

***Case No COMP/M.3289 -  
INTERBREW / SPATEN-  
FRANZISKANER***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/12/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.12.2003  
SG (2003) D/233839

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3289 - INTERBREW/SPATEN-FRANZISKANER/  
LÖWENBRÄU/DINKELACKER  
Notification of 20.11.03 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 20.11.2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, by which Interbrew Deutschland Holding GmbH ("Interbrew Germany") belonging to Interbrew S.A., Belgium ("Interbrew") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the beverage business of Gabriel Sedlmayr Spaten-Franziskaner-Bräu KGaA, Germany ("Spaten"), comprising the Spaten-Franziskaner Beverage Division, the Löwenbräu AG and the Dinkelacker-Schwaben Bräu AG, 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 AND THE OPERATION**

3. Interbrew is active in the production, marketing and supply of beer in more than 130 countries worldwide. It carries out wholesaling of beverages and is active in the non-alcoholic- and flavoured alcoholic beverages business.

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<sup>1</sup> 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. Spaten, comprising the Spaten-Franziskaner Beverage Division, the Löwenbräu AG and the Dinkelacker-Schwaben Bräu AG, is active in the beer business mostly in Southern Germany and has a limited involvement in the sale and bottling of other beverages. Spaten's activities include a real estate business that is not subject to this transaction.
5. The acquisition of Spaten by Interbrew will be executed in different steps. The brewing activities of Spaten Franziskaner will be spun-off into a separate legal entity. Subsequently, Interbrew Germany will acquire Spaten Franziskaner and Löwenbräu. Another subsidiary of Interbrew Germany, Brauerei Beck & Co, will acquire the whole of Dinkelacker-Schwaben Bräu AG. On completion, the current shareholders of Interbrew Germany and Spaten will enter into a joint venture agreement relating to the enlarged Interbrew Germany, where Interbrew shall have full control of the management and business strategy, thus sole control. 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 billion<sup>2</sup> (Interbrew € 6.992,0 million; Spaten € [...] million). Both Interbrew and Spaten have a Community-wide turnover in excess of EUR 250 million (Interbrew € [...] million; Spaten € [...] million), but they do not both 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. In accordance with the Commission's decisional practice<sup>3</sup> and the European Court of Justice's (ECJ) case law<sup>4</sup>, the relevant product market is the market for the production and distribution of beer, distinct from other beverages. The Commission's decisional practice, confirmed by the ECJ is that there are distinct markets for beer sold in retail outlets ("off-trade" consumption) and beer sold for consumption at the point of sale ("on-trade" consumption). Taking into consideration a further differentiation between premium and standard beer or other segmentations according to different groups of beer types<sup>5</sup> will leave the result in the competitive assessment of the present case unchanged.

### **B. Relevant Geographic Markets**

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<sup>2</sup> 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, p.25).

<sup>3</sup> COMP/M.3032-Interbrew/Brauergilde, M.2569-Interbrew/Beck's, M.2877-Karlsberg/Brauholding Int./JV, M.2387-Heineken/Bayerische Brauholding/JV, M.2152-Scottish & Newcastle/ Centralcer

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

<sup>5</sup> COMP/M.2569 Interbrew/Beck's, where a separate premium market and the differentiation between Ale and Lager beer were considered, but the question was ultimately left open.

8. The notifying party follows for the purposes of this transaction the general decisional practice of the Commission<sup>6</sup> that from geographical point of view, the market for production and distribution of beer is principally considered to be national in scope. In the present case it can be left open, whether on the still highly fragmented German beer market, in accordance with the decisional practice of the German Competition Authority (Bundeskartellamt), core sales areas (Kernabsatzgebiete) constitute the relevant geographic markets<sup>7</sup>. Even if the geographic markets were defined as the territory around a brewery where approximately 90% of its sales are achieved (core sales areas), the competitive assessment would remain unchanged.

