

***Case No COMP/M.4232 -
SCOTTISH &
NEWCASTLE /
KUEHNE + NAGEL / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/06/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.06.2006

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Notifying parties:

Dear Madam, dear Sir

**Subject: Case No COMP/M.4232 – Scottish & Newcastle/Kuehne+Nagel/JV
Notification of 19/05/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19/05/2006 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Scottish & Newcastle UK Ltd (“S&N”, UK, part of the S&N Group) and Kuehne + Nagel Logistics Ltd (“K+N”, UK, part of the K&N Group), acquire within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 joint control of JVCo (“JV”, UK) by way of purchase of shares in a newly created company constituting a joint venture.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. S&N is one of the leading brewers in the UK and is active in supply and distribution of beer and other alcoholic and non-alcoholic drinks to the on-trade and off-trade customers in the UK. Its brands include Foster’s, John Smith’s, Kronenbourg 1664, Strongbow, McEwan’s and Newcastle Brown Ale.

¹ OJ L 24, 29.1.2004 p. 1.

4. K+N is a contract logistics provider operating in the UK. K+N concentrates on the retail, telecommunications, industrial and consumer goods industries.
5. JV will be active in the physical distribution of drinks in the UK. While JV will initially handle the distribution predominantly for S&N UK's products, the parties' intention is to grow by accessing further distribution growth in the grocery sector and by creating an efficient platform for drinks distribution in the on-trade channel.

II. THE OPERATION

6. The notified operation consists of S&N and K+N acquiring joint control in a newly created company (JV) constituting a 50/50 joint venture by way of purchase of shares pursuant to the agreement signed on 24 April 2006. For this purpose, S&N's existing drinks distribution business in the UK, comprising both assets and employees, will be transferred to JV and K+N will contribute vehicle leasing arrangements, IT assets, and employees. The value of the tangible assets (excluding) contracts being transferred to JV is approximately [...].

III. THE CONCENTRATION

7. The JV will perform on a lasting basis, all the functions of an autonomous economic entity. It will have a management dedicated to its day-to-day operations and access to sufficient resources including finance, staff and assets in order to conduct on a lasting basis its business activities independently from its parent companies.
8. K+N currently performs some of S&N's drinks distribution services in the UK through a services agreement, while S&N currently performs the remaining drinks distribution internally. JV will in the future be responsible for all of S&N's distribution. JV will initially handle distribution predominantly for S&N products; however, it will also undertake distribution for third parties for whom S&N already undertakes contract distribution, and the parties' intention is to grow JV's third-party distribution business.
9. According to the parties, JV will enable on and off-trade drinks distribution to be provided under the umbrella of one company. In being run on a day-to-day basis by K+N, a logistics operator of proven scale and experience, JV will have the benefit of K+N's logistics industry expertise while at the same time retaining commercial and strategic support from one of the UK's leading drinks companies. Therefore from the outset JV will be a full-functional joint venture, with all the assets and resources required to assume S&N's existing third-party distribution business, and indeed expand the latter. Thus the proposed concentration is a full-function joint venture between S&N and K+N within the meaning of Articles 3(1)(b) and 3(4) ECMR.

IV. COMMUNITY DIMENSION

10. The combined aggregate worldwide turnover of the undertakings concerned is more than € billion (S&N €5.8 billion, K+N €3.8 billion). The aggregate Community-wide turnover of each of the undertakings concerned is more than €250 million (S&N €4.6 billion, K+N €1.1 billion). None of the Parties achieved more than two-thirds of its Community-wide turnover in one and the same Member State. The operation has therefore a Community dimension.

V. RELEVANT MARKETS

11. The parties are primarily active on the markets for the supply of beer and cider, and for contract logistics. The principal areas of overlap between the parties concern the market for contract logistics and more specifically for drinks distribution in the UK.

