Commission fines Dutch brewers over €273 million for a beer cartel

Geert WILS (1)

Introduction
On 18 April 2007, the Commission fined Dutch brewers Heineken, Grolsch and Bavaria a total of €273 783 000 for operating a cartel in the beer market in The Netherlands. The Commission's decision names the Heineken group, Grolsch and Bavaria, together with the InBev group which also participated in the cartel. Between 1996 and 1999 at least, the four brewers held numerous unofficial meetings, during which they coordinated prices and price increases of beer in The Netherlands. InBev received no fines as they provided decisive information about the cartel under the Commission's leniency programme.

The product
Beer consumption is around 80 litres per capita in the Netherlands. Around 60% of this consumption reaches the consumer through the off-trade consumption channel, the remaining 40% via the on-trade channel. The value of the beer market in the Netherlands is around one billion EUR per year.

Procedure
After the Commission, on its own initiative, discovered a cartel in the Belgian beer market, InBev provided information under the auspices of the Commission's leniency policy that it was also involved in cartels in other European countries. This led to surprise inspections of brewers in France, Luxembourg, Italy and the Netherlands in the Spring of 2000. These investigations led to decisions condemning cartels in Belgium (see Commission press release IP/01/1739; upheld by the CFI and ECJ, see CJE/07/13), France (see IP/04/1153; not appealed) and Luxembourg (see IP/01/1740; upheld by the CFI). The Italian investigation was closed without charges being brought.

The cartel
The evidence uncovered in the inspections, in particular handwritten notes taken at unofficial meetings and proof of the dates and places when these meetings took place, showed that Heineken, InBev, Grolsch and Bavaria ran an illegal cartel in the Netherlands. This fully confirms the corporate statements provided by InBev.

At meetings called “agenda meeting”, “Catherine meeting” or “sliding scale meeting”, the four brewers coordinated prices and price increases of beer in the Netherlands, both in the on-trade segment of the market — where consumption is on the premises (known as “horeca”, an acronym for ‘hotels, restaurants and cafés’) — and the off-trade market segment — consumption off the premises (mainly sold through supermarkets), including private label beer. Private label beer is either sold under a supermarket chain's own brand, or under a brand name unsupported by advertising.

In the on-trade market segment, the brewers coordinated the rebates granted to pubs and bars, which are the main element of pricing, using the “sliding scale” approach. Moreover, there is proof that they occasionally coordinated other commercial conditions offered to individual customers in the on-trade segment in the Netherlands, and engaged in customer allocation, both in the on-trade and the off-trade segment.

The Commission has evidence that in all four brewery groups high-ranking management (such as board members, the managing director and national sales managers) participated in the cartel meetings and discussions. There is also evidence that the companies were aware that their behaviour was illegal and took measures to avoid detection, such as using a panoply of code names and abbreviations to refer to their unofficial meetings and holding these meetings in hotels and restaurants.

InBev did not contest the facts outlined in the Commission's Statement of Objections.

Fines
As the Statement of Objection had been issued on August 2005, the 1998 Guidelines on fines (2) applied.

(1) Directorate-General for Competition, unit B-3. The content of this article does not necessarily reflect the official position of the European Communities. Responsibility for the information and views expressed lies entirely with the author

(2) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty, OJ C 9, 14.1.1998.
The cartel was classified as a ‘very serious infringement’, and the starting amount for the cartel member with the largest market share, Heineken, was set at €65 million. The starting amounts for the other parties were set at a proportionately lower level based on their own position in the market.

In order to ensure sufficient deterrence, the Commission applied multiplying factors to the largest undertakings: for InBev 2.5, for Heineken 2.5.

The cartel lasted more than 3 and a half years, which resulted in an increase of 35% in total of the starting amount increased by the multiplier where applicable.

As InBev was the first to inform the Commission of the existence of the cartel and met all the further conditions set by the 1996 Leniency Notice (3) it was granted full immunity from fines.

**Fines imposed and reductions granted by the Commission:**

<table>
<thead>
<tr>
<th>Name and location of company</th>
<th>Reduction under the Leniency Notice (%)</th>
<th>Reduction under the Leniency Notice (euros)</th>
<th>Exceptional reduction (euros)</th>
<th>Fine (euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heineken NV (NL) &amp; Heineken Nederland BV (NL) (*)</td>
<td>0</td>
<td>0</td>
<td>100 000</td>
<td>219 275 000</td>
</tr>
<tr>
<td>InBev NV (B) &amp; InBev Nederland NV (NL) (*)</td>
<td>100</td>
<td>84 375 000</td>
<td>--</td>
<td>0</td>
</tr>
<tr>
<td>Grolsch NV (NL)</td>
<td>0</td>
<td>0</td>
<td>100 000</td>
<td>31 658 000</td>
</tr>
<tr>
<td>Bavaria NV (NL)</td>
<td>0</td>
<td>0</td>
<td>100 000</td>
<td>22 850 000</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td>273 783 000</td>
</tr>
</tbody>
</table>

(*) Jointly and severally liable