

MOFCOM 2016 No.38 Announcement - Announcement of the Anti-Monopoly Review Decision to Approve, with Restrictive Conditions, the Concentration of Undertakings in respect of the Acquisition of Shares of SABMiller Plc. by AB InBev S.A / N.V.

29 July 2016

[Issuance Authority] Ministry of Commerce of the People's Republic of China

[Issuance Number] Announcement [2016] No. 38

[Issuance Date] 2016-07-29

The Ministry of Commerce of the People's Republic of China (hereinafter "MOFCOM") has received the notification for antitrust review of the concentration of business operators for the proposed acquisition of SABMiller plc (*SABMiller*) by Anheuser-Busch InBev SA/NV (*AB InBev*). Upon review, MOFCOM has decided to approve this concentration of business operators with restrictive conditions attached. Pursuant to Article 30 of the Anti-monopoly Law of the People's Republic of China (hereinafter "AML"), this Announcement is hereby given as follows:

1. Case acceptance and review procedures

On December 8, 2015, AB InBev consulted with MOFCOM before the notification. MOFCOM paid high attention to the Transaction and indicated that the Transaction involved the MOFCOM [2008] No. 95 Announcement and required AB InBev to notify pursuant to the law as soon as possible. On March 8, 2016, MOFCOM received the notification for antitrust review of the concentration of business operators relating to AB InBev's acquisition of SAB Miller. Upon examination, MOFCOM found that the notification documents and materials were incomplete, and therefore required the notifying party to submit supplementary documents. Given that the Transaction may have the effect of excluding or restricting competition in the beer ma

arket and the requirement provided in the MOFCOM [2008] No. 95 Announcement, AB InBev submitted a proposal of restrictive conditions and the Sale and Purchase Agreement (*Agreement*) entered with China Resources Beer (Holdings) Company Limited (*CRB*) to MOFCOM on March 14. Pursuant to the Agreement, upon completion of the Transaction, AB InBev shall cause SABMiller to sell to CRB the 49% stake in China Resources Snow Breweries Limited (*CR Snow*) owned by SABMiller. On March 29, 2016, MOFCOM confirmed that the notification documents and materials, after supplementary submission, were in line with the requirements of Article 23 of the AML, and thus granted case establishment for this notification for concentration of business operators and commenced the preliminary review process. On April 27, 2016, MOFCOM decided to conduct further review of this concentration of business operators. Upon further review, MOFCOM was of the opinion that this concentration of business operators might have the effect of excluding or restricting competition and the final plan of restrictive conditions submitted by AB InBev and the Agreement could eliminate the effect of excluding or restricting competition of the Transaction. Currently, MOFCOM decided to further extend the review period of the Transaction until September 23, 2016.

During the review process, MOFCOM consulted relevant government departments, industry associations. It also reviewed the truthfulness, completeness and accuracy of the documents and materials submitted by the notifying party.

2. Basic information of the case

AB InBev, the acquiring party, was incorporated in 1977 in Brussels, Belgium. It is listed on the Euronext and the New York Stock Exchange. Its ultimate controllers are 8 entities act in concert such as the foundation of AB InBev and represent approximately 52.56% of the voting rights of AB InBev. AB InBev's major products include beer, other alcoholic beverages and soft drinks. AB InBev entered the Chinese market in 1984 and main brands include Budweiser, Harbin and Sedrin.

SABMiller Plc, the target, was found in 1895 in Surrey County, Britain, which is a public company listed on the in London Stock Exchange and Johannesburg Stock Exchange. The ownership structure of SABMiller is relatively disperse and the largest shareholder is Altria Group who owns 26.6% shares of SABMiller. The main products of SABMiller includes beer, other alcoholic beverages and non-alcoholic beverages. SABMiller entered Chinese market in 1994 by forming joint venture company with CR Snow and it owns 49% shares of CR Snow. Other than the shareholding of CR Snow, SABMiller also sells few malt liquor in China.

On November 11, AB InBev and SABMiller entered into the Acquisition Agreement and AB InB ev will acquire all the shares of SABMiler.

3. Relevant market

1) Relevant product market

AB InBev and SABMiller are mainly engaged in the production and sales of beer. Beer is a kind of low-alcoholic drink that uses malt, hops and water as its main raw materials, and that is brewed by adding yeast. As beer differs significantly from white spirits, wines and other alcoholic beverages in terms of ingredients, brewing process, alcohol content and consumer preference, Beer can be defined as a separate relevant product market.

Beers at different price levels differ significantly in terms of taste, sales channel and consumer group. Therefore, beer producers also differentiate beer into popular beer and premium/super premium beer. RMB5.00/500 ml is usually used as a cutting point to further sub-segment beer into popular beer and premium/super-premium beer in the industry.

