



EUROPEAN COMMISSION
DG Competition

Case M.9921 - HEINEKEN/CARLSBERG/INNSERVE

Only the English text is available and authentic.

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

Article 4(4)
Date: 21/12/2020



EUROPEAN COMMISSION

Brussels, 21.12.2020
C(2020) 9585 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Carlsberg UK Limited
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United Kingdom

Competition and Markets Authority
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London, E14 4QZ
The United Kingdom

**Subject: Case M.9921 – Heineken/Carlsberg/Innserve
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004,¹ 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**

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.

United Kingdom and Article 57 of the Agreement on the European Economic Area²

Date of filing: 16 November 2020

Legal deadline for response of Member State (United Kingdom): 8 December 2020

Legal deadline for the Commission decision under Article 4(4): 21 December 2020

Dear Sirs,

1. INTRODUCTION

- (1) On 16 November 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 acquisition of joint control³ of Innserve Limited ('Innservice' or 'the Target') by Carlsberg UK Limited ('Carlsberg') and Heineken UK Limited ('Heineken')⁴. 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 17 November 2020.
- (4) By letter of 7 December 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 is a private limited liability company with its registered office in Northampton, the UK. Carlsberg is controlled by Carlsberg A/S which is an international producer and supplier of alcoholic beverages, headquartered in Copenhagen, Denmark. Carlsberg is active in the brewing and supplying beer and cider throughout the UK, and it also operates a wholesaling business supplying alcoholic and non-alcoholic beverages to retail outlets.
- (6) Heineken is a private company with its registered office in Edinburgh, the UK. Heineken is controlled by Heineken N.V. which is an international producer and distributor of alcoholic beverages, in particular, beer and cider, headquartered in Amsterdam, the Netherlands. Heineken is active in the brewing and supply of beer and cider in the UK and it also owns a leased and tenanted pub business.
- (7) Innservice is a wholly owned subsidiary of Hallriver Limited and it is active in providing technical services equipment ('TSE') and technical services ('TS') to and

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

³ Hereinafter referred to as the 'the Proposed Transaction'.

⁴ Carlsberg and Heineken together are hereinafter referred to as the 'Notifying Parties', and together with Innservice as 'the Parties')

on behalf of Carlsberg and Heineken in the UK and the Isle of Man. Aside from Carlsberg and Heineken, Innserve does not directly supply other customers; however its sister company Innserve Technical Solutions Limited ('ITS') serves other customers as well. ITS which is also wholly-owned by Hallriver is not within the scope of the present transaction. Carlsberg and Heineken will acquire Innserve through a jointly controlled company, Serviced Dispense Equipment Limited ('SDE')⁵, and as a result of the transaction, the Notifying Parties will exert joint control over the Target.

3. THE OPERATION AND CONCENTRATION

- (8) On 8 June 2020, SDE sent a notice to exercise an option to acquire all of the shares of Innserve from Hallriver Limited. The option is provided for under the terms of a services sub-subcontract dated 24 May 2010 between a wholly-owned subsidiary of the SDE Group, Innserve and Hallriver Limited.

4. UNION DIMENSION

- (9) The Proposed Transaction 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 [...], Heineken: [...], Innserve's: [...]). Each of the Parties achieved Union-wide turnover in excess of EUR 250 million (Carlsberg: EUR [...], Heineken's: [...], Innserve's: [...]). Innserve achieves all of its aggregate Union-wide turnover in the United Kingdom while Heineken and Carlsberg do not achieve 2/3 of their respective turnovers there.

5. ASSESSMENT

5.1. Introduction

- (10) The Notifying Parties are primarily active in the market of brewing and distributing beer and cider to both the on-trade and off-trade in the UK. The Notifying Parties supply both the on-trade⁶ and off-trade⁷ channels. However, only the market(s) of brewing and distributing beer and cider to the on-trade channel are related to the supply of TSE and the provision of TS in the UK. Therefore supply to the off-trade is not relevant for the purpose of assessing the Proposed Transaction.
- (11) The Notifying Parties have overlapping activities with Innserve in the UK which create horizontally affected markets for the procurement of TSE and the supply of TS for draught beer. In addition, the Proposed Transaction gives rise to the following UK vertically affected markets: (i) the production / distribution and supply of beer to the on-trade channel; and (ii) the procurement of TSE for draught beer and the supply of TS.

