COMPETITION COMMISSION OF INDIA

26th February, 2013

Combination Registration No. C-2012/12/97

Order under Section 31 (1) of the Competition Act, 2002

Introduction:

1. On 5th December, 2012, a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") was jointly given by Relay B.V., which is an indirect wholly-owned subsidiary of Diageo Plc. (hereinafter Diageo Plc. is referred to as "**Diageo**" and both Relay B.V. and Diageo are jointly referred to as the "**Acquirer**"), and United Spirits Limited (hereinafter referred to as "**USL**"), for the proposed acquisition of shares and control of USL. The notice was given pursuant to execution of (i) Preferential Allotment Agreement executed between Relay B.V., USL and Diageo (hereinafter referred to as "**PAA**"); (ii) Share Purchase Agreement executed between United Breweries (Holdings) Limited ("**UBHL**"), Kingfisher Finvest India Limited ("**KFinvest**"), SWEW Benefit Company ("**SWEW**"), Trustees of the USL Benefit Trust ("**UBT**"), Palmer Investment Group Limited ("**Palmer**"), UB Sports Management Overseas Limited ("**UB Sports**") (hereinafter all collectively referred to as "**Sellers**"); Relay B.V. and Diageo (hereinafter the said Share Purchase Agreement is referred to as the "**SPA"**); and (iii) Shareholder's Agreement executed between UBHL, KFinvest, Relay B.V. and Diageo (hereinafter referred to as "**SHA"**), and all the said agreements were executed on 9th November, 2012. (PAA, SPA and SHA are hereinafter collectively referred to as "**Agreements**").

2. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as the "**Combination Regulations**"), vide letter dated 12th December, 2012, the parties were required to remove certain defects and furnish required information/document(s). The reply to the said letter was filed by the parties on 4th January, 2013. On 8th January, 2013, another letter was sent to the parties, in continuation of the Commission's earlier letter dated 12th December, 2012, requiring them to remove such defects which were still not removed and the reply to the same was filed by the parties on 21st January, 2013. Further, in terms of sub-regulation (4)

of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, vide letter dated 24th January, 2013, the parties were required to provide certain additional information, the reply to which was filed by them on 4th February, 2013. On 6th February, 2013, another letter was sent to the parties in continuation of the Commission's letter dated 24th January, 2013, the reply to which was filed by the parties on 18th February, 2013.

Nature of the Proposed Combination:

3. In terms of the PAA, Relay B.V. has agreed to subscribe to the new equity shares of USL (hereinafter referred to as the "**preferential shares**"), representing 10 per cent of USL's post-issue enlarged share capital, by way of preferential allotment, on terms and subject to the conditions as provided in the PAA. It has been submitted in the reply dated 4th January, 2013, that the said issue of preferential shares of USL required approval of the shareholders of USL, which has since been obtained through a special resolution dated 14th December, 2012 by a postal ballot process.

4. In terms of the SPA, Relay B.V. has agreed to purchase equity shares of USL from the Sellers, amounting to around 17.4 per cent of USL's enlarged share capital (hereinafter referred to as the "**sale shares**"). Further, it has been stated in the notice that as per the terms of the SPA, in certain circumstances, where (i) the preferential allotment is not completed, and (ii) Relay B.V. holds less than 25.1 per cent of the equity shares in USL after taking into account the sale shares acquired under the SPA, the shares acquired pursuant to the mandatory open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the "**Takeover Regulations**") or the shares acquired in any other manner, then UBHL and KFinvest will sell and Relay B.V. will acquire, such number of additional equity shares in USL which will take Relay B.V.'s shareholding in USL to 25.1 per cent. Such number of shares of USL which UBHL and KFinvest would require to sell to Relay B.V., under the aforesaid conditions, has been termed as "**additional shares".** In this regard, it has also been stated that if the preferential shares representing 10 per cent of USL's post-issue enlarged capital are subscribed to by Relay B.V., then no additional shares would be required to be sold to Relay B. V.

