

APPENDIX 2.2

(referred to in paragraphs 2.192, 5.120, 5.226, 6.30, 6.37, 6.51, 6.68, 6.104, 6.172, 6.189, 6.267, 6.269, 6.294, 6.333, 6.342, 6.374 and 6.402)

Issues and Remedies Statement

The Competition Commission has sent an issues and remedies letter to Interbrew SA in its inquiry into the acquisition by Interbrew of Bass PLC's brewing interests.

An issues letter is always sent before the Competition Commission has reached any conclusions and is designed to highlight those matters which have been identified by the investigating group for further consideration, and to ensure nothing has been missed. The statement of issues and remedies is being made public to inform all interested parties should there be any further points they wish to raise with the Competition Commission within two weeks. **No conclusions have yet been reached by the Competition Commission about whether any matters operate or may be expected to operate against the public interest. Conclusions will not be reached until the issues have been discussed with Interbrew.**

The issues the Commission intend to consider are as follows:

1. The effects of the merger on brewing

- (a) Whether the merger will reduce competition in the brewing of beer as a result of Interbrew having control of the brewing operations of Bass and Whitbread;
- (b) Whether the merger will have the effect of making market conditions more conducive to a reduction in price competition, escalation in non-price competition and reduction in product innovation on the part of Interbrew and Scottish & Newcastle (S&N); and, if so, in what way such behaviour might manifest itself and with what effects;
- (c) Whether the merger will increase barriers to entry or expansion in brewing;
- (d) Whether the merger will create a position of market dominance for Interbrew based on leading brands;
- (e) Whether S&N and Carlsberg-Tetley have brand portfolios and the necessary financial resources to support them, that will enable them to compete effectively with Interbrew;
- (f) Whether other competitors, including Anheuser-Busch, Guinness, Heineken and the regional and local brewers, have brand portfolios and the necessary financial resources to support them, that will enable them to compete effectively with Interbrew;
- (g) Whether there will be scope for competitors to respond to price increases by increasing output or by importing beer;
- (h) Whether the merger will lead to higher levels of overall market spending; whether this will be in the interests of consumers; and whether this will raise barriers to the entry of new brands or new firms into the market;
- (i) Whether Interbrew will have an incentive to rationalise the Whitbread and Bass portfolios;
- (j) What will be the effect of the merger on exports of beer from the UK;
- (k) Whether, in the light of the fact that Interbrew has acknowledged that in prior years it has taken actions which are incompatible with the competition rules of the EU; and has also stated that it is now compliant with the competition rules prohibiting restrictive agreements and concerted practices and is committed to ensuring that its business practices are now fully compliant with the regulations in the markets where it operates, it would nonetheless be reasonable to infer an expectation that such conduct will occur following the merger;

- (l) Whether Interbrew has a financial incentive to increase wholesale prices as a result of the price it paid to acquire Bass.

2. The effect of the merger on the wholesaling and distribution of beer

- (a) Whether the merger will reduce competition in the wholesaling and distribution of beer as a result of Interbrew having control of the wholesaling and distribution operations of Bass and Whitbread;
- (b) Whether the merger will increase barriers to entry or expansion in wholesaling and distribution;
- (c) Whether the merger will have any impact on Carlsberg-Tetley's position in the wholesaling and distribution of beer;
- (d) Whether Interbrew will be able to use its expanded brand portfolio to deny leading brands to competing brewers and wholesalers on terms that would enable them to compete effectively for the business of retail outlets;
- (e) Whether Interbrew will be in a position to require wholesalers or retailers to take its complete product range (full-line forcing);
- (f) Whether the differences in the net prices charged to different buyers by Bass and Whitbread are cost-justified; and what effect would the merger have on these net price differentials;
- (g) Whether Interbrew's increased portfolio will enable it to spread distribution costs across multiple brands, cross-subsidise prices and offer high promotional support or discounts on specific brands within its portfolio, to the disadvantage of its competitors;
- (h) Whether Interbrew will have a financial incentive to promote brands from its enhanced portfolio at the expense of competing brands;
- (i) Whether Interbrew will be able to lower the price of its own brands, or artificially increase the price of competing brands, in order to encourage sales of its own brands to retail outlets and disadvantage its competitors;
- (j) Whether Interbrew will have greater access to information about its competitors' sales to retail outlets, and whether this will give Interbrew the ability to compete selectively to secure sales to those outlets;
- (k) Whether Interbrew will be able to control the route to market, especially to the on-trade, for competing brewers, or potential entrants to the market who lack their own wholesaling and distribution functions, thereby placing them at a competitive disadvantage;
- (l) Whether the merger will have any adverse effects on the wholesaling and distribution of beer to the off-trade;
- (m) Whether synergies will justify the purchase price for the merger; and what percentage of those synergies would be passed to consumers of beer.

3. The effect of the merger on the retailing of beer

- (a) Whether the long-term supply agreements which Interbrew has entered into with the retained estates of Bass and Whitbread effectively foreclose the estates to competitors for the duration of the agreements and beyond; and if so, by what means;
- (b) Whether these agreements will enable Interbrew to compete more aggressively for other business;
- (c) Whether the pub companies have sufficient buyer power to enable them to withstand the increased market power of Interbrew;

- (d) Whether the merger will have an adverse effect on the free trade.

4. Possible adverse effects on the public interest

The Competition Commission invites views on the following **possible** adverse effects of the merger on the public interest:–

- (a) Higher wholesale prices and, eventually, higher retail prices in the on-trade than otherwise would be the case;
- (b) Increased price discrimination between buyers leading to adverse effects on the structure of the retail market and on independent wholesalers;
- (c) Reduced choice of brands for retailers and consumers and a reduced rate of new product innovation;
- (d) Escalation of marketing expenditure leading to increases in entry barriers into brewing.

5. Possible remedies

The Competition Commission invites views on the following **possible** remedies, in the hypothetical situation that the merger is found to be against the public interest:–

- (a) Divestment of the Bass business in its entirety; or possibly without its activities in Scotland and Northern Ireland;
- (b) Divestment of the Whitbread brewing business, either with or without the rights to the Stella Artois brand;
- (c) Divestment of such brands and associated brewing and wholesaling capacity as would enable the creation of a competitive fourth brewer-wholesaler;
- (d) Divestment of the wholesaling and distribution businesses of Bass and/or Whitbread;
- (e) Divestment of the Interbrew/Bass interest in Tradeteam and re-negotiation of the supply contract with Tradeteam on an arms-length and non-preferential basis;
- (f) Termination of the supply agreements with the retained estates of Bass and/or Whitbread;
- (g) Requirement not to discriminate in pricing at the brewing level, that is, to avoid differentials not justified by cost differences between sales to wholesalers and direct sales to retailers;
- (h) Requirement not to discriminate in pricing at the wholesaling level, that is, to avoid differentials not justified by cost differences between sales of Interbrew beers and sales of competitors' beers;
- (i) Requirement not to engage in line forcing at both brewing and wholesaling levels, that is, not to require, or induce through differential terms, the purchase of a full range of Interbrew products.