



EUROPEAN COMMISSION  
DG Competition

***Case M.7881 - AB INBEV / SABMILLER***

Only the English text is available and authentic.

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

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 24/05/2016

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## EUROPEAN COMMISSION

Brussels, 24.5.2016  
C(2016) 3212 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

### To the notifying party

Dear Madam(s) and/or Sir(s),

**Subject: Case M.7881 – AB InBev / SABMiller**  
**Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

- (1) On 30 March 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Anheuser-Busch InBev SA/NV ('ABI', Belgium) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking SABMiller plc ('SAB', United Kingdom) by way of public bid ('the Transaction').<sup>3</sup> **ABI** is hereinafter referred to as the 'Notifying Party' and together with SAB as 'the Parties', whilst the undertaking resulting from the Transaction is referred to as 'NewCo' or 'the Combined Business'.

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

<sup>3</sup> Publication in the Official Journal of the European Union No C 123, 7.4.2016, p. 33.

## **I. THE PARTIES**

- (2) **ABI** is a publicly traded company headquartered in Belgium. ABI is listed on the Euronext Stock Exchange in Brussels, the New York Stock Exchange, the Mexican Stock Exchange and the Johannesburg Stock Exchange. ABI was created in 2008 by the merger of InBev and Anheuser-Busch. InBev was a Belgian-Brazilian brewer, itself created in 2004 by the merger of AmBev and Interbrew. Anheuser-Busch was a brewing company established in 1860 in St. Louis, Missouri, United States, as Anheuser & Co. ABI acquired in 2013 the Mexican brewer Grupo Modelo, which owned inter alia the Corona brand.
- (3) ABI is active in the production, marketing, and distribution of beer, non-alcohol and low-alcohol beer as well as soft drink products. In certain countries, ABI also distributes the beer products of other brewers. ABI has a portfolio of over 200 beer and other malt beverage brands. These include global brands, such as Budweiser, Corona (except in the United States) and Stella Artois; multi-country brands, including Beck's, Leffe and Hoegaarden; and numerous local brands, including Bud Light and Michelob Ultra in the United States, Corona Light and Modelo Especial in Mexico, Jupiler in Belgium and the Netherlands, Klinskoye and Sibirskaya Korona in Russia, and Cass in South Korea. ABI is also active in the production, marketing and distribution of Stella Artois Cider as well as in the production, marketing and distribution of soft drinks in certain countries.
- (4) **SAB** is listed on the London and the Johannesburg Stock Exchanges. SAB was founded in 1895 as The South African Breweries (SAB), with its head office at the Castle Brewery in Johannesburg, South Africa. SAB later expanded internationally, making several acquisitions in both emerging and developed markets. In 1999, SAB formed a new UK-based holding company, SAB plc, and moved its primary listing to London.
- (5) SAB is active in the production, marketing, and distribution of beer and soft drink products through its subsidiaries and together with its associated companies. SAB has a portfolio of more than 200 beers, including global and regional brands. SAB's global brands include Grolsch, the Peroni brand, the Miller Brand, and Pilsner Urquell (all of which are sold in the US through MillerCoors LLC, a 50-50 joint-venture with US brewer Molson-Coors). SAB is also involved both individually and in conjunction with various joint venture partners in regional brands that include Club Colombia in Colombia, Castle throughout Africa, Hero in Nigeria, Snow Draft in China, and Kozel and Radegast in Czech Republic. SAB is also active in the production, marketing and distribution of soft drinks, particularly through its bottling and distribution agreements.

## **II. THE TRANSACTION**

- (6) On 11 November 2015, ABI announced its intention to make an offer to acquire the entire issued, and to be issued, share capital of SAB. The offer is recommended by the board of SAB.
- (7) The offer for acquisition takes the legal form of public bid pursuant to the UK City Code on Takeovers and Mergers and valued SAB at approximately GBP 71 billion (EUR 90.1 billion).

- (8) The acquisition will be completed by way of a three-stage process ('the Transaction') pursuant to which (i) the shares of SAB will be transferred to NewCo, a Belgian company formed for the purposes of completing the acquisition, in exchange for the issue of NewCo shares to SAB shareholders, (ii) ABI will acquire NewCo shares from former SAB shareholders, and (iii) ABI will subsequently merge into NewCo, so that, following this third step, NewCo will be directly holding the ABI business and all the shares (sole control) of SAB.
- (9) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **III. UNION DIMENSION**

- (10) The Parties have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>4</sup> [ABI: EUR 35 412 million; SAB: EUR 16 655 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [ABI: [...]; SAB: [...]], and they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has an Union dimension, pursuant to Article 1(2) of the Merger Regulation.

### **IV. CONTEXT OF THE TRANSACTION**

- (11) ABI and SAB are respectively number one and number two brewers in terms of volume at a global level, followed by Heineken and Carlsberg as number three and four. However, in Europe, ABI and SAB are respectively only number three and number four in volume (after Heineken and Carlsberg).
- (12) The Transaction is a transformational deal aiming at building the first truly global beer business. The Combined Business would be the global undisputed category leader for beer, with a 30% volume global market share. It would be three times bigger than the future number two (Heineken) in volume. The Combined Business would capture 50% of the world's beer profits and be four times bigger than Heineken in terms of profits. NewCo's market capitalisation would be six times bigger than Heineken's and fifteen times bigger than Carlsberg's or Molson Coors.
- (13) NewCo would also have a wide geographic footprint with ABI buying from SAB activities in South America, Africa and Australia in order to reinforce its global presence. Some of these former SAB countries such as Ecuador, Peru, Colombia, South Africa and Australia are major profit pools due to SAB's leading positions. It has to be noted that Europe is not a priority in the proposed transaction, since European countries are significantly less profitable than extra-European countries in which ABI or SAB have undisputed leading positions.
- (14) European customers can turn to a wide variety of brands in each of the EEA Member States that reflect the history of the brewing industry in these countries. Nevertheless, European beer markets are oligopolistic markets, characterised by a reduced number of players (SAB, ABI, Heineken and Carlsberg are present in almost all EEA countries) that also meet in a significant number of other markets at worldwide level.

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<sup>4</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

## **V. RELEVANT MARKETS**

### **V.1. Relevant Product Markets**

#### *V.1.1. Past decisional practice*

- (15) In previous decisions, the Commission has considered that beer is distinct from other beverages such as wine or carbonated soft drinks and that a distinction between (i) on-trade (beer sold in retail outlets such as pubs, night clubs, cafés and restaurants) and (ii) off-trade (beer sold in retail outlets such as supermarkets and liquor stores) outlets has to be made.<sup>5</sup>
- (16) Although, the Commission has previously considered that a further segmentation of beer by style (e.g. lager, ale and stout in the UK and Ireland) and by category, depending on the product positioning, such as 'mainstream' or 'premium', could be of relevance, it has ultimately left that possible sub-product market definition open.<sup>6</sup>

#### *V.1.2. The Notifying Parties' arguments*

- (17) The Parties do not contest the fact that the beer market is distinct from the markets for other beverages.
- (18) The Parties consider that the relevant product market includes all types of distribution channels, without any need for segmentation between on-trade and off-trade.
- (19) The Parties consider that it is neither appropriate nor meaningful to segment by positioning of beer because (i) there is a high level of supply-side substitution as between differently positioned beers, (ii) customers do not recognise a distinction between 'mainstream' (i.e. standard) and 'premium' beer, but make their choices according to factors such as traditional preferences, taste, or occasion, (iii) there do not seem to be commonly recognised criteria that would enable a meaningful distinction by positioning of beer, and (iv) in recent years, a number of brands have been launched with 'standard' levels of alcohol content, but marketing that promotes 'premium'-style qualities.
- (20) Moreover, the Parties consider that within each hypothetical sub-segment there is a wide spectrum of different products that vary considerably in terms of their characteristics and appeal to customers, resulting in competitive interactions not only within the same sub-segment but also across different sub-segments. This is evidenced, inter alia, by the fact that the same beer brands are reported in different segments in different national markets, as well as the same beer brand is reported in different segments for the same national market but according to different data sources.

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<sup>5</sup> M.6587-Molson Coors/Starbev (2012), para. 7; M.4952-Carlsberg/Scottish & Newcastle Assets (2008), para. 11; M.4999-Heineken/Scottish & Newcastle Assets (partial referral to Ireland) (2004), para. 21; M.3372-Carlsberg/Holsten (2004), para. 8; M.3289-Interbrew/Spaten-Franziskaner (2003), para. 7; M.3195-Heineken/BBAG (2003), para. 7.

<sup>6</sup> M.6587-Molson Coors/Starbev (2012), para. 7; M.4952-Carlsberg/Scottish & Newcastle Assets (2008), para. 11; M.4999-Heineken/Scottish & Newcastle Assets (partial referral to Ireland) (2004), para. 21; M.3372-Carlsberg/Holsten (2004), para. 8; M.3289-Interbrew/Spaten-Franziskaner (2003), para. 7; M.3195-Heineken/BBAG (2003), para. 7.

- (21) The Parties consider eventually that different styles of beer (ales, stouts and lagers) should be considered as part of the same product market due to a high degree of demand-side substitutability and important similarities in the production process for ales, stouts and lagers. The Parties submit that to the extent a possible further sub segmentation were to be applicable, *quod non*, it could only be relevant or meaningful for a small number of national markets in which lager constitutes a comparatively smaller share of the overall beer market (UK, France and Belgium being the main examples).

V.1.3. *The Commission's assessment*

- (22) In accordance with its past decisional practice, the Commission considers that beer is a market distinct from other beverages. A majority of respondents to the market investigation indeed confirm that beer and other beverages belong to different product markets and that they are not readily substitutable.<sup>7</sup>
- (23) With respect to segmentation based on the sales channels, the large majority of the respondents to the market investigation also suggested the existence of a clear division between on-trade and off-trade channels. A large majority of respondents indicated that the demand in the on-trade channel is different from demand in the off-trade channel in view of *inter alia* prices, product mix, customers, packaging and services.<sup>8</sup> A competitor of the Parties has indicated that *'there are differences in packaging for each channel, which affects both production and distribution. There are also differences in consumer purchasing habits in both channels. In the on-trade the main drivers are habit, price and visual cues, with secondary drivers of serve and whether it is found on a menu[...]. In the off-trade the main driver is format, with price, feature and display as secondary drivers.'* The demand which [the respondent] experiences from pubs and pub chain customers are also significantly influenced by the distribution platform available to access that customer base'.<sup>9</sup>
- (24) With respect to segmentation based on beer positioning, the Commission finds that the market investigation has indicated that it is possible to further distinguish beer based on parameters such as price, brand recognition, and quality between value or discount beer (private label and entry level lager brands), mainstream beer (most popular lager brands), premium beer (national and international upmarket lager brands), and super-premium beer (specialty beers, beer mixes, international brands in the highest price and quality range). However, the Commission finds that brands may also be substitutable with each other across such specific categories. According to the Commission, the market investigation suggested that, in a given country, a mainstream brand may compete with a premium or a super-premium beer, in certain circumstances. A competitor has stated that the consumers tend to choose within a 'repertoire of brands' rather than always within the same rigid segment. Another competitor has stated that *'beer products in different segments compete against each other as consumers choose from a wide variety of beers in different segments when*

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<sup>7</sup> Questionnaire to Competitors (Q1), question 5 and Questionnaires to Customers (Q2a-k).

<sup>8</sup> Questionnaire to Competitors (Q1), question 6 and Questionnaires to Customers (Q2a-k), question 7.

<sup>9</sup> Questionnaire to Competitors (Q1), question 6.

*making their purchasing decisions*<sup>10</sup>, and within the perception of cross-category brand competition among consumers varies significantly across countries.<sup>11</sup>

- (25) Thus, the Commission takes the view that a segmentation based on product positioning may be of relevance but acknowledges that it should not be taken as a rigid model globally applicable, since the categories may differ from country to country, different categories can be found in certain countries as opposed to in other ones and the borders between categories may show a certain degree of porosity.
- (26) With respect to segmentation based on types of beer such as lager, ale, stout and speciality beers, the majority of the respondents to the market investigation have confirmed that the segmentation is justified and that this distinction operates not only in specific countries such as the United Kingdom and Ireland but also in continental European countries<sup>12</sup>. This segmentation is for instance widely recognised by Italian and Romanian customers.<sup>13</sup>
- (27) The Commission thus considers that although this segmentation may be of relevance, it should not be understood rigidly, since the borders between sub-segments can be different in different countries and sometimes substitution across sub-segments is observed.
- (28) With respect to national and international beer brands, the majority of the market participants has indicated that the two segments compete with one another especially if both beer brands are in the same category: *'Only if they are in the same market segment because they address and communicate similar values for the same customers', 'Beers in the same categories, main stream or special beers to some extent compete with each other [...]', '[...]there is a lot of competition inter-brands between national and international breweries e.g. Stella Artois was in the past a mainstream beer while it aims since 2014 at becoming a premium beer in Belgium. This way it becomes a competitor in the segment of the premium beers'*.<sup>14</sup>
- (29) In the light of the above, the Commission concludes that it is appropriate to carry out its assessment of the relevant product market taking beer as a whole, with reference, however, to the distinction between the on-trade segment and the off-trade segments. The Commission also considers that it is appropriate to give relevance to possible narrower segmentations such as positioning of beer or types of beer when such is relevant.

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<sup>10</sup> Questionnaire to Competitors (Q1), question 10.

<sup>11</sup> Questionnaire to Competitors (Q1), question 8 and Questionnaires to Customers (Q2a-k).

<sup>12</sup> Questionnaire to Competitors (Q1), question 12.

<sup>13</sup> Questionnaire to Customers Italy (Q2d), question 13 and Questionnaire to Customers Romania (Q2f), question 14.

<sup>14</sup> Questionnaire to Customers (Q2a-f), question 11.

## V.2. Relevant Geographic Markets

### V.2.1. Past decisional practice and the Parties' arguments

(30) In its practice, the Commission has generally considered the markets for the production and distribution of beer to be national in scope<sup>15</sup>.

(31) The Parties do not contest this geographic market definition.

### V.2.2. The Commission's assessment

(32) In accordance with its past decisional practice, the Commission considers that the relevant geographic markets for beer should be assessed as being at most national in scope for the reasons set out below.

(33) First, there are differences in consumption habits across EEA countries. In particular, in some countries, such as Romania, mainstream beer is more popular, whereas in other countries such as France, premium beer is more popular. In some countries consumers also have more preference for national brands (for example Poland) than for international brands, and in some countries such as the United Kingdom or the Republic of Ireland there exists a preference among consumers for 'stout or lager beer'.<sup>16</sup>

(34) Second, the distribution networks are generally organised at national level, since customers confirm that *'les réseaux de distribution sont en général organisés au niveau national'*<sup>17</sup>. One competitor also noted that *'distribution logistics, particularly within the on-trade, and varying consumer preferences for beer brands across national markets mean that competition is not wider than national in scope.'*<sup>18</sup>

(35) Third, there are differences in terms of legislation across EEA countries: *'EEA countries differ in various aspects of beer consumption, as for example [...] excise tax and VAT rate or legal environment influencing consumption habits.'*<sup>19</sup>

(36) The majority of respondents to the market investigation confirmed that in some countries there are regional differences in terms of brand preferences. However, the consumption habits are the same across a country and are moving towards those brands that are the most promoted at national level: *'In the most recent years, though, we see that the typical regional taste habits are changing towards beer that is in promotion, regardless their brands. So, the regional differences are diminishing over time.'*<sup>20</sup>

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<sup>15</sup> M.6587-Molson Coors/Starbev (2012), para. 7; M.4952-Carlsberg/Scottish & Newcastle Assets (2008), para. 11; M.4999-Heineken/Scottish & Newcastle Assets (partial referral to Ireland) (2004), para. 21; M.3372-Carlsberg/Holsten (2004), para. 8; M.3289-Interbrew/Spaten-Franziskaner (2003), para. 7; M.3195-Heineken/BBAG (2003), para. 7.

<sup>16</sup> Questionnaire to Customers (Q2a-f), question 16.

<sup>17</sup> Questionnaire to Customers France (Q2e), questions 15-17.

<sup>18</sup> Questionnaire to Competitors (Q1), question 14.

<sup>19</sup> Questionnaire to Customers Poland (Q2i), question 17.

<sup>20</sup> Questionnaire to Customers (Q2a-f), questions 15-17.



- (37) In the light of the above the Commission concludes that it is appropriate to assess the effects of the Transaction in the geographic beer markets at national level, in line with its past practice and the results of the market investigation.

## **VI. COMPETITIVE ASSESSMENT**

### **VI.1. Introduction**

- (38) As it is stated in the Commission Guidelines on the assessment of horizontal mergers ('HMG')<sup>21</sup>, effective competition brings benefits to consumers, such as low prices, high quality products, a wide selection of goods and services, and innovation. Through its control of mergers, the Commission prevents mergers that would likely to deprive customers of those benefits by significantly increasing the market power of firms. By increased market power, it is meant the ability of one or more firms to profitably increase prices, reduce output, choice, or quality of products offered, diminish innovation, or otherwise influence parameters of competition.<sup>22</sup> In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger.<sup>23</sup>
- (39) The HMG distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely through non-coordinated and coordinated effects. The assessment in the sections below in this Decision will analyse both kinds of effects.<sup>24</sup>
- (40) Against this general background, the Commission considers that some common features can be identified in the various national beer markets being affected by the Transaction, including: a high degree of concentration, the repeated presence of the same multinational players ('the major brewers'), most notably including ABI, SAB, Carlsberg and Heineken, the existence of significant barriers to entry and expansion in the market, and a limited countervailing buyer power.
- (41) First, the Commission considers that, as demonstrated by Table 1 below, the market investigation confirmed that markets in many Member States are highly concentrated with oligopolistic features.

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<sup>21</sup> HMG, OJ C 31, 5.2.2004, p. 5.

<sup>22</sup> HMG, para. 8.

<sup>23</sup> HMG, para. 9.

<sup>24</sup> HMG, para. 22.

**Table 1: The Parties' market shares in the EEA countries (2014)**

	Total country		AB InBev	SAB	Heineken	Carlsberg	Molson Coors	Local Champion	Others
	Value (€m)	Volume ('000 HL)	Value (%)	Value (%)	Value (%)	Value (%)	Value (%)	Value (%)	Value (%)
AT	3,596	9,145	[0-5]	[0-5]	[40-50]	[0-5]	[0-5]	[10-20]	[30-40]
BE	4,655	8,095	[50-60]	[0-5]	[5-10]	[0-5]	[0-5]	[5-10]	[20-30]
BG	429	5,027	[0-5]	[0-5]	[30-40]	[10-20]	[30-40]	[5-10]	[10-20]
HR	785	3,086	[5-10]	[0-5]	[20-30]	[10-20]	[30-40]	[0-5]	[10-20]
CY	226	450	[0-5]	[0-5]	[5-10]	[30-40]	[0-5]	[20-30]	[20-30]
CZ	2,241	14,638	[0-5]	[40-50]	[10-20]	[0-5]	[10-20]	[5-10]	[20-30]
DK	1,485	3,496	[0-5]	[0-5]	[0-5]	[50-60]	[0-5]	[10-20]	[20-30]
EE	190	1,230	[0-5]	[0-5]	[0-5]	[30-40]	[0-5]	[40-50]	[10-20]
FI	3,103	4,304	[0-5]	[0-5]	[0-5]	[40-50]	[0-5]	[10-20]	[20-30]
FR	9,351	19,243	[10-20]	[0-5]	[20-30]	[30-40]	[0-5]	[0-5]	[10-20]
DE	29,231	84,414	[10-20]	[0-5]	[0-5]	[0-5]	[0-5]	[10-20]	[70-80]
EL	1,778	3,931	[0-5]	[0-5]	[50-60]	[5-10]	[0-5]	[10-20]	[10-20]
HU	1,233	6,257	[5-10]	[20-30]	[30-40]	[0-5]	[10-20]	[0-5]	[10-20]
IE	2,815	4,536	[10-20]	[0-5]	[20-30]	[5-10]	[5-10]	[30-40]	[10-20]
IT	9,283	16,781	[10-20]	[10-20]	[20-30]	[5-10]	[0-5]	[5-10]	[30-40]
LV	331	1,556	[0-5]	[0-5]	[0-5]	[20-30]	[0-5]	[20-30]	[40-50]
LT	365	2,817	[0-5]	[0-5]	[0-5]	[50-60]	[0-5]	[10-20]	[20-30]
LU	317	472	[40-50]	[0-5]	?	?	[0-5]	?	[50-60]
MT	113	207	[0-5]	[0-5]	[0-5]	[5-10]	[0-5]	[50-60]	[30-40]
NL	6,413	12,045	[20-30]	[10-20]	[40-50]	[0-5]	[0-5]	[0-5]	[10-20]
PL	6,235	37,760	[0-5]	[30-40]	[20-30]	[10-20]	[0-5]	[0-5]	[10-20]
PT	2,070	4,838	[0-5]	[0-5]	[40-50]	[40-50]	[0-5]	[0-5]	[0-5]
RO	3,002	16,888	[0-5]	[30-40]	[30-40]	[5-10]	[5-10]	[5-10]	[5-10]
SK	683	4,017	[0-5]	[30-40]	[30-40]	[0-5]	[5-10]	[0-5]	[20-30]
SI	434	1,550	[0-5]	[0-5]	[70-80]	[0-5]	[0-5]	[0-5]	[10-20]
ES	15,662	37,289	[0-5]	[0-5]	[30-40]	[0-5]	[0-5]	[30-40]	[30-40]
SE	2,240	4,702	[0-5]	[0-5]	[5-10]	[20-30]	[0-5]	[20-30]	[30-40]
UK	23,270	45,442	[10-20]	[0-5]	[20-30]	[10-20]	[10-20]	[5-10]	[20-30]

Source: Form CO

- (42) The Commission notes that the number of market players is limited in the vast majority of markets, with a consistent presence of two or more of the top four major brewers globally (ABI, SAB, Heineken and Carlsberg). The top four brewers account for 67% of the Western European beer profit pool (and 45% in volumes) and 70% of profit pool (58% in volumes) in Central and Eastern Europe.
- (43) In eleven EU markets, one of the top four brewers has a market share above 40%. The respective biggest three brewers per country account in almost all countries (except Germany: [...]%) for more than 50% and in the majority of countries even for 70% or more of the market (in volumes), confirming a pattern of high market concentration globally.

- (44) The Commission also considers that the entry and expansion barriers in the individual national markets are generally high for a number of reasons:
- (a) the high relevance of brand recognition in national markets, resulting in high costs and long lead times for development of new brands;
  - (b) efficient production scale required for sizeable entry and expansion supported by existing breweries that are sufficiently geographically close: due to required scale efficiencies, lengthy brand development, and the high cost of investment, greenfield investment into local brewing facilities to support new entry is rare.
  - (c) access to distribution networks (route to market) being crucial for effective entry or expansion: distributors often have limited capacity (e.g. shelf space, warehouse capacity etc.) and existing organisational or contractual ties to incumbent brewers, making it more difficult for new entrants to find an adequate number of outlets.
- (45) Consequently, significant market entry has been historically observed primarily through merger and acquisition activities. This access-to-market model is being followed by the Parties as well as all other major brewers.
- (46) Finally, due to high market concentration in the beer markets, the customers, particularly in the on-trade channel where the demand is not fragmented, do not have the requisite buyer power to sufficiently constrain beer suppliers. Accordingly, brewers' margins are typically higher in the on-trade channel.
- (47) As will be outlined in further detail below, the Commission found, in the light of the outcome of the market investigation and the information available to it, that the Transaction would lead to an elimination of important competitive constraints and thus would significantly impede effective competition in markets where both Parties are currently competing and where the increment brought by the Transaction exceeds 5% (Italy, Netherlands, Hungary, Romania and the United Kingdom).
- (48) In its assessment of such markets, the Commission considers it is necessary to especially take into account:
- (a) the oligopolistic market structure and overlaps with substantial market presence resulting in a considerable increment of market shares;
  - (b) the elimination of rivalry where the Parties' brands compete closely in terms of brand positioning and the risk of price increases particularly in the light of high margins pre-transaction;
  - (c) the limited possibility of customers to switch suppliers concerning "must have brands",
  - (d) the power of the merged entity to hinder expansion of smaller firms and potential competitors especially in the light of the increased financial strength of the Parties post-transaction.

- (49) The Decision will also examine whether due to the significant market position of one or both Parties, and the specific changes to the market structure due to the Transaction, the Transaction would lead to anticompetitive effects in a number of other Member States, notably Belgium, Czech Republic, Slovakia and Poland.

## **VI.2. Overview of relevant non-coordinated effects in this case**

- (50) As regards the non-coordinated effects, a merger may significantly impede effective competition in a market by removing important competitive constraints on market participants increasing their market power. The most direct effect of the merger will be the loss of competition between the merging firms.<sup>25</sup> In oligopolistic markets a significant impediment to competition can result from a merger if this merger eliminates important competitive constraints that the merging parties exerted previously upon each other together reducing the competitive pressure on the remaining competitors.<sup>26</sup>
- (51) The Commission assesses on a case-by-case basis if significant non-coordinated effects are likely to arise from a merger. Within this analysis a number of factors have to be taken into account.<sup>27</sup> In the present case the Commission finds that the following factors are of particular relevance for its assessment of potential non-coordinated effects of the merger:
- (a) High market shares/increment<sup>28</sup>: Market shares as a first indication of market power and increase of market power are generally important factors in the assessment. The larger the market share, the more likely a firm is to possess market power. Thus, the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power and an increased power to raise prices. Moreover, higher prices of the merged group's products may cause some costumers to switch to rival products thereby increasing the demand for rivals' products. The rivals may, in turn, find it profitable to raise their prices.
  - (b) Closeness of competition<sup>29</sup>: The higher the degree of substitutability of the merging firms' products, the more likely it is that the merging firms will raise prices significantly due to the elimination of rivalry that existed between the parties before. High pre-merger margins may also make significant price increases more likely. The degree of substitutability may be evaluated inter alia through cross-price elasticities of the products involved.<sup>30</sup>
  - (c) Limited switching possibilities<sup>31</sup>: Customers of the merging parties who have difficulties to switch to other suppliers – because there are few alternative suppliers or because of substantial switching costs – are particularly vulnerable

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<sup>25</sup> HMG, para. 24.

<sup>26</sup> HMG, para. 25.

<sup>27</sup> HMG, para. 26.

<sup>28</sup> HMG, para. 27.

<sup>29</sup> HMG, para. 28.

<sup>30</sup> HMG, para. 29.

<sup>31</sup> HMG, para. 31.

to price increases. Evidence of past customer switching patterns and reactions to price changes may provide important information in this respect.

- (d) Elimination of important competitive forces<sup>32</sup>: The competitive dynamics would be changed in a significant, anti-competitive way by a merger involving a firm which has more influence on the competitive process than their market shares or similar measures would suggest. This is in particular the case in markets that are already concentrated.
- (e) Hindering of expansion<sup>33</sup>: Effective competition might significantly be impeded also where the merged entity post-transaction would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete. The merged entity might for instance have control or influence over the supply of inputs or distribution possibilities so that expansion or entry becomes more costly for competitors. The Commission may in this context take into account, inter alia, the financial strength of the merged entity relative to its rivals.