5. It is stated in the notice that the execution of the SPA and the PAA triggered an obligation on the part of Relay B.V. to make a mandatory tender offer to the public shareholders of USL under the Takeover Regulations. Accordingly, on 9th November

2012, Relay B.V. announced its intention to launch a mandatory tender offer under the Takeover Regulations (hereinafter referred to as the "**MTO**") to acquire the equity shares from the public shareholders of USL which represent up to a maximum of 26 per cent of USL's enlarged share capital (hereinafter referred to as the "**offer shares**"). It has been stated in the notice that on acquisition of the sale shares, preferential shares and the offer shares (if the MTO is fully subscribed), Relay B.V. would hold 53.4 per cent of the USL's enlarged equity share capital.

6. As stated in the notice, Relay B.V. also triggered an obligation to make a mandatory tender offer under the Takeover Regulations to the public shareholders of Pioneer Distilleries Limited (hereinafter referred to as "**Pioneer**"), a subsidiary of USL, to acquire up to 18.4 per cent of Pioneer's outstanding share capital (hereinafter referred to as "**pioneer shares**") and had announced its intention to launch this mandatory tender offer on 9th November, 2012 itself. However, in the reply dated 4th February, 2013, it has been submitted by the parties that as the assets and turnover of Pioneer are less than INR 250 crore and INR 750 crore respectively, acquisition of pioneer shares is likely to be exempted under the Government of India Notification No. S.O. 482(E), dated 4th March, 2011.

7. Further, as per the SHA, which becomes effective on the completion of the SPA, if, following the acquisition of shares under the SPA and PAA, including the offer shares, the Acquirer is unable to hold a majority of the share capital of USL, the UB Parties (as defined in the SHA), who hold shares in USL, will vote their shares at Relay B.V.'s direction. This voting obligation on the part of the UB Parties will terminate upon the earlier of the date on which Diageo and its affiliates (hereinafter referred to as the "**Diageo Group**") first acquires 50.1 per cent of the shares carrying voting rights in USL or at the end of the fourth financial year of Diageo, after the date on which the SPA completes. This voting obligation of the UB Parties would, however, come into effect on completion of the SPA and upon the SHA becoming effective.

8. As stated in the notice and other documents on record, Relay B.V. proposes to acquire sole control over USL, since on completion of the SPA and SHA becoming effective, Relay B.V. would exercise an absolute right to appoint a majority of the directors on the Board of USL and the right to appoint all the senior executives of USL, apart from the contractual obligation of UBHL to vote its shares in accordance with Relay B.V.'s instruction, till such period and on such terms as agreed in the SHA, which

would enable Relay B.V. to determine all the strategy and policy decisions in respect of USL.

9. As stated in the notice, Relay B.V., or an affiliate of Relay B.V., may also, at any time and from time to time, acquire other shares in USL in order to obtain an aggregate shareholding of at least 50.1 per cent of USL's equity share capital (hereinafter referred to as the "**other shares**"). It has been provided under the SHA that if either of UBHL or KFinvest, or any of their controlled affiliates, transfer all or part of their shares in USL to any third party, it shall first offer such shares exclusively to Relay B.V. and on receipt of such offer, Relay B.V. would have the right to elect to acquire all or, in some cases, part of such offered shares (hereinafter referred to as the "**ROFO shares**"), by giving a notice to UBHL or KFinvest, or as the case may be, within a specified period, in terms of the SHA. Further, as per the terms of the SHA, each of UBHL and KFinvest would also have the right, but not the obligation, to require Relay B.V. to purchase shares held by them in USL (hereinafter referred to as the "**put right"**). However, in the reply dated 18th February, 2013, it has been confirmed that the parties to the SHA have agreed to delete the provisions relating to the put right in the SHA and have undertaken to forward to the Commission a copy of the amended SHA, as and when it is executed. Further, it has been stated that as there is no certainty about the shares being tendered in the MTO, it is possible that on completion of the SPA, Relay B.V. would hold shares only up to 27.4 per cent of the share capital of USL, and so in such a scenario, Relay B.V., either by itself or through its affiliates, may, subject to the provisions of the SHA and any applicable law, seek to increase its shareholding in USL up to 50.1 per cent or more, through acquiring the other shares and, if available, the ROFO shares. Further, it has also been stated in the reply dated 4th February, 2013 by the parties that if following the acquisition of the preferential shares, sale shares and the offer shares, the Acquirer is not able to acquire up to 50.1 per cent of the share capital of USL, it would like to increase its economic exposure in USL and take its holding to at least 50.1 per cent over a period of 4 to 5 years.

