Alcohol (Minimum Pricing) (Scotland) Bill

Office of Fair Trading (OFT)

We welcome the opportunity to comment in response to the call for evidence of 1 November.

This brief submission highlights key points arising from the OFT’s remit in relation to competition and consumer issues. The OFT gave evidence to the Health and Sport Committee of the Scottish Parliament in January 2010 in relation to the Alcohol etc. (Scotland) Bill (SP Bill 34) and points made in that previous evidence remain relevant to the current Bill.

As noted in our previous submission, the OFT’s remit is limited to considering competition and consumer issues. We recognise that the Scottish Parliament must weigh these against the anticipated health and wider benefits of introducing a minimum price of alcohol.

In relation to the potential effectiveness of a minimum price, the OFT agrees with Scottish Government that the first order effect is likely to be a reduction in alcohol consumption (although much will depend on the level at which the minimum price is set for different types of alcoholic drink). However, we consider that there may be unintended second order consequences. Retailers of alcohol are expected to gain from a minimum price because they will earn a higher margin on low cost alcohol. This could give retailers an increased incentive to sell more rather than less low cost alcohol, for example through advertising or changing the mix of products on the shelves. These second order effects are not likely to outweigh entirely the primary effect of reducing consumption, but should be taken into account in assessing potential impacts and implementation.

In relation to effects on competition, the Scottish Government’s Competition Assessment within the Business and Regulatory Impact Assessment identifies a number of possible concerns about the impact of minimum prices. These include:

- A minimum price could make it harder for firms to enter or exit the market for retailing alcohol if the price floor is binding. New, small retailers would no longer be able to attract demand by challenging existing firms on price, and below that price floor retailers would be left with the ability to compete only on non-price factors.\(^\text{2}\)

- Retailers would not be able to undercut one another on price across some or all of their product range or through loss-leading. This could have a weakening effect on competition between retailers.\(^\text{3}\)

\(^\text{2}\) Competition Assessment, paragraph 25
\(^\text{3}\) Competition Assessment, paragraph 29
The OFT broadly agrees with the analysis in the Competition Assessment. However, it is not clear how these identified competition costs have been factored into the main impact assessment. For example, they do not appear to be highlighted in the summary of costs and benefits.

Finally, we note that the Scottish Government is not proposing to fix a particular minimum price in primary legislation. The OFT agrees that it is sensible to retain flexibility to adjust any minimum price over time in the light of evidence of its impact. However, it is also clear that any potential effects on competition and consumers would be greater the higher the minimum price. It would be important to assess these impacts as part of any decision to set or revise the minimum price in future.

On the legal analysis, the OFT is aware that there is ongoing discussion of whether a minimum price would be consistent with European free movement rules. This is a matter for the European Courts and is outside the OFT’s jurisdiction.

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