmark its customer catchment area.
19. However, Thresher also submits that supermarkets and other retailers who operate on a somewhat larger scale (such as Majestic Wine Warehouses) exert a significant competitive constraint on Threshers whether or not they are within one mile of a Threshers or an Unwins store. Customers are willing to drive several miles to a supermarket or larger format store, particularly given that both these types of retailer make provision for car-parking. Customers in a rural setting may also be prepared to travel longer distances.
20. In view of the factors outlined in paragraph 18 above, Threshers identified which of the former Unwins stores purchased by Thresher were within a distance of one mile of a Threshers store. Centred on each of these Unwins and Threshers outlets, it identified and numbered nearby off-licensed outlets such as grocery multiples, independent grocers, other specialist stores, convenience stores and garage forecourts.
21. On the basis of evidence received by the OFT and detailed above, the analysis in this decision takes account of the impact of the acquisition at both national and local levels.<sup>5</sup>

## **HORIZONTAL ISSUES**

### **Market shares**

#### **National level**

22. Threshers has a post-merger share of [5-10 per cent] of the total off-trade market in terms of both sales value and store numbers.
23. One third party competitor was concerned that if a narrower product frame of reference is considered, Threshers has a post-merger share of approximately [60-70 per cent] (increment [5-10 per cent]) of multiple specialist off-licences and around 20 per cent of multiples and independent off-licences.

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<sup>5</sup> At the local level the OFT has focussed its analysis on Thresher and former Unwins stores within a one mile radius.

24. However even on this narrower frame of reference constraints remain: four other principle multiple specialists<sup>6</sup> remain commercially active in Great Britain (unlike Unwins who were facing financial difficulties) with well-established brands and fascia. In any event, as detailed above, both third party views and independent research support a wider frame of reference with supermarkets in particular providing a significant competitive constraint on multiple specialist off licences.
25. Overall, the available data suggest that the acquisition does not raise any substantial horizontal concerns at the national level.

#### **Local level**

26. The localised data supplied by Threshers enabled the OFT to consider the impact of any loss of competition specifically vis à vis a Threshers and an Unwins store within a one mile radius. Third parties noted that supermarkets account for particular competitive constraint in off-licence sales. It should be noted that a supermarket's catchment area has previously been deemed to extend beyond a mile radius.
27. Within each of these one mile radii (irrespective of whether these are centred on a Threshers or an Unwins store) there is always at least one alternative off-licensed retail outlet.
28. Within one of these radii – part of Abingdon<sup>7</sup> – there is a reduction in the number of off-licensed outlets from three to two, the other competing outlet being a Budgens supermarket. Just outside the radius, however, there is a Waitrose supermarket (1.05 miles away) and also a Somerfield (1.13 miles away).
29. Within four further radii there is a reduction in the number of off-licensed outlets from four to three, one of which is part of Gerrards Cross.<sup>8</sup> Here the two competing outlets are an independent supermarket (AA Fisher) and BP Connect. Within one to two miles are two Tescos, a Budgens and a Londis.
30. Two of these four radii are parts of Ashtead and Lower Ashtead.<sup>9</sup> In both, the competitors are Garland Wine Cellar (a specialist independent) and an Alldays convenience store. There are several supermarkets within two miles and both a Tesco store at 1.01 miles and an Oddbins at 1.02 miles.

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<sup>6</sup> Oddbins, Wine Cellar/Booze Buster, Majestic Wine and Bargain Booze.

<sup>7</sup> A market town six miles south of Oxford.

<sup>8</sup> A town in the south of Buckinghamshire.

<sup>9</sup> Both areas within a large commuter village in Surrey.

31. The fourth of these radii is a part of Forest Row. Here the remaining competitors are a Tesco Express and a Co-op. Given, however, that Forest Row is in a rural setting, further competitive constraint may well be posed by the supermarkets and specialist off-licences in the larger town of East Grinstead three miles away.
32. In all other radii, at least four other off-licensed outlets remain.
33. As noted in paragraph 16 Threshers' current business model consists of determining pricing and other factors at a national level. [ ]. The OFT has no evidence that this policy will be changed to enable Thresher to respond to any change in competitive conditions in a few local catchment areas.
34. The above analysis suggests that in all local areas in which Threshers and former Unwins stores overlap a sufficient competitive constraint will remain posts merger. In addition, there is no evidence to suggest that Thresher will abandon its policy of setting pricing and other factors at a national level. Consequently, the OFT does not believe that Threshers' acquisition of the 200 Unwins stores gives rise to any substantial horizontal concerns at the local level.

#### **BARRIERS TO ENTRY**

35. Threshers submits that it is not difficult to obtain a retail premises for off-licences. The costs involved in making a licence application are not high (typically £450 – depending on the rateable value of the premises concerned). Threshers estimated that costs of refitting an empty site to trade as an off-licence as being between £100k - £150k.
36. Threshers has expanded little itself, with few applications for new licences in the past few years. Internal documentation shows, however, that there are several new entrants in the market, suggesting that barriers to expansion – including the obtaining of a licence – are not insurmountable.
37. The OFT notes that in previous convenience store cases, suitable premises have been considered to be easily available and expansion possible. However, obtaining planning permission for larger stores has been considered to form a barrier for large supermarkets. This may also apply to large stores such as Majestic. The OFT notes that a number of multiple specialists, including Oddbins, have publicly announced expansion plans.
38. The OFT considers that, overall, the evidence suggests that smaller outlets face relatively low barriers to entry and expansion, but that barriers to entry and expansion for larger stores are higher.

### **THIRD PARTY VIEWS**

39. Only one third party was concerned. Those concerns have been dealt with in paragraphs 23 and 24 above.

### **ASSESSMENT**

40. The parties overlap in the operation of off-licensed retail outlets and as a result of this acquisition, Threshers' estate will increase by 200 stores to total of around 2000.
41. Threshers and the 200 Unwins stores it acquired operated as 'specialist multiples' i.e. chains of branded off-licences. There are number of different types of retail outlet that are licensed for the off-sale of alcoholic drinks. The evidence available to the OFT indicates that scope for demand side substitution between these various types supports a proposition for a single frame of reference comprising all retailers offering beer, wines and spirits.
42. An examination has been made of the loss of competition between Threshers and Unwins at both the national level and, initially on the basis of a one mile radius, at the local level.
43. At the national level there are around 50,000 off-licensed retail outlets in Great Britain and Threshers has a post-merger share of less than 5 per cent of such outlets. Although this figure is significantly higher if the much narrower view of the product as expressed by the only concerned third party is accepted, there remain four nationwide specialist chains.
44. At the local level, on the basis of a one mile radius, the acquisition reduces in one area the number of competing outlets from three to two, and in four areas the number of competing outlets from four to three. However, given that in each area there is a significant competitive constraint from retailers within and just outside the one mile radius, that Thresher currently determines competitive conditions at a national level, that entry barriers are low, and that possibilities for expansion are evidenced by the publicly announced plans of a number of multiple specialists, including Oddbins, to expand, the OFT considers that this does not amount to significant loss of competition at the local level.
45. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

46. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.