### C. Assessment

9. In an affected market the only overlap between the parties' activities is in the area of beer.

#### *National beer markets on trade or off trade*

10. According to the parties data and following the above mentioned traditional market delimitation (national all-beer, off- or on trade markets), it appears that technically the following markets are affected:

<b>Market shares (sales, 2002)</b>			
Market	Market share Interbrew	Market share Spaten	Combined Market share
Belgium on trade	[50-60]%	[<1]%	[50-60]%
Belgium off trade	[50-60]%	[<1]%	[50-60]%
France on trade	[10-20]%	[<1]%	[10-20]%
Ireland off trade	[20-30]%	[<1]%	[20-30]%
Luxembourg off trade	[30-40]%	[<1]%	[30-40]%
United Kingdom off trade	[20-30]%	[<1]%	[20-30]%

11. The table shows that the high market shares are due to the presence of the more than [...] times larger (in terms of turnover) brewery Interbrew compared to Spaten's brewery business. In all cases the increment is of less than 1%. Owing to these minimal competitive overlaps, the proposed transaction will not materially change the competitive situation in the affected beer markets.

<sup>6</sup> M.1925-Scottish & Newcastle/Group Danone, decision of 11.07.2000.

<sup>7</sup> Decision of 26 April 2000; B2 – 15963 – U – 8/00, left open in COMP/M. 2877 - Karlsberg/ Brauholding International/ JV

12. Furthermore it is not so much the financial strength of a brewery than the brands, the knowledge of the local market structures and local preferences which are important competitive factors in the beer markets. The market investigation confirmed that consumers show high brand loyalty and are reluctant to change their drinking habits. This conservative customer behaviour restrains Interbrews' room to manoeuvre after the transaction: Interbrew will not be in the position to gain easily market shares for its own brands or the newly acquired Spaten brands from customers of competing brands.
13. Finally it is important to mention that in all of the above mentioned markets Interbrew faces competition from other important breweries, such as Anheuser-Busch, Heineken, SABMiller, Scottish & Newcastle, Carlsberg and in Luxembourg the most important national player Bofferding.

***National premium beer market segments on trade or off trade***

14. The notifying party submits that there is no distinct market for premium beers as opposed to mainstream or standard beer. It is brought forward that little in terms of quality, taste, alcoholic content, presentation or packaging allows distinguishing premium beer from standard brands. There is full supply side substitutability and the distribution channels do not differ. Overall the premium status is mainly a result of the way in which the manufacturer positions the beer.
15. The market investigation has shown that the vast majority of the parties' consumers, both off- and on-trade, as well as their competitors do not consider distinct markets for premium and standard beer. The remaining replies in favour of a separation named very heterogeneous criteria to qualify beers to be premium brands, such as: price, positioning, national distribution (as opposed to regional), TV advertisements, packaging, distributive position, history of the product/producer and the image of the product, as perceived by the consumer etc. These findings confirmed the results of the Commission's previous market investigations in the beer markets that had shown that the criteria for declaring a brand to be premium were not homogenous. Moreover the concept of premium seems to vary according to the national markets under consideration and differs even between market researchers in the beer industry. *Canadean*, an important research consultant, differentiates between premium and standard beer on a basis of the respective national price indices<sup>8</sup>. Additionally every imported beer is considered independently of its position on its home market to be a premium brand.
16. If one is to classify on the basis of *Canadean's* definition the parties premium beer market shares, the following "affected market segments" appear according to the parties estimates. The table shows the overlaps in the parties beer activities according to this segmentation:

<b>Market shares (sales, 2002)</b>			
Premium market segment	Market segment share Interbrew	Market segment share Spaten	Combined Market segment shares

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<sup>8</sup> The leading brand in the most popular pack type is the standard in each country (=100), the core segment is considered between 90 and 110, the premium segment above 110.

