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Case No COMP/M.2152 - SCOTTISH & NEWCASTLE / JV / CENTRALCER

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 22/11/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.11.2000
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

Subject: Case No COMP/M. 2152 – Scottish & Newcastle/Centralcer
Notification of 18.10.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 18.10.2000**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation"). Scottish & Newcastle plc ("S&N") and VTR SGPS SA ("VTR") propose to acquire joint control of the Portuguese undertaking Centralcontrol SGPS SA, parent company of the Centralcer group of companies including Centralcer – Central de Cervejas S.A.'s ("Centralcer").

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 THEIR ACTIVITIES

3. **S&N** is a public limited company registered in Scotland and listed on the London and Amsterdam Stock Exchanges. The S&N Group is active in brewing, wholesaling and beer retailing in the UK, France and Belgium and in brewing and wholesaling in the Republic of Ireland. It recently acquired control of the beer business of Brasseries Kronenbourg S.A. and Brouwerij Alken Maes N.V. [1]. S&N beer brands include Courage, John Smiths, McEwan's and Newcastle Brown. It also produces beer under licence, including Fosters, Miller and Moleson. It also has leisure interests comprising of Center Parcs and Holiday Club Pontin's both operated in the UK.

[1] Case COMP/M.1925 – *Scottish & Newcastle/Danone*.

4. VTR is the holding company for the interests of the following Portuguese companies : Banco Espírito Santo S.A. (“BES”), Parfil S.G.P.S., S.A. (“Parfil”), Fundação Bissaya Barreto (“FBB”), Olinveste and STDP-SGPS, S.A.. BES main business activities are retail and corporate banking, portfolio management and other banking services provided through a network of branches both in Portugal and abroad. Parfil, Olinveste and STDP are holding companies, the former representing a number of family businesses that formerly owned Centralcer and the two remaining ones being investment companies. FBB is a non-profit making public interest foundation with social objectives based in Portugal.

5. **Centralcontrol** is the parent company of the Centralcer group of companies including Centralcer – Central de Cervejas S.A. whose main activities are the production and distribution of beverages. Centralcer produces a number of brands of beer, soft drinks and sells wine and bottled water. Centralcer’s principal shareholder was the Colombian Santo Domingo group until March 2000, when it was sold to the Parfil holding company. At present, Centralcontrol is owned by the holding company, VTR, which represents the interests of the above referred five shareholders.

II. THE OPERATION

6. Pursuant to a subscription agreement, the proposed transaction consists of the acquisition by S&N of a stake in the Portuguese brewer Centralcer through a 49% shareholding in Centralcontrol, holding 100 % in Centralcer. The remaining 51% in Centralcontrol will be held by VTR.

III. CONCENTRATION

7. On completion, VTR and S&N will enter into a Shareholders’ Agreement which will confer joint control over Centralcer on S&N and VTR. VTR and S&N will have equal representation in the executive committee and will be able to veto a number of matters which relate to strategic decisions (annual budget, business plan, etc.). The transaction is therefore a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2]. Each of VTR and S&N have a Community-wide turnover in excess of EUR 250 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.

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[2] 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.

V. COMPETITIVE ASSESSMENT

1. Relevant product markets

9. The sector concerned is the production and sale of branded beers. 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. Whilst it has in previous cases been suggested that further segmentation is possible, the parties submit that no distinction is necessary in the present case because of the homogeneous nature of the beer market in Portugal. The market test conducted by the Commission has largely confirmed this view.

10. Three different activities can be considered in the beer sector, namely brewing, wholesaling and retailing. However there is no need in this case to decide whether each of these activities constitutes a different product market since even on the narrowest basis the assessment will remain similar.

11. At the retail level it is usual to distinguish between the on-trade (e.g. pubs and 'Horeca') and the off-trade (e.g. off-licences and supermarkets)[3]. In Portugal, which has a café-culture, approximatively 70 % of the market is sales to on-trade. However in this case this market definition can be left open as the precise definition does not affect the analysis of the case.

2. Relevant geographic markets

12. The parties submitted that the geographic market is national with respect to brewing, wholesaling and retailing of beer. This is in line with the Stergio Delimitis Case where the Court' assessment was based on the facts that :

- most beer supply agreements are still entered into at a national level;
- the characteristics of the beer consumed, in terms of labelling and different consumer preferences, support a national market definition ; and
- low trade flows, mainly due to the fact that beer is a bulky product subject to high transport costs, and to the specificity of beer distribution operations.

13. These factors have been fully confirmed by the Commission's market test in this case. Therefore, in line with previous decisions, the geographic market will considered to be national with respect to brewing, wholesaling and retailing of beer.

3. Assessment

14. This is the fourth concentration in the beer sector handled under the Merger Regulation in one year. Others are : M.1925 Scottish & Newcastle/Danone, M.2044 Interbrew/Bass and M.1155 Heineken/Cruzcampo.

15. Regarding brewing and retailing activities, there is no overlap between the parties. The only overlap identified by the parties is in the <u>wholesale activity in Portugal.</u>

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

16. The Portuguese beer market is a highly concentrated one, with two main players, Unicer and Centralcer which have respectively [50-60]% and [30-40]% of the market. Unicer is the market leader in Portugal and since 1991 an important part of its shareholding is held by Carlsberg. The remaining [0-5]% of the beer market is divided between four or five undertakings. Concerns of duopolistic dominance have been raised during the market test. Most of the answers state that there is already a duopolistic situation in the market but only a few respondents considered that the proposed transaction would result in a strengthening of any such dominant position.

17. The parties state that the operation will allow Centralcer to compete more efficiently in the Portuguese market and that the partnership between Centralcer and S&N will bring a balance to the one between Carlsberg and Unicer.

18. By way of background, in July 2000, the Portuguese Competition Council issued a decision condemning both Unicer and Centralcer for anti-competitive practices regarding exclusive distribution contracts with wholesalers, namely abuse of economic dependence and resale price fixing. Centralcer must comply with the competition authority's decision by the 24th of November 2000, thereby modifying its existing distribution contracts.

19. As a result of the notified operation, the overlap between the parties would be de minimis : it consists of the supply of twelve wholesale customers in Portugal supplied by S&N International and Danone for the distribution of Kronenbourg beers. These supply agreements passed to S&N pursuant to its acquisition of Brasseries Kronenbourg SA. Sales of Kronenbourg account for [less than 1 %] of the Portuguese beer market. Moreover this market share has been stable for years, as the Portuguese beer market is dominated by local brands. There are several distribution alternatives to any potential entrant but foreign beers are not very well accepted in Portugal due to differing consumer tastes. Foreign brands have a combined share of only [0-5] % which corresponds mostly to consumption by tourists.

20. The operation does not generate any incentive for Unicer and Centralcer to coordinate and there is no suggestion that any collective dominant position in the Portuguese market would be created or strengthened as a result of the concentration.

21. In the light of these elements, the proposed operation would not create or strengthen any dominant position in the beer sector in Portugal.

VI. CONCLUSION

22. 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.

For the Commission,

Mario Monti
Member of the Commission