EN

Case No COMP/M.2569 - INTERBREW / BECK'S

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 26/10/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.10.2001
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

<u>Subject</u>: Case No COMP/M.2569 – INTERBREW/BECK'S
Notification of 14.09.2001 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 14.09.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[2] by which the Belgian Company Interbrew S.A. ("Interbrew") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the German company Brauerei Beck's GmbH and Co ("Beck's") by way of purchase of shares.

2. In the course of the proceedings Interbrew submitted two commitments in accordance with Article 6(2) of the Merger Regulation. The first of these was in relation to the exclusive distribution agreement that exists between Beck’s and Scottish and Newcastle (“S&N”) in relation to the distribution of Beck’s in the UK. The second commitment concerned the impending implementation of the remedies in the UK which followed the UK authorities’ investigation into Interbrew’s previous acquisition of Bass Brewers. In relation to the first of these, since the commitment was offered the distribution

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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).

2 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).

agreement between S&N and Beck's has been modified in such a way that it is not necessary to make this decision conditional upon the commitment (see paragraph 29 below). In relation to the second commitment, the Commission considers that sufficient procedural certainty exists in relation to the implementation of the previous UK remedies for it not to be necessary to impose an obligation upon Interbrew to implement the previous remedies.

3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

4. Interbrew is principally involved in the production, marketing and supply of beer in the Americas, Western, Central and Eastern Europe and Asia Pacific. Interbrew's beers are sold in a total of 110 countries.

5. Beck's is involved in the brewing and marketing of beer in Germany, Eastern and Central Europe, the UK, the United States and approximately 120 other countries around the world. It is also active in the production and marketing of non-alcoholic drinks in Germany and in producing and marketing container glass for the German market.

II. THE OPERATION

6. The proposed operation involves the acquisition of sole control by Interbrew over Beck's by way of the purchase by Interbrew, through its wholly-owned German subsidiary Ameli GmbH of the entirety of the partnership interests of Beck's. Interbrew will effectively become the 100% owner of Beck's.

III. CONCENTRATION

7. The concentration concerns the acquisition by Interbrew of sole control of Beck's. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Regulation 4064/89, the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion[3] [Interbrew €5,657 million; Beck's €863 million]. Each of Interbrew and Beck's have a Community-wide turnover in excess of €250 million [Interbrew €[...] million; Beck's €[...] million], but they do not each 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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3 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

A. Relevant Product Markets

9. The notifying party has submitted that there are two relevant product markets, namely those for all beer, on-trade and off-trade respectively. Interbrew has submitted that the markets should not be further segmented by whatever criterion, except by on- and off-trade channel. However, in its notification Interbrew also recognises that as Beck's is a single brand company, and this brand is classified as a premium lager in many countries, it may be necessary to examine whether a separate relevant product market exists for premium lager.

10. Interbrew has argued that despite the degree of product differentiation found in most beer markets, customers treat beers of all types as a single category, because (i) the essential ingredients of most beers are the same; (ii) the alcoholic strength of about 90% of beers of all types in the EU is fairly constant, within the range 3% to 7%; (iii) with certain rare exceptions, all types of beer are consumed in the same situations and occasions; and (iv) the portion and essential presentation of most beers is unitary, exhibiting variations upon themes, rather than fundamental differences.

11. In relation to the possibility that there may exist separate segments for ale and for lager, and that within the lager segment there may exist separate segments for standard lager and for premium lager, Interbrew states that "there is very little by quality, by taste, and by presentation and packaging to distinguish one lager from another." Furthermore, the great advertising and marketing exertions made by brewers are crucial in sustaining a notion of premium status in the public eye, and that without these exertions, premium brands collapse.

12. Interbrew also highlight that there are significant price differences between premium and other, mainstream, products. The price marker that Interbrew adopts for beers which it considers have premium positioning is 20% or more than the average price of mainstream lagers in the relevant geographic areas. The results of the Commission's market investigation support this estimate of the price mark-up for premium products.

13. Interbrew argues that supply-side considerations are further evidence in favour of a single product market. In particular, they argue that the costs of switching production and distribution from one beer to another are not material because most breweries can be used to make many different kinds of beer and, moreover, all beer types and certainly both premium and mainstream lagers can be distributed along the same channels. Regardless of the considerable efforts required to maintain premium status (see paragraph 11), Interbrew has stated that as branding spans beer types, investments in brands can be more readily transferred to another beer type without significant further investment specific to the new beer.

