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## **PUBLIC VERSION**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the notifying parties**

**To Competition and Markets  
Authority**

**Subject: Case M.9860 – Carlsberg/Marston’s/JV**  
**Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004,<sup>1</sup> in conjunction with Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

**Date of filing:** 22 July 2020

**Legal deadline for response of Member State (United Kingdom):** 12 August 2020

**Legal deadline for the Commission decision under Article 4(4):** 26 August 2020

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p.3 (the 'EEA Agreement').

Dear Sirs,

## **1. INTRODUCTION**

- (1) On 22 July 2020, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the proposed creation of a joint venture by Carlsberg A/S and Marston's PLC. The parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom (the 'UK').
- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 22 July 2020.
- (4) By letter of 24 July 2020, the Competition and Markets Authority ('UK CMA') as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees to the proposed referral.

## **2. THE PARTIES**

- (5) Carlsberg A/S ('Carlsberg') is an international producer and supplier of alcoholic beverages, headquartered in Copenhagen, Denmark. It is active in the UK through its wholly-owned subsidiaries, including Carlsberg UK Holdings Limited. In the UK, Carlsberg brews and supplies beer (with a focus on lager including its Carlsberg lager brand) and cider, engages in the wholesale supply of beverages to retail outlets in the UK and ([...]) provides contract brewing services.
- (6) Marston's PLC ('Marston's') is a public company headquartered in Wolverhampton, UK. It brews and supplies alcoholic beverages (with ale being its key product); engages in the wholesale supply of beverages, offers contract brewing and packaging services [...] and (to a limited degree) provides ancillary services. It also owns the Marston's Pub Estate, which is not part of the Proposed JV.
- (7) The Proposed JV is a full-function joint-venture in the UK to which the Parties would contribute their UK alcoholic beverage brewing, wholesaling and distribution business, together with certain ancillary services of Marston's'.

## **3. THE OPERATION AND CONCENTRATION**

- (8) Pursuant to an agreement signed on 22 May 2020, Carlsberg and Marston's will combine their UK alcoholic beverage brewing, wholesaling and distribution businesses, together with certain ancillary services of Marston's', to a full-function joint venture in the UK (the 'Proposed Concentration'). Marston's will retain full ownership and control of its pub and restaurant estate, which will not be contributed to the Proposed JV.

#### 4. UNION DIMENSION

- (9) The Proposed Concentration has a Union dimension within the meaning of Article 1(2) of the Merger Regulation. The Parties' combined aggregate worldwide turnover exceeds EUR 5 000 million (Carlsberg: EUR 8.8 bn and Marston's: EUR 1.34 bn). Each of the Parties' aggregate Union-wide turnover exceeds EUR 250 million (Carlsberg: EUR [...] and Marston's: EUR [...]). While Marston's achieves more than two-thirds of its aggregate Union-wide turnover within one Member State (the UK), Carlsberg does not achieve two-thirds of its aggregate Union-wide turnover in any single Member State.

#### 5. ASSESSMENT

##### 5.1. Introduction

- (10) The Parties have overlapping activities in (i) the supply of beer; (ii) the supply of cider; (iii) wholesaling of beverages to the on-trade channel and (iv) contract brewing. As only certain sub-segments of the supply-of beer would give rise to affected markets<sup>3</sup>, the rest of the markets not discussed further in this decision.
- (11) Marston's is also active in the operation of on-trade retail outlets for beverages (such as pubs) in the UK. Nonetheless, the vertical link created by the Proposed Concentration between the Parties' upstream supply of beverages, and in particular beer, to the on-trade channel and Marston's downstream activities would not appear to give rise to vertically affected markets on the basis of the information provided in the Reasoned Submission in that market shares both upstream and downstream would remain below 30%.

##### 5.2. Relevant product markets

- (12) With regard to the supply of beer, previous Commission decisions have defined a product market covering the supply of beer, with a further assessment of potential narrower segments defined based on factors such as: (i) product positioning (e.g. standard and premium), and (ii) beer type (e.g. lager, ale and stout) and (iii) on-trade<sup>4</sup> supply and off-trade<sup>5</sup> supply of beer.<sup>6</sup>
- (13) The Parties have submitted that, in the context of the UK-markets, the delineation between 'standard' and 'premium' beer should be made on the basis of the alcohol content with 4.2% alcohol-by-volume being a suitable threshold. The Parties have submitted that further delineation of the markets would not be appropriate.
- (14) Nonetheless, it is not necessary for the purposes of the present decision conclude on the exact scope of the relevant product markets.