10. As regards the non-compete obligation, in terms of the SHA and subject to certain exceptions, the UB Parties, as defined in the SHA, shall procure that none of their affiliates and no current promoter of UBHL shall, during the term of the SHA and for a period of two years following the termination of the SHA, carry on any business, either directly or indirectly, and including as a director, consultant or advisor, which manufactures, distills, bottles, distributes, purchases and/or sells alcoholic spirits (excluding beer, wine and bottled water), or disclose to any person or use any

confidential information related to the USL Group, or assist any person to carry out any of such activities.

11. The proposed combination accordingly relates to an acquisition of shares and control under Section 5 of the Act.

12. It has been stated in the notice that Diageo, through the proposed combination, would be able to effectively participate in India's large and rapidly growing spirits market, in which USL is a key player with local knowledge and a stable of strong brands. It has also been stated in the notice that the proposed combination provides an opportunity to Diageo to premiumise the existing brands and innovate from USL's trademarks, which would also result in a huge change in Diageo's emerging market global footprint.

<u>Parties to the Combination:</u>

13. Relay B.V., a company incorporated in July, 2012 under the laws of the Netherlands, is an indirect wholly owned subsidiary of Diageo and a part of the Diageo Group. The main objects of Relay B.V. include subscription to and investment in equity shares/ equity linked instruments of the investee companies. As stated in the notice, as on 9th November, 2012, Relay B.V. had no existing business.

14. Diageo is a listed company incorporated under the laws of England and Wales. It is primarily engaged in the manufacturing and distribution of spirits, beer and wine in around 180 countries across the world. Diageo's main brands which are popular around the world include Johnnie Walker, Bushmills Whiskies, Smirnoff, Ciroc, Captain Morgan, Baileys, Guinness, etc. In India, Diageo is present through its wholly owned subsidiary Diageo India Private Limited (hereinafter referred to as "**Diageo India**"), which as stated, is engaged in the manufacture of Diageo's products in India through lease arrangements with four distilleries in the states of Punjab, Maharashtra, Karnataka and Madhya Pradesh. Diageo India also has three custom bonded warehouses in New Delhi, Mumbai and Kolkata where it imports Diageo's products for onward distribution.

15. USL, a listed company incorporated under the laws of India, is engaged in the business of manufacturing, brewing, distilling, blending, compounding, preparing, processing potable or marketable alcoholic beverages (including wine and spirits), bottled water and bottled soda in India and around the world. USL is stated to be the

largest spirits company in the world in terms of volume, with sales of around 123 million cases for the fiscal year ending 31st March, 2012. USL carries on the business of manufacturing and bottling of the Indian Made Foreign Liquor (hereinafter referred to as "**IMFL**"), through the distilleries and bottling units which include owned units, tie-up units, associate units and leased/privileged units. USL's main brands include Antiquity, McDowell's, Signature, Bagpiper, Royal Challenge, DSP Black, Black Dog, Whyte & Mackay, Romanov, White Mischief, Four Seasons etc. USL currently belongs to the UB Group, which has diverse interests in brewing, distilling, real estate, engineering, fertilizers, biotechnology, information technology and aviation. The UB Group is also the largest Indian manufacturer of beverage alcohol. It has been stated in the notice that USL is not engaged in the manufacture, sale and distribution of beer in India or anywhere else in the world. Further, USL also holds a 100 per cent stake in Royal Challengers Sports Private Limited, which owns the franchise for the Royal Challengers Bangalore team in the Indian Premier League (IPL). In addition, USL, through its subsidiaries, is also engaged in the production of Extra Neutral Alcohol (hereinafter referred to as "**ENA**") and spirit flavours, both of which are used in the process of manufacturing and blending spirits.

