EUROPEAN COMMISSION
DG Competition

Case M.8357 - ASAHI / AB INBEV CEE DIVESTMENT BUSINESS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 01/03/2017

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Subject: **Case M.8357 – ASAHI/AB INBEV CEE DIVESTMENT BUSINESS Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]**

Dear Sir or Madam,

(1) On 26 January 2017, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Asahi Group Holdings, Ltd. ('Asahi Group', Japan) acquires control within the meaning of Article 3(1)(b) of the Merger Regulation of the business comprising certain brands and assets currently belonging to Anheuser-Busch InBev NV/SA ('AB InBev', Belgium) in the Czech Republic, Hungary, Poland, Romania and Slovakia (the 'AB InBev CEE Business') by way of purchase of shares and assets.[3] The Asahi Group is

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.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 35, 3.2.2017, p. 4.

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hereinafter referred to as the 'Notifying Party' while the Asahi Group and the AB InBev CEE Business are collectively referred to as 'Parties'.

1. THE PARTIES

(2) On 24 May 2016 the Commission approved[4] the acquisition of SABMiller plc ('SABMiller') by AB InBev (the 'AB InBev/SABMiller decision') upon condition of the divestiture of:

a. SABMiller's business in Italy, the Netherlands and the UK. These principally included the Peroni, Grolsch, and Meantime brands, together with related assets ("the PGM Business"). The Asahi Group was identified upfront as a suitable purchaser of the PGM Business by the Commission in the AB InBev/SABMiller decision[5], and that acquisition was completed on 11 October 2016.

b. SABMiller's business in the Czech Republic, Hungary, Poland, Romania and Slovakia. The acquisition of this divested business[6] by the Notifying Party is the subject of the present Transaction (i.e. the AB InBev CEE Business).

(3) The **Asahi Group** is a beverages and food company, listed on the Tokyo Stock Exchange and headquartered in Tokyo, Japan. The Asahi Group has a diverse product portfolio in Japan that includes alcoholic beverages, non-alcoholic beverages and food products. However, the core of its business is beer. The Asahi Group has been operationally present in Europe since 1998.

(4) The **AB InBev CEE Business** comprises certain beer brands and assets (including breweries) formerly owned by SABMiller and currently belonging to AB InBev in the Czech Republic, Hungary, Poland, Romania and Slovakia.

2. THE OPERATION AND CONCENTRATION

(5) The Asahi Group and AB InBev signed a sale and purchase deed on 13 December 2016. After the completion of the Transaction, the Asahi Group will have sole control over the AB InBev CEE Business. The Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[7] [the Asahi Group: EUR […]; the AB InBev CEE

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4 M.7881-*AB InBev/SABMiller* (2016).

5 See recital (364) of the AB InBev/SABMiller decision.

6 Outside the EEA, the Target includes sales offices in Switzerland and Dubai, as well as a business in South Korea which manages distribution, sales and marketing in this country.

7 Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

Business: EUR […]]. Each of them has an EU-wide turnover in excess of EUR 250 million [the Asahi Group: EUR […]; the AB InBev CEE Business: EUR […]] but they do not 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.

4. ASSESSMENT

4.1. Relevant product market

(7) In previous decisions, the Commission has considered that beer is distinct from other beverages such as wine or carbonated soft drinks and that a distinction between (i) on-trade (beer sold in retail outlets such as pubs, night clubs, cafés and restaurants) and (ii) off-trade (beer sold in retail outlets such as supermarkets and liquor stores) distribution has to be made.[8]

(8) Although the Commission has previously considered that a further segmentation of beer by style (e.g. lager, ale and stout in the UK and Ireland) and by category, depending on the product positioning, such as 'mainstream' or 'premium', could be of relevance, it has ultimately left that possible sub-product market definition open.[9]

(9) The Commission has most recently assessed the beer market in the AB InBev/SABMiller decision. In this case, the Commission confirmed that beer is a market distinct from other beverages. The Commission also considered being appropriate to carry out its assessment taking beer as a whole, with reference, however, to the distinction between the on-trade segment and the off-trade segments. The Commission considered further to be appropriate to give relevance to possible narrower segmentations such as positioning of beer or types of beer when relevant.

