

Brussels, 4 November 2002

Commission closes cartel procedure against Carlsberg and Heineken

The European Commission has closed its investigation into an alleged market sharing agreement between Carlsberg of Denmark and Dutch company Heineken, two large international brewers, since the Commission did not find evidence to prove that the suspected infringement continued after May 1995. Under EU rules, the Commission cannot fine companies for infringements for which it has no evidence that they continued in the five years preceding the start of its investigation – which in this case was 2000.

On 1 March 2002, the Commission issued statements of objections to Carlsberg and Heineken presenting its provisional conclusion that there appeared to exist, in the period 1993-1996, an agreement and/or concerted practice between the two brewers with the overall objective of limiting activity, in particular through acquisitions, in each other's "home markets" (see [IP/02/350](#)).

This provisional conclusion was reached on the basis of documents found during surprise inspections at Heineken in March 2000 and Carlsberg in May 2000. These documents included memos on a meeting in August 1994 between the then CEOs of both companies and a further document from February 1995 in which Carlsberg's then Managing Director reported to his CEO on a telephone conversation with the Heineken CEO.

Both parties replied in writing to the statement of objections in May 2002. Carlsberg presented its case during an oral hearing in June 2002. Both companies fully developed their reasons for rejecting the Commission's interpretation of the documents quoted in the statement of objections and argued that there had never been any market sharing agreement or concerted practice between them. Furthermore, each company stressed that it was very difficult to enter the other's home market anyhow. The companies also indicated that, even if the Commission were to disagree with their arguments, the evidence for the alleged infringement was too old to impose a fine¹.

¹ Council Regulation (EEC) No 2988/74 of 26 November 1974 (OJ L 319, 29.11.1974, p. 1) sets out the Commission's procedural framework with respect to limitation periods in competition cases. It requires that, for fining purposes, the Commission gives evidence that an infringement to the competition rules was not terminated 5 years prior to its first intervention. In this case the first relevant intervention was the verification at Carlsberg in May 2000.

The Commission reflected upon these arguments and concluded that an agreement limiting acquisitions in each other's home market would constitute an infringement, but that it required supplementary evidence. It therefore decided to complete its fact-finding by additional inspections at the premises of Carlsberg and Heineken on 28 August 2002 (see [MEMO/02/181](#)).

As evidence of the kind sought for was not found, the Commission came to the conclusion that any possible infringement arising in this case would fall outside the time limit for fines. Therefore the Commission informed the companies that no further action will be taken with respect to its investigation and that the case has been closed.