Varieties of capitalism, competition policy and the UK alcoholic beverages industry

Abstract

This article informs a key aspect of the business-government interface; the evolution of competition policy and how firms adapt to it. Drawing on an extensive portfolio of inquiries, what constitutes 'the market' and the boundaries of the firm within it is described through the experience of the UK alcoholic beverages industry. In situating competition policy in its historical socio-economic context, this study traces three overlapping eras; family ownership and control, network and conglomerates organisation, and specialisation and financialisation. Issues emerge that inform wider debate, notably the nature of portfolio and network effects, a central and contested theme in contemporary competition policy.

Introduction

Scholars have promoted the Hall and Soskice (2001) Varieties of Capitalism (VoC) framework as a helpful tool in shifting the emphasis in institutional research away from neoclassical orthodoxies such as the self-regulatory power of "The Market" (Berghahn, 2010), to a more holistic understanding of the role of the political economy in supporting or countering change. Social embeddedness and context are over-riding drivers of structures and processes (Morgan and Kristensen, 2006), with the legal system and approach to establishing the 'rules of the game' in areas such as state ownership and regulation being a major factor (Wilkins, 2010). Competition policy is an important nexus for the state and its legal framework as it seeks to establish and monitor activity at the interface of firm activity and the consumer markets they serve. It is shaped by beliefs about what policy works best for the economy and society (Bartalevich, 2016).

In Hall and Soskice's thesis the distinction is made between two fundamental styles of economic organisation; that of the 'liberal market' economies of the US and UK, and that of the 'coordinated market' economies of mainland European countries such as Germany and the Scandinavian countries. This distinction makes it possible to predict corporate strategic behaviour (Iversen, 2010). However, the distinction is not so discrete as it may appear. Wilkins (2010) observed that the nature of capitalism varies not only between different countries, but also within individual countries over the course of time. Indeed, when looking retrospectively at the supposed 'laissez-faire' approach of the US in the managerial era, there is a distinct difference between the 1960s and the 1980s.[1] In Chandlerian terms, Lazonick (2010), describes this as the old economy business model of the pre-1970s US, breaking down by the 1980s under the weight of financialisaton and the entry of Japanese manufacturers in key industries. Corporations in successful market economies are governed through different combinations of legal protection and concentrated ownership, with banks playing a more significant role in corporate governance in the coordinated economies of both Germany and Japan (Shleifer and Vishny, 1997).[2] In the US model of neoclassical capitalism, the state's role is essentially to remove itself from business and the operation of the market (Berghahn, 2010), although some observers have questioned whether the US conforms to a genuine market economy with a deregulated state (Lazonick, 2010), the UK, and latterly the coordinated economies of continental Europe have tended towards the US model of corporate governance embedded in the 1980s. This owes much to the evolution of competition policy and how it is implemented in a globalised market for many goods and services.

This article focuses on the role of competition policy and the type of capitalism it engenders in market economies. It utilises a long and eventful history of policy oversight and intervention in the UK alcoholic beverages industry, incorporating latterly interactions between

UK firms and the competition policy framework of the United States, the Federal Trade Commission (FTC) and Department of Justice (DoJ) and Europe, the European Commission (EC). The history of the UK brewing industry charts a path from family capitalism, with its traditional small-scale vertical tie to public house (pub) ownership and control, to the free market specialisation and financialisation that has characterised the post-Beer Orders environment of the late 1980s. In reaching this deregulated industrial architecture there was a significant albeit short-lived 'detour' of a conglomerate phase in the 1960-1980 period (Shleifer and Vishny, 1991). It adds historical context to the strategic initiatives and structural and ownership changes within an established set of firms as they interacted with legislative changes in the post-War years, new thinking on economic efficiency and the scale and scope of the firm, and the challenges of globalisation of competition policy. There are not hard lines defining each era but overlapping periods of flux where firm adaptation was a work-in-progress running in parallel with changes in the domestic institutional framework, itself subject to external and supra-national factors, such as, for example, the harmonisation of the various competition policy regimes made necessary by the globalisation of markets and industries.

Varieties of capitalism and the competition policy framework

Toms and Wright (2002) pointed to the wide adoption of pre-WWII US management practices and the Chandlerian M-form structure in the UK in the period 1950-80, with Freyer (1992), noting this era was characterised by a series of anti-cartel and merger measures that replaced self-regulation with public control, thereby paving the way for a 'corporate economy'.[3] The period was something of a transition, however, with the UK coming late to the 'wholehearted commitment to competition', something that would only emerge in the 1980s (Wilks, 1999).[4] The move from the use of common law to public policy sought to establish a framework to maintain competition in British industry as part of the pursuit of full employment,[5] with the assumption that post-War reconstruction would be inherently expansionist.[6] In the inter-War years, Cassis (1997) pointed to a growing awareness for modernisation in business practices, something that would be best achieved through the rationalisation opportunities accruing from merger activity.

The 1948 Companies Act was a key staging post in the move to a free market and financialised form of capitalism, bringing a more stringent financial disclosure in company accounts to outside shareholders (Hannah, 1974). In addition to the push for greater corporate disclosure the Monopolies and Restrictive Practices Act of 1948, empowered a so-called Commission to investigate cases where dominant firms might operate against the public interest (Roberts, 1992). Despite this anti-trust legislation, however, it was not until 1965 that merger control was added to the regulatory powers of the re-named Monopolies and Mergers Commission (MMC) meaning that there were no regulatory obstacles to mergers and acquisitions between 1948 and 1965. According to Wilks (1999), competition policy emerged in the UK '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',[7] having 'rejected the rigour and dogmatisation of American antitrust and latterly rejected the comprehensiveness and economisation of the European approach'[8] The market for corporate control remained under-developed, leaving firms largely unchallenged in pursuing value-destroying diversification strategies (Toms and Wright, 2002). The backdrop of dividend restrictions and tax credits led to an over-accumulation of capital that allowed firms with limited dependency on external capital providers to spend freely on an array of expansionary measures (Rowlinson, Toms and Wilson, 2007).