(10) The Notifying Party considers that the relevant product market for beer includes all types of distribution channel and all positioning. Without prejudice to the Notifying Party's views as regards the product market, it has provided market data in relation to all possible segmentations.

(11) Therefore, the product market definition can be left open in this case, as the assessment does not differ under the different market definitions.

4.2. Relevant geographic market

(12) In its practice, the Commission has generally considered the markets for the production and distribution of beer to be national in scope[10]. In the AB InBev/SABMiller decision, the Commission considered that the relevant

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8 M.6587-*Molson Coors/Starbev* (2012), para. 7; M.4952-*Carlsberg/Scottish & Newcastle Assets* (2008), para. 11; M.4999-*Heineken/Scottish & Newcastle Assets* (partial referral to Ireland) (2004), para. 21; M.3372-*Carlsberg/Holsten* (2004), para. 8; M.3289-*Interbrew/Spaten-Franziskaner* (2003), para. 7; M.3195-*Heineken/BBAG* (2003), para. 7.

9 See footnote 8.

10 See footnote 8.

geographic markets for beer should be assessed as being at most national in scope. The Notifying Party does not disagree with this definition.

4.3. Competitive assessment

(13) In the EEA, the Asahi Group is currently active in the production and distribution of beer primarily through the acquisition of the PGM Business. Prior to the acquisition of the PGM Business, the Asahi Group had marginal activities in the EEA, mainly through licencing of its flagship brand Asahi Super Dry.

(14) The AB InBev CEE Business is also active in the production and distribution of beer in the EEA, but with sales concentrated in the Czech Republic, Hungary, Poland, Romania and Slovakia.

(15) Consequently, as a result of the Transaction, there will be horizontal overlaps[11] in beer and its subsegments in the Czech Republic, Hungary, Poland, Romania and Slovakia, which however will not give rise to any serious doubts, either for their non-coordinated or their coordinated effects, for the reasons illustrated below.

4.3.1. Non-coordinated effects

4.3.1.1. Czech Republic

(16) The AB InBev CEE Business in the Czech Republic includes the following brands: Gambrinus, Pilsner Urquell, Kozel, Radegast, Klasik, Primus.

(17) After the Transaction, the combined entity will have a market share of [40-50]% in value of the total beer market, with an increment of less than [0-5]% from the Asahi Group (PGM Business). Under no narrower market segmentation does the increment exceed [0-5]%. Competitors include for instance Molson Coors, Heineken, K Brewery Trade, Pivovar Svijany and Budejovicky Budvar.

4.3.1.2. Hungary

(18) The AB InBev CEE Business in Hungary includes the following brands: Arany Ászok, Kőbányai Világos, Dreher, Kozel (from the Czech Republic), Kanizsai and Pilsner Urquell (from the Czech Republic).

(19) After the Transaction, the combined entity will have a market share of [20-30]% in value of the total beer market, with an increment of less than [0-5]% from the Asahi Group (PGM Business). Under no narrower market segmentation does the

[11] Currently, as a result of the recent acquisition of the PGM Business, the vast majority of the Asahi Group's beer turnover in the EEA is generated in Italy, the Netherlands and the United Kingdom. In these countries, the AB InBev CEE Business does not have any production assets and is represented through imports, (Pilsner Urquell, Lech, Debowe Mocne, Źubr and Tyskie brands). The combined market share in these markets remains below 20% in all markets (with the exception of total "mainstream" beer in the Netherlands with a [20-30]% combined market share and an increment of [0-5]% from the AB InBev CEE Business, and total "on trade" in Italy with a [20-30]% combined market share and an increment of [0-5]% from the AB InBev CEE Business). These markets will hence not be discussed further in this Decision.

increment exceed [0-5]%. Competitors include for instance Heineken, Molson Coors, AB InBev and Ottakringer.