### VI.3. Overview of Coordinated Effects

#### VI.3.1. Legal Framework

- (52) Coordinated effects may arise *"as the result of a concentration where, in view of the actual characteristics of the relevant market and of the alteration in its structure that the transaction would entail, the latter would make each member of the dominant oligopoly, as it becomes aware of common interests, consider it possible, economically rational, and hence preferable, to adopt on a lasting basis a common policy on the market with the aim of selling at above competitive prices, without having to enter into an agreement or resort to a concerted practice within the meaning of Article 81 EC.*<sup>34</sup>
- (53) Concentrations may significantly impede effective competition by creating or strengthening a dominant position by changing the nature of competition in such a way that firms would significantly be more likely to coordinate and raise prices or otherwise harm effective competition. In such a case, the merger would<sup>35</sup> (a) increase the likelihood that firms are able to coordinate successfully, or (b) make existing coordination easier, more stable or more effective, either by making the coordination more robust or by permitting firms to coordinate on even higher prices, for example by facilitating the detection of deviation, limiting the ability and incentives of some market players to deviate and allowing more efficient retaliation.<sup>36</sup> In complex economic environments, for example with differentiated products, coordinating firms may find ways to reach the terms of coordination: establishing a small number of reference pricing points, or a fixed relationship between base prices and a number of other prices (prices moving in parallel). Market transparency through publicly

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<sup>32</sup> HMG, para. 37, 38.

<sup>33</sup> HMG, para. 36.

<sup>34</sup> T-342/99 *Airtours v Commission*, ECLI:EU:T:2002:146, para 61. See also HMG, para 39.

<sup>35</sup> T-342/99 *Airtours v Commission*, cited *ut supra* and also Case T-102/96 *Gencor Ltd v Commission*, ECLI:EU:T:1999:65 para 22. See also HMG, para 39.

<sup>36</sup> HMG, para. 42.

available key information or, for example, by information exchanged through structural links between competitors may further facilitate coordination.<sup>37</sup> In addition, structural links such as cross-shareholding or participation in joint ventures may also help in aligning incentives among the coordinating firms.<sup>38</sup>

- (54) In some markets the structure may be such that firms would consider it not only possible, but also rational because more economically viable, and hence preferable, to adopt on a sustainable basis a course of action on the market aimed at selling at increased prices through a coordination of their behaviour. Coordination may take various forms, such as setting prices above the competitive level, limiting production or capacity, or dividing the market, for instance by geographic areas or other customer characteristics, or by allocating contracts in bidding markets.<sup>39</sup>
- (55) Coordination may therefore relate to various parameters of competition. In this case, the Commission considers that it is particularly relevant to examine coordination on prices, particularly concerning general price lists and their periodic updates, to verify, firstly, whether it would be possible to reach terms of coordination in the investigated markets and whether, secondly, the coordination is likely to be sustainable.<sup>40</sup>
- (56) Concerning the first aspect (feasibility of price coordination), coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination. This is the case where coordinating firms have similar views regarding which actions would be considered to be in accordance with the aligned behaviour and which actions would not.<sup>41</sup> The less complex and the more stable the economic environment (for example, oligopolistic markets), the easier it is for the firms to reach a common understanding on the terms of coordination.<sup>42</sup> In addition, three conditions are necessary for coordination to be sustainable. First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, discipline requires that there is some form of credible deterrence mechanism that can be activated if deviation from coordination is detected. Third, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.<sup>43</sup>

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<sup>37</sup> HMG, para 47.

<sup>38</sup> HMG, para 48.

<sup>39</sup> HMG, para. 40.

<sup>40</sup> HMG, para 42.

<sup>41</sup> HMG, para 44.

<sup>42</sup> HMG, para 45.

<sup>43</sup> See Case *Airtours v Commission*, cited *ut supra* paragraph 62 ; and Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala*, ECLI:EU:C:2008:392, paragraph 123. See also HMG, para. 41.

- (57) Concerning the second question, namely whether the coordination is likely to be sustainable, the Decision will examine a number of elements.
- (a) market transparency allowing coordinating firms to monitor to a sufficient degree whether other firms are deviating, and thus know when to retaliate. When evaluating the level of transparency in the market, the key element is to identify what firms can infer about the actions of other firms from the available information;<sup>44</sup>
  - (b) credible deterrent mechanisms in case of a deviation from the terms of coordination. The credibility of the deterrence mechanism depends on whether the other coordinating firms have an incentive to retaliate in view of the costs of deterrence (price wars) and the long-term benefits from coordination. Retaliation need not necessarily take place in the same market as the deviation. If the coordinating firms have commercial interaction in other markets, these may offer various methods of retaliation;<sup>45</sup>
  - (c) impact of actions by outsiders (non-coordinating firms, new entrants and customers), in particular whether they would be able to jeopardise the results expected from coordination.<sup>46</sup>
- (58) According to the case law, in applying those criteria, it is necessary to avoid a mechanical approach involving the separate verification of each of those criteria taken in isolation, while taking no account of the overall economic mechanism of a hypothetical tacit coordination.<sup>47</sup>
- (59) To sum up, the Commission considers that it is appropriate to take account of all the changes that the Transaction is likely to bring about.<sup>48</sup> The Commission considers that the Transaction may make it easier for competitors to reach a common understanding on the terms of coordination, or may render coordination more sustainable. In this case, it is appropriate to verify whether this is likely to be achieved by, for example:
- (a) reduction of the number of players;
  - (b) creation or transformation of structural links between competitors;
  - (c) increased number of commercial interactions in other markets between the same competitors.
- (60) Against the foregoing, the Commission will (i) examine the evidence on existing, past or attempted price coordination, and (ii) assess the impact of the Transaction on the ability of major brewers to reach or maintain a coordinated outcome.

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<sup>44</sup> HMG, paras 49-51.

<sup>45</sup> HMG, paras 52-55.

<sup>46</sup> HMG, paras 56-57.

<sup>47</sup> Case *Bertelsmann and Sony Corporation of America v Impala*, cited *ut supra*, para. 125.

<sup>48</sup> HMG, para 42.

### *VI.3.2. Evidence of Price Coordination in the Investigated Markets*

- (61) The Commission's investigation of the Transaction has produced ample evidence of tacit coordination in a number of EU markets, consisting essentially in coordination of general price levels as expressed in listed prices for beer and their periodic modifications applicable across significant parts of the brewers' portfolios. The investigation has also shown that, where the tacit coordination has not been sufficiently stable or broke down, competitors analysed whether market conditions could evolve again to allow brewers to reach the appropriate terms of tacit coordination.
- (62) In investigating coordinated effects, the Commission takes into account all available relevant information on the characteristics of the markets concerned, including both structural features and the past behaviour of firms. Evidence of past coordination is important if the relevant market characteristics have not changed appreciably. Likewise, evidence of coordination in similar markets may be useful information.<sup>49</sup>
- (63) Although the concerned markets are national in scope, there are few major beer suppliers in the EU. National beer markets are predominantly very concentrated and characterised by the repeated presence of two or more top four global brewers (see recitals (41) to (43)). Beer markets appear to be very transparent due to periodic price change announcements to customers, accessibility of trade reports by third party surveyors documenting price and volume evolutions at a high level of detail, and, to a certain extent, due to structural links between brewers.<sup>50</sup>
- (64) Numerous cartel decisions addressed to major brewers (including ABI, and its predecessors in controlled brands) have confirmed that beer markets are prone to coordination. On some occasions, the Commission has found that cartels had formed in Belgium, the Netherlands, Luxembourg and France which served to avoid price wars, coordinate prices and price increases, allocate customers, limit investment etc.<sup>51</sup> More recently, in 2014, the German competition authority imposed fines to the members of a beer cartel operating in Germany.<sup>52</sup>
- (65) Paragraph 43 of the HMG provides that in assessing the likelihood of coordinated effects, the Commission takes into account all available relevant information on the characteristics of the markets concerned, including both structural features and the past behaviour of firms. As elements of context, these past cartels show that brewers have strong economic incentives to seek coordinated outcomes, whether through cartels or through tacit coordination.

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<sup>49</sup> HMG, para 43.

<sup>50</sup> See section VI.5.1.

<sup>51</sup> Case IV/37.614/F3 PO/Interbrew and Alken-Maes) (notified under document number C(2001) 3915); Case COMP/B/37.766 — Dutch beer market) (notified under document number C(2007) 1697); Case COMP/37.800/F3 — Luxembourg Brewers) (notified under document number C(2001) 3914); Case COMP/C.37.750/B2 — Brasseries Kronenbourg — Brasseries Heineken) (notified under document number C(2004) 3597.

<sup>52</sup> See BKartA, B10 - 105/11, decisions of 27 Dec 2013 and 31 March 2014.



#### VI.3.2.1. Coordination on Price

- (66) The Commission's investigation indicates that major brewers are generally prone to price coordination on the markets where they operate. More specifically, the evidence on file shows that the Parties, as well as other major brewers, seek a coordinated outcome in determining the general price level by means of mirroring the periodical price adjustments to listed prices. Brewers have an incentive to coordinate, because the price elasticity of the beer category is low, but there is a much higher degree of substitution among similarly positioned brands.<sup>53</sup> Therefore, by coordinating brewers can benefit from higher prices than aggressive competition would entail. A complaint by the US Department of Justice (DOJ) in the *ABI/Modelo* concentration demonstrates that ABI in particular appears to have a sophisticated understanding of price coordination, and it was found by the US DOJ to adopt market conduct that "*read like a how-to manual for successful price coordination*".<sup>54</sup>
- (67) [ABI's sales and pricing strategies]. The Commission considers that, similarly to what happens in other mature markets, in the beer market value is mainly obtained by increasing prices. [Direct quote from confidential ABI internal document]<sup>55</sup>. [ABI's sales and pricing strategy].
- (68) The Commission has found evidence that major brewers recognise the increased margins from coordinating pricing decisions and analyse the benefits of keeping prices above the competitive level as part of their standard business activity. [Summary of confidential ABI internal document]. [Summary of confidential SAB internal document]. [Direct quote from confidential SAB internal document].<sup>56</sup>
- (69) As described in more detail in the subsequent recitals, the Commission has found ample evidence that brewers analyse in their internal documents how to establish and sustain price coordination. The Commission has even found indications that the objective to maintain stable conditions for price coordination may impact a coordinating firm's decisions on other commercial aspects. [Details of ABI's sales and marketing strategy].<sup>57</sup> Given that even such considerations are linked to the sustainability of price coordination, the Commission's assessment does not focus on non-price related aspects of coordination for the purpose of this Decision.

#### VI.3.2.2. Reaching Terms of Coordination

- (70) In the Gencor case, the General Court has found that *'in a market with the appropriate characteristics, in particular in terms of market concentration, transparency and product homogeneity, those parties are in a position to anticipate one another's behaviour and are therefore strongly encouraged to align their conduct in the market, in particular in such a way as to maximise their joint profits by restricting production with a view to increasing prices. In such a context, each trader is aware that highly competitive action on its part designed to increase its*

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<sup>53</sup> [Reference to confidential ABI internal documents].

<sup>54</sup> U.S. v. Anheuser-Busch InBev SA/NV and Grupo Modelo S.A.B. de C.V., available at <https://www.justice.gov/file/486606/download>.

<sup>55</sup> [Reference to confidential ABI internal document].

<sup>56</sup> [Reference to confidential SAB internal document].

<sup>57</sup> [Reference to confidential ABI internal document].

*market share (for example a price cut) would provoke identical action by the others, so that it would derive no benefit from its initiative. All the traders would thus be affected by the reduction in price levels.*<sup>58</sup>

- (71) The Commission finds that certain Parties' and third parties' documents would suggest that major brewers regularly resort to coordinated price leadership behaviour to reach the terms of coordination. The Commission considers that this finding is indeed relevant to describe the coordination behaviour in certain national beer markets in the EU.
- (72) Under the coordinated price leadership behaviour, the respective market leader sets the price level and its competitors follow its move in a repeated process. Coordinated price leadership behaviour provides a simple pricing pattern and creates a useful reference for coordination. Moreover, the coordinated price leadership behaviour would also strengthen coordination among brewers by increasing the punishment potential of the followers. In particular, by announcing its prices first the price leader reduces its own incentives to deviate from collusion, because the follower could undercut the leader instantaneously and make the leader's attempt to cheat unprofitable.
- (73) [Direct quote from confidential ABI internal document].<sup>59,60</sup>
- (74) [ABI's sales and pricing strategy]. [Direct quote from confidential ABI internal document].<sup>61</sup> [Reference and description of confidential SAB internal document].<sup>62</sup>
- (75) The Commission considers that market transparency plays a key role [reference to confidential SAB internal document], allowing competitors to come to a common understanding on the terms of coordination. [ABI's competitor intelligence practices]. To gather intelligence, brewers use a broad array of information including data and reports from specialist providers such as AC Nielsen, Canadean, investor reports, observations from market visits, interviews in specialist press, statements in annual reports, regulatory filings, social media etc.
- (76) [Details of competitive intelligence available to the Parties].<sup>63,64</sup> Accordingly, the price increases appear to be tools of information sharing in their own right. Major brewers are therefore aware that price increases occur in certain ways as to send clear and intelligible signals to other competitors willing to follow. For example, [details of SAB's pricing decisions].<sup>65</sup>

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<sup>58</sup> Case *Gencor Ltd v Commission*, para 276, and Case *Airtours v Commission*, para 60.

<sup>59</sup> [Details of confidential ABI internal document].

<sup>60</sup> [Reference to confidential ABI internal document].

<sup>61</sup> [Reference to confidential ABI internal document].

<sup>62</sup> [Reference to confidential SAB internal document].

<sup>63</sup> [Direct quote from confidential ABI internal document].

<sup>64</sup> [Reference to confidential ABI and SAB internal documents].

<sup>65</sup> [Reference to confidential SAB internal document].

- (77) Internal documents also show that in order to ensure stable coordination, brewers are eager to react expeditiously to a price increase by the market leader as a signal of compliance, for example: [direct quote from confidential ABI internal document].<sup>66</sup> Price leaders closely monitor whether their price increases are followed. [SAB's competitive intelligence practices]:<sup>67</sup>

## Figure 1

[Extract from confidential SAB internal document]

- (78) The Commission considers that market transparency is enhanced by the fact that the same major brewers interact with each other in the same national markets, both within and outside the EU. The experience accumulated from such repeated contacts in common markets of interest would help the major brewers to better predict the pricing policy a major brewer will follow in a given market. One example that the Commission has identified which would demonstrate the effects of such recurrent interaction is that, [direct quote from confidential SAB internal document].<sup>68</sup> [Reference to and direct quote from confidential ABI internal document].<sup>69</sup> [Strategic considerations take into account by ABI in determining its pricing policy].
- (79) The Commission further observes that structural links may help in aligning incentives among the coordinating firms.<sup>70</sup> In the present case, contractual links, such as the licensed brewing and distribution agreements between ABI and Molson Coors in Central and Eastern Europe would facilitate reaching a common understanding. Such links would not only lead to align the Parties' commercial interests, but would also give reason for exchanging sensitive market information, including pricing strategies. This is further discussed in section VI.5.1. below.
- (80) The Commission considers that such transparency would effectively facilitate brewers' common understanding of each other's key commercial policies, including how to reach coordination on prices and what role to assume in adhering to the coordinated price leadership behaviour.
- (81) [Details of ABI's sales and pricing strategy; direct quotes from confidential ABI internal document].
- (82) [Details of SAB's sales and pricing strategy; direct quotes from confidential SAB internal document].<sup>71</sup> [Details of SAB's sales and pricing strategy; direct quotes from confidential SAB internal document].<sup>72</sup>

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<sup>66</sup> [Reference to confidential ABI internal document].

<sup>67</sup> [SAB's competitive intelligence practices; reference to confidential SAB internal document].

<sup>68</sup> [Reference to confidential SAB internal document].

<sup>69</sup> [Reference to confidential ABI internal document].

<sup>70</sup> HMG, para. 48.

<sup>71</sup> [Reference to confidential SAB internal document].

<sup>72</sup> [Reference to confidential SAB internal document; direct quote from confidential SAB internal document].

- (83) The documentary evidence shows that price leadership in the beer market is more than a classic competitive conduct in an oligopolistic market: it serves as a tool for coordination where prices have a signalling function. [Direct quotes from confidential ABI internal documents].<sup>73</sup>
- (84) The simplicity of price coordination model based on the market leadership ("follow-the-leader") appears to be an important practical factor for successful coordination. Evidence suggests that where the market structure does not lead to a brewer being clearly identifiable as a market leader, it is more difficult to reach a coordinated outcome. This may in turn undermine the desired revenue maximisation. [Direct quotes from confidential SAB internal documents].<sup>74</sup>

#### VI.3.2.3. Sustainability of Coordination

- (85) In general, coordination is not sustainable unless the consequences of deviation from the terms of tacit coordination are perceived to be sufficiently severe to convince coordinating firms that it is in their interest to abide by such terms. Moreover, sufficient transparency is required to allow the coordinating firms to monitor to a sufficient degree whether other firms are deviating.
- (86) In the present case, the high degree of transparency resulting from specific market conditions and contractual links, described in recitals (75) to (79), and in particular the competitors' ability to detect deviations from the expected follow-the-price-leader behaviour in a timely manner, would constitute an effective means to monitor whether competing major brewers adhere to the terms of coordination. Competitors are able to detect deviations, typically consisting in a relative price decrease with the objective to gain market share, and react speedily.
- (87) [Direct quotes from confidential ABI internal document].<sup>75</sup>
- (88) The Commission finds that, [details of SAB's pricing policy; direct quote from Confidential SAB internal document].<sup>76</sup>
- (89) The Commission notes that major brewers are present in several EEA markets and they implement and adapt to the collusive price leadership model in these markets both as price leaders and price followers. Such an alternation of roles for brewers in several common markets would increase the sustainability of coordinated price leadership. Brewers' incentives to deviate in markets where they are followers is reduced by the possible punishment consequences they face in markets where they are leaders. Equally, brewers' incentives to commit to prices above the competitive level in markets where they are price leaders is strengthened by the strong punishment potential they have in markets where they act as followers. Multi-market contacts therefore mutually reinforce the incentives to coordinate between price leaders and followers across markets and enhance the stability of price coordination in national markets. [Reference to sales and pricing strategies discussed in confidential ABI internal document].

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<sup>73</sup> [Reference to confidential ABI internal document].

<sup>74</sup> [Reference to confidential SAB internal document].

<sup>75</sup> [Reference to confidential ABI internal document].

<sup>76</sup> [Reference to confidential SAB internal document].

- (90) [Summary of and direct quote from confidential ABI internal document].<sup>77</sup> Although it does not concern an EU market, the Commission finds that this evidence is relevant as it would unequivocally confirm that coordinating companies seek to stabilise the coordination game by "responsibly" adhering to their respective roles as either a leader or a follower in different countries. [Direct quote from confidential ABI internal document]. The wording would suggest a nexus between stabilising coordination in a non-EU market and sustainability of price coordination between the same players in European markets, including EEA markets. It also suggests that signalling for the purpose of compliance or disciplining in a multi-market coordination scenario does go beyond EU borders, but is geographically limited to Europe.
- (91) The Commission is aware that outsiders, including, for example, customers or new entrants in the market, can undermine price coordination. However, in the investigated markets where coordination is taking place, the Commission has found confirmation that neither customers nor non-coordinating competitors would appear motivated to exercise sufficient constraint on the on-going coordination and therefore sustainability does not appear constrained by possible new entrants. Accordingly, in this case, not even the reaction of outsiders would in practice be able to jeopardise the results expected from the coordination. This would also follow from several other indications.
- (92) First, price coordination takes place in several markets with a very concentrated retail sector. This shows that while buying power by customers may limit the scope for price increases, it is not sufficient to prevent brewers from imposing supra competitive prices as a result of tacit coordination.
- (93) Secondly, evidence suggests that the success and stability of coordination depends on reaching a common understanding with major brewers. As a result of the acquisition of the StarBev business from CVC, Molson Coors entered some of SAB's most important markets in Central and Eastern Europe, and SAB undertook a detailed analysis of the competitive implications of this entry. However, it concluded that [direct quote from confidential SAB internal document].<sup>78</sup> This suggests that, even when a major brewer newly enters a market as a result of an acquisition, it may consider it *'economically rational and hence preferable to adopt on a sustainable basis a course of action on the market aimed at selling at increased prices'*.<sup>79</sup>
- (94) On the other hand, absence of price followership by smaller competitors does not significantly inhibit larger brewers' ability to successfully coordinate prices. [Details of ABI's pricing strategy considerations]. [Direct quote from confidential SAB internal document].<sup>80</sup>

### VI.3.3. Coordinated Effects Deriving from the Transaction

- (95) The Commission derives from the above that, in the concentrated Union markets for the supply of beer, major brewers are able to reach a common understanding on the

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<sup>77</sup> [Reference to confidential ABI internal document].

<sup>78</sup> [Reference to confidential SAB internal document].

<sup>79</sup> HMG, para 39.

<sup>80</sup> [Reference to confidential SAB internal document].

terms of coordination, and in some Member States actually do coordinate prices tacitly. This Decision analyses if the situation post transaction is likely to be maintained or it may be further worsened by the Transaction.

- (96) In general, a concentration may result in coordinated effects either by changing the market structure in such a way that (i) firms that previously were not coordinating their behaviour are significantly more likely to coordinate post-merger, or (ii) pre-existing coordination is rendered even easier, more stable or more effective.<sup>81</sup>
- (97) In this case, it is the Commission's preliminary view that the Transaction could likely cause the creation or strengthening of price coordination in a number of EU national markets for three main reasons including:
- (a) the reduction of the number of competitors in the direct overlap countries (Italy, the Netherlands, UK and France);
  - (b) the creation of a structural link between direct competitors (combination of the ABI-Molson Coors arrangement and ABI's acquisition of SAB's business in Central and Eastern Europe);
  - (c) the significant increase of multi-market contacts between ABI and its close competitors, notably Heineken and Carlsberg.
- (98) Firstly, the Commission considers that SAB's acquisition would remove a close competitor to the major brewers in Italy (Heineken, Carlsberg and ABI) and the Netherlands (Heineken and ABI). The Transaction would also remove a competitor at the level of specific brands in the UK and France, Hungary and Romania. Given the already concentrated nature of these markets, such further reduction of the number of sizeable and sophisticated players may in itself facilitate coordination. This point will be elaborated in more detail in the individual country chapters.
- (99) Secondly, the Commission considers that SAB's acquisition would transform the vertical licenced brewing and distribution link between ABI and Molson Coors into a horizontal one. In the current pre-Transaction stage, SAB and Molson Coors are close competitors: respectively, number 1 and number 2 in Czech Republic, number 2 and number 3 in both Slovakia and Hungary, and number 1 and number 3 in Romania. Post transaction, they would share a commercially significant and long term structural link.<sup>82</sup> Such a link may reduce the incentives of Molson Coors to compete aggressively and to win market share at the expense of ABI/SAB. [Details of ABI's distribution arrangement in CEE]. Finally, ABI could also leverage its contractual rights under the arrangement (for example, [details of ABI's distribution arrangement in CEE]) to discourage or discipline potential deviations by Molson Coors. Such a link could in particular tip the markets such as Hungary and Romania, where the equilibrated competitive structure did not allow for a full deployment of a stable leader-follower model<sup>83</sup>, into a coordinated outcome with ABI as the leader. This point will be elaborated in more detail in the relevant country chapters.

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<sup>81</sup> HMG, para 22(b).

<sup>82</sup> See more detailed analysis under section VI.5.1.

<sup>83</sup> See recital (84).

- (100) Thirdly, the Commission finds that the Transaction would facilitate previously non-coordinating firms to reach terms of coordination, or strengthen existing coordination, by significantly increasing the number of markets where ABI has a significant market position and competes with other major brewers, notably Heineken and Carlsberg not only in the EU, but also other countries in Europe and broader. As explained<sup>84</sup>, multi-market contacts allow brewers to gather more comprehensive intelligence on the competitors' strategies, pricing policy, growth model (volume or value) and enhance market transparency. Knowledge of historical patterns of behaviour as a price leader or follower in other markets, past reactions to rivals' conduct, management philosophy, amongst others, can make competitors' reactions more predictable and thus facilitates reaching or maintaining a common understanding on terms of coordination.
- (101) The investigation produced ample evidence that major brewers have indeed been able to reach and maintain relatively stable terms of coordination on price in many EU markets.<sup>85</sup> [Summary of and direct quote from confidential ABI internal document].<sup>86</sup>
- (102) The Commission believes that, in such a context, the additional multi market contacts as deriving from the Transaction would not only facilitate reaching terms of coordination, but also strengthen the price leader-follower coordination in the national markets by increasing the punishment potential of other major brewers in other markets.<sup>87</sup> ABI is currently mainly holding followership positions in the EEA and the Transaction would add several leadership positions to its portfolio (Hungary, Romania, Poland and the Czech Republic). These positions would increase the punishment potential of Carlsberg and Heineken and therefore increase the commitment of ABI to set prices in a coordinated way throughout the EEA. For example if ABI would find it profitable to deviate in France, the Netherlands or Germany, where it holds followership positions, after the merger it would face a retaliation in its new leadership markets. This would reduce ABI's incentives to deviate from coordination. Similarly, the additional punishment potential of Carlsberg and Heineken would increase their commitment to set prices in a coordinated way. Therefore, the transaction risks making price coordination in all these national markets stronger.<sup>88</sup>
- (103) [Summary of and direct quotes from confidential ABI internal documents].
- (104) [ABI's and competitors' pricing strategy considerations]. Against this finding, the Transaction would therefore further reduce the number of operators with a multi-market dimension, because it would eliminate some complexity in reaching or monitoring terms of coordination. Most importantly, the Commission believes that the transaction would, significantly increase the number of contacts in the EU

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<sup>84</sup> See paragraphs (78) and (89)-(90).

<sup>85</sup> See paragraph (81)-(84) and assessment of coordinated effects in country sections below.

<sup>86</sup> [Cross-reference to direct quote from confidential ABI internal document].

<sup>87</sup> HMG, para 55. The economic mechanism behind multi-market coordinated effects is explained in Bernheim, B. Douglas, and Michael D. Whinston. "Multimarket contact and collusive behavior." *The RAND Journal of Economics* (1990): 1-26.