Concurrent with these changes in the political economy of the UK, the wider European system of corporatism evolved from an Austrian-German (Ordoliberal) conception of the role

of competition and regulation in a market economy, described by Gerber (1998) as 'unlike national competition law systems, its primary objective has not been to obtain the generic benefits associated with competition such as lower prices to consumers or technological progress ….. (it is understood) as part of a program for achieving the specific goal of unifying the European market'.[9]Bartalevich (2016) has attributed the Ordoliberal (or Freiburg) School with influencing European competition policy since the 1960s, supporting the EC's practice of taking into account matters 'unrelated to the protection of competition per se'.[10] This represented a competing economic philosophy to neoclassical economic thought associated with the Chicago School,[11] that dominated US policy since the late 1960s, supplanting the Harvard School's prior role (Hovenkamp, 2010).[12] The US legal base now operates solely in the name of consumer welfare and efficiency, with a decisional framework operating with the ground rule of letting markets work on their own with minimal government intervention (Fox, 2014). The difference between the two jurisdictions has been cast as 'Americans protect competition, while Europeans protect competitors' (Kokkoris, 2014). This emanates from controversial decisions where both jurisdictions have investigated a specific merger, most notably that of US firms, General Electric and Honeywell, and reached different conclusions.[13]

Varieties of capitalism and the UK alcoholic beverages industry

From a theoretic standpoint, the aim of the study is to use historical narrative to integrate interpretations of the past with contemporary knowledge (Rowlinson, Hassard and Decker, 2014). Political economists have identified a valuable role for historians in tracking the unintended consequences of policy by comparing intentions of policymakers with what unfolded and in discerning systematic patterns in issues at the heart of the policymaking agenda (Zelizer, 2012). Following Chandler's methodological dictum, business history research can benefit considerably from the VoC approach where history and context is more than incidental in the quest to utilise empirical data collected to explore the boundaries of existing concepts and theories (Iversen, 2010), by marrying contemporary commentary and industrial and political economy insights into a narrative that is attentive to the external environment and context (Maclean, Harvey and Clegg, 2016; Perchard, MacKenzie, Decker and Favero, 2017).

Arguably, competition policy has had a more fundamental impact on the evolution of the UK brewing industry than of any other domestic industry, with entire books dedicated to policy intervention (Spicer, Thurman, Walters and Ward, 2012), or the internal organisation of its firms (Mutch, 2006). The industry continues to offer important insights to business and economic historians (Bower, 2016a, 2016b; Bower and Cox, 2012; Da Silva Lopes and Casson, 2007, 2012; Higgins, Toms and Uddin, 2016), and has informed several empirical studies by industrial and regulatory economists, notably in merger policy (Nalebuff, 2003). Consequently, in addition to the rich dataset provided by a series of regulatory inquiries, shown in Table 1 below, there is an extensive portfolio of prior literature on which to build and enhance the narrative argument.

[Insert Table 1 here]

Family capitalism

In his account of the 'divorce' of ownership and control, Hannah (2007) noted that personally owned or family firms were still the norm in the industrial sector at the start of the twentieth century. Where family firms were engaged with the public market, it was frequently by recourse to preference shares or debenture stock, that reduced voting rights.[14] Very few families, even extended kinship groups were numerous enough, or experienced enough, to manage the scale and scope of national and international markets, and in capital-intensive industries the recruitment of managerial hierarchies was essential for an enterprise to expand

market share (Chandler, 1986). Until 1948, all but a small number of the largest UK firms – the producers of branded packaged consumer goods such as Imperial Tobacco, Distillers Company Limited, Unilever and Guinness,[15] - were either family-managed and controlled, or were federations of family firms legally unified under the control of a holding company (Chandler, 1986). Freyer (1992) linked the failure of the British corporate sector to evolve from family ownership into corporate structures at the early part of the twentieth century as reinforcing the view that a lack of managerial centralisation contributed to the UK's relative economic decline.[16]

Da Silva Lopes and Casson (2007) pointed to the stability and consistency in ownership of many of the best-known brands, including those in the alcoholic beverages industry, where most of the firms described were controlled by families, trusts, or a small group of major shareholders. This offered the advantage of rendering the firms relatively immune to pressures from independent shareholders to maximise short-term payment of dividends. Da Silva Lopes and Casson (2012) described how Anglo-Irish brewer Guinness had embarked on a rapid strategy of internationalisation soon after it went public in 1886 by employing the strategy of granting bottling franchises to independent companies in lieu of a restriction of their bottling activities to the eponymous stout beer. Similarly, Weir (1995) described how the Scotch whisky industry developed rapidly from family-related activity into a highly consolidated and dominant producer-marketer in the shape of Distillers Company Limited (DCL).

By contrast, the UK brewing market remained highly fragmented, and dominated by a large number of families, prior to the great amalgamation of the late 1950s and early 1960s (Gourvish and Wilson, 1994). This was despite an evident erosion of collusive agreements between family firms that emerged in the latter part of the nineteenth century under the financial pressures that accompanied the rush to acquire additional public house outlets and invest in new brewing technology, the latter being fulfilled by recourse to the public markets, albeit retaining corporate control through issuing low-voting preference and debenture stock (Watson, 1996).[17] Gourvish and Wilson (1994) identified that 'for the great majority of brewers the building up and maintaining of networks of outlets – usually over distances of not much more than a dozen miles – was at the very heart of their business'.[18]The ongoing process of amalgamations resulting in the closure of redundant capacity, and the reassignment of retail outlets within the estates of the acquirers meant that by the time of the 1969 inquiry into the structure and operation of the UK brewing industry, the family origins of the brewers had been lost not only in their surviving names,[19] but also in practical management terms. One possible exception to this was Whitbread, still carrying the name of its founder, and with the direct oversight of Colonel Bill Whitbread and closely aligned family members. The firm retained a unique, and complex dual voting share structure and shareholding relationship with a portfolio of other small family brewers through the Whitbread Investment Company (Bower, 2016b), an arrangement that despite contributing to poor financial performance (Higgins and Toms, 2011), nonetheless endured until the early 1990s.

