Alcohol etc. (Scotland) Bill

Office of Fair Trading (OFT)

1. The OFT is the consumer and competition authority for the UK as a whole. Our mission is to make markets work well for consumers. Intervention by the OFT is designed to support the development of competitive efficient innovative markets. These are markets where customer care is high, consumers are empowered about making choices, and businesses are not disproportionately burdened by government regulations. We look at both the demand and supply sides of markets because where empowered consumers are able to make informed decisions businesses are more likely to innovate, reduce inefficiencies and compete in ways which make markets work well for consumers and the wider economy.

2. We acknowledge the evidence of the harmful effect of excessive alcohol consumption and the concern of the Scottish Government to try to reduce that harm. However, the OFT has a number of concerns about the use of a minimum sales price for a unit of alcohol to achieve this end, which we thought it would be helpful to share with the Committee. The nature of the OFT’s remit limits our submission on the Alcohol etc. (Scotland) Bill to commenting on the competition and market impacts of this proposal.

Expected impacts of a minimum price for alcohol

3. The Competition Assessment in the Scottish Government’s Regulatory Impact Assessment (the Competition Assessment) reflects many of the matters of concern to the OFT. In particular we would like to draw the Committee’s attention to the following points which could impact on all consumers of alcohol, including responsible drinkers:

4. As acknowledged by the Scottish Government the Sheffield Report ‘predicts that all minimum price scenarios modelled result in increased revenue for the alcohol industry (off-trade and on-trade).’\(^1\) The Competition Assessment suggests the possibility that retained profits are passed on to consumers through lower prices/higher quality on other products.\(^2\) However, this is not the only effect. Another possible outcome is that higher revenues increase the incentives for retailers to sell more alcohol (due to relatively higher returns). This is explicitly recognised in the recent House of Commons Health Select Committee report on alcohol,\(^3\) which, though in favour of minimum pricing, recognises:

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2\(^{\text{\footnotesize Competition Assessment, para 30}}\)
3\(^{\text{\footnotesize Competition Assessment, para 32}}\)
4\(^{\text{\footnotesize First Report of Session 2009-10 on Alcohol (HC 151–I) http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhealth/151/151i.pdf}}\)
‘without an increase in duty minimum pricing will lead to an increase in the profits of supermarkets and the drinks industry and an increase in marketing, promotions and non-price competition.’

5. Therefore, on the basis of that view, there might inadvertently be an increase in alcohol sales because the effect of increased marketing outweighs the effect of the price increase. In markets where, as acknowledged by the Scottish Government, demand is relatively inelastic (i.e. has a weak response to price increases), this potential consequence cannot be discounted.

6. Fixing minimum prices means that retailers can no longer compete to offer a more competitive price than their rivals. It has the effect of weakening competition between retailers. Over time, this weakened competition means there is less incentive for retailers and manufacturers to reduce their costs. The loss of these dynamic cost savings risks being irreversible in the sense that, even if the minimum price restriction were removed at a future date, costs may still be higher than they might otherwise have been. As noted by the Scottish Government, there is substantial empirical evidence linking price restrictions to higher costs and lower productivity.

7. The raised minimum price threshold could also make it harder for new - small or lower cost - suppliers to enter the market if as a result they were unable to compete with incumbents on price.

8. We also draw attention to paragraph 48 of the Competition Assessment which notes:

‘it is important to ensure that the introduction of a minimum price does not inadvertently allow or encourage competitors to share information on their commercial matters … during the process of setting their price according to the regulations. If this was the case, this could also lead to reduced incentives to compete.’

9. We agree that it is important to take this into account in designing any approach to minimum pricing and in particular to ensure that it does not result in a breach of competition law (for example, as would occur if competitors were to share among themselves information on commercially sensitive matters such as price setting).

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5 First Report of Session 2009-10 on Alcohol (HC 151–I), para 329
6 Competition Assessment, para 29
7 Competition Assessment, para 21
9 For example, as noted in para 35 of the Competition Assessment, the OECD round table in 2005 on resale below cost found that restrictions on selling below cost are associated with slower economic growth and higher unemployment (‘OECD Policy Roundtables, Resale Below Cost, 2005’ http://www.oecd.org/dataoecd/13/30/36162664.pdf). The Competition Assessment also picked up on the experiences of France, following the introduction of the Loi Galland (paras 33 and 49) and of Ireland, in respect of the Groceries Act (para 34).
10 Competition Assessment, para 19
Alternative policy options

10. As the Scottish Government acknowledges, where there are wider policy reasons for wanting to increase the price of a product, the standard policy response is to consider taxation. For example, and although it concerns a different market, fuel tax changes might be used to encourage consumers to buy more energy efficient cars.

11. Taxation, if well designed, should be less distortive of competition than a minimum price because it would apply to all sales and in equal relative measure (for example, on a percentage basis) rather than setting a minimum floor, which would affect only some products (that is, those below the minimum price) and by differing amounts (depending on how far each product is away from the minimum price). Tax revenues also get passed to the government, and in principle could be spent on tackling alcohol misuse in other ways. This is in contrast to a minimum price which may increase revenues for the industry whereas a tax could avoid any adverse incentives to increase sales of alcohol noted in paragraphs 4 and 5 above. We recognise of course that the Scottish Government does not have direct control over rates of duty.

Summary

12. We are grateful to the Committee for seeking our evidence on this matter. It is not within the OFT’s remit to weigh up the competition and market impacts against wider public interest in terms of health and social costs. Ultimately, the fundamental question of whether raising price is likely to be an effective way of tackling alcohol misuse, and whether any advantages of such a policy are outweighed by the negatives, is a matter for policy makers to decide on.

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