<sup>88</sup> The role of multi-market contacts in making coordination more stable was also emphasised in the decision COMP/M.4980 - ABF/GBI BUSINESS, concerning yeast markets.

markets where both ABI and the remaining major brewers have significant competitive positions, and, accordingly, strengthen deterrence against any deviating behaviour:

- (a) Heineken - the number of contacts would increase from 5 to 10. For most of these ten markets, some evidence of existing or past price coordination has been found. Currently, ABI and Heineken both have significant positions in Belgium (ABI as market leader, Heineken number 3), France (Heineken strong number 2, ABI number 3), Italy (Heineken market leader, ABI number 3), the Netherlands (Heineken market leader, ABI number 2) and the UK (Heineken market leader, ABI close number 3). The Transaction would add four markets where ABI is the market leader and Heineken is the follower (Czech Republic, Poland, Hungary, and Romania) and one market where Heineken is the leader and ABI the follower (Slovakia). Heineken would in addition to Belgium have four more markets where it can sanction potential ABI deviations in markets where Heineken is the price leader. Conversely, ABI's "*responsible*" price leadership may also induce a similar stable "*environment*" where Heineken is the price leader.
  - (b) Carlsberg – the number of contacts would increase from 3 to 5. Currently, ABI and Carlsberg both have significant positions in France (Carlsberg as market leader, ABI number 3), Italy and the UK (ABI number 3, Carlsberg number 4). The Transaction would add two markets where ABI is number 1 and Carlsberg is number 3 (Poland) or number 4 (Romania). Carlsberg would gain two markets where it could attack ABI in case the latter challenged Carlsberg in France or other markets where it holds a strong position.<sup>89</sup>
- (105) Therefore, the Commission considers that the changes in multi-market contacts caused by the Transaction would facilitate reaching terms of coordination both in the countries with pre-existing market contacts (for example the Netherlands) and in the countries where a contact would be newly established post-merger (for example Poland, where the Transaction could facilitate the main operators – ABI, Heineken and Carlsberg, to tip the market back into coordination). Past or actual coordination, as established for most of the contact markets, is furthermore made more sustainable, both because of increased transparency across markets and because additional retaliation possibilities are available in case of a deviation. This is assessed in more detail in the country-specific sections. Due to the specific market structure, including the significant market position of one or both Parties, and the evidence on existing, past or attempted coordination, the coordination could be facilitated or strengthened in particular in the following Member States: Belgium, Czech Republic, France, Hungary, Italy, the Netherlands, Poland, Romania and Slovakia.

#### VI.3.4. *Conclusion on Coordinated Effects*

- (106) In view of the foregoing, the Commission considers that the Transaction increases the ability and incentives of the merged entity and its competitors to coordinate their behaviour post transaction in a number of relevant markets.

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<sup>89</sup> See, for example, recital (90).



## VI.4. Western Europe – Overview of Coordinated and Non-Coordinated Effects

### VI.4.1. Belgium

#### VI.4.1.1. Market Overview

- (107) ABI operates the following four breweries in Belgium: Sint-Pieters-Leeuw ([annual brewing capacity]), Hoegaarden ([annual brewing capacity]), Jupille-sur-Meuse ([annual brewing capacity]), and Leuven ([annual brewing capacity]). The main brands sold by ABI in Belgium are Jupiler, Stella Artois, Leffe and Hoegaarden. ABI has a direct sales presence and organises distribution for on-trade and off-trade customers in Belgium.
- (108) SAB does not operate any brewery, nor does it have direct sales presence. SAB has entered into distribution agreements with third party importers in Belgium, under the terms of which the latter have the right to import and distribute certain SABMiller brands in Belgium ([details of SAB's contractual arrangements in Belgium]).
- (109) There are two other players in Belgium with market shares above 5%: Heineken and Duvel Moorgat. Heineken is active in Belgium through Alken Maes NV. Heineken operates the Alken Brewery in Alken, the Affligem Brewery in Opwijk and the Mort Subite Brewery in Kobbegem. Heineken's main brands include Maes Pils, Affligem, Grimbergen, Mort Subite and Cristal Alken. Duvel Moortgat operates three breweries in Belgium: the De Koninck brewery in Antwerp, the Brasserie d'Achouffe brewery in Achouffe and the Duvel brewery in Puurs. Its main brands include Duvel, Vedett, De Koninck and La Chouffe. Other smaller players are Haacht and Palm.
- (110) Market shares of the Parties and their main competitors in value in 2014 (except for on-trade where only volume shares are available) are shown in the table below.

**Table 2: The Parties and their competitors' market shares in Belgium**

Market shares by value 2014	Total beer (%)	Total beer off-trade (%)	Total beer on-trade (%)
ABI	[50-60]	[50-60]	[50-60]
SAB	[0-5]	[0-5]	[0-5]
<b>Combined</b>	<b>[50-60]</b>	<b>[50-60]</b>	<b>[50-60]</b>
Heineken	[5-10]	[5-10]	[10-20]
Duvel Moortgat	[5-10]	[5-10]	[10-20]
Haacht	[0-5]	[0-5]	NA
Palm	[0-5]	NA	[0-5]
Others	[20-30]	[20-30]	[10-20]

Source: Form CO

#### VI.4.1.2. Non-Coordinated Effects

- (111) The Commission considers that although ABI enjoys a very strong position in the Belgian market with a market share above 50% regardless of the segmentation

between off-trade and on-trade,<sup>90</sup> there is no increment brought about by the transaction. Therefore, the Commission concludes that the Transaction does not lead to non-coordinated effects in Belgium.

#### VI.4.1.3. Coordinated Effects

- (112) In line with the general framework on the assessment of coordinated effects (see above section VI.3), the Commission has found ample evidence of past coordination between brewers in Belgium, consisting essentially of coordination of general price level as expressed in list prices for beer and their periodic modifications applicable across significant parts of the brewers' portfolios.
- (113) Like in other European national markets, the price coordination method selected by brewers is based on a "follow-the-leader" coordination model. Under this model, the market leader, in a repeated process, increases the price level and its competitors, as anticipated by the leader, do not deviate but follow the leader's increase. In this scenario, monitoring of the price increases is ensured by brewers that gather correct and up-to-date information about price increases by their rivals, as explained in recitals (66) to (69). Such monitoring ensures that any deviation from the coordinated outcome is swiftly identified and adequately addressed.
- (114) As regards Belgium more specifically, the Commission considers that tacit coordination is first facilitated by the limited number of major beer suppliers. The Belgian market is already very concentrated and characterised by the presence of three main suppliers which account together for more than 70% of the overall volumes.
- (115) Moreover, the Commission finds that the Belgian beer market appear to be very transparent due to accessibility of trade reports by third party providers documenting price and volume evolutions at a high level of detail and to periodic price change announcements to customers. All Belgian customers confirmed in their reply to the market investigation that they receive periodically price letters to inform them about planned price increases by the main suppliers.<sup>91</sup>
- (116) A significant number of Belgian customers have confirmed towards the Commission the existence of price followership behaviour among large Belgian brewers. As explained by one large retailer '*normally they follow the price increase from AB Inbev*'. Another retailer put forward that '*the two main competitors have each slightly the same price increase*'. An on-trade wholesaler explained that '*Usually ABI as the largest brewer takes the lead on price increases the other brewers follow the example on short term*'.<sup>92</sup>
- (117) [Direct quote from confidential ABI internal document].<sup>93,94,95</sup>

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<sup>90</sup> This share is [70-80]% in the mainstream segment, [10-20]% in the premium segment and [30-40]% in the super premium segment.

<sup>91</sup> Questionnaire to Customers Belgium (Q2a), question 28.1.

<sup>92</sup> Questionnaire to Customers Belgium (Q2a), question 29-1.

<sup>93</sup> [Reference to confidential ABI internal document].

<sup>94</sup> [Reference to confidential ABI internal document].

- (118) [Direct quotes from confidential ABI internal document].<sup>96,97,98</sup>
- (119) This follow-the-leader behaviour has been actually detected in the market. [Direct quotes from confidential ABI internal documents].<sup>99,100</sup>
- (120) In the light of the above, the Commission considers that there is a significant body of evidence that coordination is already taking place in the beer markets in Belgium. Since there is no overlap in Belgium, the Transaction does not eliminate any actual competitor currently active on the market. It does not create new market contacts between ABI and Heineken (or Carlsberg) which are already present in Belgium (albeit Carlsberg has only a small import business). These elements would militate in favour of a neutral effect of the Transaction in Belgium, although the overall implications of the elimination of SAB as a player in Europe on existing price coordination in Belgium remain to be assessed.
- (121) In any case, the Commission does not need to assess whether the merger would make any possible current coordination in the beer markets easier, more stable or more effective for competitors who could potentially coordinate their market behaviour in Belgium prior to the Transaction, as the remedies proposed by the Parties would eliminate any overlaps between the Parties in Europe. Therefore there is no need to conclude on the potential coordinated effects caused by the Transaction on the market in Belgium.

#### VI.4.2. *The Netherlands*

##### VI.4.2.1. Market Overview

- (122) ABI operates two breweries in the Netherlands and is active through its subsidiary, Interbrew Nederland NV. The main ABI brands sold in the Netherlands are Jupiler, Hertog Jan, Dommelsch, Hoegaarden, Leffe, and Corona.
- (123) SAB operates one brewery in the Netherlands and is active through its wholly-owned subsidiary, Koninklijke Grolsch NV. The main SAB brands sold in the Netherlands are Grolsch and Gulpener.

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<sup>95</sup> [Reference to confidential ABI internal document].

<sup>96</sup> [Reference to confidential ABI internal document].

<sup>97</sup> [Reference to confidential ABI internal document].

<sup>98</sup> [Reference to confidential ABI internal document].

<sup>99</sup> [Reference to confidential ABI internal document].

<sup>100</sup> [Reference to confidential ABI internal document].

- (124) The other main competitors are Heineken, which operates one brewery and sells the brands Heineken, Amstel and Brand, and Bavaria, which operates one brewery and sells the brands Bavaria and Le Trappe.

**Table 3: The Parties' and their competitors' market shares in the Netherlands**

Market shares by value 2014	Total beer (%)	Total beer off-trade (%)	Total beer premium (%)	Total super premium (%)
ABI	[20-30]	[10-20]	[50-60]	[40-50]
SAB	[10-20]	[10-20]	[0-5]	[0-5]
<b>Combined</b>	<b>[30-40]</b>	<b>[20-30]</b>	<b>[60-70]</b>	<b>[40-50]</b>
Heineken	[40-50]	[30-40]	[10-20]	[5-10]
Bavaria	[0-5]	[5-10]	NA	[0-5]
Duvel Moortgat	NA	NA	NA	[10-20]
Tr Westmalle	NA	NA	NA	[5-10]
Carlsberg	NA	NA	NA	[0-5]
Warsteiner Brauerei Haus Cramer	[0-5]	[0-5]	[10-20]	NA
Diageo	NA	NA	NA	[0-5]
Palm	NA	NA	5.2	NA
Aldi	[0-5]	NA	NA	NA
Oettinger	NA	[0-5]	NA	NA
Private label	NA	[10-20]	NA	NA
Others	[10-20]	[5-10]	[0-5]	[10-20]

Source: Form CO

#### VI.4.2.2. Non-Coordinated Effects

- (125) In the light of the outcome of the market investigation and in view of the information available, the Commission considers that the Transaction would significantly impede effective competition in the beer market in the Netherlands due to the following reasons.
- (126) First, the Commission finds that increment brought about by the Transaction in the total beer market and the off-trade segment is substantial (approximately [10-20]% from SAB), creating the second largest competitor in this market.
- (127) Second, the Commission considers that in the premium and super-premium segment, ABI would reinforce its dominant position with combined market shares of [60-70]% and [40-50]% respectively. In the premium segment, this would create a very large gap of [40-50]% between the merged entity and the second largest competitor, Heineken. In the super-premium segment, the gap would be of [30-40]% between the combined entity and the second largest competitor, Duvel Moortgat. Post-merger, besides Heineken and Duvel, there would be only two competitors left with market shares above 5% in the premium and super-premium segments.
- (128) Third, the Commission considers that the Transaction eliminates an important and close competitor of ABI. The majority of customers consider that Grolsch is the closest competitor to Hertog Jan, followed by Heineken brand and Jupiler. ABI's brands Hertog Jan and Jupiler and SAB's brand Grolsch were quoted by customers as

the "must have" brands in the Netherlands, together with Heineken, Amstel and Bavaria.<sup>101</sup>

- (129) In conclusion, the Commission considers that the Transaction is likely to produce non-coordinated effects in the Netherlands and thus raises serious doubts as to its compatibility with the internal market.

#### VI.4.2.3. Coordinated Effects

- (130) In the light of the outcome of the market investigation and taking into account the information available to it, the Commission considers that the Transaction would increase the ability and incentives of the Parties to coordinate their behaviour in the Netherlands and thus raises serious doubts as to its compatibility with the internal market for the following reasons.
- (131) First, the Commission finds that the market is dominated by three major brewers (Heineken, ABI and SAB). Customers in the market investigation also indicated that these three major brewers dominate the beer market in the Netherlands and that other suppliers or private labels brands *'have no or at most very limited influence on the actions or intentions of the big three'*.<sup>102</sup> Given the already concentrated nature of the beer market in the Netherlands, the removal of a close competitor to these major brewers may in itself facilitate coordination and may result in the creation or strengthening of price coordination in the Netherlands.
- (132) Second, the Commission, in the past, has found cartels in the Netherlands, which served to coordinate prices and price increases both in on-trade and off-trade (also for private label), and occasional coordination on commercial conditions/rebates offered on the on-trade segment. Back in 2007, the Commission fined the Dutch brewers Heineken, Grolsch and Bavaria for operating a cartel on the Dutch beer market.<sup>103</sup> A history of past price coordination and other forms of collusion in the beer market in the Netherlands, are indicative of conditions favourable to coordination and that brewers have strong economic incentives to seek coordinated outcomes, whether through cartels or through tacit coordination.
- (133) Third, customers in the market investigation have confirmed that they regularly receive price letters from suppliers announcing price changes and that competitors react to price changes from their rivals: *'We do see that once one supplier communicates a price raise in the market, that the others will follow'*.<sup>104</sup> These price announcement letters could be used as means to signal price increases to other competitors in the market and therefore facilitate price coordination with the understanding that profits will also follow. [Details of ABI's pricing and sales strategy in the Netherlands; direct quotes from confidential ABI internal documents].<sup>105,106</sup>

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<sup>101</sup> Questionnaire to Customers Netherlands (Q2b), questions 23, 24 and 25.

<sup>102</sup> Questionnaire to Customers Netherlands (Q2b), question 26.

<sup>103</sup> Case COMP/B/37.766 — Dutch beer market (notified under document number C(2007) 1697).

<sup>104</sup> Questionnaire to Customers Netherlands (Q2b), questions 28-30.

<sup>105</sup> [Reference to confidential ABI internal document].

<sup>106</sup> [Reference to confidential ABI internal document].

- (134) Finally, the majority of the customers in the market investigation have indicated that entry barriers are high due to high investment costs, especially in the premium segment. As regards crafts beer, some customers indicated that '*smaller brands/suppliers can enter the market, but distribution and sales will be limited*'.<sup>107</sup> Therefore potential entry could not jeopardise the outcome expected from potential current coordination between the three major brewers in the Netherlands.
- (135) In conclusion, the Commission considers that the Transaction is likely to produce anticompetitive coordinated effects in the Netherlands and thus raises serious doubts as to its compatibility with the internal market.

#### VI.4.3. Italy

##### VI.4.3.1. Market Overview

- (136) ABI does not operate any brewery in Italy, nor are its brands produced under licence by any third party in Italy. ABI has a direct sales presence and organises distribution for on-trade and off-trade customers in Italy. ABI brands sold in Italy are Beck's, Corona, Franziskaner, Budweiser and Spaten.
- (137) SAB is active through its subsidiary, Birra Peroni S.r.l and operates three breweries in Italy. The main SAB brands sold in Italy are Peroni, Nastro Azzuro, Raffo and Wührer. SAB also produces private label beer for third parties in Italy.
- (138) The other competitors are Heineken which has four breweries in Italy and sells Heineken, Moretti and Dreher brands, and other small players such as Carlsberg, Forst, Royal Unibrew, Brau Holding International, Birra Castello, Bavaria.

**Table 4: The Parties' and their competitors' market shares in Italy**

Market shares by value 2014	Total beer (%)	Total beer on-trade (%)	Total beer off-trade (%)	Total super premium (%)
ABI	[10-20]	[5-10]	[10-20]	[30-40]
SAB	[10-20]	[10-20]	[10-20]	[0-5]
<b>Combined</b>	<b>[20-30]</b>	<b>[20-30]</b>	<b>[20-30]</b>	<b>[30-40]</b>
Heineken	[20-30]	[20-30]	[30-40]	[5-10]
Carlsberg	[5-10]	[5-10]	[5-10]	[5-10]
Private label	NA	NA	[5-10]	NA
Bavaria	[0-5]	NA	[5-10]	[5-10]
Ceres Italia	NA	[5-10]	[5-10]	NA
Forst	[5-10]	[5-10]	[5-10]	[5-10]
Royal Unibrew	[5-10]	NA	NA	[10-20]
Brau Holding	[5-10]	[5-10]	NA	[5-10]
Others	[20-30]	[20-30]	[10-20]	[20-30]

Source: Form CO

<sup>107</sup> Questionnaire to Customers Netherlands (Q2b), questions 31-33.

#### VI.4.3.2. Non-Coordinated Effects

- (139) In light of the outcome of the market investigation and taking into account the information available to it, the Commission conclusively considers that the Transaction would give rise to anticompetitive non-coordinated effects in Italy, due to the following reasons.
- (140) First, the Commission finds that the increment brought about by the Transaction in the total beer market and the off-trade segment is relatively significant ([10-20]% and [10-20]% respectively). In the total beer market the proposed transaction leads to a 3 to 2 scenario, where two players would account for most of the market, the combined entity being the market leader. [...]. Heineken is the second largest competitor with [20-30]% in the total market for beer, followed by Carlsberg with [5-10]%. In the off-trade, the transaction would reduce the number of players with market shares above 10% from 3 to 2 with a few small rivals.
- (141) For super-premium beer, ABI would reinforce its dominant position ([30-40]% with increment of [0-5]% from SAB). Only three players would have market shares above 5% in the super-premium segments, in addition to a range of small players with market shares below 5%.
- (142) In the off-trade segment, the Transaction would lead to a 4 to 3 scenario and the merged entity would become the second largest competitor ([20-30]%), behind Heineken ([30-40]%) and with Carlsberg as the third player ([5-10]%).
- (143) Second, the majority of customers in the market investigation indicated that Beck's and Nastro Azzuro are close and important competitors. Some customers also indicated that Peroni competes with Beck's, although, due to the regional character of the beer market in Italy, Peroni is widely present and is the most important brand mainly in the south of Italy.<sup>108</sup>
- (144) In conclusion, the Commission considers that the Transaction is likely to produce non-coordinated effects in Italy and thus raises serious doubts as to its compatibility with the internal market.

#### VI.4.3.3. Coordinated Effects

- (145) In light of the outcome of the market investigation and taking into account the information available to it, the Commission considers that the Transaction raises the ability and incentives of the Parties to coordinate their behaviour in Italy post transaction for the following reasons.
- (146) First, the Commission considers that the Transaction would remove a close competitor to major brewers (Heineken, Carlsberg and ABI) in Italy. Given the already concentrated nature of the beer market in Italy, the removal of a close competitor to these major brewers may in itself facilitate coordination and may result in the creation or strengthening of price coordination in Italy.

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<sup>108</sup> Questionnaire to Customers Italy (Q2d), questions 24 and 25.



- (147) Second, the Commission looks at evidence of coordination in the past behaviour of the firms. The Italian Competition Authority (Autorita garante della concorrenza e del mercato), in the proposed acquisition of Birra Moretti by Heineken Italia<sup>109</sup>, considered possible coordination concerns that could have arisen from the transaction, but eventually cleared it subject to conditions.
- (148) Third, customers in the market investigation confirmed that they regularly receive price letters from suppliers announcing price changes and that competitors react to price changes from their rivals: *'Yes, according to our perception normally the competitors follow the price changes of the market leader'*.<sup>110</sup> [Details of ABI's sales and pricing strategy in Italy].<sup>111</sup>
- (149) In conclusion, the Commission considers that the Transaction is likely to produce anticompetitive coordinated effects in Italy and thus raises serious doubts as to its compatibility with the internal market.

#### VI.4.4. *United Kingdom*

##### VI.4.4.1. Market Overview

- (150) Both Parties are present with a direct sales force and to a limited extent also with brewing facilities in the UK. However, the Parties' main brands are imported.
- (151) ABI has two breweries in the United Kingdom with a total brewing capacity of approximately [annual brewing capacity] hectolitres. Furthermore, ABI has acquired recently the craft brewer Camden Town Brewery which will be operated by ABI in the future. ABI's main brands in the UK are Stella Artois, Budweiser, Beck's and Boddingtons, [details of ABI's distribution arrangements in the UK].
- (152) SAB operates the Meantime craft beer brewery in Greenwich which it had acquired recently. SAB imports its main brands Peroni and Tyskie and organises distribution that is executed by third parties. Further, SAB has shares (51%) in a joint-venture with Molson Coors. The JV's purpose is to market Grolsch brands in the UK and Republic of Ireland ("Grolsch JV UK"). [Details of arrangements between SAB and Molson Coors].
- (153) The beer market in the UK is concentrated with the top five brewers accounting for 72.3%. As can be seen from the table below, all top four global brewers are present in the UK with Heineken ([20-30]%) being the market leader considering the total beer market by value in the UK, followed by ABI ([10-20]%), Carlsberg ([10-20]%), and SAB ([0-5]%).

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<sup>109</sup> Case No. C-2347, *Heineken Italia/Birra Moretti*, decision no.4049 of 4 July 1996.

<sup>110</sup> Questionnaire to Customers Italy (Q2d), questions 28-30.

<sup>111</sup> [Reference to confidential ABI internal document].



**Table 5: The Parties' and their competitors' market shares in the United Kingdom**

Market shares by value 2014	Total beer (%)	Total off-trade (%)	Total lager beer (%)	Total premium (%)	Total super-premium (%)
AB InBev	[10-20]	[20-30]	[20-30]	[20-30]	[10-20]
SAB	[0-5]	[0-5]	[0-5]	[0-5]	[10-20]
Combined	[20-30]	[30-40]	[20-30]	[20-30]	[30-40]
Molson Coors	[10-20]	[10-20]	[20-30]	[5-10]	[5-10]
Heineken	[20-30]	[20-30]	[20-30]	[5-10]	[10-20]
Carlsberg	[10-20]	[10-20]	[10-20]	[10-20]	[5-10]
Diageo Plc, UK	[5-10]	[0-5]	[0-5]	[10-20]	[5-10]
C&C Group	[0-5]	[0-5]	[0-5]		[0-5]
Greene King	[0-5]	[0-5]		[0-5]	
Mahou-San Miguel	[0-5]	[0-5]	[0-5]		[10-20]
Marston's	[0-5]	[0-5]		[0-5]	
Charles Wells	[0-5]	NA		[0-5]	[0-5]
Others	[10-20]4	[5-10]	[5-10]	[10-20]	[10-20]

Source: Form CO

- (154) As illustrated in detail in the table above, the Commission considers that the Transaction leads to affected markets with combined market shares between [20-30]% (total beer) and [30-40]% (super-premium beer) if considering the overall market for the supply of beer on the one hand and the sub-segments for off-trade, lager beer, premium and super-premium beer on the other hand. Concerning the market for total beer (by value) the combined market share of the Parties post-transaction will be [20-30]% with a modest increment of [0-5]%. However, regarding the super-premium segment (by value) the combined market share post-transaction will be [30-40]% with a notable increment of [10-20]%.

#### VI.4.4.2. Non-Coordinated Effects

- (155) In the light of the outcome of the market investigation and taking into account the information available, the Commission considers that the Transaction may give rise to non-coordinated effects in the UK. Namely, the Commission considers, on the basis of the available evidence and in the light of the outcome of the market investigation, that the Transaction may increase the likelihood of non-coordinated effects within the sub-segment of super-premium beer brands<sup>112</sup> for the following reasons.
- (156) First, the Commission finds that the most significant impact of the Transaction in the UK concerns the super-premium segment where the transaction will result in a combined market share of [30-40]%, widening the distance to its next closest competitor Heineken, who has a market share of [10-20]%. The Commission finds that because of the existing oligopolistic market structure, the high increment

<sup>112</sup> Regarding other potential sub-segmentations the Commission's investigation could not find sufficient evidence, that the Transaction would significantly impede effective competition in the UK. In contrast to the super-premium beer segment, the increment resulting from the transaction is minor or modest at maximum in the segments for total beer, total on-trade, total lager and total premium. The Parties are not close competitors in such segments and post-transaction there remain a number of serious competitors exerting competitive constraints on the merged entity.

brought about by the Transaction and the relatively modest market shares of remaining competitors such as Heineken ([10-20]%) and Mahou San-Miguel ([10-20]%) the Transaction would significantly increase the Parties' market power.

- (157) Second, the Commission considers on the basis of the evidence obtained that in the super-premium segment the Peroni (SAB) and Corona (ABI) brands of the Parties are currently close competitors in the UK. The Office of Fair Trading found in a past decision<sup>113</sup> indications that Peroni and Corona are close competitors. This has been confirmed by the market investigation. Some respondents to the market investigation identified Peroni and Corona as close competitors.<sup>114</sup> Furthermore, one respondent raised concerns that post-transaction under "*the ABI umbrella*" the Peroni brand and the Corona brand would not compete as before.<sup>115</sup> [Summary of confidential ABI and SAB internal documents regarding the Parties' marketing and pricing strategies in the UK].<sup>116,117</sup> Therefore, the Transaction will eliminate existing rivalry and reciprocally exerted competitive constraints between the Parties' brands. Thus, post-transaction price increases become more likely.
- (158) Third, through the Transaction the number of market players in the super-premium segment with market shares above 10% will be reduced from four to three, leaving only a few – relatively small – competitors to exercise competitive constraints on the merged entity.
- (159) Fourth, post-transaction ABI will become part of the Grolsch JV UK with Molson Coors. Therefore, an additional link between ABI and Molson Coors will be created. In the light of the existing relationship between ABI and Molson Coors in Central and Eastern Europe which will be outlined in more detail in section VI.5.1 below and given the resulting increase of dependencies between ABI and Molson Coors there is a risk that ABI and Molson Coors will not continue to compete in the same manner on the UK beer market as pre-transaction.

#### VI.4.4.3. Coordinated Effects

- (160) The Commission concludes that, in the UK, the Transaction may increase the ability and incentives of the parties to coordinate their behaviour post transaction for the following reasons.
- (161) First, the Commission notes that the Transaction would increase market transparency by eliminating one player on an already highly concentrated beer market. Furthermore, the existing links between competitors in the United Kingdom would promote further market transparency.

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<sup>113</sup> OFT decision concerning the Anticipated acquisition Anheuser-Busch InBev NV/SA of Grupo Modelo SAB de CV of 18 November 2008, para. 70.

<sup>114</sup> Only few respondents to the market investigation view Corona and Peroni as being close competitors, see replies to Questionnaire to Customers UK (Q 2c), questions 23 and 24 – and replies to Questionnaire to Competitors (Q 1), questions 19.8 and 20.9.

