

## Competition Commission Acceptance of Undertakings

**IN THE MATTER of a reference to the Competition Commission dated 29 September 2004 concerning the acquisition by Serviced Dispense Equipment Limited (SDEL) of Coors Brewers Limited's (Coors) Technical Service function.**

### Whereas:

1. A report of the Competition Commission ("the Commission") entitled "Serviced Dispense Equipment Limited and the Technical Services function of Coors Brewers Limited: A report on the proposed acquisition by Serviced Dispense Equipment Limited of the Technical Services Function of Coors Brewers Limited" ("the Report") was prepared and published under section 38 of the Enterprise Act 2002 ("the Act") on 11 March 2005;
2. The Commission concluded in its Report that SDEL's acquisition of Coors' Technical Services function would result in the creation of a relevant merger situation in accordance with section 23 of the Act;
3. The Report contains the decision that there would be an anti-competitive outcome (as defined in section 35(2) of the Act) in relation to the proposed acquisition by SDEL of Coors' Technical Services function;
4. Undertakings for the purpose of remedying the anti-competitive outcome identified have been agreed and are being given to the Commission by:
  - (a) Serviced Dispense (Holdings) Limited (SDEH), its subsidiary SDEL (the SDEL Undertakings); and
  - (b) Coors (the Coors Undertakings); and
5. The Commission:-
  - (a) gave notice of the SDEL Undertakings and the Coors Undertakings in accordance with Schedule 10 to the Act on 19 August 2005; and
  - (b) did not receive any representations in accordance with the notice referred to in paragraph 5 (a) above.
6. **Now the Commission** pursuant to section 82(1) of the Act hereby accepts:
  - (i) the SDEL Undertakings , a copy of which is set out in the attached Annex 1; and

(ii) the Coors Undertakings, a copy of which is set out in the attached Annex 2 (see note) below;

and accordingly both the SDEL Undertakings and the Coors Undertakings come into force in accordance with section 82(2) of the Act.

Signed by authority of the Competition Commission

A handwritten signature in cursive script, reading "Diane Coyle", followed by a horizontal dotted line.

Dr Diane Coyle

12 September 2005

**IN THE MATTER of the proposed acquisition by Serviced Dispense Equipment Limited of the Technical Services Function of Coors Brewers Limited**

**Undertakings given to the Competition Commission by Serviced Dispense Equipment Limited and Serviced Dispense Equipment (Holdings) Limited**

**Whereas:**

(a) On 29 September 2004 the Office of Fair Trading referred the proposed acquisition by Serviced Dispense Equipment Limited (SDEL) of Coors Brewers Limited's (Coors) Technical Service function to the Competition Commission for investigation and report under section 33 of the Enterprise Act 2002 (the Act).

(b) A report of the Competition Commission entitled *Serviced Dispense Equipment Limited and the Technical Services function of Coors Brewers Limited: A report on the proposed acquisition by Serviced Dispense Equipment Limited of the Technical Services Function of Coors Brewers Limited* (the Report) was published under section 38(1) of the Act on 11 March 2005.

(c) The Competition Commission concluded in the Report that:

- (i) the proposed acquisition of Coors' Technical Services function by SDEL would result in a relevant merger situation within section 23(2) of the Act;
- (ii) if it were to be completed, the said acquisition would have an anticompetitive outcome within the meaning of section 35(2) of the Act, because it could be expected to result in a substantial lessening of competition (SLC) in markets in the United Kingdom for goods and services;
- (iii) the action that should be taken for the purpose of preventing the anti-competitive outcome within the meaning of section 35(3) of the Act was the prohibition of the said acquisition.

**Now Therefore** Serviced Dispense Equipment (Holdings) Limited (SDEH) and SDEL hereby give to the Competition Commission the following undertakings under section 82 of the Act for the purpose of remedying, mitigating or preventing the SLCs and any resulting adverse effects identified in the Report.

