Competition - Switzerland

Competition Commission Approves Heineken/Eichhof Merger

November 06 2008

Authors

Silvio Venturi

Pascal G Favre

On August 21 2008 the Competition Commission approved Heineken's proposed acquisition of Eichhof Holding's drinks business.

The commission held that there were no indications that the concentration might create or strengthen a dominant position for the Heineken/Eichhof group. It further held that the merger would not lead to the market being collectively dominated by Heineken/Eichhof and the biggest Swiss brewery, Carlsberg/Feldschlösschen. The investigation revealed that there would still be sufficient competition in the local and regional beer markets after the takeover. It also found no significant barriers to market entry for new competitors. Furthermore, undertakings active in the food retail sector appear to be strong enough to counterbalance the respective market power of Heineken/Eichhof and Carlsberg/Feldschlösschen.

In April 2008 Heineken announced its plans to buy Eichhof Holding's drinks business. Preliminary investigations indicated that the merger could lead to the market being dominated by Heineken/Eichhof and Carlsberg/Feldschlösschen. The commission therefore decided to refer the case to a second-stage assessment. The principal concern in this proposed acquisition was the potential increased concentration in the catering trade (including for both alcoholic and non-alcoholic beers).

Under Swiss law, the commission first applied the concept of collective dominance under the Merger Regulation in *Bell/SEG Poulets* in 1998. It held, among other things, that there must be an expectation that the tacit coordination will last - in other words, the incentive to coordinate behaviour must be sufficient to deter the members of the oligopoly from deviating from the coordinated behaviour.

For further information on this topic please contact Silvio Venturi or Pascal Favre at Tavernier Tschanz by telephone (+41 22 704 3700) or by fax (+41 22 704 3777) or by email (venturi@taverniertschanz.com or favre@taverniertschanz.com).