

***Case No COMP/M.3813 -
FORTUNE BRANDS /
ALLIED DOMECQ***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 10/06/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.06.2005

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3813 - FORTUNE BRANDS / ALLIED DOMEQC
Notification of 2 May 2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 2 May 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“Merger Regulation”) by which the undertaking Fortune Brands Inc. (“Fortune Brands”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of various brands and assets of Allied Domecq plc (“Allied Domecq”) and of Pernod Ricard SA (“Pernod Ricard”).

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

2. Fortune Brands is a publicly listed US company active in the consumer goods sector, mainly home and hardware, golf equipment, office products and spirits and wines. US Whiskey “Jim Beam” and the “New World” wines “Geyser Peak” and “Wild Horse” are amongst its main spirit and wine brands.
3. Allied Domecq is a publicly listed English company active in the production and distribution of spirits and wines on a world-wide scale. The Allied Domecq brands and assets concerned by the present transaction include among others the Scotch whisky “Teachers” and “Laphroaig”, the tequila “Sauza”, the brandy “Courvoisier”, the aniseed “Castellana”, the bitter “Kuemmerling” and several still and fortified wines.
4. Pernod Ricard is a publicly quoted French company active in the production and distribution of alcoholic beverages, mainly spirits and wines, on a world-wide scale. The Pernod Ricard brand and assets concerned by the present transaction is the “Larios” brand, primarily a gin brand.

II. THE OPERATION AND THE CONCENTRATION

5. On 21 April 2005, Fortune Brands and Pernod Ricard signed a framework agreement pursuant to which Fortune Brands is to acquire the control of various brands and assets of Allied Domecq². On the same day, Fortune Brands and Pernod Ricard signed a separate sale and purchase agreement pursuant to which Fortune Brands will also acquire Pernod Ricard’s Larios brand. The acquisition by Fortune Brands of the Larios brand belonging to Pernod Ricard is part the overall distribution of the Allied Domecq assets between Pernod Ricard and Fortune Brands.
6. This transaction is conditional to the completion of the acquisition by Pernod Ricard of the entire issued and to be issued share capital of Allied Domecq by way of a public bid announced on 21 April 2005. The acquisition by Pernod Ricard of sole control over Allied Domecq is subject to the Commission’s clearance under the Merger Regulation.
7. The acquisition by Fortune Brands of the Allied Domecq and Pernod Ricard’s brands will take place in two stages. First, Fortune Brands will acquire shares in the bidding vehicle that will be created for the acquisition by Pernod Ricard of the whole of Allied Domecq. The purpose of the acquisition of these shares, which will account for approximately 37% of the issued share capital but will not carry any voting rights, is to protect the value of the brands and assets that will be ultimately transferred to Fortune Brands. This will also confer Fortune Brands certain contractual rights to manage and operate immediately the relevant Allied Domecq brands and assets. Then, within a period of six months, the transfer of the relevant Allied Domecq brands and assets will become effective.

² The brands and assets are the following: Teachers, Laphroaig, DYC, Canadian Club, Maker’s Mark (whiskey); Sauza (tequila); Courvoisier, Centenario, Fundador, Jacobi (brandy); Castellana (aniseed); Kuemmerling (bitters); Harvey’s (sherry); Cockburn’s (port); Buena Vista, Clos du Bois, Atlas Peak, Callaway, William Hill, Jerry Garcia, Gary Farrell, Haywood Estate, Jakes Fault (US wines) and the distribution assets of Allied Domecq in the UK, Spain (except wine distribution) and Germany.

8. The notified transaction thus constitutes a concentration under the Merger Regulation whereby Fortune Brands acquires control of several brands and assets of Allied Domecq and Pernod Ricard.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Fortune Brands, EUR [...] million and assets to be acquired from Allied Domecq and Pernod Ricard, EUR [...] million). Each of Fortune Brands and the assets to be acquired from Allied Domecq and Pernod Ricard have a Community-wide turnover in excess of EUR 250 million (Fortune Brands, EUR [...] million and assets to be acquired from Allied Domecq and Pernod Ricard, EUR [...] 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

10. The concentration relates to the spirit and wine sector. As far as the wine sector is concerned, the notifying party submits that the sales of wine in the EEA by Fortune Brands and by the assets that they will acquire from Allied Domecq and Pernod Ricard are de minimis⁴. Therefore it can be concluded that the transaction will not lead to any affected market in the wine sector. This has been confirmed by the market investigation where no concerns were raised on the impact of the transaction in the wine markets. These markets will thus not be further examined in this decision.

A. The relevant product markets

11. On the basis of the *Guinness/Grand Metropolitan*⁵ and *Pernod Ricard/Diageo/Seagram*⁶ Commission decisions, the notifying party considers that the relevant product markets have to be defined for each of the main spirit category, i.e. whiskey, Cognac/Armagnac, other brandies, rum, gin, vodka, tequila, aniseed, bitters and liqueurs.
12. Fortune Brands is mainly active in the EEA in the sale of US whiskey which therefore constitutes the main relevant product market of this case. The notifying party considers that it is appropriate to segment the whiskey market between Scotch whisky, Irish whiskey, US whiskey, and Canadian whiskey. A similar approach had been adopted by the Commission in its decision *Pernod Ricard/Diageo/Seagram* where Scotch whisky

³ 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).

⁴ Fortune Brands markets two wine's brands in the EEA, representing less than [1%] of the sales of still light wines (a segment of the wine sector) in each of the following countries: Norway, Ireland, Denmark and the Netherlands. Sales of the Allied Domecq brands concerned by the transaction are limited to Germany and represent [less than 1%] of the still light wines sales.

⁵ Commission decision of 15.10.1997, case No IV/M.938.

⁶ Commission decision of 9.05.2001, case No COMP/M.2268.

was said to constitute a separate relevant market. Therefore, the notifying party also submits data in relation to these narrower markets.

13. The market investigation has broadly confirmed the views of the notifying party and the applicability of the past Commission assessments to the present case. However the exact product market definition can be left open for the purposes of this decision as even if the narrower product market definition for whiskey was retained, this would not change the competitive assessment.

B. Relevant geographic markets

14. The notifying party submits that the market for the production and distribution of spirits is national, in agreement with the findings of the Commission in the *Guinness/Grand Metropolitan* and *Pernod Ricard/Diageo/Seagram* decisions. This has been confirmed by the market investigation.

C. Assessment

15. Due to the so far limited presence of Fortune Brands in the EEA, the only affected product markets by the transaction are the “all whiskey” markets in Germany and Spain and the US whiskey markets in Czech Republic, Denmark, Germany, Hungary and Sweden. However, the increase in market shares resulting from the transaction will be less than [0-5%] for all the above mentioned markets with the exception of the “all whiskey” market in Germany where the new entity has a combined market share of [10-20%]⁷ with an increment of [0-5%].
16. In view of the minimal competitive overlap and the results of the market investigation which has shown no indication of competition concerns if all alternative market definitions are considered, it can be concluded that the notified concentration will not significantly impede effective competition in particular as a result of the creation or the strengthening of a dominant position.

V. CONCLUSION

17. 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 (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission

⁷ Market shares based on 2003 volume data