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Case No COMP/M.6149 - SUNTORY / CASTEL / GMdF / SAVOUR CLUB / MAAF SUBSIDIARIES

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 31/03/2011

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case No COMP/M. 6149 - SUNTORY / CASTEL / GMdF / SAVOUR CLUB / MAAF SUBSIDIARIES
Notification of 25 February 2011 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 25 February 2011 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Suntory France SAS (France) belonging to Suntory Group ("Suntory", Japan) and Groupe Castel ("Castel", France) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking SA Grands Millesimes de France ("GMdF", France) by way of purchase of shares, and simultaneously Castel acquires sole control of the undertakings Savour Club SA and its subsidiaries ("Savour Club", France) as well as SAS Appellations and its subsidiaries SAS Château Haut Caplane, SAS Tour Saint Christophe and SAS Distribution Bordeaux Grands Crus Références and their subsidiaries ("MAAF Subsidiaries", France) by way of purchase of shares.

1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

I. THE PARTIES

2. Suntory is a Japanese group active mainly in the production and distribution of alcohol and non-alcoholic beverages.

3. Castel is a French producer and distributor of alcohol and non-alcoholic beverages.

4. GMdF is French holding company with participations in different companies active in the wine sector.

5. Savour Club is a French company specialised in retailing of wine and spirits.

6. MAAF Subsidiaries is active in the production and commercialization of wine.

7. GMdF, Savour Club and MAAF Subsidiaries will be further referred to as "The Targets".

II. THE OPERATION AND CONCENTRATION

8. In accordance with the Term Sheet Agreement ("the Term Sheet") signed on 4 February 2011, the Parties agreed on (i) the acquisition by Suntory and Castel of joint control over GMdF, and (ii) the acquisition by Castel of sole control of Savour Club as well as MAAF Subsidiaries. The Targets are currently controlled by Covea Group.

9. The operation thus involves acquisition of joint control of one Covea Group's subsidiary (GMdF) and acquisition of sole control of other Covea subsidiaries (Savour Club and MAAF Subsidiaries). Both acquisitions are simultaneous. The undertaking acquiring sole control (Castel) is also acquiring joint control. According to the Consolidated Jurisdiction Notice[2], such operation constitutes one single concentration if the transactions are interdependent.

10. The two transactions can be considered as interdependent for the following reasons.

11. [Description of the Term Sheet's provisions relating to the interdependency and indivisibility of the two transactions].

12. […]

13. […]

14. Given that, in light of the above, the transactions are linked by mutual conditionality and are thus interdependent, they constitute one single concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.

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2 paragraph 42 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings adopted by the Commission on 10 July 2007. OJ C95 of 16.04.2008

III. EU DIMENSION

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[3] [Suntory: EUR […] million; Castel: EUR […] million; GMdF: EUR […] million; Savour Club: EUR […] million; MAAF Subsidiaries: EUR […] million]. Two of them have an EU-wide turnover in excess of EUR 250 million [Suntory: EUR […] million; Castel: EUR […] million;], but only Castel, Savour Club and MAAF Subsidiaries achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. COMPETITIVE ASSESSMENT

16. The proposed transaction relates to the wine sector (i.e. production and commercialisation of wine, trading and retailing of wine) where the concerned undertakings are all active.

17. Affected markets only arise in relation to the production and commercialisation of wine, and more particularly Bordeaux wines, in France.[4]

Relevant product and geographic market

18. In previous decisions in the wine sector, the Commission has traditionally distinguished between still wines and sparkling wines (other than Champagne). As far as the still wines are considered, several potential segmentations have been considered (*i.e.* distinguishing the wines according to different regional denominations and appellations of the wine concerned[5], or a potential distinction of wines by colour[6]), but the precise market definition was left open. Other segmentations were also discussed but not considered appropriate for those specific cases.[7]

19. As regards the geographical scope of the market, the Commission previously regarded the market for the production and commercialisation of wine as national in scope.[8]

20. The Parties in the present case consider that the relevant product market is the production and commercialisation of still wines in France. Nevertheless, they provide information on all alternative narrower product market definitions such as the Bordeaux wines and a distinction according to the colour of the wine.

21. The Targets are only active on the Bordeaux wine segment in France. Therefore, for the purpose of the present decision, only the production and commercialisation of Bordeaux wines in France will be considered.

Competitive assessment

22. The transaction leads to horizontally affected markets regarding the production and commercialisation of wine, and more particularly Bordeaux wines, in France where

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3 Turnover calculated in accordance with Article 5 of the Merger Regulation.

4 The parties' activities also marginally overlap in the markets for trading of wine and in the market for retailing of wine, however no affected markets arise in these markets irrespectively of the precise market definitions.

5 See COMP/M.2941 CNP/Taittinger, 16 October 2002.

6 See COMP/M.5114 Pernod/Ricard, 17 July 2008.

7 A segmentation according to price or on the basis of the country of origin. See COMP/M.5114 Pernod/Ricard, 17 July 2008.

8 See COMP/M. 5114 Pernod/Ricard, 17 July 2008.

Suntory, Castel, GMdF and MAAF Subsidiaries are all present. However, the combined market shares of the Parties do not exceed 20% on any of these affected markets and the increment is very limited.

23. Indeed, on a broader market for the commercialisation of Bordeaux wine, the Parties market shares are as such: [0-5] % for Suntory; [10-20]% for Castel; [0-5]% for GMdF and [0-5]% for MAAF Subsidiaries. Even considering a potential narrower segmentation of the production and commercialization of Bordeaux wines in France by distinguishing between red wines and white wines, the transaction will lead to an affected market only on the potential market for red wines, where Suntory holds a market share of [0-5]%, Castel holds a market share of [10-20]%, GMdF has a market share of [0-5]% and MAAF Subsidiaries have a market share of [0-5]%.

24. Therefore, the proposed transaction does not raise competition concerns on the market for the production and commercialisation of wine, and more particularly Bordeaux wines, in France.

V. CONCLUSION

25. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)

Joaquín ALMUNIA
Vice-President