

***Case No COMP/M.4952 -  
CARLSBERG /  
SCOTTISH &  
NEWCASTLE ASSETS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 07/03/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07/03/2008

SG-Greffe(2008) D/201027

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4952 - Carlsberg/ Scottish & Newcastle assets  
Notification of 1 February 2008 pursuant to Article 4 of Council  
Regulation No 139/2004<sup>1</sup>**

1. On 1 February 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking Carlsberg A/S ("Carlsberg", Denmark) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of Scottish & Newcastle plc ("S&N assets", United Kingdom) by way of a public offer announced on 25 January 2008.
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 serious doubts as to its compatibility with the common market and the EEA agreement.

**I. THE PARTIES**

3. Carlsberg is an international brewing company active worldwide in the production, sale, marketing and distribution of beer, soft drinks and mineral water. The main beer brands owned by Carlsberg and distributed worldwide are 'Carlsberg', 'Tuborg' and 'Holsten'. Carlsberg also owns a number of regional and national beer brands. Carlsberg has a 50:50 joint venture with Scottish & Newcastle, Baltic Beverages Holding AB ("BBH"). BBH is a Swedish holding company with subsidiaries that produce and distribute beer primarily in Russia, Ukraine, the Baltic countries (Estonia, Latvia and Lithuania), Kazakhstan and Uzbekistan. BBH is also active in non-alcoholic beverages such as water and soft drinks as well as alcoholic beverages other than beer.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1.

4. Scottish & Newcastle is a public limited company registered in the United Kingdom and listed on the London Stock Exchange. It is active worldwide in the production, sale, marketing, wholesaling and distribution of beer, soft drinks and mineral water. The beer brands owned or co-owned and distributed worldwide by Scottish & Newcastle include 'Kronenbourg', 'Grimbergen', 'Foster's' and 'Newcastle Brown Ale'.

## II. THE OPERATION

5. The notified transaction is part of a recommended joint public bid by Carlsberg and Heineken, which, if successful, will lead to the break-up of Scottish & Newcastle. The present notification relates to Carlsberg's acquisition of certain assets (including brands) and liabilities relating to the businesses operated by Scottish & Newcastle in Estonia, France, Greece, Latvia and Lithuania in the EEA as well as Belarus, China, , Kazakhstan, , Russia, Ukraine, Uzbekistan and Vietnam ("S&N assets"). The acquisition of the remaining assets of Scottish & Newcastle has been notified separately as Case No. COMP/M.4999 - Heineken/Scottish & Newcastle assets.
6. In this way, Carlsberg will acquire ownership of the 'Kronenbourg' brand, which is currently held by S&N's French business as well as other S&N brands including 'Baltika', 'Saku' and 'Mythos'<sup>2</sup>. As an exception to the principle agreed between the parties by which ownership of S&N brands follows the allocation of S&N national businesses, Carlsberg will also acquire the 'Grimbergen' brand which is currently held by S&N's business in Belgium which is to be acquired by Heineken<sup>3</sup>.
7. Prior to the announcement of the bid, Carlsberg and Heineken signed a consortium agreement which will regulate the conduct of the offer and provide for the precise division of the assets and liabilities of Scottish & Newcastle between them and the terms on which this will be done. Clause 10.1 of the consortium agreement provides that the split of assets will occur "*as soon as possible*" after the closing date, while, pursuant to clause 10.2, [...].
8. Pursuant to the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings where the subsequent break-up of assets is agreed between the parties in a legally binding and is certain to take place within a short time period after the first acquisition, "only the acquisitions of the different parts of the undertaking in the second step will constitute concentrations, whereby each of these acquisition by different purchasers will constitute a separate concentration." Consequently, as there are no indications which would put the certainty of the split-up and the foreseen timetable into question, each of the acquisitions of certain S&N assets by Carlsberg and Heineken respectively is considered to constitute a separate concentration.

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<sup>2</sup> Carlsberg will acquire the worldwide ownership of the 'Kronenbourg' brand via the acquisition of S&N's French business (Brasseries Kronenbourg S.A.). The 'Kronenbourg' brand is currently manufactured and sold in the UK by S&N UK under licence from Brasseries Kronenbourg. Under the terms of the consortium agreement signed by the parties, Heineken, which is to acquire S&N's business in the UK, will receive a [...] licence for the 'Kronenbourg' brand in that country.

<sup>3</sup> Under the terms of the consortium agreement signed by the parties, Heineken will receive a [...] licence in respect of the 'Grimbergen' brand in Belgium and will commit to continuing production of the brand for Carlsberg's sales outside Belgium ([...]).

### **III. CONCENTRATION**

9. The proposed transaction will result in the acquisition of sole control by Carlsberg over S&N assets. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **IV. COMMUNITY DIMENSION**

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Carlsberg EUR 5,521 million, S&N assets EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (Carlsberg EUR [...] million, S&N assets [...] million). Carlsberg did not achieve more than two-thirds of its Community-wide turnover in any one Member State<sup>4</sup>. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

### **V. COMPETITIVE ASSESSMENT**

#### **A. Relevant markets**

##### **Relevant product market**

11. The proposed transaction concerns the drinks industry and in particular the beer sector. The Commission's decisional practice<sup>5</sup> and the European Court of Justice's case law<sup>6</sup> suggest that the relevant product market is that for the production and distribution of beer which is to be distinguished from other beverages. Furthermore, the Commission has generally considered that a distinction between the on-trade distribution (that is, beer sold by pubs, bars, restaurants, etc.) and off-trade distribution (retail outlets) is relevant. In a number of instances, the Commission has also considered whether a further segmentation of the beer market by type (e.g. lager or ale) or by quality (e.g. standard vs. premium) might also be relevant in some countries<sup>7</sup> but the question was ultimately left open.
12. In the present case, the notifying party submits that the relevant product market is at least as wide as to include all beer but that it is not necessary to reach a definitive conclusion since, even on a narrower basis, the proposed transaction will not give rise to a significant impediment to effective competition.
13. As far as the markets for non-alcoholic beverages and alcoholic beverages other than beer are concerned, the notifying party notes that the parties' activities overlap only in those countries where they are already active through their existing BBH joint venture. As the proposed transaction will only bring about a change from joint to sole control in

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<sup>4</sup> The turnover provided for S&N assets are based on the notifying party's best estimates and publicly available information including Scottish & Newcastle's 2006 annual report. [...].