<sup>115</sup> Questionnaire to Customer UK (Q2c), question 45.1 and 49.

<sup>116</sup> [Reference and direct quotes from confidential ABI and SAB internal documents].

<sup>117</sup> [Reference to confidential ABI internal document].

- (162) Second, the results of the market investigation show that brewers often work with price letters and standard price lists for their customers.<sup>118</sup> Such letters typically increase the information flow regarding prices and, thus, transparency. [Summary of confidential ABI and SAB internal documents regarding the Parties' sales and pricing in the UK].<sup>119</sup>
- (163) [Summary of and direct quote from confidential ABI internal document regarding ABI's sales and pricing strategies in the UK].<sup>120,121</sup>

#### VI.4.4.4. Overall Conclusion for the UK

- (164) In sum, the Commission concludes, in light of the outcome of the market investigation and taking into account the information available to it, that the merger may give rise to non-coordinated effects in the UK. Furthermore, there is a certain risk that coordinated effects might result from the merger. However, as shown below, the proposed commitments will in any event resolve any identified anti-competitive effects of the Transaction. Therefore, the Commission considers that it is not necessary to take a position on whether the Transaction will lead to coordinated or non-coordinated effects in the UK.

#### VI.4.5. *France*

##### VI.4.5.1. Market Overview

- (165) The Commission notes that in France, the level of market concentration in the beer market is high. Three main brewers mainly compete with small players: the market leader Carlsberg (market share by value of [30-40]%), Heineken following closely with a market share of [20-30]% and ABI with a market share of [10-20]%. Thus, the three major players together account for a market share of [70-80]%.
- (166) Neither Party operates breweries in France. Both sell only imported brands in France: ABI uses its direct sales presence and organises distribution to on- and off-trade customers, whereas SAB operates through [details of SAB's distribution arrangements in France]. ABI's main brands sold in France are Leffe, Stella Artois and Hoegaarden accounting together for approximately [10-20]% of the total beer market. SAB has only minor sales, mainly of its Amsterdam beer brand representing [0-5]% of the French total beer market.
- (167) The combined market share of the Parties post-transaction will be above 20% only in the sub-segment for super premium beer where the Parties' combined market share will be [30-40]% with an increment of [0-5]% due to SAB's limited sales in France.

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<sup>118</sup> Questionnaire to Customers UK (Q2c), question 28.

<sup>119</sup> [Direct quote from and reference to confidential ABI internal document].

<sup>120</sup> [Reference to confidential ABI internal document].

<sup>121</sup> [Direct quote from and reference to confidential ABI internal document].

#### VI.4.5.2. Coordinated and Non-Coordinated Effects

- (168) The Commission considers that, in France, there are some indications that the Transaction would lead to non-coordinated and coordinated effects for the following reasons.
- (169) First, the Parties combined market share in the sub-segment of super premium beer will be post-transaction [30-40]%, with the next competitor Heineken having a market share of [20-30]%. The Transaction will remove an existing (albeit small) player on an already oligopolistic market.
- (170) Second, the considerable market concentration with only few large market players competing provides for a rather transparent economic environment.
- (171) Third, the results of the market investigation show that price letters by brewers are widely made public<sup>122</sup> enhancing price transparency on the market.
- (172) [Summary of confidential ABI and SAB internal documents]. [ABI's sales and pricing strategies in France].<sup>123</sup> Third Party evidence supports these assumptions.
- (173) Therefore, considering the high market concentration with the top three brewers accounting for more than [70-80]% of the overall beer market and the already existing market transparency, the Transaction could through the elimination of one market player (i) eliminate the competitive constraint previously exerted by SAB and (ii) strengthen or facilitate coordination.
- (174) In any event, as the proposed commitments will in any event resolve any identified anti-competitive effects of the Transaction, there is no need to conclude on the question whether the Transaction will lead to coordinated or non-coordinated effects in France.

### VI.5. Central and Eastern Europe – Overview of Coordinated and Non-Coordinated Effects

#### VI.5.1. *Links between ABI and Molson Coors in CEE*

##### VI.5.1.1. Description of existing distribution partnership

- (175) In 2009, ABI decided to sell off its subsidiaries in Central and Eastern European (CEE) countries ("the Starbev business") to private equity firm CVC. The divestment was driven by financial considerations as ABI was looking to raise capital to pay down debt it had assumed to acquire Anheuser-Busch in the US. Following this sale, CVC/StarBev continued to brew ABI brands that had previously been licensed intra-group to the CEE Business, including Stella Artois, Beck's, Löwenbräu, Spaten and Franziskaner pursuant to a license agreement between ABI and StarBev. Similarly, StarBev continued to distribute ABI brands that were previously distributed intra-group to the CEE Business, including Leffe and Hoegaarden. At the same time, ABI continued to brew and distribute Staropramen (a former ABI brand licensed intra-

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<sup>122</sup> Questionnaire to Customer France (Q2e), question 28.

<sup>123</sup> [Reference to confidential ABI internal document].

group to the CEE Business) in Russia and Ukraine pursuant to a license agreement between ABI and StarBev.

- (176) In 2012, CVC divested the StarBev business to the US-based beer company-Molson Coors. [Details of ABI's distribution arrangements in CEE].
- (177) [Details of ABI's distribution arrangements in CEE].
- (178) [Details of ABI's distribution arrangements in CEE].
- (179) The Commission considers that the above contractual relations with Molson Coors create a strong partnership in the management of the licensed brands by between ABI and Molson Coors. [Details of ABI's distribution arrangements in CEE].<sup>124</sup>
- (180) Moreover, the Commission considers that the already significant influence exercised by ABI on the way Molson Coors conducts its activities in relation to the licensed brands, as set in the various agreements, would extend beyond the formal contractual relationship in the arrangements. [Details of ABI's distribution arrangements in CEE].
- (181) [Direct quotes from confidential ABI internal documents].<sup>125,126</sup>
- (182) [Direct quote from confidential ABI internal document].<sup>127</sup>

#### VI.5.1.2. Dependency of Molson Coors on ABI

- (183) The Commission considers that the partnership between ABI and Molson Coors has the effect of creating dependency of Molson Coors from ABI. The following elements would support this conclusion.
- (184) [Details of ABI's distribution arrangements in CEE]. First, in terms of revenues, ABI's brands generated [...] % of Molson Coors' total revenues in Central and Eastern Europe in 2015. These figures vary significantly across countries: Molson Coors achieved [...] % of its revenues with ABI's brands in Czech Republic and [...] % in Bulgaria. However, in Hungary, ABI's brands represent [...] % of Molson Coors's revenues in 2015 and [...] % in Romania.<sup>128</sup>
- (185) [Reference to confidential Molson Coors internal documents].
- (186) [Details of ABI's distribution arrangements in CEE].
- (187) [Direct quote from Molson Coors' confidential submission]. [Direct quote from confidential ABI internal document].<sup>129</sup>

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<sup>124</sup> ABI's response to request for information, 4 March 2016, part I, page 5.

<sup>125</sup> [Reference to confidential ABI internal document].

<sup>126</sup> [Reference to confidential ABI internal document].

<sup>127</sup> [Reference to confidential ABI internal document].

<sup>128</sup> ABI's response to request for information 26 February 2016, Q46.

<sup>129</sup> [Reference to confidential ABI internal document].

- (188) [Details of ABI's distribution arrangements in CEE].
- (189) [Details of ABI's distribution arrangements in CEE].<sup>130,131</sup>
- (190) [Reference to confidential ABI internal document regarding ABI's distribution arrangements in CEE].<sup>132</sup>

VI.5.1.3. Post-transaction, Molson Coors Will Become Dependent Either On The Market Leader or On Strong n°2 in Four CEE Countries

- (191) While ABI and Molson Coors are partners rather than competitors in CEE countries, Molson Coors is also present on the market with its own brands and businesses that it acquired from CVC in 2012. In fact, Molson Coors is an important rival of SAB in four central European countries, namely Czech Republic, Slovakia, Hungary and Romania.<sup>133</sup>
- (192) In Czech Republic, Molson Coors holds a number two position with a market share of [10-20]% behind market leader SAB ([40-50]%). In Slovakia, Molson Coors has a share of [5-10]% behind SAB ([30-40]%), the leader being Heineken ([30-40]%). In Hungary, Molson Coors has a share of [10-20]% behind SAB ([20-30]%), the leader being Heineken ([30-40]%). Finally in Romania, Molson Coors has a share of [5-10]% behind SAB and Heineken ([30-40]% each).
- (193) The Transaction would transfer the structural link from ABI, a non-competitor to Molson Coors in the CEE markets, to the CEE business of SAB, one of Molson Coors' strongest rivals (with Heineken) in these four markets. The Commission considers that the aforementioned structural links and economic dependence make it quite likely that competition between SAB/ABI and Molson Coors would be significantly reduced in these four countries post-transaction. In particular, it will change the incentives for Molson Coors to challenge ABI/SAB, on which it is economically dependent and with which it entertains periodical contacts, will be lowered as a result of the Transaction. Likewise, ABI will be in a stronger position to restrict even further the possibilities of Molson Coors to introduce its brands in the CEE territories, or try to influence the positioning of Molson Coors' brands, or the pricing thereof, than it was before the merger.
- (194) The Commission considers it appropriate to carry out an assessment of the impact of the Transaction in these four countries in the light of these findings on Molson Coors' inability, or reduced incentives to compete against the new entity post-transaction. As a consequence, Molson Coors will not be considered as an independent competitor in these four countries and its sales and market shares will not qualify as exercising competitive constraint on ABI/SAB post-transaction.
- (195) For the purposes of market share calculations, the sales and market share achieved by Molson Coors with ABI brands will be allocated to the brand owner ABI. This is

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<sup>130</sup> [Reference to ABI's distribution arrangements in CEE].

<sup>131</sup> Coors is the 11<sup>th</sup> beer brand worldwide in terms of sales volumes, ahead of Stella Artois, Carlsberg or Guinness.

<sup>132</sup> [Reference to confidential ABI internal document].

<sup>133</sup> In Bulgaria and Croatia, Molson Coors has a strong presence but SAB has not or is almost not active.

consistent with the general approach taken in the Molson Coors / Starbev Decision, where the Commission concluded on the facts that the market share for a particular product should be allocated to the brand owner on the basis that it retained all intellectual property rights, maintained trademark registrations and had the right to co-agree with the exclusive distributor its annual operating plan for marketing, advertisement and promotion.

- (196) As regards the assessment of coordinated effects, the existence of these links will be taken into account when assessing the likelihood of coordinated effects to arise or to be strengthened as a result of the transaction.<sup>134</sup> [Details of ABI's distribution arrangements in CEE].
- (197) In light of the existing partnership between Molson Coors and ABI, the Commission conclusively considers that the expected alignment of policies between Molson Coors and SAB raises serious doubts as to the compatibility of the Transaction with the internal market because SAB and Molson Coors, have a strong position in the CEE markets. The likely effects of the Transaction are going to be even more detrimental to competition considering that the alignment takes place in already concentrated oligopolistic markets, where only SAB, Heineken and Molson Coors (and Carlsberg in Romania only) have a direct presence.

#### VI.5.2. *Hungary*

##### VI.5.2.1. Market Overview

- (198) In Hungary, ABI does not operate any brewery, nor does it have direct sales presence. [Details of ABI's distribution arrangements in Hungary].
- (199) SAB is active in Hungary through its subsidiary Dreher Sörgyárak, which operates one brewery in Hungary at Kőbánya, Budapest. SAB's main brands sold in Hungary are Arany Ászok, Kőbányai Világos, Dreher, Kozel, Kaniszai and Pilsner Urquell. [Details of SAB's activities in Hungary].
- (200) The other major competitors in Hungary are Heineken, which operates two breweries and is selling a mix of domestic and imported brands (Soproni, Adambräu, Heineken and Gösser), and Molson Coors who operates one brewery and sells own domestic brands (e.g. Borsodi), as well as the aforementioned ABI brands.
- (201) Market shares of the Parties and their main competitors in value based on the Form CO are shown in the table below.

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<sup>134</sup> HMG, para. 48.

**Table 6: The Parties' and their competitors' market shares in Hungary**

Market shares by value 2014	Total beer (%)	Total beer on-trade (%) <sup>135</sup>	Total beer off-trade (%)
ABI	[5-10]%	[5-10]%	[5-10]%
SAB <sup>136</sup>	[20-30]%	[30-40]%	[20-30]%
<b>Combined</b>	<b>[30-40]%</b>	<b>[40-50]%</b>	<b>[30-40]%</b>
Heineken	[30-40]%	[20-30]%	[20-30]%
Molson Coors	[10-20]%	[20-30]%	[10-20]%
Ottakringer	[0-5]%	[5-10]%	[0-5]%
Carlsberg	[0-5]%	[0-5]%	[0-5]%

Source: Form CO

- (202) The table above shows in Hungary, with four brewers (ABI, SAB, Heineken and Molson Coors) together accounting for around 80% of the total beer market.
- (203) Concerning the premium segment, the Parties claimed that the high market shares were based on an erroneous categorisation by the data provider, Canadean, and were not representative of the competitive structure in that segment. Table 7 shows these segmentations of the market shares in its first and fourth column. The overlap would result from the incorrect inclusion into the premium segment of ABI's Löwenbräu brand, which the Parties consider to be a non-premium brand. The Commission found that the pricing indexes and the Parties' contemporaneous documents ([details of ABI's distribution arrangements in Hungary]) generally corroborate the Parties' contention that Löwenbräu should not be analysed as a premium brand. Table 6 in columns two, three and five and six, also shows the alternative market shares in various segments based on the inclusion of Löwenbräu in the mainstream segment. [Molson Coors' and ABI's brand positioning strategies].

**Table 7: The Parties' and their competitors' market shares in Hungary**

	Mainstream		Int. Value[2]	Premium		
	Form CO	Alternative[1]		Form CO	Alternative	
					Premium	Super Premium
AB InBev	[0-5]%	[10-20]%	[40-50]%	[40-50]%	[10-20]%	[0-5]%
SAB	[30-40]%	[20-30]%	[10-20]%	[30-40]%	[40-50]%	[10-20]%
<b>Combined</b>	<b>[30-40]%</b>	<b>[30-40]%</b>	<b>[50-60]%</b>	<b>[70-80]%</b>	<b>[60-70]%</b>	<b>[10-20]%</b>
Heineken	[30-40]%	[30-40]%	[30-40]%	[5-10]%	[10-20]%	[70-80]%
Carlsberg	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[5-10]%
Molson Coors	[20-30]%	[20-30]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%
Others	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[0-5]%

[1] Including Löwenbräu.

[2] Comprising the following brands: Kozel (SAB), Steffl (Heineken), Löwenbräu (ABI), [Details of SAB's activities in Hungary].

<sup>135</sup> Data provided by the Parties exceeds 100%.

<sup>136</sup> [Details of SAB's activities in Hungary].



#### VI.5.2.2. Non-Coordinated Effects

- (204) In light of the outcome of the market investigation and taking into account the information available to it, the Commission has reached the conclusion that, in Hungary, the Transaction would likely lead to non-coordinated effects that would raise serious doubts as to its compatibility with the internal market for the following reasons.
- (205) First, the Commission expects that Transaction would lead to the creation of ABI as the largest brewer in the total beer market as well as in all segments except for super premium presented in Table 7 above. This would result from adding the ABI-Molson Coors relationship to the strong SAB portfolio. The concentration would thus further consolidate the already concentrated market for beer in Hungary, with Heineken as a strong number two.
- (206) Second, the Transaction would lead to significant market positions in the total beer market (combined: [30-40]%; SAB: [20-30]%; ABI [5-10]%) as well as in the total off-trade channel (combined: [30-40]%; SAB: [20-30]%, ABI: [5-10]%). The overall combined market share would be even larger in the on-trade channel ([40-50]%; SAB: [30-40]%; ABI: [5-10]%). The Parties would hold a similar market share of [30-40]% in the mainstream segment including Löwenbräu.
- (207) In the premium segment (without Löwenbräu) the Parties' combined market shares would be even higher, at [60-70]% (SAB: [40-50]%, ABI: [10-20]%), based on the combination of SAB's Dreher and ABI's Stella Artois and Beck's brands. [Reference to confidential Molson Coors internal document].
- (208) [Reference to ABI's internal documents related to International Value products]. In this segment (accounting for [10-20]% of total volume, and [10-20]% of total value of beer in Hungary), the Parties' market shares would reach [50-60]% with a significant overlap (SAB: [10-20]%; ABI: [40-20]%). A majority of respondents in the market investigation considers that Löwenbräu is a close competitor to SAB's international value brands, namely Kozel and/or [Details of SAB's activities in Hungary].<sup>137</sup>
- (209) The Parties submitted four types of quantitative evidence on brand level substitution in Hungary: (i) the Tesco Dunhumby promotion switching data; (ii) Nielsen regular cross price elasticity estimates; (iii) Third party cross-consumption data; (iv) Tesco Dunhumby expenditure reallocation data. The Commission notes that the last two sources of data are not suitable to infer substitution patterns between brands, because they reflect many other factors other than cross-brand substitution. Concerning the Tesco Dunhumby promotion switching data the Commission does not consider the value figures used by the Parties as indicative of substitution patterns. However, a measure of cross-price elasticity (the volume responses of Löwenbräu to relative price changes of Dreher and the volume responses of Dreher and Arany Aszok to relative price changes of Löwenbräu) indicates that these brands are substitutes. Concerning the Nielsen regular cross-price elasticity estimates the Commission observes that these do not show any strong substitution between SAB and ABI brands, putting this evidence at odds with the Tesco Dunhumby promotion switching data. However, these regular cross-price elasticity estimates are based on price

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<sup>137</sup> Questionnaire to Customers Hungary (Q2g), question 23.

changes and volume changes unconnected to promotions. Beer is mostly purchased under promotion and cross-price elasticities based on the promotion data can be quite different from the regular cross-price elasticities. This could also explain the contradiction between the two data sources. On balance, taking into account also the methodological caveats pointed out by the Parties, the Commission leaves the conclusion on the closeness of substitution between ABI and SAB brands open and concludes that the quantitative evidence does not provide sufficient basis to eliminate serious doubts about unilateral effects in Hungary.

- (210) Third, due to the Molson Coors relationship, this transaction is effectively tantamount to a 3 to 2 scenario, with Heineken remaining the only sizeable and independent competitor without a structural link to the combined entity. For the reasons explained in section VI.5.1, Molson Coors cannot be seen as an effective competitor to ABI, as its incentives to compete are skewed by the economic dependence flowing from its relationship with ABI. First, [Details of ABI's distribution arrangements in Hungary].
- (211) Fourth, and finally, the Commission notes that half of the responding customers in the market investigation consider that the Transaction will lessen competition and have a negative impact on prices, as a result of the strengthening of the Parties already strong position due to the overlap and of the lessening of competition from Molson Coors.<sup>138</sup>
- (212) In conclusion, the Commission considers that the Transaction is likely to produce non-coordinated effects in Hungary and thus raises serious doubts as to its compatibility with the internal market.

#### VI.5.2.3. Coordinated Effects

- (213) In light of the outcome of the market investigation and taking into account the information available to it, the Commission has reached the conclusion that the Transaction is likely to increase the ability and incentives of the Parties and other brewers to coordinate their behaviour in Hungary and would thus raise serious doubts as to its compatibility with the internal market for the following reasons.
- (214) First, the already concentrated beer market in Hungary would become even more concentrated, with only three players, ABI, Heineken and Molson Coors accounting for more than 80% of the market value.
- (215) Second, in such a concentrated market, the Transaction would facilitate reaching the term of price coordination by creating ABI/SAB as the largest brewer in the market, and further reducing Molson Coors' incentives to compete with the combined entity. Several customers commented that brewers were monitoring competitors' price changes and reacting to them, for example: *'Although we do not have visibility or knowledge of what information our suppliers are aware of concerning their rivals' pricing, suppliers appear to be generally reactive to the market. In relation to price, once it's increased/decreased by the market leader, the others competitors follow.'*<sup>139</sup>

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<sup>138</sup> Questionnaire to Customers Hungary (Q2g), questions 53 and 54.

<sup>139</sup> Questionnaire to Customers Hungary (Q2g), question 36.

- (216) Documentary evidence shows that [SAB's sales and pricing strategy in Hungary].<sup>140</sup>
- (217) [Reference to confidential SAB internal document].
- (218) Previously, the scale of SAB's Hungarian business was very close to that of Heineken, while Molson Coors appears to have played a disruptive role at least in the East of Hungary. The combination of these elements rendered reaching the terms of coordination more difficult in Hungary: on the one hand, the player could not easily come to a common understanding which of SAB and Heineken would act as a leader and which as a follower. Moreover, the presence of a third player, Molson Coors, appears to have acted as an additional constraint on SAB's and Heineken's ability to reach a coordinated outcome.
- (219) The Commission considers that the Transaction would bring a two-fold change in the market structure [SAB's sales and pricing strategies in Hungary]:
- (a) by creating the largest brewer in Hungary, the Transaction would facilitate reaching the common understanding of ABI/SAB as the market leader.
  - (b) Molson Coors incentives to compete with the bigger rivals would be likely reduced compared to the present situation. This is in particular due to its relationship with ABI, which would become the market leader following the transaction. Due to its economic dependence on ABI, Molson Coors is, post-transaction, more likely to align its behaviour to that of ABI than is presently the case with respect to SAB. ABI's prerogatives under its relationship with Molson Coors provide a strong incentive for the latter to follow ABI as the price leader, as they offer additional leverage for ABI to discipline Molson Coors in case of deviations from price coordination. Moreover, this relationship also provides for an additional channel for exchange of sensitive information between ABI and Molson Coors which would render the risk of coordination between the two players even more likely. A customer commented that the Transaction would lead to less competition, as *'Borsodi Sörgyár Kft [Molson Coors] and Dreher Sörgyárak Zrt [SAB] will no longer compete under the same owner, the market will be formed through the competition with Heineken Hungária.'*<sup>141</sup>
- (220) Third, the Commission finds that the Transaction would create an additional affected market in Hungary where both ABI and Heineken holding a significant market position. Heineken would have the possibility, for example, to use its market presence to sanction potential aggressive behaviour of ABI in another market where Heineken holds a stronger market position.
- (221) In conclusion, the Commission considers that the Transaction is likely to produce anticompetitive coordinated effects in Hungary and thus raises serious doubts as to its compatibility with the internal market.

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<sup>140</sup> [Reference to confidential SAB internal document].

<sup>141</sup> Questionnaire to Customers Hungary (Q2g), question 53.

### VI.5.3. Romania

#### VI.5.3.1. Market Overview

- (222) In Romania, ABI does not operate any brewery, nor does it have direct sales presence. [Details of ABI's distribution arrangements in Romania].
- (223) SAB is active in Romania through its Romanian subsidiary, Ursus Breweries SA. The main SAB brands sold in Romania are Ursus, Timișoreana, Ciucaș, Azuga, Grolsch, Redd's.
- (224) The other major competitors in Romania are Heineken which operates four breweries, Molson Coors which operates one brewery and is primarily active through a Romanian brewer, Bergenbier<sup>142</sup>, and Carlsberg which operates one brewery and is primarily active through a Romanian brewer, United Romanian Breweries Bereprod. Other small competitors active in Romania are European Food, Romaqua, Bermas Suceava or Marten Browerij.
- (225) Market shares of the Parties and their main competitors in value are shown in the table below.

**Table 8: The Parties' and their competitors' market shares in Romania**

Market shares by value 2014	Total beer (%)	Total beer on-trade (%)	Total beer off-trade (%)	Total mainstream (%)	Total super premium (%)
ABI	[0-5]	[5-10]	[0-5]	[0-5]	[10-20]
SAB	[30-40]	[30-40]	[30-40]	[40-50]	[30-40]
<b>Combined</b>	<b>[30-40]</b>	<b>[40-50]1</b>	<b>[30-40]</b>	<b>[40-50]</b>	<b>[40-50]</b>
Heineken	[30-40]	[30-40]	[30-40]	[10-20]	[30-40]
Molson Coors	[5-10]	[10-20]	[10-20]	[5-10]	[0-5]
Carlsberg	[5-10]	[5-10]	[5-10]	[5-10]	[10-20]
Romaqua	[5-10]	[0-5]	[0-5]	[5-10]	NA
European Drinks	[0-5]	[0-5]	[0-5]	[5-10]	NA
Private label	NA	NA	[0-5]	NA	NA
Bermas Suceava	[0-5]	[0-5]	NA	[0-5]	NA
Others	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]

Source: Form CO

#### VI.5.3.2. Non-Coordinated Effects

- (226) In light of the outcome of the market investigation and taking into account the information available to it, the Commission has reached the conclusion that, in Romania, the Transaction would likely lead to non-coordinated effects that would raise serious doubts as to its compatibility with the internal market for the following reasons.

<sup>142</sup> Molson Coors also sells its own Romanian domestic brands such as Bergenbier and Noroc.

- (227) In particular, at brand level, the Transaction would likely reduce competition between Beck's and Ursus where the Parties are close competitors, and between Molson Coors and the combined entity. The following considerations would point to this conclusion.
- (228) First, the merger leads to high market shares with significant additions.<sup>143</sup> In the total beer market, the combined entity would have [30-40]% market share by value with an increment of [0-5]% from ABI. In the super premium segment where Beck's and Ursus are positioned, the Parties would have a significant combined market share ([40-50]% with an increment of [10-20]% from ABI). In terms of market shares, the Parties' closest competitor would be Heineken with [30-40]%, with the other player Carlsberg holding [10-20]% of the market. Molson Coors is not a significant competitor in the super-premium segment, as it holds a share of below [0-5]%.<sup>144</sup>
- (229) Second, the market investigation has shown that Ursus and Beck's are close and important competitors for the following reasons.<sup>145</sup>
- (230) To start, the majority of the customers in the market investigation indicated that Ursus and Beck's are close and important competitors.<sup>146</sup> [Reference to confidential ABI internal document],<sup>147,148</sup> [Reference to confidential SAB internal document].
- (231) Furthermore, the Nielsen elasticity data submitted by the Parties also suggests that at least for some package types Beck's is closely competing with Ursus.<sup>149</sup>
- (232) Moreover, there is interaction between local brands and international brands competing in the same beer category or in neighbouring beer categories. [Reference to confidential ABI internal document].
- (233) [Reference to and direct quotes from confidential SAB internal documents].<sup>150</sup> [Reference to and direct quotes from confidential ABI internal documents].<sup>151</sup>
- (234) The competitive interaction between international and national brands has also been confirmed by the respondents to the market investigation: *'In the same categories, different producers have different brands. As example, Ursus is a premium national brand, that compete with Ciuc (also national brand), Tuborg (international brand), Staropramen (int'l brand) and Beck's (int'l brand).'*<sup>152</sup>

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<sup>143</sup> HMG, para. 27.

<sup>144</sup> Concerning the degree of competitive pressure from Molson Coors, see also paragraph (235).

<sup>145</sup> HMG, para. 28.

