

MAIN PARTIES' RESPONSE TO ADDITIONAL THIRD PARTY COMMENTS ON COMMISSION'S WEBSITE AS OF 4 MARCH 2005

1. RELATIONSHIP BETWEEN SDEL AND INNSERVE

Submission from?	Third party comment	How the parties have addressed this
A Brewer (3)	The fee cap would not provide sufficient opportunities for independent service providers. Innserve could tender for the 20% between the take or pay and the revenue cap and many independent service providers would have difficulty in matching a tender from Innserve.	SDEL will judge all tenders on the basis of the most appropriate principle. If a service provider other than Innserve is more appropriate SDEL will award the contract to that sub-contractor. SDEL has no incentive to favour Innserve and will simply wish to get the best deal for the provision of TS, taking account of all considerations. The cost base of independent service providers may be lower than Innserve's, because Innserve is acquiring all of the brewers' employees. The Commission has indicated that it considers that the densities in TS arise at a regional level.
A member of the public (4)	Innservice will select the work for their own staff which will be both geographically and of a type to make their labour/travelling element the most cost effective. The links with Innservice will make it impossible for SDEL not to give some preferential treatment that will restrict other entrants.	The parties have explained that SDEL will allocate work on the basis of the most appropriate principle. The parties have also explained that the employees will be transferring to Innservice under TUPE, on the same terms and conditions as their current employment. Accordingly, SDEL will, where possible, allocate to those employees the same type of TS work in the same geographic areas that they carried out prior to their transfer to Innservice.
An anonymous third party (4)	SDEL will be able to award additional work above the Innservice limit direct to a number of different sub-contractors who might otherwise have received that work from Innservice. This does not sound like a competitive market structure nor one which would be attractive to large scale entry. TS suppliers would foresee significant barriers to entry/growth in the market.	Innservice's take or pay arrangement is lower than its current level of TS revenue, servicing Scotco's and Carlsberg UK's TS requirements. The parties have explained how the proposed transaction including remedies will reduce barriers to entry/growth. The parties believe that it is the retailers who decide how the market develops.

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BFBi	<p>The business will still be a dominant buying force with regard to TS and TSE. This will ensure substantial barriers to entry and decreased competition.</p> <p>SDEL will treat Innserve as its preferred supplier and Innserve would receive preferential treatment. Nothing to stop SDEL and/or Innserve winning contracts for the whole TS and TSE business of the remaining brewers. The revised structure puts SDEL and Innserve in a competing position as purchasers of TS and TSE. The increased levels of management and administration will lead to increased costs. SDEL will have dominance over TS work in the UK.</p>	<p>As regards TSE, the parties have explained to the Commission that SDEL has only an [X] market share of the West European market. As regards TS, SDEL has no incentive to favour one supplier over another and the Code of Conduct will ensure that this is the case.</p> <p>The parties have explained that SDEL will allocate work on the basis of the most appropriate principle. The parties have also explained that the employees will be transferring to Innserve under TUPE, on the same terms and conditions as their current employment. Accordingly, SDEL will, where possible, allocate to those employees the same type of TS work in the same geographic areas that they carried out prior to their transfer to Innserve.</p>
T&G (2)	<p>A co-sited operation suggests an underlying recognition that the functions ultimately report to the same owner and would be subject to monopoly control.</p>	<p>[X]. Ownership and management of the restructured SDEL and Innserve are entirely separate. The two companies have different owners with different commercial interests.</p>
A TS provider (5)	<p>The work given to third parties will be capable of being structured to perpetuate imbalances - i.e. sub-contractors will be offered areas where Innserve have not historically serviced usually because of the lack of economies that can be brought to that market</p>	<p>The parties have explained that SDEL will allocate work on the basis of the most appropriate principle. SDEL has no incentive to favour one supplier over another and the Code of Conduct will ensure that this is the case. The parties have also explained that the employees will be transferring to Innserve under TUPE, on the same terms and conditions as their current employment. Accordingly, SDEL will, where possible, allocate to those employees the same type of TS work in the same geographic areas that they carried out prior to their transfer to Innserve. The difference between the take or pay and the revenue cap (and any additional TS work above the cap) will be contestable under the proposed transaction, whereas at present (and therefore in the event of a prohibition)</p>

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		Innserve will automatically receive all of that work. Therefore the proposed undertaking actually increases competition in the TS market, rather than distorting it.

