EUROPEAN COMMISSION
DG Competition

Case M.7881 – AB InBev/SABMiller

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Decision on the implementation of remedies - Art. 6(1)(b) in conjunction with 6(2) - Purchaser approval
Date: 8.3.2017

EUROPEAN COMMISSION

Brussels, 8.3.2017
C(2017) 1700 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

IMPLEMENTATION OF COMMITMENTS

To the notifying party

Dear Sir/Madam,

Subject: Case M.7881 – AB InBev/SABMiller
Approval of Asahi as a purchaser of the CEE Divestment business following your letter of 20 December 2016 and the Trustee's opinion of 27 January 2017

I. FACTS AND PROCEDURE

1. By decision of 24 May 2016 ('the Decision'), adopted in application of Article 6(2) of the Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings ('the Merger Regulation')[1], the Commission declared the operation by which undertaking Anheuser-Busch InBev SA/NV ('ABI') intended to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking SABMiller plc ('SABMiller') ('the Transaction') compatible with the internal market subject to full compliance with the commitments annexed to the Decision and the obligations contained therein (the 'Commitments'). Following the Decision, the closing of this Transaction occurred in October 2016 and resulted in the creation of the new entity ABI/SABMiller.

[1] OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

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2. In accordance with the Decision, with a view to removing the serious doubts raised by the Transaction, ABI proposed:

   a. in the markets for beer in Czech Republic, Slovakia, Hungary, Romania and Poland, the divestiture of the whole of SABMiller's businesses in these five Member states ('the CEE Divestment Business'). The CEE Divestment Business also includes all global rights for all CEE local brands as well as 11 breweries and one microbrewery ('the Hungarian Business').

   b. In the Netherlands, Italy and the UK, the divestiture of the SABMiller's business ('the PGM Divestment Business') principally including (i) the Peroni brand and business in Italy, (ii) the Grolsch brand and business in the Netherlands and (iii) the Meantime brand and related business in the UK. On 19 April 2016, ABI and Japanese brewer Asahi Group Holdings Ltd ('Asahi') signed a final and binding Share and Purchase deed for the transfer of the PGM Business to Asahi. In the Decision, the Commission approved Asahi as a suitable buyer for the PGM Divestment Business and the closing of the acquisition of the PGM Business by Asahi occurred in 10 October 2016.[2]

3. Against the above background, the scope of the present decision is accordingly to assess Asahi as a suitable purchaser for the CEE Divestment Business.

4. By e-mail of 20 December 2016 ABI submitted to the Commission's approval the choice of Asahi as purchaser of the CEE Divestment Business and submitted the final binding share purchase agreement (SPA) as well as certain draft ancillary agreements (notably transitional service agreements or 'TSA' together with the SPA collectively defined “Transaction Documents”). The Transaction Documents were signed on 13 December 2016.

5. On 27 January 2017 Mazars LLP (the 'Trustee') submitted its reasoned Opinion as regards Asahi's suitability as a purchaser and, in particular, indicated that Asahi fulfils the criteria of the purchaser requirements set in the Commitments. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

6. The acquisition of the CEE Divestment Business by Asahi was notified to the Commission on 27 January 2017 and subsequently unconditionally cleared by decision of 1st March 2017.[3]

7. Some amendments have been made to the SPA notably with regard to some intellectual property rights related to pipeline innovations for the CEE Divestment Business and dormant brands of the CEE Divestment Business. On 3 March 2017, ABI has explained these changes in a note. The Trustee has confirmed that these changes are consistent with the Commitments on 8 March 2017.

2 See recitals 391 to 402 of the Decision.

3 See COM/M.8357 - Asahi/ABInbev CEE Divestment Business.

II. ASSESSMENT OF THE PROPOSAL

8. Asahi is a food and beverages company, headquartered in Tokyo, Japan, and is listed on the Tokyo Stock Exchange. Asahi was founded in 1889 as the Osaka Brewing Company and Asahi beer was launched in 1892. The company is principally engaged in beer brewing business, but it also produces and markets soft drinks and nutritional snacks and seasoning materials. The company primarily operates in Japan with its operations extending to China, Europe, the US and Asia.