Family business scholars have pointed to the Chandlerian thesis that the modern economy had rendered family-led enterprise obsolete, while presenting the counterfactual of the prevalent, thriving and ubiquitous family ownership model (Schulze and Gedajlovic, 2010). La Porta, Lopez-de-Silanes and Shleifer (1999) noted that widely held firms are still relatively uncommon, reflecting ownership patterns in a small number of countries, such as the US, or by dint of research focusing on a specific measure of control among a small number of large firms. In much of the rest of the world, legal protection of investors is less substantial, consequently, firms remain family-controlled and, even in some of the richest countries, have difficulty raising outside funds (Shleifer and Vishny, 1997). Contrary to Chandler's prediction, family firms have not disappeared from the ranks of leading publicly listed US firms (Van Essen, Carney, Gedajlovic and Heugens, 2015).

In the context of the UK brewing industry, once the family ownership and control pattern dismantled new business models emerged, conditioned to a great degree by change in the competition policy regime and the structure of the capital markets. It is notable, however, that the 'traditional' UK brewing model is re-emerging with a small but increasingly significant number of newly established firms joining an original set of long-standing family firms in a currently vibrant UK brewing sector. The Independent Family Brewers of Britain (IFBB), established in 1993 with a common goal to preserve the cask ale tradition of the original family sector, is now a dynamic and innovative collective of 29 firms. It includes some well-known names in the brewing industry, such as Brakspear and Fuller, Smith and Turner, that have been in existence for several generations. In aggregate they control 4,000 pubs, 82 per cent of which are tenanted outlets, and unlike those pubs controlled by the pub companies (PubCos) that have characterized the post-Beer Orders era (Bower, 2016a), the name of the brewery is prominent in the signage, including the cask ale associated with the pub. As per tradition, the pubs are close to the breweries that supply them. As Figure 1 shows, there has been a steady decline in the number of pubs per brewery for the major brewery sector since 1990, reflecting both a decline in the number of breweries and number of brewer-owned and operated pubs. However, running in conjunction with the growth in the PubCos and other independent pub operators has been a rapid increase in the number of breweries from just over 200 in 1990 to 1880 by 2015, based on data provided by the British Beer & Pub Association (Statistical Handbook, 2016).

[Insert Figure 1 here]

Vertical networks and managerial capitalism

Firms gravitated to opportunities to extract economies of scope during the 1950s (Toms and Wright, 2002), albeit what constituted scope rather than unrelated diversification for which they had no natural competences would become the Achilles heel of all but the most robustly managed industrial conglomerates. Capital market sentiment towards diversified firms changed in the 1980s, and with the deregulation of financial services activity supporting the globalisation of capital flows, the often mentioned conglomerate or 'diversification discount' (Feldman, Gilson and Villalonga, 2014),[20] presented an array of opportunities to well-informed corporate raiders with access to capital in the 1980s merger wave that characterised both the US and UK corporate scene (Herzel and Shepro, 1990).[21]

Analysis of ownership and diversification strategies in the context of the coordinated market VoC model is interesting in that it reveals less distinction versus the liberal market backdrop than might have been predicted. Whittington and Mayer (2000), for example, concluded that in terms of structure, trends in Europe more, or less, tracked the 'Chandlerian' direction albeit there was a time lag. The managerial organisation that was practically unknown in the 1950s, had been adopted by 40 per cent of large industrial firms in France and Germany, and 75 per cent of those in the UK, by the 1970s.[22] In a subsequent refinement, Hautz, Mayer and Stadler (2013), considering the diversification strategies of large European firms from 1994 to 2007, found that family ownership concentration was positively related to product diversification and negatively related to international diversification. For financial institutions, accustomed to interacting with the (global) capital markets, strategies are not conditioned by the perceived risk of expanding or acquiring internationally.[23]

The first merger inquiry in the UK brewing sector, and one of the first to be considered following the introduction of the merger regulation in competition policy, was the proposed friendly merger between Allied Breweries and Unilever announced in November 1968. It offers an interesting and informative insight into institutional attitudes to conglomerates and diversification strategies. Unusually, the inquiry report was accompanied by a Monopolies Commission (MC) opinion on 'conglomerate mergers', attached as a 19-page annexe (it was

also attached to the concurrent inquiry into the hostile bid of The Rank Organisation Limited for banknote printer The De La Rue Company Limited). Conglomerate mergers in the US had come to prominence in the 1960s,[24] largely as a function of 'the aggressive antitrust enforcement in the '60s and '70s that simply disallowed mergers of firms in the same industry, regardless of the effects of these mergers on competition' (Shleifer and Vishny, 1991).[25] For the MC, investigating mergers that were neither predominantly horizontal nor vertical added to the complexity in establishing market effects, with the decision taken to adopt *de facto* a 'rule of reason', rather than 'per se' illegal stance.[26]

The Unilever/Allied merger gave rise to a considerable amount of public interest. Unilever regarded the merger as a 'product extension … that is a consolidation of two companies whose activities are related functionally at either the production or marketing level, but whose products are different', and which was a 'natural extension of Unilever's international food business'. For Allied, with an ambition to expand rapidly overseas beyond the licensing of home-grown Skol lager,[27] Unilever's presence in brewing joint ventures, primarily in Africa, and its established international position in the food market, 'which was closely related to the drinks market' combined with its expertise and resources in, for example, research and development, would augment Allied's strategic objectives.[28] This was largely dismissed by the MC as 'some exaggeration in the claims made for immediate benefits in this area'.[29]

Also running concurrently with the Unilever/Allied merger was a multi-year investigation of the UK brewing industry, the first of two market inquiries that would lead ultimately to the dismantling of the vertical tie through the 1989 'Beer Orders' (Bower, 2016a). One aspect of the vertical tie that has otherwise attracted limited attention is its impact on the related areas of soft drinks, wine and spirits production and distribution. Indeed the 1969 inquiry highlighted a greater volume of complaints about the tie to spirits sales than any other aspect of the industry's structure and conduct. Tenants, wines and spirits trade associations and others complained about restrictions imposed by the brewers' promotion through wholesale prices and discount structures of their own 'house brands', and their recourse to various underhand practices.[30] Independent brand owners claimed that the retail distribution networks controlled by the brewers were responsible not only for the foreclosure of their brands but that this was also constraining innovation, with the Consumer Council highlighting 'the entry of new producers and new products (other than brewers' own new products) is hindered'.[31]