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<sup>3</sup> In the rest of the markets, the Parties' combined market shares remain below 20% in the UK.

<sup>4</sup> That is, where beverages are consumed on the premises where they are purchased, such as pubs, bars and the hospitality/restaurant/café (HoReCa) segment.

<sup>5</sup> That is, where beverages are purchased and consumed away from the point of purchase, such as grocery retailers, and impulse/convenience stores.

<sup>6</sup> See, for example, M.7881 – *AB INBEV/SABMiller*, paragraphs 15–6 and 22–9; M.4999 – *Heineken/Scottish & Newcastle Assets* (partial referral to Ireland), paragraphs 21 and 32; and M.4952 – *Carlsberg/Scottish & Newcastle Assets*, paragraphs 11 and 14.

### 5.3. Relevant geographic market

- (15) The Commission has generally considered the geographic markets for the production and distribution of beer to be national or no wider than national in scope.<sup>7</sup>
- (16) The Parties have provided market share data on the supply of various types of beer at the national level in the UK.

### 5.4. Assessment of the referral request

#### 5.4.1. Legal requirements

- (17) According to the Commission Notice on Case Referral<sup>8</sup>, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:
  - a) there must be indications that the concentration may significantly affect competition in a market or markets,<sup>9</sup> and
  - b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>10</sup>
- (18) Based on the information submitted in the Reasoned Submission, the Parties estimate that their combined market share in the **overall sale of ale to the off-trade channel** to be [20-30]%, both volume and value, at national level in the UK.<sup>11</sup> In the **sale of premium ale to the off-trade channel**, the Parties estimate their combined market share to be [20-30]% by value and [20-30]% by volume at national level in the UK.<sup>12</sup>
- (19) Overall, Marston's generates over 99% of its Union-turnover in the UK. Marston's Union sales outside of the UK are therefore negligible and result from occasional sales mainly by intermediaries.
- (20) Therefore, the Commission considers that the Proposed Concentration may significantly affect competition in markets that present all the characteristics of distinct markets and that are located exclusively in the UK.
- (21) The Proposed Concentration therefore meets the legal requirements for referral set forth in Article 4(4) of the Merger Regulation.

#### 5.4.2. Additional factors

- (22) In addition to the verification of the legal requirements, point 19 of the Commission Notice on Case Referral provides that it should also be considered whether referral of the case is appropriate, and in particular *'whether the competition authority or*

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<sup>7</sup> See, for example, M.7881 – *AB INBEV/SABMiller*, paragraph 37; M.4999 – *Heineken/Scottish & Newcastle Assets* (partial referral to Ireland), paragraphs 35 – 6; and M.4952 – *Carlsberg/Scottish & Newcastle Assets*, paragraph 15; and

<sup>8</sup> Commission Notice on Case Referral in respect of concentrations, OJ C56, 5.3.2005, p. 2.

<sup>9</sup> Further developed in point 17 of the Commission Notice on Case Referral.

<sup>10</sup> Further developed in point 18 of the Commission Notice on Case Referral.

<sup>11</sup> Form RS, Annex 6.

<sup>12</sup> Form RS, Annex 6.

*authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case’.*

- (23) In addition, point 23 of the Notice states that ‘*[c]onsideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned’*
- (24) The effects of the Proposed Transaction are likely to be confined to the UK and will have their main economic impact in the UK. Each of the materially affected markets is not wider than national in scope, and all of them are located in the UK. Moreover, the Commission has been contacted by two potential complainants from the UK, referring to UK-specific market features and raising concerns regarding the effects of the transaction in the UK. Therefore, the UK CMA is well placed to examine the case.
- (25) The requested referral will also preserve the ‘one-stop shop’ principle as this case will be referred in its entirety to a single competition authority.
- (26) In addition, the UK CMA frequently examines concentrations in the supply of alcoholic beverages sector and has therefore developed significant experience and expertise in the relevant industry.<sup>13</sup> As a result, the UK CMA is well equipped to assess the impact of the Proposed Transaction on competition in the markets in question.

#### *5.4.3. Conclusion on referral*

- (27) 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 Merger Regulation in that the concentration may significantly affect competition in market(s) within a Member State which presents all the characteristics of a distinct market.
- (28) Moreover, the UK CMA is the most appropriate authority to review the case.

## **6. CONCLUSION**

- (29) For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*

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<sup>13</sup> See for example CMA’s Decision ME/6576/15 – Anticipated acquisition by Heineken N.V. of Diageo plc assets (2016).