2) Relevant geographic market

Whether popular beer or premium/super-premium beer, beer brewers tend to confine production sites and distribution based on provinces due to the relatively low prices and high transportation costs, and various beer brands compete with each other mainly within provinces. As such, the geographic market for beer should be defined on a province by province basis. As both AB InBev and SABMiller are active in the production and sales of beer in China, MOFCOM focused its assessment on the 24 provinces where the parties have horizontal overlaps.

Meanwhile, with the further improvement of the infrastructure, the transportation has become more convenient and the geographic scope where beer is sold tends to be expanded. This is especially true for premium/super-premium beer, because there are circumstances where beer is sold across provinces and regions. Therefore, MOFCOM also assessed beer market on a national basis as well.

4. Competition analysis

According to Article 27 of the Anti-monopoly Law, MOFCOM conducts in-depth analysis of the concentration's effect on the market, taking into account the concentration of relevant market, the market share and control power of the operators concerned in the concentration, the difficulty of market entry, the effect on the consumers and other business operators and other factors, and believes that the concentration has the effect of eliminating or restricting competition in the relevant market.

1) The Transaction will further enhance the control power of AB InBev in relevant market

There are limited competitors in Chinese beer market, which has relatively high degree of concentration. Seen from the sales in 2014, top five competitors are CR Snow, Tsingtao, AB InBev, Yanjing and Carlsberg. CR Snow and AB InBev combined market share amounted to 43%.

After the completion of the case, AB InBev will replace SABMiller and become the shareholder of CR Snow and hold 49% of CR Snow's shares, and will have a joint control of CR Snow with CRB. So the Ministry of Commerce will combine the market share of beer brands controlled by AB InBev and CR Snow to assess AB InBev's market control power. Result of investigation suggests that, AB InBev's control power of popular and premium/super premium beer markets is further enhanced through the Transaction.

In 2014, in Chinese popular beer market, seen from the sales volume, CR Snow and AB InBev is the first and third competitors in market shares, who have a combined market share of 41%. The market share of Tsingtao Beer, Yanjing Beer and Carlsberg are 21%, 13% and 5% respectively. The combined market shares of AB InBev and CR Snow in Tianjin, Liaoning, Heilongjiang, Jilin, Guizhou, Zhejiang and Anhui are over 70% and their combined market shares in Sichuan, Jiangsu, Shanxi and Fujian are over 50%, which is far ahead of other competitors and is lack of effective competition control. In other provinces and regions, AB InBev and CR Snow also have the capacity to enter the market rapidly and increase their grip on the market.

In 2014, in Chinese premium beer market, seen from the sales volume, CR Snow and AB InBev is the first and second competitors in market shares, who have a combined market share of 52%. The market share of Tsingtao Beer, Carlsberg and Heineken are 13%, 8% and 7% respectively. The combined market shares of AB InBev and CR Snow in Tianjin, Anhui, Hunan, Liaoning and Zhejiang are over 70% and their combined market shares in Fujian, Sichuan, Heilongjiang, Guangdong, Jilin, Shanghai, Jiangsu and Tibet are over 50%, which is far ahead of other competitors and is lack of effective competition control. In other provinces and regions, AB InBev and CR Snow also have the capacity to enter the market rapidly and increase their grip on the market.

2) The Transaction will reduce the competition between the two leading competitors in the Chinese beer market.

Survey data shows that in China, no matter in the popular beer market or in the premium/super premium beer market, AB InBev and CR Snow are the closest rivals, and both sides have similar product customers and sales channels, and fierce competition in beer brands, distributors, consumers and among other things, and restrict each other. The Transaction will reduce the competition between the two leading competitors in the market.

3) The Transaction will increase the entry barriers in the relevant market.

After the completion of the Transaction, AB InBev and CRB both have motivation and ability to integrate, control beer sales channels in the other's China's sales channels and customer relationships and other important resources, to squeeze out other competitors' beer products, improve the beer sales channels entry barriers, so that it is more difficult for other operators to enter the relevant market.

4) The Transaction will harm the interests of downstream distributors.

In the relevant market, the majority of beer dealers are small in size and limited in distribution, and have low bargaining power against the beer producers. After the completion of the Transaction, due to the reduced competition between AB InBev and CR Snow, dealers may have weaker negotiation position during the beer agent sales and obtain reduced sales incentive, and the interests of dealers will be compromised.

In summary, after the completion of concentration, AB InBev will further enhance the control power in the relevant market, reduce competition between the two close leading competitors in the market, raise entry barriers to the market, so that harm the interests of the downstream dealers. The Ministry of Commerce believes that the operator concentration has the effect of eliminating or restricting competition of the relevant market, consequently harm the interests of the Chinese consumers.

5. Regarding MOFCOM [2008] No. 95 Announcement

According to MOFCOM [2008] No. 95 Announcement, MOFCOM decided to impose the following restrictive conditions on the acquisition of Anheuser-Busch by InBev "(InBev) should not seek to hold any stake in China Resources Snow Breweries or Beijing Yanjing Brewery. In the case of any non-compliance of any of the conditions listed above, InBev shall make a prior notification with MOFCOM in a timely manner. No step shall be taken before obtaining the approval from MOFCOM".

