

***Case No COMP/M.3182 -
SCOTTISH &
NEWCASTLE / HP
BULMER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/06/2003

SG (2003) D/230345

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3182 – Scottish & Newcastle / HP Bulmers
Notification of 26-05-2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

I. INTRODUCTION

1. On 26 May 2003 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Scottish & Newcastle plc (“S&N”, UK) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of HP Bulmers Holdings plc (“Bulmers”, UK) by way of a public bid announced on 28 April 2003.
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.

II. THE PARTIES

3. S&N is a public limited company registered in the United Kingdom and listed on the London Stock Exchange. It is active in brewing beer and inwholesaling and distributing beer and other beverages (including cider). S&N is mainly active in the UK and Ireland. It is the largest UK brewer. It also operates retail outlets, pubs, restaurants etc. S&N’s only cider making activities are in Finland.

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. Bulmers is a public limited company registered in the United Kingdom and listed on the London Stock Exchange. Bulmers manufactures and distributes cider and is mainly active in the UK, where it is the largest cider producer. It also has exclusive license to distribute in the UK the San Miguel and Amstel beer brands. It also has minor activities in wholesale and distribution of beer, through its subsidiary “The Beer Seller” (hereafter “TBS”).

III. THE OPERATION

5. S&N announced on 28 April 2003 a public bid to acquire the entire issued share capital of Bulmers. Bulmers’ board of directors recommended the bid. The proposal arises from a decision by Bulmers to review the strategic options available to repay lenders and note holders by 25 July 2003. Bulmers’ board decided against refinancing and concluded that the acquisition by S&N was in the best interest of the company.

IV. CONCENTRATION

6. Pursuant to the transaction S&N will acquire control of Bulmers. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3 of Regulation 4064/89.

V. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (S&N: €7,454 million; Bulmers : €894 million) Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (S&N : €7,345 million; Bulmers: €835.35 million) but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State³. The notified operation therefore has a Community dimension.

VI. COMPETITIVE ASSESSMENT

A. THE RELEVANT PRODUCT MARKETS

Beer

8. Beer is a beverage obtained after alcoholic fermentation of a wort prepared from cereal malt, raw materials extracted from cereals, hops and water with the addition of yeast. The parties submit, in line with previous Commission decisions, that beer is a separate product market from other beverages. Indeed, in previous decisions⁴, the Commission has consistently held that beer constitutes a separate product market from other beverages (including cider, wine, spirits, soft drinks and bottled water).

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).

³ S&N’s turnover in the UK represents 66,4% of its EU-wide turnover, that is just under the two-third threshold of Article 13 of the Merger Regulation.

⁴ See in particular cases M.1925 *S&N/Danone* and M.2044 *Interbrew/Bass*.

9. Furthermore, again in line with previous cases⁵, the beer market has been further delineated into the three main stages in the beer supply chain: a) brewing (or exclusive supply); b) wholesaling⁶; and c) retailing.. Retailing will not be addressed in this decision, as there is no retailing-specific overlap between the parties.
10. Finally, also in line with previous decisions, a distinction can be made between “on-trade” and “off-trade”, depending on the nature of the business of the final retailer. On-trade stands for sales to/in pubs and bars whereas off-trade refers to sales to/in supermarkets and discount stores.

Cider

11. Cider is a beverage obtained after alcoholic fermentation of apples, water and glucose. Cider is supplied in bottles, cans, kegs or casks. The parties submit that cider constitutes a separate product market. Although cider has not been considered directly in previous decisions of the Commission, there have been indications that cider does not form part of the beer product market. In this respect the parties cite the case *Interbrew/Bass* (2000), in which the UK Competition Commission concluded that cider does not form part of the same product market as beer. The parties also stress that this conclusion is consistent with a long line of UK Competition Commission decisions, going back to the Supply of Beer report (1989).
12. The parties have considered, for the purposes of the notification, that cider constitutes a separate relevant product market.
13. Furthermore, although (as previously mentioned) cider has not been investigated in previous Commission decisions, it appears reasonable to argue that the same further delineation as for beer (into production, wholesaling and retailing on the hand and into “on-trade” and “off-trade” on the other) is also applicable to cider. As for beer, retailing will not be addressed in this decision, as there is no retailing-specific overlap between the parties.
14. The market investigation conducted by the Commission has largely confirmed the parties’ submission. Cider and beer (brewing and wholesaling) thus constitute the relevant product markets for the purposes of the present decision.