<sup>146</sup> Questionnaire to Customers Romania (Q2f), question 24.

<sup>147</sup> [Reference to confidential ABI internal document].

<sup>148</sup> [Reference to confidential ABI internal document].

<sup>149</sup> [Reference to confidential SAB internal document].

<sup>150</sup> [Reference to confidential SAB internal document].

<sup>151</sup> [Reference to confidential ABI internal document].

<sup>152</sup> Questionnaire to Customers Romania (Q2f), question 11.

- (235) Finally, as explained in section VI.5.1 above the partnership between ABI and Molson Coors has created a dependency of Molson Coors on ABI. [Details of ABI's distribution arrangements in Romania]. Second, because Molson Coors, which mainly sells mainstream brands in Romania, could not successfully compete on the beer market without the premium and super-premium beer brands of ABI. As explained by Molson Coors: 'the ABI brands are important for Molson Coors, because they are premium and super premium brands that complement Molson Coors's portfolio. Customers value a broad portfolio'<sup>153</sup> Molson Coors cannot therefore be considered an independent competitor on the beer market in Romania.
- (236) In conclusion, the Commission considers that the Transaction is likely to produce non-coordinated effects in Romania and thus raises serious doubts as to its compatibility with the internal market

#### VI.5.3.3. Coordinated Effects

- (237) In light of the outcome of the market investigation and taking into account the information available to it, the Commission has reached the conclusion that the current market outcomes in Romanian beer market are, on balance, indicative that the Transaction is likely to increase the ability and incentives of the Parties and other brewers to coordinate their behaviour.
- (238) First, the presence of only one other competitor equal to the size of the merged entity, Heineken, is another factor that can make it easier for competitors to reach terms of coordination in Romania. Carlsberg is at a distance of [30-40]% from the merged entity and only a limited number of fringe players are active in the beer market in Romania (European Drinks, Romaqua, Bermas Suceava). The likelihood of coordination increases with the reduction of the major competitors from 4 to 3.
- (239) Second, the four major beer competitors seem to have extensive information regarding the price letters of the other three major beer competitors and even their price levels. Customers in the market investigation also confirmed that they regularly receive letters announcing price changes and consider that suppliers are aware of prices charged by their rivals: *'we don't have precise information but taking into consideration that the retail sector has transparency in term of selling prices and the margin can be easily approximated, we consider that a beer producer can estimate within reasonable margins the selling price of his competitors.'*<sup>154</sup> Customers also indicated that beer suppliers react to competitors' changes in prices: *'On the Romanian market, the beer suppliers react to the competitors price changes; as we mentioned, on the Romanian market there is a strong competition on the local brands. Ex. we negotiate with Heineken a special offer. After a short time, the similar offer appears to other competitors.'*<sup>155</sup>

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<sup>153</sup> Non-confidential minutes of a call with Molson Coors, 19 April 2016.

<sup>154</sup> Questionnaire to Customers Romania (Q2f), questions 35 and 36.

<sup>155</sup> Questionnaire to Customers Romania (Q2f), question 37.

- (240) Third, certain features of the beer market makes the players in the Romanian market more prone to coordination. The Commission's investigation suggests that, as in other European markets<sup>156</sup>, the most likely mechanism for price coordination is the "follow-the-leader" model. [SAB's sales and pricing policy in Romania; direct quotes from confidential SAB internal documents].<sup>157,158</sup>
- (241) Fourth, as explained in section VI.5.1 above, the existence of structural links between ABI and Molson Coors, will be transferred to the new entity ABI/SAB and such will reduce Molson Coors' incentives to compete against it. Given the commercial nature of the distribution arrangement between Molson Coors and the new entity ABI/SAB, regular exchange of information between these players will contribute to increased transparency and implicitly to facilitating terms of coordination.
- (242) [Details of ABI's distribution arrangements in Romania; direct quotes from confidential ABI internal documents].<sup>159,160</sup> This shows that although ABI does not have contractual rights to interfere with Molson Coors' strategy for the development of the Staropramen brand in Romania, the existing structural links between ABI and Molson Coors may favour or contribute to an alignment of policies between firms.
- (243) Sixth, ABI's rights under the licensed brewing and/or distribution agreements could be leveraged against Molson Coors to discipline potential deviations of Molson Coors.
- (244) Seventh, currently, SAB and Heineken have virtually identical market shares in Romania, which may be a source of uncertainty as to how the terms of coordination should be reached. Following the Transaction, the combined entity would become a more obvious market leader, four percentage points ahead of Heineken. This could in itself tip the beer market in Romania which could not have been fully deployed into a more stable or widespread price coordination based on the leader-follower model as compared to the current competitive structure.
- (245) Finally, the Commission has found evidence which indicate that, with ABI's entry into the current SAB markets in Central and Eastern Europe, Heineken would have a much higher retaliation potential over ABI. Furthermore, since the merger leads to additional contact points in Europe, the Commission considers that coordination effects between ABI and Heineken would likely be strengthened in Romania post-transaction. [Reference to confidential ABI internal document].
- (246) In conclusion, the Commission considers that the Transaction is likely to produce anticompetitive coordinated effects in Romania and thus raises serious doubts as to its compatibility with the internal market.

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<sup>156</sup> See section VI.3.2.1.

<sup>157</sup> [Reference to confidential ABI internal document].

<sup>158</sup> [Reference to confidential SAB internal document].

<sup>159</sup> [Reference to confidential ABI internal document].

<sup>160</sup> [Reference to confidential ABI internal document].

#### VI.5.4. Czech Republic

##### VI.5.4.1. Market Overview

- (247) In the Czech Republic, SAB has a very significant leading market position through its local subsidiary Plzensky Prazdroj A.S., which operates three breweries and holds a number of top Czech brands, including Pilsner Urquell, Gambrinus, Radegast and Kozel.
- (248) [Details of ABI's distribution arrangements in the Czech Republic]. In addition, ABI also acquired in 2014 a small brewery, Samson, in České Budějovice [details of ABI's acquisition of Samson brewery].
- (249) The other major competitors in Czech Republic are Molson Coors with two breweries in Ostrava and Prague, and a portfolio of Czech brands including Staropramen, Ostravar and Branik, and Heineken, with three breweries and a mixed portfolio of brands including Czech brands Krušovice, Starobrnno, Zlatopramen and international brands, such as Heineken and Desperados. Smaller competitors include Pivovary Lobkowicz (owned by CEFC of China, main brands Ježek, Platan, Lobkowicz).
- (250) Market shares of the Parties and their main competitors in value based on the Form CO are shown in the table below.

**Table 9: The Parties' and their competitors' market shares in the Czech Republic**

Market shares by value 2014	Total beer (%)	Total beer on-trade (%)	Total beer off-trade (%)	Super premium segment
ABI	[0-5]%	[0-5]%	[0-5]%	[0-5]%
SAB	[40-50]%	[40-50]%	[40-50]%	[40-50]%
<b>Combined</b>	<b>[40-50]%</b>	<b>[40-50]%</b>	<b>[40-50]%</b>	<b>[40-50]%</b>
Molson Coors	[10-20]%	[10-20]%	[10-20]%	[5-10]%
Heineken	[10-20]%	[10-20]%	[10-20]%	[0-5]%
Lobkowicz	[5-10]%	[10-20]%	[0-5]%	[10-20]%
Budejovicky Budvar	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Others	[10-20]%	[10-20]%	[10-20]%	[30-40]%

Source: Form CO

- (251) The market structure in the Czech Republic is thus characterised by a high degree of concentration, with SAB's market shares between [40-50]% and [40-50]% and the 3 largest brewers (SAB, Molson Coors and Heineken) together accounting for more than 70% of the total beer market.

##### VI.5.4.2. Non-Coordinated Effects

- (252) SAB is the market leader in Czech Republic and holds a very strong market position (market shares between [40-50]% and [40-50]% on the overall markets for beer). However, the sales of ABI brands through Molson Coors are very limited ([0-5]%) and as such do not bring about a significant overlap. Even if one looks at the super premium segment, the only segment where ABI's brands are present, the increment to SAB's existing market share of [40-50]% would be limited to [0-5]%.



- (253) Notwithstanding the above circumstances, in light of the outcome of the market investigation and taking into account the information available to it, the Commission has reached the conclusion that, based on a preponderance of elements, the transaction is likely to lead to non-coordinated effects that would lead the Commission to raise serious doubts as to its compatibility with the internal market for the following reasons.
- (254) In Czech Republic, Molson Coors is the largest competitor of SAB, active across all the market segments. As a result of the Transaction, Molson Coors' structural link to ABI would be transferred to the combined entity including the present SAB business in the Czech Republic. In other words, the largest two competitors would be connected by a commercially significant horizontal structural link.
- (255) The Commission considers that, as a consequence of that link, Molson Coors' incentives to compete effectively against the combined entity would be significantly reduced. On the one hand, its relationship with ABI is of a limited commercial scale in the Czech Republic, and from this perspective the customers do not expect that competition between the combined entity and Molson Coors would be lessened.<sup>161</sup> However, the analysis in section VI.5.1 shows that it is the overall economic importance of the relationship in Central and Eastern Europe that is likely to influence the degree of competitive pressure Molson Coors' would exert on its cooperation partner, ABI.
- (256) As a result, in a market already weakened by the presence of SAB's very strong market position, the Commission conclusively holds that the Transaction would further reduce the degree of competition between two already close competitors with a combined market share of [50-60]%, and raises serious doubts with the internal market as a result of non-coordinated effects in the Czech Republic.

#### VI.5.4.3. Coordinated Effects

- (257) The Commission considers that the Transaction risks producing coordinated effects in Czech Republic and thus would raise serious doubts as to its compatibility with the internal market for the following reasons.
- (258) The Commission finds that the market structure in Czech Republic is characterised by the presence of a market leader with a very strong market position (SAB), two distant sizeable competitors (Molson Coors and Heineken), and a number of smaller players.
- (259) The Commission also takes note of the fact that there is ample documentary evidence suggesting that already pre-transaction, larger firms, led by SAB, were tacitly coordinating prices in Czech Republic: [direct quote from confidential SAB internal document].<sup>162</sup>
- (260) [Direct quote from confidential SAB internal document].<sup>163</sup>

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<sup>161</sup> Questionnaire to Customers Czech Republic (Q2h), question 28.

<sup>162</sup> [Reference to confidential SAB internal document].

<sup>163</sup> [Reference to confidential SAB internal document].

- (261) It follows that, while larger competitors (Molson Coors and Heineken) had been consistently following SAB's price increases, these competitors encountered difficulties to impose price increases on their retail customers. Such signals could either lead the price leader, SAB, to adapt its behaviour and adapt the pace of planned price increases, but it could also represent a threat to the stability of coordination.
- (262) The Transaction is likely to make the existing amount of coordination in Czech Republic more stable and effective for the following two reasons.
- (263) First, Molson Coors' incentives to compete with the combined entity would likely be reduced compared to the present situation. This is due to its relationship with ABI which would take over SAB's position as the market leader in Czech Republic. Due to its economic dependence on ABI, Molson Coors is, post-transaction, more likely to align its behaviour with that of ABI than is presently the case with respect to SAB. ABI's prerogatives under its relationship with Molson Coors provide a strong incentive for the latter to follow ABI as the price leader, as they offer additional leverage for ABI to discipline Molson Coors in case of deviations from price coordination. Moreover, this relationship also provides for an additional channel for exchange of sensitive information between ABI and Molson Coors which would render the risk of coordination between the two players even more likely.
- (264) Second, the Transaction would create an additional national market where both ABI, on the one side, and Heineken (and, to a certain degree, Molson Coors), on the other side, would hold a significant market position. The existence of competitive interactions with ABI in a number of other market in the EU where Heineken holds a relatively stronger position, would provide a disincentive for Heineken to deviate from the terms of coordination in the Czech Republic and thus render coordination more stable.
- (265) The Commission has accordingly reached the conclusion that the Transaction is likely to increase the ability and incentives of the Parties and other brewers to coordinate their behaviour post-Transaction in Czech Republic and thus raises serious doubts as to its compatibility with the internal market.

#### *VI.5.5. Slovakia*

##### *VI.5.5.1. Market Overview*

- (266) SAB is, after Heineken, the second biggest brewer in Slovakia, operating through its local subsidiary Pivovary Topvar A.S., which operates one brewery producing Slovak brands such as Šariš and Topvar, and in addition imports significant quantities of SAB's Czech brands, including Pilsner Urquell, Gambrinus, and Kozel.
- (267) [Details of ABI's distribution arrangements in Slovakia].
- (268) The other major competitor in Slovakia is Heineken, the market leader with one local brewery in Hurbanovo, and a portfolio of local brands including Zlatý Bažant, Corgoň and Kelt, as well as imported brands such as Heineken and Krušovice. Smaller competitors include Molson Coors (no local brewery but imports of Czech brands), Endemit London and Budvar.

(269) Market shares of the Parties and their main competitors in value based on the Form CO are shown in the table below.

**Table 10: The Parties' and their competitors' market shares in Slovakia**

Market shares by value 2014	Total beer (%)	Total beer on-trade (%)	Total beer off-trade (%)
ABI	[0-5]%	[0-5]%	[0-5]%
SAB	[30-40]%	[10-20]%	[40-50]%
<b>Combined</b>	<b>[30-40]%</b>	<b>[10-20]%</b>	<b>[40-50]%</b>
Heineken	[30-40]%	[20-30]%	[40-50]%
Molson Coors	[5-10]%	[5-10]%	[0-5]%
Endemit London	[0-5]%	[5-10]%	[0-5]%
Budejovicky Budvar	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[30-40]%	[5-10]%

Source: Form CO

(270) Market structure in Slovakia is thus characterised by a high degree of concentration, with the 2 largest brewers (Heineken and SAB) responsible for almost 70% of the total market by value, and as much as 84.2% of the total beer value in the off-trade channel. On the other hand, the on-trade channel displays a significant degree of fragmentation.

#### VI.5.5.2. Non-Coordinated Effects

(271) SAB is a close number 2 operator to Heineken both in the total beer segment and in the off-trade channel. However, the sales of ABI brands through Molson Coors are negligible and as such do not bring about a significant overlap between ABI and SAB businesses.

(272) However, as the Transaction would transfer the structural link between ABI and Molson Coors onto the combined entity in Slovakia, the Commission has nonetheless reached the conclusion that the transaction could lead to non-coordinated effects and raise serious doubts as to its compatibility with the internal market for the following reasons.

(273) Molson Coors is a distant third largest operator ([5-10]%), after Heineken, and thus the second most important competitor of SAB although it is actively exclusively through imports of brands from Czech Republic, notably Staropramen.<sup>164</sup> In fact, SAB and Molson Coors are by far the largest importers of Czech beer brands into Slovakia, and their combined imports of around [...] represent around [20-30]% of all beer sold in Slovakia.<sup>165</sup> [Summary of confidential SAB internal document].

<sup>164</sup> While the Parties data in the Form CO suggest that the SAB and Molson Coors are particularly close competitors in the super premium segment in Slovakia (SAB: [30-40]%; Molson Coors [30-40]%), the Commission considers that this data may not be sufficiently representative of the actual competitive interactions between the companies and is rather a reflection of the way Canadian categorises brands in Slovakia.

<sup>165</sup> [Reference to the Parties' confidential response to the Commission's request for information of 13 March].

## Figure 2

[Extract from confidential SAB internal document]

Source: [Reference to confidential SAB internal document]

- (274) Thus, SAB and Molson Coors are close competitors in the importation of Czech brands in Slovakia, a possible sub-segment accounting for more than 25% of the total beer market.
- (275) As a result of the Transaction, Molson Coors' structural link to ABI would be transferred to a combined entity including the present SAB business in Slovakia. In other words, the two close competitors would be connected by a commercially significant horizontal structural link.
- (276) The Commission considers that, as a consequence of that link, Molson Coors' incentives to compete effectively against the combined entity would be significantly reduced. While its relationship with ABI appears to be of limited commercial importance looking at Slovakia in isolation, the analysis in section VI.5.1 shows that it is the overall economic importance of the relationship in Central and Eastern Europe that is likely to influence the degree of competitive pressure Molson Coors' would exert on its cooperation partner, ABI.
- (277) As a result, the Commission considers that in a very concentrated market where players other than SAB and Heineken play only a limited role, the Transaction would likely further reduce the degree of competition the Combined Business will face post-merger and thus raises serious doubts in Slovakia as a result of non-coordinated effects.

### VI.5.5.3. Coordinated Effects

- (278) In light of the outcome of the market investigation and taking into account the information available to it, the Commission has reached the conclusion that the Transaction risks producing coordinated effects in Slovakia and that it would thus raise serious doubts as to its compatibility with the internal market for the following reasons.
- (279) The market structure in Slovakia is characterised by the presence of a market leader with a strong market position (Heineken), followed by a close number 2 (SAB), and a number of smaller players (led by Molson Coors).
- (280) The customers generally confirmed that brewers react to competitors' price changes, and one customer identified Heineken as the market leader: '*... suppliers appear to be generally reactive to situations on the market. In relation to price, once it's increased/decreased by the market leader (Heineken), we have observed that the others competitors often follow*'.<sup>166</sup>
- (281) [Details of SAB's sales and pricing strategy in Slovakia].<sup>167</sup>
- (282) [Summary of and direct quotes from confidential SAB internal documents].<sup>168,169</sup>

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<sup>166</sup> Questionnaire to Customers Slovakia (Q2j), question 34.

<sup>167</sup> [Reference to confidential SAB internal document].

- (283) The Commission considers that the Transaction is likely to make this existing coordination in Slovakia more stable and effective for the following two reasons.
- (284) First, Molson Coors' incentives to compete with the combined entity would be likely reduced compared to the present situation. This is due to its relationship with ABI which would take over SAB's position as an important number 2 in Slovakia. Due to its economic dependence on ABI, Molson Coors is, post-transaction, more likely to align its behaviour with that of ABI and also take on followership conduct than it may presently be the case with respect to SAB. ABI's prerogatives under its relationship with Molson Coors provide a strong incentive for the latter to follow the market conduct espoused by ABI, as they offer additional leverage for ABI to discipline Molson Coors in case of deviations from price coordination. Moreover, this relationship also provides for an additional channel for exchange of sensitive information between ABI and Molson Coors which would render the risk of coordination between the two players even more likely.
- (285) Second, the Transaction would create an additional national market where both ABI, on the one side, and Heineken (and, to a certain degree, Molson Coors), on the other side, would hold a significant market position. Given Heineken's leading position, ABI's presence in Slovakia through the acquisition of SAB would provide ABI with additional retaliation options to further reduce Heineken incentives to deviate from price coordination in other markets.
- (286) The Commission has accordingly reached the conclusion that the Transaction is likely to increase the ability and incentives of the Parties to coordinate their behaviour post-transaction in Slovakia and thus raises serious doubts as to its compatibility with the internal market.

#### VI.5.6. *Poland*

##### VI.5.6.1. Market Overview

- (287) In Poland, ABI does not operate any brewery, nor does it have direct sales presence. [Details of ABI's distribution arrangements in Poland].
- (288) SAB is active through its subsidiary Kompania Piwowarska ("KP") which operates three breweries in Poland: Tychy, Poznań, and Białystok with a combined capacity of approximately [annual brewing capacity]. Its main brands sold in the Polish market are Zubr, Tyskie and Lech. SAB has a direct sales presence and organises distribution for on-trade and off-trade customers in Poland.
- (289) There are two others large players in Poland: Heineken is active in Poland through Grupa Zywiec SA ("GZ") and it operates five breweries. Heineken's leading brands include Zywiec, Tatra and Warka. Carlsberg is active in Poland through its subsidiary Carlsberg Polska SA. Carlsberg operates three breweries in Poland and its main brands sold in Poland are Carlsberg, Harnas, Okocim, and a range of regional beers as well. Other smaller players are Van Pur and Perla-Browary Lubelskie.

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<sup>168</sup> [Reference to confidential SAB internal document].

<sup>169</sup> [Reference to confidential SAB internal document].

- (290) Market shares of the Parties and their main competitors in value in 2014 (except for on-trade where only volume shares are available) are shown in the table below.

**Table 11: The Parties' and their competitors' market shares in Poland**

Market shares by value 2014	Total beer (%)	Total beer on-trade (%)	Total beer off-trade (%)
ABI	[0-5]	[0-5]	[0-5]
SAB	[30-40]	[40-50]	[30-40]
<b>Combined</b>	<b>[30-40]</b>	<b>[40-50]</b>	<b>[30-40]</b>
Heineken	[20-30]	[30-40]	[20-30]
Carlsberg	[10-20]	[5-10]	[20-30]
Van Pur	[0-5]	[5-10]	[0-5]
Perla Browary Lubelskie	[0-5]	NA	[0-5]
Others	[10-20]	[10-20]	[10-20]

Source: Form CO

#### VI.5.6.2. Non-Coordinated Effects

- (291) Although SAB enjoys a very strong position in the Polish market with a market share around [40-50]% regardless of the segmentation between off-trade and on-trade,<sup>170</sup> the increment brought about by the Transaction is very limited (less than [0-5]%, regardless of the segmentation). Molson Coors is not present and does not distribute ABI beer brands in Poland. Therefore the transaction does not lead to unilateral effects in Poland.

#### VI.5.6.3. Coordinated Effects

- (292) In line with the general framework on the assessment of coordinated effects (see above section VI.3), the Commission found ample evidence of past coordination between brewers in Poland, consisting essentially in coordination of general price level as expressed in list prices for beer and their periodic modifications applicable across significant parts of the brewers' portfolios.
- (293) Like in other European national markets, the price coordination method selected by brewers is based on a "follow-the-leader" coordination model. Under this model, the market leader, in a repeated process, increases the price level and its competitors, as anticipated, do not deviate but follow its move. Monitoring of the price increases is ensured by brewers that gather correct and up-to date information about price increases by their rivals, as explained in recitals (66) to (69). Such monitoring ensures that any deviation from the coordinated outcome is swiftly identified and adequately addressed.
- (294) Tacit coordination is first facilitated by the limited number of major beer suppliers. The Polish market is already very concentrated and characterised by the presence of three main suppliers which account together for more than 80% of the overall volumes.

<sup>170</sup> This share is [50-60]% in the mainstream segment, [30-40]% in the premium segment and [20-30]% in the super premium segment.

- (295) Moreover, the Polish beer market appear to be very transparent due to accessibility of trade reports by third party providers documenting price and volume evolutions at a high level of detail and to periodic price change announcements to customers. Polish customers confirmed in their reply to the market investigation that they receive periodically price letters to inform them about planned price increases by the main suppliers.<sup>171</sup>

*Evidence of Past Coordination*

- (296) Internal documents from SAB provided a useful insight into the functioning of the Polish market and the persistence of coordinated effects in the recent past as well as the 2014-2015 turmoil in Polish brewers' behaviour that seriously impacted market dynamics.
- (297) [SAB's sales and pricing strategy in Poland].
- (298) [Direct quotes from confidential SAB internal document].<sup>172</sup>
- (299) A significant number of Polish customers have confirmed the existence of price followership behaviour among large Polish brewers. As explained by one large retailer *'In case Kompania Piwowarska introduces new price policy the remaining two suppliers will immediately react and adjust their respective price policy to Kompania Piwowarska (this in particular applies to the mainstream brands: Zubr vs Tarta and Harnas)'*.<sup>173</sup>
- (300) [Reference to extract of confidential SAB internal document].<sup>174,175</sup>

**Figure 3**

[Extract from confidential SAB internal document]

- (301) [Direct quotes from confidential SAB internal documents].<sup>176,177</sup>
- (302) [Details of SAB's sales and pricing strategy in Poland; direct quote from confidential SAB internal document].<sup>178</sup>
- (303) However, as explained above, the price increase was not clearly followed by competitors. This is confirmed by one retailer *'On the other hand, at the beginning of 2015 when Kompania Piwowarska claimed they raised their prices, other*

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<sup>171</sup> See Questionnaires to Customers Poland (Q2i), question 33-1. As explained by a Polish customer "Yes, we did receive price increase announcements from suppliers (email / letters). In general, prices change on a yearly basis". Another customer explained that he received price letters from "SUBMILLER(sic), HEINEKEN GROUP AND CARLSBERG".

<sup>172</sup> [Direct quote from and reference to confidential SAB internal document].

<sup>173</sup> Questionnaire to Customers Poland (Q2i), question 35.

<sup>174</sup> [Reference to confidential SAB internal document].

<sup>175</sup> [Reference to confidential SAB internal document].

<sup>176</sup> [Reference to confidential SAB internal document].

<sup>177</sup> [Reference to confidential SAB internal document].

<sup>178</sup> [Reference to confidential SAB internal document].

*competitors did not follow, which resulted in significant loss of share of Kompania Piwowarska, which were only slowly regained after Kompania Piwowarska returned to promotional activities'.<sup>179</sup>*

- (304) [Summary of confidential SAB internal document].<sup>180,181</sup>
- (305) [SAB's sales and pricing strategies in Poland].
- (306) It is therefore clear from SAB's documents that Heineken and Carlsberg, respectively number 2 and number 3 on the Polish market, have implemented since 2010 a price strategy consisting in prices followership of the market leader SAB since 2010. This strategy has resulted in a steady increase in average prices in Poland as shown by [...].
- (307) Heineken and Carlsberg's "non-followership" market behaviour in 2014-2015 could be interpreted as deviations from a coordinated outcome which has been properly functioning during (at least) the previous five years. Such an interpretation could possibly call into question the effectiveness of SAB's deterrence mechanisms and therefore the sustainability of coordination with Heineken and Carlsberg in the long term.
- (308) In that sense, there is no conclusive evidence to be drawn as regards the stability of any tacit coordination in the Polish market and the likelihood that this market will (or not) revert to conditions of normal competition in the near future. What is clear on the other hand is that this market has already experienced tacit collusion and may experience it again should incentives of market players be re-aligned.

*The Transaction May Increase Risks of Coordination in the Polish Market*

- (309) As explained above, the Commission considers that the Transaction would substantially increase the number of markets where ABI has significant market position and competes with other major brewers, notably Heineken and Carlsberg. As explained, multi-market contacts allow brewers to gather more comprehensive intelligence on the competitors' strategies, pricing policy, growth model (volume or value) etc. This intelligence can make competitors' reactions more predictable and thus facilitates reaching or maintaining a common understanding on terms of coordination. Poland is one of the markets where ABI will be in direct competition with Heineken and Carlsberg after the transaction whereas ABI was not present in this market prior to the merger.
- (310) The additional multi market contacts in Poland between ABI, Carlsberg and Heineken may also strengthen the price leader-follower coordination in the national markets by increasing the punishment potential of major brewers. As explained above, additional multi-market contacts between ABI, Heineken, and Carlsberg increase punishment potential of Carlsberg and Heineken and therefore increase the commitment of ABI to set prices in a coordinated way throughout the EEA.

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<sup>179</sup> Questionnaire to Customers Poland (Q35).

<sup>180</sup> [Summary of confidential SAB internal document].

<sup>181</sup> [Reference to confidential SAB internal document].