9. International expansion has increased the share of Asahi’s sales made outside Japan from 1% of its sales in FY2000 to about 14% of its sales in FY2015. Including the PGM Business (sales of € 747 million in FY ending 31 March 2016), this share is now around 18%.

10. In 2015, Asahi made global sales of about € 14.3 billion, with an EBITDA of EUR 1.5 billion. Including the PGM Business, Asahi’s global sales in 2015 are about EUR15 billion. As of 31 December 2015, Asahi employed 22,194 people.

(a) Independence from the Parties

11. Pursuant to clause 16 (a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent of and unconnected to ABI and its affiliated undertakings.

12. According to the information provided by ABI and the Trustee, there are no joint-ventures in which ABI/SABMiller and Asahi participate, nor are there any entities in which both of ABI/SABMiller and Asahi hold a material interest. ABI/SABMiller does not share any executive and non-executive directors with Asahi.

13. However, there is one pre-existing commercial relationship in place between ABI/SABMiller and Asahi, whereby Asahi distributes a small number of ABI products in Japan. These products represented sales of EUR […] in 2015 or less than […]% of their total sales that year (including the PGM Business). The Commission considers that such limited links between Asahi and ABI and its 'arm's length' nature is unlikely to affect Asahi's independence towards ABI.

14. In the context of the acquisition of the PGM Business, Asahi and ABI have entered into Transitional Services Agreement to govern the separation and transition of the PGM Business from ABI. Under the agreement, ABI will provide a number of defined services to Asahi, namely [details of transitional services], for a period not exceeding [duration of transitional services]. There are also some transitional agreements between Asahi and ABI/SABMiller related to production, licensing, supply and distribution of PGM products, for periods not exceeding [duration of transitional agreements]. In view of the short duration of these agreements, the existence of these agreements should not undermine Asahi’s independence from ABI.

15. On the basis of the information provided by ABI and taking into account the reasoned opinion submitted by the Trustee, the Commission considers that Asahi is independent and unconnected to ABI/SABMiller and its affiliated undertakings.

(b) Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

16. Pursuant to clause 16 (b) of the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, a proven expertise and the incentives to maintain and developed the CEE Divestment Business as a viable and active competitive force in competition with ABI/SAB Miller and other competitors.

17. In terms of financial resources, Asahi is a listed company in the Tokyo Stock Exchange. As such, Asahi has different avenues for accessing funding across bank markets and highly liquid debt and equity capital markets. Similarly to the PGM acquisition, the CEE Divestment Business purchase is […] debt-financed, which has a significant impact on Asahi's financial resources. The expected leverage of Asahi after the acquisition is high although not significantly higher than those of its industry peers.

18. In order to finance the acquisition of the CEE Divestment Business, Asahi will benefit from […] debt facilities specifically set up for the acquisition: [details of Asahi's financing arrangements]. There are no indications that Asahi would not be able to contract to mid- to long-term financing.

19. Going forward it is Asahi's intention to finance the CEE Divestment Business' ongoing operations [Asahi's potential repayment strategy]. The Trustee considers that [Asahi's potential repayment strategy].

20. With respect to the proven business expertise in the sector, Asahi has over 120 years' experience in the production and distribution of beer with a leading market position on the very competitive Japanese market. Asahi has a deep understanding of beer markets and global beer supply chain. The proposed acquisition of the CEE Divestment business will combine Asahi's global and European experience (since its acquisition of the PGM business) with the profound understanding of the domestic markets of CEE's local and senior management

21. In terms of incentives, Asahi's strategic rationale driving its acquisition of the CEE Divestment Business is its long-standing aim to increase its share of overseas sales and join the ranks of the top global food and beverage companies. The acquisition of the CEE Divestment Business increases Asahi's geographical footprint and allows it to enter other regions beyond Japan and Asia-Pacific. [Asahi's future business strategy].