What started as a noble endeavor to assist their tenants in accessing heavily restricted supplies of wines and spirits that they were previously free to source independently quickly evolved into forced supply contracts when the brewers entered directly into production. Initially the brewers focused on the bulk buying and registration of supplies of whisky, gin, and other wines and spirits to distribute as their own 'house brands' in the late 1950s. By the late 1960s, however, they had expanded such that three major wines and spirits groups were evident in the UK. Allied Breweries, owner of Grants of St. James's Ltd (a wholesale wine and spirit merchant), and Victoria Wine Company Ltd (a national chain of wines and spirits retail shops) acquired brand owner Showerings, Vine Products and Whiteway's Ltd in 1968, making it the largest manufacturer, wholesaler and retailer of wines and spirits in the UK. In 1968, Watney Mann acquired a 38 per cent interest in International Distillers and Vintners Ltd, owner of J&B Rare Scotch whisky and Gilbey's gin, and Whitbread acquired a 33 per cent stake in J R Philips, a wines and spirits distributor in which Allied also had a shareholding.[32]

The brewers' tie remained unchallenged for a further 20 years before its total elimination for non-alcoholic or low-alcoholic beers, wines, spirits, cider, soft drinks and mineral waters as part of the 1989 'Beer Orders' legislation. Although the brewers had taken steps to slacken the demands on their tenants by this stage,[33] there remained a problem of foreclosure, with the 1989 inquiry noting 'a restriction of consumer choice (that) limits the

ability of brand owners of spirits who do not own public houses (in essence, Guinness) to compete in the on-licensed market'.[34] By 1989, the UK brewers were fully-fledged conglomerates of drinks, pub retailing and associated consumer-related activities. Allied-Lyons, Grand Metropolitan (owner of Big 6 brewer Watney Mann), and Guinness were a major force in the international spirits arena, having embraced the mergers and acquisitions market of the 1980s. The Big 6's reach incorporated a wide array of 'related' areas of trade, notably food manufacturing (Allied Breweries' 1978 acquisition of J Lyons), hotels, restaurants and other leisure activities (Bass's acquisition of the Holiday Inn franchise system in 1988/9 added to its existing leisure-related portfolio of bingo clubs, betting shops, and the manufacture, supply and operation of amusement and gaming machines); Scottish & Newcastle's acquisitions of Center Parcs and Pontins in 1989 (paid for by the sale of the home-developed Thistle hotel chain). Headline acquisitions were used in conjunction with, or to support the organic areas of expansion of the 1970s and early 1980s that were the natural response of pub operators to rapid socio-economic change in the UK casual dining and leisure retail market. As Mutch (2006) noted, however, Allied Breweries and Bass were less equipped, or indeed possessed the skills and resources to make the transition away from the traditional style of the working man's pub in the way Whitbread managed successfully.

Deregulation and specialisation

Although a discussion of the economics of competition policy is beyond the scope of this article, it is important to understand that its rules are informed and shaped by economic theories (Bartalevich, 2016). Changes in the 1980s, particularly the free market thinking attributable to the government of Margaret Thatcher, had a lasting impact on the nature and boundaries of 'the market' in the UK, not least, in the structure and operation of the vertically integrated brewing industry. This was supported by the ascendency of Chicago School economics and the associated think-tank movement it promoted, foremost of which was the Mont Pèlerin Society (MPS). Jackson (2012a) attributes the MPS, founded in 1947 by Friedrich Hayek with leading Chicago School economists, Milton Friedman, Frank Knight and George Stigler, to the debate dubbed subsequently as 'neo-liberalism',[35] and the explication and dissemination of the proposition that political interference with market activities was harmful to freedom.[36] The MPS was the first in a number of free-market think tanks, notably the Institute of Economic Affairs (IEA), that would shape the Thatcherite critique of British social democracy.[37] Business support was crucial in shaping elite opinion in Britain in the 1960s and 1970s, and this prepared the ground for the deregulation of the 1980s that defined Mrs Thatcher's government. Major firms such as British American Tobacco, Marks & Spencer, Unilever, the high street banks, and several City institutions, offered financial support to the IEA and its sister think tanks, the Centre for Policy Studies and the Adam Smith Institute, to neutralise 'the left-wing output of universities (that) was providing ammunition for the unions'.[38]

Notable absences from the list of big business leaders in support of the liberalisation and deregulation of industries were the UK's large brewers. The major brewer-retailers, with the support of their influential trade association, the Brewers' Society, fought hard to preserve the status quo of the vertically integrated arrangement (Bower and Cox, 2012). According to Spicer et al (2012), in its chapter entitled 'Borrie's bombshell' the brewers believed they had been successful in averting any further intervention when Sir Gordon Borrie, Director General of Fair Trading, indicated he had instructed the UK Government that the Brewers' Society directed swap arrangement that was agreed as part of the 1969 market inquiry had been successful in reducing local pub concentration. Sir Gordon, a lawyer described by Wilks (1999) as a man who 'came squarely from the world of consumer protection, where he had made his mark as an activist, academic and author',[39] however appeared to change his mind.

Change was also evident from within the industry itself as a function of the entry of firms with a more evident managerialist, financially driven approach. Grand Metropolitan (Grand Met), established in 1948 as a hotel and property finance conglomerate, had acquired Watney Mann in the early 1970s, bringing with it a stake in the international spirits industry. Guinness, a brewer without a tied pub estate, and with a portfolio of Scotch whisky assets, had made representations to the MMC during the 1985/6 Scottish & Newcastle/Matthew Brown merger inquiry, in additional to direct approaches to the Office of Fair Trading in the early part of 1986, pressing for an ending of the vertical tie, with its new chief executive, Ernest Saunders, presenting the case in a manner 'altogether more professional than the OFT was accustomed to (from the brewers).[40] Finally, there were a series of changes of ownership of Courage, finally settling in the ownership of aggressive Australian conglomerate, Elders IXL.