Belgium on trade	[30-40]%	[<1]%	[30-40]%
Belgium off trade	[40-50]%	[<1]%	[40-50]%
France on trade	[10-20]%	[<1]%	[10-20]%
Germany off trade	[20-30]%	[<5]%	[20-30]%
Italy on trade	[20-30]%	[<5]%	[20-30]%
Luxembourg off trade	[40-50]%	[5-10]%	[50-60]%
Netherlands off trade	[20-30]%	[<1]%	[20-30]%
United Kingdom on trade	[10-20]%	[<1]%	[10-20]%
United Kingdom off trade	[30-40]%	[<1]%	[30-40]%

17. Again, the overlaps are mostly minor, adding to a stronger presence of Interbrew a minor presence of Spaten, as discussed above.
18. For the **German** market the only brand to be considered a premium brand according to the above mentioned definition (*Canadean*) is a speciality, a wheat beer (Weizenbier) of the Spaten Franziskaner brewery. The parties are confronted with major competitors such as Warsteiner (Haus Kramer), Krombacher, Bitburger, Veltins, holding market shares between 8 - and 17%
19. Outside Germany all imported brands are considered to be premium beers. However the [...] imported brand of Spaten to **Luxembourg**, [...], is not a premium brand in Germany and was sold [...] in Luxembourg at a [...] beer price. The overall premium beer segment accounts only [5-10]% of the beer sales in Luxembourg and the premium off trade segment accounts only [<5]% of the sales of beer. Spaten's sales amounted to [<1]% of the total Luxembourg beer market and presently [...] has abandoned the purchase of this beer.
20. In **Italy** where the combined market share of the parties on the premium on trade beer market amounts to [20-30]%, the parties are confronted with important competitors such as SABMiller, Heineken, Forst and Carlsberg, which achieve respectively market shares of [10-20],[10-20],[10-20]% and [5-10]%.
21. Generally on all the affected markets according to this segmentation Interbrew is confronted with the major players of the beer industry.

**Regional beer market segments on trade or off trade in Germany**

22. In their core sales areas in Germany, as defined by the Bundeskartellamt, the notifying party submits that the highest combined market share is [10-20]% (Dinkelacker-Schwaben Bräu core sales area, on trade). Considering the figures per German Bundesland the parties achieve their highest combined market shares in [...], (off-trade) with [20-30]%, although the overlap is of less than 1%. The most important overlap (of [<5]%) in such a possible affected market is in [...], again off trade, giving the parties a

combined market share of [10-20]%. Considering German regions as being the relevant geographic markets, a further segmentation into Premium and Standard beers is not appropriate. Premium brands, whatever the exact definition to distinguish these product categories might be, will achieve in most cases the scope of a national market or even wider.<sup>9</sup> It results from these figures that the transaction would not lead to competitive concerns even if regional markets (core sales areas) were to be considered as the relevant geographic areas in Germany. Interbrew is predominantly active in the north of Germany whereas Spaten does its business mostly in the South of Germany.

**Other segmentations according to different groups of beer types**

23. Interbrew claims that the rationale of this transaction is to complement its portfolio with the speciality Weizenbier (wheat beer) which is the most important beer type of Spaten. Even if one were to consider this beer type as belonging to a distinct product market, no competition concerns arise. There are no overlaps within this segment.
24. The existing overlaps on the Malzbier-segment, a non-alcoholic, beer-tasting beverage lead to a combined market share of [5-10]% in Germany. Accordingly, it is not necessary to decide about the exact product market definition for Malzbier.
25. It can be concluded for the beer activities of the parties that considering the traditional and even any possible narrower market delimitation, the proposed transaction does not raise any competitive concerns.

***Other activities of the parties in the beverage business***

26. In accordance with the Commission's decisional practice and case law<sup>10</sup>, the relevant product markets for the production and distribution of beer are to be distinguished from those for other beverages. The present transaction does not give rise to any affected market in the segment of beverages other than beer, even if beer mix beverages were to be treated as a separate product market on its own.

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<sup>9</sup> COMP/M.3032 – Interbrew/Brauergilde, from 18.11.2002

<sup>10</sup> Case C-234/89, Delimitis v. Henninger Brau, of 28.02.1991

#### **IV. CONCLUSION**

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