<u>Alcoholic Beverages Industry in India</u>

16. The proposed combination relates to the Indian alcoholic beverages industry. The various types of alcoholic beverages can be broadly categorized into three main categories i.e., Beer, Wine and Spirits, which are primarily distinguished on the basis of ingredients, alcoholic content and the manufacturing process involved. Out of the these three categories, the alcoholic content in spirits, which is manufactured by distillation of ethanol, produced from molasses, grain, fruits or vegetables, is higher than the alcoholic content in beer or wine. As per the information provided in the notice, in the year 2011, a total of around 661 million 9-litre cases of alcoholic beverages were sold in India which included 227 million 9-litre cases of beer, 1.3 million 9-litre cases of wine and around 433 million 9-litre cases of spirits. Spirits include both country liquor as well as branded spirits. Country liquor is a range of locally manufactured, low-priced distilled products, produced from rectified spirit, which is manufactured by way of distillation of molasses only once, unlike the branded spirits, which are comparatively higher priced and are manufactured from ENA, the manufacture of which requires the molasses/grain to be distilled at least twice. As per the information provided in the notice, out of the total 433 million 9-litre cases of spirits sold in India in 2011, as per the internal estimates of USL, around 183 million 9-litre cases were of country liquor and around 250 million 9-litre cases

were of branded spirits. Branded spirits can also be broadly categorised into five main segments which include Whisky, Rum, Vodka, Brandy and Gin. Each of these can be further classified into locally manufactured spirits and spirits imported into India. Generally, based on the location of bottling, the spirits imported into India are labeled as either Bottled in India (BII) or Bottled at Source (BAS). In terms of the sales volume, the imported branded spirits do not contribute significantly to the total sales of branded spirits in India. While internationally, different categories of branded spirits i.e. whisky, rum, vodka, brandy and gin are manufactured from different raw materials, such as malt for whisky, grapes for brandy, cane spirit for rum etc., in India, all spirits are manufactured by the double distillation of molasses or grain, to produce ENA. Individual spirit flavours are then accordingly added to the ENA, for instance, grape spirit to convert the ENA into brandy, cane juice spirit to convert the ENA into rum etc. It has been stated in the notice that the volume of sales of Whisky, Vodka, Rum, Gin and Brandy, in terms of 9-litre million cases, in the year 2011 in India, as per International Wine and Spirit Research Report, 2012, (hereinafter referred to as the "**IWSR Report**"), were around 149 million, 9 million, 47 million, 2 million and 43 million, respectively.

17. As per the distribution of legislative powers prescribed by the Constitution of India, the power to make laws regarding the production, manufacture, possession, transport, purchase and sale of alcoholic beverages in India falls within the purview of the State Governments. The production of alcoholic beverages requires licenses from the respective State Governments which determine the production capacity of each manufacturing facility and control the production and movement of both the raw materials and finished products. Any entity intending to commence manufacture of liquor requires an excise license from the respective State Government. Licenses are also required from the State Government for possession of raw material and bottling, as well as for possession and sale of liquor. The introduction of new product(s) or brands by a manufacturer or a brand owner also requires the approval of the respective State Government. It is also noted that publicity or new brand recognition is a difficult proposition in this industry due to a ban on the advertising of alcoholic beverages which results in the companies following the route of surrogate advertising to promote their brands.