**Prohibitions**

1. Neither SDEL nor its holding company, SDEH, shall directly or indirectly:
  - (a) acquire control of the activities or part of the activities of Coors' Technical Services Business ;
  - (b) acquire control of any company or other undertaking carrying on or having control from time to time of the activities or part of the activities of Coors' Technical Services Business;
  - (c) acquire all or such part of Coors' Technical Services Assets as would result in transfer of control of the activities or part of the activities of Coors' Technical Services Business to SDEL or SDEH.
2. For the avoidance of doubt, the restriction set out in paragraph 1 above shall not apply to a Permitted Transfer.

3. Neither SDEL nor SDEH shall enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any associated person of either SDEL or SDEH, directly or indirectly, doing any of the matters listed in paragraph 1 above.
4. For the avoidance of doubt, the undertakings in paragraphs 1 and 3 above shall continue to apply regardless of who carries on, controls or has an interest in Coors' Technical Services Business and regardless of who controls or has an interest in Coors' Technical Services Assets.

#### **Provision of information**

5. Each of SDEL and SDEH shall provide promptly to the Competition Commission such information as the Competition Commission may reasonably require for the purpose of performing any of its functions under sections 82, 83 and 94(7) of the Act.
6. Each of SDEL and SDEH shall provide promptly to the OFT such information as the OFT may reasonably require for the purpose of performing any of its functions under sections 92, 93(6) and 94(6) of the Act.

#### **Compliance**

7. Each of SDEL and SDEH shall procure that their subsidiaries shall comply with these undertakings as if they had given them.
8. The Competition Commission may give to SDEL and SDEH, and SDEL and SDEH shall comply with, such written directions as the Competition Commission may from time to time reasonably consider necessary for the purpose of carrying out or securing compliance with these undertakings.

#### **Interpretation**

9. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
10. In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
11. For the purpose of these undertakings:

"**the Act**" means the Enterprise Act 2002;

"**associated person**" means a person or persons associated with SDEL or SDEH within the meaning of section 127(4) of the Act and includes any subsidiary of such a person or persons construed in accordance with section 129(1) of the Act;

"**business**" has the meaning given by sections 129(1) and (3) of the Act;

"**control**" shall be construed in accordance with section 26 of the Act and includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise. In the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate

of 10 per cent or more of the total number of votes which may be cast at such meetings and (where the holding is of shares or an interest in shares amounting to less than 15 per cent of its issued share capital or which carries an entitlement to vote at meetings of that body corporate of less than 15 per cent of the total number of votes which may be cast at such meetings) there is another factor or factors present which, together with such interest in shares, indicate the ability materially to influence policy;

**"Coors"** means Coors Brewers Limited;

**"customer of SDEL or SDEH"** means:

- (i) Carlsberg UK Limited a company incorporated and registered in England and Wales under Company Number 00078439 whose registered office is at 140 Bridge Street, Northampton NN1 1PZ, and its successors; and/or
- (ii) Scottish Courage Limited a company incorporated and registered in Scotland under Company Number SC65227 whose registered office is at 33 Ellersly Road, Edinburgh EH12 6HX, and its successors;

**"Draught Beer"** means draught ale, lager and stout from bulk containers (such as kegs, casks or tanks);

**"Draught Cider"** means draught cider from bulk containers (such as kegs, casks or tanks);

**"interest"** includes shares, an interest in shares and any other interest in shares carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder to exercise any right conferred by the holding of these shares or an entitlement to control the exercise of any such right;

**"OFT"** means the Office of Fair Trading;

**"Permitted Transfer"** means:

(a) the day to day supply of goods and services, including any acquisition or disposal of any Technical Services Equipment along with any associated records and information about such equipment or transfer of the supply of Technical Services that is the result of:

- a retailer changing any of the brands of Draught Beer or Draught Cider available at a licensed trade premises, or
- a retailer deciding to source directly or indirectly Technical Services Equipment and/or Technical Services from SDEL or SDEH or any associated person or customer of SDEL or SDEH;

(b) any acquisition or disposal of any Technical Services Equipment along with any associated records and information about such equipment or transfer of the supply of Technical Services that is the result of a customer of SDEL or SDEH acquiring any brand of Draught Beer or Draught Cider;

**"the Report"** means the report of the Competition Commission entitled *Serviced Dispense Equipment Limited and the Technical Services function of Coors Brewers Limited: A report on the proposed acquisition by Serviced Dispense Equipment*