Contract logistics

12. In previous decisions the Commission has defined contract logistics as: “*the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customer’s requirements*”². The main elements of contract logistics are the provision of warehousing and transportation services. Traditionally, these functions have been performed by customers in-house, but over the last 20 years manufacturers and retailers have started outsourcing some of this activity in order to benefit from specialist expertise³.
13. In previous cases the Commission has considered whether the market for contract logistics should be segmented i) into cross-border and domestic logistics services, ii) by reference to the type of goods handled or the industry serviced or iii) into lead logistics providers (“LLPs”), that are capable of managing the full supply chain with a European or global infrastructure and traditional contract logistics service providers (“3PLs”)⁴. In the end however, the Commission considered that a distinction of separate product markets did not seem warranted. Recently, the Commission noticed that contract logistics are regarded as more customer than sector specific services. They are tailored to meet the particular needs of the customer and the specifications that the customer has imposed, in whichever sector they operate⁵. The parties follow the Commission in this approach and consider the drinks distribution as a part of the contract logistics market.
14. The Commission’s market investigation confirmed that for the majority of customers and competitors the market for contract logistics does not need to be split up into separate product markets according to industry sectors/goods handled and that physical drinks distribution should not be a separate product market.
15. In its previous decisions the Commission found the geographic market for contract logistics and any segments thereof to be national in scope⁶ and the Parties followed this approach. The market investigation was not conclusive on this issue.
16. However, for the purposes of this decision, the precise scope of the relevant product and geographic market can be left open, as, on the basis of all alternative market definitions considered, the proposed concentration will not significantly impede effective competition in the common market or a substantial part of it.

² Case No COMP/M.3496 - TNT forwarding Holding AB/Wilson Logistics Holding AB.

³ Case No COMP/M.3492 - Exel /Tibbett & Britten.

⁴ Case No COMP/M.1895 - Ocean Group/Exel.

⁵ Case No COMP/M.3971 - Deutsche Post/Exel.

⁶ Cases No COMP/M.1500 - TPG/Technologista, Case No COMP/M. 1895 Ocean Group/Exel and Case No COMP/M. 3971 Deutsche Post/Exel.

VI. ASSESSMENT

17. As a result of the proposed transaction S&N's internal logistics function will be moved it into JV, which will then compete on the drinks distribution market. As such, the parties believe they are establishing a business that can exploit the opportunities of the UK drinks distribution market.
18. The Commission's investigation has shown that the proposed transaction is unlikely to give rise to a significant impediment to effective competition for the following reasons:
19. The only horizontally affected market in this case is the contract logistics services in the UK. However, K+N's current UK drinks distribution activities are limited to its contract with S&N (except for very limited distribution undertaken on behalf of one UK supermarket) and account for [below 5]% of the UK contract logistics market. Hence, there will be little structural change in the market.
20. The Commission's market inquiry showed that the transaction is perceived by a majority of customers and competitors as pro-competitive and leading to increased and better choice, quality and efficiency for customers. Increasingly, the distribution services are sourced separately from the drinks supply. It is argued that planned JV is likely to make the market for the distribution of drinks in the UK more competitive as all customers will have a wider choice as to how they source their drinks products and distribution thereof.
21. S&N currently uses only its own internal distribution network and K+N for the distribution of its products. As such, the proposed transaction will not displace any current distributor that is providing services to S&N. Similarly, K+N does not currently distribute drinks for any other brewer or drinks company. The transaction will therefore not foreclose access to the market for distribution services for any other brewer or drinks company. It is also the parties' intention and expectation of potential customers that JV will not be limited in the customers it can provide services for. In addition, K+N has the ability to undertake distribution contracts that JV has decided not to enter into. Indeed, the purpose of JV is to create a platform that will allow the joint venture to undertake further contract distribution. Following the proposed transaction the number of players on the UK market for drinks distribution will remain the same, and in fact competition is likely to be increased because of the focus, resources and independence of JV.

VII. CONCLUSION

22. 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