

***Case No COMP/M.3372 -  
CARLSBERG /  
HOLSTEN***

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: 16/03/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.03.2004

SG-Greffe(2004) D/200004

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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.3372 - Carlsberg/Holsten  
Notification of 16.02.2004 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 16.02.2004, the Commission received a notification of a proposed concentration by which the undertaking Carlsberg Breweries A/S ("Carlsberg", Denmark) acquires control of the whole of the undertaking Holsten-Brauerei AG ("Holsten", Germany) by way of a public bid announced on 20.01.2004.
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 OPERATION AND THE PARTIES**

3. *Carlsberg* is an international brewing company active in the production, sale, marketing and distribution of beer and soft drinks on a worldwide basis.

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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. *Holsten* is involved in the production, sale, marketing and distribution of beer, mainly in Germany. In addition, *Holsten* is active in the bottling, sale, marketing and distribution of soft drinks with fruit juice and mineral water.
5. The notified concentration consists in the acquisition of *Holsten* by Carlsberg by a public tender offer for all the shares of *Holsten*. It is intended to sell on parts of *Holsten* to Bitburger Getränke Verwaltungsgesellschaft mbH (“Bitburger”), namely its subsidiaries König Brauerei GmbH (“König”) and Licher Privatbrauerei Ihring Melchior GmbH & Co. KG (“Licher”) after a transition period in which König and Licher will be disintegrated and spun off from the remaining *Holsten* business. The intended on-sale of König and Licher to Bitburger was already subject to a notification to the German Competition Authority and was cleared on 24 February 2004. For the purpose of this decision the question whether König and Licher are to be regarded as controlled by Carlsberg can be left open, as in either case no competition problems arise.
6. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **II. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion<sup>2</sup> (Carlsberg € 4,783.8 million; *Holsten* € [...] million). Both Carlsberg and *Holsten* have a Community-wide turnover in excess of EUR 250 million (Carlsberg € [...] million; *Holsten* € [...] 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. Product markets**

8. The main sector involved in 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 defined as the market for the production and distribution of beer, distinct from other beverages. It is generally accepted by the Commission and confirmed by the ECJ 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). The question, if a further differentiation (e.g. between premium and standard beer or other segmentations according to different groups of beer types) might be appropriate, can

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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> Cases No COMP/M.3289 – Interbrew/ Spaten-Franziskaner/ Löwenbräu/ Dinkelacker, COMP/M.3032 - Interbrew/ Brauergilde, COMP/M.2569 – Interbrew/ Beck’s, COMP/M.2877 - Karlsberg/ Brauholding International/ JV, COMP/M.2387 - Heineken/ Bayerische Brauholding/ JV, COMP/M.2152 – Scottish & Newcastle/ Centralcer.

<sup>4</sup> Case C-234/89 - Delimitis v. Henninger Bräu, Rec. 1991, p. I-935.

be left open in the present case, because the result of the competitive assessment would not change under either delineation.

**B. Geographic markets**

9. As regards the geographic market definition, the notifying parties submit that the market for the production and distribution of beer is national in scope. With respect to the still highly fragmented *German* beer market, the Commission has in previous cases contemplated a further segmentation of the market into so-called core sales areas<sup>5</sup>. According to the concept core sales areas (“Kernabsatzgebiete”), derived from the decisional practice of the German Competition Authority<sup>6</sup> (Bundeskartellamt), the relevant geographic market is defined as the territory around a brewery where approximately 90% of its sales are achieved. However, like in the previous cases, it can be left open whether this delineation is more appropriate than a market definition based on national markets, as no competition problems occur under either delineation

**C. Assessment**

10. The parties submit that the only affected markets are the markets for the production and distribution of beer in Germany, Denmark, Finland and Iceland.

