

***Case No COMP/M.3032 -
INTERBREW /
BRAUERGILDE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.12.2002

SG (2002) D/233388

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3032 - Interbrew/Brauergilde
Notification of 18.11.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 18.11.2002 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the Belgian undertaking Interbrew S.A. ("Interbrew") acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the German undertaking Brauergilde Hannover AG ("Brauergilde") by way of purchase of shares.
2. 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 and with the EEA Agreement.

I. THE PARTIES

3. Interbrew is principally involved in the production, marketing and supply of beer in the Americas, Western, Central and Eastern Europe and Asia Pacific. Its portfolio of beer brands is made up of a combination of domestic and international brands. Interbrew is also active in the production of non-alcoholic drinks and flavoured alcoholic beverages.

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. Brauergilde is the ultimate holding company of the Gilde group of companies (“the Gilde Group”). The Gilde Group is a traditional brewing group involved in the brewing and retail of beer, related products and non-alcoholic beverages in Germany.

II. THE OPERATION AND THE CONCENTRATION

5. The proposed operation consists in the acquisition of sole control by Interbrew over Brauergilde by way of purchase of shares through Interbrews wholly owned indirect German subsidiary Ameli GmbH. Through the proposed operation Interbrew will acquire a stake of [>85] % in Brauergilde and thus sole control.
6. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3 of Regulation 4064/89.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Interbrew € 6.604,3 million; Gilde Group € 269,9 million). Each of them have a Community-wide turnover in excess of EUR 250 million (Interbrew € [...] million; Gilde Group € [...] 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.

IV. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

8. The main overlap between the parties’ activities concerns production and distribution of beer. There is a very limited overlap in flavoured alcoholic beverages (FAB) in Germany, where however both parties have only very limited activities and their combined market share represents less than [0-10] % on the FAB market. If one would consider the German malt beverage "Vitamalz" as being part of the non-alcoholic beverages market (and not the beer market) very minor overlaps could be discerned on Germany's non-alcoholic beverages market. Due to these de minimis overlaps and minor market shares the only relevant markets to be considered in depth are those in the area of beer.
9. As submitted by the notifying party and generally accepted in former Commission's decisions² and by the ECJ³ distinct markets for beer sold in retail outlets (“off-trade” consumption) and beer sold for consumption at points of sale (“on-trade” consumption) are to be distinguished.
10. The issue as to whether or not there are distinct markets for different kinds of beer is less clear, and in any event the answer could vary according to the national market in question. Interbrew argues on this subject that there is no justification for treating different types of beer as separate markets. More specifically, it states that the distinction between lager beer, ale and stout exists only in certain countries (for instance in UK) and not in others (for instance in Germany). In addition Interbrew contends that

² Commission Decision of 22.08.2000, case No M.2044, Interbrew/Bass, para. 24.

³ Stergios Delimitis v. Henninger Bräu AG, case C-234/89, [1990] ECR I-395, para.16.

there is also no basis on which to treat premium brands and mainstream brands as separate markets.

11. Different research and data consultancies in the drinks sector do not have common criteria to distinguish for instance premium, even "superpremium", and standard beer. The market investigation has shown, that even though the breweries tend to declare one or more of their brands to belong to the premium segment, there were no common criteria for these regroupings. Indeed, it appears that different aspects such as the price (e.g. 20% above the other beer prices), the geographic scope of distribution (e.g. nationwide), the marketing expenses or just the "image" attributed to a certain brand could be decisive.
12. Furthermore, the market investigation has shown that in Germany a product market definition relying on the distinction between lager and ale does not make sense. The large majority of German beers are "Pilsner" beers and other possible regroupings vary considerably according to German regional preferences.
13. Considering the British beer markets it seems more likely, as shown in previous decisions⁴, to consider Lager on the one hand and Ale on the other hand, as well as the premium and standard segments, as possible distinct product markets. However, it could be finally left open, whether these subgroups constitute product markets on their own.
14. For the purpose of this decision it can be left open, too, whether a segmentation of the all-beer product markets is appropriate, as under any alternative consideration the parties' activities do 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 product markets are defined.

B. Relevant Geographic Markets

15. The notifying party submits that there are a number of international brands, which exist in different Member States. However, it does not dispute the Commission's previous findings⁵ that the geographic markets should be national.
16. The notifying party recognises that Germany may be an exception to the position that beer markets are likely to be at least national. The German *Bundeskartellamt* considers that relevant geographic markets in Germany were no larger than the so-called core sales area (*Kernabsatzgebiet*, in the following: "CSA"), which is defined as the territory around a brewery where about 90% of its sales are made.
17. Considering the CSA's as the relevant geographic markets, a further product-market segmentation into Premium and Standard beers is not appropriate. Premium beers, whatever the exact definition to distinguish these from Standard beer may be, will not be limited to a CSA, but are - that is a core element of their qualification for being Premium - known and distributed on a wider market, achieving in most cases the scope of a national market or even wider.

⁴ Commission Decision of 22.08.2000, case No M.2044, Interbrew/Bass

⁵ Interbrew/Beck's, Nestlé/Perrier, Guinness/Grand Metropolitan, Coca-Cola/Carlsberg, Orkla/Volvo

18. For the purposes of this decision it is not necessary to define the precise delineation of the relevant market(s) in Germany, 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 geographic markets are defined.

C. Impact of the Concentration

19. The main overlaps between the parties to the operation are in the production and distribution of beer in Germany, the UK and to a small extent in Italy and Belgium.
20. Considering any proposed segmentation of the markets, the affected markets are (i) the UK all beer off-trade market, (ii) the UK premium lager off-trade segment and (iii) the German premium lager off-trade segment. The table below shows the market shares held by the merging parties in 2001, in the above mentioned markets.

Market Shares of the Parties (2001)

	All beer Off-Trade UK	Premium Lager Beer Off-Trade UK	Premium Lager Beer Off-Trade Germany
Interbrew	[10-20]%	[30-40]%	[0-10]%
Gilde	[0-10]%	[0-10]%	[10-20]%
Total	[10-20]%	[30-40]%	[20-30]%

On the Belgium all-beer off-trade market the increment of [0-10]% due to Gilde is negligible, even though Interbrew holds already [55-65]% market shares. The same is true for the Italian all-beer premium lager segment, where Gilde adds only [0-10]% to Interbrew's market share which amounts to [10-20]%.

UK

21. On the basis of the above figures, it can be assumed that the present operation will have no significant impact on Interbrew's current market position. Both for off-trade all beer and off-trade premium the overlap is minimal, [0-10]% and [0-10]% respectively.
22. It follows from the above that the operation is not likely to raise competition concerns even on the narrowest possible product market definition, i.e. premium lager off-trade in the UK.

Germany

23. In Germany, on the basis of the alternative product market definitions discussed above, i.e. premium lager off-trade beer in Germany, the merged entity will have a combined market share of [20-30]%. The closest competitors are Bitburger ([10-20]%) Warsteiner ([10-20]%) and Krombacher ([10-20]%) followed by Veltins and Holsten with [5-15]% respectively and Binding with [0-10]%.
24. Considering the respective CSA 's of the parties, the overlaps - in this case on the all beer off-trade markets - appear even to be minor: Interbrew's CSA extends over 11 different German Länder and Brauergilde's CSA includes 8 German Länder, whereas only Berlin, Niedersachsen and Bremen are those, where both companies are active in the sense of this narrow geographical market definition. Only in Brauergilde's CSA, in the off-trade all beer

market, the combined market share exceeds 15% ([15-25]%). In Interbrew's off-trade all beer CSA the parties achieve a market share of [0-10]%. On the on-trade all beer markets the combined market shares are [0-10]% (Brauergerilde's CSA) and [0-10]% (Interbrew's CSA).

25. As a result of the present concentration the merged entity becomes the clear leader in the premium lager off-trade beer market in Germany. However, it remains doubtful whether such a narrow product market definition is appropriate and even if it would be so, in view of the position of the above mentioned next three competitors, it appears that the present operation does not raise serious competition concerns.

V. CONCLUSION

26. 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