B. The relevant geographic markets

15. For both cider and beer (all three stages) the parties submit that the relevant markets are national in scope. This is in line (at least for beer) with past Commission decisions. As regards cider, the parties cite differing tastes and pricing and very low cross border trade flows in support of their proposed market definition. The only affected geographic market is, according to the parties, the UK, as both parties are primarily active in that market and the non-UK overlaps are to be considered *de minimis*.

⁵ Case M. 1925 *S&N/Danone*

⁶ Wholesaling can be defined as distribution of beer also brewed by third parties, i.e. distribution of products not limited to own production.

16. The market investigation has largely confirmed the geographic market definition proposed by the parties. The United Kingdom's national market thus constitutes the relevant geographic market for the purposes of this decision.

C. Competitive assessment

17. The transaction gives rise to three affected markets: a) beer production and supply; b) wholesaling/distribution (of beverages in general, thus including beer and cider); and c) cider production and supply. The following is a brief summary of the main issues which have formed part of the investigation in relation with these three affected markets.
18. *Horizontal overlaps*: S&N is primarily active in the beer sector and Bulmers in cider. However, there are horizontal overlaps in: a) beer supply, by virtue of Bulmers' role as licensee/exclusive distributor of Amstel and San Miguel beer brands in the UK; and b) wholesale/distribution (of both beer and cider) to the on-trade between S&N wholesaling activities and Bulmers' subsidiary TBS which is active in wholesaling at the national level.
19. *Vertical relationships*: in view of S&N's wholesale/distribution operations (including cider), cider production is a vertically affected market in the UK.
20. *Possible conglomerate and portfolio effects*: S&N is the leading producer of beer in the UK, with a market share of [20-30%]. It is also the leading wholesaler, with a market share of [20-30%]. At the same time Bulmers is the largest player in the cider market, with a market share of [60-70%]. Consequently, possible conglomerate/portfolio effects have been investigated.

1) Beer production and supply/brewing

21. S&N holds a [20-30%] market share of the UK market. This market share comprises all its own and licensed brands including John Smith, Kronenbourg, Foster's, Miller Genuine Draft and Beck's. S&N's main competitors in brewing in the UK are Interbrew UK, [15-25%], Coors [10-20%] and Carlsberg-Tetley [5-15%]⁷.
22. In relation to beer supply, Bulmers' activities are extremely limited and mainly based in the UK. Bulmers is the exclusive distributor for the beer brands San Miguel and Amstel⁸ and it is to be regarded as the supplier of those brands in the UK. The market shares of San Miguel and Amstel in the UK are respectively [0-1%] and [0-1%] of the beer supply market.
23. In view of the above, the Commission has concluded that horizontal overlaps are effectively *de minimis*, that the acquisition of Bulmers will lead to only a small increment in S&N's market share and that therefore the transaction raises no competition concerns in the market for beer production and supply.

⁷ AC Nielsen data for 2002.

⁸ Bulmers currently distributes Amstel but will cease to do so in the second half of 2003. Amstel accounts for [0-1%] of the UK beer production and supply market and is not considered further in this decision.

2) Cider production and supply

24. There is no horizontal overlap between the parties, as S&N is not active in cider manufacture in the UK.
25. Vertical relationships will not give rise to competition concerns. As a matter of fact, the operation will practically not change the current relationship, as the sale of Bulmers' brand Strongbow already constitutes the greater part of S&N's total sales of cider⁹.
26. Furthermore, it will not be possible for S&N post-merger to foreclose other cider manufacturers from having access to retailers: [85-90%] of cider brought to market by TBS is already supplied by Bulmers, and TBS accounted for only [1-5%] of cider brought to the UK market in 2002. Therefore other UK cider makers will continue to have fully adequate alternative routes to market.

3) Wholesaling of beer and cider

27. Wholesaling can be defined as distribution of beer/cider not only produced in-house but also produced by third parties (as opposed to the mere distribution of in-house products).
28. The overlap in the parties' activities is limited to the wholesaling of beer and cider to the on-trade. It was therefore not necessary to examine the wholesaling to the off-trade market in the framework of this decision.
29. S&N is active in this market through its subsidiary Scottish Courage Limited which distributes S&N's products and acts as a wholesaler/distributor (to the on-trade) of a range of third party brands, such as Guinness, Budweiser, Marstons' Pedigree and Carlsberg Pilsner. S&N operates through 4 regional distribution centres and 28 depots. It also has its own fleet for deliveries from depot to licensed outlets for the on-trade.
30. S&N also owns Waverley Wines & Spirits, which is a UK wholesaler to the on-trade, primarily of third party wines and spirits. Waverley also supplies some S&N packaged beer and wholesales third party packaged beer (but does not wholesale draught beer, whether produced by S&N or otherwise).
31. Bulmers' is active in the wholesaling and distribution market through its subsidiary, TBS. TBS is engaged in the supply to the on-trade of a range of products including beer and cider in draught and in bottles, wines, spirits and soft drinks. TBS sells draught and packaged products to the smaller on-trade pubs, clubs, hotels and other leisure outlets with low requirements for drinks. TBS has its own fleet of vehicles.
32. The activities of TBS overlap with both Scottish Courage Limited and Waverley. Scottish Courage Limited sells beer and third party products mainly to regional pub companies, but also to larger independent pubs, clubs, hotels and other outlets.
33. As to wholesaling and distribution of beer S&N's share of the UK market is [20-30%] whilst Bulmers', through TBS, is [0-1%].