4.3.1.3. Poland

(20) The AB InBev CEE Business in Poland includes the following brands: Źubr, Tyskie, Lech, Redd's, Dębowe, Wojak, Książęce, Gingers and Pilsner Urquell (from the Czech Republic).

(21) After the Transaction, the combined entity will have a market share of [30-40]% in value ([30-40]% in volume) of the total beer market, with an increment of [0-5]% from the Asahi Group (PGM Business). Under no narrower market segmentation does the increment exceed [0-5]%, with the exception of the "super-premium" subsegement, where the increment is [0-5]%, but the combined market share only [10-20]%. Competitors include for instance Heineken, Carlsberg, Van Pur Lomza and Perla-Browary Lubelskie.

4.3.1.4. Romania

(22) The AB InBev CEE Business in Romania includes the following brands: Timisoreana Lux, Ciucas, Ursus, Azuga, Redd's and Grolsch.

(23) After the Transaction, the combined entity will have a market share of [30-40]% in value of the total beer market, with an increment of [0-5]% from the Asahi Group (PGM Business).

(24) These increments are slightly higher in some narrower segments. In the "on trade" segment, the increment is [0-5]% and the combined market share [30-40]%. In the mainstream segment, the combined share is [40-50]% with an increment of [0-5]%, while in the total "super premium" segment the combined market share is [30-40]% with an increment of [0-5]%. Competitors in these segments include for instance Heineken, Molson Coors, Carlsberg, and AB InBev.

4.3.1.5. Slovakia

(25) The AB InBev CEE Business in Slovakia includes the following brands: Kozel (from the Czech Republic), Šariš, Topvar, Smädný Mnìch, Gambrinus (from the Czech Republic) and Pilsner Urquell (from the Czech Republic).

(26) After the Transaction, the combined entity will have a market share of [30-40]% in value of the total beer market, with an increment of less than [0-5]% from the Asahi Group (PGM Business). Under no narrower market segmentation does the increment exceed [0-5]%. Competitors include for instance Heineken, Molson Coors, Endemit London and Budejovicky Budvar.

4.3.1.6. Conclusion on horizontal effects

(27) The Transaction does not give rise to serious doubts as regards the beer markets (or in any potentially relevant segment) in the Czech Republic, Hungary, Poland, Romania and Slovakia for the following reasons.

(28) First, although the AB InBev CEE Business is strong in the countries in questions (with a market share in the overall beer market exceeding 25% in all

of the countries at stake), the Asahi Group's current presence in these markets is very limited, with modest increments at best.

(29) Second, several beer competitors are present in all of the countries in question.

(30) Third, the Asahi Group's presence in these markets is also very recent (until the acquisition of the PGM Business, Asahi was only present through *de minimis* sales of Asahi Super Dry in Hungary, Poland, Romania, and Slovakia, and was not at all present in the Czech Republic).

4.3.2. Coordinated effects

(31) In the AB Inbev/SABMiller decision, the Commission found that absent the remedies the AB Inbev/SABMiller merger would have likely facilitated tacit price coordination among brewers in the European Economic Area (EEA) through an increase in the number of national markets where the merged entity and the two remaining major supranational brewers would encounter each other as competitors**.** The present Transaction does not give rise to such risks in the beer markets (or in any potentially relevant segment) in the Czech Republic, Hungary, Poland, Romania and Slovakia for the following reasons.

(32) As described above in paragraph (30), Asahi's current presence in these markets is very limited and recent. Moreover, Asahi is mainly present in Eastern Asia, Oceania and Western Europe (the latter through the PGM Business), which means that the number of markets in which it competes with major international brewers (Heineken, Carlsberg, Molson Coors) that are active in CEE countries is much more limited than the number and value of markets in which these other international brewers compete against each other. In addition, Asahi's domestic market (Japan) is by far its main market for the sale of beer, and none of the international brewers active in the affected markets is a significant player on the competitive Japanese market.

5. CONCLUSION

(33) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission