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*Case No*  
*COMP/M.5560 –*  
*Carlsberg Deutschland/*  
*Nordmann/ JV Nordic*  
*Getränke*

Only the English text is available and authentic.

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

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Article 4(4)  
Date: 07/09/2009



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.9.2009  
SG-Greffe(2009) D/5304  
C(2009) 6908

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4(4) DECISION

**To the notifying party:**

**To the German Competition Authority:**

**Subject: Case No COMP/M.5560 – CARLSBERG DEUTSCHLAND/ NORDMANN/ JV  
NORDIC GETRÄNKE**

**Reasoned submission pursuant to article 4(4) of Regulation No 139/2004 for referral of the case to Germany.**

**Date of filing: 07.08.2009**

**Legal deadline for response of Member States: 2.09.2009**

**Legal deadline for the Commission decision under Article 4(4): 11.09.2009**

Dear Sirs,

**I. INTRODUCTION**

1. On 07 August 2009, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004<sup>1</sup> (“EC Merger Regulation”) with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authority of Germany.
2. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their

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

transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.

3. A copy of the Reasoned Submission was transmitted to all Member States on 10 August 2009, in accordance with Article 4(4), second subparagraphs, of the EC Merger Regulation. No Member State has opposed to the referral within the legal deadline.
4. By fax of 24.08.2009, the Federal Cartel Office as the competent authority of Germany informed the Commission that Germany agrees with the proposed referral.

## **II. THE PARTIES**

5. Carlsberg Deutschland GmbH ("Carlsberg", Germany) belonging to the Carlsberg Group is a brewing group, mainly active in the production, sale, marketing and distribution of beer and soft drinks.
6. Nordmann GFGH Holding GmbH ("Nordmann GFGH", Germany) is wholly owned by the Nordmann Group of companies ("Nordmann"). Its core activity consists in the distribution of beverages mainly in Northern Germany, carried out through a number of wholesale subsidiaries.

## **III. THE OPERATION AND CONCENTRATION**

7. The proposed transaction consists in the setting up of a 50/50 joint venture to be named Nordic Getränke GmbH ("Nordic"). Nordic will be active in the wholesale distribution of beverages. The newly created company will be established via contributions in kind – both Carlsberg and Nordmann GFGH will contribute most of their subsidiaries active in the distribution of beverages in Germany to the joint venture. As Nordic will have its own management and sufficient resources including finance, staff and assets (tangible and intangible) in order to conduct its business activities in the wholesale distribution of beverages on a long lasting basis and as it will also be likely to obtain a substantial proportion of its supplies from other suppliers and not only from its parent companies<sup>2</sup> it will constitute a full functioning joint venture within the meaning of Article 3 (4) of the EC Merger Regulation<sup>3</sup>

## **IV. COMMUNITY DIMENSION**

8. The aggregate worldwide turnover of the companies concerned exceeded EUR 5 billion in 2008 [Carlsberg Group EUR [...], Nordmann EUR [...]]. The Carlsberg Group generated a Community-wide turnover of EUR [...] in 2008 and Nordmann had EUR [...] Community-wide turnover in 2008. Only Nordmann generated more than two-thirds of its turnover in one Member State, namely Germany. The notified

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<sup>2</sup> Carlsberg currently supplies beverages to a rather limited extent to its subsidiary Goettsche Getränke which will be transferred to Nordic. As Nordmann is only marginally active on the upstream market for the production of beverages, it currently sources beverages almost exclusively from third parties and Nordmann's subsidiaries contributed to Nordic will continue to do so in the future.

<sup>3</sup> Commission Consolidated Jurisdictional notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, para 102.

operation therefore has a Community dimension within Article 1(2) of the EC Merger Regulation.

## V. ASSESSMENT

### A. Relevant product markets

9. The parent companies are active in the production and distribution of beverages, i.e. beer, soft drinks and water; as regards water only Nordmann is active in Germany. The newly created joint venture Nordic will be active in the wholesale distribution of beverages.
10. For the purpose of the present case and in line with a previous Commission decision<sup>4</sup>, the following relevant product markets can be distinguished: (i) the market for the distribution of beverages at the wholesale level with a potential distinction into deliveries to retail outlets ("off trade") and points of sale for direct consumption like restaurants or hotels ("on trade"), and (ii) a market for the production and distribution of beer further segmented into "off trade" and "on trade" deliveries.

### B. Relevant geographic market

11. In the cited previous case, the Commission left open whether the market for the distribution of beverages at the wholesale level is national in scope or could be narrower following the decision practice of the Federal Cartel Office of Germany, which considered the market to cover an area with 70 km radius around the production plant.<sup>5</sup>
12. Concerning the market for the production and distribution of beer the Commission considered it principally to be national in scope.<sup>6</sup> The decisional practice of the Federal Cartel Office of Germany<sup>7</sup> uses core sales areas, i.e. the area in which 90% of a brewery's sales are achieved. Following the latter approach, the parties propose to consider as an alternative to a national market the area of Mecklenburg-Vorpommern as the narrowest possible relevant geographic market.

### C. Assessment

13. The conditions for an affected market in the sense of the Form RS<sup>8</sup> are met as the companies involved are engaged in business activities in the same product market and the concentration will lead to a combined market share of at least 15% in some regional markets. In particular, in the Hamburg area, the combined market share of

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<sup>4</sup> See Case No COMP/M.5035 Radeberger/Getraenke Essmann/Phoenix.

<sup>5</sup> See Taetigkeitsbericht 2003/2004, Bundestags-Drucksache 15/5790, p.142.

<sup>6</sup> See Case No COMP/M.5035 Radeberger/Getranke Essmann/Phoenix and Case No COMP/M.3289 Interbrew/Spaten-Franziskaner/Loewenbraeu/Dinckelacker.

<sup>7</sup> Bundeskartellamt, Beschluss vom 26. April 2000, [www.bundeskartellamt.de](http://www.bundeskartellamt.de).

<sup>8</sup> Section 4 of Annex III of Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 134/2004 on the control of concentrations between undertakings, O JL 133, 30/04/2004, p. 1-39.

the parties for all beverages would be [10-20%] (on-trade) and [10-20%] (off-trade) and for beer only [10-20%] (on-trade) and [10-20%] (off-trade). As a consequence, the concentration may significantly affect competition at least in some of the relevant markets.

14. On the basis of the information provided in the Reasoned Submission, the proposed transaction does not give rise to any vertically affected markets.
15. In view of the foregoing, the preliminary assessment suggests that the principal effects of the proposed operation would be restricted to Germany. Further, the markets in question present all the characteristics of a distinct market.

*Additional factors*

16. Given that the likely focus of the competitive effects of the proposed transaction is confined to Germany, the Federal Cartel Office of Germany is best placed to examine the case.

## **VI. REFERRAL**

17. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations<sup>9</sup> (point 17) indicates that, in seeking a referral under Article 4(4), “*the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature...*”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the concentration may significantly affect competition at least in some of the relevant markets and that the principal impact on competition of the concentration is liable to take place on distinct markets in Germany. Therefore, the requested referral would be consistent with point 20 of the notice.

## **VII. CONCLUSION**

18. For the above reasons, and given that Germany has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Federal Cartel Office of Germany. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission  
(signed)  
Philip LOWE  
Director General

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<sup>9</sup> OJ C 56, 05.03.2005, p.2.