18. The distribution of the alcoholic beverages takes place through three distribution channels i.e., (i) Government channel where the Government's participation is through the Government corporations/bodies, at the wholesale or the retail level or both. In this channel, the Government either distributes directly to the end consumers

or sells to the private retailers for onward sale to the end consumers. Apart from the Government corporations/bodies operating in the Government channel, the Canteen Stores Department (hereinafter referred to as "**CSD**") is also a pan-India Government body, which being the nodal buying and distribution agency for the Armed Forces, caters to the requirement of all materials and stock including the alcoholic spirits for the defence personnel; (ii) Auction / licensing through the lottery channel in which the distributors participate in an auction / lottery system, usually on an annual / bi-annual basis, and (iii) Free channel in which the State Governments, while controlling the number of wholesalers and retailers permitted to operate in the market, exercise the least control over pricing which is largely determined by the market forces. However, in the free channel also, the approval of some of the State Governments is required for various aspects of the business including pricing. In the overall scenario, the manufacturers sell spirits to the wholesalers / distributors, who in turn sell it to the retail outlets. It has been stated in the notice that out of Diageo India's overall sales in India, 70 percent of its sales pertain to the Government or auction/lottery channels (including the sales to the CSD which is also stated to be one of the single largest buyers of USL's products), whereas only 30 per cent of its sales is through the free channel. Further, out of USL's overall sales in India, 82 per cent of its sales are in the Government or auction/lottery channels, including sales to the CSD, whereas only 18 percent of its sales are in the free channel. The alcoholic beverage products are also subject to various taxes and duties such as excise duty, export fee tax, import tax, etc. The transportation of alcoholic beverages between the states within India is also subject to the imposition of various charges, including export fee taxes, import fees and transportation charges. It is, therefore, observed that the sale or distribution of alcoholic beverages in both the wholesale and retail sectors in India is, in some form or manner, regulated by the State Governments.

19. It has been stated in the notice that in the last two years, the wine and spirits market in India has not only witnessed the entry of several new players, both domestic and foreign, but also the introduction of several new brands at various price points. As per an estimate provided in the notice, out of the 65 new brands introduced in the last two years in the spirits market in India, by domestic as well as foreign manufacturers, as many as 24 brands pertained to Whisky and the remaining pertained to Rum, Vodka, Gin and Brandy. Out of these newly introduced brands, only 6 brands belonged to USL and Diageo India. There were also 7 new brands introduced in the Wine market in India in the last two years, by domestic as well as foreign manufacturers, none of which however belonged to USL or Diageo.

20. Over the past few years, a key trend that has been witnessed in the alcoholic beverages industry in India is that of ‘premiumisation’. It is generally observed that the consumers are continually seeking better quality and innovative products, service and experience, while making their purchasing decisions. The consumers, who may be now willing to buy premium products which satisfy their aspirational needs and sense of exclusivity, are therefore, acting as drivers for this growing trend of ‘premiumisation’ in the alcoholic beverages industry in India. Generally, ‘premiumisation’ refers to the practice of introducing a new brand or extending an existing brand to a new premium or luxury variant in almost the same price segment at higher price points or even in the higher price segments, thereby increasing the product differentiation, with a view to improve upon the margins and provide additional choices to consumers for fulfilling their desire of consuming premium products. It has been generally observed that the consumer’s choice, between the different price segments of alcoholic beverages and further between the brands within such segments, is highly subjective and is as much dependent upon the occasion, mood, brand image and social perceptions, as it is dependent on the amount that the consumer is willing to spend on consumption of alcoholic beverages. It may also be observed that while at the low-end range of the consumption spectrum, the consumers may be constrained more by the amount that they are willing to spend, at the premium and luxury end of the consumption spectrum, factors such as occasion, peer pressure, social perceptions, brand value, etc. are considered to be significant factors that affect the consumer’s choice.