- (311) Similarly, the additional punishment potential of Carlsberg and Heineken would increase their commitment to set prices in a coordinated way, or at least make any previously existing coordination more stable and sustainable in the long term. In general, the transaction risks making price coordination in all these national markets stronger.
- (312) Therefore, from a multiple market perspective, the changes to the market structure caused by the Transaction would facilitate reaching terms of coordination in both in the countries with pre-existing market contacts (for example, Belgium and the Netherlands) and in the countries where a contact would be newly established post-merger, such as Poland.
- (313) As explained above, Poland is a market where price coordination between the three main players has already been functioning between 2010 and 2015. At this stage and considering the “non-cooperative” behaviour of Heineken and Carlsberg after the price increase of SAB, it is still unclear whether such collusive situation is sustainable and the direction the market will take going forward. The Commission considers however that there is a serious risk that the transaction could facilitate the main operators – ABI, Heineken and Carlsberg, to tip the market back into coordination, for the following reasons.
- (314) First, it appears that the Polish market was a few years ago already subject to successful tacit coordination. Evidence of past coordination is important if the relevant market characteristics have not changed appreciably.<sup>182</sup>
- (315) [Direct quote from confidential SAB internal document]. The economic incentives for brewers to seek coordinated outcomes are thus particularly significant.
- (316) Third, the Commission considers that precisely for those reasons there are serious risks that Heineken, Carlsberg and ABI will aim at reaching this colluded outcome. Poland is a very large market ([...]) and the second most important profit pool of SAB in Europe behind Czech Republic. [SAB profitability in Poland].
- (317) In the light of the above elements, the Commission concludes that the Transaction is likely to affect the ability and incentives of the Parties and other brewers to coordinate their behaviour in the beer market in Poland and therefore raises serious doubts as to its compatibility with the internal market.

## **VI.6. Other Possible Effects of the Transaction**

### **VI.6.1. Procurement**

- (318) In the light of complaints raised by several respondents to the market investigation<sup>183</sup>, the Commission has examined if the enhanced buyer power of the merged entity would increase its ability and incentive to foreclose competitors' access to key inputs such as cans, glass bottles, hops, barley and multi-pack cartons, and whether its financial strength may adversely influence other parameters of competition such as advertising channels (e.g. the FIFA world cup).

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<sup>182</sup> HMG, para. 43.

<sup>183</sup> Questionnaire to Suppliers (Q3), questions 31- 33.1, and replies to Questionnaire to Competitors (Q1), questions 50.1, 54-59.

- (319) In general, a merger creating or strengthening market power of a buyer may significantly impede effective competition, e.g. where the merged entity is likely to use its buyer power vis-à-vis its suppliers to foreclose rivals. On the other hand, increased buyer power may be beneficial for competition, e.g. where cost savings regarding inputs which are achieved due to increased buyer power without restricting downstream competition or total output, are likely to be passed onto consumers. The Commission assesses in this regard the competitive conditions in upstream markets and evaluates the possible positive and negative effects of the Transaction.<sup>184</sup>
- (320) The Parties submit<sup>185</sup> that post-transaction ABI will have neither the ability nor the incentive to foreclose its competitors' access to key inputs. [Details of ABI's sourcing strategy]. These suppliers are in the case of cans and hops themselves large players in the upstream markets which are also highly concentrated.<sup>186</sup> The market for multi-packs on the other hand is highly fragmented and thus, a large number of suppliers would remain available to supply smaller competitors. Suppliers furthermore prefer to supply multiple customers to maintain leverage over larger customers. Where inputs are sourced regionally<sup>187</sup> (e.g. cans) the merger would not result in substantial benefits for ABI as SAB's suppliers would be too far away from ABI's production facilities and the other way round due to the Parties' complementary footprint. Thus, ABI would not be able to centralise the purchase of such inputs. In the case of cans, bottles and multi-packs the Parties point out that the combined share of the merged entity on the purchasing market of such inputs remains limited.<sup>188</sup>
- (321) Some respondents to the market investigation raised concerns<sup>189</sup> that the merged entity will be in an even better position than it already is today to successfully push for beneficial conditions such as longer payment terms, lower prices (even below production costs), priority in times of capacity constraints during peak-times (e.g. in summer) towards suppliers leaving smaller competitors, thus, with less beneficial supply conditions, such as longer lead times, higher prices etc ('waterbed effects'). However, the majority of the respondents to the market investigation did not expect that the Transaction will have a negative impact neither on their business nor on prices and availability of inputs.<sup>190</sup>
- (322) The Commission notes that the Transaction will substantially increase ABI's buyer power, globally and within the EEA. However, in the light of the results of the market investigation and the information it had obtained, the Commission considers that there is not sufficient evidence that the Transaction will result in waterbed effects and that post-transaction such increased buyer power will increase ABI's ability and incentives to foreclose smaller competitors for the following reasons.

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<sup>184</sup> See HMG, para. 61-63.

<sup>185</sup> See the Parties' "Memorandum on procurement of hops, cans and multipacks". See for the market structure of the can supply market case the Commission's decision in the case M.7567–*Ball/Rexam*.

<sup>186</sup> The Parties submit that for example regarding hops the two big global suppliers account together for 75% of global hops supply.

<sup>187</sup> [Details of ABI's sourcing strategy].

<sup>188</sup> [Details of ABI's sourcing strategy].

<sup>189</sup> Questionnaire to Suppliers (Q3), questions 31- 33.1, and Questionnaire to Competitors (Q1), questions 50.1, 54-59.

<sup>190</sup> Questionnaire to Suppliers (Q3), questions 31 -33.1.

- (323) [Details of ABI's sourcing strategy].<sup>191</sup> Nevertheless, the Commission did not find any evidence that ABI is currently engaging in foreclosing competitors.
- (324) Second, on highly concentrated upstream markets such as the market for hops and cans the Parties face suppliers who have themselves considerable market power. It has also to be noted that as regarding cans, bottles, malt and multi-packaging services brewers represent only one of several potential customer groups. Other customers sourcing such inputs are e.g. soft drink producers.
- (325) Third, as regards advertising and sponsorship of major events (e.g. FIFA cup) the Commission notes that on the supply side there are a number of events of global, regional and local importance offering a broad number of advertising opportunities to brewers. There is no substantial evidence that post-transaction the remaining major brewers will not be able to afford the sponsorships of such events.
- (326) Fourth, whereas some respondents raised concerns regarding potential waterbed effects, the majority of suppliers did not raise any concerns within the market investigation.
- (327) Fifth, internal documents do not indicate that post-transaction the Combined Business will be engaging in foreclosure of competitors.
- (328) Finally, there is a substantial risk for suppliers to enter into dependencies towards ABI and SAB.
- (329) In any event, the Commission considers that any possible foreclosure risk will be resolved by the submitted commitment as will be outlined below. Therefore, the Commission finds that it is not necessary to conclude on whether the Transaction will have anti-competitive effects regarding the upstream markets for inputs.

#### VI.6.2. *Full-line forcing*

- (330) Furthermore, in the light of concerns raised in the market investigation the Commission analysed if the Transaction will lead to an increased power of the merged entity to exert pressure on on- and off-trade customers to purchase beers of its portfolio in bundles to the detriment of other competing brands.
- (331) The Parties submit that the existence of small players today, despite the size of the current portfolio of the Parties, shows that the Parties cannot leverage their existing portfolio to exclude smaller competitors. Furthermore, there are other rivals with a likewise wide product portfolio continuing to exert competitive constraints on the Parties post-transaction.
- (332) Despite the existing substantial market power of the entity, the investigation did not reveal any instances of full-line forcing by the entity. Even in markets such as Belgium, where ABI is already now a dominant market leader with a broad portfolio of brands, such full-line forcing behaviour is not visible. In the light of the complementary nature of the merger it is not likely that this would change post-transaction. Furthermore, the investigation showed that on- and off-trade customers, to be competitive and to attract customers, have to select the beer brands they sell

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<sup>191</sup> See replies to Questionnaire to Suppliers (Q 3) questions 35 and 35.1.

mainly according to customers' preferences.<sup>192</sup> Thus, even small but popular brewers usually have sufficient access to shelf space and to on-trade outlets.<sup>193</sup>

- (333) The Commission concludes that, in any event, all possible competition concerns regarding the ability and incentive of the merged entity to get engaged in full-line forcing are likely to be resolved by the submitted remedies as examined in detail in the following section. Thus, the Commission considers that it is not necessary to conclude whether the Transaction will increase the likelihood of full-line forcing behaviour by the merged entity.

*VI.6.3. Reduced Incentives of Competitors to Compete in the Light of Increased Financial Resources*

- (334) Finally and in the light of the increase of relative financial resources and global footprint of the merged entity post-transaction, the Commission has assessed, whether such increase of "financial firepower" and coverage would result in anti-competitive effects.
- (335) In general, financial strength of the merged entity relative to its rivals will be *inter alia* taken into account by the Commission when assessing whether the merged entity will be able and have the incentive to hinder expansion or restrict the ability of rival firms to compete.<sup>194</sup> The financial strength could in this regard e.g. make large scale or lengthy price wars for the merged entity more affordable than is the case for competitors with a limited war chest. This could discourage competitors to intensively compete with the merged entity on prices as they might have to fear fierce retaliation. One competitor has raised concerns that post-merger, the new entity will be further incentivized to make purchases (for example of craft brewers) to protect market share and reduce brewing capacity and to pay premiums that cannot be matched by others in the industry.
- (336) However, the Commission notes that the financial strength of the merged entity can only be one component of the assessment whether post-transaction the merged entity will have the ability and incentive to restrict the ability of rival firms to compete.
- (337) Yet, in the present case, sufficient evidence that a change in commercial strategy towards less competition as a direct result of the increase of investment capacity and footprint of the merged entity post-transaction could not be obtained. The Commission furthermore was unable to find evidence that the merged entity post-transaction would have the ability and the incentive to use its financial resources to hinder rival firms to compete. Acquisitions of craft brewers are already taking place and there are no elements that the Transaction would make these acquisitions easier or more systematic. Besides, the commitments submitted by the parties include one UK craft brewer acquired by SAB in 2015.

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<sup>192</sup> See e.g. agreed non-confidential minutes of a conference call with an off-trade customer of 4 February 2016.

<sup>193</sup> See e.g. agreed non-confidential minutes of a conference call with a competitor of 21 April 2016.

<sup>194</sup> HMG, para. 36.

- (338) Therefore, the Commission concludes that the examined concerns regarding anti-competitive effects of the merger resulting from the Combined Business' increase of financial resources and global footprint are not likely to arise from the Transaction.

#### *VI.6.4. Conclusion as to the Other Possible Effects of the Transaction*

- (339) In the light of the evidence obtained and the Parties' arguments, the Transaction is not likely to raise serious doubts as regards (i) a potential decrease of competitors' access to inputs, (ii) the potential risk of full-line forcing or (iii) the weakening of competition resulting from the increased financial firepower and global footprint post-transaction.

### **VI.7. Conclusion of the Competitive Assessment**

- (340) In the light of the assessment above, the Commission concludes that in absence of adequate remedies the Transaction raises serious doubts as to its compatibility with the internal market regarding the beer markets in Italy, Netherlands, Hungary, Romania, Czech Republic, Slovakia and Poland. Furthermore, in the absence of adequate remedies, the Commission is unable to exclude the presence of serious doubts to the compatibility of the Transaction with the internal market as to its expected coordinated and non-coordinated effects in Belgium, France and the UK.

## **VII. MODIFICATIONS OF THE TRANSACTION**

- (341) In order to render the Notified Transaction compatible with the internal market, the Parties have modified the Notified Transaction by entering into commitments.
- (342) The Parties submitted two sets of commitments, respectively, on 8 April 2016 (the "PGM Package", concerning the Western European countries), and on 27 April 2016 (the "CEE Package", concerning the Central and Eastern European countries) in order to address the serious doubts that the Notified Transaction would raise, as indicated above by the Commission. The comprehensive sets of commitments lodged are referred to as the "Final Commitments" and are annexed to this decision of which they form an integral part.

### **VII.1. Principles Applicable to Remedies**

- (343) As background, the following principles, as referred to in Commission Regulation (EC) No 802/2004, and in the Commission Notice on remedies acceptable under the Merger Regulation (the "Remedies Notice"),<sup>195</sup> notably apply where the parties to a merger choose to offer commitments with a view to restoring effective competition following serious doubts identified by the Commission.
- (344) Where a concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having the transaction approved in phase I of the merger review procedure. In this respect, the Commission has the power to accept commitments provided that they will remove the grounds for serious doubts as to the compatibility of the transaction with the internal market.

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<sup>195</sup> OJ C 267, 22.10.2008.

- (345) As set out in the Commission's Remedies Notice,<sup>196</sup> to be accepted by the Commission the commitments have to entirely eliminate the competition concerns raised by the concentration,<sup>197</sup> and have to be comprehensive and effective from all points of view.<sup>198</sup> The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent the significant impediment to effective competition in all relevant markets where competition concerns were identified.<sup>199</sup>
- (346) In assessing whether commitments will be appropriate to preserve effective competition post-Transaction, the Commission is to consider all the relevant factors including, *inter alia*, the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the Parties and other participants on the market.<sup>200</sup>
- (347) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.<sup>201</sup> Where, however, the Parties submit remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted.<sup>202</sup>
- (348) Concerning the form of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the requisite standard.<sup>203</sup> Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.<sup>204</sup> Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, although other structural commitments, such as access remedies, may be suitable to resolve concerns if those remedies are equivalent to divestitures in their effects.<sup>205</sup>
- (349) The intended effect of a divestiture will only be achieved if and once the business to divest is transferred to a suitable purchaser in whose hands it will become an active

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<sup>196</sup> Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27).

<sup>197</sup> See also Case C-202/06 P *Cementbouw Handel & Industrie v Commission* [2007] ECR 2007 I-12129, Paragraph 54.

<sup>198</sup> Remedies Notice, Paragraphs 9 and 61.

<sup>199</sup> Remedies Notice, para. 9.

<sup>200</sup> Remedies Notice, para. 12.

<sup>201</sup> Remedies Notice, para. 9.

<sup>202</sup> Remedies Notice, Paragraphs 13, 14 and 61 *et seq.*

<sup>203</sup> Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, Paragraph 197.

<sup>204</sup> Remedies Notice, para. 10.

<sup>205</sup> Remedies Notice, para. 19.

competitive force in the market. In order to ensure that the business is divested to a suitable purchaser, the commitments have to include criteria to define its suitability which will allow the Commission to conclude that the divestiture of the business to such a purchaser will likely remove the competition concerns identified.<sup>206</sup>

- (350) However, there are situations where the Commission does not need to provide for the criteria for the parties to identify a suitable purchaser since the parties have already entered into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission procedure (so-called "fix-it-first-remedy"). In this situation, the Commission will be able to decide in the final decision whether the transfer of the divested business to the identified purchaser will remove the competition concerns. In this case, and if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards.<sup>207</sup>
- (351) If the parties choose to enter into a binding agreement with a suitable purchaser during the procedure by way of a fix-it-first solution, the Commission will be able, in those circumstances, to conclude with the requisite degree of certainty that the commitments will be implemented with a sale to a suitable purchaser.<sup>208</sup>

## **VII.2. Commitments Submitted**

- (352) As already mentioned, with a view to restoring effective competition following the doubts that the Transaction was expected to raise, the Parties had submitted one initial set of commitments under Article 6(2) of the Merger Regulation on 8 April 2016. The PGM Package was intended to ensure that the Commission's serious doubts in Western European national markets (Italy, Netherlands and potentially France and the UK) were removed.
- (353) On 20 April 2016, during a state of play meeting with the Commission, the Parties were informed that, besides the serious doubts in Western European national markets the Transaction raised additional serious doubts resulting from the Commission's preliminary review, because of the non-coordinated and coordinated effects in five national markets in Central and Eastern Europe (Czech Republic, Slovakia, Poland, Hungary and Romania)
- (354) On 27 April 2016, the Parties therefore submitted a second remedy proposal in addition to the Western European remedy proposal. The second set of remedies submitted aimed at removing serious doubts related to the acquisition by ABI of the SAB businesses in Czech Republic, Slovakia, Poland, Hungary and Romania. The CEE Package together with the PGM Package forms the Initial Commitments.
- (355) On 18 May 2016, the CEE package was expanded and improved. The new CEE package together with the PGM package form the Final Commitments.

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<sup>206</sup> Remedies Notice, para. 43.

<sup>207</sup> Remedies Notice, para. 56.

<sup>208</sup> Remedies Notice, para. 57.

- (356) The Final Commitments presented by the Parties are intended to remove the entire overlaps between the Parties' activities in the EEA (excluding a small SAB business in the Canary Islands), thereby re-establishing the ex-ante situation.
- (357) In phase I of a merger control proceedings, commitments can only be accepted where the competition problem raised by the notified concentration can easily be remedied. In particular, the proposed remedy needs to be so clear-cut that it is not necessary to enter into an in-depth investigation. It is only where the Commission's assessment confirms that the proposed commitments remove the grounds for serious doubts on that basis, that it shall clear the notified concentration in the phase I proceedings, pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.
- (358) The Commission has analysed the proposed commitments in that context and has concluded that the Final Commitments are appropriate to ensure that effective competition is maintained following the Transaction.

#### *VII.2.1. Scope of the Initial Commitments*

##### *VII.2.1.1. The PGM Package*

- (359) As already mentioned above, on 8 April 2016, the Parties submitted the PGM package with the aim to remove overlaps between their businesses in Western Europe. It consists on the divestment of three entire businesses currently owned by SAB, namely the Peroni business in Italy, the Grolsch business in the Netherlands and the Meantime business in the United Kingdom.
- (360) The Peroni business in Italy includes notably the global rights for the Peroni brand and related brands, the three Peroni breweries including the local Italian brands brewed in these breweries, one malting facility located in Italy and all the employees, contracts and assets related to the business as well as all of the shares in Miller Brands (UK) Ltd, the entity holding the distribution rights for the Peroni brand family within the UK and Ireland.
- (361) The Grolsch business in the Netherlands consists principally of the Grolsch global brand, the Grolsch brewery in the Netherlands together with the local brands brewed in this brewery, all the employees, contracts and assets related to the business as well as SAB's 51% stake in a joint venture between SAB and Molson Coors which holds the distribution rights of the Grolsch products in the UK.
- (362) The Meantime business consists in of the Meantime craft brand and its related business in the United Kingdom, together with the employees, contracts and assets related to this business.
- (363) In addition, under the Initial Commitments package AB InBev had already agreed to the sale, conditional on completion of the Transaction, of SABMiller's interest in MillerCoors LLC (a joint-venture in the US and Puerto Rico between Molson Coors and SABMiller) and of the Miller Global Brand Business (the Miller Brand) to Molson Coors ("the US Agreement"). Pursuant to the terms of the US Agreement, Molson Coors is to acquire full ownership of the Miller brand portfolio and retain certain contractual rights to the brands currently distributed by MillerCoors in the US and Puerto Rico, including the Peroni and Grolsch brands. The Purchaser of the PGM Package will therefore grant a perpetual distribution licence for the Peroni and Grolsch brands in the US to Molson Coors.



- (364) In accordance with the proposed Initial Commitments package, on 16 April 2016, ABI discussed and eventually accepted an offer from the Japanese brewer Asahi for the purchase of the PGM Package. On 19 April 2016, ABI and Asahi have signed a final and binding Sale and Purchase deed (SPD) that set out the agreements (including transitional service agreement and transitional manufacturing and distribution agreements) between Asahi and ABI for the transfer of the PGM Business to Asahi.
- (365) Pursuant to paragraph 56 of the remedies notice, the Commission is accordingly to assess the suitability of Asahi as a purchaser of the PGM Package.

#### VII.2.1.2. The CEE Package

- (366) On 27 April 2016, the Parties submitted the CEE Package which is intended to remove serious doubts arising from the combination of their activities in Central and Eastern Europe. It consists on the divestment of the following entities:
- (i) The entire SABMiller business in Hungary, currently owned by Dreher Sörgyárak Zrt. and its subsidiaries, including all tangible assets and global rights for all Hungarian local brands Arany Ászok, Dreher, Kanizsai, Kőbányai, Ritterkonig, Waldert, Wanderburg and Rocky-Cellar as well as one brewery ("the Hungarian Business")
  - (ii) The entire SABMiller business in Romania, currently owned by Ursus Breweries SA and its subsidiaries, including all tangible assets and global rights for all Romanian local brands Azuga, Ciucas, Stejar, Timisoreana and Ursus as well as three breweries ("the Romanian Business");
  - (iii) The entire SABMiller business in the Czech Republic, currently owned by Plzenský Prazdroj and its subsidiaries, including all tangible assets and global rights for all Czech local brands Pilsner Urquell, Gambrinus, Kozel, Radegast, Primus, Klasik, Birell, Fénix, Master, Frisco, and Kingswood as well as three breweries ("the Czech Business");
  - (iv) The entire SABMiller business in Slovakia, currently owned by Pivovary Topvar as and its subsidiaries, including all tangible assets and global rights for all Slovakian local brands Topvar, Smädný, Mních, Šariš, and Swist as well as one brewery ("the Slovakian Business");
  - (v) The entire SABMiller business in Poland, currently owned by Kompania Piwowarska SA and its subsidiaries, including all tangible assets and global rights for all Polish local brands Debowe Mocne, Ksiazecze, Lech, Tyskie, Zubr, Wojak, and Gingers as well as three breweries ("the Polish Business").
- (367) The Initial Commitments package allowed the Parties to design the CEE Package in one or several (up to 5) sub-packages as considered suitable or appropriate.
- (368) In addition, the Parties have submitted in the CEE Package other related conditions for the undertakings concerned by the commitments to follow, including, inter alia, the separation of the divested businesses from their retained businesses, the preservation of the viability, marketability and competitiveness of the divested businesses, and the appointment of a monitoring trustee, as well as, if necessary, a divestiture trustee.

### *VII.2.2. Assessment of the Initial Commitments*

- (369) The Commission has assessed the appropriateness of the Initial Commitments in the light of the above-mentioned principles underlying its commitments policy and the results of the market test carried out.
- (370) As a reminder, following its examination the Commission has concluded that the Notified Transaction would raise serious doubts as to its compatibility with the internal market in relation to beer markets in Italy, Netherlands, Hungary, Romania, Czech Republic, Slovakia and Poland. Serious doubts could not be excluded in Belgium, France and the UK.
- (371) As set out in the Remedies Notice, the proposed commitments, once implemented, would need to fully and unambiguously resolve the said competition concerns. The Commission would therefore need to be able to conclude - with the requisite degree of certainty - that the new commercial structures resulting from the proposed remedies will be sufficiently workable and lasting to ensure that all grounds for serious doubts as to the compatibility of the Transaction with the internal market will be removed.

### *VII.2.3. Suitability to Remove Serious Doubts*

- (372) Respondents to the market test have overall given positive feedback regarding the suitability of the Initial Commitments to remove the serious doubts identified by the Commission, as well as with respect to the long-term viability of the Divestment Business.
- (373) A majority of respondents to the market test (including a majority of customers in each Member State) have stated that the Initial Commitments would be capable of removing all the doubts identified by the Commission, because the assets that form part of the concerned Divestment Business constituted a clear-cut viable business.
- (374) Against this background and as regards the PGM Package, the Commission notes that the PGM Package would effectively eliminate all the overlaps created by the Transaction as to the Parties' business activities in Italy, Netherlands, France, and the UK.
- (375) The Commission considers that the sale of the Peroni brands family would essentially removes the overlap between the Parties' activities in Italy and the UK. The on-sale of the Grolsch brand family removes the overlap between the Parties activities in the Netherlands and in France.<sup>209</sup> It will therefore eliminate all the serious doubts raised as to the likely or potential non-coordinated and coordinated effects in Italy, the Netherlands, the UK and France resulting from the Transaction.
- (376) As regards the divestment of the whole of SAB's activities in Central and Eastern Europe, the Commission notes that this sale will remove the serious doubts arising in these countries in three ways.

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<sup>209</sup> In France, the overlap comes from the Amsterdam brand, which belongs to the Grolsch brand family and is brewed in the Enschede brewery, which is part of the PGM package.

- (377) First, the divestment of the CEE Package would remove the full overlap between ABI and SAB in Hungary and Romania and therefore restore the Hungarian and Romanian businesses as a source of competition at the level of specific brands in Hungary and Romania.
- (378) Second the divestment of the CEE Package would definitely eliminate any new long term contractual links likely to result from the Transaction between SAB and Molson Coors in Hungary, Romania, the Czech Republic and Slovakia. The removal of such a link will restore the incentives of Molson Coors to compete aggressively and win market share on the account of ABI/SAB. In addition, the divestment of the CEE Package will limit the scope for information exchanges and reporting obligations to the ABI brands Molson Coors is currently already brewing and distributing. Through this commitment, the Transaction will not increase transparency on the brewers' competitive interactions and it is not likely to facilitate to reach or maintain a common understanding on coordination neither to monitor compliance with the terms of coordination, Czech Republic, Slovakia, Hungary and Romania. In sum, the restoration of the status quo ante through the divestment of the whole of SAB's activities will enable brewers to fully compete on the merits in these four countries.
- (379) Third, the divestment of the CEE Package would not increase the number of markets where ABI has significant market position and competes with other major brewers, notably Heineken and Carlsberg. Because of the divestment of the CEE Package, the punishment potential of Carlsberg and Heineken on ABI will not be increased and the ability of ABI to set price in a coordinated way throughout the EEA will not be enhanced. Similarly, ABI would not get more punishment potential on Carlsberg and Heineken
- (380) As regards Heineken, the Transaction added four markets where ABI is the market leader and Heineken is the follower (Czech Republic, Poland, Hungary, and Romania) and one market where Heineken is the leader and ABI the follower (Slovakia); Conversely, the Transaction added four national markets where Heineken can sanction potential ABI deviations in markets where Heineken is price leader such as Netherlands or France. Through restoration of the status quo ante, the Transaction will not bring new retaliation potential to either ABI or Heineken and therefore it will not contribute to more stable tacit coordination in any national EEA market.
- (381) As regards Carlsberg, the Transaction added two markets where ABI is number 1 and Carlsberg is number 3 (Poland) or number 4 (Romania). Conversely, the Transaction added two national markets where Carlsberg can sanction potential ABI deviations in markets where Carlsberg holds a strong position. Through restoration of the status quo ante, the Transaction will not bring new retaliation potential to either ABI or Carlsberg and therefore it will not contribute to more stable tacit coordination in any national EEA market. This includes markets where there is a high likelihood that coordination is already taking place, such as Belgium, but where the remedies eliminates any risk that this tacit coordination is made more stable and sustainable.
- (382) In the light of the above, the Commission considers that the Initial Commitments are considered suitable for removing the serious doubts in all national EEA markets where they have been raised, as well in all national markets where they have not been excluded.