22. Asahi has demonstrated a clear strategic rationale for acquiring and developing the business which fits within its longstanding strategy of geographical expansion. Furthermore, the acquisition of the CEE Divestment Business will enable Asahi to reproduce the competitive constraint exerted by SABMiller in Europe prior to its acquisition by ABI. It is therefore important that Asahi extract the synergies resulting from the combination of the PGM and the CEE Divestment Business. In this respect, [description of potential synergies].

23. On the basis of the above and taking into account the reasoned opinion submitted by the Trustee, the Commission considers that Asahi has sufficient financial resources, proven expertise and incentives to maintain and develop the Divestment Business as a viable and active competitor in competition with ABI and other players.

(c) Absence of prima facie competition problems

24. Pursuant to the clause 16 (c) of the Commitments, the acquisition of the Divestment Business by the Purchaser must neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

25. In light of the information provided by ABI and Asahi, the acquisition of the CEE Divestment Business by Asahi does not create prima facie competition concerns. Although the CEE Divestment Business holds a sizable market position in the Czech Republic, Slovakia, Hungary, Romania and Poland (with a market share in the overall beer market exceeding 25% in all of the countries at stake), Asahi current presence in these markets is very limited, with modest increments. Likewise, in Italy, the Netherlands and the United Kingdom, Asahi has been present since its acquisition of the PGM Divestment Business but the increments brought by the CEE Divestment Business are always minor.

26. As regards the necessary approval from the relevant regulatory authorities, as mentioned earlier, the acquisition of the CEE Divestment Business by Asahi was notified to the Commission on 27 January 2017 and unconditionally cleared on 1st March 2017. The only other jurisdiction where the acquisition of the CEE Divestment Business was scrutinized by antitrust authorities is South Korea and clearance was granted on 11 January 2017.

27. On the basis of the above and taking into account the reasoned opinion submitted by the Trustee, the Commission concludes that the acquisition of the CEE Divestment Business by Asahi does not create prima facie competition concerns nor does it give rise to a risk that the implementation of the Commitments will be delayed.

III. ASSESSMENT OF THE AGREEMENTS

28. According to the Trustee, the SPA appears to scrupulously respect the requirements imposed by the Commitments. Likewise, the transitional services to be provided to Asahi pursuant to the TSA appear to be comprehensive, and generally in line with what is required pursuant to the Commitments

29. With respect to IP rights related to pipeline innovations, the Commitments require the transfer of the CEE Divestment Business, of assets necessary to ensure its viability and competitiveness, in particular, all related tangible and intangible assets (including IP rights). However the SPA only covered pipeline innovation related to CEE brands, which as a consequence excluded some pipeline innovations not yet used by the CEE Business but currently developed within this business. The SPA was therefore amended in order to cover [reference to confidential product-specific and IP-related information].

30. ABI accepted also to include called ‘dormant brands’, i.e., brands which despite having been previously registered or commercialised in the relevant CEE countries are currently not commercialised in the respective countries and/or in the wider region as brands to be licensed to Asahi. As these dormant brands were not included in the SPA, a due diligence work to identify and list these brands has been completed by ABI and the Hold Separate Manager on 8 March 2017.

31. The Trustee has confirmed on 8 March 2017 that the inclusion in the SPA of [reference to confidential product-specific and IP-related information], as well as the inclusion of dormant brands are consistent with the Commitments.

32. In light of the above and based on the information provided by ABI and taking into account the reasoned opinion submitted by the Trustee, the Commission concludes that the Transaction Documents are consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

33. On the basis of the above assessment, the Commission approves Asahi as a suitable purchaser of the CEE Divestment Business.

34. Moreover, on the basis of the Transaction Documents, the Commission also concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

35. This decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Documents. This decision does not constitute a confirmation that ABI has complied with its Commitments.

36. This decision is based on Section D of the Commitments attached to the Commission Decision of 24 May 2016.

For the Commission

(Signed)

Johannes LAITENBERGER
Director-General