2. ACCESS TO TSE

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A Brewer (3)	<p>The remedies do not address the concentration in ownership of TSE that would arise from the merger. The remedies should ensure that this does not operate to foreclose access to TSE by non-SDEL beer suppliers.</p> <p>The level of the rebate should not be varied according to future volumes and the unbundled price/rebate should be separated from the volumes supplied.</p> <p>The proposals may impose an unnecessary and unreasonable burden on sub-contractors e.g. liability insurance provisions.</p>	<p>The FBI ensures that access to TSE is not foreclosed.</p> <p>The brewer must have its brand being sold in the retailer's outlet for the period for which the rebate is given. If the retailer chooses to reduce or increase the number of lines for a particular brewer as a result of brand decisions, then this would directly relate to the level of rebate. The volume only becomes an issue as and where a brewer and retailer agree to convert the per line rebate to a pounds per barrel figure, when changes will be calculated in a more complex way. The form and manner of the rebate is a matter for agreement between the brewer and individual which will allow any retailer to identify cost for their outlet.</p> <p>SDEL understood that the insurance obligation was lower than usual. This can be adjusted in negotiating the final form of the undertakings.</p>
An anonymous third party (4)	Lack of transparency regarding the methodology used to determine the unbundled price. £23.29 per annum per line is insufficient.	<p>The parties have disclosed to the Commission in Annex 5 of their submission dated 22 February how they arrived at the £23.29 figure. The constituent elements are business secrets. £23.29 is a sufficient figure to cover the costs of a third party provider. On average, outlets have 14 lines – thus the average total annual discount would be £326. The parties estimate that the costs of a technician are less than £30 per visit (based on technician cost of £200 per day, average of 7 calls per day). This would allow for</p>

		almost 11 visits per annum (parties estimate average no visits required are around 8). Thus, is headroom even in the minimum figure.
A TS provider (5)	The discount to retailers on lines dropped will have been determined by the artificial structure of this deal and cannot possibly be checked by third parties to ensure it reflects the true cost of TS provision by those parties - this will lead to little migration from Innserve despite independent TS providers' service being substantially better quality and cheaper.	The minimum discount to retailers is based on the costs savings to the brewers. [X]. The parties do not accept that independent TS providers' service is substantially better in quality or cheaper.

3. SALE OF TSE

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A Brewer (3)	Net book values are overstated. Adjudication should be available to all estates, regardless of size. The proposals qualify the right of retailers to purchase TSE and retailers are not permitted to acquire TSE in increments.	Net book values are not overstated, for the reasons already given to the Commission. Adjudication in all estates would be impractical and impose too great a burden on the adjudicator. It would also not be necessary in estates of 200 or more outlets, as the parties have demonstrated to the Commission. The right to purchase in incremental steps could lead to cherry-picking.
A member of the public (4)	The asset valuation process still seems vague with the difference between NBV and FBI rates not being clear as there could be significant differences as to what elements of equipment or capitalised items to be valued could still prohibit the cost of entry to a 3rd party.	The parties have clarified this to the Commission in their submission of 22 February 2005. The FBI rates are published in the FBI agreement. The proposed NBV rules are very clear.

4. CODE OF CONDUCT

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A Brewer (3)	This will become an industry standard and full consultation of all interest parties should be permitted.	This will take place as part of the Commission's consultation on the final remedies. The brewer has not indicated why the Code should become an industry standard.
BFBi	It is inevitable that SDEL will manipulate the sub-contractor market.	The BFBi has not explained why this is 'inevitable'. SDEL has no incentive to manipulate the sub-contractor market and every incentive to facilitate the development of a vibrant and competitive sub-contractor market. The Code of Conduct will ensure this.
T&G (2)	Despite the Code, real control of the market would remain with the three brewers.	The parties have explained to the Commission that they believe that retailers make the ultimate decisions about TS provision.
A TS provider (5)	A deal based on a code of conduct wherein one party is by far the largest player in the market merely means that market players will at best be back before the Commission regularly trying to ensure it is adhered to and at worst have a market which is anti-competitive.	The parties believe that the Code is clear, and that there will not be regular resort to the adjudicator. The adjudicator's ability to award compensation and costs against SDEL will militate against abuse. SDEL has no incentive to favour one supplier over another and the Code of Conduct will ensure that this is the case.

5. ADJUDICATION

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A Brewer (3)	The role of the adjudicator is too narrow.	All the remedies are readily enforceable. The majority of the remedies are contractual or quasi-contractual and are backed by suitable enforcement mechanisms. Once the contractual amendments have been made and the details of the undertakings worked out with the Commission,

		there will be minimal ongoing monitoring required. The Asset Access Protocol and the Code of Conduct will be public documents, enforceable by an adjudicator. The parties do not believe that the role of the adjudicator needs to be wider.
BFBi	Who would the adjudicator be? Would the parties agree to be bound by the rulings? Would the parties become embroiled with disputes rather than providing a quality service?	The parties have clarified to the Commission who the adjudicator would be, and that the parties would undertake to be bound by the rulings. The parties do not envisage that the burden of adjudication will be heavy and their focus will be on providing a quality service.

6. DURATION

Submission from?	Third party comment	How the parties have addressed this
A Brewer (3)	Agree that remedies should not be limited in time.	This mirrors the parties' final proposals.
An anonymous third party (4)	Even if the package were put in place, it is unlikely that such a 'regulated' environment would facilitate a transition to a more competitive market structure. The parties recognise this as they are now proposing their package would remain in place indefinitely.	The parties have shown how the remedies will facilitate the development of the nascent markets compared with the counterfactual. The parties believe that five years would be sufficient for the nascent markets to develop. But the Commission indicated a preference for an unlimited duration, to which the parties have agreed.