#### *VII.2.4. Structure of the Divestment Business and Features of a Suitable Purchaser*

- (383) The intended effects of the committed divestiture will only be achieved if and when the Divestment Business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The market test therefore requested respondents for their views on whether the Initial Commitments would require a specific purchaser to transform the Divestment Business into a competitive force on the market in terms of the composition of the Divestment Business and the features of the suitable purchaser(s).
- (384) In particular, the market test sought respondents' view on whether there should be a single buyer for the PGM Package and the CEE Package in the light of the fact that the Parties have already accepted a binding offer from Asahi for the whole of the PGM Package. Assuming that both packages can be separated without impacting the viability and the competitiveness of the Divestment business as a whole, the market test checked whether Asahi could be a suitable buyer for the PGM Package only.
- (385) Regarding the CEE Package, the market test then requested respondents' view on whether there should be one or several buyers for the CEE and the identity of buyer or buyers or the CEE Package (financial investor or industrial buyer).
- (386) The Commission accordingly considers that in order to conclude on the suitability of proposed divestment packages it is appropriate to separately examine the questions of (i) whether one or several buyers for the PGM and CEE packages are preferable, (ii) if Asahi is a suitable buyer of the PGM Package, and (iii) whether the sale of CEE Package should or not be divided in several sub-packages, as well as (iv) whether the purchaser for the CEE Package should be industrial or not.

##### *VII.2.4.1. Would one single buyer for the PGM Package and the CEE Package be preferable?*

- (387) As regards the issue whether there should be a single buyer for the PGM Package and the CEE package, the majority of respondents to the market investigation indicated that they do not see any compelling reasons why the two packages could not be acquired by different buyers. In fact respondents confirmed the arguments of the parties that the PGM and CEE businesses are to a very large extent operationally independent from the above market European management level, the few functions which are operated centrally (procurement, IT and innovation) can be operated easily and without meaningful losses of synergies at regional level. Moreover, both organisations are commercially independent from each other essentially because the Western European brands Peroni and Grolsch have hardly any sales in CEE and the CEE brands (including the global brand Pilsner Urquell) have hardly any sales in Western Europe.
- (388) It should be mentioned however that SABMiller runs an IT platform which is common to businesses belonging to the PGM Package and to businesses belonging to the CEE Package and the divestment of which was not envisaged in the Initial Commitments. If these packages are sold to different purchasers, the commitments need to ensure that support of this IT platform is ensured for each of these businesses.
- (389) Moreover, in a market which is prone to coordination, more than one buyer for the PGM Package and the CEE Package may actually be beneficial for the competitive structure as it would not provide for a large number of points of contacts between

European brewers and therefore the opportunities to retaliate will not be more frequent.

- (390) In the light of the above, the Commission concludes that there is no need that the CEE Package and the PGM Package are sold to the same purchaser. The Commission can now turn to assess the suitability of Asahi as a buyer of the PGM Package only.

#### VII.2.4.2. Asahi as a suitable buyer of the PGM Package

- (391) Paragraph 56 of the Remedies Notice provides for situations when Parties identify and enter into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission procedure (fix-it-first remedy). In this case, the Commission will be able to decide in the final decision whether the transfer of the divested business to the identified purchaser will remove the competition concerns. Under the fix it first assessment, if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards.
- (392) Against this background, the Commission has assessed whether the proposed buyer of the fix-it-first remedy would fulfil the standard purchaser criteria as set out in the Commission's notice on remedies, and most notably if:
- i) the purchaser is independent of and unconnected to the parties;
  - ii) the purchaser possesses the financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business as a viable and active competitive force in competition with the parties and other competitors, and
  - iii) the acquisition of the business by a proposed purchaser is neither likely to create new competition problems nor to give rise to a risk that the implementation of the commitments will be delayed. Therefore, the proposed purchaser should be reasonably expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the business to be divested.
- (393) As mentioned, on 16 April 2016, the Parties have accepted an offer from Japanese brewer Asahi for a purchase of the PGM Package. On 19 April 2016, ABI and Asahi have signed a final and binding Share and Purchase deed (SPD) that set out the agreements (including transitional service agreement and transitional manufacturing and distribution agreements) between Asahi and ABI for the transfer of the PGM Business to Asahi. This SPD was communicated to the Commission only on 19 May 2016.
- (394) The Commission has assessed the suitability of Asahi as a purchaser of the PGM package on the basis of the covenants included in the SPD to determine whether the PGM Package was sold in a manner consistent with the commitments. The Commission has also examined the replies provided by the market test respondents' view as regards the suitability of Asahi, as follows.
- (395) Asahi is a leading beverages and food company, listed on the Tokyo Stock Exchange and headquartered in Tokyo, Japan, with over 120 years' history. It takes note that Asahi has emerged to be, since 1998, the leading brewer in Japan and is one of the

ten largest brewers globally by volume. The Commission understands that Asahi has a diverse portfolio of products, and has operations mainly in the Asia-Pacific region. Its leading brand, Asahi Super Dry, is the top selling beer in Japan, and is distributed in over 80 countries worldwide.

- (396) The Commission has further noted that a vast majority of respondents to the market test has indicated that they consider Asahi as a suitable purchaser for the PGM package.<sup>210</sup> One customer has, for example, explained that *"It seems like a proven brewer with an excellent track record. The brands and markets seem compatible with Asahi's current business and a complementary addition to Asahi's current portfolio. Also this acquisition would bring a new major brewer to Europe which can improve competition"*.
- (397) This conclusion is confirmed by a UK operator who states that<sup>211</sup> *"Asahi is a financially sound but new entrant to European markets, with existing industry knowledge. Its purchase of the PGM Divestment Business does not lead to further consolidation in European markets, which has been the industry trend in recent years and has led to reduced market access for smaller, regional players"*.
- (398) The Commission further notes that, in terms of market autonomy, Asahi is independent from both ABI and the retained business of SABMiller. The Commission understands that Asahi is a public company with widely held shareholding, with no individual shareholder holding more than a 6.2% shareholding. It has no ownership links with AB InBev or SABMiller, no common interests in joint ventures and does not have any material distribution, licensing or marketing arrangements with either company. Asahi distributes a small number of ABI products in Japan, but these represent sales of [details of ABI's distribution relationship with Asahi]. The Commission concludes that such limited links between Asahi and ABI are therefore unlikely to affect Asahi's independence towards ABI.
- (399) As regards financial resources, [details of the financing of Asahi's acquisition of the PGM package]. Following the proposed transaction, the purchaser will retain a relatively low level of financial gearing that will mean it is well-placed to continue as a strong competitor through changes in economic conditions. It will also have sufficient cash flows and strong access to capital markets to allow it to invest in the divestment business. Respondents to the market test have confirmed that they consider Asahi as financially sound.
- (400) As regards proven expertise, the Commission considers that Asahi seems having the ability, and every incentive, to operate the divestment business as a viable and active competitive force in competition with ABI and other competitors. Its experience with its own brands has given it deep experience in all aspects of managing and monitoring a business such as the PGM Package. The Commission considers that Asahi also has all the incentives to develop the PGM Package in Europe as [details of Asahi's sales and product strategy].
- (401) Finally, the Commission expects the acquisition of the business by Asahi to be unlikely to create new competition problems nor to give rise to a risk that the

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<sup>210</sup> See Replies to Questions 12 to the Remedies market test.

<sup>211</sup> Idem.

implementation of the commitments will be delayed. Asahi's market share in any EEA country is not higher than [0-5]%. Asahi and the divestment business revenues also do not trigger mandatory filings in any EU Member State. [Details of Asahi's turnover].

- (402) In the light of the above, the Commission concludes that Asahi is a suitable purchaser for the PGM Package and therefore no additional buyer approval decision is necessary for the PGM Package.

VII.2.4.3. Split of the CEE Package in, Several Sub-Packages and Nature of the Purchaser for the CEE Package

- (403) With respect to the issue of a possible split of the CEE Package, the Commission observes that the market respondents were nuanced in their assessment of such a split. First, it appears that at least Czech Republic and Slovakia cannot be split [details of SAB's internal commercial structure]. Some of the country operations (Slovakia, Hungary) are relatively small in international comparison and do not provide a comparable scale as SAB had before. Finally, having a strong CEE home base may also be necessary for driving the export business into countries such as Germany or Russia and Ukraine.
- (404) On the other hand, it also appears the Polish business could at least be divested separately from the other businesses especially the Czech one. First, the volumes of the Non-Polish CEE brands sold in Poland and of Polish brands sold in the other four countries are clearly de minimis. In Poland, over 99% of the CEE brands sold by the SAB business are domestic Polish brands. The reverse is also true regarding the Non-Polish CEE countries, where Non-Polish CEE brands comprise 99% or above of the CEE brands.
- (405) [Details of SAB's internal commercial structure]. Separating Poland from Czech Republic appears to also create two packages with sufficient scale with at least one strong profit pool (Poland and Czech Republic respectively) in each.
- (406) Moreover in general Polish customers consider the Polish business as viable and stand-alone by itself. As explained by one Polish retailer *"In our opinion Polish beer market is fully independent from the other domestic beer markets. As far as Polish part of the divested package is concerned, we believe that it represents stand-alone business which is not dependent from the businesses located in other countries covered by the divestment package. We consider that Kompania Piwowarska could retain its leading position in Poland even if being separated from other current businesses of SABMiller"*.<sup>212</sup>
- (407) Finally, respondents have not expressed a strong preference as to whether the Purchaser(s) should be an industrial buyer or could be a financial investor. Some respondents indicated that a financial buyer could also have the ability and incentives to develop the business as a viable and competitive force in the market, with additional management expertise (e.g. by recruiting managers experienced in the beer industry). In general, companies having responded to the market test insisted on, the purchaser(s) to be financially sound, in order to be in a position to invest into the

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<sup>212</sup> See Replies to Questions 23-2 and 25 to the Remedies market test.

brands and also on business expertise, either through internal resources or through the hiring of individuals with experience in the beer industry.

- (408) At this stage therefore the Commission considers that the question of whether the CEE Package will be sold in its entirety to a single buyer or whether different parts of the CEE Package will be sold to different buyers is likely to have no impact on the viability and competitiveness of these assets provided that the packages are designed in a way that ensures that each of them has a sufficient scale to be financially viable in the long run. In a nutshell, the Commission does not consider as viable any sub-packages that would not include at least one of the major profit pools of Central and Eastern Europe (Poland or Czech Republic).
- (409) As regards the purchaser of the CEE Package, the outcome of the market test has confirmed the importance of financial capabilities and business expertise in order to ensure long-term viability of the divestments pertaining to the CEE package. In the light of the findings of the market investigation, particularly as regards the risks of coordinated effects, the Commission considers of critical importance that the purchaser is fully independent from the Parties. The independence criteria will consequently be enforced strictly, account taken of the fact that the monitoring trustee will be checking whether all potential suitable buyers are given the opportunity to be involved on equal footing in the CEE selection process. In this respect, the Commission considers that *pari-passu* treatment of interested purchasers is likely to guarantee that viable market operators are not excluded from the opportunity of strengthening their market positions, vis-à-vis the Parties to the Transaction.

### **VII.3. Final commitments submitted by the Parties**

- (410) The Parties submitted Final Commitments on 18 May 2016 aimed at improving and refining the Initial Commitments as regards the CEE package.
- (411) The Final Commitments introduced the following improvements to the Initial Commitments:
- (a) It is offered that the CEE Package is not to be sold to more than two different Purchasers.
  - (b) It is offered that if the CEE Package is acquired by two purchasers, SABMiller Poland and SABMiller Czech Republic/Slovakia are not to be acquired by the same purchaser.
  - (c) It is offered that all necessary IT infrastructure, including any necessary functionality of the currently shared IT platform, is divested.
- (412) Moreover, the Final Commitments ensure that all necessary assets are included in the CEE package and that assets belonging to the CEE package are divested in a way that ensure viability and competitiveness of each divested package going forward.

### **VII.4. Conclusion on the remedies**

- (413) In the light of the outcome of the market investigation and in view of the information made available to it, the Commission therefore concludes that the Commitments remove the serious doubts raised by the Notified Transaction as to its compatibility with the internal market.



## **VII.5. Conditions and obligations**

- (414) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with internal market.
- (415) The fulfilment of the measures that give rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (416) As explained, the Commission is to make sure in particular that in the purchaser approval process the independence criteria of the buyer are rigorously assessed. The Commission is also to check, in close cooperation with the monitoring trustee, that no potential suitable buyer is excluded from the outset of the purchaser selection process.
- (417) In accordance with the basis distinction between conditions and obligations, the commitments in sections B of Annexes I and II constitute conditions attached to this Decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in Annexes I and II constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market. Accordingly, the Decision not to raise objections is made conditional on full compliance by the Notifying Party with Sections B of the Final commitments and with the remaining sections of the Final commitments which constitute obligations on the Parties.
- (418) The full text of the Commitments is attached as Annexes I and II to this Decision and forms an integral part of it.

## **VIII. CONCLUSION**

- (419) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the commitments attached as Annexes I and II to the present decision and to the fulfilment of the obligations contained in the remaining sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*

*Margrethe VESTAGER*  
*Member of the Commission*

**Case M. 7881 – AB InBev / SABMiller****COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the **Merger Regulation**), Anheuser-Busch InBev SA/NV (**AB InBev**) (the **Notifying Party**) hereby enters into the following commitments (the **PGM Commitments**) vis-à-vis the European Commission (the **Commission**) with a view to rendering the acquisition of sole control of SABMiller plc (**SABMiller**) by AB InBev (the **Concentration**) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the **Decision**), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the **Remedies Notice**).

The PGM Commitments shall take effect upon the Effective Date, provided that if Completion does not subsequently take place for whatever reason and is thereby abandoned, the Notifying Party shall not be bound by these PGM Commitments.

**Section A. Definitions**

1. For the purpose of the PGM Commitments, the following terms shall have the following meaning:

**AB InBev:** Anheuser-Busch InBev SA/NV incorporated under the laws of Belgium.

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the **Consolidated Jurisdictional Notice**).

**Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the PGM Divestment Business as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Sale and Purchase Deed.

**Closing:** the transfer of the legal title to the PGM Divestment Business to the Purchaser.

**Completion:** completion of the acquisition of SABMiller by AB InBev.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the PGM Commitments.

**Effective Date:** the date of adoption of the Decision.

**Hold Separate Manager:** the person appointed by the Parties for the PGM Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the PGM Divestment Business, as provided for, in particular, in Schedule 8 of the Sale and Purchase Deed, including the Hold Separate Manager.

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party, and who has/have the duty to monitor the Notifying Party's compliance with the conditions and obligations attached to the Decision.

**Parties:** the Notifying Party and the undertaking that is the target of the concentration, SABMiller.

**Personnel:** all employees currently employed by the PGM Divestment Business, including Target Company Employees, Global Brands Employees, SBE France Employees, Procurement Employees or Seconded Management Employees, each time as defined in the Sale and Purchase Deed.

**PGM Divestment Business:** the business or businesses as defined in Section B and in the Sale and Purchase Deed which the Notifying Party commits to divest.

**Purchaser:** Asahi Group Holdings, Ltd.

**Sale and Purchase Deed:** the sale and purchase deed attached as Annex A to the final, binding and irrevocable offer from the Purchaser to acquire the PGM Divestment Business entered into by AB InBev and the Purchaser on 10 February 2016 and attached as **Schedule 1**.

**Trustee:** the Monitoring Trustee.

## **Section B. The PGM Commitments**

### Commitment to divest

2. In order to maintain effective competition, the Notifying Party commits to divest, or procure the divestiture of the PGM Divestment Business to the Purchaser.
3. The Notifying Party shall be deemed to have complied with this commitment if pursuant to the Sale and Purchase Deed, AB InBev sells, at Closing, the PGM Divestment Business to the Purchaser.

4. In order to maintain the structural effect of the PGM Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the PGM Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and, to the extent a Monitoring Trustee has been appointed, accompanied by a report from the Monitoring Trustee (as provided in paragraph 36 of these PGM Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the PGM Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

#### Structure and definition of the PGM Divestment Business

5. The PGM Divestment Business consists of:

- (i) The entire Peroni business in Italy, currently owned by Birra Peroni srl and its subsidiaries, including:
- the Peroni brand globally;<sup>1</sup>
  - all three Peroni breweries located at Rome, Padua and Bari, together with all Italian local brands brewed at these Peroni breweries;<sup>2</sup>
  - one malting facility in Pomezia;<sup>3</sup>
  - all necessary employees located in Italy, as well as certain other employees supporting the Peroni business;
  - the benefit of all business contracts (subject to the definitions and provisions in the Sale and Purchase Deed); and
  - all tangible assets and intangible assets exclusively relating to the Peroni business;
- and
- all of the shares in Miller Brands (UK) Ltd., the entity holding the distribution rights for the Peroni brand family within the UK and Ireland;
- (ii) The entire Grolsch business in the Netherlands, currently owned by Koninklijke Grolsch NV and its subsidiaries, including:
- the Grolsch brand globally;<sup>4</sup>

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<sup>1</sup> Includes Peroni brand products such as Birra Peroni, Nastro Azzurro, Peroni Nastro Azzurro, Peroni Peroncino, Gran Riserva and Gran Riserva Red, Peroni Forte, Peroni Senza Glutine, Peroni Radler and Peroni Leggera.

<sup>2</sup> Comprising the following brands: Crystall; Raffo; Tourtel; and Wührer. These brands are brewed by SABMiller in the Peroni breweries in Italy only. They are therefore referred to as Italian local brands. However, under the SPD, the PGM Divestment Business includes the rights to sell, market and distribute all these brands globally, except for Tourtel where the rights are limited to Italy, since SABMiller currently only holds the Tourtel trademark in Italy.

<sup>3</sup> The malting facility located in Pomezia (Società Anonima Produzione Lavorazione Orzo – **SAPLO**) provides various types of malt (barley that has been steeped, germinated, and dried, used for brewing) to the three Peroni breweries located in Rome, Bari and Padua.

- the Grolsch brewery located at Enschede, together with all Dutch local brands brewed at the Enschede brewery;<sup>5</sup>
  - all necessary employees located in the Netherlands, as well as certain other employees supporting the Grolsch business;
  - the benefit of all business contracts (subject to the definitions and provisions in the Sale and Purchase Deed);
  - all tangible assets and intangible assets exclusively relating to the Grolsch business; and
  - SABMiller's 51% stake in Grolsch UK Ltd (a JV between SABMiller through Koninklijke Grolsch NV and Molson Coors Brewing Company (UK) Limited), as well as any other joint venture or minority interests held by SABMiller in respect of certain other entities related to the Grolsch business in the Netherlands; and
- (iii) The Meantime brand and related Meantime business in the UK, currently owned by the Meantime Brewing Company Ltd, together with all entities, employees and all tangible and intangible assets exclusively related to the Meantime business.
6. A number of employees currently not employed by the legal entities mentioned above, but who are supporting the Peroni and Grolsch Businesses will also be included in the PGM Divestment Business. It is currently anticipated that this will include the following employees:
- Marketing employees: [number of employees] working in the international marketing and brand management team for Peroni in the UK, who are currently employed outside the perimeter of the Peroni Business<sup>6</sup>;
  - Peroni procurement employees: [number of employees] who are currently employed by the Italian branch of a Swiss entity that provides procurement services to the SABMiller Group, but who are dedicated to Peroni procurement;
  - Seconded management employees: [number of employees] who are currently employed by various entities higher up the SABMiller corporate structure and who are seconded to the Peroni and Grolsch businesses; and
  - SBE France employees: [number of employees] in France, who are currently employed by the French branch of SABMiller Brands Europe a.s., a Czech company not within the PGM Divestment Business.
7. In light of the fact that AB InBev has agreed to the sale, conditional on Completion of (i) SABMiller's interest in MillerCoors LLC (**MillerCoors**), a joint venture in the US and Puerto

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4 Includes Grolsch brand products such as Grolsch Premium Lager, Grolsch Radler (and Radler variants), Grolsch Puur Weizen, Grolsch Krachtig Kanon, Grolsch Frisse Lentebok, Grolsch Rijke Herfstbok, Grolsch Kruidige Pale Ale, Grolsch Milde Amber, Grolsch Stender Naturel, and Grolsch Kornuit.

5 Comprising the following brands: De Klok; Gulpener Gladiator; and Amsterdam. These brands are brewed by SABMiller in the Grolsch breweries in the Netherlands only. They are therefore referred to as Dutch local brands. However, under the SPD, the PGM Divestment Business includes the rights to sell, market and distribute all these brands globally, except for Gulpener Gladiator, for which SABMiller currently only holds the right to brew and distribute in the Netherlands.

6 These employees are currently not employed by a Peroni target company, but it is envisaged that these employees will transfer into a Peroni target company (as appropriate) at Closing (information responsive to Question 9 of the Commission's RFI of 4 March 2016).

Rico between Molson Coors Brewing Company (***Molson Coors***) and SABMiller, and (ii) the Miller brand globally to Molson Coors (collectively the ***US Transaction***), Molson Coors will acquire full global ownership of the Miller brand portfolio and retain certain contractual rights to the brands currently distributed by MillerCoors in the US and Puerto Rico, including the Peroni and Grolsch brands (the ***US Agreement***).

8. Given the pre-existing US Agreement, the Sale and Purchase Deed incorporates the provisions of the US Agreement with regards to the Peroni and Grolsch brands. The PGM Divestment Business is therefore subject to the terms of the US Agreement.
9. The legal and functional structure of the PGM Divestment Business as operated to date is described in Schedules 1 and 2 of the Sale and Purchase Deed. The PGM Divestment Business, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the PGM Divestment Business, in particular:
  - (a) all necessary tangible and intangible assets (including all intellectual property rights exclusively related to the PGM Divestment Business);
  - (b) all necessary licences, permits and authorisations issued by any governmental organisation for the benefit of the PGM Divestment Business;
  - (c) all contracts, leases, PGM Commitments and customer orders of the PGM Divestment Business; all customer, credit and other records of the PGM Divestment Business; and
  - (d) the Personnel.
10. In addition, the PGM Divestment Business includes the benefit, for a transitional period of up to 18 months (depending on the type of service) after Closing and on terms and conditions equivalent to those at present afforded to the PGM Divestment Business, of certain current arrangements under which the Parties or their Affiliated Undertakings supply products or services to the PGM Divestment Business, as detailed in the Sale and Purchase Deed and its schedules, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the Notifying Party's operations.

## **Section C. Related commitments**

### Preservation of viability, marketability and competitiveness

11. From Completion until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the PGM Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the PGM Divestment Business. In particular, the Notifying Party undertakes:
  - (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the PGM Divestment Business or that might alter

the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the PGM Divestment Business;

- (b) to make available, or procure to make available, sufficient resources for the development of the PGM Divestment Business, on the basis and continuation of the existing business plans;
- (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the PGM Divestment Business, and not to solicit or move any Personnel to the Notifying Party's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the PGM Divestment Business, the Notifying Party shall provide a reasoned proposal to replace the person or persons concerned to the Commission and, to the extent applicable, the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. Where applicable, the replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

#### Hold-separate obligations

12. In case Closing does not occur upon Completion, the Notifying Party commits, for the period between Completion and Closing, to keep the PGM Divestment Business separate from the businesses it is retaining and to ensure that unless explicitly permitted under these PGM Commitments: (i) management and staff of the business retained by the Notifying Party have no involvement in the PGM Divestment Business (other than as required by these PGM Commitments); (ii) the Key Personnel and Personnel of the PGM Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the PGM Divestment Business.
13. In case Closing does not occur upon Completion, the Notifying Party shall (i) for the period between Completion and Closing assist the Monitoring Trustee in ensuring that the PGM Divestment Business is managed as a distinct and saleable entity separate from the business which the Notifying Party is retaining, and (ii) appoint a Hold Separate Manager immediately after Completion. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the PGM Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Notifying Party. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 11(c) of these PGM Commitments. The Commission may, after having heard the Notifying Party, require the Notifying Party to replace the Hold Separate Manager.
14. To ensure that the PGM Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the Notifying Party rights as shareholder in the legal entity or entities that constitute the PGM Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Notifying Party's obligations under the PGM Commitments. Furthermore, the



Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Notifying Party. Upon request of the Monitoring Trustee, the Notifying Party shall resign as a member of the boards or shall cause such members of the boards to resign.

#### Ring-fencing

15. The Notifying Party shall implement, or procure to implement, all necessary measures to ensure that it does not, after Completion, obtain any Confidential Information relating to the PGM Divestment Business and that any such Confidential Information obtained by the Notifying Party before Completion will be eliminated and not be used by the Notifying Party. This includes measures vis-à-vis the Notifying Party appointees on the supervisory board and/or board of directors of the PGM Divestment Business. In particular, the participation of the PGM Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the PGM Divestment Business. The Parties may obtain or keep information relating to the PGM Divestment Business which is reasonably necessary for the divestiture of the PGM Divestment Business or the disclosure of which to the Notifying Party is required by law.

#### Non-solicitation clause

16. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the PGM Divestment Business for a period of 2 years after Closing.

### **Section D. Monitoring Trustee**

#### **I. Appointment procedure**

17. In case Closing does not occur upon Completion, the Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these PGM Commitments for a Monitoring Trustee.
18. The Trustee shall:
- (i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
  - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
  - (iii) neither have nor become exposed to a Conflict of Interest.
19. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate.

*Proposal by the Notifying Party*

20. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval in case Closing does not occur upon Completion, indicating which of the proposed Monitoring Trustees is the Notifying Party's preferred choice (if any). The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 18 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these PGM Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

*Approval or rejection by the Commission*

21. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by the Notifying Party*

22. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 17 and 21 of these PGM Commitments.

*Trustee nominated by the Commission*

23. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

24. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the PGM Commitments in case Closing does not occur upon Completion. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

25. The Monitoring Trustee shall:

- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the PGM Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Party with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (a) monitor the preservation of the economic viability, marketability and competitiveness of the PGM Divestment Business, and the keeping separate of the PGM Divestment Business from the business retained by the Parties, in accordance with paragraphs 11 and 12 of these PGM Commitments;
  - (b) supervise the management of the PGM Divestment Business as a distinct and saleable entity, in accordance with paragraph 13 of these PGM Commitments;
  - (c) with respect to Confidential Information:
    - determine all necessary measures to ensure that the Notifying Party does not after Completion obtain any Confidential Information relating to the PGM Divestment Business,
    - in particular strive for the severing of the PGM Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the PGM Divestment Business,
    - make sure that any Confidential Information relating to the PGM Divestment Business obtained by the Notifying Party before Completion is eliminated and will not be used by the Notifying Party and
    - decide whether such information may be disclosed to or kept by the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;
  - (d) monitor the splitting of assets and the allocation of Personnel between the PGM Divestment Business and the Notifying Party or Affiliated Undertakings;
- (c) propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the PGM Divestment Business, the holding separate of the PGM Divestment Business and the non-disclosure of competitively sensitive information;

- (d) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the PGM Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the PGM Commitments;
- (e) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these PGM Commitments;
- (f) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

### III. Duties and obligations of the Parties

- 26. The Notifying Party shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks in case Closing does not occur upon Completion. The Trustee shall in such case have full and complete access to any of the Notifying Party's or the PGM Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the PGM Commitments and the Notifying Party and the PGM Divestment Business shall provide the Trustee upon request with copies of any document. The Notifying Party and the PGM Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
- 27. The Notifying Party shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the PGM Divestment Business. This shall include all administrative support functions relating to the PGM Divestment Business which are currently carried out at headquarters level.
- 28. The Notifying Party shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for, any liabilities arising out of the performance of the Trustee's duties under the PGM Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
- 29. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the

Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 of these PGM Commitments shall apply *mutatis mutandis*.

30. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
31. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
32. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these PGM Commitments.

#### IV. Replacement, discharge and reappointment of the Trustee

33. If the Trustee ceases to perform its functions under the PGM Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
  - (a) the Commission may, after hearing the Trustee and the Notifying Party, require the Notifying Party to replace the Trustee; or
  - (b) the Notifying Party may, with the prior approval of the Commission, replace the Trustee.
34. If the Trustee is removed according to paragraph 33 of these PGM Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17-23 of these PGM Commitments.
35. Unless removed according to paragraph 33 of these PGM Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the PGM Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### **Section E. The review clause**

36. The Commission may extend the time periods foreseen in the PGM Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. Where applicable, this request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.

37. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these PGM Commitments. Where applicable, this request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

**Section F. Entry into force**

38. The PGM Commitments shall take effect upon the date of adoption of the Decision.

.....  
duly authorised for and on behalf of  
Anheuser-Busch InBev SA/NV

## **SCHEDULE 1**

[Sale and Purchase Deed between Anheuser-Busch InBev SA/NV and Asahi Group Holdings, Ltd.]

**Case M. 7881 – AB InBev/ SABMiller****COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the **Merger Regulation**), Anheuser-Busch InBev SA/NV (**AB InBev**) (the **Notifying Party**) hereby enters into the following commitments (the **CEE Commitments**) vis-à-vis the European Commission (the **Commission**) with a view to rendering the acquisition of sole control of SABMiller plc (**SABMiller**) by AB InBev (the **Concentration**) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the **Decision**), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the **Remedies Notice**).

The CEE Commitments shall take effect upon the Effective Date, provided that if Completion does not subsequently take place for whatever reason and is thereby abandoned, the Notifying Party shall not be bound by the CEE Commitments.

**Section A. Definitions**

1. For the purpose of the CEE Commitments and the Form RM relating to the CEE Commitments, the following terms shall have the following meaning:

**AB InBev:** Anheuser-Busch InBev SA/NV incorporated under the laws of Belgium.

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

**Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the CEE Divestment Business as indicated in Section B, paragraph 5 (a)-(d), and described more in detail in **Schedule 1**.

**CEE:** the following Central and Eastern European Member States: Czech Republic, Hungary, Poland, Romania and Slovakia.

**CEE Divestment Business:** each of the businesses as defined in **Schedule 1**, or each of the two packages of these businesses (subject to the proviso that if the CEE Divestment Business is



acquired by two purchasers, SABMiller Poland and SABMiller Czech Republic/Slovakia will not be acquired by the same purchaser), as the case may be, which the Notifying Party commits to divest.

**CEE Purchaser:** entity approved by the Commission as acquirer of a part of, or the entirety of, the CEE Divestment Business in accordance with the criteria set out in Section D.

**CEE Purchaser Criteria:** the criteria laid down in paragraph 18 of these CEE Commitments that any CEE Purchaser must fulfil in order to be approved by the Commission.

**Closing:** the transfer of the legal title to the CEE Divestment Business to no more than two CEE Purchasers.

**Closing Period:** the period of 3 months from the approval of no more than two CEE Purchasers and the terms of sale by the Commission.

**Completion:** completion of the acquisition of SABMiller by AB InBev.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the CEE Commitments.

**Divestiture Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party and who has/have received from the Notifying Party the exclusive Trustee Mandate to sell all or part of the CEE Divestment Business to no more than two CEE Purchasers at no minimum price.

**Effective Date:** the date of adoption of the Decision.

**First Divestiture Period:** the period of 6 months from Completion.

**Hold Separate Manager:** one or more individuals appointed by the Parties for all or parts of the CEE Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the CEE Divestment Business, including the Hold Separate Manager.

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party, and who has/have the duty to monitor the Notifying Party's compliance with the conditions and obligations attached to the Decision.

**Parties:** the Notifying Party and the undertaking that is the target of the Concentration.

**Personnel:** all staff currently employed by the CEE Divestment Business.

**Regional Innovation Centre:** SABMiller's above-market function based in Switzerland and the UK that is the primary lead for innovation across SABMiller's European business.

**SABMiller Czech Republic/Slovakia:** the businesses as described in Schedule 1 (iii) and (iv) of the CEE Commitments.

**SABMiller Poland:** the business as described in Schedule 1 (v) of the CEE Commitments.

**Shared Supply Contract:** any contract concluded by SABMiller and a third party for the supply of ingredients and/or packaging materials that relates to both the relevant CEE Divestment Business and any other SABMiller entity.

**Trustee(s):** the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

**Trustee Divestiture Period:** the period of 3 months from the end of the First Divestiture Period.

## **Section B. The CEE Commitments**

### Commitment to divest the CEE Divestment Business

2. In order to maintain effective competition, the Notifying Party commits to divest, or procure the divestiture of, the CEE Divestment Business as a going concern to no more than two purchasers and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 19 of these CEE Commitments. To carry out the divestiture, the Notifying Party commits to find no more than two purchasers and to enter into a final binding sale and purchase agreement with each purchaser, which taken together, will bring about the sale of all parts of the CEE Divestment Business within the First Divestiture Period. If the CEE Divestment Business is to be acquired by two purchasers, SABMiller Poland and SABMiller Czech Republic/Slovakia will not be acquired by the same purchaser. If the Notifying Party has not entered into such agreement(s) at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the CEE Divestment Business in accordance with the procedure described in paragraph 31 in the Trustee Divestiture Period.
3. The Notifying Party shall be deemed to have complied with the CEE Commitments if:
  - (a) by the end of the Trustee Divestiture Period, the Notifying Party or the Divestiture Trustee has entered into final binding sale and purchase agreement(s) for the sale of all parts of the CEE Divestment Business and the Commission approves the proposed purchaser(s) and the terms of sale as being consistent with the CEE Commitments in accordance with the procedure described in paragraph 19; and
  - (b) the Closing of the sale of all parts of the CEE Divestment Business to no more than two CEE Purchasers takes place within the Closing Period, subject to the proviso that if the CEE Divestment Business is acquired by two purchasers, SABMiller Poland and SABMiller Czech Republic/Slovakia will not be acquired by the same purchaser.

4. In order to maintain the structural effect of the CEE Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the CEE Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 37 of these CEE Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the CEE Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The legal and functional structure of the relevant parts of the CEE Divestment Business as operated to date is described in **Schedule 1**. Each CEE Divestment Business, described in more detail in **Schedule 1**, includes all assets and staff that are necessary to ensure the viability and competitiveness of such CEE Divestment Business, in particular:
- a) all related tangible and intangible assets (including intellectual property rights), subject to third party rights;
  - b) all necessary IT infrastructure, including any necessary functionality of the currently shared IT platform, subject to third party rights. If change of control rights prevent the relevant CEE Divestment Business from enjoying the functionality as referred to above, the Notifying Party shall, at the option of the CEE Purchaser, use best efforts to put in place arrangements which allow the CEE Divestment Business to enjoy the equivalent functionality for a transitional period of up to 18 months after Closing;
  - c) all licences, permits and authorisations issued by any governmental organisation for the benefit of the CEE Divestment Business;
  - d) all other such contracts, leases, commitments and customer orders of the CEE Divestment Business (including third party license, distribution contracts or supply contracts that exclusively relate to the CEE Divestment Business), subject to third party rights. If change of control rights prevent the relevant CEE Divestment Business from enjoying the products and/or services under such contracts, leases, commitments or customer orders, the Notifying Party shall, at the option of the CEE Purchaser, use best efforts to put in place arrangements which allow the CEE Divestment Business to enjoy the equivalent products and/or services for a transitional period of up to 18 months after Closing;
  - e) all customer, credit and other records of the CEE Divestment Business;
  - f) the Personnel (including all necessary employees of SABMiller Brands Europe);
  - g) necessary functionality of the Regional Innovation Centre (including employees, and tangible and intangible assets exclusively related to the relevant CEE Divestment Business); and
  - h) the necessary SABMiller resources supporting the sale of brands owned by the CEE Divestment Business outside CEE.

6. In respect of any Shared Supply Contract, each CEE Divestment Business will continue to enjoy the benefit of the portion of those contracts which relates to the relevant CEE Divestment Business for a transitional period of up to 18 months after Closing, on terms and conditions equivalent to those at present afforded to SABMiller, at the option of the CEE Purchaser and subject to any third party rights. If change of control rights prevent the relevant CEE Divestment Business from enjoying the benefit as referred to above, the Notifying Party shall, at the option of the CEE Purchaser, use best efforts to put in place arrangements which allow the CEE Divestment Business to enjoy the equivalent benefit for such transitional period of up to 18 months after Closing.
7. The CEE Divestment Business further includes the benefit, for a transitional period of up to 18 months after Closing and on terms and conditions equivalent to those at present afforded to the CEE Divestment Business, of all current arrangements under which the Parties or their Affiliated Undertakings supply products or services to the CEE Divestment Business, unless otherwise agreed with any CEE Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the Notifying Party's operations.
8. In light of the fact that AB InBev has agreed to the sale, conditional on Completion, of (i) SABMiller's interest in MillerCoors LLC (***MillerCoors***), a joint venture in the US and Puerto Rico between Molson Coors Brewing Company (***Molson Coors***) and SABMiller, and (ii) the Miller brand globally to Molson Coors (collectively the ***US Transaction***), Molson Coors will acquire full global ownership of the Miller brand portfolio and retain certain contractual rights to the brands currently distributed by MillerCoors in the US and Puerto Rico, including the Pilsner Urquell, Tyskie and Lech brands (the ***US Agreement***). Given the pre-existing US Agreement, the sale of the CEE Divestment Business will therefore be subject to the terms of the US Agreement.

## **Section C. Related commitments**

### Preservation of viability, marketability and competitiveness

9. From Completion until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the CEE Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the CEE Divestment Business. In particular, the Notifying Party undertakes:
  - (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the CEE Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the CEE Divestment Business;
  - (b) to make available, or procure to make available, sufficient resources for the development of the CEE Divestment Business, on the basis and continuation of the existing business plans;
  - (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the CEE Divestment Business, and not to solicit or move any Personnel to the Notifying Party's remaining business. Where, nevertheless,

individual members of the Key Personnel exceptionally leave the CEE Divestment Business, the Notifying Party shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

#### Hold-separate obligations

10. The Notifying Party commits, from Completion until Closing, to keep the CEE Divestment Business separate from the businesses it is retaining and to ensure that unless explicitly permitted under these CEE Commitments: (a) management and staff of the business(es) retained by the Notifying Party have no involvement in the CEE Divestment Business (other than as required by these CEE Commitments); (b) the Key Personnel and Personnel of the CEE Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the CEE Divestment Business.
11. From Completion until Closing, the Notifying Party shall (a) assist the Monitoring Trustee in ensuring that the CEE Divestment Business is managed as distinct and saleable, separate from the business(es) which the Notifying Party is retaining, and (b) for that period, appoint one or more Hold Separate Managers, with such appointment to become effective upon Completion. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the CEE Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Notifying Party. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 9(c) of these CEE Commitments. The Commission may, after having heard the Notifying Party, require the Notifying Party to replace the Hold Separate Manager.

#### Ring-fencing

12. The Notifying Party shall implement, or procure to implement, all necessary measures to ensure that it does not, after Completion, obtain any Confidential Information relating to the CEE Divestment Business and that any such Confidential Information obtained by the Notifying Party before Completion will be properly ring-fenced and not be used by the Notifying Party. This includes measures vis-à-vis the Notifying Party's appointees on the supervisory board and/or board of directors of the CEE Divestment Business. In particular, the participation of the CEE Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the CEE Divestment Business. The Notifying Party may obtain or keep information relating to the CEE Divestment Business which is reasonably necessary for the divestiture of the CEE Divestment Business or the disclosure of which to the Notifying Party is required by law.

#### Non-solicitation clause

13. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the CEE Divestment Business for a period of 2 years after Closing.

#### Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the CEE Divestment Business, the Notifying Party shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the CEE Divestment Business; and
  - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

#### Reporting

15. The Notifying Party shall submit written reports in English on progress of implementation of the CEE Commitments to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following Completion.
16. Where applicable, the Notifying Party shall submit written reports in English on potential purchasers of the CEE Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following Completion (or otherwise at the Commission's request). The Notifying Party shall submit a list of all potential purchasers having expressed interest in acquiring the CEE Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
17. The Notifying Party shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

### **Section D. The CEE Purchaser(s)**

18. In order to be approved by the Commission, any CEE Purchaser must fulfil the following criteria:
- (a) a CEE Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
  - (b) a CEE Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop any or all parts of the CEE Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

- (c) the acquisition of any or all parts of the CEE Divestment Business by any CEE Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the CEE Commitments will be delayed. In particular, the CEE Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of any or all parts of the CEE Divestment Business.
19. The final binding sale and purchase agreement(s) (as well as ancillary agreements) relating to the divestment of the CEE Divestment Business shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that any purchaser fulfils the CEE Purchaser Criteria and that the CEE Divestment Business is being sold in a manner consistent with the Commission's Decision and the CEE Commitments. For the approval, the Commission shall verify that any purchaser fulfils the CEE Purchaser Criteria and that the CEE Divestment Business is being sold in a manner consistent with the CEE Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the CEE Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the CEE Divestment Business after the sale, taking account the capabilities of the proposed purchaser.

## **Section E. Trustee**

### **I. Appointment procedure**

20. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these CEE Commitments for a Monitoring Trustee.
21. If the Notifying Party has not entered into binding sale and purchase agreement(s) for all parts of the CEE Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected any purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
22. The Trustee shall:
- (a) at the time of appointment, be independent of the Notifying Party and its/their Affiliated Undertakings;
  - (b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
  - (c) neither have nor become exposed to a Conflict of Interest.
23. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package

of a Divestiture Trustee includes a success premium linked to the final sale value of the CEE Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

*Proposal by the Notifying Party*

24. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 18 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these CEE Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
  - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

*Approval or rejection by the Commission*

25. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by the Notifying Party*

26. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 17 and 21 of these CEE Commitments.

*Trustee nominated by the Commission*

27. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.



## II. Functions of the Trustee

28. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the CEE Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

### *Duties and obligations of the Monitoring Trustee*

29. The Monitoring Trustee shall:

- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the CEE Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Party with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (i) monitor the preservation of the economic viability, marketability and competitiveness of the CEE Divestment Business, and the keeping separate of the CEE Divestment Business from the business retained by the Parties, in accordance with paragraphs 11 and 12 of these CEE Commitments;
  - (ii) supervise the management of the CEE Divestment Business as a distinct and saleable entity, in accordance with paragraph 13 of these CEE Commitments;
  - (iii) with respect to Confidential Information:
    - determine all necessary measures to ensure that the Notifying Party does not after Completion obtain any Confidential Information relating to the CEE Divestment Business,
    - in particular strive for the severing of the CEE Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the CEE Divestment Business,
    - make sure that any Confidential Information relating to the CEE Divestment Business obtained by the Notifying Party before Completion is properly ring-fenced and will not be used by the Notifying Party, and
    - decide whether such information may be disclosed to or kept by the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;
  - (iv) monitor the splitting of assets and the allocation of Personnel between the CEE Divestment Business and the Notifying Party or Affiliated Undertakings;

- (c) propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the CEE Divestment Business, the holding separate of the CEE Divestment Business and the non-disclosure of competitively sensitive information;
- (d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
  - (i) potential purchasers receive sufficient and correct information relating to the CEE Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
  - (ii) potential purchasers are granted reasonable access to the Personnel;
- (e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the CEE Commitments;
- (f) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the CEE Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the CEE Commitments and the progress of the divestiture process as well as potential purchasers;
- (g) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these CEE Commitments;
- (h) within one week after receipt of the documented proposal referred to in paragraph 19 of these CEE Commitments, submit to the Commission, sending the Notifying Party a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser(s) and the viability of the CEE Divestment Business after the sale and as to whether the CEE Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the CEE Divestment Business without one or more Assets or not all of the Personnel affects the viability of the CEE Divestment Business after the sale, taking account the capabilities of the proposed purchaser(s);
- (i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

30. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

*Duties and obligations of the Divestiture Trustee*

31. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the CEE Divestment Business to no more than two purchasers (subject to the proviso that if the CEE Divestment Business is acquired by two CEE Purchasers, SABMiller Poland and SABMiller

Czech Republic/Slovakia will not be acquired by the same CEE Purchaser), provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the CEE Commitments in accordance with paragraphs 18 and 19 of these CEE Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial and IP-related interests of the Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

32. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

### III. Duties and obligations of the Parties

33. The Notifying Party shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Notifying Party's or the CEE Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the CEE Commitments and the Notifying Party and the CEE Divestment Business shall provide the Trustee upon request with copies of any document. The Notifying Party and the CEE Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
34. The Notifying Party shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the CEE Divestment Business. This shall include all administrative support functions relating to the CEE Divestment Business which are currently carried out at headquarters level. The Notifying Party shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Party shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
35. The Notifying Party shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Party shall cause the documents required for effecting the sale and the Closing to be duly executed.

36. The Notifying Party shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for, any liabilities arising out of the performance of the Trustee’s duties under the CEE Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
37. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 of these CEE Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
38. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
39. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
40. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these CEE Commitments.

#### IV. Replacement, discharge and reappointment of the Trustee

41. If the Trustee ceases to perform its functions under the CEE Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
- (a) the Commission may, after hearing the Trustee and the Notifying Party, require the Notifying Party to replace the Trustee; or
  - (b) the Notifying Party may, with the prior approval of the Commission, replace the Trustee.
42. If the Trustee is removed according to paragraph 33 of these CEE Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17-23 of these CEE Commitments.

43. Unless removed according to paragraph 33 of these CEE Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the CEE Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**Section F. The review clause**

44. The Commission may extend the time periods foreseen in the CEE Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.
45. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these CEE Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

**Section G. Entry into force**

46. The CEE Commitments shall take effect upon the date of adoption of the Decision.

.....  
duly authorised for and on behalf of  
Anheuser-Busch InBev SA/NV

**SCHEDULE 1**  
**CEE Commitments – Description of CEE Divestment Business**

AB InBev has not yet been able to conduct confirmatory due diligence with regards to the exact scope of the CEE Divestment Business. Accordingly, the below description and footnotes may require further clarification, but it is anticipated that the CEE Divestment Business will include:

**SABMiller Hungary**

- (i) The entire SABMiller business in Hungary, currently owned by Dreher Sörgyárak Zrt. and its subsidiaries, including (subject to any existing third party rights):
- a) Global rights for all Hungarian local brands brewed by Dreher Sörgyárak Zrt., i.e. Arany Ászok, Dreher,<sup>1</sup> Kanizsai,<sup>2</sup> Kőbányai, Ritterkonig, Waldert, Wanderburg and Rocky-Cellar;
  - b) The brewery at Kőbánya in Budapest;
  - c) Two distribution and warehouse facilities in Budapest;
  - d) All personnel employed by the Hungarian business, as well as employees supporting the Hungarian business which are necessary to ensure the viability and competitiveness thereof;
  - e) The benefit of all business contracts necessary for the continued production and distribution of the above brands including:
    - i. the licencing agreement with Staatliches Hofbräuhaus under the terms of which Dreher Sörgyárak Zrt. has a licence to produce and distribute certain Hofbräu products in the territory of Hungary; and
    - ii. those contracts that currently provide Dreher Sörgyárak Zrt. and its subsidiaries with rights to use distribution centres and warehouses currently owned by third parties<sup>3</sup>; and
  - f) All other tangible assets and intangible assets owned by SABMiller or its affiliates exclusively relating to the Hungarian business.<sup>4</sup>

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<sup>1</sup> With the exception of the Dreher trademark in Italy which is owned by Heineken Italia.

<sup>2</sup> The Kanizsai brand also includes sub-brands Balatoni.

<sup>3</sup> Includes facilities at Törökbálint, Sárospatak, Balassagyarmat, Vác, Siófok, Tatai út, Dunaharaszti, Székesfehérvár, Pilisvörösvár, Szeged, Makó, Csongrád, Kecskemét, Szolnok, Kalocsa, Tiszafüred, Jászberény, Békéscsaba, Szarvas, Törökszentmiklós and Budapest.

<sup>4</sup> Annex 1 hereto sets out the registered IP rights owned by SABMiller in Hungary. SABMiller (through its subsidiary Dreher Sörgyárak) filed a new trademark application for “D24 alkoholmentes sör” on 9 December 2015. The application is pending.

## **SABMiller Romania**

- (ii) The entire SABMiller business in Romania, currently owned by Ursus Breweries SA and its subsidiaries, including (subject to any existing third party rights):
- a) Global rights for all Romanian local brands brewed by Ursus Breweries SA, i.e. Azuga, Ciucas, Stejar, Timisoreana and Ursus;
  - b) Three breweries located at Timișoara, Buzau, and Brașov respectively and the microbrewery located at Cluj-Napoca;
  - c) Three distribution centres and warehouses;<sup>5</sup>
  - d) All personnel employed by the Romanian business, as well as employees supporting the Romanian business which are necessary to ensure the viability and competitiveness thereof;
  - e) The benefit of all business contracts necessary for the continued production and distribution of the above brands including those contracts that currently provide Ursus Breweries SA and its subsidiaries with rights to use distribution centres and warehouses currently owned by third parties;<sup>6</sup> and
  - f) Any other tangible and intangible assets owned by SABMiller or its affiliates exclusively relating to the Romanian business.<sup>7</sup>

## **SABMiller Czech Republic**

- (iii) The entire SABMiller business in the Czech Republic, currently owned by Plzeňský Prazdroj and its subsidiaries, including (subject to any existing third party rights):
- a) Global rights for all Czech local brands, i.e. Pilsner Urquell, Gambrinus, Kozel, Radegast, Primus, Klasik, Birell, Fénix, Master and Frisco, and Kingswood<sup>8</sup>;
  - b) Three breweries located at Plzeň, Nošovice and Velké Popovice;
  - c) Nine distribution centres and warehouses at Plzeň, Nošovice, Velké Popovice, Praha Chyne, Brno, Teplice, Hradec Králové, Karlovy Vary and České Budějovice;
  - d) Two malting facilities at Plzeň and Nošovice;
  - e) All personnel employed by the Czech business, as well as employees supporting the Czech business which are necessary to ensure the viability and competitiveness thereof;
  - f) The benefit of business contracts necessary for the continued production and distribution of the above brands including those contracts that currently provide

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<sup>5</sup> Includes facilities at Timisoara, Buzau and Brasov.

<sup>6</sup> Includes facilities at Cluj, Craiova, Buzau and Brasov.

<sup>7</sup> Annex 2 hereto sets out the registered IP rights owned by SABMiller in Romania.

<sup>8</sup> Kingswood is a cider brand.

Plzenský Prazdroj and its subsidiaries with rights to use distribution centres and warehouses currently owned by third parties<sup>9</sup>; and

- g) Any other tangible or intangible assets<sup>10</sup> owned by SABMiller or its affiliates exclusively relating to the Czech business.

### **SABMiller Slovakia**

- (iv) The entire SABMiller business in Slovakia, currently owned by Pivovary Topvar as and its subsidiaries, including (subject to any existing third party rights):
  - a) Global rights for all Slovakian local brands, i.e. Topvar, Smädný Mnìch<sup>11</sup>, Šariš, and Swist<sup>12</sup>.
  - b) The brewery at Velký Šariš;
  - c) The malting facility at Velký Šariš;
  - d) The distribution centre at Velký Šariš;
  - e) All personnel employed by the Slovakian business, as well as employees supporting the Slovakian business which are necessary to ensure the viability and competitiveness thereof (as set out in Section 5 below);
  - f) The benefit of all business contracts necessary for the continued production and distribution of the above brands including those contracts that currently provide Pivovary Topvar as and its subsidiaries with rights to use distribution centres and warehouses currently owned by third parties<sup>13</sup>; and
  - g) Any other tangible or intangible assets<sup>14</sup> owned by SABMiller or its affiliates exclusively relating to the Slovakian business.

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<sup>9</sup> Includes facilities at Zlín, Jihlava, Olomouc, Mnichovo Hradiště and Ostrava.

<sup>10</sup> Annex 3 hereto sets out the registered IP rights owned by SABMiller in the Czech Republic.

<sup>11</sup> AB InBev understands that Smädný Mnìch is currently owned by SABMiller International Brands. However, it is anticipated that all IP rights related to this brand will be assigned by SABMiller International Brands to the CEE Purchaser under a standalone IP assignment agreement upon Closing so that the CEE Purchaser effectively will hold all applicable IP rights (to the extent owned by SABMiller or its affiliates) to this brand. To the extent that any other brand to be included in the CEE Divestment Business is held by a SAB legal entity that is not part of the CEE Divestment Business, the rights to those brands will equally be assigned by the relevant SAB entity to the CEE Purchaser upon Closing.

<sup>12</sup> Swist is a soft drinks brand.

<sup>13</sup> Includes facilities at Bratislava, Zvolen, Strážske, Bytča, Topolčany and Spišská Nová Ves.

<sup>14</sup> Annex 4 hereto sets out the registered IP rights owned by SABMiller in Slovakia.



## **SABMiller Poland**

- (v) The entire SABMiller business in Poland, currently owned by Kompania Piwowarska SA and its subsidiaries, including (subject to any existing third party rights):
- a) Global rights for all Polish local brands brewed by Kompania Piwowarska SA i.e. Debowe Mocne, Ksiazecze, Lech, Tyskie, Zubr, Wojak, and Gingers;
  - b) Three breweries located at Tychy, Poznań, and Białystok respectively;
  - c) Four distribution centres and warehouses;<sup>15</sup>
  - d) All personnel employed by the Polish business, as well as employees supporting the Polish business which are necessary to ensure the viability and competitiveness thereof;
  - e) The benefit of all business contracts necessary for the continued production and distribution of the above brands including those contracts that currently provide Kompania Piwowarska SA and its subsidiaries with rights to use distribution centres and warehouses currently owned by third parties;<sup>16</sup>
  - f) Any other tangible and intangible assets<sup>17</sup> owned by SABMiller or its affiliates exclusively relating to the Polish business.

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<sup>15</sup> Includes distribution centres at Tychy, Poznań, Białystok and Kielce.

<sup>16</sup> Includes facilities at Swarzędz, Wrocław, Szczecin, Pruszcz Gdański, Warszawa, Kraków, Rzeszów, Lublin, Pabianice, Kretomino, Bugaj-Biskupice and two facilities at Tychy.

<sup>17</sup> Annex 5 hereto sets out the registered IP rights owned by SABMiller in Poland.

## **Annexes 1-5**

[Details of trademarks belonging to the CEE Divestment Business]