

***Case No COMP/M.1925 -
SCOTTISH &
NEWCASTLE / GROUPE
DANONE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/07/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.07.2000
SG(2000)D/

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

to the notifying parties

Dear Madam/Sir,

Subject: Case No COMP/M.1925 – Scottish & Newcastle/ Groupe Danone

Your notification of 07/06/2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 07.06.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) by which Scottish & Newcastle plc (“S&N”) and Danone Group (“Danone”) combines some of their respective brewing and distribution businesses.
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. **Scottish & Newcastle plc** is a public limited company registered in Scotland. The S&N Group is active in brewing, wholesaling and beer retailing in the UK, and in brewing and wholesaling in Ireland. It also has leisure interests comprising of Center Parcs and Holiday Club Pointin’s both operated in the UK. S&N beer brands include Courage, John Smiths, McEwan’s and Newcastle Brown. It also produces beer under licence, which include Fosters, Kronenbourg 1664, Miller and Moleson.
4. **Groupe Danone SA** is a public company incorporated in France. It is active in dairy foods, biscuits, bottled water and beer. Danone beer brands include Kronenbourg 1664, Kanterbrau, Maes and Cristal. It also produces a number of beers under licence including Grimbergen, Brugs and Judas.

5. The proposed transaction will involve the combination of S&N brewing and distribution in the UK and Ireland with Danone's beer businesses in France and Belgium. Danone's beer business comprises of the beer business of Brasseries Kronenbourg SA; Brouwerijen Alken Maes N.V.; Elidis Holding SA; Soredis SA and Société Financière de Développement.

II. CONCENTRATION

6. The proposed operation will be carried out in two different transactional stages. Stage One lasts for a maximum of three years during which all of the relevant businesses will come under the management of S&N. Danone will have an option to require S&N to buy Danone's interest in the various businesses. Thus S&N will acquire sole control of Danone's beer businesses. At Stage Two, if the option has not been exercised, the relevant beer businesses of S&N and Danone will come under sole control by S&N which will own not less than 75% of the issued share capital of a new company created for that specific purpose. Danone will own the balance of the shares and will therefore become a minority shareholder. Consequently the whole operation will result in the acquisition of sole control by S&N of Danone's beer business.
7. The operation is therefore a concentration under Article 3 of the Merger Regulation since the operations described above will result in the acquisition of sole control by S&N over Danone's French and Belgian brewing and distribution businesses.

III. COMMUNITY DIMENSION

8. S&N and Danone have a combined aggregate world-wide turnover of more than EUR 5 billion¹ (S&N: EUR [*Deleted for publication ; business secret*] million and Danone's beer business: EUR [*Deleted for publication ; business secret*] million). Each of S&N and Danone has a Community-wide turnover in excess of EUR 250 million (S&N: EUR [*Deleted for publication ; business secret*] million and Danone's beer business: EUR [*Deleted for publication ; business secret*] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension and does not qualify for co-operation with the EFTA surveillance authority pursuant to the EEA Agreement

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

9. Post-merger, S&N will be active in production of beers in the UK, Ireland, France and Belgium. The sector concerned is the production and sale of branded beers.
10. In line with the Orkla/Volvo decision (Commission Decision of September 20, 1995, Case IV/M. 582), the beer market is considered distinct from wine and carbonated soft drinks. The parties reject further segmentation of the beer market in the UK for lager and ale.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

11. The distinction in product characteristics in the UK market between lager and ale is said to be blurred with the development of beers that combine some characteristics of the two beer types. In addition, akin to lager brands, national ale brands have emerged which are developed and promoted in a similar way to lager. In this case, however, it is not necessary for the Commission to decide on the precise market definition, as the operation does not raise any competitive concern irrespective of the definition chosen.
12. At the retail level it is usual to distinguish between on-trade (e.g. pubs and 'Horeca') and off-trade (e.g. off-licences and supermarkets)². However in this case this market definition can be left open as the precise definition does not affect the analysis of the case.

B. Relevant geographic market(s)

13. The geographic market is considered to be national with respect to brewing, wholesaling and retailing of beer. This is in line with previous decisions³.

C. Assessment

Calculation of market shares

14. The notifying party provided the market share information on the basis of two distinct approaches: (i) where beer produced under licence is included in the licensee's market share, and (ii) where beer produced under licence is included in the licensor's market share.
15. The notifying party favours the first approach because the licensee is generally responsible for the marketing in its country, and therefore the sales of beer produced under licence should be included in the licensee's market share. This is the approach adopted to date by the European Commission and the UK competition authorities.
16. When excluding the beer produced or packaged by S&N under licence or beer bought from third parties and merely distributed, S&N's would generate [0-10]% of the total production of beer in the UK and Brasseries Kronenbourg's [0-10]%. When including beer produced under licence, S&N and Brasseries Kronenbourg would generate [20-30]% and 0% respectively. In France there is no difference between these approaches as S&N beers are not brewed under licence in France. In Belgium, only a negligible amount of S&N beers are brewed under licence by Brouwerij Roman and Martins, this represents less than 0.5 % of the Belgian beer production. Therefore, it is not necessary to reach a definite conclusion on the exact method of calculation of market shares since the present operation would not generate any competitive concerns irrespective of the approach chosen.
17. The activities of S&N and Kronenbourg overlap in the wholesale of beer in France and Belgium and the retail of beer in France. S&N and Danone have no brewing activities in one and the same Member State and there is therefore no overlap in this area.