Grand Met's acquisition of Watney Mann had brought the firm to the edge of bankruptcy in the 1973/4 recession.[41] Founder Maxwell Joseph recruited Allan (later Lord) Sheppard, a seasoned motor industry executive with a background in economics and finance, to salvage the perceived overpayment for Watney Mann and rationalise the brewing operations.[42] Sheppard was the antithesis of the traditional 'Beerage' owner-manager, as 'the epitome of the 1980s' deal-maker', and an early 'conversion to the free-market cause'.[43] He presided over some 70 large acquisitions and disposals, including the 1988 purchase of US bakery firm, Pillsbury/Burger King,[44] and the 1991 innovative 'breweries-for-pubs swap' with Courage/Elders IXL. His legacy, however, is more significant for the expansion into the international spirits industry, marked by the 1987 purchase of Heublein, owner of Smirnoff vodka. Although Grand Met had been successful in its ventures in the US, its aggressive tactics were less than successful in the highly politicised merger market of Europe in the 1980s. Failure to cement an approach for family-controlled Martell Cognac,[45] was followed by political outmanoeuvring in the approach for Irish Distillers when the target lodged a tactical complaint with the EC under both Article 81,[46] and Article 82,[47] prompting 'the Commission's most effective intervention of all'.[48] Perhaps conveniently, the EC Competition Commissioner was high-profile Irish lawyer and politician, Peter Sutherland, at a time when the Irish parliament was under considerable pressure for the retention of the control of Irish Distillers in Ireland.[49]

By the time of the 1989 Beer Orders inquiry, three of the top four international spirits firms were domiciled in the UK (the fourth was Canadian/US firm Seagram); Allied-Lyons (renamed Allied Domecq in 1994), Grand Met (through its IDV subsidiary) and Guinness (the Bell's and DCL acquisitions unified in the UD subsidiary). Despite these acquisitions, however, no firm possessed strength and depth in their international brand portfolios and distribution capabilities. The rationale for the Grand Met and Guinness merger of 1997 that created the global spirits giant Diageo, was to capture the benefits of the complementary nature of their respective spirits operations while eliminating significant costs in marketing and distribution.[50] Key US competitor Seagram commented: 'The industry is suffering from over-capacity, but it is hard for us to imagine a more anti-competitive way of dealing with it than with this deal … if this deal goes through I believe it will only be after a huge amount of scrutiny and only with major divestitures'.[51] Despite Seagram's concerns the EC cleared the merger in October 1997 with minor remedies,[52] although a different approach from the US regulators in defining 'relevant markets' meant that Diageo was obliged to divest Dewar's Scotch and Bombay gin to an FTC-approved competitor.[53]

Diageo was one of the first mergers to be investigated simultaneously by the FTC and EC as part of the harmonisation of policy initiative.[54] The different approach taken in both defining the relevant market and in establishing the scope of portfolio or network effects aroused wider academic and practitioner interest, culminating in a study undertaken by eminent Yale economist, Barry Nalebuff, on behalf of the UK government, in which the principles of Chicago School economics were criticised (Nalebuff, 2003).[55] In the case of Diageo, the EC

had acknowledged that 'the market power deriving from a portfolio of brands exceeds the sum of its parts'.[56] Such an inference, and one which was supported by several leading competitors, stood in 'stark contrast to the Chicago School concept of their being a single monopoly rent'.[57] This added to concerns expressed by both regulators and advisers that US policy, and the underlying economic concepts that supported it such as oligopoly theory (Werden, 2004),[58] were especially inadequate in highly differentiated product mergers (Rubinfeld, 2000).[59] The relative ease with which Diageo had navigated multi-jurisdictional oversight prompted a cascade of subsequent deals, structured similarly; the Diageo/Pernod Ricard joint acquisition of the international spirits portfolio of Seagram, investigated by both the EC,[60] and the FTC,[61] and the Pernod Ricard/Fortune Brands purchase of Allied Domecq's spirits operations in a similar joint carve-out.

Elders IXL's entry into the UK brewing industry was a major catalyst for change in both the economics of brewing and the nature of the brewer-pub retailing relationship that would ensue in the 1990s financialized pub trade (Bower, 2016a): the early prototype lease agreements of the former Inntrepreneur pub estate.[62] The Beer Orders prompted fundamental change in the ownership and governance of relationships between brewers and their tenants.[63] In its assessment of the economic evidence provided by the industry's trade association, the Brewers' Society (conducted on its behalf by two leading University of Oxford economists), the MMC said, 'tenancy agreements have evolved which have a price per barrel above marginal cost and a lower fixed element in the form of a subsidised rent. The Society argues that these agreements give some of the benefits of vertical integration while also reducing the tenant's risk …. We reject this argument'.[64] Lafontaine and Slade (2015) note that the theoretical welfare effects of vertical restraints are almost always ambiguous and historically, antitrust authorities have treated exclusive dealing more leniently than other forms of vertical restraints.[65] Against this backdrop the intervention into the operation of the UK brewing industry that broke the traditional vertical tie is the more significant for its rarity as for what happened in the evolution of the market subsequently, specifically, the demise of the UK pub industry.[66] Higgins, Toms and Uddin (2016) investigated the matter further as an assessment of the transfer of risk in the PubCo model that was underpinned by a 'full-tie' model. Enterprise Inns, for example, imposed a 'range of exclusive purchasing obligations', that had the effect of maintaining the profit margins available to tenants but at the price of the transfer of a disproportionate amount of risk.[67]

After a ten-year lobbying campaign by The Campaign for Real Ale (CAMRA), a Pubs Code (PCO) came into force in July 2016 to regulate the relationship between all pub companies owning 500 or more tied pubs and their tenants, providing an appeal process to a newly created Pubs Code Adjudicator (PCA).[68] In CAMRA's view, the PubCos had been charging inflated rents and preventing landlords from buying beer at open market prices, thereby forcing them out of business. Moreover, it presented evidence that some PubCos were exploiting gaps in the Code and not abiding by the spirit of the legislation,[69] prompting the first statutory review of the Code and PCA that is due to report in summer 2019. Both Bower (2016a) and Higgins, Toms and Uddin (2016), allude to the hybrid or unstable nature of the PubCo model regarding transaction cost economics, with Bower (2016a) going further in attributing this to the very nature of the financialisation arrangements that had supported the inexorable rise of the PubCos, and noted that there was evidence of a return to the traditional brewer-retailer tied model. In this respect, it is of note that subsequently Heineken continued its strategy of acquiring pub assets in the UK, having been given clearance by the competition authorities in 2017 to take over Punch Taverns in lieu of selling 30 of Punch's 1,895 pubs. This deal made Heineken the third largest pub owner after brewer Greene King and PubCo Enterprise Inns.[70]

