

***Case No COMP/M.3195 -
HEINEKEN / BBAG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/07/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18/07/2003

SG (2003) D/230873

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3195 - Heineken/BBAG
Notification of 17.06.03 pursuant to Article 4 of Council Regulation
No 4064/89¹

1. On 17.06.2003 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("Merger Regulation") by which the Dutch undertaking Heineken International B.V. ("Heineken") acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the Austrian undertaking Österreichische Brau-Beteiligung-AG ("BBAG") 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.

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).

I. THE PARTIES AND THE OPERATION

3. Heineken is the holding company of the international activities of the Heineken group. The Heineken group is principally involved in the world-wide production, commercialisation and distribution of beer and other beverages.
4. BBAG is primarily active in the production, commercialisation and distribution of beer. BBAG is also active in non-alcoholic drinks (mineral water and fruit juice) and in real estate.
5. The proposed operation consists in the acquisition of sole control by Heineken over BBAG by way of purchase of shares. Heineken will acquire [.....] of the shares in GEBAG, which itself will (indirectly) hold [.....] of BBAG's share capital. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Regulation 4064/89, the Merger Regulation.

II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Heineken € 10.292,846 million; BBAG € 1.100,360 million). Both Heineken and BBAG have a Community-wide turnover in excess of EUR 250 million (Heineken € [.....] million; BBAG € [.....] 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.

III. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

7. The main sector concerned by the proposed transaction is the production and distribution of beer, that is to say a market which is distinct from other beverages markets, in line with the Commission's decisional practice³ and the case law of the European Court of Justice (ECJ)⁴. A distinction is generally made between sales of beer in retail outlets, such as multiple retailers and hyper-markets ("off-trade" consumption) and sales of beer for consumption at the points of sale, such as hotels, restaurants and cafés ("on-trade" consumption). However, in the present case this distinction makes no difference in the competitive assessment of the proposed transaction, as the competitive overlaps in both types of distribution channels are minimal.

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.

³ COMP/M.3032-Interbrew/Brauergilde, M.2569-OINterbrew/Becks, M.2877-Karlsberg/Brauholding International/JV, M.2387-Heineken/Bayerische Brauholding/JV, M.2152-Scottish & Newcastle/Centralcer

⁴ Case C-234/89 Delimitis v. Henninger Bräu of 28.02.1991

8. In addition, both parties are also active in mineral water and fruit juices, whereas BBAG is also active in real estate, however there are no overlaps in their respective activities in these sectors.

B. Relevant Geographic Markets

9. The notifying party proposes that from the geographical point of view, the market for production and distribution of beer has to be considered as being national in scope. The market investigation has confirmed that because of strong consumer preferences the markets for the production and distribution of beer can be considered as national in scope.

C. Competitive Assessment

10. According to Heineken the rationale of the transaction is its further expansion of beer activities in Central and Eastern Europe, where BBAG already has an established presence. As far as the EEA is concerned, the transaction creates affected markets in Austria, France, Greece, Italy, Ireland and the Netherlands. It has to be mentioned from the outset that the competitive overlaps in these markets are minimal, at either national or local level and at either channel of distribution, i.e., “on-trade” or “off-trade”. In the present case it appeared not to be relevant to distinguish these distribution channels, so the following data refers to the respective national "all-beer markets".

Austria

11. The competitive situation on the Austrian beer market will not differ significantly post-merger, as the market share increment brought about by the transaction is less than 1% in all circumstances.
12. The Austrian beer market is highly fragmented. In 2002, there were around 119 brewers in Austria, operating approximately 127 brewing plants. BBAG is the market leader with a [50-60]% market share on the basis of its volumes sold. Heineken’s pre-merger market share on the Austrian market amounts to [<1]%. If one differentiates between distribution channels Heineken's market shares is [<1]% in the on-trade and [<1]% in the off-trade channel. The market shares of the largest competitors, amount to approximately [10-20]% for the Stieglbrauerei, [5-10]% for Ottakringer and around [1-5]% for the Fritz Egger brewery.
13. The Commission has considered whether, despite the insignificant competitive overlap between the merging parties, Heineken’s financial strength⁵ could lead to the creation or the strengthening of a dominant position on the Austrian beer market.
14. This was not confirmed by the market investigation. Financial strength does not appear to be of decisive importance in the Austrian beer market. It is rather the know-how in the local market structures and preferences, the distribution channels, the customers’ loyalty etc., which play a more important role in this market. Competitors indicated that their marketing expenditures do not exceed 10% of their turnover. Overall, the need for more intensive advertisement concerns more international than local brands, whereas the marketing costs for smaller local brands appear to be of negligible

⁵ Heineken’s turnover is approximately ten times bigger than BBAG’s.

importance. The traditional, local preferences and the relatively high brand loyalty in Austria lead to the conclusion that financial strength is not a decisive factor of competition. Indeed, in reply to the Commission's questionnaires, competitors ranked financial strength low in their list of factors of success in the Austrian beer market. Furthermore, in case of supracompetitive prices market entry by imports, re-entry, take-overs or distributors own brands remains feasible.

15. In conclusion, it appears that the present operation does not give rise to serious doubts as to its compatibility with the common market in relation to Austria.

France, Greece, Italy, Ireland, the Netherlands

16. In all these countries the competitive overlaps are minimal.
17. In France, Heineken accounts for an overall market share of [30-40]%, but BBAG's market position is negligible, i.e., less than [1]%.
18. In Greece, Heineken has a significant market position, currently amounting to approximately [80-90]% of the market. However, BBAG's sales in Greece are minimal and account for less than [1]%.
19. In Italy, Heineken has an overall market share of approximately [30-40]%. BBAG's sales in Italy are insignificant, representing less than [1]% market share.
20. In Ireland, Heineken has an overall market share of approximately [10-20]%, BBAG's again representing less than [1]% market share.
21. In the Netherlands, Heineken's market position accounts for approximately [50-60]%, however BBAG's sales account for a market share of less than [1]%.
22. Owing to the minimal competitive overlaps, it appears that the proposed transaction will not materially change the competitive situation in the beers market in the aforementioned countries and will thus not raise serious doubts as to its compatibility with the common market.

IV. CONCLUSION

23. 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