Post-Transaction, AV InBev will replace SABMiller to hold 49% interest in CR Snow. According to the Announcement above, AB InBev shall obtain the prior approval from MOFCOM, otherwise the Transaction shall not be implemented.

6. Negotiation on the imposition of restrictive conditions

During the review process, MOFCOM informed AB InBev and SABMiller that the Transaction would have the effect of eliminating and restricting competition, and informed AB InBev and SABMiller of MOFCOM's suggestions on the proposals of the restrictive conditions submitted by AB InBev as well as the comments on the Agreement in a timely manner. MOFCOM also negotiated with AB InBev and SABMiller on how to improve the proposals of the restrictive conditions so as to reduce the negative effect that the Transaction has on competition for several rounds. AB InBev and SABMiller submitted

several rounds of revised proposals. MOFCOM assessed those proposals with a focus on the scope of the Divestment Assets, the viability, competitiveness and marketability of the Divestment Assets, and the competency of the buyer of the Divestment Assets under the *Provisions on the Imposition of Restrictive Conditions on Concentration of Undertakings (for Trial)*.

After assessment, MOFCOM concluded that the final proposals of the restrictive conditions submitted by AB InBev and SABMiller on 14 July 2016 and 21 July 2016 respectively would be able to remove the negative effect that the Transaction has on competition.

7. Review decision

Given that the Transaction will have the effect of eliminating and restricting the competition in the relevant market, according to MOFCOM [2008] No.95 Announcement, MOFCOM decided to conditionally clear the Transaction based on the final proposal of the restrictive conditions submitted by AB InBev and SABMiller and require AB InBev and SABMiller to fulfill the following obligations:

- 1) To divest the 49% interest held by SABMiller in CR Snow.
- 2) To sell the 49% interest in CR Snow to CRB strictly in accordance with the Agreement submitted to MOFCOM by AB InBev.
- 3) To ensure that the closing of the abovementioned divestment to be completed within 24 hours after completion of acquisition of shares of SABMiller by AB InBev. Since the date of this announcement until the completion of the divestment, Article 20 of the *MOFCOM's Provisions on the Concentration of Business Operators with Additional Restrictive Conditions (For Trial)* should be strictly implemented, to ensure the viability, competitiveness and marketability of the Divestment Assets.

The supervision and implementation of the restrictive conditions shall be conducted under this announcement. In addition, the final proposal of the restrictive conditions and the Agreement submitted by AB InBev on 14 July 2016 shall be legally binding on AB InBev. And the final proposal of the restrictive conditions submitted by SABMiller on 21 July 2016 shall be legally binding on SABMiller.

MOFCOM can monitor the implementation of this Commitment through monitoring trustee or by their own. If AB InBev and SAB Miller fails to fulfill the above obligations, MOFCOM will take measures according to relevant provisions of China Antimonopoly Law.

This decision shall come into effect since its announcement. This decision shall come into effect as of the date of this announcement.

MOFCOM

29 July 2016

Annex – Final proposal of the restrictive conditions submitted by AB InBev and SABMiller

ANNEX

Final Remedy Proposal Submitted by Anheuser-Busch InBev and SABMiller

On 4 March 2016, AB InBev S.A / N.V. (**ABI**) submitted a notification in relation to its proposed acquisition of shares in SABMiller Plc (**SABMiller**) (the **SABM Transaction**). In order to remove any competition concerns that may arise from the SABM Transaction in China, ABI is willing to provide the following commitments in order to obtain approval of the SABM Transaction by the Ministry of Commerce of PRC (**China**) (**MOFCOM**):

To divest the 49% interest in China Resources Snow Breweries Ltd. (**CR Snow**) held by SABMiller. The scope of the Divestment is the 49% interest in CR Snow (**Divestment Assets**).

According to the Sale and Purchase Agreement entered into between ABI and China Resources Beer (Holdings) Co. Ltd. (**CRB**) on 2 March 2016, to sell the 49% interest in CR Snow held by SABMiller for a purchase price of USD 1.6 billion (**Divestment Transaction**).

ABI shall procure that the closing of the Divestment Transaction to be completed as soon as practicable on or within 24 hours after completion of the SABM Transaction. Before the closing, the provisions of the MOFCOM on the Provisions on the Concentration of Business Operators with Additional Restrictive Conditions (For Trial Implementation) should be strictly implemented, to ensure the viability, competitiveness and marketability of the Divestment Assets.

MOFCOM can monitor the implementation of this Commitment through monitoring trustee or by their own. If ABI fails to implement this Commitment, MOFCOM can take measures according to relevant provisions of China Antimonopoly Law.

SABMiller undertakes that it will support and coordinate with ABI to implement the above commitments in this Remedy Proposal.

[The Sale and Purchase Agreement is Confidential]