

## II

*(Information)*

## INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COMMISSION

**Summary of Commission Decision****of 18 April 2007****relating to a proceeding under Article 81 of the Treaty establishing the European Community****(Case COMP/B/37.766 — Dutch beer market)***(notified under document number C(2007) 1697)***(Only the Dutch text is authentic)***(2008/C 122/01)***SUMMARY OF THE INFRINGEMENT**

1. This Decision was addressed to InBev NV, InBev Nederland NV, Heineken NV, Heineken Nederland BV, Koninklijke Grolsch NV and Bavaria NV.
2. The above six legal entities belonging to four brewery undertakings have participated in a single and continuous infringement of Article 81 of the EC Treaty between 27 February 1996 and 3 November 1999 on the market for beer in the Netherlands.
3. The infringement consisted in a complex of agreements and/or concerted practices the object of which was to restrict competition within the common market, in particular by:
  - (i) coordinating prices and price increases of beer in the Netherlands, both in the on-trade and the off-trade segment, including with regard to private label beer;
  - (ii) occasionally coordinating other commercial conditions offered to individual customers in the on-trade segment in the Netherlands;
  - (iii) occasional concertation on customer allocation, both in the on-trade and the off-trade segment in the Netherlands.
4. On-trade refers to places where consumption is on the premises, e.g. restaurants and cafés. Off-trade refers to consumption off the premises, e.g. sales through supermarkets.

**THE DUTCH BEER MARKET**

5. The market value of the beer sold by the four brewery undertakings on the Dutch market in the period covered by the decision was approximately EUR one billion per year. The total market share of the cartel members in the Dutch beer market was above 90 %.

**FUNCTIONING OF THE CARTEL**

6. The Central Brewery Office (*Centraal Brouwerij Kantoor*), of which the four brewery undertakings are the most important members, has numerous well-structured, numbered meetings of its general assembly and various working parties, for which invitations and minutes were sent. In parallel to these official meetings, there have been for years unofficial meetings during which the breweries had anticompetitive discussions.
7. The Decision sets the starting date with the meeting of 27 February 1996, the first meeting for which the Commission has documentary evidence of the anti-competitive content of the discussions. The end of the cartel is set at 3 November 1999, which is the date of the last proven meeting.
8. The infringements committed by the addressees are considered as 'very serious' by their nature, as they had the object of fixing prices, thereby restricting competition and affecting trade between Member States.

## PROCEDURE

9. In July 1999, the Commission carried out inspections at the headquarters of Interbrew (a predecessor of InBev) in Leuven (Belgium) following a complaint about a possible abuse of a dominant position. The inspection led to the opening of a different case regarding a cartel on the Belgian beer market between Interbrew and the second player Alken-Maes involving also the confederation of Belgian brewers. In the course of this second investigation, Interbrew came forward with an application under the 1996 leniency notice regarding a second cartel on the Belgian market (concerning private label beer and involving more brewers) as well as regarding anticompetitive practices in France, Luxembourg, Italy and the Netherlands.
10. As a result of Interbrew's statement, investigations were carried out in the Netherlands on 22 and 23 March 2000.
11. On 30 August 2005, the Commission initiated proceedings in the present case, and adopted a Statement of Objections which was notified to the addressees of the present Decision.
12. Interbrew has through its 2004 merger with AmBev become InBev, and Interbrew Nederland has in 2006 been renamed InBev Nederland.
13. As none of the parties requested an oral hearing, no hearing took place.
14. Except for InBev, the addressees of the Statement of Objections objected to the facts constituting the infringement presented therein. The parties' arguments are examined and discussed in the Decision.

## FINES

### Basic amount

15. In view of the nature of the infringement and the fact that it affected the entire territory of the Netherlands, the undertakings to which this Decision is addressed have committed a very serious infringement of Article 81 of the Treaty.
16. Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders, respectively, to cause significant damage to competition. This is appropriate where, as in this case, there are considerable disparities between the respective market shares of the undertakings participating in the infringement.
17. It is appropriate in this case to use the beer sales in the Netherlands of the undertakings participating in the infringement as a basis for comparison to determine their respective weight. The comparison is based on sales in the Netherlands of beer in the last full calendar year of the infringement (1998). Heineken, with beer sales in the

Netherlands of EUR [between 450 and 480] million in 1998, is placed in the first category. Grolsch, with beer sales in the Netherlands of EUR [between 150 and 180] million in 1998 and InBev, with beer sales in the Netherlands of EUR [between 150 and 180] million in 1998, are placed in a second category. Bavaria, with beer sales in the Netherlands of EUR [between 100 and 130] million in 1998, is placed in a third category.