<u>Competitive Assessment of the Proposed Combination:</u>

Relevant Product Market:

21. It is observed that the market for alcoholic beverages comprises of different types of spirits, across various price segments, and is therefore, considerably differentiated and driven by the consumer’s preference for different products and brands in each product category. The alcoholic beverages/ products can be generally differentiated either on the basis of intrinsic quality or on the grounds of perceived quality. Therefore, in such a market which is characterized by product differentiation, the propensity of the consumer to switch to a different product depends upon the closeness of the available substitute products. In this scenario, products which are close substitutes compete more vigorously with each other in comparison to others that are distant substitutes. It is observed that if two competing enterprises produce differentiated products that are

close substitutes, an increase in prices by one enterprise could lead to a divergence of the demand to the products of the other. Therefore, the key variables which an enterprise has to take into account in a differentiated product market while positioning and pricing its brands, are the characteristics of the brand on the basis of which the enterprise wants to compete, and then launch its brand in a price band close to the competitors' price, so as to enable it to get its brand included in the perceived consideration set of the consumers.

22. This enables the consumer to choose a brand of a certain quality and characteristic in line with the price segment that also meets his affordability criterion. In view of the foregoing, to appreciate the competitive interplay between the enterprises with respect to their differentiated products and brands, which constitute the proposed combination, the differentiated products for each type of branded spirits have been further segmented on the basis of close price bands, to assess the degree of substitutability among the brands.

23. As stated, Relay B.V. is a newly incorporated entity and currently does not undertake any business activities, however, for the purposes of competitive assessment of the proposed combination, while considering the products of Diageo which are manufactured, sold and distributed in India, it is observed that neither USL nor Diageo are engaged in the business of Country Liquor in India. Further, it is also observed that USL does not operate in the Beer segment in India and that Diageo is not present in the Brandy segment in India. Therefore, for the purpose of competitive assessment of the proposed combination, the segments relating to Beer, Country Liquor and Brandy in the overall alcoholic beverages market in India have not been taken into consideration. The data relating to price and volume, for the purpose of assessment, has been generally taken from the IWSR Report.

Relevant Geographic Market:

24. As stated, the production, manufacture, possession, transport, purchase and sale of alcoholic beverages in India, falls within the regulatory purview of the respective State Governments. However, the conditions of supply of alcoholic beverages, despite being different in different states, translate into the same competitive situation on the ground for all the enterprises. As stated in the notice and other documents on record, although the marketing, branding and pricing decisions of the parties to the combination are tailored to the requirement of the consumers in different states, they are broadly determined at a national level for the country as a whole. Further, as both

USL and Diageo are stated to operate on a pan-India basis, the relevant geographic market for the purpose of the assessment of the proposed combination is considered to be the whole of India.

Evaluation of Competition

25. From an analysis based on market shares, it can be seen that post combination, the market share of the combined entity will not change much except in the vodka market. However, in a highly differentiated product market, the closeness of competition between the products of the combining parties has to be examined more specifically with regard to price ranges of these products in different spirits markets and their corresponding market shares.

26. As stated earlier, consumers of spirits while making a choice generally have a preference for a particular spirit, and within a given category of spirit say rum, vodka, whisky etc., they may have a preference for a brand that meets a certain quality and affordability constraint. The data reveals that the consumer has options of various quality of a particular spirit in various price ranges. This implies that for firms in highly segmented markets, their strategic choice is the positioning of the new products within a given price range.

Whisky Segment:

27. It is observed that in the Indian branded spirits, Whisky, which alone accounts for 60 per cent of the total sales volume, constitutes the largest segment. Whisky can further be segmented into IMFL Whisky, Scotch Whisky and Imported Whisky. As per the data provided in the notice and in the IWSR Report, the total whisky sales in India, in the year 2011, were around 149 million 9-litre cases, of which IMFL Whisky sales were around 147 million 9-litre cases, constituting a large chunk of around 98.54 per cent of the total Whisky segment. It is also observed that all the IMFL Whisky brands are priced below INR 800 and that none of Diageo's Whisky brands are significantly present below this price point, thereby indicating no significant market concentration in the IMFL Whisky segment, post-combination. The Scotch Whisky and the Imported Whisky segments, which together constitute less than 2 per cent of the overall Whisky segment and around 1 per cent of the branded spirits segment in India, are characterized by the presence of a large number of brands positioned across various premium and luxury price points starting from INR 800 and going up to INR 10000 and even further. It is observed that the consumers of these brands (in the

