MARKET SHARING (BREWING): THE BREWERS CARTEL CASE

Subject: Market sharing
Price fixing
Information agreements

Industry: Brewing
(Implications for other industries)

Parties: Interbrew
Alken-Maes
Haacht
Martens
Danone
Bofferding
Diekirch
Mousel et Clausen
Battin
De Wiltz

Source: Commission Statement IP/00/1092, dated 2 October 2000

(Note. The interest of this case lies mainly in the fact that, while past action against brewers has been almost entirely directed to problems of vertical restraints, as between the brewers and their retail outlets, the present case is concerned with horizontal arrangements, as between the different firms of brewers themselves. If the Commission's prima facie case is proved, the penalties could be severe since, as the Commissioner points out, market sharing and price fixing are particularly heinous offences. However, the brewers have yet to respond to the Commission's Statement of Objections.)

The Commission has issued Statements of Objections to brewers in Belgium and Luxembourg relating to alleged infringements of Article 81 of the EC Treaty which prohibits concerted behaviour or agreements between companies that have an anti-competitive object or effect. The Statements of Objections mark the opening of infringement proceedings and contain the Commission's preliminary assessment. The parties are now entitled to present their defence in writing, as well as at an oral hearing. The Commission is also investigating similar alleged practices by major brewers in other Member States, in particular France, the Netherlands, Italy and Denmark. However, these investigations are at an early stage and no conclusions should be drawn as to the existence of any infringement.

The Statement of Objections for Belgium is addressed to Interbrew, Alken-Maes (and its parent company at the time of the alleged infringement, Danone), Haacht and Martens. Interbrew and Alken Maes are the No. 1 and No. 2 brewers on the Belgian market. The alleged infringements include market sharing, price fixing and information exchange on the Belgian market during the period 1993 to at

least 1998. The involvement of the two smaller brewers, Haacht and Martens, is limited to alleged infringements relating to private label beer (i.e. sold under supermarkets' own labels).

The Statement of Objections for Luxembourg is addressed to the following Luxembourg brewers: Bofferding, Diekirch, Mousel et Clausen, Battin and De Wiltz. The alleged infringement is an agreement to maintain the parties' market shares in the Luxembourg on-trade (that is, restaurants, hotels and cafés) and to restrict entry by foreign brewers from 1985 until at least 1998.

The Commission became aware of the alleged practices following surprise inspections at Interbrew, Alken-Maes and the Belgian brewers' federation in July and October 1999. Competition Commissioner Mario Monti commented: "While the Commission has for many years focused on the exclusive dealing agreements between brewers and their outlets, this is the first time that it has acted against possible horizontal collusion between brewers. Market sharing and price fixing are among the most serious forms of anti-competitive practice. In this respect, the beer sector will be treated no differently from any other." ■

The Danone Case

In the Brewers Cartel Case, reported above, Danone is shown as one of the brewers to whom the Statement of Objections was addressed. However, Danone has been divesting its brewing interests. Three months ago, the Commission cleared the acquisition of Danone's beer businesses in France and Belgium by British brewer Scottish & Newcastle. Through the operation Scottish & Newcastle acquires sole control over Danone's beer business known as Kronenbourg Brasseries, which will be aggregated with the Scottish & Newcastle's beer business in the UK and Ireland. The proposed transaction will be carried out in two stages. In a first phase, which will last a maximum of three years, all of the relevant businesses will come under the management of Scottish & Newcastle but Danone will have an option to require Scottish & Newcastle to buy all of Danone's interest in the various beer businesses. In a second phase and if the option has not been exercised, Danone will keep a minority shareholding in the company controlled by Scottish & Newcastle. Britain's Scottish & Newcastle and Danone of France brew, produce and sell a wide range of branded beers in the UK, Ireland, France and Belgium. Scottish & Newcastle beer brands include Courage, John Smiths, McEwan's and Newcastle Brown. It also produces under licence other beer brands including Fosters, Kronenbourg 1664 (for Danone in the UK) and Miller and Moleson. Danone beer brands include Kronenbourg 1664, Kanterbrau, Maes and Cristal. It also produces a number of beers under licence including Grimbergen, Brugs and Judas.

Source: Commission Statement IP/00/754, dated 12 July 2000.