<sup>5</sup> See COMP/M.3372 – Carlsberg/Holsten which refers to further decisions of the Commission: COMP/M.3032 – Interbrew/Brauergilde; COMP/M.2569 – Interbrew/Beck's; COMP/M.2877 Carlsberg/Brauholding Int./JV; COMP/M.2387 – Heineken/Bayerische Brauholding JV/; COMP/M.2152 S&N/Centralcer

<sup>6</sup> See C-234/89 – Delimitis v. Henninger Brau, judgment of the Court of 28 February 1991

<sup>7</sup> See for example M.2569 Interbrew/Beck's and M.3032 Interbrew/Brauergilde

this respect, it is not necessary for the purposes of the present notification to reach a precise market definition in this regard and such products are not considered further.

14. In considering the relevant product market for beer, it is to be noted that the market investigation in the present case has generally confirmed the conclusions reached by the Commission in prior cases concerning the beer sector. However, as the proposed transaction does not raise any competition concerns irrespective of the definition chosen, it is not necessary for the purposes of this decision to define the precise delineation of the relevant market.

### Relevant geographic market

15. The Commission and the European Court of Justice have historically considered the market for the production and distribution of beer to be national in scope<sup>8</sup>. The notifying party submits, for the purposes of the present notification, that the market should be defined as national. The market investigation supports the conclusion that the scope of the relevant geographic market for the production and distribution of beer in the countries affected by the concentration is indeed national.

### B. Competitive assessment

16. The proposed transaction would give rise to a number of technically affected markets in the sense that a market share of 15% or more is increased by a minimal amount. However, as shown in the following table, the increment is in all cases less than 1%. Moreover, the overlap remains minimal even if a segmentation by distribution channel (i.e. off or on-trade) and/or by type of beer is considered.

Table 1 - Parties' market share for beer in 2006 (based on volumes)

| Member State     | Carlsberg                               |          |          | S&N assets |          |       |
|------------------|---|----------|----------|------------|----------|-------|
|                  | Off-trade                               | On-trade | Total    | Off-trade  | On-trade | Total |
| <b>Denmark</b>   | [60-70%]                                | [60-70%] | [60-70%] | <0.1%      | <0.1%    | <0.1% |
| <b>Estonia</b>   | [40-50%] through existing joint venture |          |          |            |          |       |
| <b>Finland</b>   | [40-50%]                                | [40-50%] | [40-50%] | <0.1%      | <0.1%    | <0.1% |
| <b>Latvia</b>    | [40-50%] through existing joint venture |          |          |            |          |       |
| <b>Lithuania</b> | [40-50%] through existing joint venture |          |          |            |          |       |
| <b>Sweden</b>    | [30-40%]                                | [50-60%] | [30-40%] | <0.1%      | <0.1%    | <0.1% |

Source: Notifying party

<sup>8</sup> See for example COMP/M.3195 Heineken/BBAG and C-234/89 – Delimitis v. Henninger Brau.

17. In Estonia, Latvia and Lithuania, the parties are active through an existing joint venture, Baltic Beverages Holdings ('BBH'). Consequently, the proposed transaction consists of a move from joint to sole control and will not lead to any increment in market shares.
18. In Denmark, Finland and Sweden, the limited increment results from sales of imported Scottish & Newcastle brands, such as 'Kronenbourg' and 'Grimbergen', the rights to which Carlsberg will acquire as part of the transaction.
19. During the course of the market investigation, it was alleged that the transaction would strengthen Carlsberg's position in Sweden, specifically in a potential market for the distribution of 'premium imported lagers'<sup>9</sup> as Carlsberg would acquire the rights to certain Scottish & Newcastle brands such as 'Kronenbourg', 'Grimbergen', 'Mythos' and 'Baltika'. Upon further examination of this issue, the Commission found that three of the aforementioned brands are currently marketed in Sweden albeit in very limited quantities with markets shares below 0.1% even on the basis of market segments for imported lagers. None of the brands is among the top 20 selling brands and none appears to be key brand in any segment. In the case of the remaining brand, 'Baltika' (which is currently not marketed in Sweden), as it is part of BBH's product portfolio, it would be possible for Carlsberg to introduce this beer to the Swedish market even without the merger. In light of these factors, the Commission has concluded that the changes brought about by the proposed transaction are insignificant and would not appreciably strengthen Carlsberg's position in Sweden.

## **VI. 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 (EC) No 139/2004.

For the Commission  
(signed)  
Neelie KROES  
Member of the Commission

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<sup>9</sup> The respondent considered 'premium imported lagers' to be distinct from 'other beers' on the basis of certain factors such as price, branding, customer perception and volume. It was also suggested that premium imported lagers should be distinguished from other beers because of the different manner in which they are presented to the consumer, i.e. in a bottle as opposed to on draught.