Wholesale in France and Belgium

² Stergio Delimitis v Henninger Brau AG, Judgement of the Court of February 28, 1991, Case C-234/89

³ Stergio Delimitis v Henninger Brau AG, Judgement of the Court of February 28, 1991, Case C-234/89

France

18. Danone (Brasseries Kronenbourg) produces locally and sells directly to retailers and wholesalers through its integrated distribution network, Distriboisson, which includes its own company Elidis, which operates 105 depots. Brasseries Kronenbourg also wholly owns or has invested in a number of wholesalers through Elidis Holding only for the on-trade premises. In France, Kronenbourg distributes its own brands as well as Budweiser, Tuborg, Kilkenny, Guinness, Carlsberg, Grimbergen and San Miguel. Kronenbourg accounts for [35-45]% of the on-trade sales and [35-45]% of the off-trade sales in France. It also has a [35-45]% share of the whole beer production in France.
19. S&N has little wholesale activity in France. S&N distributes beer to wholesalers and direct to on-trade outlets in France through its French subsidiary of Scottish Courage, AIC, which imports and distributes alcoholic beverages to wholesalers and on-trade outlets in France. The volume sold by S&N represents approximately [less than 1]% of the total French beer production, for the on-trade market it is less than [0-1]% and for the off-trade market less than [0-1]%.
20. On the basis of the foregoing and given in particular the *de minimis* overlap, the Commission concludes that the operation does not raise serious doubts as to its compatibility with the common market for wholesaling of beer in France.

Belgium

21. Alken Maes, created in 1988 through the merger of the brewery Maes with Alken-Kronenbourg, distributes in Belgium Kronenbourg 1664, Tourtel, Maes, Cristal, Ciney, Mort Subite, Grimbergen, San Miguel, Guinness/Kilkenny, Budweiser and Carlsberg/Tuborg. Alken Maes wholesales its products through independent wholesalers and supplies over a hundred independent wholesalers. Alken Maes has [10-20]% of the on-trade market and [10-20]% of the off-trade market.
22. The market shares for wholesaling as a whole are for Alken Maes [10-20]% and for S&N [less than 1]%. The main competitor is Interbrew with [50-60]% market share and Haacht, Palm and Moortgat which each have less than 5% market share.
23. The concentration does not give rise to competition concerns because the increment is small and does not change the market structure substantially.

Retail in France

24. In France, Kronenbourg operates 15 licensed on-trade outlets and S&N has an interest in three licensed on-trade outlets. Given that there are, in total approximately 180,000 licensed on-trade outlets in France and that the localisation of the parties' on-trade outlets is widely dispersed, the operation would generate an overlap of less than 1% and does not raise any competitive concerns in this area.

V. ANCILLARY RESTRAINTS

25. The notifying party has identified the following clauses to be directly related and necessary to the implementation of the concentration. The Framework Agreement and the Management Agreement relate to Stage One of the concentration.

Framework Agreement

26. The clause 7.1 contains certain restrictions which will apply following the transfer of the Kronenbourg Business (Stage One of the operation). Firstly, it provides for a non-compete clause: Danone will not acquire an interest in the shares or businesses of certain businesses in the Core territories (UK, France, Belgium, Ireland, Switzerland, Luxembourg, Monaco and subject to certain circumstances when they fall outside the scope of this restriction, Spain and Italy); in the Other European Territories nor in any activities which constitute a Competing Business (brewing, wholesale and retailing of beer) in any Competing Territory (Europe, any other country where the parties have more than 5% market share). Second, it provides for a non-solicitation clause: Danone will not solicit or contact the personnel of the new entity. The duration of clause 7.1 is either two years from the date of the agreement or three months from the date on which Danone has sold its entire holding of Kronenbourg Shares to S&N, whichever is the earlier.
27. The clause 7.2 contains the same restrictions as in 7.1, except that Danone also agrees not to carry on or be engaged in any activities which constitute a Competing Business in a Competing Territory. The duration of the clause is until 17 March 2003 at the latest and two years from that date on which Danone has sold its entire holding of Kronenbourg shares to S&N.
28. The Commission regards the geographical scope of the restrictions 7.1 and 7.2 as ancillary only to the extent that they relate to the areas where the transferred businesses are currently active. Furthermore, the restriction not to acquire an interest in a competing business is only regarded as ancillary if the interest confers to Danone any management function or any material influence on that company. The duration of the restrictions is ancillary to the extent that it does not exceed three years.

Management Agreement

29. According to Clause 3.2.1, S&N undertakes that it will not make any major acquisitions without prior written consent of Danone.
30. According to Clause 8.1.5 S&N undertakes that neither Beamish & Crawford, Scottish Courage nor any other of its subsidiaries will make any major acquisitions without written consent of Danone.
31. According to Clause 10, if Danone objects to a major acquisition and where the target company is located outside United Kingdom, Ireland, Belgium, France, Italy or Spain, S&N will be entitled to proceed alone with such an acquisition.
32. The Commission regards these restrictions ancillary provided that the duration is limited to three years.

VI. CONCLUSION

33. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

signed by

M. MONTI

Member of the Commission

For the Commission