**Germany**

11. By the acquisition of Holsten, Carlsberg will become the fifth largest brewer in Germany. According to the parties, the combined market share on the German market (in terms of volume) remains below [5-10]%, with increments of less than [<5]%

Market shares in volume (2003)	<b>Carlsberg</b>	<b>Holsten<sup>7</sup></b>	<b>Combined market share</b>
Germany total	[<5]%	[5-10]%	[5-10]%
Germany on-trade	[<5]%	[5-10]%	[5-10]%
Germany off-trade	[<5]%	[5-10]%	[5-10]%

12. Even a narrower definition of the geographic market would not raise any competition concerns. The region where the parties have the strongest market position is the Northern area of Germany. Even if a core sales area were to be defined including the Länder Schleswig-Holstein, Hamburg, Mecklenburg-Vorpommern and Lower Saxony, the parties’ market share (off-trade) would not exceed [10-20] %, with increments of [<5%]. In all other core sales areas the market shares remain significantly lower. As the proposed transaction will not lead to the creation of a dominant position as a result of which effective competition would be significantly

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<sup>5</sup> See e.g. cases COMP/M.3289 – Interbrew/ Spaten-Franziskaner/ Löwenbräu/ Dinkelacker, COMP/M.2877 – Karlsberg/ Brauholding International/ JV.

<sup>6</sup> See Bundeskartellamt, decision of 26 April 2000; B2 – 15963 – U – 8/00 (Holsten/König).

<sup>7</sup> Including König and Licher.

impeded even under the narrowest market definition, the exact delineation of the geographic market can be left open.

13. The notifying parties submit that the market for the production and distribution of beer in retail outlets and at the point of sale should not be further segmented into different markets for premium and standard beer or for different types of beer. Indeed, as the parties are mainly active in the production and marketing of various regional ‘standard’ beers and have only very limited sales of nationwide-branded ‘premium’ beer, a further segmentation of the market would not significantly change the assessment of the competitive position of the parties set out above. For the purpose of this decision, the question whether a further delineation of the beer market is appropriate can be left open.
14. It follows from the above that the proposed concentration is not likely to raise any competition concerns in Germany.

### **Denmark, Finland and Iceland**

15. As regards the production and distribution of beer in each Denmark, Finland and Iceland, Holsten’s sales are *de minimis*. The table below sets out the market shares held by the parties in the respective national affected markets:

Market shares in volume	<b>Carlsberg</b>	<b>Holsten<sup>8</sup></b>	<b>Combined market share</b>
Denmark on-trade (2002)	[60-70]%	-	[60-70]%
Denmark off-trade (2002)	[60-70]%	[<5]%	[60-70]%
Finland on-trade (2003)	[40-50]%	[<5]%	[40-50]%
Finland off-trade (2003)	[40-50]%	[<5]%	[40-50]%
Iceland on-trade (2003)	[20-30]%	[<5]%	[20-30]%
Iceland off-trade (2003)	[10-20]%	[<5]%	[10-20]%

16. The table illustrates that in all these markets there are only minimal overlaps as the increment is not more than [<5]% in the Icelandic market and even less than [<1]% in the Danish and Finnish beer market. Therefore, the proposed transaction will not materially change the competitive situation in the affected beer markets in Denmark, Finland and Iceland and will thus not lead to any competitive concerns. In all three countries the transaction is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded.

### *Conclusion on the beer markets*

17. It can be concluded that under all alternative market definitions considered the proposed transaction would not raise any competitive concerns.

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<sup>8</sup> Including König and Licher.

*Other activities of the parties in the beverage business*

18. The operation also involves – to a minor extent – other beverages, in particular the mineral water and soft drinks segments. In accordance with the Commission's decisional practice and case law, the relevant product markets for the production and distribution of beer are to be distinguished from those for other beverages.
19. However, the present transaction does not give rise to any affected market in the segment of other beverages than beer. The only market in which the parties' activities overlap in other segments than beer is a possible market for mineral water in Germany, though, with only minor market shares for both parties (Market shares for 2003 in volume for Holsten: [5-10]%; for Carlsberg: [<1]%). Accordingly, the present transaction does not raise any competitive concerns in other segments of beverages than beer.

IV. CONCLUSION

20. 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