7. FURTHER COMMENTS

Submission from?	Third party comment	How the parties have addressed this
A Brewer (3)	The proposals do not address concerns regarding the continued viability of the FBI – no indication that SDEL proposes to become a member of the FBI and not clear that arrangements would enable the SDEL brewers to	The parties have clarified to the Commission that they will propose an amendment to the FBI rules to ensure that the MBMS rules apply to SDEL. The SDEL brewers/Coors will continue to represent themselves at the FBI Steering Group meetings. The contracts expressly provide for the

	procure sale of SDEL assets in the context of the FBI.	SDEL brewers to procure the sale of SDEL assets in the context of FBI.
A member of the public (5)	The remedies are ineffective in dealing with the fundamental issue and the parties are fully aware that this is the case. The problems cannot be resolved by complex rules/regulations. Does not understand the parties' arguments that the complex remedies will encourage competition and innovation to develop in the industry. The addition of Coors will remove the ability of the industry to continue to develop naturally and retailers and thereby consumers will pay the price.	The parties believe that the remedies, which have been sought by the Commission, will lead to the development of the nascent TS and TSE markets, which is in the interests of all industry players. The remedies are not complex, for the reasons already stated to the Commission. Retailers will continue to drive the development of the markets and will benefit from the transaction and the remedies.
An anonymous third party (4)	<p>The package is very complex and how the remedies would operate would only become fully apparent after the remedies were put into operation. There would be consequent administrative problems in monitoring and enforcement.</p> <p>The market would not develop as competitively as it would have done but for the merger.</p> <p>The key issue is whether Coors will be permitted to joint SDEL and/or Innsolve or whether it will be required to pursue alternative options. If the merger were allowed to proceed subject to remedies, retailers will perceive risk in the complexity of the remedies and would be reluctant to outsource to competing TS suppliers until the rules could be proven to work in practice. The resulting inertia would prevent the market from developing as it would have done according to the counterfactual.</p>	<p>The third party does not explain why there would be administrative problems. The fact that the operation of the remedies will only become apparent after they are put into operation is answered by the parties' proposal for an adjudicator.</p> <p>Annex 2 of the parties' submission of 8 February 2005 shows that the remedies will be more likely to lead to the development of the nascent markets than the counterfactual.</p> <p>As the Commission is aware, the counterfactual is that Coors will continue as present and will not pursue alternative options. The remedies are more likely to lead to the development of the markets than the counterfactual.</p>
A small tenanted pubco	The remedies are complex, difficult to enforce and likely to create confusion. The simplest option would be to reject the proposed merger and leave market forces to create two or three competitive suppliers.	The proposed remedies are not complex or difficult to enforce, as the parties have already demonstrated to the Commission (see for example Annex 1 to the parties' submission dated 8 February 2005). In the counterfactual, both Coors and Interbrew have indicated that they will not supply TS (or TSE) except together with beer. As the parties have consistently demonstrated,

		prohibition is less likely to lead to the development of the nascent markets than clearance with undertakings.
BFBi	<p>It is not clear whether either SDEL or Innserve will have a seat on the FBI or the BFBi Dispense Committee. These have provided adequate monitoring of standards.</p> <p>SDEL will make profits by virtue of the buying power asserted on the supply chain. This must be passed on for SDEL to show only nominal profit – either to the SDEL brewers or to Innserve. Although the main parties in the TSE market may be global or European, their UK manufacturing and supply chain units are unique to the UK and they reside exclusively in the UK. Dispense systems are unique to countries in European and cannot be standardised.</p> <p>Unbundled prices should be published for beer, TS and TSE as a matter of course.</p>	<p>The parties have clarified the position as regards FBI representation to the Commission. The parties have not yet considered their position as regards the BFBi.</p> <p>The parties have explained that the TSE market is European-wide and that SDEL's share of the Western European market is only [%]. Whilst some elements of dispense systems may be country-specific, the systems themselves are not: hence the existence of international trade fairs and the extensive international focus of BFBi. SDEL therefore has no buying power in the supply chain. Any profits made by SDEL will be passed back to the SDEL brewers.</p> <p>Publication of unbundled prices for TS and TSE will be achieved by the undertakings. In the counterfactual, such prices will not be published. Prices for beer are a matter for commercial negotiation and are business secrets.</p>
CAMRA (2)	The measures proposed go a long way towards answering concerns but it is in the best interests of the consumer for the merger to be prohibited.	CAMRA do not provide any reasons for this view. The parties have demonstrated that the merger will facilitate the development of the nascent TS and TSE markets and is a significant improvement on the counterfactual.
A TS provider (5)	The proposed deal is fundamentally anti-competitive as it allows SDEL/Coors/Innserve to dictate the shape and growth of the market.	The proposed deal is not anti-competitive. The proposed undertakings will facilitate the development of the nascent TS and TSE markets. It will be retailers, rather than SDEL, Coors or Innserve, which dictate the shape and growth of the market.