Concluding comments

In seeking further explication of the VoC framework, this study has described three key features of the post-War structure and operation of the UK brewing industry to illustrate how competition policy, a key aspect of the business-government interface, conditions firm strategies. It has drawn on a long and eventful history of policy oversight and intervention in the UK, and latterly considered aspects of the international policy framework of the US and Europe as certain firms embarked on consolidation of the international spirits industry. The narrative account charts a path from family capitalism, with its traditional small-scale vertical tie to pub ownership and control, to the free market specialisation and financialisation that created, Diageo, a firm that dominates the global distribution of many spirits categories, most notably Scotch whisky (McKendrick and Hannan, 2014),[71] and large retail chains of pubs (the PubCos) that, in retaining and advancing many of the more critical aspects of the former brewers vertical tie as they consolidated in the era of seemingly unlimited availability of capital prior to the 2008 Financial Crisis (Lazonick, 2010). The latter have been shown to be fundamentally unstable hybrid constructs designed only to shift risk in the value chain (Bower, 2016a; Higgins, Toms and Uddin, 2016). However, highlighting the pros and cons of breaking traditional structures through policy intervention, there is now an invigorated small family brewing sector engaged in traditional practices, and the consolidation of the former PubCos financialisation vehicles in the hands of larger brewers, particularly Heineken. The process of change has not therefore been smooth and one-directional. As Wilkins (2010) established, several types of capitalism can co-exist within the same jurisdiction and this can vary over time.

In reaching the 'final state', there was a significant, albeit short-lived, 'detour' of a conglomerate phase in the 1960-1980 period that charted similar developments in the US (Shleifer and Vishny, 1991). Although the major brewers escaped competition policy intervention in 1969, the implications of the extension of the vertical brewing tie to other types of beverages, notably wines and spirits, was more than a natural extension of scope into related areas when economies of scale in existing lines had been exhausted (Toms and Wright, 2002). The promotion of the brewers 'house brands' of wines and spirits was only possible because of the portfolio or network effects available from their control of distribution into the retail pub market. Heavily criticised by tenants and consumer bodies alike, and fearing perhaps that the competition authorities would have a second look at the structure and operation of the beer market – which they did twenty years later – the brewers embarked on a series of unrelated business distractions that took them further into other areas of the beverages and leisure markets, before the hostile merger market of the 1980s brought conglomerate structures to a virtual end.

The manner in which the Big 6 brewers sought to monopolise the control of the distribution of a wider portfolio of products and services into the retail estates during the 1960s may offer interesting insights for those currently considering the socio-political consequences of the major US technology firms and their reputed monopolisation of information and data networks. This has prompted a wider debate on the fundamental approach adopted by the US to competition policy, specifically the role of Chicago School economic theory, as identified in Khan's (2017) widely cited thesis. Indeed, high-profile politicians in the US have resurrected the idea of a European-style interventionist approach to curtail the 'let the market decide' philosophy of liberal capitalism,[72] referring to the hardening of the EC's stance on potential abuse of dominance in the case of Google. Aktas, de Bodt and Roll (2007), described this previously as the US having exported 'its own and possibly flawed antitrust policy to the EC … the very same policy now hits back at US bidders'.[73]

In the UK, one of the consequences of Brexit means that the UK will have to develop its own independent competition policy regime. Although the trajectory of this is still uncertain,

it is notable that the new chairman of the Competition and Markets Authority, Lord Tyrie, has signalled a more interventionist stance, commenting 'in the new regime … the authority should be "doing and saying a lot more"' as he vowed that the organisation would 'become a more active champion for individuals and small businesses that believe they have lost out to the forces of capitalism'.[74] The backdrop to this was the CMA's controversial decision to block the proposed merger between the supermarket groups, Sainsbury's and ASDA, with the CMA ruling the proposed merger threatened to push up prices and reduce the choice and quality of products on sale in stores.[75] For historians of the UK brewing industry, this sounds ominously similar to reasons cited for the 1989 Beer Orders, 'these measures will increase competition in brewing, wholesaling and retailing, encourage new entry, **reduce prices and widen consumer choice**'.[76]