14. The Commission's market investigation in this case has highlighted that there exists a variety of opinions on the scope of the relevant product market. While all respondents agree that it is appropriate to define separate markets for the on- and for the off-trades, not all agree that beer is a single product market. Some have argued that there exist separate markets for lager and for ale. Others (including brewers and retailers on the on- and off-trades) have argued that these should be further sub-divided into premium and standard segments. For example, one respondent stated that, at least insofar as the UK is concerned, the beer market sub-divides between premium and standard categories in terms of both lager and ale. The reasons given for this are that (i) there is a price

differential between ale and lager at both the wholesale and the retail level; (ii) UK brewers and industry bodies internally analyse their own business and the UK beer market in terms of the narrower product markets; the purchasing decisions of retail outlets are driven by brand position within these narrower product markets (in particular whether or not brands are positioned at number one or two in the segment) and (iv) consumers consider premium and standard lager and ale as different products.

15. While it may be possible to consider the supply of premium lager to be a separate relevant market within an overall market for the supply of beer (on- and off-trade), for the purposes of this decision it is not necessary to define the precise delineation of the relevant market(s), as the combination of the parties' activities does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it, however the markets are defined.

B. Relevant Geographic Markets

16. The notifying party submits that while there are a number of international brands which exist in different Member States and there are significant imports in several EU countries which would suggest a geographic market wider than national, it does not dispute the Commission's previous findings[4] that the geographic markets for beverages are national.

17. The notifying party recognises that Germany may be an exception to the position that beer markets are likely to be at least national. In a recent *Bundeskartellamt* decision in Holsten[5], it was determined that the relevant geographic markets in Germany were no larger than the so-called broad *Kernabsatzgebeit*, which was defined as that territory around a brewery where about 90% of its sales are made.

18. For the purposes of this decision it is not necessary to define the precise delineation of the relevant market(s), as the combination of the parties' activities does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it, however the markets are defined.

C. Impact of the Concentration

19. On the basis that the relevant product market is that for all beer, the concentration would lead to the following affected markets: Belgium (on-trade); the Netherlands (on-trade) and the UK (on- and off-trade).

20. If a narrower product market of premium lager were considered relevant, the affected markets would be: Italy (on-trade); the Netherlands (on-trade) and the UK (on- and off-trade).

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[4] See for example, Nestlé/Perrier, Guinness/Grand Metropolitan, Coca-Cola/Carlsberg and Orkla/Volvo

[5] Decision of 26 April 2000; B2 – 15963 – U – 8/00

i Belgium

21. In Belgium, Interbrew/Beck's' combined share in the Belgian all-beer on-trade market is [50-60]%, of which the Beck's increment is [<1]%[6]. On the all-beer off-trade market, Interbrew/Beck's combined share is [50-60]%, with a minimal 330 hectolitre increment from Beck's[7] (considerably less than [1]%).

22. In Belgium, Interbrew/Beck's' combined share of the on-trade premium lager market is [10-20]% (Interbrew [0-10]%, Beck's [0-10]%) and their combined share of the off-trade premium market is [0-10]% with no increment from Beck's.

ii Italy

23. Interbrew is distributed in Italy through Heineken and through its own subsidiary BBW. There is a question whether the market structure should be assessed by allocating the market shares of beers distributed through exclusive distribution agreements to the distributor or to the brand owner. For the purposes of the current assessment it is not necessary to reach a definitive view on this as even on the worst case scenario, with all of the share allocated to Interbrew, no competition concerns arise in Italy.

24. On the basis that these market shares are all allocated to Interbrew, the only possible market in which the combined market share would exceed 15% is the premium lager on-trade segment, where the combined Interbrew/Beck's share would be [30-35]% (Interbrew [5-10]%, Beck's [20-25]%). In this segment, the combined entity will face a number of significant players including Heineken, Peroni and Carlsberg[8].

iii The Netherlands

25. In the Netherlands, the combined entity would have [15-20]% of the all-beer on-trade market. The increment resulting from the acquisition of Beck's would be [<1]%.

iv The United Kingdom

26. The competitive assessment in the UK has to be set against the backdrop of doubt that currently exists in relation to the precise remedy that Interbrew will be required to implement following the UK authorities' investigation, and subsequent adverse finding, into Interbrew's acquisition of the Bass brewing business in 2000.