Scotch Whisky and Imported Whisky segments) may generally have a higher degree of brand affinity, which can be witnessed from the relatively high sales volume of brands like Pernod Ricard's Royal Salute, Chivas Regal 18/12Year Old, Ballantine's Finest, 100 Pipers, Beam Global's Teacher's 50, Teacher's Original; WM Grant's Glenfiddich, Grant's Family Reserve, Diageo's Johnnie Walker Blue/Red/Black, USL's Black Dog, etc. This segment of Scotch and Imported Whisky has the presence of many other brands of Scotch and Imported Whisky including some brands of BII Scotch Whisky also.

28. In the INR 800 to INR 1600 price segment, which constitutes around one per cent in volume terms of the overall Whisky segment, although it is observed that both USL and Diageo are present with their strong brands like Black Dog 12 Years Old, Black Dog (BII) and Whyte & Mackay in the USL portfolio and brands such as Johnnie Walker Red Label, Black & White and VAT 69 in the Diageo portfolio, however, it is also seen that in this price segment, there is also a significant presence of other brands like Pernod Ricard's 100 Pipers, 100 Pipers (BII), Ballantine's Finest and Passport (BII), Beam Global's Teacher's and its variants, WM Grant's Grant's Family Reserve etc. Within this price segment, it is also observed that if USL's Black Dog 12 Years Old has a strong presence at the price point of around INR 1600, there are equally strong competitive brands of Teacher's 50 and Teacher's Original at around the same price point. Further, at a price point of INR 1200, if Diageo's Johnnie Walker Red Label and USL's Black Dog (BII) have strong presence, it is observed that other competitors like Beam Global with Teacher's, Pernod Ricard with Ballantine's Finest, WM Grants with Grant's Family Reserve are also present at the same price point. Accordingly, at a price point of around INR 900, if Diageo and USL are present with their brands like Vat 69 (BII) and Whyte & Mackay (BII) respectively, other competitors like Beam Global with Teacher's (BII) and Pernod Ricard with 100 Pipers (BII) are also present at around the same price point. It is, therefore, seen that the consumers have reasonable choice available at various price points in this segment, even though the overall volume in this segment of Whisky is miniscule, thus minimising any concern of elimination of competitive constraint. It is also observed that the Compound Annual Growth Rate ("**CAGR**") of most of the competitors' brands in this price segment is greater than the total CAGR of this entire segment as well as that of the aggregated Scotch and Imported Whisky segment, showing that the competitors' brands in the above segment have high growth rates and these brands are therefore, considered to be effective competitors to the brands of the parties to the combination in the above segment. Further, as regards the above price segment, it is also noted that it is one of the fastest growing segments of the entire branded spirits

segment with a CAGR of around 25 per cent, which can be attributed to the recent trend of premiumisation, which as discussed above, is currently being witnessed in the branded spirits segment due to the changing demographics of the alcohol beverage market in India. Considering the current trend of premiumisation, it is anticipated that the players at various price points in this segment and as well as in other segments may introduce new and innovative premium brands and products, thereby providing more choice to the consumers.

