

***Case No COMP/M.2387 -
HEINEKEN /
BAYERISCHE
BRAUHOLDING / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/07/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.07.2001

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2387 - Heineken / Bayerische Brauholding / JV
Notification of 12.06.2001 pursuant to Article 4 of Council Regulation
No 4064/89**

1. On 12.06.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the undertakings Heineken International B.V., belonging to the Heineken-group and Bayerische Brauholding AG, belonging to the Schörghuber group, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Brau Holding International AG, by way of purchase of shares in a newly created company constituting a joint venture.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 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

3. Heineken International B.V. ("Heineken") is the holding company of the international activities of the Dutch based Heineken group. The Heineken group is active in the fields of production, commercialisation and distribution of beer and other beverages world wide. Heineken has subsidiaries in most of the member states of the European Union.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. Bayerische BrauHolding AG ("BBH") is the German based holding company for the beer and other beverage business of the Schörghuber Unternehmensgruppe. It is currently 73.58% owned by the Schörghuber Unternehmensgruppe, a diversified group of companies which, apart from the beverage business, has interests mainly in real estate, hotels and aircraft leasing.

II. THE OPERATION

5. For purposes of this transaction, BBH will contribute all of its beer business to the joint venture company Brau Holding International AG ("BHI") which will thus become the holding company for Schörghuber's/BBH's beer business, operating primarily under its Paulaner and Kulmbacher brands. Heineken will not contribute any activities to BHI. BBH's activities in the non-alcoholic beverage business will remain outside of BHI.
6. The notified transaction entails the acquisition of joint control by Heineken, together with BBH, in BHI. This joint venture will be active in the production and distribution of beer mainly in Germany and encompasses BBH's entire current beer business. The transfer of the BHI shares from BBH to Heineken will become effective in January 2002.

III. FULL FUNCTION JOINT VENTURE

7. Since the JV takes over all the beer business activities, assets, personnel, etc. on a lasting basis and will independently from the parents perform all activities related to the beer business, the JV will operate as an autonomous economic entity and the transaction constitutes a concentration under Article 3 (1)b of the Merger Regulation.

IV. JOINT CONTROL

8. BHI will be 50.1% held by BBH and 49.9% held by Heineken. However, [...], BHI will be jointly controlled by BBH and Heineken. [...].

V. COMMUNITY DIMENSION

9. The Parties have a combined aggregate world-wide turnover in excess of € 5,000 million (Heineken, € 7,054 million and BBH € 1,180 million. Each of them has a Community-wide turnover in excess of € 250 million (Heineken, € [...] million and BBH, € [...] 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.

VI. COMPETITIVE ASSESSMENT

A. The product market

10. The main sector concerned by the proposed transaction is the production and distribution of beer, where horizontal overlaps in the Parties' activities may occur in Italy, France, Germany, Spain, the Netherlands and Greece. In accordance with

Commission Decisional practice², the relevant product market is the market for the production and distribution of beer, distinct from other beverages.

11. In line with Commission decisional practice³, the Parties distinguish markets in terms of distribution channels, namely the Horeca Channel (pubs, hotels and restaurants, also called on-trade) and the Food Channel (supermarkets etc., also called off-trade). However, for the purpose of the present case, it is not necessary to determine whether or not this distinction applies, because, on the basis of any alternative market definition, the concentration does not create or strengthen a dominant position.

B. The geographic markets

12. Following the decisional practice of the Commission⁴, the notifying parties submit that, from a geographical point of view, the market for production and distribution of beer has to be considered national in scope. The Commission's market investigation has confirmed this.

C. Assessment

Germany, France, Spain, the Netherlands and Greece.

13. In the German market, aggregated market shares remain in any case below 15%. In Italy, France, Spain, the Netherlands and Greece aggregate market shares exceed 15%. However, in the possible markets considered in these Member States, there are either no overlaps or only insignificant overlaps between the Parties (market share additions of less than 1%). In none of those markets, therefore, the concentration creates or strengthens a dominant position as a result of which effective competition would be significantly impeded.

Italy

14. On the Italian market, the position of the Parties is as follows:

(a) **Market Shares Parties: Overall Italy, Food and Horeca channels together (sources: internal estimates by the Parties)**

2000	BBH	Heineken	Total
Market Share	[0-5]%	[30-35]%	[35-40]%

² Case no. IV/ M.582, ORKLA/ Volvo, of 20.09.1995

³ recently in M.1925-Scottish & Newcastle/Groupe Danone, decision of 11.07.2000

⁴ Case no. COMP/M.1925-Scottish & Newcastle/Groupe Danone

In view of the insignificant market share addition in this possible market encompassing both channels the concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded.

(b) Food channel

In the Food channel, BBH is practically absent, with a share of far below 1%. In view of the insignificant market share addition, the concentration will not create or strengthen a dominant position in that possible market as a result of which effective competition would be significantly impeded.

(c) *Market Shares Parties: Horeca channel*

2000	BBH	Heineken	Total
Market Share	[0-5]%	[30-35]%	[35-40]%

15. On average over the last three years, BBH's market share addition in this segment is only [0-5]% for an aggregate share of [35-40]%.

The Parties' competitors in the Horeca Channel on the Italian market have the following position:

2000	Market Share (hl.)
Peroni	[15-25]%
Carlsberg	[5-15]%
Forst	[5-15]%
Imports by independents	[25-35]%

Parties' estimates.

16. Peroni and Carlsberg are strong competitors in this possible market. The Parties argue that, in addition, the Italian market is a market of steady and moderate growth, in which about 25-30% of consumption is imported from EEA countries (mainly keg beer). Over the last three years, at least 9 new brands have been marketed as imports. Nationally, new brewers have also emerged, such as Castello di Udine, Hausbrand, SIDA ("Birra Morena") and others. In short, the Parties submit that the entry barriers

are low, as witnessed by new entries and imports and over capacity in surrounding countries exert competitive pressure. This view is supported by the Commission's market examination.

More specifically in the Horeca channel, imports of keg beer are steadily growing (from 36% in 1994 to about 45% in 2000) and are mostly made by importers and wholesalers that are independent of brewers. Therefore it may be expected that imports will continue to cover an increasing proportion of beer sold through the Horeca channel. In addition, at present the number of exclusive agreements and their duration are limited.

17. In view of the competitive structure of the Italian Horeca market, it appears that sufficient competition remains after the operation. It can thus be concluded that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

VII. CONCLUSION

18. In view of the above, the concentration would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part thereof. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) N° 4064/89.

For the Commission

(signed)

Mario MONTI

Member of the Commission