18. Within the category of very serious infringement, the scale of likely fines also makes it possible to set the fines at a level which ensures that they have sufficient deterrent effect, taking into account the size of each undertaking. In 2006, the world-wide turnover of InBev was EUR 13 308 million, that of Heineken EUR 11 829 million, that of Grolsch EUR 317 million and that of Bavaria EUR 401 million. Accordingly, the Commission considers it appropriate to multiply the fine for InBev and Heineken by 2,5.
19. The starting amount of the fines is generally increased by 10 % for each full year of infringement, and further increased by 5 % for any remaining period of 6 months or more but less than a year. All addressees of the Decision are liable for an infringement of 3 years and 8 months. This leads to an increase in the starting amount of the fine by 35 %.

### Aggravating and attenuating circumstances

20. The Decision concludes that in the present case there are neither aggravating nor attenuating circumstances for any of the undertakings concerned.

### Application of the 10 % turnover limit

21. Article 23(2) of Regulation (EC) No 1/2003 provides that 'For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10 % of its total turnover in the preceding business year'. Taking into account the undertakings' turnover in 2006, this requirement leads to a limitation of the fine to be imposed on Grolsch.

### Application of the 1996 Leniency Notice

22. InBev submitted an application under the Commission Notice on the non-imposition or reduction of fines in cartel cases. It co-operated with the Commission at different stages of the investigation with a view to receiving the favorable treatment provided for in the the 1996 Commission Notice on the non-imposition or reduction of fines <sup>(1)</sup>.
23. InBev claims that it fulfils the conditions for benefiting from a reduction of at least 75 % of the fine or even from exemption from a fine under Section B of the 1996 Notice.

<sup>(1)</sup> OJ C 207, 18.7.1996, p. 4.

24. InBev informed the Commission of the existence of an infringement, even before the Commission launched an investigation and before it had any other information about the infringement. InBev was also the first undertaking to provide documentation to the Commission that was crucially important to confirming the existence of a cartel. To the Commission's knowledge, InBev ended its participation in the illegal activities before the Commission became aware of the infringement. InBev also supplied the Commission with all the evidence about the cartel which it had in its possession. In addition, InBev continued to cooperate fully throughout the investigation and did not fundamentally contest the accusations levelled against the participating undertakings in the statement of objections. Finally, there is no indication that InBev forced any other undertaking to take part in the infringement, or took the initiative or played a leading role in the illegal activity.
25. The Commission therefore takes the view that InBev fully complied with the conditions in Section B of the 1996 Notice.
26. The Decision took into account all of these elements when granting a 100 % reduction of the fine that would otherwise have been imposed on InBev NV and InBev Nederland NV.

#### DECISION

27. The following undertakings participated, during the period from 27 February 1996 to 3 November 1999, in a single and continuous infringement of Article 81 of the Treaty, by entering into a complex of agreements and/or concerted practices the object of which was to restrict competition within the common market, in particular by (i) coordinating prices and price increases of beer in the Netherlands, both in the on-trade and the off-trade segment, including with regard to private label beer; (ii) occasionally coordinating other commercial conditions offered to individual customers in the on-trade segment in the Netherlands; (iii) occasional concertation on customer allocation, both in the on-trade and the off-trade segment in the Netherlands:
- (a) InBev: InBev NV and InBev Nederland NV;
  - (b) Heineken: Heineken NV and Heineken Nederland BV;
  - (c) Grolsch: Koninklijke Grolsch NV;
  - (d) Bavaria: Bavaria NV.
28. For the infringements referred to above, the following fines were imposed:
- (a) Heineken NV and Heineken Nederland BV, jointly and severally: EUR 219 275 000;
  - (b) Koninklijke Grolsch NV: EUR 31 658 000;
  - (c) Bavaria NV: EUR 22 850 000.
29. The undertakings listed above had to immediately bring to an end the infringements, insofar as they had not already done so. They had to refrain from any act or conduct as the infringement found in this case, and from any act or conduct having the same or a similar object or effect.
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