

PROPOSED ACQUISITION BY
SERVICED DISPENSE EQUIPMENT LIMITED
OF THE TECHNICAL SERVICES FUNCTION
OF COORS BREWERS LIMITED

REFERENCE TO THE COMPETITION COMMISSION

MAIN PARTIES' RESPONSE TO THE COMPETITION COMMISSION'S
PROVISIONAL FINDINGS REPORT AND NOTICE OF POSSIBLE
REMEDIES

ANNEX THREE
CUSTOMER BENEFITS

19 JANUARY 2005

**Proposed Acquisition by Serviced Dispense Equipment Limited
of the Technical Services Function of Coors Brewers Limited**

Reference to the Competition Commission

**Main Parties' response to the Competition Commission's Provisional Findings Report
and Notice of Possible Remedies**

**ANNEX THREE
CUSTOMER BENEFITS**

1. STATUTORY PROVISIONS

- 1.1 Section 36(4) of the Enterprise Act 2002 provides that the Competition Commission may, in deciding the question of remedies, "have regard to the effects of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned".
- 1.2 "Relevant customer benefits" are defined in section 30 of the Act. A benefit is a relevant customer benefit if:
- (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
 - (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
- 1.3 "Relevant customers" are defined in section 30(4) and include customers at any point in the supply chain. They are not therefore limited to end consumers.

2. RELEVANT CUSTOMER BENEFITS ARISING FROM THE PROPOSED TRANSACTION

The parties have already identified the following relevant customer benefits arising from the proposed transaction:

- 2.1 The transaction will lead to immediate cost savings. The market power of the retailers and competition between the brewers will ensure that a fair share of these savings flow through to retailer customers in prices lower than if the proposed transaction did not take place. In paragraph 5.70 of the Provisional Findings Report, the CC states that, in relation to this relevant customer benefit, "it was not clear to us that the benefits would be passed through in full to all the retailers, and that, even if they were, that they would be shared between the different types of retailers." Neither the relevant statutory provisions nor the Commission's Guidelines on Merger References (CC2) state that benefits must be passed through in full to all customers in order to be considered relevant customer benefits for the purposes of the Enterprise Act.
- 2.2 By enabling the brewers to focus on their core business (beer brands), SDEL to focus on the supply of TSE and Innserve and other service providers to focus on the supply of TS, the transaction will ultimately enable higher levels of service provision and quality equipment to be provided, leading to a better product being offered to the consumer. This will benefit both retail customers and end consumers.

2.3 The pooling of generic TSE in SDEL creates the potential for longer-term ownership and thus increases the incentive to innovate in generic TSE which, absent the proposed transaction, would not exist. This will benefit both retail customers and end consumers.

3. EFFECT OF REMEDIES ON RELEVANT CUSTOMER BENEFITS

3.1 In relation to the relevant customer benefits, the CC must have regard to these in deciding on the question of remedies.

3.2 The parties submit that the proposed remedies further enhance the customer benefits that they have already identified as arising from the transaction, as follows:

3.2.1 The proposed Asset Access Protocol, whereby third party TS contractors appointed by the retailers will have access to TSE owned by SDEL, will ensure that the third party TS providers are not in any way prevented from carrying out their TS activities. This benefits retailer customers, who will be able to contract with any TS provider regardless of whether that provider also owns TSE.

3.2.2 Where the retailer has contracted with a third party TS provider, the Asset Access Protocol will also enable retailers to call off TSE from SDEL's warehouses up to 10% per annum of the gross book value of the assets per outlet, where those assets are owned by SDEL. The retailer's position is therefore enhanced, as the retailer will be making the repair/replace decision so as to get the best deal for the assets in its outlets.

3.2.3 The terms on which a retailer can buy TSE in its outlets are also clearer as a result of the proposed remedies.

3.2.4 Competitive pressures in the beer market imply that the costs savings will be passed through to retail customers.

3.2.5 The proposed undertaking regarding quality of TS incentivise Innserve to achieve levels higher than the KPIs. This means that retailers may get even better quality TS as a result. There are no equivalent incentives in place at the current time.

3.3 In relation to the customer benefits identified in 2.2 above, the package of remedies that the parties have put forward do not reduce these. The remedied transaction will still permit brewers to focus on their core business, SDEL to focus on the supply of TSE, and Innserve and other service providers to focus on the supply of TS.

3.4 Nor do the proposed remedies reduce the relevant customer benefits identified in 2.3 above. Ownership of generic TSE will still be pooled in SDEL, creating the incentive to innovate and leading to benefits for retailers and end consumers.

3.5 The parties realise that []. As identified in Annex 2, certain other of the undertakings also have minor costs implications. However, as set out above, the parties submit that the restructuring of the proposed transaction will have additional benefits. Furthermore most of the envisaged savings would still be achieved. In contrast, the alternative remedy of prohibition, referred to by the Commission in its Notice on Possible Remedies, would prevent **any** relevant customer benefits from being realised, including those which will result in the development of the nascent TS and TSE markets, identified in 3.1 above.