

*Case No IV/M.093 -
APOLLINARIS /
SCHWEPPE*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(a) INAPPLICABILITY
Date: 24.06.1991

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PUBLIC VERSION

MERGER PROCEDURE -
Article 6(1)a decision

Registered with advice of delivery

To: notifying parties

Dear Sirs,

Subject : Case No. IV/M.093 - Apollinaris / Schweppes
Your notification of 22.05.1991 pursuant to Article 4 of
Council Regulation No. 4064/89

1. On 22 May 1991, Brau und Brunnen AG (B&B) and Cadbury Schweppes Plc (CS) notified their agreement to set up a joint venture (JV) in order to manufacture, prepare, bottle, distribute and sell mineral water and soft drinks under the Apollinaris trademarks (Apollinaris, Heppinger, Johannis Quell) in Germany, Austria and on other European markets and CS soft drinks in Germany and Austria.
2. After full examination of the notification, the Commission has come to the conclusion that the notified transaction does not fall within the scope of Council Regulation No. 4064/89 (Merger Regulation).

Community dimension

3. The proposed operation has a Community dimension. In 1990, the combined worldwide annual turnover of B&B and CS was 5.08 billion ECU (681 million and 4.407 million respectively). Virtually all of B&B's turnover is achieved in Germany, thereby exceeding the 250 million ECU threshold. CS's Community-wide turnover also exceeded 250 million ECU (2.970 million in 1990). The parties do not achieve more than two thirds of their turnover in one and the same Member State.

Concentration

4. The notified operation is, however, not a concentration within the meaning of Article 3 of the Merger Regulation.

5. Both parent companies intend to transfer parts of their beverages business to the joint venture. B&B is one of the leading German breweries with a considerable non-alcoholic beverages business, in particular mineral waters. The company will contribute to the joint venture its Apollinaris, Heppinger and Johannis Quell business, including trademarks, land, buildings and machinery. The mineral waters and soft drinks sold under these three trademarks are distributed throughout Germany. B&B will retain its regional mineral waters and soft drink business which is marketed under other trademarks in four different areas within Germany. CS manufactures confectionary and also non-alcoholic beverages. It sells soft drinks in particular, a large part of which are mostly distributed Community-wide mainly under the Schweppes trademark. The company will transfer the whole of its German and Austrian beverages business, including land, buildings and machinery, to the joint venture, but will retain its beverages business elsewhere.
6. In view of the value of the businesses contributed by the parties, B&B (through Apollinaris) initially will own 72% of the share capital of the JV with CS (through Schweppes) owning the remaining 28%. It is foreseen that the latter shall increase its shareholding up to 50% within the first five years of the JV's operation. Irrespective of their capital share the managing directors of the JV shall be elected by unanimous vote of both parties, and its supervisory board shall be composed of six members, two nominated by B&B and two by CS, the remaining two being representatives of the employees. It is also agreed that certain actions and decisions of the JV shall require the prior consent of the shareholders, including the approval of long range business, loans and annual budgets. It can therefore be concluded that the JV will be jointly controlled by the parents.
7. The parties agreement to establish a joint venture for the production and marketing of non-alcoholic beverages under the Apollinaris and Schweppes trademarks will have the effect of coordinating the competitive behaviour of undertakings which remain independent.
8. It has already been pointed out that both parties will only partially transfer their non-alcoholic beverages business to the joint venture. B&B will continue its activities with regard to regional mineral water and soft drinks. Likewise CS will only partially transfer the soft drinks business to the joint venture. It will remain in the same product market as the joint venture, selling those products independently in the remainder of the Community.

CS will in any event remain a competitor of B&B, although the company will transfer its present German and Austrian business to the joint venture. CS will in view of the nature of the products concerned have the realistic option to re-enter the German market. This is especially true for the mineral water market. Production substitutability is for non-alcoholic beverages, in particular for mineral waters and soft drinks, extremely high. CS disposes of production capacities, the commercial know-how and financial means to market a mineral water. It is already selling a mineral water in the UK-market ("Malvern Water"). Since the German mineral water market is growing, entering the German market represents for CS a commercially reasonable course in the light of all objective circumstances.

9. For the above reasons, and in particular in view of the only partial withdrawal of the parent companies which is likely to lead to a division of markets, the Commission has concluded that the notified operation does not constitute a concentration within the meaning of Article 3 of the Merger Regulation and consequently does not fall within the scope of application of that Regulation. This decision is adopted in application of Article 6 para 1(a) of the Merger Regulation.
10. The Commission will treat the notification pursuant to Article 5 of Commission Regulation No. 2367/90 as an application within the meaning of Article 2 or a notification within the meaning of Article 4 of Regulation No. 17 as it has been requested by the parties in their notification.

For the Commission,