

PRESS RELEASE

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The Competition College of the BCA has rejected the application for interim measures of Alken-Maes versus AB InBev regarding the acquisition of Bosteels

The Competition College of the Belgian Competition Authority has rejected on 21 November 2016 the application for interim measures of Brouwerijen Alken-Maes NV calling for a suspension of the takeover of Brouwerij Bosteels by Anheuser-Busch InBev NV. Alken-Maes is part of the Heineken group, Bosteels was a small independent brewery with the brands Triple Karmeliet and Kwak.

Alken-Maes argued that, although the acquisition had not to be notified because the turnover of Bosteels in Belgium was significantly lower than the relevant threshold of 40 million euros, the acquisition must be regarded as an abuse of a dominant position by AB InBev and should therefore be assessed under articles IV.2 CEL and 102 TFEU. In particular, the acquisition of the brand Triple Karmeliet would significantly strengthen the dominant position of AB InBev.

Unlike the EU merger regulation, Belgian competition law does not explicitly exclude the application of the rules on restrictive practices to concentrations. But the Competition College has ruled that acquisitions that are not subject to the merger control rules, can *prima facie* only be assessed by application of the provisions on abuse of a dominant position if there are restrictions on competition which can be distinguished from the mere effect of the concentration and which might by themselves *prima facie* be qualified as an abuse of a dominant position.

The takeover of Bosteels resulted in an increase in market share of AB InBev with slightly more than 1 % on the on-trade beer market in Belgium, and significantly less than 1 % on the off-trade market. On the smallest segment Bosteels had a market share of approximately 6.5 % with the brand "Karmeliet", but on that segment there was no concentration effect because the applicant considered that AB InBev was not yet present on that segment.

The College ruled that there was insufficient evidence that the concentration resulted in restrictions on competition which could be distinguished from the mere effect of the concentration and which might by themselves *prima facie* be qualified as an abuse of a dominant position. It also considered that if such restrictions would materialize, it will at that time be possible to examine them under competition law.

For more information you may contact:

Prof. em. dr. Jacques Steenbergen

President

Tel. +32 (2) 277 73 74

E-mail: jacques.steenbergen@bma-abc.be

Website: [www. www. belgiancompetition.be](http://www.belgiancompetition.be)

The Belgian Competition Authority (BCA) is an independent administrative authority that contributes to the definition and implementation of competition policy in Belgium. Concretely, the BCA pursues anti-competitive practices, such as cartels and abuses of a dominant position, and reviews the main merger operations. The BCA cooperates with the other competition authorities of the member states of the European Union and the European Commission within the European Competition Network (ECN)