IP/03/545

Brussels, 15 April 2003

European Commission opens up Interbrew's Belgian horeca outlets to competing beer brands

Today the European Commission approved the amended supply agreements between Interbrew, the largest brewer in Belgium, and pubs, restaurants or hotels (horeca-outlets) located in Belgium. As a condition for , the Commission has required Interbrew to amend these agreements in order to offer competitors access to the "tied" horeca outlets. Welcoming the outcome, Mr. Mario Monti, Commissioner responsible for competition, pointed out: "Consumers will now have additional choice of beer brands in more than 10,000 outlets which have so far been exclusively supplied by Interbrew. In view of Interbrew's strong position, I expect that this will bring an extra dynamic to the Belgian beer market".

The amended agreements will give Belgian horeca outlets - those having concluded so-called "loan agreements" as well as those having entered into a lease or sublease agreement with Interbrew – significantly increased commercial freedom to carry beers not brewed by Interbrew.

Loan agreements

For the more than 7000 outlets which have so far been entirely tied to Interbrew under a so-called "loan agreement", the non-compete obligation (i.e. a clause forcing them to serve exclusively Interbrew's beer) vis-à-vis Interbrew will in the future be limited to draught pils. The exclusivity covers the Stella, Jupiler and Safir lager brands which are served from 30 liter or 50 liter kegs. Only in the unlikely event that Interbrew's draught pils would account for less than 50% of the outlet's total beer throughput, the outlet has to ensure that it purchases the shortfall also from Interbrew's portfolio of brands. Therefore, these outlets will now be able to buy from Interbrew's competitors: a) any draught beer other than pils and b) any beer (including pils) in bottles or cans. A loan agreement is an agreement whereby Interbrew provides independent horeca-outlets with a loan, a bank guarantee or valuable material (e.g. cooling installations). It usually has a maximum duration of five years.

In addition, the outlets can now also terminate their loan agreement more easily. They can do so at any time prior to normal termination after five years provided they give Interbrew three months' notice. If the outlets do so, they (or the competing brewer from whom they intend to buy in future) must of course repay the outstanding capital of the loan or the remaining value of the material (or return this material in kind). However, in case they have to repay the outstanding capital of the loan, they do not have to pay the usual penalty the lender is normally entitled to claim from them for early repayment.

Lease or sublease agreements

The non-compete obligation of the more than 3000 other outlets which operators lease or sublease from Interbrew will be limited to draught beer. This gives competing brewers the possibility to sell their bottled or canned beer, including pils, to these outlets.. In addition, the horeca operator will have the right to serve one draught beer other than pils as “guest beer”. Interbrew will be obliged to accept such a “guest beer” even if it brews this type of beer (e.g. white beer, amber beer, etc.) itself.The Commission accepts that this "guest beer" will be supplied by Interbrew or a wholesaler appointed by it. The Commission will review the impact of the “guest beer” clause after one year of operation in order to verify whether it has given competing brewers a real entry into Interbrew’s lease and sublease outlets.

Under a lease or sublease agreement which last for at least nine years, Interbrew owns the outlet and lets it to an independent operator or it is the principal lessee of this outlet and sublets it to such an operator.

Commission's approval

The Commission has informed Interbrew that its amended agreements no longer lead to an appreciable restriction of competition. Before the Commission reached its final position, it has collected and examined the comments from other stakeholders in the sector (in particular competitors, wholesalers and horeca outlets).[1]

Interbrew has committed itself to implementing the amended agreements within two months after the Commission's approval.

The competition policy context

Interbrew is the largest Belgian brewer and holds an overall market share of roughly 56% of the Belgian horeca sector. Due to this market share, it is the only Belgian brewer whose exclusivity agreements are clearly not covered by the new so-called Block Exemption Regulation on Vertical Agreements from the end of 1999.[2] This Block Exemption Regulation allows a brewer with a market share not exceeding 30% to oblige horeca outlets to buy all their beer from it in exchange for a five year loan or for as long as they would lease or sub-lease the premises from it. This new regime entered into force as from 1 January 2002.

In the past, Interbrew had the right – like any other brewer – to tie horeca outlets without much legal constraint. Indeed the previous Block Exemption Regulation provided in practice a safe haven even for brewers with very substantial market shares.[3] In view of the changed situation, Interbrew notified its brewery contracts and offered some amendments. The Commission found these amendments insufficient. After lengthy discussions and additional concessions made by Interbrew, the Commission is now satisfied that the amended brewery contracts no longer restrict competition in an appreciable manner.

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1 Notice published pursuant to Article 19(3) of Regulation No 17 concerning notification COMP/A37.904/F3 – Interbrew, OJ C 283, 20.11.2002, p. 14.

2 Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, JOUE L 336, 29.12.1999, p. 21.

3 Title II of Regulation No 1984/83.

Dealing with the underlying case the Commission has kept the Belgian competition authority informed throughout the procedure. It also responded to a request from the Dutch competition authority (NMa) to obtain guidance from it in the context of its handling of brewery contracts notified by Heineken, the leading Dutch brewer with a market share also exceeding 30%. The NMa approved Heineken's amended brewery contracts on 29 May 2002 broadly following the line suggested by the Commission.

In light of the need to intensify contacts with the National Competition Authorities (NCA) through the European Competition Network (ECN), the Commission intends to organise a workshop with them in the near future. This will provide it with an opportunity to ensure a coherent application of the principles underpinning its above mentioned Block exemption and its corresponding Guidelines on vertical restraints[4] to brewery contracts throughout the Community.

[4] JOUE C 291, 13 October 2000, p. 1.