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[1] Wilkins, 'Multinational enterprises and the varieties of capitalism', p 636, notes '*Many believers in the efficacy of markets, from the 1980s onward, would have been surprised at (Stewart and Simmons's) comments that America in the 1960s had an economy that was relatively laissez-faire*'.
[2] Shleifer and Vishny, 'A survey of corporate governance', p 771, notes both Germany and Japan shaped their systems of powerful banks at the end of the 19th century with strong support from the state. The legal system developed to accommodate the prevailing economic power – the banks.
[3] Freyer, '*Regulating big business*', p 269.
[4] Wilks, '*In the public interest*', p 24-25, comments that the British vocabulary, in common with that of the US, talked about 'monopolies' and 'restrictive practices' but did not regard them as unlawful.
[5] Pickering, 'Thoughts on the competition regime' provides a concise historical backdrop to the move from the 'public interest test' in early policy to the 'competition test' of the Enterprise Act 2002 that created an independent Competition Commission.
[6] Freyer, '*Regulating big business*', p 234-236, notes that trade associations needed to be dismantled as they were deemed responsible for an unduly rigid industrial structure that stifled new entry, innovation and organisational efficiency.
[7] Wilks, '*In the public interest',* p 25.
[8] Ibid, p 296.
[9] Gerber, '*Law and competition in twentieth century Europe'*, p 334.
[10] Bartalevich, 'The influence of the Chicago School on the Commission's guidelines', p 270-271, provides an account of the pros and cons of the competing paradigms, Ordoliberal and Chicago School, philosophies.
[11] The intellectual movement grounded in the University of Chicago's Economics department of the 1930s and the scholarship of Frank Knight, Jacob Viner and Henry Simons. Later influential scholars of the Chicago School movement include Aaron Director, Milton Friedman, George Stigler, Ronald Coase and Robert Bork.
[12] Hovencamp, 'Harvard, Chicago, and transaction cost economics', p 615-617, describes the Harvard or 'structural' school's emergence as the dominant paradigm in US antitrust in the 1930s, and how it viewed with suspicion both ownership vertical integration and vertical contractual practices such as tying, exclusive dealing, resale price maintenance, or related restraints. In contrast, the Chicago School view that displaced it embodied a theory of vertical integration which began with the collapse of the 'leverage' theory in the 1950s and developed into a more general argument that vertical ownership and contract integration should be lawful per se.
[13] Kokkoris, 'Introduction: EU and US competition enforcement', p 4, points to a core difference in that the US approach indicates it is not unlawful for a firm with a monopoly in one market to leverage its monopoly power in neighbouring markets per se, whereas under EU law it is viewed as an abuse of dominance.
[14] Hannah, 'The "divorce" of ownership from control', p 416, notes that typically families retained absolute voting control with only one-third of the securities.
[15] Payne, 'Family business in Britain: An historical and analytical survey', p 185, notes that although Guinness was family-owned and controlled at board level, outside managers had been chosen carefully to run the firm for over 50 years.
[16] Freyer, '*Regulating big business*', p 69, attributes shared values and market relationships in providing cohesion among different business interests in contrast to the situation in the US at this time.
[17] Watson, 'Banks and industrial finance', notes that by 1900, capital subscribed by the London new issues market accounted for almost 75 per cent of capital invested in brewing.
[18] Gourvish and Wilson '*The British brewing industry*', p 127.
[19] Gourvish and Wilson, '*The British brewing industry*', p 448-449 noted that the quoted assets of the top five brewers increased from 21 per cent of the industry's total in 1952 to 63 per cent by 1967 as many family names were subsumed in a merger wave precipitated by financial entrepreneurship.
[20] Feldman, Gilson and Villalonga, 'Do analysts add value when they most can', studied the role of financial analyst research in aiding investors' understanding of diversified firms. The authors concluded analysts are as challenged by the opacity of diversified firms as investors are.
[21] Herzel and Shepro, '*Bidders and targets'*, recounts high-profile hostile bids in the era, including Grand Metropolitan's bid for US food conglomerate, Pillsbury/Burger King.
[22] Whittington and Mayer, '*The European Corporation*', p 13, notes that although the European analysis in the Harvard Programme revealed a steadily rising trend towards the levels of diversification advocated by Chandler, US firms were more likely to have adopted strategies of unrelated (conglomerate) diversification.
[23] Hautz, Mayer and Stadler, 'Ownership identity and concentration', p 108, considers that, unlike families, financial institutions are more focused on firm level economic effectiveness.
[24] Federal Trade Commission data showed 84 per cent of all mergers in the US during 1968 were of a conglomerate nature.
[25] Shleifer and Vishny, 'Takeovers in the '60s and the '80s: evidence and implication', p 52.

[26] Monopolies Commission, '*Unilever Limited and Allied Breweries Limited*', Annex, p 37, notes 'losses in efficiency may in some cases be found sufficiently likely and substantial, even in the absence of anti-competitive consequences, to cause the merger to be regarded as contrary to the public interest'.
[27] Ibid, p 11, notes that in 1964 Allied formed Skol International with three overseas brewers to create a world-wide brand of beer, Skol lager. By 1969 Skol lager was manufactured under license in 17 countries and marketed in 50.
[28] Ibid, p 15-16.
[29] Ibid, p 25.
[30] Monopolies Commission, '*Beer: A report on the supply of beer*', p 61-62, describes the switching of orders, late delivery and various pub-specific financial inducements in lieu of promoting house brands of spirits.
[31] Ibid, p 113.
[32] Ibid, p 20-24 outlines the already extensive wines and spirits activities of the Big 6 brewers that spanned production and distribution of third-party international brands.
[33] Monopolies and Mergers Commission, '*The supply of beer*', p 63-65, provides evidence of the proportion of optics in various types of outlet by brand, noting that the brands owned by brewers tended to have a higher share in the owning brewer's managed estate, but that the position was different in their tenanted estates.
[34] Ibid, p 277
[35] Jackson, 'The think-tank archipelago', p 43.
[36] Jackson, 'Freedom, the common good, and the rule of law', p 49-50, traces the new economic thinking in criticism of the 1930s New Deal. Critics, such as Walter Lippmann, aligned philosophically with Hayek notwithstanding their polar-extreme political affiliations.
[37] Jackson, 'The think-tank archipelago', p 44, quoting Ralph Harris and Arthur Seldon, who had just been entrusted to run the IEA.
[38] Ibid, p 48, quoting Sir Nicholas Cayzer's view of the IEA.
[39] Wilks, '*In the public interest*', p 287.
[40] Spicer et al, 'Intervention in the modern UK brewing industry', p 42-43.
[41] Having been unsuccessful in selling the stake in IDV to Rank Group to reduce the overall cost of the acquisition, Grand Met eventually bought the minorities.
[42] Lord Sheppard of Didgemere, Obituary, *The Times* (4 April 2015).
[43] Lord Sheppard of Didgemere, Obituary, *The Times* (4 April 2015).
[44] Herzel and Shepro, '*Bidders and targets*', refers to this deal as an exemplar of aggressive tactics in the 1980s takeover market.
[45] 'Grand Met makes final Martell bid', *The New York Times* (16 January 1988). Seagram was the successful bidder for Martell.
[46] Formerly known as Article 85, this deals with agreements between undertakings. For details refer to: http://ec.europa.eu/competition/legislation/treaties/ec/art81_en.html
[47] Formerly known as Article 86, this deals with either joint or sole abuse of dominance cases. For details refer to: http://ec.europa.eu/competition/legislation/treaties/ec/art82_en.html
[48] Burnside and Meyntjens, 'The EEC merger regulation', p 1373.
[49] 'Adjournment Matter – Proposed Takeover of Irish Distillers', Seanad Eireann, Volume 120 (13 July 1988).
[50] '*Proposed merger of Guinness PLC and Grand Metropolitan Public Limited Company*', Listing Particulars (undated), p 14-17 for details on Guinness, and p 18-20 for details on Grand Met (available from the author on request).
[51] Cope, 'Grand Met and Guinness in £23bn deal', *The Independent* (13 May 1997), quoting Seagram's vice-chairman, Robert Matschullat.
[52] The European Commission analysed broad category, sub-category, price point and brand-specific factors and reached the conclusion: 'the relevant product markets …. are in general no wider than those for each of the individual internationally-recognised main spirit types (whiskey, gin, vodka, rum and so forth) ... Narrower definitions may, however, be appropriate to specific product and geographic areas' (p L 228/28).
[53] Various conditions were attached to the remedy, including that Dewar's was sold with inventory of aging whisky to produce 3 million 9-litre cases per annum for a full seven years. Bacardi was the buyer of both brands.
[54] Following the passing of the International Anti-trust Enforcement Assistance Act of 1994, the International Competition Policy Advisory Committee (ICPAC) was established under the auspices of the US Attorney General. The International Competition Network (ICN) was borne out of ICPAC, with a mission to 'advocate the adoption of superior standards and procedures in competition policy around the world, formulate proposals for procedural and substantive convergence' (see: http://www.internationalcompetitionnetwork.org/).
[55] Nalebuff, '*Bundling, tying, and portfolio effects: part 1-conceptual issues',* p 21-22 states '(while) the Chicago School argument is persuasive in a static context, it does not take into account the dynamic games that firms play'
[56] Case No IV/M.938 Guinness/Grand Metropolitan, p L 288/29.
[57] Nalebuff and Majerus, '*Bundling, tying, and portfolio effects: part 2- case studies*', p 83-84.