Vodka Segment:

29. The Vodka segment constitutes around 4 per cent of the overall branded spirits segment in India and has shown a high growth CAGR of around 22 per cent in the period 2007-2011. In the year 2011, nearly 88 per cent of the Vodka that was sold in India was priced at INR 500 or below. It is observed that Diageo, with its brand Smirnoff and its variants, is present in the INR 500+ price segment and USL, with its flagship brand Romanov and its variants, is present in the price range of below INR 500. However, it is observed that in the below INR 500 segment, Radico Khaitan is also present with its brand 'Magic Moments' which has demonstrated a strong CAGR of around 33 per cent in the period 2007 – 2011. Magic Moments and its variants are observed to be positioned at price points around the brands of USL and Diageo, thus providing them stiff competition. It is also observed that the Vodka brands of both USL and Diageo would also continue to face stiff competition at different price segments from many other brands and their variants, such as Pernod Ricard's Absolut and its variants, Brown Forman's Finlandia and its variants, etc. It is also observed that in the Vodka segment, in the past two years, 27 new brands have entered the local as well as the flavoured Vodka segments, indicating that this market is rapidly growing and evolving in India.

Rum, Gin and Wine:

30. The Rum segment constituted around 17 per cent of the overall branded spirits segment in India and has shown a CAGR of around 15 per cent in the period 2007-2011. It is observed that Diageo had an insignificant share of around 0.05 per cent in volume terms of the total Rum segment in India. Further, in the Gin segment, which constituted less than one per cent of the overall branded spirits segment in India, Diageo had an insignificant share of around 0.34 per cent in volume terms. In the year 2011, a total of 1.3 million nine litre cases of Wine were sold in India. Diageo India has a marginal presence in the wine market in India with sales of only 250 nine litre

wine cases in the year 2011, amounting to less than 0.1 per cent of the total wine segment in India.

<u>Conclusion:</u>

31. In regard to the narrow price sub-segments in the overall Whisky segment, in which even if the brands of USL and Diageo were considered to be positioned as close competitors, it is observed that there are multiple brands of other players who are present and effectively competing with the brands of USL and Diageo in those segments, and as already observed, the volume in these price segments is also miniscule in comparison to the overall volume of the Whisky segment. Further USL and Diageo are mostly present in different price spectrums in the branded spirits market with negligible overlap between their products in each of the branded spirits segment. As already observed, the proposed combination may bring new products and more variants of the existing brands at different price points which would ultimately enable the consumer to expand his choice set. Moreover, as already stated, the manufacture, production, distribution and sale of alcoholic beverages in India falls within the regulatory purview of the State Governments. Under the prevailing regulatory control of the State Governments, the introduction of new brands in the market as well the pricing of existing or newly introduced brands of the alcoholic beverages in India is not, therefore, entirely at the choice of the enterprises and even if free from state control, it is determined by the market within the overall regulatory framework provided by the respective states.

32. The present transaction in the highly differentiated market was assessed in the appropriate analytical framework. As noted, products refer to the various "qualities" (brands) of spirits and the different firms strategise to appropriately position their products in the corresponding price range. In this framework, the proposed combination may allow for increasing product differentiation as a consequence of both brand proliferation and brand extension.

33. In the present case, Diageo's acquisition of USL may give a boost to the premiumisation strategy. Thus, new premium brands of the established brands (brand proliferation) and new premium brands (brand extension), are likely to be introduced in the market for spirits. The degree of product differentiation across price segments is likely to increase in the post combination scenario. The combination may increase and improve consumer choice and since the combining parties produce distant substitutes, the synergy of the firms will not detract competition.

34. In view of foregoing, considering the facts on record and the details provided in the notice and the assessment of the proposed combination after duly considering the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission hereby approves the acquisition of control of USL by the Acquirer and the acquisition of shares within a period of 5 years upto 53.4 per cent of USL by the Acquirer, by any of the modes as stated in the notice and other documents on record, under sub-section (1) of Section 31 of the Act, as the proposed combination is not likely to have an appreciable adverse effect on competition in India.

35. This approval is without prejudice to any other legal/statutory obligations as applicable.

36. This order shall stand revoked if, at any time, the information provided to the Commission is found to be incorrect.

37. The Secretary is directed to communicate to the Acquirer and USL accordingly.