Limited of the Technical Services Function of Coors Brewers Limited published on 11 March 2005;

"SDEH" means Serviced Dispense Equipment (Holdings) Limited;

"SDEL" means Serviced Dispense Equipment Limited;

"SLC" means a substantial lessening of competition;

"subsidiary" has the same meaning as in section 736 of the Companies Act 1985 (as amended);

"Technical Services" means the installation, repair, maintenance, refurbishment and removal of Technical Services Equipment for Draught Beer or Draught Cider;

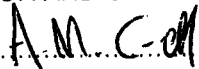

"Technical Services Assets" means:

- (a) Technical Services Equipment;
- (b) all associated goodwill, business information and records; and
- (c) employees engaged wholly or substantially in the provision of any services in relation to Coors' Technical Services Business;

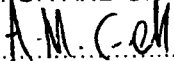

"Technical Services Business" means the business of providing Technical Services in Great Britain; and

"Technical Services Equipment" means all equipment in or intended for licensed trade premises in Great Britain that facilitates the transference, dispense and cooling of Draught Beer or Draught Cider and includes any equipment that may be held as part of inventory stock.

FOR AND ON BEHALF OF Serviced Dispense Equipment Limited

	Signature		Signature
ANDREW CASWELL	Name	SIMON BELFER	Name
DIRECTOR	Title	DIRECTOR	Title
18/08/05	Date	18/8/05	Date

FOR AND ON BEHALF OF Serviced Dispense Equipment (Holdings) Limited

	Signature		Signature
ANDREW CASWELL	Name	SIMON BELFER	Name
DIRECTOR	Title	DIRECTOR	Title
18/08/05	Date	18/8/05	Date

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**Undertakings given to the Competition Commission by Coors Brewers Limited**

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- (i) the proposed acquisition of Coors' Technical Services function by SDEL would result in a relevant merger situation within section 23(2) of the Act;
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- (iii) the action that should be taken for the purpose of preventing the anti-competitive outcome within the meaning of section 35(3) of the Act was the prohibition of the said acquisition.

**Now Therefore** Coors hereby gives to the Competition Commission the following undertakings under section 82 of the Act for the purpose of remedying, mitigating or preventing the SLCs and any resulting adverse effects identified in the Report.

**Prohibitions**

1. Coors shall not dispose of to SDEL or SDEH, whether directly or indirectly:
  - (a) control of the activities or part of the activities of Coors' Technical Services Business ;
  - (b) control of any company or other undertaking carrying on or having control from time to time of the activities or part of the activities of Coors' Technical Services Business;
  - (c) all or such part of Coors' Technical Services Assets as would result in transfer of control of the activities or part of the activities of Coors' Technical Services Business to SDEL or SDEH.
2. For the avoidance of doubt, the restriction set out in paragraph 1 above shall not apply to a Permitted Transfer.

3. Coors shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any associated person of Coors, directly or indirectly, doing any of the matters listed in paragraph 1 above.

#### **Provision of information**

4. Coors shall provide promptly to the Competition Commission such information as the Competition Commission may reasonably require for the purpose of performing any of its functions under sections 82, 83 and 94(7) of the Act.
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#### **Compliance**

6. Coors shall procure that its subsidiaries shall comply with these undertakings as if they had given them.
7. The Competition Commission may give to Coors, and Coors shall comply with, such written directions as the Competition Commission may from time to time reasonably consider necessary for the purpose of carrying out or securing compliance with these undertakings.

#### **Interpretation**

8. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
9. In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
10. For the purpose of these undertakings:

**"the Act"** means the Enterprise Act 2002;

**"associated person"** means a person or persons associated with Coors within the meaning of section 127(4) of the Act and includes any subsidiary of such a person or persons construed in accordance with section 129(1) of the Act;

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FOR AND ON BEHALF OF Coors Brewers Limited

*Kath M H. Howard* Signature

*[Handwritten Signature]* Signature

*KATH M H. HOWARD* Name

*JOHN S. HOLBERT* Name

*DIRECTOR* Title

*DIRECTOR* Title

*Wednesday, 17<sup>th</sup> August* Date

*17/8/05* Date

*2005*