Antitrust: Commission fines AB InBev €200 million for restricting cross-border sales of beer

The European Commission has fined AB InBev €200 409 000 for breaching EU antitrust rules. AB InBev, the world's biggest beer company, has abused its dominant position on the Belgian beer market by hindering cheaper imports of its Jupiler beer from the Netherlands into Belgium.

Margrethe **Vestager**, Commissioner in charge of competition policy, said: "C*onsumers in Belgium have been paying more for their favourite beer because of AB InBev's deliberate strategy to restrict cross border sales between the Netherlands and Belgium. Attempts by dominant companies to carve up the Single Market to maintain high prices are illegal. Therefore we have fined AB InBev €200 million for breaching our antitrust rules.*"

Anheuser-Busch InBev NV/SA (AB InBev) is the world's biggest beer brewer. Its most popular beer brand in Belgium is **Jupiler**, which represents approximately 40% of the total Belgian beer market in terms of sales volume. AB InBev also sells Jupiler beer in other EU Member States, including the Netherlands and France. In the Netherlands, AB InBev sells Jupiler to retailers and wholesalers at lower prices than in Belgium due to increased competition.

In June 2016, the Commission opened an antitrust investigation to assess whether AB InBev abused its dominant position on the Belgian beer market by hindering imports of its beer from neighbouring countries, in breach of EU antitrust rules. In November 2017, the Commission issued a Statement of Objections.

Today's decision concludes that **AB InBev is dominant on the Belgian beer market**. This is based on its constantly high market share, its ability to increase prices independently from other beer manufacturers, the existence of barriers to significant entry and expansion, and the limited countervailing buyer power of retailers given the essential nature of some beer brands sold by AB InBev.

Market dominance is, as such, not illegal under EU antitrust rules. However, dominant companies have a special responsibility not to abuse their market power by restricting competition, either in the market where they are dominant or in separate markets.

AB InBev abused its dominant market position in Belgium by pursuing a deliberate strategy to **restrict the possibility for supermarkets and wholesalers to buy Jupiler beer at lower prices in the Netherlands** and to import it into Belgium. The overall objective of this strategy was to maintain higher prices in Belgium by limiting imports of less expensive Jupiler beer products from the Netherlands. AB InBev used four different ways to achieve this:

1) AB InBev changed the packaging of some of its Jupiler beer products supplied to retailers and wholesalers in the Netherlands to make these products harder to sell in Belgium, notably by removing the French version of mandatory information from the label, as well as changing the design and size of beer cans.

2) AB InBev limited the volumes of Jupiler beer supplied to a wholesaler in the Netherlands, to restrict imports of these products into Belgium.

3) A number of AB InBev's products are very important for retailers in Belgium as customers expect to find them on their shelves. AB InBev refused to sell these products to one retailer unless the retailer agreed to limit its imports of less expensive Jupiler beer from the Netherlands to Belgium.

4) AB InBev made customer promotions for beer offered to a retailer in the Netherlands conditional upon the retailer not offering the same promotions to its customers in Belgium.

On this basis, the Commission concluded that AB InBev abused its dominant position from 9 February 2009 until 31 October 2016 in breach of EU antitrust rules. It deprived European consumers of one of the core benefits of the European Single Market, namely the possibility to have more choice and get a better deal when shopping.

As a result, the Commission decided to impose a fine on AB InBev.

Cooperation with AB InBev

AB InBev has cooperated with the Commission beyond its legal obligation to do so, in particular by expressly acknowledging the facts and the infringement of EU competition rules and by proposing a remedy.

More specifically, the **remedy will ensure that AB InBev provides mandatory food information in both French and Dutch** on the packaging of its products. The remedy will specifically ensure that the packaging of all existing and new products in Belgium, France and the Netherlands will include mandatory food information in both Dutch and French for the next five years. The Commission decision has made this remedy legally binding on AB InBev.

Therefore, the Commission granted AB InBev a 15% fine reduction in return for this cooperation. Further information on this type of cooperation can be found on the Competition website.

Fines

The fines were set on the basis of the Commission's 2006 Guidelines on fines (see press release and MEMO). In setting the level of the fine, the Commission took into account several factors, including the value of AB InBev's sales of Jupiler beer in Belgium and the Netherlands, the gravity of the infringement and its duration, as well as the fact that AB InBev cooperated with the Commission during the investigation.

The fine imposed by the Commission on AB InBev amounts to €200 409 000. The infringement of EU competition rules lasted from 9 February 2009 until 31 October 2016.

Fines imposed on companies found in breach of EU antitrust rules are paid into the general EU budget. However, the money is not earmarked for particular expenses, instead Member States' contributions to the EU budget for the following year are reduced accordingly. The fines therefore help to finance the EU by reducing taxpayers' contributions.

Background

Through market monitoring the Commission identified ex-officio restrictions for the imports of consumer goods into Belgium from neighbouring Member States. On 30 June 2016, the Commission opened an antitrust procedure to assess whether AB InBev was abusing its dominant position in the Belgian wholesale beer market to illegally restrict imports of cheaper beer into Belgium. On 30 November 2017, the Commission adopted a Statement of Objections alleging that AB InBev engaged in restrictive practices constituting an abuse of dominance under EU antitrust rules.

Article 102 of the Treaty on the Functioning of the European Union (TFEU) prohibits the abuse of a dominant position, which may affect trade and prevent or restrict competition.

Today's decision finds that the four abovementioned practices used by AB InBev infringed Article 102 of the Treaty because AB InBev holds a dominant position in Belgium. Such practices restricting imports within the Single Market may also constitute an infringement of Article 101 of the Treaty if they are the result of an agreement or concerted practice between independent companies,whether a supplier is dominant or not.

More information on today's decision will be available on the Commission's Competition website in the public case register under the case number AT.40134 once any confidentiality issues have been resolved.

Action for damages

Any person or company affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision that has become final constitutes binding proof that the behaviour took place and was illegal. Even though the Commission has fined the cartel participants concerned, damages may be awarded without being reduced on account of the Commission fine.

The Antitrust Damages Directive, which Member States had to implement in their legal systems by 27 December 2016, makes it easier for victims of anti-competitive practices to obtain damages. More information on antitrust damages actions, including a practical guide on how to quantify antitrust harm, is available here.

Whistleblower tool

The Commission has set up by a tool to make it easier for individuals to alert it about anti-competitive behaviour while maintaining their anonymity. The new tool protects whistleblowers’ anonymity through a specifically-designed encrypted messaging system that allows two way communications. The tool is accessible via this link.