⁵ SDE is a non-full function company controlled by the Notifying Parties. SDE was set up by the Notifying Parties for the purpose of outsourcing and procuring TSE and TS for them in the UK.

⁶ That is, where beverages are consumed on the premises where they are purchased, such as pubs, bars and the hospitality/restaurant/café (HoReCa) segment.

⁷ That is, where beverages are purchased and consumed away from the point of purchase, such as grocery retailers, and impulse/convenience stores.

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 supply and off-trade supply of beer.⁸
- (13) TSE is the equipment used in on-trade outlets such as pubs or clubs for the purpose of dispensing draught beer, wine, premixed cocktails and soft drinks. TS is the on-site technical maintenance (excluding weekly cleaning), repair, installation and replacement of TSE at outlets. TS are provided to outlets by brewers and third-party TS providers, while TSE are provided by brewers. The Commission has not investigated TSE and TS services until now, but the CMA has previously investigated⁹ the supply of TSE (together with the supply of TS).
- (14) Nonetheless, it is not necessary for the purposes of the present decision to conclude on the exact scope of the relevant product markets.

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.¹⁰
- (16) The Parties have provided market share data on the (i) production / distribution and supply of beer to the on-trade channel; and (ii) the procurement of TSE for draught beer and the supply of TS, 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 Referral¹¹, 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,¹² and
 - b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.¹³

⁸ 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.

⁹ See for example CMA’s Decision ME/1587/04 – Anticipated merger of the technical services divisions of Scottish Courage Limited and Carlsberg-Tetley (2004); and (ii) Competition Commission’s on the proposed acquisition by Serviced Dispense Equipment Limited of the Technical Services Function of Coors Brewers Limited (2005).

¹⁰ 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.

¹¹ Commission Notice on Case Referral in respect of concentrations, OJ C56, 5.3.2005, p. 2.

¹² Further developed in point 17 of the Commission Notice on Case Referral.

¹³ Further developed in point 18 of the Commission Notice on Case Referral.

- (18) Based on the information submitted in the Reasoned Submission, the Parties estimate that their combined market share with regard to the horizontally affected markets will be: (i) around **[40-50%] for the procurement of TSE for draught beer in the UK**,¹⁴ and (ii) around **[20-30%] for the supply of TS for draught beer**.¹⁵ At the same time, the Parties submit¹⁶ that their market shares in the distribution of draught beer (all types) to the on-trade channel in the UK (vertically related to the above TS and TSE markets) is approximately [30-40%]¹⁷. The vertical link between these activities thus results in a vertically affected market.
- (19) 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.
- (20) 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

- (21) 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 authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case’*.
- (22) In addition, in line with point 20 of the Notice, 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. Therefore, the UK CMA is well placed to examine the case.
- (23) 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.
- (24) In addition, according to point 23 of the Notice *‘Consideration 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’*. 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.¹⁸ As a result, the UK CMA is well equipped to assess the impact of the Proposed Transaction on competition in the markets in question.

¹⁴ Form RS –Annex 4.1.

¹⁵ Form RS –Annex 4.1.

¹⁶ Form RS – paragraph 149, Table 4.1.

¹⁷ All market shares include those of Marston’s. The joint venture between Marston’s plc and Carlsberg was completed on 30 October 2020. The vertically affected markets would arise even if disregarding the markets shares of Marston’s.

¹⁸ See for example CMA’s Decision ME/6576/15 – Anticipated acquisition by Heineken N.V. of Diageo plc assets (2016) and CMA’s Decision ME/1587/04 – Anticipated merger of the technical services divisions of Scottish Courage Limited and Carlsberg-Tetley (2004).

5.4.3. *Conclusion on referral*

- (25) 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.
- (26) Moreover, the UK CMA is the most appropriate authority to review the case.

6. CONCLUSION

- (27) For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the Proposed 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