⁹ Bulmers' cider accounts for [80-90%] of S&N's total cider sales of [...] hl, amounting to [5-10%] of Bulmers' production.

34. As to the wholesaling and distribution of cider S&N's share of the UK market is [10-20%] whilst Bulmers', through TBS, is [1-5%].
35. The parties have submitted that S&N's ownership of The Beer Seller would raise no competition concerns. However, in order to assuage Bulmers' concerns that the timing/closing of the operation could be somehow delayed, the parties have offered (at the insistence of Bulmers) the undertaking to dispose of TBS, if necessary to ensure prompt clearance.
36. Some respondents to the market investigation suggested that the acquisition by S&N of TBS would raise competition concerns in the beverages wholesaling market, allegedly for two reasons: firstly TBS is one of only two wholesalers who are both independent (as opposed to integrated wholesalers i.e. owned by brewers) and who also have nationwide networks¹⁰; secondly, TBS mainly deals with a customer base typically requiring smaller volumes of beer/cider (and other beverages), delivered on a frequent basis, for instance hotels and wine bars. TBS distributes to these smaller outlets a large variety of products, including those of small specialist brewers. One third party has estimated TBS's market share for the distribution of beverages to smaller retailers (having these specific demand patterns) as being approximately 25%. It was suggested that the acquisition of TBS by S&N, which would leave Matthew Clark as the only remaining independent wholesaler with nation-wide coverage, would result in a lack of adequate wholesaling/distribution capacity for supply to smaller retailers.
37. However, no third party suggested that an alternative market definition (i.e. separate market for independent wholesalers with a customer base of small retailers requiring frequent/small drops of a large variety of products, including specialist beers) should be adopted for the purposes of the investigation. Moreover, no convincing evidence was submitted to demonstrate that, on the basis of the adopted market definition, the transaction would raise competition concerns.
38. The Commission has thus concluded that, on the basis of the adopted market definition, no competition concern arises from the transaction as the horizontal overlap is to be considered *de minimis* and that therefore the undertaking offered by the parties to dispose of the TBS does not constitute a condition for clearance.

4) Conglomerate/Portfolio effects/Bundling

39. As regards possible conglomerate/portfolio effects the Commission has concluded that, in view of recent market conditions for cider and of its declining "role" and importance in British drinking habits, no competition concerns will arise from possible Conglomerate/Portfolio effects/Bundling effects, as alleged by a limited number of respondents to the market investigation.
40. On the contrary, the Commission believes that third parties might reap the benefits of any attempt by S&N to re-launch cider's image and sales rather than being negatively affected by the transaction. This possibility was raised by those of Bulmer's competitors in the UK cider market who responded to the Commission's market investigation,

¹⁰ The other independent national wholesaler is Matthew Clark, the second biggest cider producer.

several of whom suggested that the UK cider market might be revived and expanded as a result of the current transaction.

41. Moreover, it has to be underlined that Bulmers' main competitor, Matthew Clark, is owned by Constellation Brands Inc., the major US wine producer, which would certainly have the financial and other means to react to any possible change in branding/positioning/marketing/pricing/output/general strategy for Bulmers' cider which may be pursued by S&N following the merger.
42. The Commission's investigation has also shown that it is unlikely that S&N would be (post-merger) in a position to 'bundle' sales of Bulmers' cider brands with sales of its own beer brands, since the UK cider market is relatively insignificant in comparison with the UK beer market. As a matter of fact the cider market is only about one twentieth the size of the beer market, and cider represents only about 1% on average of a retail outlet's total sales revenue, after sales of beer, wines, other beverages, food, etc are taken into account. Therefore any attempt by S&N to leverage its acquired Bulmer's cider brands in order to promote sales of its own beer brands is likely to have very limited or no success.

VII. CONCLUSION

43. 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 by Mario MONTI
Member of the Commission