27. There are two possible remedies that may be implemented to resolve this adverse finding[9]. One, the "Carling brewers remedy" involves Interbrew retaining the businesses of Bass Brewers in Scotland and Northern Ireland, together with the breweries at Glasgow and Belfast and the Tennent's and Bass Ale brands. The remainder of the Bass

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[6] Data for all countries is presented as provided in the notification by Interbrew. This is based upon Canadean data consistent across all countries.

[7] This is on the basis of Beck's actual sales in the off-trade segment of the Belgian market, excluding sales of [...] hl for duty free sales to ships suppliers in Antwerp for consumption outside the EU.

[8] Data were not provided for on-trade separately, but these competitors have the following market shares for all premium lager sales: Heineken 26.7%; Peroni 13.5% and Carlsberg 11.4%.

[9] See the Secretary of State for Trade & Industry's announcement of 18 September 2001

Brewers UK business, including the Carling brand, together with the Scottish element of Bass Brewers' on-trade national account customers, would be sold to a buyer approved by the UK's Director General of Fair Trading. If Interbrew is unable to implement the Carling brewers remedy, it will be required by the UK authorities to implement the "Bass brewers remedy" which effectively involves the divestment of all of the Bass Brewers business. If the Bass brewers remedy is implemented, Interbrew's resulting market shares will be lower than if the Carling brewers remedy is implemented.

28. If Beck's shares were allocated to Interbrew, according to data presented to the Commission by Interbrew, its highest combined market shares would come about if the Carling brewers remedy were implemented. On that basis, the Interbrew/Beck's combined market shares would be [20-30]% for the UK all-beer on-trade market (Beck's [<1]%); [15-25]% for the all-beer off-trade market (Beck's [<5]%); [35-45]% for the premium lager on-trade market (Beck's [0-10]%) and [20-30]% for the premium lager off-trade market (Beck's [0-10]%). The increments in market share in a market for all beer (on- or off-trade) are too small for any competition concerns to arise as a result of the operation.

29. In order to assess Interbrew's market position after the acquisition of Beck's, it is necessary to consider the nature of the exclusive distribution agreement that is in place between Beck's and S&N. It is also important to note that, since the announcement of Interbrew's acquisition of Beck's, the terms of this distribution agreement have been modified. Under the terms of the agreement prior to its amendments, the agreement would have provided for S&N (as distributor) and Interbrew (as owner of Beck's) to [description of obligations under the terms of the agreement]. The modifications that have been agreed between S&N and Interbrew[10] remove [description of relationship] that would otherwise have existed between S&N and Interbrew. Under the terms of the revised distribution agreement S&N [description of obligations under the terms of the revised agreement].

30. Given [description of relationship between S&N and Beck's] in the UK, it is arguable that the Beck's market shares should be allocated to S&N for the duration of the distribution agreement, rather than being viewed as an increment to Interbrew's market shares in the UK. Given that Beck's will continue to be distributed by S&N under the terms of the revised distribution agreement, it is arguable that there will in effect be no structural change in the immediate future.

31. In relation to the premium lager on-trade market, the Commission has received a range of market share estimates during its market investigation. While the structure of the market provided to the Commission by Interbrew has been broadly confirmed, it also appears that Interbrew's estimates of its own position are higher than others' estimates of Interbrew's position. In general, the estimates of Interbrew's position in the premium lager on-trade segment are between 35% and 40%. Estimates of the competitors' market shares in the premium lager on-trade segment are as follows: S&N 15%-25%; Carlsberg-Tetley 5-15%; Anheuser Busch 5%-15%.

32. In the premium lager on-trade segment, even if Beck's market shares were allocated to Interbrew, the operation does not raise concerns about the creation or strengthening of either a single dominant position for Interbrew or a collectively dominant position for

[10] As provided to the Commission in a letter from Interbrew dated 21October 2001.

Interbrew together with one or more of the other players in the market. Neither do any such concerns arise on the basis of a wider product market for all beer.

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.

For the Commission

(signed)
Mario MONTI
Member of the Commission