[58] Werden, 'Economic evidence on the existence of collusion', p 770-771, notes theory does not always provide sufficiently robust predictions of the actions real-world competitors take in pursuit of unilateral self-interest.
[59] Rubinfeld, 'Market definition with differentiated products', is an expert witness account of the Post/Nabisco cereal merger of 1992. It criticises econometric models for being calibrated to imply products in the same segment are much closer substitutes than is really the case whereas products categorised in different segments are mathematically seen as insignificant substitutes.
[60] EC Case COMP/M.2268. The EC did not identify any situations that would create or strengthen a dominant position or where there was the likelihood of the creation or strengthening of collective dominance.
[61] FTC, C-4032. The FTC identified five relevant product markets of concern: premium rum, popular gin, deluxe Scotch, single malt Scotch and Cognac. Diageo agreed to divest its Malibu brand to an approved acquirer.
[62] Bower, 'Vertical and financial ownership', p 656 anchors the PubCo business model to the novel 'breweries-for-pubs' swap between Grand Met and Courage, linking competition policy to the subsequent financialisation era.
[63] In the case of a managed house the brewer owns the premises and the licensee is an employee of the brewer; the brewer bears all the costs of operating the house and receives all the revenue from it. In the case of a traditional tied tenancy, the brewer owns the premises but lets them to a tenant. The tenancy agreement specifies the rent and various purchasing obligations, usually including the obligation to buy all beer (except, where appropriate, a guest beer) from the brewer concerned. Tenants purchase the fixtures and fittings and stock on taking up the tenancies and sell them on relinquishment. They set retail prices and derive their income from the profit available after meeting costs such as purchase of supplies, rent and staff wages.
[64] Monopolies and Mergers Commission, '*The supply of beer*', p 453-454.
[65] Lafontaine and Slade, '*Franchising and exclusive distribution*', p 396.
[66] Perrett, 'How have different agreements affected the pub property market', *The Morning Advertiser* (5 March 2019), quotes data from the British Beer & Pub Association. In 1980 there were 69,000 pubs in the UK. By 2017, there were 48,350, of which the brewers controlled 4,000 managed and 7,000 tenanted and leased pubs. PubCos owned 5,400 managed and 9,300 tenanted, with some 22,650 pubs in independent hands.
[67] Higgins, Toms and Uddin, 'Vertical monopoly power, profit and risk', p 673, notes that this ranged from a full drinks tie for all alcoholic and non-alcoholic drinks to a partial tie that only applied to beer.
[68] The Code's two core principles are fair and lawful dealing by pub-owning businesses in relation to their tied tenants and that tied tenants should be no worse off than they would be if they were not subject to any product or service tie. Tenants can request a Market Rent Only (MRO) option to go free of tie in specific circumstances, including at a rent review or renewal of their tenancy.
[69] For details see: https://www.camra.org.uk/pubs/save-our-pubs-campaign/pubs-code-and-adjudicator/
[70] Brown, 'Heineken cleared to take over Punch Taverns', *The Financial Times* (18 August 2017).
[71] McKendrick and Hannan, 'Oppositional Identities and resource partitioning' p 1273, note 'the near-total domination of the production of an iconic product by global diversified firms', suggesting it is only a matter of time before new entry of specialist traditional distillers will change these metrics. Weir (1995), however, identifies the former DCL as a virtual monopolist following the 1925 mergers that created a vertically integrated DCL group with both whisky production, brand ownership and international distribution arrangements.
[72] Prominent Democratic Party senator, Elizabeth Warren, interviewed on the US cable news network CNBC on 24 July 2018 when asked about the fine imposed by the EC on Google said: 'What it shows is that Europe is serious about antitrust laws, Europe is serious about anti-competition laws, and the United States is lagging. We were once the leaders in the world on this, and no more'.
[73] Aktas, de Bodt, and Roll, 'Is European M&A regulation protectionist?', p.1118.
[74] Kinder, 'Lord Tyrie demands power to police big companies', *The Times* (9 May 2019).
[75] Wood, 'Sainsbury's-Asda merger blocked by competition watchdog', *The Guardian* (25 April 2019).
[76] Monopolies and Mergers Commission, '*The supply of beer*', p 5.